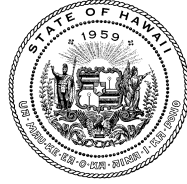


**DAVID Y. IGE**  
GOVERNOR

**SHAN TSUTSUI**  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
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**MARIA E. ZIELINSKI**  
DIRECTOR OF TAXATION

**DAMIEN A. ELEFANTE**  
DEPUTY DIRECTOR

To: The Honorable Gilbert S.C. Keith-Agaran, Chair  
and Members of the Senate Committee on Judiciary and Labor

Date: Wednesday, March 22, 2017

Time: 9:30 A.M.

Place: Conference Room 016, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

Re: H.B. 1031, H.D. 1, Relating to Criminal History Record Checks

The Department of Taxation (Department) strongly supports H.B. 1031, H.D. 1, an Administration measure allowing the Department and other agencies to conduct criminal history record checks on employees with access to federal tax information. H.D. 1, has a defective effective date of July 1, 2050.

The Internal Revenue Service (IRS), through Section 5 of Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies, recently mandated all agencies that receive Federal Tax Information (FTI) perform background checks, including an FBI fingerprint search, on all employees who access FTI.

The Department of Taxation relies on FTI received from the IRS to target and perform audits. Maintaining access to FTI is critical to the administration of taxes. There will be a definite decrease in tax revenue collected without the ability to receive FTI.

Thank you for the opportunity to provide testimony in support.

DAVID Y. IGE  
GOVERNOR



PANKAJ BHANOT  
DIRECTOR

BRIDGET HOLTHUS  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES  
P. O. Box 339  
Honolulu, Hawaii 96809-0339

March 22, 2017

TO: The Honorable Senator Gilbert S.C. Keith-Agaran, Chair  
Senate Committee on Judiciary & Labor

FROM: Pankaj Bhanot, Director

SUBJECT: **HB1031 HD 1 - RELATING TO CRIMINAL HISTORY RECORD CHECKS**

Hearing: March 22, 2017, 9:30 a.m.  
Conference Room 016, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) supports this administration measure.

**PURPOSE:** The purpose of this measure is to add the Child Support Enforcement Agency and the Departments of Taxation, Human Services, and Labor and Industrial Relations to the list of agencies that are authorized to conduct criminal history record checks on employees, prospective employees, and contractors that have access to federal tax information (FTI). The House Committee on the Judiciary amended the measure by defecting the effective date and making technical amendments.

IRS, through Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies, recently mandated all agencies that receive Federal Tax Information (FTI) perform background checks, including an FBI fingerprint search, on all employees, applicants for employment, and contractors who access to FTI.

This committee amended the companion measure SB 897 deleting references to contractors in relation to criminal history records checks of persons who are employed or seeking employment with the DHS to avoid conflict with federal laws that prohibit contractors from accessing federal tax information (FTI). DHS clarifies that as DHS is moving toward an

integrated eligibility system (IES), DHS IT systems have become and will become more integrated with other systems, including the Internal Revenue Service (IRS), and there will be instances in which DHS IT contractors are required to address DHS system issues that may encounter FTI from other systems.

Notwithstanding reference to Internal Revenue Code (IRC) §6103, which provides specific restrictions and prohibitions on disclosure of FTI and contracting for services involving disclosure of FTI to contractors, the IRS has recognized instances when the IRS will authorize an agency's vendor to access FTI, specifically prohibited under IRC §6103(I)(7), (I)(8) and (I)(10). To address such situations as described, and consistent with IRS memorandum entitled "Safeguards Technical Assistance Memorandum for Contractor Data Migration of Federal Tax Information (FTI) into State Integrated Eligibility Systems (IES),"<sup>1</sup> the DHS requests that the committee retain the language in Sections 3 and 8 to reflect the following:

SECTION 3. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

**"§346-\_\_\_\_\_ Criminal history record checks.** (a) The department shall develop procedures for obtaining verifiable information regarding the criminal history of any person who is employed or seeking employment, or any contractor and its employees or agents (when prior authority to access federal tax information was provided by the U. S. Secretary of Treasury or the Internal Revenue Service), if ~~[the person's]~~ such position will require access to federal tax information. The procedures shall include criminal history record checks in accordance with section 846-2.7. Information obtained pursuant to this subsection shall be used exclusively by the department for the purpose of determining whether a person is suitable for accessing federal tax information in accordance with applicable federal laws.

