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January 29, 2016

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

Date: Friday, January 29, 2016
Time: 10:00 a.m.
Place: Conference Room 309, State Capitol

From: Linda Chu Takayama, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 685 Relating to Employment

I. OVERVIEW OF PROPOSED LEGISLATION

HB 685 proposes to amend section 394B-9, Hawaii Revised Statutes (HRS), to require any employer to provide written notification to non-temporary employees at least thirty days in advance of any planned layoff, except for layoffs resulting from lawful disciplinary action or as provided in current statute.

II. CURRENT LAWS

Currently, section 394B-9, HRS, requires an employer in a “*covered establishment*” to provide written notification to its employees and department director of a closing, divestiture, partial closing, or relocation at least *sixty days* prior to its occurrence.

“*Covered establishment*” means an employer with *50 or more employees* in last twelve month period (Section 394B-2).

“Closing” and “partial closing” refer to the permanent shutting down of operations within a covered establishment due to *the sale, transfer, merger, and other business takeover or transaction of business interests, bankruptcy, or other close of business transactions that results in a layoff or termination of employees of a*

covered establishment by the employer.

The federal Worker Adjustment and Retraining Notification Act (WARN) generally requires employers of at least 100 employees to provide 60 days written notice to their employees in advance of laying off at least one-third of their workforce, except for a faltering company that is actively seeking capital or business and in good faith believes that advance notice would preclude its ability to obtain such capital or business to avoid or postpone a shutdown; unforeseeable business circumstance such as the unexpected cancellation of a major order; or natural disaster.

III. COMMENTS ON THE HOUSE BILL

There are four (4) basic differences between HB 685 and existing state statute:

1. Applies to more employers.
HB 685 has no minimum threshold for number of employees for an employer to be covered; thus, HB 685 would apply to *any* employer with one or more non-temporary employees. This differs from section 394B-2, HRS, which defines “covered establishment” as business entities employing fifty (50) or more persons in last twelve month period.
2. Covers more layoffs.
HB 685 requires prior notice for layoffs of just one non-temporary employee for any reason other than resulting from lawful disciplinary action. Current statute requires prior notice only if the layoff is due to result of a sale, transfer, merger, and other business takeover or transaction of business interests, bankruptcy, or other close of business transactions that results in a layoff or termination of employees of a covered establishment by the employer.
3. Requires 30-day advance notice versus 60-day advance notice.
HB 685 requires thirty days (30) prior written notification to employees in advance of any layoff. The current law requires employers in “covered establishment” to provide sixty (60) days prior written notice both to their employees and department director.
4. Does not require advance notice to department director.
The bill does not require advance notice to the director, whereas current law does. With large-scale layoffs, such as HC&S, it is more cost-effective to plan services jointly with the employer and applicable union(s). Advance notice to the department helps to achieve this.

HB 685 will drastically expand the prior notice requirement to apply to any employer planning to lay off any paid employees on a non-temporary basis. There would be a substantially increased workload if the department were required to enforce the new provision as paragraph (f) mandates. The department also notes that because there

is no notification to DLIR for layoffs of less than 50 employees, we would have no knowledge of the action or ability to take preventive measures to assist small scale layoffs in advance.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Labor & Public Employment
Friday, January 29, 2016 at 10:00 A.M.
Conference Room 309, State Capitol**

RE: HOUSE BILL 685 RELATING TO EMPLOYMENT

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

The Chamber of Commerce Hawaii ("The Chamber") **opposes** HB 685, which requires all entities and individuals that employ employees on a non-temporary basis to provide notice to employees at least thirty days in advance of any planned layoff and violators are subject to civil penalties.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 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.

We understand the need for notice to employees for entities with a large layoff. At the same time, we are concerned with the effect caused by the 30-day advance notice would have on morale and productivity. Regardless of whether individuals are affected or not by the layoff, internal morale and work disruption could obviously result from the time frame set by this bill. In addition, this disruption in morale and productivity could lead to further financial and operational distress which may exacerbate the financial problems of the entity.

Thank you for the opportunity to testify.



Testimony to the House Committee on Labor & Public Employment
Friday, January 29, 2016, 10:00AM
State Capitol - Conference Room 309

RE: HOUSE BILL NO. 685 RELATING TO ADVANCED NOTICE OF PLANNED LAYOFF

Aloha Chair Nakashima, Vice Chair Keohokalole, and members of the committee:

I am John Knorek, the Legislative Committee chair for the Society for Human Resource Management – Hawaii Chapter (“SHRM Hawaii”). SHRM Hawaii represents more than 800 human resource professionals in the State of Hawaii.

