



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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February 3, 2011

To: The Honorable Karl Rhoads, Chair
and Members of the House Committee on Labor and Public Employment, and

The Honorable Angus McKelvey, Chair
and Members of the House Committee on Economic Revitalization and Business

Date: Friday, February 4, 2011
Time: 9:00 a.m.
Place: House Conference Room 309, State Capitol

From: Dwight Takamine, Interim Director
Department of Labor and Industrial Relations

Re: H.B. 1166 Relating to Employment

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 1166 proposes to amend Chapter 349B of the Hawaii Revised Statutes (HRS) by requiring the retention of employees who would be displaced from an employer by divestiture through a transfer of a covered establishment to a new employer. The following requirements would apply to the new employer:

- A. Shall hire all incumbent nonsupervisory and non-confidential employees;
- B. Shall not require such employees to file employment applications with the successor employer to be considered for hire unless the existing files are incomplete;
- C. May conduct pre-hire screening of the employees not prohibited by law, including criminal history record checks and drug screening;

- D. May retain less than one hundred percent of incumbent employees if:
- (1) the successor employer is substantially dissimilar to the former employer's business; or
 - (2) the human resource needs of the successor employer are reduced, resulting in the reduction of employees needed, provided that the number of employees to be dislocated shall be in direct proportion to the reduction in the total human resource needs of the successor employer; and
- E. If in violation, shall compensate the dislocated worker the difference between the employee's salary or wage earned under the employee's former employer and the dislocated employee's unemployment insurance benefits received for the covered period.

For the purposes of this bill, a "covered establishment" means any industrial, commercial or other business entity that employed fifty or more persons at any time in the preceding twelve-month period.

II. CURRENT LAW

Chapter 394B, HRS, provides employment and training assistance for workers who are faced with termination due to a closing, divestiture, partial closing or relocation as a result of a sale, transfer, merger, bankruptcy or other business transactions by:

- A. Requiring employers with fifty or more employees in the State of Hawaii to provide advance notification to the Department of Labor and Industrial Relations and to all affected employees;
- B. Requiring employers to provide Dislocated Worker Allowance (the difference between the employee's average weekly wage and the weekly unemployment compensation benefit) to affected employees who apply for and are found eligible for unemployment compensation;
- C. Allowing employers in violation to be liable to each affected worker an amount equal to back pay and benefits for the period of violation, not to exceed sixty days. The liability may be reduced by any wages the employer pays during the notice period and voluntary and unconditional payment not required by a legal obligation; and

- D. The definition of a “divestiture” is the transfer of any covered establishment from one employer to another because of the sale, transfer, merger, bankruptcy or other business takeover or transaction of business interests that causes the covered establishment’s employees to become dislocated workers.

III. HOUSE BILL

The Department of Labor and Industrial Relations supports the intent of this bill, however, we respectfully ask the Committee to consider the following comments:

- A. To implement the bill, if enacted, clarification is requested in the following areas:

- The bill allows for less than 100% retention of employees if the human resource needs of the successor employer are reduced, provided that the reduction is in “direct proportion” to the reduction in total human resource needs of the successor employer. Does the reduction apply to the combined workforce of the successor employer and original employer, or just to the original employer?

For example, if the original employer has a staff of 100, and the successor employer has a staff of 20 that could work at the acquired business (for a combined workforce of 120), but the business requires a staff of only 100, does the reduction apply only to the incumbent workers, or does it apply in equal proportion (20%) to both workforces?

- If the successor employer has different standards for their employees than the prior employer, will the successor employer have any means to apply those standards to the incumbent workers prior to acquiring them?
- Is there a deadline following the divestiture after which release of employees is no longer covered by this bill? For example, if the incumbent employees are released two months after the divestiture, is that a violation? Is it a violation if it occurs one week after the divestiture?
- If the employer is found in violation, he is responsible for compensation to affected workers for the covered period. The dates and duration of a covered period are not stated in the bill. The current law requires the payment of a “dislocated worker allowance” should a worker becomes

unemployed as a result of a closing. Is the successor employer required to pay both compensations, or is the compensation in the bill referring to the payments for dislocated worker allowances?

- B. The Department would be required to develop rules and respond to public inquiries to carry out the purposes of this law for which additional State funds would be necessary.



