

# HB 634



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The Twenty-Seventh Legislature, State of Hawaii  
House of Representatives  
Committee on Labor & Public Employment

Testimony by  
Hawaii State AFL-CIO  
February 5, 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,

Randy Perreira  
President

**Testimony to the House Committee on Labor and Public Employment  
Tuesday, February 5, 2013 at 9:00 A.M.  
State Capitol – Conference Room 309**

**RE: HOUSE BILL 634 RELATING TO EMPLOYMENT**

Chair Nakashima, Vice Chair Hashem, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** HB 634 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 be held.

Thank you for the opportunity to testify.



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

TO: Honorable Mark Nakashima, Chair  
Honorable Mark Hashem, Vice Chair  
Members of the Committee on Labor & Public Employment

DATE: Tuesday, February 5, 2013

TIME: 9:00 AM

PLACE: Conference Room 309  
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, RELATING TO EMPLOYMENT**

Chair Nakashima, Vice Chair Hashem, and members of the Committee,

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

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

HB 634 has the potential to cause significant harm to Hawaii's economy. HB 634 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. Without the option to sell, companies may be forced to close, leaving jobless the very employees HB 634 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.



Representative Mark M. Nakashima, Chair  
Representative Mark J. Hashem, Vice Chair  
Committee on Labor & Public Employment  
State Capitol, Honolulu, Hawaii 96813

HEARING      Tuesday, February 05, 2013  
                  9:00 am  
                  Conference Room 309

**RE      HB634, Relating to Health**

Chair Nakashima, Vice Chair Hashem, 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

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 04, 2013 8:49 AM  
**To:** LABtestimony  
**Cc:** nokumura@vipfoodservice.com  
**Subject:** Submitted testimony for HB634 on Feb 5, 2013 09:00AM

**HB634**

Submitted on: 2/4/2013

Testimony for LAB on Feb 5, 2013 09:00AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nelson T. Okumura	VIP Foodservice	Oppose	No

Comments: This mandate limits the new owner's ability to restructure and establish the right team. It will be seen as a measure that will hinder investment in Hawaii and hurt many companies interested in selling their businesses.

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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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 01, 2013 11:44 AM  
**To:** LABtestimony  
**Cc:** econnell1@hawaii.rr.com  
**Subject:** Submitted testimony for HB634 on Feb 5, 2013 09:00AM

**HB634**

Submitted on: 2/1/2013

Testimony for LAB on Feb 5, 2013 09:00AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Emmons Connell	Individual	Oppose	No

Comments: This bill puts undue burdon on the new owner. Don't pass this bill.

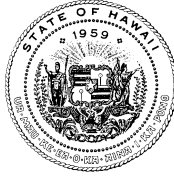
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# HB 634

**LATE TESTIMONY**



**LATE TESTIMONY**

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

830 PUNCHBOWL STREET, ROOM 321  
HONOLULU, HAWAII 96813  
[www.hawaii.gov/labor](http://www.hawaii.gov/labor)

January 31, 2013

To: The Honorable Mark Nakashima, Chair,  
The Honorable Mark Hashem, Vice Chair, and  
Members of the House Committee on Labor & Public Employment

Date: Tuesday, February 05, 2013  
Time: 9:00 a.m.  
Place: Conference Room 309, 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**

H.B. 634 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 Department of Labor and Industrial Relations supports the intent of this bill, however, we respectfully ask the Committee to consider 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. 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.



**LATE TESTIMONY**

Testimony to the Labor Committee  
State Capitol, Conference Room 309 at 9:00am  
February 5, 2013

**RE: OPPOSE HB634 RELATING TO EMPLOYMENT**

Dear Chair Nakashima, Vice Chair Hashem, and Committee Members:

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce. I am writing on behalf of our organization to Oppose HB634 which establishes job security requirements upon the divestiture of a covered establishment if the covered establishment employs 100 or more persons.

While we all want a robust economy with low unemployment and an abundance of job opportunities, we feel this bill, which is intended to protect jobs for existing employees when a company that employs over 100 people is sold, may have the opposite effect.

Such a mandate will hamper a new owner's ability to restructure an organization, which can limit their opportunities for viability and growth. When a company cannot make needed changes, it hurts the organization and jobs can be lost.

The measure may hinder investment in Hawaii as well, by tying new owners hands in an already heavily regulated environment with a high-cost of doing business, and make other locations far more attractive in terms of investment.

And, you may hurt the ability of local businesses to sell their business with such conditions.

Therefore, we ask that you hold HB634 in committee and not allow it to advance further.

Thank you for the opportunity to submit testimony. If you have any questions regarding our testimony, please do not hesitate to give me a call.

Sincerely,

Pamela Tumpap  
President