

**DAVID Y. IGE**  
GOVERNOR

**SHAN TSUTSUI**  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
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**MARIA E. ZIELINSKI**  
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**DAMIEN A. ELEFANTE**  
DEPUTY DIRECTOR

To: The Honorable Jill N. Tokuda, Chair  
and Members of the Senate Committee on Ways and Means

Date: Friday, February 24, 2017

Time: 1:35 P.M.

Place: Conference Room 211, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

Re: S.B. 897, S.D. 1, Relating to Criminal History Record Checks

The Department of Taxation (Department) strongly supports S.B. 897, S.D. 1, an Administration measure allowing the Department and other agencies to conduct criminal history record checks on employees. S.D. 1 has a defective effective date of January 7, 2059.

The Internal Revenue Service (IRS), through Section 5 of Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies, recently mandated that 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.



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 897, S.D. 1, RELATING TO CRIMINAL HISTORY RECORD CHECKS.

**BEFORE THE:**

SENATE COMMITTEE ON WAYS AND MEANS

**DATE:** Friday, February 24, 2017

**TIME:** 1:35 p.m.

**LOCATION:** State Capitol, Room 211

**TESTIFIER(S):** **WRITTEN TESTIMONY ONLY.**

(For more information, contact Nathan S.C. Chee,  
Deputy Attorney General, at 586-1470)

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Chair Tokuda and Members of the Committee:

The Department of the Attorney General supports this administration 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 Internal Revenue Service (IRS), through *Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies*, recently mandated that all agencies receiving FTI perform background checks, including an FBI fingerprint search, on all employees, applicants for employment, and contractors who have access to FTI.

The CSEA receives FTI for the purposes of locating noncustodial parents and for the enforcement of child support obligations through the interception of federal income tax refunds.

The Department of Taxation receives and relies on FTI to perform audits. Maintaining access to FTI is required for the proper administration and collection of taxes.

The Department of Labor and Industrial Relations (DLIR) receives FTI for two purposes: (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 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). On December 26, 2013, President Obama signed into law the Bipartisan Budget Act. The Act requires each state to administer the unemployment insurance programs and to use TOP to recoup certain outstanding debts via intercept of Federal income tax refunds as a condition for receipt of grants. As the DLIR relies on grant funding to operate the unemployment insurance offices, continued access to FTI must be maintained.

The Department of Human Services (DHS) receives FTI from both the IRS and the Social Services Administration (SSA). DHS relies on FTI and other income data sources to accurately determine an individual's eligibility for services and programs.

To ensure the agency and departments discussed above may continue to perform their core functions, we respectfully request passage of this bill.

DAVID Y. IGE  
GOVERNOR

SHAN S. TSUTSUI  
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA  
DIRECTOR

LEONARD HOSHIO  
DEPUTY DIRECTOR

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

February 23, 2017

To: The Honorable Jill N. Tokuda, Chair  
The Honorable Senator Donovan M. Dela Cruz, Vice Chair, and  
Members of the Senate Committee on Ways and Means

Date: Friday, February 24, 2017  
Time: 1:35 P.M.  
Place: Conference Room 211, State Capitol

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

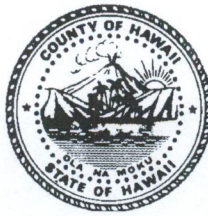
**Re: S.B. No. 897 SD1 Relating to Criminal History Record Checks**

The Department supports the intent of this measure to authorize criminal history record checks on employees with access to the federal tax information, but has serious concerns with the current version of the bill, which deleted the reference to contractors accessing federal tax information (FTI). As contractor services are required to view FTI, the Department recommends reinstating the omitted language and suggests the following amendment to Section 4 of this proposal:

“(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 approved by the Internal Revenue Service (IRS) under subsection (a) that the employee or applicant poses a risk to the security of federal tax information....”

The Internal Revenue Service (IRS), through Publication 1075, Tax Information Security Guidelines for Federal, State, and Local Agencies, recently mandated all agencies that received Federal Tax Information (FTI) to perform background checks, including an FBI fingerprint search, on all employees who access FTI. The department receives FTI to identify employers who misclassify workers and to apply federal income tax refunds in offsetting outstanding unemployment insurance overpayments.

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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February 22, 2017

Senator Jill Tokuda  
Ways and Means Committee  
Hawai'i State Capitol  
Honolulu, HI 96813

Dear Chair Tokuda and members:

RE: **SB 897, SD1**

Thank you for this opportunity to generally support SB 897, SD1, but to request amendments.

SB 897, SD1 is needed legislation, but it should be recognized that 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 SD1.

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 SB 897, SD1. 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]

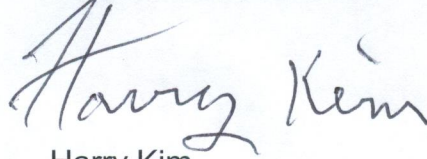
[(45)] (49) The various County agencies on current and prospective employees and contractors that have access to federal tax information in order to comply with federal law, regulation, or procedure; and

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

Jill Tokuda  
Ways and Means Committee  
February 22, 2017

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

Respectfully submitted,

A handwritten signature in black ink that reads "Harry Kim". The signature is written in a cursive style with a large initial "H" and a distinct "K".

Harry Kim  
Mayor