
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 all current and prospective employees and contractors
4 who receive access to federal tax information. The background
5 checks must be comprehensive and include a Federal Bureau of
6 Investigation fingerprint search. To comply with this new
7 requirement, the child support enforcement agency and the
8 departments of taxation, human services, and labor and
9 industrial relations require additional authorization to search
10 criminal histories of employees, prospective employees, and
11 contractors, and to perform a fingerprint search of these
12 persons. Multiple other departments and agencies have received
13 this additional authority.

14 The purpose of this Act is to extend similar authority to
15 the child support enforcement agency and the departments of
16 taxation, human services, and labor and industrial relations to
17 allow them to comply with new Internal Revenue Service
18 requirements.



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

4 "§231- Criminal history record checks. (a) The
5 department shall establish a personnel security program that
6 ensures a background investigation is completed at the
7 appropriate level designated by the federal government for any
8 person, including any authorized contractor, to have access to
9 federal tax information. This program shall include criminal
10 history record checks in accordance with section 846-2.7.
11 Information obtained pursuant to this subsection shall be used
12 exclusively by the department for the purpose of determining
13 whether the person is suitable for accessing federal tax
14 information in accordance with applicable federal laws.

15 (b) The department may terminate or deny employment to any
16 employee or applicant, or terminate or refuse to secure the
17 services of any contractor, if the department finds by reason of
18 the background investigation conducted under subsection (a) that
19 the employee or applicant, or employee or agent of the
20 contractor, poses a risk to the security of federal tax
21 information. Termination or denial of employment, or



1 termination or refusal to secure the services of any contractor,
 2 under this subsection shall only occur after appropriate
 3 notification to the employee, applicant, or employee or agent of
 4 the contractor, of the findings of the background investigation,
 5 and after the employee, applicant, or employee or agent of the
 6 contractor is given an opportunity to meet and rebut the
 7 findings. Nothing in this subsection shall abrogate any
 8 applicable appeal rights under chapters 76 and 89, or
 9 administrative rules of the department.

10 (c) The department shall be exempt from section 831-3.1
 11 and need not conduct investigations, notifications, or hearings
 12 under this section in accordance with chapter 91."

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

16 "§346- Criminal history record checks. (a) The
 17 department shall develop procedures for obtaining verifiable
 18 information regarding the criminal history of any person who is
 19 employed or seeking employment, including a contractor and its
 20 employees or agents if prior authority to access federal tax
 21 information has been provided by the United States Department of



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

8 (b) The department may terminate or deny employment to any
9 employee or applicant, or terminate or refuse to secure the
10 services of a contractor and its employees or agents authorized
11 under subsection (a), if the department finds by reason of the
12 nature and circumstances of the background investigation
13 conducted under subsection (a) that the employee, applicant,
14 contractor, or contractor's employees or agents pose a risk to
15 the security of federal tax information. Termination or denial
16 of employment under this subsection shall only occur after
17 appropriate notification to the employee, applicant, or
18 contractor of the findings of the background investigation, and
19 after the employee, applicant, or contractor is given an
20 opportunity to respond to the findings. Nothing in this



1 subsection shall abrogate any applicable appeal rights under
2 chapters 76 and 89, or administrative rules of the department.

3 (c) The department shall be exempt from section 831-3.1
4 and need not conduct investigations, notifications, or hearings
5 under this section in accordance with chapter 91."

6 SECTION 4. Chapter 383, Hawaii Revised Statutes, is
7 amended by adding a new section to part IV to be appropriately
8 designated and to read as follows:

9 "§383- 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 federal government for any
13 individual who will have access to federal tax information,
14 including a contractor and its employees or agents, if prior
15 authority to access federal tax information has been provided by
16 the United States Department of the Treasury. This program
17 shall include criminal history record checks in accordance with
18 section 846-2.7. Information obtained pursuant to this
19 subsection shall be used exclusively by the department for the
20 purpose of determining whether the person is suitable for



1 accessing federal tax information in accordance with applicable
2 federal laws.

3 (b) The department may terminate or deny employment to any
4 employee or applicant, or terminate or refuse to secure the
5 services of a contractor and its employees or agents authorized
6 under subsection (a), if the department finds by reason of the
7 background investigation conducted under subsection (a) that the
8 employee, applicant, contractor, or contractor's employees or
9 agents pose a risk to the security of federal tax information.
10 Termination or denial of employment under this subsection shall
11 only occur after appropriate notification to the employee,
12 applicant, or contractor of the findings of the background
13 investigation, and after the employee, applicant, or contractor
14 is given an opportunity to meet and rebut the findings. Nothing
15 in this subsection shall abrogate any applicable appeal rights
16 under chapters 76 and 89, or administrative rules of the
17 department.