We are writing to respectfully oppose HB 685, which requires entities and individuals that employ employees on a non-temporary basis to provide notice to employees at least thirty days in advance of any planned layoff.

At present, federal law, under the Worker Adjustment and Retraining Notification (“WARN”) Act, requires businesses employing more than 100 full-time employees to provide 60-days advance notice of any planned mass layoff. Additionally, the Hawaii Dislocated Workers Act requires entities employing more than 50 full-time employees to provide 60-days advance notice of any planned layoff due to divestiture, full or partial closure, or relocation.

This bill would unduly restrict workplace staffing flexibility, increase costs, and complicate the management of laid-off employees. Layoffs are a last resort based on economic necessity. A thirty-day waiting period would only extend the economic hardship another month. Whether advanced notice should be provided for layoffs not covered by the WARN Act or Dislocated Workers Act should be left to private market determination.

Human resource professionals are keenly attuned to the needs of employers and employees. We are the frontline professionals responsible for businesses’ most valuable asset: human capital. We truly have our employers’ and employees’ interests at heart. We respectfully oppose this measure because of the implementation challenges and administrative burden it would impose, and for the potential of unintended consequences.

We will continue to review this bill and, if it advances, request to be a part of the dialogue concerning it. Thank you for the opportunity to testify.





Before the House Committee on Labor & Public Employment

DATE: January 29, 2016

TIME: 10:00 a.m.

PLACE: Conference Room 309

Re: HB 685 Relating to Advanced Notice of Planned Layoff

Testimony of Melissa Pavlicek for NFIB Hawaii

Aloha Chair Nakashima, Vice Chair Keohokalole, and members of the Committee:

We are testifying on behalf of the National Federation of Independent Business (NFIB) in opposition to House Bill 685, which requires entities and individuals that employ employees on a non-temporary basis to provide notice to employees at least thirty days in advance of any planned layoff.

State and federal laws already require layoff notice for some employees in many circumstances. This bill creates additional economic hardship on businesses that are opting to lay off one or more employees, typically as a last resort. Providing 30-day advance notice, in some circumstances, could create employee morale, security and safety issues. Hawaii employers, first and foremost, want to stay in business – layoffs occur out of economic necessity. Increasing the notice burden when not already warranted by other state or federal laws is not necessary or advisable.

The National Federation of Independent Business is the largest advocacy organization representing small and independent business 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. Mahalo for your consideration.

The Twenty-Eighth Legislature
Regular Session of 2016

LATE

HOUSE OF REPRESENTATIVES
Committee on Labor and Public Employment
Rep. Mark M. Nakashima, Chair
Rep. Jarrett Keohokalole, Vice Chair
State Capitol, Conference Room 309
Friday, January 29, 2016, 10:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 685
RELATING TO EMPLOYMENT**

The ILWU Local 142 **strongly supports** H.B. 685, which requires all entities and individuals that employ employees on a non-temporary basis to provide notice to employees at least thirty days in advance of any planned layoff and subject violators to civil penalties.

The current law requires employers with 50 or more employees to notify them of a planned layoff due to “closing, divestiture, partial closing, or relocation” at least 60 days in advance of the layoff. This bill will require all employers to notify non-temporary employees of proposed layoff at least 30 days in advance of the layoff. The only exception would be for employees terminated for lawful disciplinary action.

We believe this bill is will regard all employees fairly. If it is important for employees of companies with 50 or more employees to be notified in advance of a planned layoff in order to begin to prepare, it should be equally important to notify employees of smaller companies as well. No business decides to close without some advance preparation and should be able to provide their employees with 30 or 60 days’ advance notice of layoff.

Hawaii’s Dislocated Worker Law (HRS 394-B) was enacted after some 120 workers at Holiday Day Inn Airport, who were members of the ILWU, were informed on New Year’s Eve that they would not have jobs the following day. The Legislature understood the lack of fairness to the employees and rightly believed that advance notification to employees would be fair and just. A year after Hawaii’s law was enacted in 1987, the federal WARN Act was passed. Hawaii led the way then and can do it again.

The ILWU urges passage of H.B. 685. Thank you for the opportunity to testify on this measure.