

JAN 28 2009

A BILL FOR AN ACT

RELATING TO HEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 323F, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§323F- Criminal history record checks. (a) The Hawaii
5 health systems corporation shall develop procedures for
6 obtaining verifiable information regarding the criminal history
7 of persons who are employed or seeking employment, or are
8 current or prospective contractors, providers or volunteers in
9 any of the corporation's health facilities. The procedures shall
10 include but not be limited to criminal history record checks in
11 accordance with section 846-2.7.

12 The Hawaii criminal justice data center may assess
13 providers and contractors a reasonable fee for criminal history
14 record checks performed. Providers and contractors shall be
15 responsible for payment to the Hawaii criminal justice data
16 center of the fee for the criminal history records checks.



1 (b) Except as otherwise specified, any person who is
2 employed or who seeks employment with Hawaii health systems
3 corporation, or is a current or prospective contractor,
4 provider, or volunteer in any of the corporation's health
5 facilities may be required to provide to the corporation:

6 (1) A sworn statement indicating whether or not the person
7 has ever been convicted of an offense for which
8 incarceration was a sentencing option, and the details
9 thereof;

10 (2) Written consent for the corporation to obtain criminal
11 history record check information for verification; and

12 (3) Written consent to be fingerprinted for the purpose of
13 a criminal history record check.

14 Information obtained pursuant to subsection (a) and this
15 subsection shall be used by the Hawaii health systems
16 corporation exclusively for the purposes of determining whether
17 a person is suitable for working or providing services in any of
18 the corporation's health facilities. All such decisions shall be
19 subject to federal laws and regulations currently or hereafter
20 in effect.



1 (c) Any Hawaii health systems corporation employee,
2 applicant for employment, or current or prospective contractor,
3 provider, or volunteer, who has been convicted of a criminal
4 offense for which incarceration is a sentencing option, may be
5 terminated, not hired, released, or not be utilized. This
6 action will be based on the corporation's analysis of whether
7 the nature and circumstances of the crime may pose a risk to the
8 health, safety, or well-being of patients and residents in its
9 health facilities.

10 (d) For the purposes of this section:

11 "Contractor" means any organization or individual that
12 enters into a contract or agreement to provide services to the
13 patients or residents in any of the Hawaii health systems
14 corporation's health facilities.

15 "Criminal history record check" means an examination of an
16 individual's criminal history records by means including, but
17 not limited to, fingerprint analysis and name inquiry into state
18 and national criminal history record files.

19 "Provider" means any organization or individual that
20 currently provides or intends to enter into a contract or
21 agreement to provide services to the patients or residents in
22 any of the Hawaii health systems corporation's health



1 facilities, or is a student in any program at any of Hawaii
2 health systems corporation's health facilities.

3 (e) Notwithstanding any other law to the contrary, for
4 purposes of this section, the Hawaii health systems corporation
5 shall be exempt from section 831-3.1 and need not conduct
6 investigations, notifications, or hearing under this section in
7 accordance with chapter 91."

8 SECTION 2. Section 378-2.5, Hawaii Revised Statutes, is
9 amended by amending subsection (d) to read as follows:

10 "(d) Notwithstanding subsections (b) and (c), the
11 requirement that inquiry into and consideration of a prospective
12 employee's conviction record may take place only after the
13 individual has received a conditional job offer, and the
14 limitation to the most recent ten-year period, excluding the
15 period of incarceration, shall not apply to employers who are
16 expressly permitted to inquire into an individual's criminal
17 history for employment purposes pursuant to any federal or state
18 law other than subsection (a), including:

19 (1) The State or any of its branches, political
20 subdivisions, or agencies pursuant to sections 78-2.7
21 and 831-3.1;



- 1 (2) The department of education pursuant to section
- 2 302A-601.5;
- 3 (3) The department of health with respect to employees,
- 4 providers, or subcontractors in positions that place
- 5 them in direct contact with clients when providing
- 6 non-witnessed direct mental health services pursuant
- 7 to section 321-171.5;
- 8 (4) The judiciary pursuant to section 571-34;
- 9 (5) The counties pursuant to section 846-2.7;
- 10 (6) Armed security services pursuant to section 261-17(b);
- 11 (7) Providers of a developmental disabilities domiciliary
- 12 home pursuant to section 333F-22;
- 13 (8) Private schools pursuant to sections 302C-1 and
- 14 378-3(8);
- 15 (9) Financial institutions in which deposits are insured
- 16 by a federal agency having jurisdiction over the
- 17 financial institution pursuant to section 378-3(9);
- 18 (10) Detective agencies and security guard agencies
- 19 pursuant to sections 463-6(b) and 463-8(b);
- 20 (11) Employers in the business of insurance pursuant to
- 21 section 431:2-201.3;



- 1 (12) Employers of individuals or supervisors of individuals
2 responsible for screening passengers or property under
3 49 U.S.C. §44901 or individuals with unescorted access
4 to an aircraft of an air carrier or foreign carrier or
5 in a secured area of an airport in the United States
6 pursuant to 49 U.S.C. §44936(a);
- 7 (13) The department of human services pursuant to sections
8 346-97 and 352-5.5;
- 9 (14) The public library system pursuant to section
10 302A-601.5;
- 11 (15) The department of public safety pursuant to section
12 353C-5;
- 13 (16) The board of directors of a cooperative housing
14 corporation or the manager of a cooperative housing
15 project pursuant to section 421I-12;
- 16 (17) The board of directors of an association of owners
17 under chapter 514A or 514B, or the manager of a
18 condominium project pursuant to section 514A-82.1 or
19 514B-133; ~~and~~
- 20 (18) The department of health pursuant to section
21 321-15.2 ~~[]~~; and



1 (19) The Hawaii health systems corporation with respect to
2 employees, applicants, and current or prospective
3 contractors, providers, or volunteers, pursuant to
4 section 323F."