(b) The department may terminate or deny employment to any employee or applicant, or terminate or refuse to secure the services of any contractor, if the department finds by reason of the background investigation conducted under subsection (a) that the employee or applicant, or employee or agent of the contractor, poses a risk to the security of federal tax information. Termination or denial of employment under this subsection shall only occur after appropriate notification to the employee or applicant of the findings of the background investigation, and after the employee or applicant is given an opportunity to

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<sup>1</sup> See, <https://www.irs.gov/pub/irs-utl/safeguards-tech-asst-memo-integrated-eligibility-systems.pdf>

respond to the findings. Nothing in this subsection shall abrogate any applicable appeal rights under chapters 76 and 89, or administrative rules of the department.

(c) Notwithstanding any other law to the contrary, for purposes of this section, the department shall be exempt from section 831-3.1 and need not conduct investigations, notifications, or hearings under this section in accordance with chapter 91.”

We also propose consistent amendments be made in SECTION 8 of the bill, which amends section 846-2.7(b), HRS, as follows:

“(47) The department of human services on current and prospective employees, and contractors (when prior authority to access FTI was provided by the U. S. Secretary of Treasury or the Internal Revenue Service), who have access to federal tax information in order to comply with requirements of federal law, regulation, or procedure, as provided by section 346-\_\_\_\_\_.”

DHS receives FTI from both the Internal Revenue Services (IRS) and the Social Security Administration, and approximately 600 employees have access to FTI. This measure will support the efforts to safeguard FTI and remain compliant with federal law and federal policy changes.

Thank you for this opportunity to provide testimony on this bill.

DAVID Y. IGE  
GOVERNOR

SHAN S. TSUTSUI  
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA  
DIRECTOR

LEONARD HOSHIJO  
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STATE OF HAWAII  
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March 22, 2017

To: The Honorable Gilbert S.C. Keith-Agaran, Chair  
The Honorable Karl Rhoads, Vice Chair, and  
Members of the Senate Committee on Judiciary and Labor

Date: Wednesday, March 22, 2017

Time: 9:30 am

Place: Conference Room 016

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

**Re: H.B. No. 1031 HD1 Relating to Criminal History Checks**

The Department strongly supports HB1031 HD1 that allows the department to conduct criminal history record checks on employees with access to federal tax information and offers a technical amendment.

The Internal Revenue Service (IRS), through Publication 1075, Tax Information Security Guidelines for Federal, State, and Local Agencies, recently mandated all agencies that receive Federal Tax Information (FTI) perform background checks, including an FBI fingerprint search, on all employees who access FTI.

DLIR receives FTI for two purposes in the Unemployment Insurance Division: (1) to reduce worker misclassification; and (2) to support the Treasury Offset Program (TOP). Worker misclassification occurs when an employee is erroneously classified by an employer as an independent contractor or not classified at all and becomes part of the underground economy. The Office of Inspector General has identified the use of 1099 data to be an effective tool for identifying employers misclassifying workers as independent contractors. As a condition for releasing FTI in the form of 1099 data, the IRS requires DLIR to meet the IRS safeguard conditions specified in IRS Publication 1075.

The TOP is a centralized offset program administered by the Bureau of the Fiscal Service's Debt Management Services to collect delinquent debts owed to federal agencies and states (including past-due child support). TOP permits interception of

federal income tax refunds to recoup outstanding Unemployment Insurance overpayments from claimants and delinquent taxes from employers. Participation in TOP is required in order to qualify for any supplemental funding from the U.S. Department of Labor (USDOL) to support the Unemployment Insurance program.

## I. COMMENTS ON THE HOUSE BILL

### A. Differences Between HB 1031 HD1 and SB 897 SD2:

- 1) Criminal history record checks language:
  - a. HB1031 HD1 proposes to amend chapter 383, Hawaii Revised Statutes (HRS), by adding a new section to part IV.
  - b. SB897 SD2 proposes to amend chapter 371, HRS, by adding a new section to part I.
- 2) Subsection (b) beginning on page 5, line 17:
  - a. HB1031 HD1 states that: "The department may terminate or deny employment to any employee or applicant, or terminate or refuse to secure the services of any contractor, if the department finds..."
  - b. SB897 SD2 states that: "The department may terminate or deny employment to any employee or applicant, or terminate or refuse to secure the services of any contractor approved by the Internal Revenue Service, if the department finds..."