18 (c) The department shall be exempt from section 831-3.1
19 and need not conduct investigations, notifications, or hearings
20 under this section in accordance with chapter 91."



1 SECTION 5. Chapter 576D, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§576D- Criminal history record checks. (a) The agency
5 shall develop procedures for obtaining verifiable information
6 regarding the criminal history of any person, including any
7 contractor, who is employed, seeking employment with, or
8 provides or seeks to provide services to the agency if this
9 person will require access to federal tax information. These
10 procedures shall include criminal history record checks in
11 accordance with section 846-2.7.

12 Information obtained pursuant to this subsection shall be
13 used exclusively by the agency for the purpose of determining
14 whether a person is suitable for accessing federal tax
15 information. All decisions shall be subject to applicable
16 federal laws and regulations currently or hereafter in effect.

17 (b) The agency 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 agency finds by reason of the
20 background investigation conducted under subsection (a) that the
21 employee, applicant, or employee or agent of the contractor



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

11 (c) The agency shall be exempt from section 831-3.1 and
 12 need not conduct investigations, notifications, or hearings
 13 under this section in accordance with chapter 91."

14 SECTION 6. Section 831-3.1, Hawaii Revised Statutes, is
 15 amended by amending subsection (f) to read as follows:

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

- 18 (1) Denials by the department of human services, the
- 19 department of health, or any other branch, political
- 20 subdivision, or agency of any certificate of approval,
- 21 license, or permit to any organization, institution,

- 1 home, or facility subject to licensure under chapters
2 321, 333F, and 346;
- 3 (2) Denials of employment as a staff member of a youth
4 correctional facility operated under chapter 352;
- 5 (3) Denials of employment as an employee of a detention or
6 shelter facility established or designated pursuant to
7 section 571-33;
- 8 (4) Denials of employment as a staff member of a
9 correctional facility pursuant to chapter 353, or as a
10 staff member that requires the exercise of police
11 powers, including the power to arrest, in the
12 performance of the staff member's duties pursuant to
13 chapter 353C; [~~and~~]
- 14 (5) Denials of employment of applicants or employees
15 pursuant to section 78-2.7[-];
- 16 (6) Denials or termination of employment as an employee,
17 employee applicant, or employee or agent of a
18 contractor of the department of taxation with access
19 to federal tax information pursuant to section 231- ;
- 20 (7) Denials or termination of employment as an employee,
21 employee applicant, or employee or agent of a



1 contractor of the department of human services with
2 access to federal tax information pursuant to section
3 346- ;

4 (8) Denials or termination of employment as an employee,
5 employee applicant, or employee or agent of a
6 contractor of the department of labor and industrial
7 relations pursuant to section 383- ; and

8 (9) Denials or termination of employment as an employee,
9 employee applicant, or employee or agent of a
10 contractor of the child support enforcement agency
11 with access to federal tax information pursuant to
12 section 576D- ."

13 SECTION 7. Section 846-2.7, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

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

16 (1) The department of health or its designee on operators
17 of adult foster homes for individuals with
18 developmental disabilities or developmental
19 disabilities domiciliary homes and their employees, as
20 provided by section 321-15.2;

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



- 1 (7) The county liquor commissions on employees and
2 prospective employees involved in liquor
3 administration, law enforcement, and liquor control
4 investigations;
- 5 (8) The department of human services on operators and
6 employees of child caring institutions, child placing
7 organizations, and foster boarding homes as provided
8 by section 346-17;
- 9 (9) The department of human services on prospective
10 adoptive parents as established under section
11 346-19.7;
- 12 (10) The department of human services or its designee on
13 applicants to operate child care facilities, household
14 members of the applicant, prospective employees of the
15 applicant, and new employees and household members of
16 the provider after registration or licensure as
17 provided by section 346-154, and persons subject to
18 section 346-152.5;
- 19 (11) The department of human services on persons exempt
20 pursuant to section 346-152 to be eligible to provide



