

HB 634

HD 1



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor

March 19, 2013

To: The Honorable Clayton Hee, Chair,
The Honorable Maile Shimabukuro, Vice Chair, and
Members of the Senate Committee on Judiciary and Labor

The Honorable Rosalyn H. Baker, Chair, and
The Honorable Brickwood Galuteria, Vice-Chair,
Members of the Senate Committee on Commerce and Consumer Protection

Date: Tuesday, March 19, 2013
Time: 9:45 a.m.
Place: Conference Room 016, State Capitol

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

Re: H.B. No. 634 HD1 Relating to Employment

I OVERVIEW OF PROPOSED LEGISLATION

DLIR supports this proposal provided that its passage does not replace or adversely impact priorities indicated in the Executive Budget.

HB634 HD1 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?

- 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.

We support 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 Senate
Committee on Judiciary and Labor
Committee on Commerce and Consumer Protection

Testimony by
Hawaii State AFL-CIO
March 19, 2013

H.B. 634, HD1 – RELATING TO
EMPLOYMENT

The Hawaii State AFL-CIO supports H.B. 634, HD1 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, HD1 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



Hon. Daniel R. Foley
Associate Judge
Intermediate Court of Appeals
Chair

Jill M. Hasegawa
Vice Chair

HAWAII ACCESS TO JUSTICE COMMISSION

Commissioners:

Hon. Simeon R. Acoba, Jr.
Rep. Della Au Belatti
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Moses Haia
Sen. Clayton Hee

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Patricia McManaman

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Hon. Trudy Senda
Gary M. Slovin
Dean Aviam Soifer
Shannon L. Wack

March 16, 2013

To: Senator Clayton Hee
Chair, Senate Committee on Judiciary and Labor

Re: Senate Committee on Judiciary and Labor
Hearing Date: Tuesday, March 19, 2013
Hearing Time: 10:05 a.m.

Testimony in **Strong Support** of HB 197, HD2 portion relating to increasing the ceiling for the Indigent Legal Assistance Fund (ILAF)

Dear Chair Hee and Members of the Senate Committee on Judiciary and Labor:

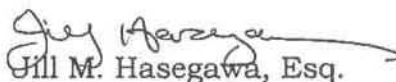
The Hawaii Access to Justice Commission (the "Commission"), **strongly supports** raising the ceiling for the Indigent Legal Assistance Fund (ILAF), as requested in HB 197, HD2.

The Commission, which was created by Rule 21 of the Rules of the Supreme Court of Hawaii on May 1, 2008, was established with the purpose to substantially increase access to justice in civil legal matters for low- and moderate-income residents of Hawaii ("low income Hawaii residents"), including increasing and stabilizing long-term public and private funding and resources for delivery of civil legal services to low-income Hawaii residents.

The Commission was created in response to the 2007 Assessment of Civil Legal needs and Barriers of Low- and Moderate-Income People of Hawaii (2007 Assessment), which found that four out of five low income Hawaii residents do not have their legal needs met and that legal service providers are only able to assist one in three persons who contact them for assistance. The Commission recognizes that in order to increase delivery of legal services to low income Hawaii residents, more funding is essential to assist the legal service providers.

In 2011, Act 180 was passed, which amended HRS §607-5.7 to increase the surcharge fees on various court filings, which additional fees were intended to benefit Hawaii's legal service providers through the Indigent Legal Assistance Fund. The passage of Act 180 was expected to significantly assist Hawaii's legal service providers, who were suffering from budget cuts and lack of funding, while at the same time facing a consistent increase in requests for assistance, well over above the 2007 Assessment figures.

However, in order to carry-out the intent of Act 180, and provide additional assistance to low income residents of Hawaii through increased funding for Hawaii's legal service providers, it is necessary to increase the ceiling amount for the ILAF fund, so that all funds collected may be distributed to the eligible legal service providers. Therefore, the Commission strongly supports the passage of the portion of HB 197, HD2, which calls for the ILAF ceiling to be raised, and requests that this Committee approve this request. Thank you.



