

ACT 83

H.B. NO. 991

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 requires fingerprint-based background checks on current and prospective employees and contractors who receive access to federal tax information. Authorization to access fingerprint-based background checks is provided through state statute approved by the Federal Bureau of Investigation. Act 35, Session Laws of Hawaii 2021, established sections 28-17 and 846-2.7(b)(49), Hawaii Revised Statutes, to authorize the department of the attorney general to conduct fingerprint-based background checks through the Federal Bureau of Investigation on current or

prospective employees or employees or agents of contractors. Upon review of section 846-2.7(b)(49), Hawaii Revised Statutes, the Federal Bureau of Investigation determined that the statute failed the requirement of identifying the specific category of persons falling within the statute's purview, as the term "agents of contractors" was overly broad and not defined in the statute.

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

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

"(b) The department of the attorney general may terminate or deny employment to any current or prospective employee, or terminate or refuse to secure the services of any contractor, if the department of the attorney general finds by reason of the background investigation conducted under subsection (a) that the current or prospective employee ~~[or employee or agent of the]~~, contractor, contractor's employee, or subcontractor 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 current or prospective employee ~~[or employee or agent of the]~~, contractor, contractor's employee, or subcontractor of the findings of the background investigation, and after the current or prospective employee ~~[or employee or agent of the]~~, contractor, contractor's employee, or subcontractor 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 of the attorney general."

SECTION 3. 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 resource family 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 of youth services 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 corrections and rehabilitation on employees and prospective employees, volunteers, contract service providers, and subcontract service providers who are directly involved with the treatment and care of, or directly involved in providing correctional programs and services to, persons committed to a correctional facility, or placed in close proximity to persons committed when providing services on behalf of the department or the correctional facility, as provided by section 353-1.5, and the department of law enforcement on employees and prospective employees whose duties involve or may involve the exercise of 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 and volunteers, as provided by sections 346-2.5 and 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) 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:
 - (A) An applicant for a mortgage loan originator license, or license renewal; and
 - (B) Each control person, executive officer, director, general partner, and managing member of an applicant for a mortgage loan originator company license or license renewal, 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 that involve contact with children or vulnerable adults;
- (35) The counties on prospective employees for emergency medical services positions that 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:
 - (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 466M-7; and
 - (C) Each of the controlling persons of an applicant for registration as an appraisal management company, as provided by section 466M-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 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, on individuals registering their firearms pursuant to section 134-3, and on applicants for new or renewed licenses to carry a pistol or revolver and ammunition pursuant to section 134-9;
- (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 the application, as provided by chapter 449;
- (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 231-1.6;
- (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 383-110;
- (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, and on current or prospective employees, volunteers, contractors, or contractors' employees or volunteers, subcontractors, or subcontractors' employees or volunteers, whose position places or would place them in close proximity to minors, young adults, or vulnerable adults, as provided by section 346-2.5;
- (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-11.5;
- (49) The department of the attorney general on current or prospective employees ~~[or employees or agents of]~~, contractors, contractor's employees, or subcontractors who have access to federal tax information to comply with ~~[requirements of]~~ federal law, regulation, or procedure, as provided by section 28-17;
- (50) The department of commerce and consumer affairs on each control person, executive officer, director, general partner, and managing member of an installment loan licensee, or an applicant for an installment loan license, as provided in chapter 480J;
- (51) The university of Hawaii on current and prospective employees and contractors whose duties include ensuring the security of campus facilities and persons; and
- (52) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law."

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

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

(Approved May 27, 2025.)