

S.B. NO. 1310

JAN 23 2025

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 requires fingerprint-based background checks on current
3 and prospective employees and contractors who receive access to
4 federal tax information. Authorization to access fingerprint-
5 based background checks is provided through state statute
6 approved by the Federal Bureau of Investigation. Act 35,
7 Session Laws of Hawaii 2021, amended sections 28-17 and 846-
8 2.7(b)(49), Hawaii Revised Statutes, to authorize the department
9 of the attorney general to conduct fingerprint-based background
10 checks through the Federal Bureau of Investigation on current or
11 prospective employees or employees or agents of contractors.
12 Upon review of section 846-2.7(b)(49), Hawaii Revised Statutes,
13 the Federal Bureau of Investigation determined that the statute
14 failed the requirement of identifying the specific category of
15 persons falling within the statute's purview, as the term
16 "agents of contractors" was overly broad and not defined in the
17 statute.

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1 The purpose of this Act is to delete the term "agents of
2 contractors" in sections 28-17 and 846-2.7(b)(49), Hawaii
3 Revised Statutes, to comply with the requirement of the Federal
4 Bureau of Investigation for fingerprint-based background checks.

5 SECTION 2. Section 28-17, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

7 "(b) The department of the attorney general may terminate
8 or deny employment to any current or prospective employee, or
9 terminate or refuse to secure the services of any contractor, if
10 the department of the attorney general finds by reason of the
11 background investigation conducted under subsection (a) that the
12 current or prospective employee, contractor, or contractor's
13 employee [~~or agent of the contractor~~] poses a risk to the
14 security of federal tax information. Termination or denial of
15 employment, or termination or refusal to secure the services of
16 any contractor, under this subsection, shall only occur after
17 appropriate notification to the current or prospective employee,
18 contractor, or contractor's employee [~~or agent of the~~
19 ~~contractor~~] of the findings of the background investigation, and
20 after the current or prospective employee, contractor, or
21 contractor's employee [~~or agent of the contractor~~] is given an
22 opportunity to meet and rebut the findings. Nothing in this

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subsection shall abrogate any applicable appeal rights under chapters 76 and 89 or administrative rules of the department of the attorney general."

SECTION 3. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

- (1) The department of health or its designee on operators of adult foster homes for individuals with developmental disabilities or developmental disabilities domiciliary homes and their employees, as provided by section 321-15.2;
- (2) The department of health or its designee on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health or health care services as provided by section 321-171.5;
- (3) The department of health or its designee on all applicants for licensure or certification for, operators for, prospective employees, adult volunteers, and all adults, except adults in care, at healthcare facilities as defined in section 321-15.2;

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- 1 (4) The department of education on employees, prospective
2 employees, and teacher trainees in any public school
3 in positions that necessitate close proximity to
4 children as provided by section 302A-601.5;
- 5 (5) The counties on employees and prospective employees
6 who may be in positions that place them in close
7 proximity to children in recreation or child care
8 programs and services;
- 9 (6) The county liquor commissions on applicants for liquor
10 licenses as provided by section 281-53.5;
- 11 (7) The county liquor commissions on employees and
12 prospective employees involved in liquor
13 administration, law enforcement, and liquor control
14 investigations;
- 15 (8) The department of human services on operators and
16 employees of child caring institutions, child placing
17 organizations, and resource family homes as provided
18 by section 346-17;
- 19 (9) The department of human services on prospective
20 adoptive parents as established under section 346-
21 19.7;

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1 (10) The department of human services or its designee on
2 applicants to operate child care facilities, household
3 members of the applicant, prospective employees of the
4 applicant, and new employees and household members of
5 the provider after registration or licensure as
6 provided by section 346-154, and persons subject to
7 section 346-152.5;

8 (11) The department of human services on persons exempt
9 pursuant to section 346-152 to be eligible to provide
10 child care and receive child care subsidies as
11 provided by section 346-152.5;

12 (12) The department of health on operators and employees of
13 home and community-based case management agencies and
14 operators and other adults, except for adults in care,
15 residing in community care foster family homes as
16 provided by section 321-15.2;

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

20 (14) The department of human services on employees,
21 prospective employees, and volunteers of contracted
22 providers and subcontractors in positions that place

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1 them in close proximity to youth when providing
2 services on behalf of the office or the Hawaii youth
3 correctional facility as provided by section 352D-4.3;