Representative Karl Rhoads, Chair
Representative Kyle Yamashita, Vice Chair
Committee on Labor & Public Employment

Representative Angus McKelvey, Chair
Representative Isaac Choy, Vice Chair
Committee on Economic Revitalization & Business

State Capitol, Honolulu, Hawaii 96813

HEARING Friday, February 04, 2011
 9:00 am
 Conference Room 309

RE: HB1166, Relating to Employment

Chairs Rhoads and McKelvey, Vice Chairs Yamashita and Choy, and Members of the Committees:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is the one of the largest single employers in the state, employing almost 24% of the labor force.

RMH strongly opposes HB1166, which establishes job security requirements upon the divestiture of a covered establishment if the covered establishment employs 50 or more persons.

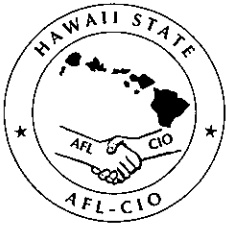
This bill is an infringement on the basic rights of ownership that seriously impacts the value of a business and the ability of an owner to divest that business operation. It further discourages investment in Hawaii by severely restricting the options for potential new owners by dissuading any development and/or diversification possibilities.

At a time when Hawaii should be encouraging new enterprise in our state to accelerate economic recovery, this bill is a giant step in the opposite direction and could have the undesirable result of more companies just closing their doors for lack of viable alternatives.

The members of the Retail Merchants of Hawaii respectfully request that you hold HB1166. Thank you for your consideration and for the opportunity to comment on this measure.

Carol Pregill, President

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Randy Perreira
President

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The Twenty-Sixth Legislature, State of Hawaii
House of Representatives
Committee on Labor and Public Employment
&
Committee on Economic Revitalization and Business

Testimony by
Hawaii State AFL-CIO
February 4, 2011

H.B. 1166 – RELATING TO EMPLOYMENT

The Hawaii State AFL-CIO strongly supports H.B. 1166 which establishes job security requirements upon the divestiture of a covered establishment if the covered establishment employs 50 or more persons.

It is not in Hawaii's best interest to potentially increase unemployment in today's unstable economy through the divestiture of business entities with no assurance of continued employment for its workers.

H.B. 1166 will help change the mind set of lower consumer confidence by providing additional comfort to those worried tomorrow may be their last day of work in the event of a divestiture.

H.B. 1166 will help retain jobs ensuring workers' lives are not disrupted and their families remain secure. Having a healthy, qualified workforce and lower unemployment is a win-win for everyone. Businesses perform better, consumers are more content and the family remains intact. While it is impossible to prevent all job losses, it is possible to help prevent some of them. H.B. 1166 does just that.

We hope the two committees recognize the importance of worker retention and pass H.B. 1166 out favorably.

Thank you for the opportunity to testify.

Respectfully submitted,

Randy Perreira
President



**Testimony to the House Committees on Economic Revitalization & Business
and Labor & Public Employment
Friday, February 4, 2011
9:00 a.m. – 12:00 p.m.
State Capitol - Conference Room 309**

RE: HOUSE BILL NO. 1166 RELATING TO EMPLOYMENT

Chairs Rhoads and McKelvey, Vice Chairs Yamashita and Choy, and members of the committees:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). I am here to state The Chamber's opposition to House Bill No. 1166 HD1, relating to Employment.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

This measure establishes job security requirements upon the divestiture of a covered establishment if the covered establishment employs 50 or more persons.

The Chamber well recognizes the hardship that business failures and ownership changes place on employees. However, The Chamber does not believe that House Bill 1166 is an appropriate measure in addressing this issue. The following is a list of some of the reasons why this bill should be held:

- 1) This bill interferes with the basic principles of doing business. The measure removes the successor employer's rights to select employees appropriate for its goals and objectives. As a result, it may have the adverse consequence of discouraging capital investment in Hawaii because purchasers will be more reluctant to acquire companies due to the stringent requirements and mandates. This will send a negative message to the nation and potential buys, as well as further undermine Hawaii's efforts in saving and creating jobs during this tough economic period.

Also, the bill places a mandate on the new business to retain a proportion of the incumbent employees if the human resources needs of the successor employer are reduced. There is no understanding that a change in human resource needs may change the nature of the skills and abilities of those employees needed to operate the new business. Saddling a new business with the predecessor's employees may undermine the livelihood and continued employment of other employees.

