
A BILL FOR AN ACT

RELATING TO CRIMINAL HISTORY RECORD CHECKS.

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

1 SECTION 1. The legislature finds that the Internal Revenue
2 Service has instituted a new requirement to perform background
3 checks on certain current and prospective employees and
4 contractors that receive access to federal tax information. The
5 background checks must be comprehensive and include a Federal
6 Bureau of Investigation fingerprint search. To comply with this
7 new requirement, the child support enforcement agency and the
8 departments of taxation, human services, and labor and
9 industrial relations, as well as various county agencies,
10 require additional authorization to search criminal histories of
11 employees, prospective employees, and contractors, if
12 authorized, and to perform a fingerprint search of these
13 persons. Multiple other departments and agencies have received
14 this additional authority. The purpose of this Act is to extend
15 similar authority to the child support enforcement agency and
16 the departments of taxation, human services, and labor and



1 industrial relations, as well as the counties, to allow them to
2 comply with new Internal Revenue Service requirements.

3 SECTION 2. Chapter 231, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§231- Criminal history record checks. (a) The
7 department shall establish a personnel security program that
8 ensures a background investigation is completed at the
9 appropriate level designated by the United States government for
10 any person, including any authorized contractor, to have access
11 to federal tax information. This program shall include criminal
12 history record checks in accordance with section 846-2.7.
13 Information obtained pursuant to this subsection shall be used
14 exclusively by the department for the purpose of determining
15 whether the person is suitable for accessing federal tax
16 information in accordance with applicable federal laws.

17 (b) The department may terminate or deny employment to any
18 employee or applicant, or terminate or refuse to secure the
19 services of any contractor, if the department finds by reason of
20 the background investigation conducted under subsection (a) that
21 the employee or applicant, or employee or agent of the



1 contractor, poses a risk to the security of federal tax
2 information. Termination or denial of employment, or
3 termination or refusal to secure the services of any contractor,
4 under this subsection shall only occur after appropriate
5 notification to the employee, applicant, or employee or agent of
6 the contractor of the findings of the background investigation,
7 and after the employee, applicant, or employee or agent of the
8 contractor is given an opportunity to respond to the findings.
9 Nothing in this subsection shall abrogate any applicable appeal
10 rights under chapters 76 and 89, or administrative rules of the
11 department.

12 (c) Notwithstanding any other law to the contrary, for
13 purposes of this section, the department shall be exempt from
14 section 831-3.1 and need not conduct investigations,
15 notifications, or hearings under this section in accordance with
16 chapter 91."

17 SECTION 3. Chapter 346, Hawaii Revised Statutes, is
18 amended by adding a new section to part I to be appropriately
19 designated and to read as follows:

20 "§346- Criminal history record checks. (a) The
21 department shall develop procedures for obtaining verifiable



1 information regarding the criminal history of any person who is
2 employed or seeking employment, if the person's position will
3 require access to federal tax information. The procedures shall
4 include criminal history record checks in accordance with
5 section 846-2.7. Information obtained pursuant to this
6 subsection shall be used exclusively by the department for the
7 purpose of determining whether a person is suitable for
8 accessing federal tax information in accordance with applicable
9 federal laws.

10 (b) The department may terminate or deny employment to any
11 employee or applicant if the department finds by reason of the
12 background investigation conducted under subsection (a) that the
13 employee or applicant poses a risk to the security of federal
14 tax information. Termination or denial of employment under this
15 subsection shall only occur after appropriate notification to
16 the employee or applicant of the findings of the background
17 investigation, and after the employee or applicant is given an
18 opportunity to respond to the findings. Nothing in this
19 subsection shall abrogate any applicable appeal rights under
20 chapters 76 and 89, or administrative rules of the department.



1 (c) Notwithstanding any other law to the contrary, for
2 purposes of this section, the department shall be exempt from
3 section 831-3.1 and need not conduct investigations,
4 notifications, or hearings under this section in accordance with
5 chapter 91."

6 SECTION 4. Chapter 371, Hawaii Revised Statutes, is
7 amended by adding a new section to part I to be appropriately
8 designated and to read as follows:

9 "§371- Criminal history record checks. (a) The
10 department shall establish a personnel security program that
11 ensures a background investigation is completed at the
12 appropriate level designated by the United States government for
13 any person who will have access to federal tax information.
14 This program shall include criminal history record checks in
15 accordance with section 846-2.7. Information obtained pursuant
16 to this subsection shall be used exclusively by the department
17 for the purpose of determining whether the person is suitable
18 for accessing federal tax information in accordance with
19 applicable federal laws.

