



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

S.B. NO. 2769, RELATING TO PAYMENTS OF SUPPORT.

BEFORE THE:

SENATE COMMITTEES ON LABOR, CULTURE AND THE ARTS AND ON
HUMAN SERVICES

DATE: Monday, February 3, 2020 **TIME:** 2:55 p.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Clare E. Connors, Attorney General, or
Lynn Kashiwabara, Deputy Attorney General

Chairs Taniguchi and Ruderman and Members of the Committee:

The Department of the Attorney General supports the intent of this bill and provides the following comments.

The purpose of the bill is to amend the definition of "income" in sections 571-52, 571-52.2, and 576E-16, Hawaii Revised Statutes (HRS), to include tips or gratuities paid directly to an individual by a customer of the employer and reported or declared to the employer. These sections deal with the assignment of future income for payments of child or spousal support.

Employers are required to follow the Consumer Credit Protection Act, Title III (CCPA) when garnishing employee's wages for payments of support. For tipped employees, the U.S. Department of Labor Wage and Hour Division provided guidance in Fact Sheet #30, which states:

For employees who receive tips, the cash wages paid directly by the employer and the amount of any tip credit claimed by the employer under federal or state law are earnings for the purposes of the wage garnishment law. Tips received in excess of the tip credit amount or in excess of the wages paid directly by the employer (if no tip credit is claimed or allowed) are not earnings for purposes of the CCPA.

Pursuant to federal guidelines, employers are limited in only including the cash wages and tip credit as earnings subject to withholding and are not allowed to consider

tips over these amounts. Thus, this bill may have a limiting effect on existing employer withholding practices.

If the intent of the bill is to deem the entire amount of the tips, including those tips received in excess of the tip credit, to be included as earnings subject to withholding, then the proposed wording may conflict with the federal law. The U.S. Department of Labor Wage and Hour Division has explicitly stated in their guidance that “tips received in excess of the tip credit amount or in excess of wages paid directly by the employer (if no tip credit is claimed or allowed) are not earnings” subject to garnishment. Thus, such state law that requires a larger amount to be garnished than the federal law permits in the CCPA may be considered preempted by the federal law. To avoid this potential conflict with the federal law, we suggest that section 1 on page 1, line 7 through 9, section 2 on page 2, line 5 through 7, and section 3, on page 3, line 5 through 7 be revised as follows: “including tips or gratuities paid directly to an individual by a customer of the employer and reported or declared to the employer to the extent permitted under relevant federal law.”

Thank you for the opportunity to provide testimony.

SB-2769

Submitted on: 2/2/2020 7:54:34 PM

Testimony for LCA on 2/3/2020 2:55:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
SHEILA GUZMAN	Individual	Support	No

Comments:

I have had to endure the painstaking process of requesting the other parent to make his child support payments on a timely basis consistently. He has the income to do so. However, the current law defining "income" does not include tips, gratuities, and tips declared, which makes it impossible for employers to garnish child support payments fully. I sought help from the Child Support Agency, but they are unable to provide any workable solutions. By making this change, it will help and significantly alleviate the financial stress and worries many families have to go through.