



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2018**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1647, H.D. 2, RELATING TO HEALTH.

**BEFORE THE:**

SENATE COMMITTEES ON HUMAN SERVICES AND ON LABOR

**DATE:** Wednesday, March 14, 2018      **TIME:** 3:15 p.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** Russell A. Suzuki, Acting Attorney General, or  
Lili A. Young, Deputy Attorney General, Phone: 587-3050

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Chairs Green and Tokuda and Members of the Committees:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to require the Department of Human Services (DHS) to compile data and identify employers that have employees enrolled in the public assistance programs administered by the DHS, so the Legislature and other policy makers will have a deeper understanding of the causes and sources of underemployment, poverty wages, and the economic impacts on society, business, and the state budget. The bill proposes adding a new section to chapter 346, Hawaii Revised Statutes, requiring the DHS to compile information relating to employers with employees who receive public assistance, and requires the Department of Labor and Industrial Relations to assist by sharing employment data with the DHS.

Article III, section 14, of the Hawaii State Constitution provides in relevant part that "No law shall be passed except by bill. Each Law shall embrace but one subject, which shall be expressed in its title." The purposes of section 14 of article III are as follows:

First, to prevent hodge-podge or logrolling legislation, second, to prevent surprise or fraud upon the Legislature by means of provisions in bills of which titles give no intimation; and third, to apprise the people of proposed matters of legislation.

Schwab v. Ariyoshi, 58 Haw. 25, 30-31, 564 P.2d 135, 139 (1977). Thus, a bill that addresses subjects outside its single subject title violates article III, section 14, of the Hawaii State Constitution.

Here, the title of the bill properly refers to one subject, and section 1 indicates that this Act may be cited as the “Fair Share Health Care Disclosure Act.” However, section 3, at page 2, lines 17 through 20, mandates that the DHS “compile data regarding employers having employees who receive public assistance, including benefits under the state medicaid program **and other services or other benefits** administered by the” DHS [emphasis added]. The bill’s purpose of requiring the DHS to compile the data, including the medicaid program data, is “so that the legislature and other policy makers will have a deeper understanding of the causes and sources of underemployment, poverty wages, and the economic impacts on society, business, and the state budget.”

Requiring the DHS to compile data regarding an employer with employees receiving benefits from all other public assistance programs administered by the DHS, unrelated to health or health care, appears to be beyond the scope of the title of this bill. Thus, the bill may be subject to challenge as violative of article III, section 14, of the Hawai’i Constitution.

We suggest this problem could be cured by amending section 2 of the bill by including an explanation of how compilation of the data relating to the various public assistance programs administered by DHS relates to the single subject of health. If this is not possible, we recommend removing the requirement to have DHS compile data not related to health. Alternatively, we recommend that another vehicle with a title broad enough to embrace the issues under a single subject be used to enact this bill, such as "Relating to Labor" or "Relating to Human Services".

We respectfully ask the Committees to make the suggested changes. Thank you for the opportunity to provide these comments.



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

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March 14, 2018

To: The Honorable Josh Green, Chair,  
The Honorable Stanley Chang, Vice Chair,  
and Members of the Senate Committee on Human Services

The Honorable Jill N. Tokuda, Chair,  
The Honorable J. Kalani English, Vice Chair,  
and Members of the Senate Committee on Labor

Date: Wednesday, March 14, 2018  
Time: 3:15 p.m.  
Place: Conference Room 016, State Capitol

From: Leonard Hoshijo, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. No. 1647 HD2 Relating to Health**

**I. OVERVIEW OF PROPOSED LEGISLATION**

This proposal seeks to add a new section to chapter 346, Hawaii Revised Statutes (HRS), requiring the Department of Human Services (DHS) to compile information regarding employers with employees who receive public assistance. It requires DLIR to assist the DHS in the form of sharing employment data to achieve this purpose.

The Directors of DHS and DLIR discussed the capability of matching data, which can be done through an MOU. DLIR defers to DHS on this measure and estimates that it would need \$50,000 to accomplish its responsibility in the measure.

**II. CURRENT LAW**

The current law does not require DHS access to Unemployment Insurance (UI) data as proposed in this measure.

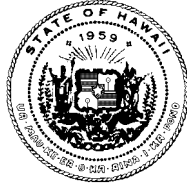
### **III. COMMENTS ON THE HOUSE BILL**

DLIR supports the intent of this bill and is willing to work with DHS to determine how the legislative purpose can be achieved within the statutory disclosure provisions contained in Chapter 383, HRS and within cost or resource restrictions.

The U.S. Department of Labor (U.S.DOL) has long interpreted methods of administration to require the confidentiality of UI information and to follow the congressional mandate that UI information be used only for the purpose for which it is directed. According to HRS §383-95 and HAR §12-5-211 to §12-5-220, disclosure of information from workers, employers, or other persons or groups in the course of administering the state employment security program shall be held confidential and shall not be disclosed unless authorized requesting agencies have entered into a written agreement with the department.

Should this proposal be enacted, an information sharing agreement with DHS would be required to satisfy its limited purposes. As a condition for the data exchange, DHS would have to provide relevant recipients' personal identifying information to crossmatch against the DLIR-UI employer and wage records. All expenses associated with providing the data must be reimbursed by the requesting agency in accordance to federal requirements.