20 (b) The department may terminate or deny employment to any
21 employee or applicant, or terminate or refuse to secure the



1 services of any contractor approved by the Internal Revenue
2 Service, if the department finds by reason of the background
3 investigation conducted under subsection (a) that the employee
4 or applicant, or employee or agent of the contractor, poses a
5 risk to the security of federal tax information. Termination or
6 denial of employment, or termination or refusal to secure the
7 services of any contractor, under this subsection shall only
8 occur after appropriate notification to the employee, applicant,
9 or employee or agent of the contractor of the findings of the
10 background investigation, and after the employee, applicant, or
11 employee or agent of the contractor is given an opportunity to
12 respond to the findings. Nothing in this subsection shall
13 abrogate any applicable appeal rights under chapters 76 and 89,
14 or administrative rules of the department.

15 (c) Notwithstanding any other law to the contrary, for
16 purposes of this section, the department shall be exempt from
17 section 831-3.1 and need not conduct investigations,
18 notifications, or hearings under this section in accordance with
19 chapter 91."

20 SECTION 5. Section 378-2.5, Hawaii Revised Statutes, is
21 amended by amending subsection (d) to read as follows:



1 "(d) Notwithstanding subsections (b) and (c), the
2 requirement that inquiry into and consideration of a prospective
3 employee's conviction record may take place only after the
4 individual has received a conditional job offer, and the
5 limitation to the most recent ten-year period, excluding the
6 period of incarceration, shall not apply to employers who are
7 expressly permitted to inquire into an individual's criminal
8 history for employment purposes pursuant to any federal or state
9 law other than subsection (a), including:

- 10 (1) The State or any of its branches, political
11 subdivisions, or agencies pursuant to sections 78-2.7
12 and 831-3.1;
- 13 (2) The department of education pursuant to section
14 302A-601.5;
- 15 (3) The department of health with respect to employees,
16 providers, or subcontractors in positions that place
17 them in direct contact with clients when providing
18 non-witnessed direct mental health services pursuant
19 to section 321-171.5;
- 20 (4) The judiciary pursuant to section 571-34;



- 1 (5) The counties pursuant to section 846-2.7(b)(5), (33),
2 (34), (35), (36), [~~and~~] (38) [~~+~~], and (49);
- 3 (6) Armed security services pursuant to section 261-17(b);
- 4 (7) Providers of a developmental disabilities domiciliary
5 home pursuant to section 321-15.2;
- 6 (8) Private schools pursuant to sections 302C-1 and
7 378-3(8);
- 8 (9) Financial institutions in which deposits are insured
9 by a federal agency having jurisdiction over the
10 financial institution pursuant to section 378-3(9);
- 11 (10) Detective agencies and security guard agencies
12 pursuant to sections 463-6(b) and 463-8(b);
- 13 (11) Employers in the business of insurance pursuant to
14 section 431:2-201.3;
- 15 (12) Employers of individuals or supervisors of individuals
16 responsible for screening passengers or property under
17 title 49 United States Code section 44901 or
18 individuals with unescorted access to an aircraft of
19 an air carrier or foreign carrier or in a secured area
20 of an airport in the United States pursuant to title
21 49 United States Code section 44936(a);



1 (13) The department of human services pursuant to sections
2 346-97 and 352-5.5;

3 (14) The public library system pursuant to section
4 302A-601.5;

5 (15) The department of public safety pursuant to section
6 353C-5;

7 (16) The board of directors of a cooperative housing
8 corporation or the manager of a cooperative housing
9 project pursuant to section 421I-12;

10 (17) The board of directors of an association of owners
11 under chapter 514A or 514B, or the manager of a
12 condominium project pursuant to section 514A-82.1 or
13 514B-133; and

14 (18) The department of health pursuant to section
15 321-15.2."

16 SECTION 6. Chapter 576D, Hawaii Revised Statutes, is
17 amended by adding a new section to be appropriately designated
18 and to read as follows:

19 "§576D- Criminal history record checks. (a) The agency
20 shall develop procedures for obtaining verifiable information
21 regarding the criminal history of any person, including any



1 contractor, who is employed, seeking employment with, or
2 provides or seeks to provide services to the agency if the
3 person's position will require access to federal tax
4 information. These procedures shall include criminal history
5 record checks in accordance with section 846-2.7.

6 Information obtained pursuant to this subsection shall be
7 used exclusively by the agency for the purpose of determining
8 whether a person is suitable for accessing federal tax
9 information. All decisions shall be subject to applicable
10 federal laws and regulations currently or hereafter in effect.

