

JAN 25 2017

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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 that 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 such  
12 persons. Multiple other departments and agencies have received  
13 such additional authority. This Act will extend similar  
14 authority to the child support enforcement agency and the  
15 departments of taxation, human services, and labor and  
16 industrial relations to allow them to comply with new Internal  
17 Revenue Service requirements.

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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 United States government for  
8 any individual who will have access to federal tax information.  
9 This program shall include criminal history record checks in  
10 accordance with section 846-2.7. Information obtained pursuant  
11 to this subsection shall be used exclusively by the department  
12 for the purpose of determining whether the person is suitable  
13 for accessing federal tax information in accordance with  
14 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 under this  
22 subsection shall only occur after appropriate notification to  
23 the employee or applicant of the findings of the background

1 investigation, and after the employee or applicant is given an  
2 opportunity to meet and rebut the findings. Nothing in this  
3 subsection shall abrogate any applicable appeal rights under  
4 chapters 76 and 89, or administrative regulation of the  
5 department.

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

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

14 "§346- Criminal history record checks. (a) The  
15 department shall develop procedures for obtaining verifiable  
16 information regarding the criminal history of persons who are  
17 employed or seeking employment, or contractors, if such position  
18 will require access to federal tax information. The procedures  
19 shall include criminal history record checks in accordance with  
20 section 846-2.7. Information obtained pursuant to this  
21 subsection shall be used exclusively by the department for the  
22 purpose of determining whether a person is suitable for

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

3 (b) The department may refuse to employ, and may terminate  
4 the employment of any employee or deny employment to an  
5 applicant if the person has been convicted of a crime, and if  
6 the department finds by reason of the nature and circumstances  
7 of the crime that the person poses a risk to the security of  
8 federal tax information. Termination or denial of employment  
9 may occur only after appropriate investigation and notification  
10 to the employee or applicant for employment of results and  
11 planned action, and after the employee or applicant for  
12 employment is given an opportunity to respond to the finding.  
13 Nothing in this subsection shall abrogate any applicable appeal  
14 rights under chapters 76 and 89, or administrative regulation of  
15 the department.

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

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

1           "§383- Criminal history record checks. (a) The  
2 department shall establish a personnel security program that  
3 ensures a background investigation is completed at the  
4 appropriate level designated by the United States government for  
5 any individual who will have access to federal tax information.  
6 This program shall include criminal history record checks in  
7 accordance with section 846-2.7. Information obtained pursuant  
8 to this subsection shall be used exclusively by the department  
9 for the purpose of determining whether the person is suitable  
10 for accessing federal tax information in accordance with  
11 applicable federal laws.

12           (b) The department may terminate or deny employment to any  
13 employee or applicant, or terminate or refuse to secure the  
14 services of any contractor, if the department finds by reason of  
15 the background investigation conducted under subsection (a) that  
16 the employee or applicant, or employee or agent of the  
17 contractor, poses a risk to the security of federal tax  
18 information. Termination or denial of employment under this  
19 subsection shall only occur after appropriate notification to  
20 the employee or applicant of the findings of the background  
21 investigation, and after the employee or applicant is given an  
22 opportunity to meet and rebut the findings. Nothing in this  
23 subsection shall abrogate any applicable appeal rights under

1 chapters 76 and 89, or administrative regulation of the  
2 department.

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

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

11 "§576D- Criminal history record checks. (a) The child  
12 support enforcement agency shall develop procedures for  
13 obtaining verifiable information regarding the criminal  
14 history of persons who are employed or seeking employment  
15 with the agency if such position will require access to  
16 federal tax information. These procedures shall include  
17 criminal history record checks in accordance with section  
18 846-2.7.

19 Information obtained pursuant to this subsection shall be  
20 used exclusively by the agency for the purpose of determining  
21 whether a person is suitable for accessing federal tax  
22 information. All such decisions shall be subject to  
23 applicable federal laws and regulations currently or hereafter

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1 in effect.

2 (b) The agency may refuse to employ, and may terminate  
3 the employment of any employee or deny employment to an  
4 applicant if the person has been convicted of a crime, and if  
5 the agency finds by reason of the nature and circumstances of  
6 the crime that the person poses a risk to the security of  
7 federal tax information. Termination or denial of employment  
8 may occur only after appropriate investigation and  
9 notification to the employee or applicant for employment of  
10 results and planned action, and after the employee or  
11 applicant for employment is given an opportunity to meet and  
12 rebut the finding. Nothing in this subsection shall abrogate  
13 any applicable appeal rights under chapters 76 and 89.