- 2) This bill will have the reverse effect, and in turn, cost jobs. The measure may have the unintended consequences of hurting local businesses, which otherwise would have had an opportunity to sell their business to a successor company.

In many cases, businesses are sold because the seller is losing money. In order to turn the business around, a buyer needs the flexibility to change or reduce staff to increase efficiency, or to bring in better qualified or more skilled employees, or to bring in employees with different skill sets.

Those businesses which would normally be sold to a buyer which can make necessary changes will simply go out of business and the employees will lose their jobs. Or the assets of the business will be sold off and the employees will lose their jobs.

- 3) The term, "substantially dissimilar" is ambiguous. Although HB 1166 recognizes that the new business may be substantially dissimilar to the former business, this term is difficult to define, and will result in litigation in most cases. Once again, employees will lose their jobs due to potential overwhelming litigation costs that could impact the employer.
- 4) Although the bill allows employers to apply substance abuse testing and criminal records check standards it fails to understand that a new employer may have different requirements such as conflict of interest policies or anti-nepotism rules that may not have been applied by the former employer. The bill also fails to recognize that an application form may contain other information important to a new employer that is missing or outdated on the predecessor employer's records.

In sum, Senate HB 1166, while well-intended, will pose negative consequences for Hawaii's future. We cannot afford to pass legislation that will have this kind of result. Hawaii should be cultivating the soil to help our local establishments thrive, so that jobs can be saved and created, especially as Hawaii makes a slow economic recovery. This bill is a disincentive for investment.

Thus, The Chamber respectfully requests HB 1166 held.

Thank you for the opportunity to testify.

LATE



**Before the House Committee on Labor and the
House Committee on Economic Revitalization and Business**

DATE: February 4, 2011
TIME: 9:00 a.m.
PLACE: Conference Room 309

Re: HB 1166
Relating to Employment
Testimony of Melissa Pavlicek for NFIB Hawaii

Thank you for the opportunity to testify in opposition to HB 1166.

We recognize and appreciate the efforts of legislators to address small business concerns. This measure has the potential to negatively impact the valuation of businesses and to impact the ability of struggling companies to survive through the sale of an ongoing operation.

The National Federation of Independent Business is the largest advocacy organization representing small and independent businesses in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 1,000 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.

HOUSE OF REPRESENTATIVES

Committee on Labor and Public Employment

Rep. Karl Rhoads, Chair

Rep. Kyle T. Yamashita, Vice Chair

Committee on Economic Revitalization and Business

Rep. Angus L.K. McKelvey, Chair

Rep. Isaac W. Choy, Vice Chair

State Capitol, Conference Room 309

Friday, February 4, 2011; 9:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 1166
RELATING TO EMPLOYMENT**

The ILWU Local 142 supports H.B. 1166, which establishes job security requirements upon the divestiture of a covered establishment if the covered establishment employs 50 or more persons.

Under the statute, "divestiture" is defined as "the transfer of any covered establishment from one employer to another because of the sale, transfer, merger, bankruptcy, or other business takeover or transaction of business interests that causes the covered establishment's employees to become dislocated workers." H.B. 1166 will require successor employers in a divestiture situation to retain all incumbent non-supervisory and non-confidential employees unless otherwise indicated.

We support this bill for several reasons. First, it minimizes disruption when a divestiture occurs. Instead of all employees being terminated and asked to reapply for their old jobs, transition to the new employer will be seamless. Customers will see business continuing as usual. Employees will be assured of employment, even though management will retain the right to evaluate employees and assess their ability to meet the company's needs.

Second, mass layoffs are harmful to the economy. When 50 or 100 or even more employees are laid off at one time, workers will have less money in their pockets to pay for goods and services, resulting in less money circulating in the economy and less taxes paid to the government.

Third, if the successor employer maintains the same business as the previous employer, retaining workers who know the business, understand the customer base, and have the skills and know-how to perform the job means less time and effort needed to train workers and acquaint them with the job. The successor employer will save money and maintain good will among both clientele and employees.

Most employers understand that worker retention in a divestiture makes good business sense. However, this law is needed for those employers who need to be reminded of the valuable contribution that workers make to the success of a business. Humane regard for employees will go a long way toward better productivity and loyalty from the workforce.

The ILWU urges passage of H.B. 1166. Thank you for the opportunity to testify on this measure.