



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

H.B. NO. 1031, H.D. 1, CRIMINAL HISTORY RECORD CHECKS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Wednesday, March 22, 2017 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Nathan S.C. Chee, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General supports this administration bill. The Department appreciates the amendments made by the Senate Committees to the companion bill in its present form, S.B. No. 897, S.D. 2, and thanks this committee for the time and effort it has put into its review of this bill.

The purpose of this bill is to authorize the Child Support Enforcement Agency (CSEA) and the Departments of Taxation, Labor and Industrial Relations, and Human Services to conduct criminal history record checks for employees, applicants for employment, and contractors who will have access to Federal Tax Information (FTI).

The Department notes the companion to this bill, S.B No. 897, was passed out of the Senate as S.D. 2. The amendments the Senate made to that bill as introduced are summarized as follows:

- Added the term "contractors" to the list of individuals the Department of Taxation may conduct criminal history record checks on.
- Eliminated the term "contractors" from the list of individuals the Department of Human Services may conduct criminal history record checks on.
- Moved a new section implementing criminal history record checks for the Department of Labor and Industrial Relations from chapter 383, Hawaii Revised Statutes (HRS) to chapter 371, HRS.

- Made amendments to sections 378-2.5 and 846-2.7, HRS, to allow the counties to conduct criminal history record checks on employees or contractors who have access to FTI.

While the Department appreciates all the amendments made to S.B. No. 897, S.D. 2, the Department respectfully requests that the following amendments and/or comments regarding Senate Draft 2 be considered:

1. Although IRS Publication 1075 references 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 Internal Revenue Service (IRS) also recognizes that the IRS will authorize an agency's vendor to access FTI, specifically prohibited under IRC § 6103(l)(7), (l)(8) and (l)(10). Such a situation is described in an IRS memorandum entitled "Safeguards Technical Assistance Memorandum for Contractor Data Migration of Federal Tax Information (FTI) into State Integrated Eligibility Systems (IES)"¹, (the "Safeguards Memorandum"). To address this situation, we respectfully request reinstatement of the wording regarding contractors in section 3 on pages 3-5 of S.B. No. 897, S.D. 2, to reflect the following:

SECTION 3. Chapter 346, Hawaii Revised Statutes, is amended by adding to part I a new section 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 position]~~ any of the foregoing persons 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.

¹ A copy is attached as Exhibit 1 for your convenience.

(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 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.”

In addition, we also request the following proposed amendments be used in section 8 on page 25, lines 1-5, of S.B. No. 897, S.D. 2, 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 federal tax information 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- ;”

2. To be consistent with the Safeguards Memorandum we ask that the term “approved” on page 6, line 1, of S.B. No. 897, S.D. 2, be replaced with the term “authorized.”

3. Regarding the amendments related to the counties, we understand they were submitted by the County of Hawaii and we take no position on those amendments.

To ensure the agency and departments affected by this bill above may continue to perform their core functions, we respectfully request passage of this bill in the form of S.B. No. 897, S.D. 2, with the addition of the amendments discussed above.