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

19 SECTION 6. Section 846-2.7, Hawaii Revised Statutes, is  
20 amended by amending subsection (b) to read as follows:

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

22 (1) The department of health or its designee on operators  
23 of adult foster homes for individuals with

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1 developmental disabilities or developmental  
2 disabilities domiciliary homes and their employees, as  
3 provided by section 321-15.2;

4 (2) The department of health or its designee on  
5 prospective employees, persons seeking to serve as  
6 providers, or subcontractors in positions that place  
7 them in direct contact with clients when providing  
8 non-witnessed direct mental health or health care  
9 services as provided by section 321-171.5;

10 (3) The department of health or its designee on all  
11 applicants for licensure or certification for,  
12 operators for, prospective employees, adult  
13 volunteers, and all adults, except adults in care, at  
14 healthcare facilities as defined in section 321-15.2;

15 (4) The department of education on employees, prospective  
16 employees, and teacher trainees in any public school  
17 in positions that necessitate close proximity to  
18 children as provided by section 302A-601.5;

19 (5) The counties on employees and prospective employees  
20 who may be in positions that place them in close  
21 proximity to children in recreation or child care  
22 programs and services;



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- 1           (6) The county liquor commissions on applicants for liquor  
2           licenses as provided by section 281-53.5;
- 3           (7) The county liquor commissions on employees and  
4           prospective employees involved in liquor  
5           administration, law enforcement, and liquor control  
6           investigations;
- 7           (8) The department of human services on operators and  
8           employees of child caring institutions, child placing  
9           organizations, and foster boarding homes as provided  
10          by section 346-17;
- 11          (9) The department of human services on prospective  
12          adoptive parents as established under section  
13          346-19.7;
- 14          (10) The department of human services or its designee on  
15          applicants to operate child care facilities, household  
16          members of the applicant, prospective employees of the  
17          applicant, and new employees and household members of  
18          the provider after registration or licensure as  
19          provided by section 346-154, and persons subject to  
20          section 346-152.5;
- 21          (11) The department of human services on persons exempt  
22          pursuant to section 346-152 to be eligible to provide

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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  
22 correctional facility or who possess police powers

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- 1 including the power of arrest as provided by section  
2 353C-5;
- 3 (17) The board of private detectives and guards on  
4 applicants for private detective or private guard  
5 licensure as provided by section 463-9;
- 6 (18) Private schools and designated organizations on  
7 employees and prospective employees who may be in  
8 positions that necessitate close proximity to  
9 children; provided that private schools and designated  
10 organizations receive only indications of the states  
11 from which the national criminal history record  
12 information was provided pursuant to section 302C-1;
- 13 (19) The public library system on employees and prospective  
14 employees whose positions place them in close  
15 proximity to children as provided by section  
16 302A-601.5;
- 17 (20) The State or any of its branches, political  
18 subdivisions, or agencies on applicants and employees  
19 holding a position that has the same type of contact  
20 with children, vulnerable adults, or persons committed  
21 to a correctional facility as other public employees  
22 who hold positions that are authorized by law to

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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 service  
8 contracted and subcontracted service providers and  
9 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  
22 sections of the Social Security Act for the purposes

1 of providing home and community-based services, as  
2 provided by section 346-97;

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

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

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

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

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

19 (B) The executive officers, key shareholders, and  
20 managers in charge of a money transmitter's  
21 activities of every corporate applicant for a  
22 money transmitter license; and

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

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- 1 as provided by chapter 454F;
- 2 (32) The state public charter school commission or public  
3 charter schools on employees, teacher trainees,  
4 prospective employees, and prospective teacher  
5 trainees in any public charter school for any position  
6 that places them in close proximity to children, as  
7 provided in section 302D-33;
- 8 (33) The counties on prospective employees who work with  
9 children, vulnerable adults, or senior citizens in  
10 community-based programs;
- 11 (34) The counties on prospective employees for fire  
12 department positions which involve contact with  
13 children or vulnerable adults;
- 14 (35) The counties on prospective employees for emergency  
15 medical services positions which involve contact with  
16 children or vulnerable adults;
- 17 (36) The counties on prospective employees for emergency  
18 management positions and community volunteers whose  
19 responsibilities involve planning and executing  
20 homeland security measures including viewing,  
21 handling, and engaging in law enforcement or  
22 classified meetings and assisting vulnerable citizens  
23 during emergencies or crises;

- 1       (37) The State and counties on employees, prospective  
2           employees, volunteers, and contractors whose position  
3           responsibilities require unescorted access to secured  
4           areas and equipment related to a traffic management  
5           center;
- 6       (38) The State and counties on employees and prospective  
7           employees whose positions involve the handling or use  
8           of firearms for other than law enforcement purposes;
- 9       (39) The State and counties on current and prospective  
10          systems analysts and others involved in an agency's  
11          information technology operation whose position  
12          responsibilities provide them with access to  
13          proprietary, confidential, or sensitive information;
- 14      (40) The department of commerce and consumer affairs on  
15          applicants for real estate appraiser licensure or  
16          certification as provided by chapter 466K;
- 17      (41) The department of health or its designee on all license  
18          applicants, licensees, employees, contractors, and  
19          prospective employees of medical marijuana  
20          dispensaries, and individuals permitted to enter and  
21          remain in medical marijuana dispensary facilities as  
22          provided under sections 329D-15(a)(4) and  
23          329D-16(a)(3);



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1 (42) The department of commerce and consumer affairs on  
2 applicants for nurse licensure or license renewal,  
3 reactivation, or restoration as provided by sections  
4 457-7, 457-8, 457-8.5, and 457-9;

