

ACT 132

H.B. NO. 1031

A Bill for an Act Relating to Criminal History Record Checks.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the Internal Revenue Service has instituted a new requirement to perform background checks on all current and 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 new requirement, the child support enforcement agency and the departments of taxation, human services, and labor and industrial relations require additional authorization to search criminal histories of employees, prospective employees, and contractors, and to perform a fingerprint search of these persons. Multiple other departments and agencies have received this additional authority.

The purpose of this Act is to extend similar authority to the child support enforcement agency and the departments of taxation, human services, and labor and industrial relations to allow them to comply with new Internal Revenue Service requirements.

SECTION 2. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§231- Criminal history record checks. (a) The department shall establish a personnel security program that ensures a background investigation is completed at the appropriate level designated by the federal government for any

person, including any authorized contractor, to have access to federal tax information. This program shall include criminal history record checks in accordance with section 846-2.7. Information obtained pursuant to this subsection shall be used exclusively by the department for the purpose of determining whether the person is suitable for accessing federal tax information in accordance with applicable federal laws.

(b) The department may terminate or deny employment to any employee or applicant, or terminate or refuse to secure the services of any contractor, if the department finds by reason of the background investigation conducted under subsection (a) that the employee or applicant, or employee or agent of the contractor, poses a risk to the security of federal tax information. Termination or denial of employment, or termination or refusal to secure the services of any contractor, under this subsection shall only occur after appropriate notification to the employee, applicant, or employee or agent of the contractor, of the findings of the background investigation, and after the employee, applicant, or employee or agent of the contractor is given an opportunity to meet and rebut the findings. Nothing in this subsection shall abrogate any applicable appeal rights under chapters 76 and 89, or administrative rules of the department.

(c) The department shall be exempt from section 831-3.1 and need not conduct investigations, notifications, or hearings under this section in accordance with chapter 91.”

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

“§346- Criminal history record checks. (a) The department shall develop procedures for obtaining verifiable information regarding the criminal history of any person who is employed or seeking employment, including a contractor and its employees or agents if prior authority to access federal tax information has been provided by the United States Department of the Treasury, if the person will require access to federal tax information. The procedures shall include criminal history record checks in accordance with section 846-2.7. Information obtained pursuant to this subsection shall be used exclusively by the department for the purpose of determining whether a person is suitable for accessing federal tax information in accordance with applicable federal laws.

(b) The department may terminate or deny employment to any employee or applicant, or terminate or refuse to secure the services of a contractor and its employees or agents authorized under subsection (a), if the department finds by reason of the nature and circumstances of the background investigation conducted under subsection (a) that the employee, applicant, contractor, or contractor’s employees or agents pose a risk to the security of federal tax information. Termination or denial of employment under this subsection shall only occur after appropriate notification to the employee, applicant, or contractor of the findings of the background investigation, and after the employee, applicant, or contractor is given an opportunity to respond to the findings. Nothing in this subsection shall abrogate any applicable appeal rights under chapters 76 and 89, or administrative rules of the department.

(c) The department shall be exempt from section 831-3.1 and need not conduct investigations, notifications, or hearings under this section in accordance with chapter 91.”

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

“§383- Criminal history record checks. (a) The department shall establish a personnel security program that ensures a background investigation is completed at the appropriate level designated by the federal government for any individual who will have access to federal tax information, including a contractor and its employees or agents, if prior authority to access federal tax information has been provided by the United States Department of the Treasury. This program shall include criminal history record checks in accordance with section 846-2.7. Information obtained pursuant to this subsection shall be used exclusively by the department for the purpose of determining whether the person is suitable for accessing federal tax information in accordance with applicable federal laws.

(b) The department may terminate or deny employment to any employee or applicant, or terminate or refuse to secure the services of a contractor and its employees or agents authorized under subsection (a), if the department finds by reason of the background investigation conducted under subsection (a) that the employee, applicant, contractor, or contractor’s employees or agents pose a risk to the security of federal tax information. Termination or denial of employment under this subsection shall only occur after appropriate notification to the employee, applicant, or contractor of the findings of the background investigation, and after the employee, applicant, or contractor is given an opportunity to meet and rebut the findings. Nothing in this subsection shall abrogate any applicable appeal rights under chapters 76 and 89, or administrative rules of the department.

(c) The department shall be exempt from section 831-3.1 and need not conduct investigations, notifications, or hearings under this section in accordance with chapter 91.”

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

“§576D- Criminal history record checks. (a) The agency shall develop procedures for obtaining verifiable information regarding the criminal history of any person, including any contractor, who is employed, seeking employment with, or provides or seeks to provide services to the agency if this person will require access to federal tax information. These procedures shall include criminal history record checks in accordance with section 846-2.7.

