

---

---

# 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 require additional authorization to search  
10 criminal histories of employees, prospective employees, and  
11 contractors, if authorized, and to perform a fingerprint search  
12 of these persons. Multiple other departments and agencies have  
13 received this additional authority. The purpose of this Act is  
14 to extend similar authority to the child support enforcement  
15 agency and the departments of taxation, human services, and  
16 labor and industrial relations to allow them to comply with new  
17 Internal Revenue Service 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 United States government for  
8 any person, including any authorized contractor, to have access  
9 to 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 respond to the findings.  
7 Nothing in this subsection shall abrogate any applicable appeal  
8 rights under chapters 76 and 89, or administrative rules of the  
9 department.

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

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

18 "§346- Criminal history record checks. (a) The  
19 department shall develop procedures for obtaining verifiable  
20 information regarding the criminal history of any person who is  
21 employed or seeking employment, if the person's position will



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

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

19 (c) Notwithstanding any other law to the contrary, for  
20 purposes of this section, the department shall be exempt from  
21 section 831-3.1 and need not conduct investigations,



1 notifications, or hearings under this section in accordance with  
2 chapter 91."

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

6 "§383- 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 who will have access to federal tax information.  
11 This program shall include criminal history record checks in  
12 accordance with section 846-2.7. Information obtained pursuant  
13 to this subsection shall be used exclusively by the department  
14 for the purpose of determining whether the person is suitable  
15 for accessing federal tax information in accordance with  
16 applicable federal laws.

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



1 subsection shall only occur after appropriate notification to  
2 the employee or applicant of the findings of the background  
3 investigation, and after the employee or applicant is given an  
4 opportunity to respond to the findings. Nothing in this  
5 subsection shall abrogate any applicable appeal rights under  
6 chapters 76 and 89, or administrative rules of the department.

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

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

15 "§576D- Criminal history record checks. (a) The agency  
16 shall develop procedures for obtaining verifiable information  
17 regarding the criminal history of any person, including any  
18 contractor, who is employed, seeking employment with, or  
19 provides or seeks to provide services to the agency if the  
20 person's position will require access to federal tax  
21 information. These procedures shall include criminal history



1 record checks in accordance with section 846-2.7.

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

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



1        (c) Notwithstanding any other law to the contrary, for  
2 purposes of this section, the agency 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 6. Section 831-3.1, Hawaii Revised Statutes, is  
7 amended by amending subsection (f) to read as follows:

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

- 10        (1) Denials by the department of human services, the  
11        department of health, or any other branch, political  
12        subdivision, or agency of any certificate of approval,  
13        license, or permit to any organization, institution,  
14        home, or facility subject to licensure under chapters  
15        321, 333F, and 346;
- 16        (2) Denials of employment as a staff member of a youth  
17        correctional facility operated under chapter 352;
- 18        (3) Denials of employment as an employee of a detention or  
19        shelter facility established or designated pursuant to  
20        section 571-33;



- 1           (4) Denials of employment as a staff member of a  
2           correctional facility pursuant to chapter 353, or as a  
3           staff member that requires the exercise of police  
4           powers, including the power to arrest, in the  
5           performance of the staff member's duties pursuant to  
6           chapter 353C; [and]
- 7           (5) Denials of employment of applicants or employees  
8           pursuant to section 78-2.7[-];
- 9           (6) Denials or termination of employment as an employee,  
10           employee applicant, or employee or agent of a  
11           contractor of the department of taxation with access  
12           to federal tax information pursuant to section 231- ;
- 13           (7) Denials or termination of employment as an employee or  
14           employee applicant of the department of human services  
15           with access to federal tax information pursuant to  
16           section 346- ;
- 17           (8) Denials or termination of employment as an employee or  
18           employee applicant of the department of labor and  
19           industrial relations with access to federal tax  
20           information pursuant to section 383- ; and



1       (9) Denials or termination of employment as an employee,  
2       employee applicant, or employee or agent of a  
3       contractor of the child support enforcement agency  
4       with access to federal tax information pursuant to  
5       section 576D- ."

