July 14, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB31 SD1 CD1, without my approval, and with the statement of objections relating to the measure.

HB31 SD1 CD1
A BILL FOR AN ACT
RELATING TO EMPLOYMENT PRACTICES.

Sincerely,

LINDA LINGLE
STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 31

Honorable Members
Twenty-Fifth Legislature
State of Hawaii


The purpose of this bill is to establish an employer’s use of an individual’s credit history as an unlawful discriminatory employment practice, subject to certain exceptions.

This bill is objectionable because it places another restriction on employers that could impact their ability to protect the safety and financial security of their workplaces. If enacted, this bill would restrict an employer’s ability to verify statements made in a job interview or on a resume which can be indicative of that individual’s honesty and trustworthiness. It would also restrict an employer’s ability to periodically check on the current credit history of their workforce.

Congress recognized the sensitive nature of information contained in credit histories and, as a result, passed the Fair Credit Reporting Act which governs an employer’s use of such information. It is unclear why the Legislature felt the need to pass additional legislation when federal law already places restrictions on employers and provides appropriate
protections for employees.

It is not appropriate to place restrictions on employers who are working hard to create environments that are safe for themselves, their employees, and the public. Police departments have noted that credit reports help them conduct thorough background screenings to ensure they have a comprehensive portrait of an individual's readiness for employment in a position of public trust. In addition, insurance agencies, retailers, hotels, non-profit organizations, churches, and many others have noted that their ability to conduct credit checks on employees is vital to protecting their day-to-day operations. For example, hotel workers have access to many things of value including a hotel guest's jewelry, clothing, credit card numbers, and cash. Hotels go to great lengths to ensure their employees meet the highest standards and can be trusted with a customer's personal effects.

It makes sense for private, public, and non-profit employers to use credit histories to ensure their employees are worthy of being placed in a position that impacts the satisfaction and trust of their clients and the financial well-being of their operations.

For the foregoing reasons, I am returning House Bill No. 31 without my approval.

Respectfully,

[Signature]

LINDA LINGLE
HB31 CD1 HMS 2009-4036

A BILL FOR AN ACT

RELATING TO EMPLOYMENT PRACTICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 378, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§378- Employer inquiries into and consideration of credit history or credit report. (a) Notwithstanding section 378-2(8):

(1) Inquiry into and consideration of a prospective employee's credit history or credit report may take place only after the prospective employee has received a conditional offer of employment, which may be withdrawn if information in the credit history or credit report is directly related to a bona fide occupational qualification;

(2) The prohibition against an employer's refusal to hire or employ, barring or terminating from employment, or otherwise discriminating on the basis of credit history shall not apply to employers who are expressly permitted or required to inquire into an individual's
credit history for employment purposes pursuant to any federal or state law;

(3) The prohibition against an employer's refusal to hire or employ, barring or terminating from employment, or otherwise discriminating on the basis of credit history shall not apply to managerial or supervisory employees; and

(4) The prohibition against an employer's refusal to hire or employ, barring or terminating from employment, or otherwise discriminating on the basis of credit history shall not apply to employers that are financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution.

(b) For the purposes of this section:

"Managerial employee" means an individual who formulates and effectuates management policies by expressing and making operative the decisions of the individual's employer.

"Supervisory employee" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or
to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

SECTION 2. Section 378-2, Hawaii Revised Statutes, is amended to read as follows:

"§378-2 Discriminatory practices made unlawful; offenses defined. It shall be an unlawful discriminatory practice:

(1) Because of race, sex, sexual orientation, age, religion, color, ancestry, disability, marital status, or arrest and court record:

(A) For any employer to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment;

(B) For any employment agency to fail or refuse to refer for employment, or to classify or otherwise to discriminate against, any individual;

(C) For any employer or employment agency to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication or
to use any form of application for employment or
to make any inquiry in connection with
prospective employment, which expresses, directly
or indirectly, any limitation, specification, or
discrimination;

(D) For any labor organization to exclude or expel
from its membership any individual or to
discriminate in any way against any of its
members, employer, or employees; or

(E) For any employer or labor organization to refuse
to enter into an apprenticeship agreement as
defined in section 372-2; provided that no
apprentice shall be younger than sixteen years of
age;

(2) For any employer, labor organization, or employment
agency to discharge, expel, or otherwise discriminate
against any individual because the individual has
opposed any practice forbidden by this part or has
filed a complaint, testified, or assisted in any
proceeding respecting the discriminatory practices
prohibited under this part;
(3) For any person whether an employer, employee, or not, to aid, abet, incite, compel, or coerce the doing of any of the discriminatory practices forbidden by this part, or to attempt to do so;

(4) For any employer to violate the provisions of section 121-43 relating to nonforfeiture for absence by members of the national guard;

(5) For any employer to refuse to hire or employ or to bar or discharge from employment, any individual because of assignment of income for the purpose of satisfying the individual's child support obligations as provided for under section 571-52;

(6) For any employer, labor organization, or employment agency to exclude or otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association; [ex]

(7) For any employer or labor organization to refuse to hire or employ or to bar or discharge from employment, or withhold pay, demote, or penalize a lactating employee because an employee breastfeeds or
expresses milk at the workplace. For purposes of this paragraph, the term "breastfeeds" means the feeding of a child directly from the breast[ ]; or

(8) For any employer to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment of any individual because of the individual's credit history or credit report, unless the information in the individual's credit history or credit report directly relates to a bona fide occupational qualification under section 378-3(2)."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2009.