11 (b) The agency may terminate or deny employment to any
12 employee or applicant, or terminate or refuse to secure the
13 services of any contractor, if the agency finds by reason of the
14 background investigation conducted under subsection (a) that the
15 employee or applicant, or employee or agent of the contractor,
16 poses a risk to the security of federal tax information.
17 Termination or denial of employment, or termination or refusal
18 to secure the services of any contractor under this subsection
19 shall only occur after appropriate notification to the employee,
20 applicant, or employee or agent of the contractor of the
21 findings of the background investigation, and after the



1 employee, applicant, or employee or agent of the contractor is
2 given an opportunity to respond to the findings. Nothing in
3 this subsection shall abrogate any applicable appeal rights
4 under chapters 76 and 89, or administrative rules of the agency.

5 (c) Notwithstanding any other law to the contrary, for
6 purposes of this section, the agency shall be exempt from
7 section 831-3.1 and need not conduct investigations,
8 notifications, or hearings under this section in accordance with
9 chapter 91."

10 SECTION 7. Section 831-3.1, Hawaii Revised Statutes, is
11 amended by amending subsection (f) to read as follows:

12 "(f) Notwithstanding any law to the contrary, this section
13 shall not apply to:

14 (1) Denials by the department of human services, the
15 department of health, or any other branch, political
16 subdivision, or agency of any certificate of approval,
17 license, or permit to any organization, institution,
18 home, or facility subject to licensure under chapters
19 321, 333F, and 346;

20 (2) Denials of employment as a staff member of a youth
21 correctional facility operated under chapter 352;



- 1 (3) Denials of employment as an employee of a detention or
2 shelter facility established or designated pursuant to
3 section 571-33;
- 4 (4) Denials of employment as a staff member of a
5 correctional facility pursuant to chapter 353, or as a
6 staff member that requires the exercise of police
7 powers, including the power to arrest, in the
8 performance of the staff member's duties pursuant to
9 chapter 353C; [~~and~~]
- 10 (5) Denials of employment of applicants or employees
11 pursuant to section 78-2.7[-];
- 12 (6) Denials or termination of employment as an employee,
13 employee applicant, or employee or agent of a
14 contractor of the department of taxation with access
15 to federal tax information pursuant to section 231- ;
- 16 (7) Denials or termination of employment as an employee or
17 employee applicant of the department of human services
18 with access to federal tax information pursuant to
19 section 346- ;
- 20 (8) Denials or termination of employment as an employee,
21 employee applicant, or employee or agent of a



1 contractor of the department of labor and industrial
 2 relations with access to federal tax information
 3 pursuant to section 371- ; and
 4 (9) Denials or termination of employment as an employee,
 5 employee applicant, or employee or agent of a
 6 contractor of the child support enforcement agency
 7 with access to federal tax information pursuant to
 8 section 576D- ."

9 SECTION 8. Section 846-2.7, Hawaii Revised Statutes, is
 10 amended by amending subsection (b) to read as follows:

11 "(b) Criminal history record checks may be conducted by:

- 12 (1) The department of health or its designee on operators
 13 of adult foster homes for individuals with
 14 developmental disabilities or developmental
 15 disabilities domiciliary homes and their employees, as
 16 provided by section 321-15.2;
- 17 (2) The department of health or its designee on
 18 prospective employees, persons seeking to serve as
 19 providers, or subcontractors in positions that place
 20 them in direct contact with clients when providing



- 1 non-witnessed direct mental health or health care
2 services as provided by section 321-171.5;
- 3 (3) The department of health or its designee on all
4 applicants for licensure or certification for,
5 operators for, prospective employees, adult
6 volunteers, and all adults, except adults in care, at
7 healthcare facilities as defined in section 321-15.2;
- 8 (4) The department of education on employees, prospective
9 employees, and teacher trainees in any public school
10 in positions that necessitate close proximity to
11 children as provided by section 302A-601.5;
- 12 (5) The counties on employees and prospective employees
13 who may be in positions that place them in close
14 proximity to children in recreation or child care
15 programs and services;
- 16 (6) The county liquor commissions on applicants for liquor
17 licenses as provided by section 281-53.5;
- 18 (7) The county liquor commissions on employees and
19 prospective employees involved in liquor
20 administration, law enforcement, and liquor control
21 investigations;



- 1 (8) The department of human services on operators and
2 employees of child caring institutions, child placing
3 organizations, and foster boarding homes as provided
4 by section 346-17;
- 5 (9) The department of human services on prospective
6 adoptive parents as established under section
7 346-19.7;
- 8 (10) The department of human services or its designee on
9 applicants to operate child care facilities, household
10 members of the applicant, prospective employees of the
11 applicant, and new employees and household members of
12 the provider after registration or licensure as
13 provided by section 346-154, and persons subject to
14 section 346-152.5;
- 15 (11) The department of human services on persons exempt
16 pursuant to section 346-152 to be eligible to provide
17 child care and receive child care subsidies as
18 provided by section 346-152.5;
- 19 (12) The department of health on operators and employees of
20 home and community-based case management agencies and
21 operators and other adults, except for adults in care,