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

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

9       (1) The department of health or its designee on operators  
10       of adult foster homes for individuals with  
11       developmental disabilities or developmental  
12       disabilities domiciliary homes and their employees, as  
13       provided by section 321-15.2;

14       (2) The department of health or its designee on  
15       prospective employees, persons seeking to serve as  
16       providers, or subcontractors in positions that place  
17       them in direct contact with clients when providing  
18       non-witnessed direct mental health or health care  
19       services as provided by section 321-171.5;

20       (3) The department of health or its designee on all  
21       applicants for licensure or certification for,



- 1 operators for, prospective employees, adult  
2 volunteers, and all adults, except adults in care, at  
3 healthcare facilities as defined in section 321-15.2;
- 4 (4) The department of education on employees, prospective  
5 employees, and teacher trainees in any public school  
6 in positions that necessitate close proximity to  
7 children as provided by section 302A-601.5;
- 8 (5) The counties on employees and prospective employees  
9 who may be in positions that place them in close  
10 proximity to children in recreation or child care  
11 programs and services;
- 12 (6) The county liquor commissions on applicants for liquor  
13 licenses as provided by section 281-53.5;
- 14 (7) The county liquor commissions on employees and  
15 prospective employees involved in liquor  
16 administration, law enforcement, and liquor control  
17 investigations;
- 18 (8) The department of human services on operators and  
19 employees of child caring institutions, child placing  
20 organizations, and foster boarding homes as provided  
21 by section 346-17;



- 1           (9) The department of human services on prospective  
2           adoptive parents as established under section  
3           346-19.7;
- 4           (10) The department of human services or its designee on  
5           applicants to operate child care facilities, household  
6           members of the applicant, prospective employees of the  
7           applicant, and new employees and household members of  
8           the provider after registration or licensure as  
9           provided by section 346-154, and persons subject to  
10          section 346-152.5;
- 11          (11) The department of human services on persons exempt  
12          pursuant to section 346-152 to be eligible to provide  
13          child care and receive child care subsidies as  
14          provided by section 346-152.5;
- 15          (12) The department of health on operators and employees of  
16          home and community-based case management agencies and  
17          operators and other adults, except for adults in care,  
18          residing in community care foster family homes as  
19          provided by section 321-15.2;



- 1           (13) The department of human services on staff members of  
2           the Hawaii youth correctional facility as provided by  
3           section 352-5.5;
- 4           (14) The department of human services on employees,  
5           prospective employees, and volunteers of contracted  
6           providers and subcontractors in positions that place  
7           them in close proximity to youth when providing  
8           services on behalf of the office or the Hawaii youth  
9           correctional facility as provided by section 352D-4.3;
- 10          (15) The judiciary on employees and applicants at detention  
11          and shelter facilities as provided by section 571-34;
- 12          (16) The department of public safety on employees and  
13          prospective employees who are directly involved with  
14          the treatment and care of persons committed to a  
15          correctional facility or who possess police powers  
16          including the power of arrest as provided by section  
17          353C-5;
- 18          (17) The board of private detectives and guards on  
19          applicants for private detective or private guard  
20          licensure as provided by section 463-9;



- 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  
11 302A-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,



- 1 subcontracted service providers and their employees,  
2 and adult volunteers as provided by section 321-15.2;
- 3 (22) The department of human services on purchase of  
4 service contracted and subcontracted service providers  
5 and their employees serving clients of the adult  
6 protective and community services branch, as provided  
7 by section 346-97;
- 8 (23) The department of human services on foster grandparent  
9 program, senior companion program, and respite  
10 companion program participants as provided by section  
11 346-97;
- 12 (24) The department of human services on contracted and  
13 subcontracted service providers and their current and  
14 prospective employees that provide home and community-  
15 based services under section 1915(c) of the Social  
16 Security Act, title 42 United States Code section  
17 1396n(c), or under any other applicable section or  
18 sections of the Social Security Act for the purposes  
19 of providing home and community-based services, as  
20 provided by section 346-97;



