

JAN 27 2021

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 Internal Revenue Service requires that
2 background checks be performed on all current and prospective
3 employees and contractors who receive access to federal tax
4 information. The background checks must be comprehensive and
5 must include a State and Federal Bureau of Investigation
6 fingerprint-based background check. To comply with this
7 requirement, the department of the attorney general requires
8 additional authorization. Multiple other departments and
9 agencies have received this authority.

10 The purpose of this Act is to authorize the department of
11 the attorney general to search criminal histories and
12 fingerprint records of current and prospective employees and
13 contractors who receive access to federal tax information to
14 allow it to comply with the Internal Revenue Service's
15 requirement.

16 SECTION 2. Chapter 28, Hawaii Revised Statutes, is amended
17 by adding to part I a new section to be appropriately designated
18 and to read as follows:

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1 "§28- Criminal history record checks. (a) The
2 department of the attorney general shall ensure that a
3 background investigation is completed at the appropriate level
4 designated by the federal government for any person, including
5 any authorized contractor, to have access to federal tax
6 information. This background investigation shall include
7 criminal history record checks in accordance with section 846-
8 2.7. Information obtained pursuant to this subsection shall be
9 used exclusively by the department of the attorney general for
10 the purpose of determining whether the person is suitable for
11 accessing federal tax information in accordance with applicable
12 federal laws.

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

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1 or agent of the contractor of the findings of the background
2 investigation, and after the current or prospective employee or
3 employee or agent of the contractor is given an opportunity to
4 meet and rebut the findings. Nothing in this subsection shall
5 abrogate any applicable appeal rights under chapters 76 and 89
6 or administrative rules of the department of the attorney
7 general.

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

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

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

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

20 (2) The department of health or its designee on
21 prospective employees, persons seeking to serve as
22 providers, or subcontractors in positions that place
23 them in direct contact with clients when providing

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

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1 organizations, and foster boarding homes as provided
2 by section 346-17;

3 (9) The department of human services on prospective
4 adoptive parents as established under section 346-
5 19.7;

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

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

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

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- 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;
- 21 (18) Private schools and designated organizations on
22 employees and prospective employees who may be in
23 positions that necessitate close proximity to

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1 children; provided that private schools and designated
2 organizations receive only indications of the states
3 from which the national criminal history record
4 information was provided pursuant to section 302C-1;

5 (19) The public library system on employees and prospective
6 employees whose positions place them in close
7 proximity to children as provided by section 302A-
8 601.5;

9 (20) The State or any of its branches, political
10 subdivisions, or agencies on applicants and employees
11 holding a position that has the same type of contact
12 with children, vulnerable adults, or persons committed
13 to a correctional facility as other public employees
14 who hold positions that are authorized by law to
15 require criminal history record checks as a condition
16 of employment as provided by section 78-2.7;

17 (21) The department of health on licensed adult day care
18 center operators, employees, new employees,
19 subcontracted service providers and their employees,
20 and adult volunteers as provided by section 321-15.2;

21 (22) The department of human services on purchase of
22 service contracted and subcontracted service providers
23 and their employees serving clients of the adult

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1 protective and community services branch, as provided
2 by section 346-97;

3 (23) The department of human services on foster grandparent
4 program, senior companion program, and respite
5 companion program participants as provided by section
6 346-97;

7 (24) The department of human services on contracted and
8 subcontracted service providers and their current and
9 prospective employees that provide home and community-
10 based services under section 1915(c) of the Social
11 Security Act, title 42 United States Code section
12 1396n(c), or under any other applicable section or
13 sections of the Social Security Act for the purposes
14 of providing home and community-based services, as
15 provided by section 346-97;

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

21 (26) The department of commerce and consumer affairs on
22 proposed directors and executive officers of a

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1 nondepository financial services loan company as
2 provided by section 412:3-301;

3 (27) The department of commerce and consumer affairs on the
4 original chartering applicants and proposed executive
5 officers of a credit union as provided by section
6 412:10-103;