Jill M. Hasegawa, Esq.

Vice-Chair

Hawaii Access to Justice Commission

**Testimony to the Senate Committees on Judiciary and Labor and
Commerce and Consumer Protection
Tuesday, March 19, 2013 at 9:45 A.M.
State Capitol – Conference Room 016**

RE: HOUSE BILL 634 HD1 RELATING TO EMPLOYMENT

Chairs Hee and Baker, Vice Chairs Shimabukuro and Galuteria, and Members of the Committees:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** HB 634 HD1 Relating to Employment.

The Chamber is the largest business organization in Hawaii, representing over 1000 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 members and the entire business community 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 sale, merger or other transfer of a business establishment that employs 100 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 No. 634 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. This measure removes the purchasing 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 as a result of the stringent requirements and mandates. This will send a negative message to the nation and further undermine Hawaii's efforts in becoming a "business-friendly" climate. It will be the only state that will have this kind of law.

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. Overall, this bill falls short of taking into consideration that the new business may significantly change the type and scope of goods and services, and may have different plans and objectives for a failed business, which may require a completely different personnel.

- 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 634 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.

In sum, House Bill No. 634, 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 encouraging investment in its failed or struggling businesses. This bill is a disincentive for investment.

Thus, The Chamber respectfully requests HB 634 HD1 be held.

Thank you for the opportunity to testify.

Lance N. Tanaka
Manager, Government & Public Affairs



TESORO

Tesoro Hawaii, LLC
91-325 Komohana Street
Kapolei, Hawaii 96707-1713
808 547-3920

March 18, 2013

TO: The Honorable Clayton Hee, Chair
The Honorable Maile Shimabukuro, Vice Chair
and Members of the Senate Committee on Judiciary and Labor

The Honorable Rosalyn Baker, Chair
The Honorable Brickwood Galuteria, Vice Chair
and Members of the Senate Committee on Commerce and Consumer Protection

SUBJECT: House Bill 634, House Draft 1, Relating to Employment
Joint Hearing of the Senate Committees on Judiciary and Labor and
Commerce and Consumer Protection
Tuesday, March 19, 2013; 9:45 a.m.; Conference Room 016, State Capitol

Chairs Hee and Baker and members of both committees:

My name is Lance Tanaka, and I am the government and public affairs manager for Tesoro Hawaii, LLC. Thank you for allowing me to present testimony in **opposition to House Bill 634, House Draft 1**.

As you are aware, Tesoro has attempted to sell its Hawaii business over the past year. In January of this year, Tesoro announced that it will cease refining in Hawaii as the company continues to seek a buyer for its Hawaii business. Through the divestiture process, we intend to transition ownership of our assets in Hawaii to another operator who can continue to provide employment opportunities for our employees.

Tesoro understands and can appreciate the intent behind HB 634, HD 1. However, we believe the bill is likely to have a chilling effect on our ability to attract strong buyers.

Ours is a private and complex sales transaction, and HB 634, HD 1 is likely to impose a hurdle to the sales process. Therefore, we respectfully urge your committees to hold this measure.

Thank you for your consideration and for allowing me to testify. I am available to answer any questions you may have.

Lance N. Tanaka
Manager, Government & Public Affairs
Tesoro Hawaii, LLC

NFIB

The Voice of Small Business[®]

House of Representatives
Twenty-Seventh Legislature, 2013
State of Hawai'i

TO: Honorable Clayton Hee, Chair
Honorable Rosalyn Baker, Chair
Honorable Maile Shimabukuro, Vice Chair
Honorable Brickwood Galuteria, Vice Chair
Members of the Committee on Judiciary & Labor
Members of the Committee on Commerce and Consumer Protection

DATE: Tuesday, March 19, 2013
TIME: 9:45 AM
PLACE: Conference Room 016
Hawai'i State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

FROM: National Federation of Independent Business (NFIB) Hawai'i

RE: **HOUSE BILL 634, HOUSE DRAFT 1, RELATING TO EMPLOYMENT**

Chair Hee, Chair Baker, Vice Chair Shimabukuro, Vice Chair Galuteria, and members of the Committees,

Thank you for the opportunity to testify on House Bill 634, HD1. NFIB Hawai'i respectfully **opposes** this measure.