- 1       (25) The department of commerce and consumer affairs on  
2       proposed directors and executive officers of a bank,  
3       savings bank, savings and loan association, trust  
4       company, and depository financial services loan  
5       company as provided by section 412:3-201;
- 6       (26) The department of commerce and consumer affairs on  
7       proposed directors and executive officers of a  
8       nondepository financial services loan company as  
9       provided by section 412:3-301;
- 10      (27) The department of commerce and consumer affairs on the  
11      original chartering applicants and proposed executive  
12      officers of a credit union as provided by section  
13      412:10-103;
- 14      (28) The department of commerce and consumer affairs on:
- 15           (A) Each principal of every non-corporate applicant  
16           for a money transmitter license;
- 17           (B) The executive officers, key shareholders, and  
18           managers in charge of a money transmitter's  
19           activities of every corporate applicant for a  
20           money transmitter license; and



- 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 of 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



1 (B) Each control person, executive officer, director,  
2 general partner, and manager of an applicant for  
3 a mortgage loan originator company license,  
4 as provided by chapter 454F;

5 (32) The state public charter school commission or public  
6 charter schools on employees, teacher trainees,  
7 prospective employees, and prospective teacher  
8 trainees in any public charter school for any position  
9 that places them in close proximity to children, as  
10 provided in section 302D-33;

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

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

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

20 (36) The counties on prospective employees for emergency  
21 management positions and community volunteers whose



1 responsibilities involve planning and executing  
2 homeland security measures including viewing,  
3 handling, and engaging in law enforcement or  
4 classified meetings and assisting vulnerable citizens  
5 during emergencies or crises;

6 (37) The State and counties on employees, prospective  
7 employees, volunteers, and contractors whose position  
8 responsibilities require unescorted access to secured  
9 areas and equipment related to a traffic management  
10 center;

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

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

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



- 1           (41) The department of health or its designee on all  
2           license applicants, licensees, employees, contractors,  
3           and prospective employees of medical marijuana  
4           dispensaries, and individuals permitted to enter and  
5           remain in medical marijuana dispensary facilities as  
6           provided under sections 329D-15(a)(4) and  
7           329D-16(a)(3);
- 8           (42) The department of commerce and consumer affairs on  
9           applicants for nurse licensure or license renewal,  
10          reactivation, or restoration as provided by sections  
11          457-7, 457-8, 457-8.5, and 457-9;
- 12    [+] (43) [+]        The county police departments on applicants for  
13          permits to acquire firearms pursuant to section 134-2  
14          and on individuals registering their firearms pursuant  
15          to section 134-3;
- 16    [+] (44) [+]        The department of commerce and consumer affairs  
17          on:
- 18          (A) Each of the controlling persons of the applicant  
19               for licensure as an escrow depository, and each  
20               of the officers, directors, and principals who



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

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

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

15 (46) The department of labor and industrial relations on  
16 current or prospective employees who have access to  
17 federal tax information in order to comply with  
18 requirements of federal law, regulation, or procedure,  
19 as provided by section 383- ;

20 (47) The department of human services on current and  
21 prospective employees who have access to federal tax



1           information in order to comply with requirements of  
2           federal law, regulation, or procedure, as provided by  
3           section 346- ;

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

9       ~~[(45)]~~ (49) Any other organization, entity, or the State,  
10           its branches, political subdivisions, or agencies as  
11           may be authorized by state law."

12       SECTION 8. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14       SECTION 9. This Act shall take effect on January 7, 2059.

15

**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

**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, if applicable, who have access to federal tax  
information. Takes effect on 1/7/2059. (SD1)

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

