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**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
Senate Committee on Commerce and Consumer Protection  
Thursday, February 4, 2021  
9:30 a.m.  
Via Videoconference**

**On the following measure:  
S.B. 525, RELATING TO BUSINESS REGISTRATION**

Chair Baker and Members of the Committee:

My name is Ty Nohara, and I am the Commissioner of Securities and head of the Department of Commerce and Consumer Affairs' (DCCA or Department) Business Registration Division (BREG). The Department respectfully opposes this bill for the reasons set forth below.

The purpose of this bill is to ensure that the State and counties are engaging in business, and entering into agreements, with entities that have the financial ability and business integrity necessary to perform duties under those agreements, by prohibiting the DCCA from issuing a certificate of good standing to any entity unless the entity has submitted a certificate of vendor compliance as part of its annual reporting requirements to show that it is in compliance with the Internal Revenue Service, Department of Labor and Industrial Relations, DCCA, and Department of Taxation.

BREG's primary function is the registration, processing, and maintenance of the State's business registry. The State recognizes several different types of business

entities, and each entity has specific filing requirements<sup>1</sup> for its registration. Once a business entity has been registered in the State, it must continue to comply with these statutory requirements to maintain its legal existence in the State and remain “in good standing” with the DCCA. For example, BREG will issue a certificate of good standing for a domestic for-profit corporation only if that entity has satisfied all of the filing requirements applicable to a domestic for-profit corporation under HRS chapter 414. Thus, BREG issues a certificate of good standing to show that a business entity has complied with all of its statutory requirements and is, therefore, “in good standing” with the DCCA only.

Unlike a certificate of good standing, a certificate of vendor compliance is a single summary-type document that is electronically issued by Hawaii Compliance Express (HCE). The HCE allows a business entity to quickly and easily show proof that a business entity is in compliance with the specific statutory requirements of four government agencies: (1) Internal Revenue Service, (2) Hawaii Department of Taxation, (3) Hawaii Department of Labor and Industrial Relations, and (4) DCCA, as required by HRS section 103D-310(c), thereby eliminating the need for the entity to obtain proof of compliance from each of these governmental entities. Accordingly, the bill’s prohibition on BREG’s issuance of a certificate of good standing to an entity, unless the entity has submitted a certificate of vendor compliance, would result in a catch-22, because BREG’s issuance of a certificate of good standing is a prerequisite, among others, for obtaining a certificate of vendor compliance in the first place.

Even more importantly, this bill would require all business entities, not just those that want to be vendors of the State or counties, to obtain a certificate of vendor compliance before it can be issued a certificate of good standing. The HCE is the only issuer of a certificate of vendor compliance, and it requires that the requestor of a certificate of vendor compliance pay an annual subscription fee of \$12.00. Therefore, a non-vendor business entity would still be required to pay an annual HCE subscription to obtain the certificate of vendor compliance, which is unnecessary for any entity that does not intend to engage in business, and enter into agreements, with the State or

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<sup>1</sup> These requirements are set forth in title 23 of the Hawaii Revised Statutes (HRS).

counties, but required by this bill to obtain a certificate of good standing. Consequently, this bill's application is overly broad and unduly burdensome for those entities that may need a certificate of good standing, but not a certificate of vendor compliance.

Finally, this bill proposes to amend various chapters under HRS title 23 to require each type of business entity to submit a certificate of vendor compliance with its annual report before it can be issued a certificate of good standing by BREG. In effect, the time to submit a certificate of vendor compliance would make it impossible for any newly registered business entity to obtain a certificate of good standing from BREG, because the bill specifically requires a certificate of vendor compliance to be submitted with the entity's annual report, and this would not occur until approximately one year after its initial registration in the State's business registry. In the meantime, however, a business entity may need a certificate of good standing, which is often required from a business entity to do things like open a bank account, apply for a loan, obtain a license, and register to do business in another state. What's more, a certificate of vendor compliance issued by the HCE captures the current compliance status of an entity at a specific point in time. However, because an entity's compliance status with the four governmental agencies can change at any time, verification of that entity's compliance status based upon an annual submission may be unreliable.

For the foregoing reasons, the Department respectfully opposes this bill. Thank you for the opportunity to testify on this bill.



**STATE OF HAWAII**  
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TESTIMONY  
OF  
BONNIE KAHAKUI, ACTING ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE  
ON  
COMMERCE AND CONSUMER PROTECTION  
FEBRUARY 4, 2021, 9:30 A.M.