1 residing in community care foster family homes as
2 provided by section 321-15.2;

3 (13) The department of human services on staff members of
4 the Hawaii youth correctional facility as provided by
5 section 352-5.5;

6 (14) The department of human services on employees,
7 prospective employees, and volunteers of contracted
8 providers and subcontractors in positions that place
9 them in close proximity to youth when providing
10 services on behalf of the office or the Hawaii youth
11 correctional facility as provided by section 352D-4.3;

12 (15) The judiciary on employees and applicants at detention
13 and shelter facilities as provided by section 571-34;

14 (16) The department of public safety on employees and
15 prospective employees who are directly involved with
16 the treatment and care of persons committed to a
17 correctional facility or who possess police powers
18 including the power of arrest as provided by section
19 353C-5;



- 1 (17) The board of private detectives and guards on
2 applicants for private detective or private guard
3 licensure as provided by section 463-9;
- 4 (18) Private schools and designated organizations on
5 employees and prospective employees who may be in
6 positions that necessitate close proximity to
7 children; provided that private schools and designated
8 organizations receive only indications of the states
9 from which the national criminal history record
10 information was provided pursuant to section 302C-1;
- 11 (19) The public library system on employees and prospective
12 employees whose positions place them in close
13 proximity to children as provided by section
14 302A-601.5;
- 15 (20) The State or any of its branches, political
16 subdivisions, or agencies on applicants and employees
17 holding a position that has the same type of contact
18 with children, vulnerable adults, or persons committed
19 to a correctional facility as other public employees
20 who hold positions that are authorized by law to



1 require criminal history record checks as a condition
2 of employment as provided by section 78-2.7;

3 (21) The department of health on licensed adult day care
4 center operators, employees, new employees,
5 subcontracted service providers and their employees,
6 and adult volunteers as provided by section 321-15.2;

7 (22) The department of human services on purchase of
8 service contracted and subcontracted service providers
9 and their employees serving clients of the adult
10 protective and community services branch, as provided
11 by section 346-97;

12 (23) The department of human services on foster grandparent
13 program, senior companion program, and respite
14 companion program participants as provided by section
15 346-97;

16 (24) The department of human services on contracted and
17 subcontracted service providers and their current and
18 prospective employees that provide home and community-
19 based services under section 1915(c) of the Social
20 Security Act, title 42 United States Code section
21 1396n(c), or under any other applicable section or



1 sections of the Social Security Act for the purposes
2 of providing home and community-based services, as
3 provided by section 346-97;

4 (25) The department of commerce and consumer affairs on
5 proposed directors and executive officers of a bank,
6 savings bank, savings and loan association, trust
7 company, and depository financial services loan
8 company as provided by section 412:3-201;

9 (26) The department of commerce and consumer affairs on
10 proposed directors and executive officers of a
11 nondepository financial services loan company as
12 provided by section 412:3-301;

13 (27) The department of commerce and consumer affairs on the
14 original chartering applicants and proposed executive
15 officers of a credit union as provided by section
16 412:10-103;

17 (28) The department of commerce and consumer affairs on:

18 (A) Each principal of every non-corporate applicant
19 for a money transmitter license;

20 (B) The executive officers, key shareholders, and
21 managers in charge of a money transmitter's



- 1 activities of every corporate applicant for a
2 money transmitter license; and
- 3 (C) The persons who are to assume control of a money
4 transmitter licensee in connection with an
5 application requesting approval of a proposed
6 change in control of licensee,
7 as provided by sections 489D-9 and 489D-15;
- 8 (29) The department of commerce and consumer affairs on
9 applicants for licensure and persons licensed under
10 title 24;
- 11 (30) The Hawaii health systems corporation on:
12 (A) Employees;
13 (B) Applicants seeking employment;
14 (C) Current or prospective members of the corporation
15 board or regional system board; or
16 (D) Current or prospective volunteers, providers, or
17 contractors,
18 in any of the corporation's health facilities as
19 provided by section 323F-5.5;
- 20 (31) The department of commerce and consumer affairs on:



- 1 (A) An applicant for a mortgage loan originator
- 2 license; and
- 3 (B) Each control person, executive officer, director,
- 4 general partner, and manager of an applicant for
- 5 a mortgage loan originator company license,
- 6 as provided by chapter 454F;
- 7 (32) The state public charter school commission or public
- 8 charter schools on employees, teacher trainees,
- 9 prospective employees, and prospective teacher
- 10 trainees in any public charter school for any position
- 11 that places them in close proximity to children, as
- 12 provided in section 302D-33;
- 13 (33) The counties on prospective employees who work with
- 14 children, vulnerable adults, or senior citizens in
- 15 community-based programs;
- 16 (34) The counties on prospective employees for fire
- 17 department positions which involve contact with
- 18 children or vulnerable adults;
- 19 (35) The counties on prospective employees for emergency
- 20 medical services positions which involve contact with
- 21 children or vulnerable adults;



- 1 (36) The counties on prospective employees for emergency
2 management positions and community volunteers whose
3 responsibilities involve planning and executing
4 homeland security measures including viewing,
5 handling, and engaging in law enforcement or
6 classified meetings and assisting vulnerable citizens
7 during emergencies or crises;
- 8 (37) The State and counties on employees, prospective
9 employees, volunteers, and contractors whose position
10 responsibilities require unescorted access to secured
11 areas and equipment related to a traffic management
12 center;
- 13 (38) The State and counties on employees and prospective
14 employees whose positions involve the handling or use
15 of firearms for other than law enforcement purposes;
- 16 (39) The State and counties on current and prospective
17 systems analysts and others involved in an agency's
18 information technology operation whose position
19 responsibilities provide them with access to
20 proprietary, confidential, or sensitive information;



1 (40) The department of commerce and consumer affairs on
2 applicants for real estate appraiser licensure or
3 certification as provided by chapter 466K;

4 (41) The department of health or its designee on all
5 license applicants, licensees, employees, contractors,
6 and prospective employees of medical marijuana
7 dispensaries, and individuals permitted to enter and
8 remain in medical marijuana dispensary facilities as
9 provided under sections 329D-15(a)(4) and
10 329D-16(a)(3);

11 (42) The department of commerce and consumer affairs on
12 applicants for nurse licensure or license renewal,
13 reactivation, or restoration as provided by sections
14 457-7, 457-8, 457-8.5, and 457-9;

15 [†] (43) [†] The county police departments on applicants for
16 permits to acquire firearms pursuant to section 134-2
17 and on individuals registering their firearms pursuant
18 to section 134-3;

19 [†] (44) [†] The department of commerce and consumer affairs on:
20 (A) Each of the controlling persons of the applicant
21 for licensure as an escrow depository, and each



1 of the officers, directors, and principals who
2 will be in charge of the escrow depository's
3 activities upon licensure; and

4 (B) Each of the controlling persons of an applicant
5 for proposed change in control of an escrow
6 depository licensee, and each of the officers,
7 directors, and principals who will be in charge
8 of the licensee's activities upon approval of
9 such application,

10 as provided by chapter 449; [~~and~~]

11 (45) The department of taxation on current or prospective
12 employees or contractors who have access to federal
13 tax information in order to comply with requirements
14 of federal law, regulation, or procedure, as provided
15 by section 231- ;

16 (46) The department of labor and industrial relations on
17 current or prospective employees or contractors who
18 have access to federal tax information in order to
19 comply with requirements of federal law, regulation,
20 or procedure, as provided by section 371- ;



- 1 (47) The department of human services on current and
2 prospective employees who have access to federal tax
3 information in order to comply with requirements of
4 federal law, regulation, or procedure, as provided by
5 section 346- ;
- 6 (48) The child support enforcement agency on current and
7 prospective employees and contractors who have access
8 to federal tax information in order to comply with
9 federal law, regulation, or procedure, as provided by
10 section 576D- ;
- 11 (49) The counties on current and prospective employees and
12 contractors who have access to federal tax information
13 in order to comply with federal law, regulation, or
14 procedure; and
- 15 [~~45~~] (50) Any other organization, entity, or the State,
16 its branches, political subdivisions, or agencies as
17 may be authorized by state law."

18 SECTION 9. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 10. This Act shall take effect on January 7, 2059.



Report Title:

Criminal History Record Checks; Federal Tax Information;
Employees; Contractors; Child Support Enforcement Agency;
Department of Taxation; Department of Human Services; Department
of Labor and Industrial Relations; County Agencies

Description:

Adds the child support enforcement agency, the departments of
taxation, human services, and labor and industrial relations,
and the counties, to the list of entities that are authorized to
conduct criminal history record checks on employees, prospective
employees, and contractors, if applicable, who have access to
federal tax information. Takes effect on 1/7/2059. (SD2)

*The summary description of legislation appearing on this page is for informational purposes only and is
not legislation or evidence of legislative intent.*