- 1 child care and receive child care subsidies as
2 provided by section 346-152.5;
- 3 (12) The department of health on operators and employees of
4 home and community-based case management agencies and
5 operators and other adults, except for adults in care,
6 residing in community care foster family homes as
7 provided by section 321-15.2;
- 8 (13) The department of human services on staff members of
9 the Hawaii youth correctional facility as provided by
10 section 352-5.5;
- 11 (14) The department of human services on employees,
12 prospective employees, and volunteers of contracted
13 providers and subcontractors in positions that place
14 them in close proximity to youth when providing
15 services on behalf of the office or the Hawaii youth
16 correctional facility as provided by section 352D-4.3;
- 17 (15) The judiciary on employees and applicants at detention
18 and shelter facilities as provided by section 571-34;
- 19 (16) The department of public safety on employees and
20 prospective employees who are directly involved with
21 the treatment and care of persons committed to a



1 correctional facility or who possess police powers
2 including the power of arrest as provided by section
3 353C-5;

4 (17) The board of private detectives and guards on
5 applicants for private detective or private guard
6 licensure as provided by section 463-9;

7 (18) Private schools and designated organizations on
8 employees and prospective employees who may be in
9 positions that necessitate close proximity to
10 children; provided that private schools and designated
11 organizations receive only indications of the states
12 from which the national criminal history record
13 information was provided pursuant to section 302C-1;

14 (19) The public library system on employees and prospective
15 employees whose positions place them in close
16 proximity to children as provided by section
17 302A-601.5;

18 (20) The State or any of its branches, political
19 subdivisions, or agencies on applicants and employees
20 holding a position that has the same type of contact
21 with children, vulnerable adults, or persons committed



1 to a correctional facility as other public employees
2 who hold positions that are authorized by law to
3 require criminal history record checks as a condition
4 of employment as provided by section 78-2.7;

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

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

14 (23) The department of human services on foster grandparent
15 program, senior companion program, and respite
16 companion program participants as provided by section
17 346-97;

18 (24) The department of human services on contracted and
19 subcontracted service providers and their current and
20 prospective employees that provide home and community-
21 based services under section 1915(c) of the Social

1 Security Act, title 42 United States Code section
2 1396n(c), or under any other applicable section or
3 sections of the Social Security Act for the purposes
4 of providing home and community-based services, as
5 provided by section 346-97;

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

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

15 (27) The department of commerce and consumer affairs on the
16 original chartering applicants and proposed executive
17 officers of a credit union as provided by section
18 412:10-103;

19 (28) The department of commerce and consumer affairs on:
20 (A) Each principal of every non-corporate applicant
21 for a money transmitter license;



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



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



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



1 responsibilities provide them with access to
2 proprietary, confidential, or sensitive information;

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

6 (41) The department of health or its designee on all
7 license applicants, licensees, employees, contractors,
8 and prospective employees of medical marijuana
9 dispensaries, and individuals permitted to enter and
10 remain in medical marijuana dispensary facilities as
11 provided under sections 329D-15(a)(4) and
12 329D-16(a)(3);

13 (42) The department of commerce and consumer affairs on
14 applicants for nurse licensure or license renewal,
15 reactivation, or restoration as provided by sections
16 457-7, 457-8, 457-8.5, and 457-9;

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

21 [+] (44) [+] The department of commerce and consumer affairs on:



1 (A) Each of the controlling persons of the applicant
2 for licensure as an escrow depository, and each
3 of the officers, directors, and principals who
4 will be in charge of the escrow depository's
5 activities upon licensure; and

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

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

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

18 (46) The department of labor and industrial relations on
19 current or prospective employees or contractors who
20 have access to federal tax information in order to



1 comply with requirements of federal law, regulation,
2 or procedure, as provided by section 383- ;

3 (47) The department of human services on current or
4 prospective employees or contractors who have access
5 to federal tax information in order to comply with
6 requirements of federal law, regulation, or procedure,
7 as provided by section 346- ;

8 (48) The child support enforcement agency on current or
9 prospective employees, or contractors who have access
10 to federal tax information in order to comply with
11 federal law, regulation, or procedure, as provided by
12 section 576D- ; and

13 [~~45~~] (49) Any other organization, entity, or the State,
14 its branches, political subdivisions, or agencies as
15 may be authorized by state law."

16 SECTION 8. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 9. This Act shall take effect upon its approval.



Report Title:

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

Description:

Adds 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 who have access to federal tax information. (HB1031 CD1)

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

