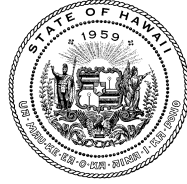


**DAVID Y. IGE**  
GOVERNOR

**SHAN TSUTSUI**  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
P.O. BOX 259  
HONOLULU, HAWAII 96809  
PHONE NO: (808) 587-1540  
FAX NO: (808) 587-1560

**MARIA E. ZIELINSKI**  
DIRECTOR OF TAXATION

**DAMIEN A. ELEFANTE**  
DEPUTY DIRECTOR

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

Date: Friday, March 31, 2017  
Time: 9:30 A.M.  
Place: Conference Room 211, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

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

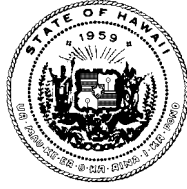
The Department of Taxation (Department) strongly supports H.B. 1031, H.D. 1, S.D. 1, an Administration measure allowing the Department and other agencies to conduct criminal history record checks on employees with access to federal tax information. S.D. 1 has a defective effective date of January 7, 2059.

The Internal Revenue Service (IRS), through Section 5 of Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies, recently mandated 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 31, 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 31, 2017, 9:30 a.m.  
Conference Room 211, 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. DHS appreciates the work of and amendments made by the Senate Committee on Judiciary & Labor:

- (1) Adding language regarding contractors and the employees or agents of contractors, when appropriate, to consistently apply criminal history record check procedures to contractors;
- (2) Clarifying that contractors and their employees or agents who are providing services for the Department of Human Services and Department of Labor and Industrial Relations that require access to federal tax information are required to obtain prior authority to access the federal tax information by the United States Department of the Treasury;

- (3) Amending the language regarding the termination or denial of employment as a result of a criminal history record check, notification requirements, and opportunity to respond to findings of the Departments of Taxation, Human Services, and Labor and Industrial Relations and Child Support Enforcement Agency for purposes of consistency;
- (4) Adding a conforming amendment to section 831-3.1, Hawaii Revised Statutes, to provide an exemption for any denials or termination of employment as an employee, employee applicant, or contractor of the Departments of Taxation, Human Services, or Labor and Industrial Relations, or the Child Support Enforcement Agency; and
- (5) Inserting an effective date of January 7, 2059, to encourage further discussion.

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, applicants for employment, and contractors who access to FTI.

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.

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>

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.

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

DAVID Y. IGE  
GOVERNOR

SHAN S. TSUTSUI  
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA  
DIRECTOR

LEONARD HOSHIJO  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
830 PUNCHBOWL STREET, ROOM 321  
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Email: [dlir.director@hawaii.gov](mailto:dlir.director@hawaii.gov)

March 30, 2017

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

Date: Friday, March 31, 2017

Time: 9:30 am

Place: Conference Room 211

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

**Re: H.B. No. 1031 HD1 SD1 Relating to Criminal History Checks**

The Department strongly supports HB1031 HD1 SD1 that allows the Department to conduct criminal history record checks on employees with access to 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 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: (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.

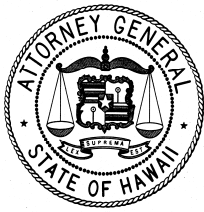
The TOP is a centralized offset program administered by the Bureau of the Fiscal Service's Debt Management Services to collect delinquent debts owed to federal agencies and states (including past-due child support). TOP permits interception of federal income

H.B. 1031 HD1 SD1

March 31, 2017

Page 2

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.



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

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**ON THE FOLLOWING MEASURE:**

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

**BEFORE THE:**

SENATE COMMITTEE ON WAYS AND MEANS

**DATE:** Friday, March 31, 2017

**TIME:** 9:30 a.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 as introduced 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.

The amendments the Senate Committee on Judiciary and Labor made to this bill in Senate Draft 1 are summarized as follows:

- Added amendments to section 831-3.1, Hawaii Revised Statutes (HRS) that would allow for the termination or denial of employment due to a prior criminal conviction.
- Added wording regarding contractors and the employees or agents of contractors to allow the respective agencies to conduct criminal history record checks.
- Added wording clarifying that the Department of Human Services and the Department of Labor and Industrial Relations could disclose FTI to contractors and their employees or agents if they received prior approval from the Internal Revenue Service.

To ensure that the agency and departments affected by this bill may continue to perform their core functions, we respectfully request passage of this bill as amended in Senate Draft 1.

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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March 29, 2017

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

Dear Chair Tokuda and Members:

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

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

In the Senate companion bill, SB 897, the Senate added language 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. HB1031 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, 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 HB 1031, HD1, 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:

.....

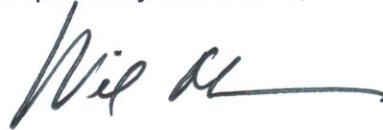
(48) The child support enforcement agency on current and prospective employees and contractors that have access to federal tax information in order to comply with federal law, regulation, or procedure;~~and~~

~~[(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."

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", with a long horizontal flourish extending to the right.

Harry Kim  
Mayor