DLIR recommends the following:

- Keeping the provisions in chapter 383.
- Making a technical amendment that mirrors the language of the Senate companion but with the contractor authorized instead of approved by the IRS as follows.

"The department may terminate or deny employment to any employee or applicant, or terminate or refuse to secure the services of any contractor authorized by the Internal Revenue Service (IRS) to access Federal Tax Information (FTI), if the department finds..."

Harry Kim  
Mayor



Wil Okabe  
Managing Director

Barbara J. Kossow  
Deputy Managing Director

## County of Hawai'i

### Office of the Mayor

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KONA: 74-5044 Ane Keohokalole Hwy., Bldg. C • Kailua-Kona, Hawai'i 96740  
(808) 323-4444 • Fax (808) 323-4440

March 20, 2017

Senator Gilbert S.C. Keith-Agaran, Chair  
Committee on Judiciary and Labor  
Hawai'i State Capitol  
Honolulu, HI 96813

Dear Chair Keith-Agaran and members:

**RE: HB 1031 HD 1**  
**Relating to Criminal History Record Checks**

Thank you for the opportunity to testify in favor of HB 1031, but with very important amendments.

In the Senate companion bill, SB 897, the Senate added to this measure, specifying that the counties also are authorized to conduct criminal history record checks of current employees, prospective employees, and contractors who have or will have access to federal tax information.

The reasons are clear. SB 897, SD1 is needed legislation, but the new IRS regulation requiring background checks and FBI fingerprinting for all current and prospective employees will affect our county workers, too, creating the same issues as those raised by the various state agencies that are the subject of the current HB 1031, HD1.

The counties are bound by Sections 378-2.5 and 846-2.7, HRS. Both those HRS sections limit the County's authority as to when and on whom we can conduct criminal background and history checks on current and prospective employees. The new IRS regulations are not currently referenced in either HRS section.

Accordingly, my staff is suggesting two amendments to HB 1031, HD1. They are highlighted in yellow:

Section 6. Section 378-2.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

(d) Notwithstanding subsections (b) and (c), the requirement that inquiry into and consideration of a prospective employee's conviction record may take place only after the individual has received a conditional job offer, and the limitation to the most recent ten-year period, excluding the period of incarceration, shall not apply to employers who are expressly permitted to inquire into an individual's criminal history for employment purposes pursuant to any federal or state law other than subsection (a), including:

(1) The State or any of its branches, political subdivisions, or agencies pursuant to sections 78-2.7 and 831-3.1;

(2) The department of education pursuant to section 302A-601.5;

(3) The department of health with respect to employees, providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services pursuant to section 321-171.5;

(4) The judiciary pursuant to section 571-34;

(5) The counties pursuant to section 846-2.7(b)(5), (33), (34), (35), (36), [and](38),and (49);

**SECTION [6](7).** Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Criminal history record checks may be conducted by:

.....



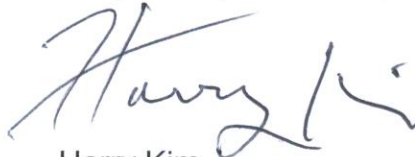
(48) The child support enforcement agency on current and prospective employees and contractors that have access to federal tax information in order to comply with federal law, regulation, or procedure; and

[(45)] (49) The various County agencies on current and prospective employees and contractors that have access to federal tax information in order to comply with federal law, regulation, or procedure; and

(50) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law."

We urge passage of this bill, with the requested, or comparable, amendments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Harry Kim", written in a cursive style.

Harry Kim  
Mayor

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:**  
**Subject:** \*Submitted testimony for HB1031 on Mar 22, 2017 09:30AM\*  
**Date:** Friday, March 17, 2017 9:20:49 PM

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**HB1031**

Submitted on: 3/17/2017

Testimony for JDL on Mar 22, 2017 09:30AM in Conference Room 016

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Circe Carr          | 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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