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

6 (16) The department of corrections and rehabilitation on
7 employees and prospective employees, volunteers,
8 contract service providers, and subcontract service
9 providers who are directly involved with the treatment
10 and care of, or directly involved in providing
11 correctional programs and services to, persons
12 committed to a correctional facility, or placed in
13 close proximity to persons committed when providing
14 services on behalf of the department or the
15 correctional facility, as provided by section 353-1.5
16 and the department of law enforcement on employees and
17 prospective employees whose duties involve or may
18 involve the exercise of police powers including the
19 power of arrest as provided by section 353C-5;

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

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- 1 (18) Private schools and designated organizations on
2 employees and prospective employees who may be in
3 positions that necessitate close proximity to
4 children; provided that private schools and designated
5 organizations receive only indications of the states
6 from which the national criminal history record
7 information was provided pursuant to section 302C-1;
- 8 (19) The public library system on employees and prospective
9 employees whose positions place them in close
10 proximity to children as provided by section 302A-
11 601.5;
- 12 (20) The State or any of its branches, political
13 subdivisions, or agencies on applicants and employees
14 holding a position that has the same type of contact
15 with children, vulnerable adults, or persons committed
16 to a correctional facility as other public employees
17 who hold positions that are authorized by law to
18 require criminal history record checks as a condition
19 of employment as provided by section 78-2.7;
- 20 (21) The department of health on licensed adult day care
21 center operators, employees, new employees,

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subcontracted service providers and their employees,
and adult volunteers as provided by section 321-15.2;

(22) The department of human services on purchase of
service contracted and subcontracted service providers
and their employees and volunteers, as provided by
sections 346-2.5 and 346-97;

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

(24) The department of human services on contracted and
subcontracted service providers and their current and
prospective employees that provide home and community-
based services under section 1915(c) of the Social
Security Act, title 42 United States Code section
1396n(c), or under any other applicable section or
sections of the Social Security Act for the purposes
of providing home and community-based services, as
provided by section 346-97;

(25) The department of commerce and consumer affairs on
proposed directors and executive officers of a bank,
savings bank, savings and loan association, trust

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1 company, and depository financial services loan

2 company as provided by section 412:3-201;

3 (26) The department of commerce and consumer affairs on

4 proposed directors and executive officers of a

5 nondepository financial services loan company as

6 provided by section 412:3-301;

7 (27) The department of commerce and consumer affairs on the

8 original chartering applicants and proposed executive

9 officers of a credit union as provided by section

10 412:10-103;

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

12 (A) Each principal of every non-corporate applicant

13 for a money transmitter license;

14 (B) Each person who upon approval of an application

15 by a corporate applicant for a money transmitter

16 license will be a principal of the licensee; and

17 (C) Each person who upon approval of an application

18 requesting approval of a proposed change in

19 control of licensee will be a principal of the

20 licensee,

21 as provided by sections 489D-9 and 489D-15;

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(29) The department of commerce and consumer affairs on applicants for licensure and persons licensed under title 24;

(30) The Hawaii health systems corporation on:

(A) Employees;

(B) Applicants seeking employment;

(C) Current or prospective members of the corporation board or regional system board; or

(D) Current or prospective volunteers, providers, or contractors,

in any of the corporation's health facilities as provided by section 323F-5.5;

(31) The department of commerce and consumer affairs on:

(A) An applicant for a mortgage loan originator license, or license renewal; and

(B) Each control person, executive officer, director, general partner, and managing member of an applicant for a mortgage loan originator company license or license renewal,

as provided by chapter 454F;

(32) The state public charter school commission or public charter schools on employees, teacher trainees,

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prospective employees, and prospective teacher trainees in any public charter school for any position that places them in close proximity to children, as provided in section 302D-33;

(33) The counties on prospective employees who work with children, vulnerable adults, or senior citizens in community-based programs;

(34) The counties on prospective employees for fire department positions that involve contact with children or vulnerable adults;

(35) The counties on prospective employees for emergency medical services positions that involve contact with children or vulnerable adults;

(36) The counties on prospective employees for emergency management positions and community volunteers whose responsibilities involve planning and executing homeland security measures including viewing, handling, and engaging in law enforcement or classified meetings and assisting vulnerable citizens during emergencies or crises;

(37) The State and counties on employees, prospective employees, volunteers, and contractors whose position

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responsibilities require unescorted access to secured areas and equipment related to a traffic management center;

(38) The State and counties on employees and prospective employees whose positions involve the handling or use of firearms for other than law enforcement purposes;

(39) The State and counties on current and prospective systems analysts and others involved in an agency's information technology operation whose position responsibilities provide them with access to proprietary, confidential, or sensitive information;

(40) The department of commerce and consumer affairs on:

(A) Applicants for real estate appraiser licensure or certification as provided by chapter 466K;

(B) Each person who owns more than ten per cent of an appraisal management company who is applying for registration as an appraisal management company, as provided by section -7; and

