

ACT 5

H.B. NO. 1503

A Bill for an Act Relating to Employment.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 394B-2, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Divestiture” means 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.”

2. By amending the definitions of “closing”, “covered establishment”, and “employer” to read:

““Closing” means the permanent shutting down of all operations within a covered establishment due to the sale, transfer, merger, [and] other business takeover or transaction of business interests [which], bankruptcy, or other close of business transaction that results in or may result in the layoff or termination of employees of a covered establishment by the employer.

“Covered establishment” means any industrial, commercial, or other business entity [which] that employs at any time in the preceding twelve-month period, fifty or more persons.

“Employer” means any [person who,] individual or entity that, directly or indirectly, owns, operates, or has a controlling interest in a covered establishment, excluding the State or any political subdivision thereof.”

SECTION 2. Section 394B-9, Hawaii Revised Statutes, is amended to read as follows:

“§394B-9 Notification[-]; penalty. (a) An employer in a covered establishment shall provide to each employee and the director written notification of a closing, divestiture, partial closing, or relocation at least sixty days prior to its occurrence.

(b) An employer that violates this section shall be liable to each affected employee for an amount equal to back pay and benefits for the period of violation not to exceed sixty days. This liability may be reduced by any:

(1) Wages the employer pays during the notice period; and

(2) Voluntary and unconditional payment not required by a legal obligation.

(c) An employer of a covered establishment that is actively seeking a buyer for a sale, transfer, or merger shall not be required to provide the notice required

under subsection (a) until the employer has entered into a binding agreement for the sale, transfer, or merger of the covered establishment that results in a divestiture.

(d) An employer who fails to provide notice under this section shall be subject to a civil penalty not to exceed \$500 for each day of the violation and the amount shall be deposited in the employment and training fund under section 383-128; provided that the employer may avoid the penalty if the employer satisfies its liability to each affected employee within three weeks after the closing. In any suit, the court, in its discretion, may award the prevailing party reasonable attorney's fees and costs."

SECTION 3. Section 394B-12, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§394B-12~~]]~~ Civil penalties. ~~[Any]~~ Except as provided in section 394B-9(b), any employer who fails to conform to the provisions of this chapter shall be liable to each of the employees affected in an amount equal to the value of all their wages, benefits, and other compensation for the three months preceding the closure, partial closure, or relocation of the covered establishment.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Vetoed by Governor and veto overridden by Legislature on July 10, 2007.)