HB 634, HD1, establishes job security requirements upon the divestiture of a covered establishment if the covered establishment employs 100 or more persons.

HB 634, HD1, has the potential to cause significant harm to Hawaii's economy. HB 634, HD1, not only encroaches upon fundamental rights of ownership, it also discourages future investment in our economy. Local companies selling their businesses due to financial crisis will be at an extreme disadvantage under the provisions of HB 634, HD1. Without the option to sell, companies may be forced to close, leaving jobless the very employees HB 634, HD1, is designed to employ.

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.

Thank you for the opportunity to testify on this measure.



Senator Clayton Hee, Chair
Senator Maile S. L. Shimabukuro, Vice Chair
Committee on Judiciary and Labor

Senator Rosalyn Baker, chair
Senator Brickwood Galuteria, Vice Chair
Committee on Commerce and Consumer Protection

HEARING Tuesday, March 19, 2013
 9:45 am
 Conference Room 016
 State Capitol, Honolulu, Hawaii 96813

RE HB634, HD1, Relating to Employment

Chairs Hee and Baker, Vice Chairs Shimabukuro and Galuteria, 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 one of the largest employers in the state, employing 25% of the labor force.

RMH strongly 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 assure economic stability, 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, HD1. Thank you for your consideration and for the opportunity to comment on this measure.

A handwritten signature in cursive script, appearing to read 'Carol Pregill'.

Carol Pregill, President



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Testimony to the Senate Committees on Judiciary and Labor, and
Commerce and Consumer Protection
March 19, 2013

Testimony in Opposition to HB 634 HD1 – Relating to Labor

To: The Honorable Clayton Hee, Chair
The Honorable Maile Shimabukuro, Vice-Chair
The Honorable Rosalyn Baker, Chair
The Honorable Brickwood Galuteria, 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 HD1, 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.

The Twenty-Seventh Legislature
Regular Session of 2013

THE SENATE

Committee on Judiciary and Labor

Senator Clayton Hee, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

Committee on Commerce and Consumer Protection

Senator Rosalyn H. Baker, Chair

Senator Brickwood Galuteria, Vice Chair

State Capitol, Conference Room 016

Tuesday, March 19, 2013; 9:45 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 634, HD1
RELATING TO EMPLOYMENT**

The ILWU Local 142 supports H.B. 634, HD1, which establishes job security requirements upon the divestiture of a covered establishment if the covered establishment employs 100 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. 634, HD1 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 workers are laid off at one time, they 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 customers 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.

One concern, however, has been raised by the Department about the staffing requirements to enforce the law. Currently, the Workforce Development Division has limited staff to perform additional functions such as enforcement and likely will need an appropriation to manage this new requirement.

The ILWU urges passage of H.B. 634, HD1 with funding for staff needed to enforce the law. Thank you for the opportunity to testify on this measure.

hee2 - Kathleen

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 17, 2013 6:22 PM
To: JDLTestimony
Cc: victor.lim@partners.mcd.com
Subject: Submitted testimony for HB634 on Mar 19, 2013 09:45AM

HB634

Submitted on: 3/17/2013

Testimony for JDL/CPN on Mar 19, 2013 09:45AM in Conference Room 016

| Submitted By | Organization | Testifier Position | Present at Hearing |
|--------------|--------------|--------------------|--------------------|
| Victor Lim | Individual | Oppose | No |

Comments: I am opposed to this bill because in a business buy sell process, this bill will make for the seller the value of the business that much lower because the buyer is obligated to take over and be restricted in the new buyers ability to mover the business to a more effective and procdutive position. We are also interfering with free enterprise here. Thanks.

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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