DAVID Y. IGE  
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PANKAJ BHANOT  
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March 13, 2018

TO: The Honorable Senator Josh Green, Chair  
Senate Committee on Human Services

The Honorable Senator Jill N. Tokuda, Chair  
Senate Committee on Labor

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 1647 HD2 – RELATING TO HEALTH**

Hearing: Wednesday, March 14, 2018, 3:15 p.m.  
Conference Room 016, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) appreciates the intent of the measure and offers comments.

Since the first hearing in the House, Directors of DHS and the Department of Labor and Industrial Relations (DLIR) have discussed this measure and are investigating available data points to match to comply with this measure. The departments will require one or more memorandum of understanding to conduct the data match, and DHS is informed that expenses associated with the data match DHS will require an appropriation.

Since the hearing before House Finance, we received a preliminary cost estimate from DLIR of \$25,000 to \$50,000; this is the potential amount DHS would be required to reimburse DLIR.

DHS will also require IT modifications to run the match, and depending upon whether the legislature requests data matching for financial program recipients and Medicaid recipients, the preliminary estimate for DHS is approximately \$100,000; DHS may be able to access federal matching funds through Medicaid, if the match is made for

purposes of system or program improvement. DHS and DLIR will continue to discuss the estimated appropriation amount to accomplish this task.

At this time we request that this proposal not be codified in statute, and instead the legislature mandate through a session law, DHS to determine the 50 employers with the highest number of employees receiving public assistance and make the necessary appropriation and spending provisions. If the legislature prefers to codify the mandate, then DHS requests that the requirement to match, compile, and report the findings to the legislature be subject to available funding.

**PURPOSE:** The purpose of the bill requires DHS to compile information regarding employers with employees who receive public assistance. Requires DHS to submit an annual report to legislature on the 50 employers with the highest number of employees receiving public assistance. Requires DLIR to share employment data.

DHS agrees that understanding and containing the state's health care costs are issues that the Legislature and the public would benefit from a deeper understanding, in addition to appreciating the complexities of underemployment, poverty wages, and economic impacts on society, business, and the state budget.

This session DHS has two legislative proposals that address similar concerns: HB2361 (now HB694 HD1) Relating to Health Analytics that establishes the Health Analytics Program in the Med-QUEST Division of the DHS and authorizes DHS to maintain an all-payers medical claims data base, and SB7923 SD2/HB2366 (now HB1926 HD1) Relating to Poverty that requires DHS to use an integrated and multigenerational approach to delivering human services to reduce the incidence of intergenerational poverty and dependence on public benefits.

It is correct that many of our adult recipients of public benefits are employed. Most program rules require adults who do not have a disability to be employed or in an activity that will lead to employment, or if minors, to be in school or be employed. However, please note:

- Employer information is not required for program eligibility and is not currently captured by our IT systems on a consistent basis. Additionally, for some

programs, such as Medicaid, we cannot require applicants to provide information that is not required for program eligibility;

- Consequently, while we do receive income verification information from various sources, we are not currently able to retrieve employer information consistently to compile such a report;
- With regard to minor children who are employed, and who are also receiving medical insurance coverage through Medicaid/CHIP, the children may be in families with household incomes up to 308 percent of the federal poverty level, which is \$72,324 for a family of four; and
- As a condition of receiving medical insurance coverage, Medicaid is always the payer of last resort; that is if there are primary medical insurance coverages available to the recipient through employment for example, the primary insurance coverage pays first before Medicaid pays.

From a different policy perspective that supports employment, DHS has established programs with employers to hire public benefit recipients, many of whom are just entering the work force and benefit from the employment experience toward income progression. Limited employer information is collected from employers who hire First-To-Work (FTW) Program participants for positions subsidized with Temporary Assistance for Needy Families (TANF) funds; however, the limited data does not include other employees hired for unsubsidized positions, information that would be required to compare hiring or other business practices.

We have concerns that this proposal may negatively impact programs that support employment opportunities for recipients as employers may be discouraged from hiring recipients to fill vacancies and discontinue their partnership with DHS.

Further, the title of the measure may be overbroad and unconstitutional pursuant to article III, section 14 of the State Constitution as there are multiple subjects in the bill, and the current bill language pertains to chapter 346, Hawaii Revised Statutes, which relate to DHS rather than the Department of Health as the title suggests.

However, as noted above, the departments are investigating available data points to match to comply with this measure. Depending on specific program data sharing

requirements, the departments may require one or more memorandum of understanding to conduct the data match, and DHS is informed that expenses associated with the data match will require an appropriation. As session progresses, we will have a better understanding of the program requirements and necessary appropriation to accomplish this task.

At this time we respectfully ask the legislature to consider that instead of codifying this new mandate in statute, that the legislature proceed through session law to mandate DHS determine the 50 employers with the highest number of employees receiving public assistance, and make the necessary appropriation and spending provisions.

If the legislature prefers to codify the mandate, then DHS requests that the requirement to match, compile, and report the findings to the legislature be subject to available funding.

Thank you for the opportunity to provide comments on this measure.