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

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

8 (1) The department of health on operators of adult foster
9 homes or developmental disabilities domiciliary homes
10 and their employees, as provided by section 333F-22;

11 (2) The department of health on prospective employees,
12 persons seeking to serve as providers, or
13 subcontractors in positions that place them in direct
14 contact with clients when providing non-witnessed
15 direct mental health services as provided by section
16 321-171.5;

17 (3) The department of health on all applicants for
18 licensure for, operators for, and prospective
19 employees, and volunteers at one or more of the
20 following: skilled nursing facility, intermediate
21 care facility, adult residential care home, expanded
22 adult residential care home, assisted living facility,

1 home health agency, hospice, adult day health center,
2 special treatment facility, therapeutic living
3 program, intermediate care facility for the mentally
4 retarded, hospital, rural health center and
5 rehabilitation agency, and, in the case of any of the
6 above-related facilities operating in a private
7 residence, on any adult living in the facility other
8 than the client as provided by section 321-15.2;

9 (4) The department of education on employees, prospective
10 employees, and teacher trainees in any public school
11 in positions that necessitate close proximity to
12 children as provided by section 302A-601.5;

13 (5) The counties on employees and prospective employees
14 who may be in positions that place them in close
15 proximity to children in recreation or child care
16 programs and services;

17 (6) The county liquor commissions on applicants for liquor
18 licenses as provided by section 281-53.5;

19 (7) The department of human services on operators and
20 employees of child caring institutions, child placing
21 organizations, and foster boarding homes as provided
22 by section 346-17;



- 1 (8) The department of human services on prospective
2 adoptive parents as established under section
3 346-19.7;
- 4 (9) The department of human services on applicants to
5 operate child care facilities, prospective employees
6 of the applicant, and new employees of the provider
7 after registration or licensure as provided by section
8 346-154;
- 9 (10) The department of human services on persons exempt
10 pursuant to section 346-152 to be eligible to provide
11 child care and receive child care subsidies as
12 provided by section 346-152.5;
- 13 (11) The department of human services on operators and
14 employees of home and community-based case management
15 agencies and operators and other adults, except for
16 adults in care, residing in foster family homes as
17 provided by section 346-335;
- 18 (12) The department of human services on staff members of
19 the Hawaii youth correctional facility as provided by
20 section 352-5.5;
- 21 (13) The department of human services on employees,
22 prospective employees, and volunteers of contracted



1 providers and subcontractors in positions that place
2 them in close proximity to youth when providing
3 services on behalf of the office or the Hawaii youth
4 correctional facility as provided by section 352D-4.3;

5 (14) The judiciary on employees and applicants at detention
6 and shelter facilities as provided by section 571-34;

7 (15) The department of public safety on employees and
8 prospective employees who are directly involved with
9 the treatment and care of persons committed to a
10 correctional facility or who possess police powers
11 including the power of arrest as provided by section
12 353C-5;

13 (16) The department of commerce and consumer affairs on
14 applicants for private detective or private guard
15 licensure as provided by section 463-9;

16 (17) Private schools and designated organizations on
17 employees and prospective employees who may be in
18 positions that necessitate close proximity to
19 children; provided that private schools and designated
20 organizations receive only indications of the states
21 from which the national criminal history record



1 information was provided as provided by section
2 302C-1;

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

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

15 (20) The department of human services on licensed adult day
16 care center operators, employees, new employees,
17 subcontracted service providers and their employees,
18 and adult volunteers as provided by section 346-97;

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



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

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

7 (23) 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 (24) 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 (25) The department of commerce and consumer affairs on
22 proposed directors and executive officers of a



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

3 (26) 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 ~~[+]~~ (27) ~~[+]~~ The department of commerce and consumer affairs on:

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

10 (B) The executive officers, key shareholders, and
11 managers in charge of a money transmitter's
12 activities of every corporate applicant for a
13 money transmitter license,

14 as provided by section 489D-9; ~~[and]~~

15 (28) The Hawaii health systems corporation on employees,
16 applicants seeking employment, or current and
17 prospective volunteers, providers, or contractors in
18 any of the corporation's health facilities as provided
19 by section 323F; and

20 ~~[+28+]~~ (29) Any other organization, entity, or the State,
21 its branches, political subdivisions, or agencies as
22 may be authorized by state law."



S.B. NO. 1137

1 SECTION 4. There is appropriated out of the state criminal
2 history record improvement revolving fund the sum of \$
3 or so much thereof as may be necessary for fiscal year
4 2009-2010, for the purposes of this Act.

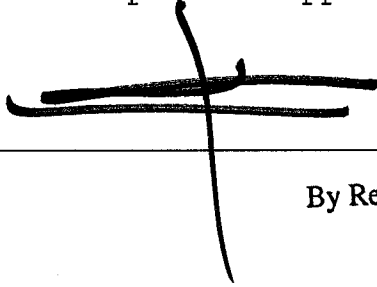
5 The sum appropriated shall be expended by the department of
6 the attorney general.

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

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

10

INTRODUCED BY: _____

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By Request



Report Title:

Hawaii Health Systems Corporation; Criminal History Record Checks; Appropriation

Description:

Authorizes Hawaii health systems corporation to conduct criminal history record checks. Makes an appropriation.

