

NEIL ABERCROMBIE
GOVERNOR



DWIGHT Y. TAKAMINE
DIRECTOR

AUDREY HIDANO
DEPUTY DIRECTOR

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

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February 22, 2013

To: The Honorable Sylvia Luke, Chair,
The Honorable Scott Nishimoto, Vice Chair,
The Honorable Aaron Ling Johanson, Vice Chair, and
Members of the House Committee on Finance

Date: Monday, February 25, 2013

Time: 11:00 a.m.

Place: Conference Room 308, State Capitol

From: Dwight Y. Takamine, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 634 Relating to Employment

I OVERVIEW OF PROPOSED LEGISLATION

The Department supports this proposal provided that its passage does not replace or adversely impact priorities indicated in the Executive Budget. HB634 proposes to amend Chapter 394B of the Hawaii Revised Statutes (HRS) by requiring the retention of employees who would be displaced from an employer by divestiture of a covered establishment to the successor employer. This amendment, for employers with 100 or more workers, would establish the following for the successor employer:

- Require the hiring of all incumbent non-supervisory and non-confidential employees;
- Shall not require incumbent employees to file employment applications to be considered for hire (unless existing files are incomplete);
- May conduct pre-hire screening of the incumbent employees not prohibited by law, including criminal conviction record checks and drug screening;
- May retain less than one hundred percent of incumbent employees if:
 - ✓ The successor employer is substantially dissimilar to the former employer's

business; or

- ✓ 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.

II. CURRENT LAW

Chapter 394B, HRS, provides employment and training assistance to workers who were faced with termination due to a sudden closure or partial closing as a result of a sale, transfer, merger, bankruptcy or other business transaction by:

- Requiring employers with fifty (50) 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;
- 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 found eligible for unemployment compensation; and
- 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.
- 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. COMMENTS ON THE HOUSE BILL

The DLIR supports the measure and offers the following comments:

- To implement the bill, if enacted, clarification is requested in the following areas:
 - ✓ If the successor employer has different standards for their employees than the previous employer, will the successor employer have any means to apply

those standards to the incumbent workers prior to acquiring them?

- ✓ Is there a time limitation 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 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 as the Workforce Development Division is largely federally funded. At a time when Federal funds for administrative responsibilities have been drastically reduced, it is critical that the Department receive State funds to implement actions required by this bill.
- An estimated \$52,200 per year will be needed to address the additional responsibilities required by the Department and includes operating funds to purchase the services of the Department of the Attorney General. Again, the DLIR supports this proposal provided that its passage does not replace or adversely impact priorities indicated in the Executive Budget.



The Twenty-Seventh Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Finance

Testimony by
Hawaii State AFL-CIO
February 25, 2013

H.B. 634 – RELATING TO EMPLOYMENT

The Hawaii State AFL-CIO supports H.B. 634 which establishes job security requirements upon the divestiture of a covered establishment if the covered establishment employs 100 or more persons.

The divestiture of a company can be a stressful and uncertain time for workers and their families. H.B. 634 will likely reduce the stress and uncertainty by helping to retain jobs ensuring workers' lives are not disrupted and their families remain financially stable and secure. Having a healthy, qualified workforce and the potential for lower unemployment is a win-win for everyone. Businesses would perform better, consumers would be more content and families would remain intact.

Thank you for the opportunity to testify.

Respectfully submitted,

Jason Bradshaw
COPE Director



Representative Sylvia Luke, Chair
Representative Scott Y. Nishimoto, Vice Chair
Representative Aaron Ling Johanson, Vice Chair
Committee on Finance

HEARING Monday, February 25, 2013
 11:00 am
 Agenda #1
 Conference Room 308
 State Capitol, Honolulu, Hawaii 96813

RE HB634, Relating to Employment

Chair Luke, Vice Chairs Nishimoto and Johanson, and Members of the Committee:

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 one of the largest employers in the state, employing 25% of the labor force.

RMH opposes HB634, relating to employment, which establishes job security requirements upon the divestiture of a covered establishment if the covered establishment employs 100 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, sell or transfer 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 HB634. Thank you for your consideration and for the opportunity to comment on this measure.

Carol Pregill, President



Submitted in Opposition to HB634

February 23, 2013

House Bill No. 634, while well-intended, will have negative consequences for Hawaii's restaurant industry. We cannot afford to pass legislation that will have such results. Hawaii should be encouraging investment in its failed or struggling businesses. This bill is a disincentive for investment.

As written, HB634 bill interferes with basic principles of doing business. It removes the purchasing employer's rights to select employees appropriate for its goals and objectives. As a result, it would have the adverse consequence of discouraging investment in Hawaii because purchasers will be more reluctant to acquire restaurant or other foodservice operations.

Additionally, the bill requires a potential new business to retain a proportion of the incumbent employees regardless of whether or not that staffing is consistent with the intended new operations.

In actuality, the bill could have the effect of loss 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

Respectfully submitted,

A handwritten signature in black ink that reads "Roger Morey". The signature is written in a cursive, flowing style.

Roger Morey
Executive Director



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Testimony to the House Committee on Finance
February 25, 2013

Testimony in Opposition to HB 634 – Relating to Labor

To: The Honorable Sylvia Luke, Chair
The Honorable Scott Nishimoto, Vice-Chair
The Honorable Aaron Johanson, Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 78 Hawaii credit unions, representing approximately 804,000 credit union members across the state. We are opposed to HB 634, Relating to Labor.

This bill would require that companies absorb employees from a company that they acquire. In today's challenging economic climate, it is sometimes necessary for smaller credit unions to merge with bigger credit unions in order to survive. In the event of such a merger, under this measure, there would be duplicative departments and positions, and functional overlaps. There could also be overlapping branch locations. This would hinder productivity. Any business strives to reduce internal redundancies in order to promote streamlining, and this would hinder that process.

Thank you for the opportunity to provide comments.

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 22, 2013 5:26 PM
To: FINTestimony
Cc: pamelapcm@gmail.com
Subject: *Submitted testimony for HB634 on Feb 25, 2013 11:00AM*

HB634

Submitted on: 2/22/2013

Testimony for FIN on Feb 25, 2013 11:00AM in Conference Room 308

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Pamela Williams | Individual | Support | No |

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 22, 2013 11:16 PM
To: FINTestimony
Cc: tabraham08@gmail.com
Subject: *Submitted testimony for HB634 on Feb 25, 2013 11:00AM*

HB634

Submitted on: 2/22/2013

Testimony for FIN on Feb 25, 2013 11:00AM in Conference Room 308

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Troy Abraham | Individual | Support | No |

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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