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

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

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(c) The agency shall be exempt from section 831-3.1 and need not conduct investigations, notifications, or hearings under this section in accordance with chapter 91.”

SECTION 6. Section 831-3.1, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

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

- (1) Denials by the department of human services, the department of health, or any other branch, political subdivision, or agency of any certificate of approval, license, or permit to any organization, institution, home, or facility subject to licensure under chapters 321, 333F, and 346;
- (2) Denials of employment as a staff member of a youth correctional facility operated under chapter 352;
- (3) Denials of employment as an employee of a detention or shelter facility established or designated pursuant to section 571-33;
- (4) Denials of employment as a staff member of a correctional facility pursuant to chapter 353, or as a staff member that requires the exercise of police powers, including the power to arrest, in the performance of the staff member’s duties pursuant to chapter 353C; ~~and~~
- (5) Denials of employment of applicants or employees pursuant to section 78-2.7[-];
- (6) Denials or termination of employment as an employee, employee applicant, or employee or agent of a contractor of the department of taxation with access to federal tax information pursuant to section 231- ;
- (7) Denials or termination of employment as an employee, employee applicant, or employee or agent of a contractor of the department of human services with access to federal tax information pursuant to section 346- ;
- (8) Denials or termination of employment as an employee, employee applicant, or employee or agent of a contractor of the department of labor and industrial relations pursuant to section 383- ; and
- (9) Denials or termination of employment as an employee, employee applicant, or employee or agent of a contractor of the child support enforcement agency with access to federal tax information pursuant to section 576D- .”

SECTION 7. 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;
- (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
 - (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
 - (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
 - (7) The county liquor commissions on employees and prospective employees involved in liquor administration, law enforcement, and liquor control investigations;
 - (8) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided 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;
 - (13) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
 - (14) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
 - (15) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
 - (16) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
 - (17) The board of private detectives and guards on applicants for private detective or private guard licensure as provided by section 463-9;
 - (18) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided pursuant to section 302C-1;

- (19) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- (20) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
- (21) The department of health on licensed adult day care center operators, employees, new employees, 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 serving clients of the adult protective and community services branch, as provided by section 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 company, and depository financial services loan company as provided by section 412:3-201;
- (26) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;
- (27) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103;
- (28) The department of commerce and consumer affairs on:
 - (A) Each principal of every non-corporate applicant for a money transmitter license;
 - (B) The executive officers, key shareholders, and managers in charge of a money transmitter's activities of every corporate applicant for a money transmitter license; and
 - (C) The persons who are to assume control of a money transmitter licensee in connection with an application requesting approval of a proposed change in control of 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:
- (A) An applicant for a mortgage loan originator license; and
- (B) Each control person, executive officer, director, general partner, and manager of an applicant for a mortgage loan originator company license, as provided by chapter 454F;
- (32) The state public charter school commission or public charter schools on employees, teacher trainees, 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 which involve contact with children or vulnerable adults;
- (35) The counties on prospective employees for emergency medical services positions which 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 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 applicants for real estate appraiser licensure or certification as provided by chapter 466K;
- (41) The department of health or its designee on all license applicants, licensees, employees, contractors, and prospective employees of medical marijuana dispensaries, and individuals permitted to enter and remain in medical marijuana 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 and on individuals registering their firearms pursuant to section 134-3;
- ⊠(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 of the officers, directors, and

- principals who will be in charge of the escrow depository's activities upon licensure; and
- (B) Each of the controlling persons of an applicant for proposed change in control of an escrow depository licensee, and each of the officers, directors, and principals who will be in charge of the licensee's activities upon approval of such application, as provided by chapter 449; ~~and~~
- ~~(45) The department of taxation on current or prospective employees or contractors who have access to federal tax information in order to comply with requirements of federal law, regulation, or procedure, as provided by section 231- ;~~
- ~~(46) The department of labor and industrial relations on current or prospective employees or contractors who have access to federal tax information in order to comply with requirements of federal law, regulation, or procedure, as provided by section 383- ;~~
- ~~(47) The department of human services on current or prospective employees or contractors who have access to federal tax information in order to comply with requirements of federal law, regulation, or procedure, as provided by section 346- ;~~
- ~~(48) The child support enforcement agency on current or prospective employees, or contractors who have access to federal tax information in order to comply with federal law, regulation, or procedure, as provided by section 576D- ; and~~
- ~~[(45)] (49) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law."~~

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 9. This Act shall take effect upon its approval.

(Approved July 10, 2017.)

Notes

1. Prior to amendment "or" appeared here.
2. Edited pursuant to HRS §23G-16.5.