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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 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.



1           Accordingly, the purpose of this Act is to delete the term  
2 "agents of contractor" and clarify that a contractor,  
3 contractor's employee, or subcontractor who has access to  
4 federal tax information held by the department of the attorney  
5 general may be subject to fingerprint-based background checks.

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

8           "(b) The department of the attorney general may terminate  
9 or deny employment to any current or prospective employee, or  
10 terminate or refuse to secure the services of any contractor, if  
11 the department of the attorney general finds by reason of the  
12 background investigation conducted under subsection (a) that the  
13 current or prospective employee [~~or employee or agent of the]~~,  
14 contractor, contractor's employee, or subcontractor poses a risk  
15 to the security of federal tax information. Termination or  
16 denial of employment, or termination or refusal to secure the  
17 services of any contractor, under this subsection, shall only  
18 occur after appropriate notification to the current or  
19 prospective employee [~~or employee or agent of the]~~, contractor,  
20 contractor's employee, or subcontractor of the findings of the  
21 background investigation, and after the current or prospective



1 employee [or employee or agent of the], contractor, contractor's  
2 employee, or subcontractor is given an opportunity to meet and  
3 rebut the findings. Nothing in this subsection shall abrogate  
4 any applicable appeal rights under chapters 76 and 89 or  
5 administrative rules of the department of the attorney general."

6 SECTION 3. 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 resource family homes as provided  
21 by section 346-17;



- 1           (9) The department of human services on prospective  
2           adoptive parents as established under section 346-  
3           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 corrections and rehabilitation on  
13 employees and prospective employees, volunteers,  
14 contract service providers, and subcontract service  
15 providers who are directly involved with the treatment  
16 and care of, or directly involved in providing  
17 correctional programs and services to, persons  
18 committed to a correctional facility, or placed in  
19 close proximity to persons committed when providing  
20 services on behalf of the department or the  
21 correctional facility, as provided by section 353-1.5



1 and the department of law enforcement on employees and  
2 prospective employees whose duties involve or may  
3 involve the exercise of police powers including the  
4 power of arrest as provided by section 353C-5;

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

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

15 (19) The public library system on employees and prospective  
16 employees whose positions place them in close  
17 proximity to children as provided by section 302A-  
18 601.5;

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



1 with children, vulnerable adults, or persons committed  
2 to a correctional facility as other public employees  
3 who hold positions that are authorized by law to  
4 require criminal history record checks as a condition  
5 of employment as provided by section 78-2.7;

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

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

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

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



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

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

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

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

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



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

4 (C) Each person who upon approval of an application  
5 requesting approval of a proposed change in  
6 control of licensee will be a principal of the  
7 licensee,

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

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

12 (30) The Hawaii health systems corporation on:

13 (A) Employees;

14 (B) Applicants seeking employment;

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

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

19 in any of the corporation's health facilities as

20 provided by section 323F-5.5;

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



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



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



- 1           responsibilities provide them with access to  
2           proprietary, confidential, or sensitive information;
- 3       (40) The department of commerce and consumer affairs on:
- 4           (A) Applicants for real estate appraiser licensure or  
5           certification as provided by chapter 466K;
- 6           (B) Each person who owns more than ten per cent of an  
7           appraisal management company who is applying for  
8           registration as an appraisal management company,  
9           as provided by section   -7; and
- 10          (C) Each of the controlling persons of an applicant  
11          for registration as an appraisal management  
12          company, as provided by section   -7;
- 13       (41) The department of health or its designee on:
- 14           (A) Individual applicants or individuals acting on  
15           behalf of applying entities for hemp processor  
16           permits as provided under section 328G-2; and
- 17           (B) All license applicants, licensees, employees,  
18           contractors, and prospective employees of medical  
19           cannabis dispensaries, and individuals permitted  
20           to enter and remain in medical cannabis



1 dispensary facilities as provided under sections  
2 329D-15(a)(4) and 329D-16(a)(3);

3 (42) The department of commerce and consumer affairs on  
4 applicants for nurse licensure or license renewal,  
5 reactivation, or restoration as provided by sections  
6 457-7, 457-8, 457-8.5, and 457-9;

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

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

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

19 (B) Each of the controlling persons of an applicant  
20 for proposed change in control of an escrow  
21 depository licensee, and each of the officers,



1 directors, and principals who will be in charge  
2 of the licensee's activities upon approval of the  
3 application,

4 as provided by chapter 449;

5 (45) The department of taxation on current or prospective  
6 employees or contractors who have access to federal  
7 tax information in order to comply with requirements  
8 of federal law, regulation, or procedure, as provided  
9 by section 231-1.6;

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

15 (47) The department of human services on current or  
16 prospective employees or contractors who have access  
17 to federal tax information in order to comply with  
18 requirements of federal law, regulation, or procedure,  
19 and on current or prospective employees, volunteers,  
20 contractors, or contractors' employees or volunteers,  
21 subcontractors, or subcontractors' employees or



1 volunteers, whose position places or would place them  
2 in close proximity to minors, young adults, or  
3 vulnerable adults, as provided by section 346-2.5;

4 (48) The child support enforcement agency on current or  
5 prospective employees or 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-11.5;

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

15 (50) The department of commerce and consumer affairs on  
16 each control person, executive officer, director,  
17 general partner, and managing member of an installment  
18 loan licensee, or an applicant for an installment loan  
19 license, as provided in chapter 480J;

20 (51) The university of Hawaii on current and prospective  
21 employees and contractors whose duties include



1           ensuring the security of campus facilities and  
2           persons; and

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

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

8           SECTION 5. This Act shall take effect upon its approval;  
9 provided that the amendments made to section 846-2.7, Hawaii  
10 Revised Statutes, by this Act shall not be repealed when section  
11 846-2.7, Hawaii Revised Statutes, is reenacted on July 1, 2027,  
12 pursuant to section 4 of Act 110, Session Laws of Hawaii 2024.

13



**Report Title:**

ATG; Criminal History Record Checks

**Description:**

Deletes the term "agent of the contractor" in sections 28-17 and 846-2.7, HRS. Clarifies that contractors, contractor's employees, and subcontractors who have access to federal tax information held by the Department of the Attorney General may be subject to fingerprint-based background checks. (SD1)

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