(C) Each of the controlling persons of an applicant for registration as an appraisal management company, as provided by section -7;

(41) The department of health or its designee on:

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(A) Individual applicants or individuals acting on behalf of applying entities for hemp processor permits as provided under section 328G-2; and

(B) All license applicants, licensees, employees, contractors, and prospective employees of medical cannabis dispensaries, and individuals permitted to enter and remain in medical cannabis dispensary facilities as provided under sections 329D-15(a)(4) and 329D-16(a)(3);

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

(43) The county police departments on applicants for permits to acquire firearms pursuant to section 134-2, on individuals registering their firearms pursuant to section 134-3, and on applicants for new or renewed licenses to carry a pistol or revolver and ammunition pursuant to section 134-9;

(44) The department of commerce and consumer affairs on:

(A) Each of the controlling persons of the applicant for licensure as an escrow depository, and each

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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 the
9 application,

10 as provided by chapter 449;

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 231-1.6;

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 383-110;

21 (47) The department of human services on current or
22 prospective employees or contractors who have access

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1 to federal tax information in order to comply with
2 requirements of federal law, regulation, or procedure,
3 and on current or prospective employees, volunteers,
4 contractors, or contractors' employees or volunteers,
5 subcontractors, or subcontractors' employees or
6 volunteers, whose position places or would place them
7 in close proximity to minors, young adults, or
8 vulnerable adults, as provided by section 346-2.5;

9 (48) The child support enforcement agency on current or
10 prospective employees or contractors who have access
11 to federal tax information [~~in order~~] to comply with
12 federal law, regulation, or procedure, as provided by
13 section 576D-11.5;

14 (49) The department of the attorney general on current or
15 prospective employees, contractors, or contractor's
16 employees [~~or agents of contractors~~], who have access
17 to federal tax information to comply with
18 [~~requirements of~~] federal law, regulation, or
19 procedure, as provided by section 28-17;

20 (50) The department of commerce and consumer affairs on
21 each control person, executive officer, director,
22 general partner, and managing member of an installment

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1 loan licensee, or an applicant for an installment loan
2 license, as provided in chapter 480J;

3 (51) The university of Hawaii on current and prospective
4 employees and contractors whose duties include
5 ensuring the security of campus facilities and
6 persons; and

7 (52) Any other organization, entity, or the State, its
8 branches, political subdivisions, or agencies as may
9 be authorized by state law."

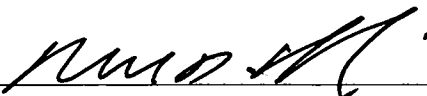
10 SECTION 4. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 5. This Act shall take effect upon its approval;
13 provided that the amendments made to section 846-2.7, Hawaii
14 Revised Statutes, by this Act shall not be repealed when section
15 846-2.7, Hawaii Revised Statutes, is reenacted on July 1, 2027,
16 pursuant to section 4 of Act 110, Session Laws of Hawaii 2024.

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INTRODUCED BY:



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BY REQUEST

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Report Title:

ATG; Criminal History Record Checks

Description:

Deletes the term "agent of the contractor" in sections 28-17 and 846-2.7, HRS, to comply with requirements of the Federal Bureau of Investigation. The Federal Bureau of Investigation deemed the term overly broad for purposes of accessing its criminal history background information. Clarifies that "contractor's employees" who have access to federal tax information held by the Department of the Attorney General may be subject to fingerprint-based background checks.

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: To delete the term "agents of contractors" in sections 28-17 and 846-2.7(b)(49), Hawaii Revised Statutes (HRS), to comply with the requirement of the Federal Bureau of Investigation for fingerprint-based background checks.

MEANS: Amend sections 28-17 and 846-2.7(b), HRS.

JUSTIFICATION: The authority for the State to conduct fingerprint-based criminal history record checks for noncriminal justice purposes is provided for in statute and is subject to approval by the Federal Bureau of Investigation (FBI). The authorizing statute must not be overly broad in scope but must specifically identify the subject of the criminal history record check. The FBI disapproved section 846-2.7(b)(49), HRS, due to the term "agent of the contractor" being overly broad and undefined in the statute. The Department needs to be able to conduct fingerprint-based background checks on people who have access to federal tax information held by the Department, so sections 28-17, and 846-2.7(b), HRS, need to be amended to delete the term "agent of the contractor" and clarify that contractor's employees are included among those who are subject to fingerprint-based background checks.

Impact on the public: The public benefits when federal tax information is secure.

Impact on the department and other agencies: This bill will allow the Department to obtain FBI approval to conduct criminal history record checks on current or

prospective employees and contractors and
contractors' employees.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.