SENATE BILL 525  
RELATING TO BUSINESS REGISTRATION

Chair Baker, Vice-Chair Chang, and members of the committee, thank you for the opportunity to submit testimony on SB525. The State Procurement Office's (SPO) comments are:

1. A Certificate of Vendor Compliance is a term coined by the State Procurement Office in 2004 when the Central Procurement Vendor Validation System, commonly known as Hawaii Compliance Express (HCE) was developed through a contract with NIC Hawaii, dba HIC.

HCE is an electronic system that provides vendors, contractors, and service providers doing business with state or county agencies to quickly and easily document that they are compliant with applicable laws. HCE expedites the ability to furnish proof of compliance with the requirements of 103D-310(c) HRS for awards \$2,500 and over, and for final payments.

This single certificate eliminates the need to obtain individual copies of clearances with the Internal Revenue Service (IRS) - Form 8821; Department of Labor & Industrial Relations (DLIR) - Form LIR27; Department of Commerce and Consumer Affairs (DCCA) - Form COGS, and Department of Taxation (DOTAX) - Form A-6.

2. Registration in HCE is not mandatory. It is a subscription-based service through HIC, with an annual fee of \$12.00. Vendors choosing not to participate are required to retrieve their "paper" documents by physical means. Requiring the Certificate of Vendor Compliance will force all entities to register with HCE, as there is no other alternative to obtaining this certificate.

Thank you.

DAVID Y. IGE  
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To: The Honorable Rosalyn H. Baker, Chair;  
The Honorable Stanley Chang, Vice Chair;  
and Members of the Senate Committee on Commerce and Consumer Protection

From: Isaac W. Choy, Director  
Department of Taxation

Date: February 4, 2021  
Time: 9:30 A.M.  
Place: Via Video Conference, State Capitol

**Re: S.B. 525, Relating to Business Registration**

The Department of Taxation (Department) offers the following comments regarding S.B. 525, for your consideration.

S.B. 525 requires the annual report of certain companies submitted to the Department of Commerce and Consumer Affairs (DCCA) be accompanied by a certificate of vendor compliance that certifies compliance with the Internal Revenue Service (IRS), Department of Labor and Industrial Relations (DLIR), DCCA, and the Department. S.B. 525 is effective on July 1, 2021.

The Department notes that this measure proposes a concept very similar to Hawaii Compliance Express (HCE). HCE is an electronic system whereby vendors, contractors, and service providers doing business with the agencies of the State or County can quickly and easily obtain a certificate of compliance. The certificate of compliance from HCE eliminates the need to obtain separate clearances from the IRS, DLIR, DCCA, and the Department.

To streamline the requirements proposed by S.B. 525, the Department suggests using an online system similar to HCE whereby the businesses affected by this measure can obtain the necessary clearances efficiently. The Department also suggests adding a provision requiring business to request this new clearance electronically.

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

DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LIEUTENANT GOVERNOR



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DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
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ANNE PERREIRA-  
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JOANN A. VIDINHAR  
DEPUTY

February 4, 2021

To: The Honorable Rosalyn H. Baker, Chair,  
The Honorable Stanley Chang, Vice Chair, and  
Members of the Senate Committee on Commerce and Consumer  
Protection

Date: Thursday, February 4, 2021  
Time: 9:30 a.m.  
Place: Conference Room 229, State Capitol

From: Anne Perreira-Eustaquio, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: S.B. No. 525 RELATING TO BUSINESS REGISTRATION**

**I. OVERVIEW OF PROPOSED LEGISLATION**

This measure seeks to prohibit the Director of the Department of Commerce and Consumer Affairs (DCCA) from issuing certificates of good standing unless the entities submit a certificate of vendor compliance as part of their annual reporting requirements.

The DLIR strongly opposes this measure.

**II. CURRENT LAW**

Chapters 414, 414D, 415A, 425, and 428, Hawaii Revised Statutes, do not require the submission of certificates of good standing as part of their annual reporting process.

**III. COMMENTS ON THE SENATE BILL**

The DLIR strongly opposes the measure as it will create undue hardship on the DLIR's Disability Compensation Division (DCD) and Unemployment Insurance Division (UI). DCD and UI already processes requests for certificates of vendor compliance ("Certificates") from entities doing business with the state or counties. Requiring all entities to submit these certificates as part of DCCA's Annual Reporting process will increase the number of certificates to be processed by the

DLIR from 14,000 certificates to over 158,000 annually. The department notes that these certificates are valid for six months.

The increased workload will require staffing resources to research and process the requests for Certificates. Without the forementioned personnel and funding, delays in excess of four weeks will be experienced by the Certificate approval process.