5 [+](43)[+] The county police departments on applicants for  
6 permits to acquire firearms pursuant to section 134-2  
7 and on individuals registering their firearms pursuant  
8 to section 134-3;

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

10 (A) Each of the controlling persons of the applicant  
11 for licensure as an escrow depository, and each  
12 of the officers, directors, and principals who  
13 will be in charge of the escrow depository's  
14 activities upon licensure; and

15 (B) Each of the controlling persons of an applicant  
16 for proposed change in control of an escrow  
17 depository licensee, and each of the officers,  
18 directors, and principals who will be in charge  
19 of the licensee's activities upon approval of  
20 such application,

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

22 (45) The department of taxation on current or prospective  
23 employees or contractors that have access to federal

1 tax information in order to comply with requirements  
2 of federal law, regulation, or procedure, as provided  
3 by section 231- ;

4 (46) The department of labor and industrial relations on  
5 current or prospective employees or contractors that  
6 have access to federal tax information in order to  
7 comply with requirements of federal law, regulation,  
8 or procedure, as provided by section 383- ;

9 (47) The department of human services or its designee on  
10 current and prospective employees or contractors that  
11 have access to federal tax information in order to  
12 comply with requirements of federal law, regulation,  
13 or procedure, as provided by section 346- ;

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

18 [~~45~~] (49) Any other organization, entity, or the State, its  
19 branches, political subdivisions, or agencies as may  
20 be authorized by state law."

21 SECTION 7. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.

23 SECTION 8. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_ *M. H. W.* \_\_\_\_\_  
BY REQUEST

**Report Title:**

Criminal History Record Checks

**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 that have access to federal tax information.

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

## JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO CRIMINAL HISTORY RECORD CHECKS.

PURPOSE: Authorize the Child Support Enforcement Agency 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.

MEANS: Add a new section to chapters 231, 346, 383, and 576D, Hawaii Revised Statutes, and amend section 846-2.7(b), Hawaii Revised Statutes.

JUSTIFICATION: 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, applicants for employment, and contractors who access FTI.

The Department of Taxation relies on FTI to perform audits. Maintaining access to FTI is important to the administration of taxes.

The Department of Labor and Industrial Relations (DLIR) receives FTI for two purposes: worker misclassification and the Treasury Offset Program (TOP). The United States Department of Labor is committed to developing tools focused on the prevention and detection of worker misclassification. 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. This reduces the

Unemployment Insurance (UI) tax revenue and adversely affects an employee's ability to receive UI benefits and other employee benefits. These actions are unfair to employers who abide by the law and properly classify their employees.

The DLIR enrolled in the IRS Government Liaison Data Exchange Program to receive a data extract of 1099-MISC Non-Employee Compensation. The 1099-MISC extract is used to identify taxpayers who have improperly classified workers as independent contractors. A data analysis and management tool is used to direct UI audits to taxpayers with a high probability of unreported and underreported workers and unpaid taxes.

The TOP is operated by the United States Department of Treasury. On December 26, 2013, President Obama signed into law the Bipartisan Budget Act. The Act requires states, as a condition for receipt of grants, to administer the UI programs and to use TOP to recoup certain outstanding debts via intercept of Federal income tax refunds. As the DLIR relies on grant funding to operate the UI offices, continued access to FTI must be maintained. The loss of grant funding will result in the shutdown of the UI offices and operations, and unemployed workers will not be able to file claims for UI benefits.

The Department of Human Services (DHS) receives FTI from both the IRS and the Social Services Administration (SSA). The department relies on FTI and other income data sources to accurately determine an individual's eligibility for services and programs administered by DHS.

The Department of the Attorney General, Child Support Enforcement Agency (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.

Under 45 CFR §303.3, the CSEA is required to locate noncustodial parents utilizing all appropriate locate sources including the Federal Parent Locate Service (FPLS). The FPLS, established and maintained by the federal Department of Health and Human Services, obtains and transmits information on parents involved in child support cases to state child support agencies. The FPLS data includes address information from the IRS that is considered FTI.

Under 45 CFR §302.60, the CSEA must have in effect procedures to obtain payment of past-due support from federal tax refunds. Currently, the agency collects approximately \$10 million in past-due child support through the interception of federal tax refunds annually. The intercepted refund amounts are considered FTI.

If the CSEA does not meet the new IRS requirements, the agency will not be able to obtain locate information and will lose millions of dollars in annual collections. In addition, if these federal requirements are not met, the state plan that is administered by the CSEA for federal funding purposes may be disapproved. If the state plan is disapproved, federal funding that is provided to the CSEA and to the Department of Human Services may be jeopardized.

This bill provides the departments the authority to conduct criminal history record checks on employees, prospective employees, and contractors.

Impact on the public: None.

Impact on the department and other agencies:

The bill will authorize the Child Support Enforcement Agency and the Departments of Taxation, Labor and Industrial Relations, and Human Services, to comply with IRS requirements.

GENERAL FUND: None.

OTHER FUNDS: None.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.