
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;



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

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

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

(12) The department of health on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in community care foster family homes as 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;



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

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

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

(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:



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



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:

(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



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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