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

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

10 (B) Each person who upon approval of an application
11 by a corporate applicant for a money transmitter
12 license will be a principal of the licensee; and

13 (C) Each person who upon approval of an application
14 requesting approval of a proposed change in
15 control of licensee will be a principal of the
16 licensee,

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

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

21 (30) The Hawaii health systems corporation on:

22 (A) Employees;

23 (B) Applicants seeking employment;

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

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

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

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

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

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

14 as provided by chapter 454F;

15 (32) The state public charter school commission or public
16 charter schools on employees, teacher trainees,
17 prospective employees, and prospective teacher
18 trainees in any public charter school for any position
19 that places them in close proximity to children, as
20 provided in section 302D-33;

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

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

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1 information technology operation whose position
2 responsibilities provide them with access to
3 proprietary, confidential, or sensitive information;

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

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

7 (B) Each person who owns more than ten per cent of an
8 appraisal management company who is applying for
9 registration as an appraisal management company,
10 as provided by section 466L-7; and

11 (C) Each of the controlling persons of an applicant
12 for registration as an appraisal management
13 company, as provided by section 466L-7;

14 (41) The department of health or its designee on all
15 license applicants, licensees, employees, contractors,
16 and prospective employees of medical cannabis
17 dispensaries, and individuals permitted to enter and
18 remain in medical cannabis dispensary facilities as
19 provided under sections 329D-15(a)(4) and 329D-
20 16(a)(3);

21 (42) The department of commerce and consumer affairs on
22 applicants for nurse licensure or license renewal,

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1 reactivation, or restoration as provided by sections
2 457-7, 457-8, 457-8.5, and 457-9;

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

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

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

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

19 as provided by chapter 449;

20 (45) The department of taxation on current or prospective
21 employees or contractors who have access to federal
22 tax information in order to comply with requirements

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1 of federal law, regulation, or procedure, as provided
2 by section 231-1.6;

3 (46) The department of labor and industrial relations on
4 current or prospective employees or contractors who
5 have access to federal tax information in order to
6 comply with requirements of federal law, regulation,
7 or procedure, as provided by section 383-110;

8 (47) The department of human services on current or
9 prospective employees or contractors who have access
10 to federal tax information in order to comply with
11 requirements of federal law, regulation, or procedure,
12 as provided by section 346-2.5;

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

18 (49) The department of the attorney general on current or
19 prospective employees or contractors who have access
20 to federal tax information in order to comply with
21 requirements of federal law, regulation, or procedure,
22 as provided by section 28- ; and

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1 [~~49~~] (50) Any other organization, entity, or the State,
2 its branches, political subdivisions, or agencies as
3 may be authorized by state law."

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

6 SECTION 5. This Act shall take effect upon its approval.

7

8

INTRODUCED BY: 

9

BY REQUEST

10

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Report Title:

Criminal History Record Checks; Department of the Attorney General

Description:

Adds the Department of the Attorney General to the list of agencies that are authorized to conduct criminal history record checks on current or prospective employees or contractors who 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.

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JUSTIFICATION SHEET

DEPARTMENT: Department of the Attorney General

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

PURPOSE: Add the Department of the Attorney General to the list of agencies that are authorized to conduct criminal history record checks.

MEANS: Add a new section to part I of chapter 28, Hawaii Revised Statutes (HRS), and amend section 846-2.7(b), HRS.

JUSTIFICATION: The Internal Revenue Service requires that background checks be performed on all current or prospective employees and contractors who receive access to federal tax information. The background checks must be comprehensive and include a Federal Bureau of Investigation fingerprint search. To comply with this requirement, the Department of the Attorney General requires authorization to search criminal histories and fingerprint records of current and prospective employees and contractors. Multiple other departments and agencies have received this authority.

Impact on the public: None.

Impact on the department and other agencies: None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION:

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.