DCD has previously requested an additional auditor in the budget to increase the capacity of the division to timely process certificates. Additionally, one of two Office Assistants that was temporarily vacant was abolished in last year's budget.

Lastly, with out general funds for UI, the measure raises conformity issues with the U.S.DOL as UI cannot provide this service as it is outside of the scope of current federal funding.

# TAX FOUNDATION OF HAWAII

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126 Queen Street, Suite 304

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SUBJECT: MISCELLANEOUS, Tax Clearance Required for Business Registration

BILL NUMBER: SB 525

INTRODUCED BY: RHOADS by request

EXECUTIVE SUMMARY: Prohibits the Director of the Department of Commerce and Consumer Affairs from issuing certificates of good standing unless the entity has submitted a certificate of vendor compliance with its annual report certifies compliance with the Internal Revenue Service, Department of Labor and Industrial Relations, Department of Commerce and Consumer Affairs, and the Department of Taxation. Requires entities to submit certificates of vendor compliance as part of their annual reporting requirements.

SYNOPSIS: Adds a new section to chapters 414, 414D, 415A, 425, and 428 respectively providing that a certificate of good standing is not to be issued unless the entity has submitted a certificate of vendor compliance with its annual report.

EFFECTIVE DATE: 7/21/2021.

STAFF COMMENTS: A certificate of vendor compliance, per Hawaii Administrative Rules section 3-122-112, is issued when the applicant can obtain (1) a tax clearance from the Department of Taxation; (2) a Certificate of Compliance from the Department of Labor and Industrial Relations, and (3) a Certificate of Good Standing from the Department of Commerce and Consumer Affairs.

In general, a tax clearance is issued when a taxpayer has filed all required returns and has paid all tax assessed on those returns. That does not necessarily mean that the returns are correct, but if the Department chooses to audit one or more of the returns and has issued a final assessment of tax, the assessment would need to be paid before the tax clearance is issued.

One of the primary uses of a tax clearance is to allow persons to bid on, and receive final payment on, a contract with state or county government. HRS section 103D-328, however, provides for two exceptions: (1) if the taxpayer is in good standing on a payment plan with the tax agency; and (2) if the taxpayer is contesting the validity of a tax debt in an administrative or judicial appeal. Note that in either the payment plan or the appeal situation, the tax clearance is not issued but the law allows the taxpayer to bid or receive final payment nonetheless.

As currently drafted, the bill may cause some unintended consequences.

First, the bill may prevent a taxpayer from complying with its annual reporting requirement if it is under a payment plan or is in the middle of a tax appeal. Because a tax clearance cannot be issued in those cases, the certificate of vendor compliance cannot be either.



Second, the bill contains a circular condition – a certificate of good standing cannot be issued unless the entity has a certificate of good standing – that may cause an insoluble problem. Suppose an entity inadvertently waits too long to submit its annual report and the deadline is passed. The entity wants to cure the deficiency and submit its annual report but now cannot, because it cannot obtain a certificate of good standing and therefore cannot obtain a certificate of vendor compliance.

Digested 1/30/2021

**SB-525**

Submitted on: 2/2/2021 8:37:20 AM

Testimony for CPN on 2/4/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
LIBRADO COBIAN	Testifying for AAC	Support	No

Comments:

This Bill 525 is vital for the protection of our consumers and the benefit of the public .

A Certificate of Good Standings ( COGS) from the DCCA CAN literally be obtained by a Criminal or Unscrupulous entity with SEVERE outstanding OSHA and wage Violations by the Department of Labor , have Tax evasion violations with the Federal IRS and delinquent with State Department of Taxation obligations .

All that is required for a "Certificate of Good standings" is a " annual report " to update Name of Entity , address, Agent Point of Contact, and phone number ....That is all . And a Letter called a "Certificate of GOOD Standings " is issued by DCCA BREG , giving the public or government agencies the FALSE impression that the entity is a financially responsible complaint entity with business integrity and reputable.

This is a disservice and injustice to our community. A COGS is merely a letter of Registration by DCCA , and should not have the words " GOOD STANDINGS" in it.

Unlike a "Certificate of Vendor Compliance " COVC issued by the Official Hawaii Portal "Hawaii Compliance Express" , a COVC is a certificate issued after compliance review is done by the Dept of Labor , IRS and State Tax Department and DCCA registration . It is a much vetted certificate . For this reason a COGS should not be issued by DCCA without being able to comply with a COVC . Thank You. Li Cobian Business owner and Taxpayer .