



GOV. MSG. NO. **1220**

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 14, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

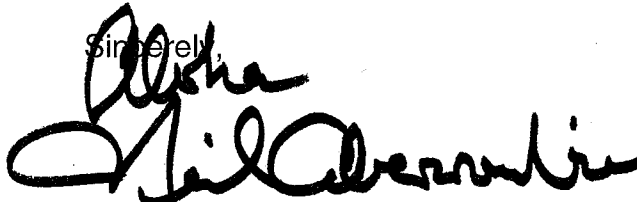
Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 14, 2011, the following bill was signed into law:

HB1009 HD2 SD2

RELATING TO FINGERPRINT RETENTION BY
HAWAII CRIMINAL JUSTICE DATA CENTER
Act 117 (11)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

on _____

HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

H.B. NO. 1009
H.D. 2
S.D. 2

A BILL FOR AN ACT

RELATING TO FINGERPRINT RETENTION BY HAWAII CRIMINAL JUSTICE
DATA CENTER.

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

1 SECTION 1. The purpose of this Act is to allow the State
2 to indefinitely retain fingerprints of employment and licensing
3 applicants for whom criminal history record checks are
4 authorized statutorily so that the State can implement a
5 statewide "Rap Back" program.

6 In 2013, two new Federal Bureau of Investigation programs
7 will go into effect:

8 (1) The "Next Generation IAFIS", which will include the
9 retention of applicant prints collected by fifty
10 states; and

11 (2) The "Rap Back" program, which will allow employers to
12 request notification if applicants are arrested in the
13 future.

14 The State's ability to take advantage of the information and
15 capabilities that other states and the Federal Bureau of
16 Investigation are using will help Hawaii develop its own program
17 and be proactive in decision-making for our vulnerable



1 populations, including children, the elderly, and the disabled.
2 For example, if the department of education hires an applicant
3 with no criminal record, the Hawaii criminal justice data center
4 retains the applicant's fingerprints. If the applicant is later
5 arrested and the prints taken during the arrest booking match
6 the previously retained applicant prints, the department of
7 education would be notified.

8 The public will be better protected as employers and
9 licensing agencies will get up-to-date criminal history
10 information. In addition, employees and licensees may not need
11 to be fingerprinted again as part of a re-application or renewal
12 process because up-to-date information will be forwarded
13 automatically to their employers or licensing agencies as part
14 of the "Rap Back" program.

15 SECTION 2. Section 846-2.7, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§846-2.7 Criminal history record checks.** (a) The
18 agencies and other entities named in subsection (b) may conduct
19 state and national criminal history record checks on the
20 personnel identified in subsection (b), for the purpose of
21 determining suitability or fitness for a permit, license, or
22 employment; provided that the Hawaii criminal justice data



1 center may charge a reasonable fee for the criminal history
2 record checks performed. The agencies and other entities named
3 in subsection (b) shall notify applicants and employees subject
4 to a criminal history record check pursuant to this section that
5 their fingerprints shall be retained by the Hawaii criminal
6 justice data center. The criminal history record check shall
7 include the submission of fingerprints to:

8 (1) The Federal Bureau of Investigation for a national
9 criminal history record check; and

10 (2) The Hawaii criminal justice data center for a state
11 criminal history record check that shall include
12 nonconviction data.

13 [~~Criminal~~] Except as otherwise provided in this section,
14 criminal history record information shall be used exclusively
15 for the stated purpose for which it was obtained.

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

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

20 (2) The department of health on prospective employees,
21 persons seeking to serve as providers, or
22 subcontractors in positions that place them in direct



1 contact with clients when providing non-witnessed
2 direct mental health services as provided by section
3 321-171.5;

4 (3) The department of health on all applicants for
5 licensure for, operators for, prospective employees,
6 and volunteers at one or more of the following:
7 skilled nursing facility, intermediate care facility,
8 adult residential care home, expanded adult
9 residential care home, assisted living facility, home
10 health agency, hospice, adult day health center,
11 special treatment facility, therapeutic living
12 program, intermediate care facility for the mentally
13 retarded, hospital, rural health center and
14 rehabilitation agency, and, in the case of any of the
15 above facilities operating in a private residence, on
16 any adult living in the facility other than the client
17 as provided by section 321-15.2;

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



- 1 (5) The counties on employees and prospective employees
2 who may be in positions that place them in close
3 proximity to children in recreation or child care
4 programs and services;
- 5 (6) The county liquor commissions on applicants for liquor
6 licenses as provided by section 281-53.5;
- 7 (7) The department of human services on operators and
8 employees of child caring institutions, child placing
9 organizations, and foster boarding homes as provided
10 by section 346-17;
- 11 (8) The department of human services on prospective
12 adoptive parents as established under section
13 346-19.7;
- 14 (9) The department of human services on applicants to
15 operate child care facilities, prospective employees
16 of the applicant, and new employees of the provider
17 after registration or licensure as provided by section
18 346-154;
- 19 (10) The department of human services on persons exempt
20 pursuant to section 346-152 to be eligible to provide
21 child care and receive child care subsidies as
22 provided by section 346-152.5;



- 1 (11) The department of human services on operators and
2 employees of home and community-based case management
3 agencies and operators and other adults, except for
4 adults in care, residing in foster family homes as
5 provided by section 346-335;
- 6 (12) The department of human services on staff members of
7 the Hawaii youth correctional facility as provided by
8 section 352-5.5;
- 9 (13) The department of human services on employees,
10 prospective employees, and volunteers of contracted
11 providers and subcontractors in positions that place
12 them in close proximity to youth when providing
13 services on behalf of the office or the Hawaii youth
14 correctional facility as provided by section 352D-4.3;
- 15 (14) The judiciary on employees and applicants at detention
16 and shelter facilities as provided by section 571-34;
- 17 (15) The department of public safety on employees and
18 prospective employees who are directly involved with
19 the treatment and care of persons committed to a
20 correctional facility or who possess police powers
21 including the power of arrest as provided by section
22 353C-5;



- 1 (16) The department of commerce and consumer affairs on
2 applicants for private detective or private guard
3 licensure as provided by section 463-9;
- 4 (17) Private schools and designated organizations on
5 employees and prospective employees who may be in
6 positions that necessitate close proximity to
7 children; provided that private schools and designated
8 organizations receive only indications of the states
9 from which the national criminal history record
10 information was provided pursuant to section 302C-1;
- 11 (18) The public library system on employees and prospective
12 employees whose positions place them in close
13 proximity to children as provided by section
14 302A-601.5;
- 15 (19) The State or any of its branches, political
16 subdivisions, or agencies on applicants and employees
17 holding a position that has the same type of contact
18 with children, vulnerable adults, or persons committed
19 to a correctional facility as other public employees
20 who hold positions that are authorized by law to
21 require criminal history record checks as a condition
22 of employment as provided by section 78-2.7;



- 1 (20) The department of human services on licensed adult day
2 care center operators, employees, new employees,
3 subcontracted service providers and their employees,
4 and adult volunteers as provided by section 346-97;
- 5 (21) The department of human services on purchase of
6 service contracted and subcontracted service providers
7 and their employees serving clients of the adult and
8 community care services branch, as provided by section
9 346-97;
- 10 (22) The department of human services on foster grandparent
11 program, retired and senior volunteer program, senior
12 companion program, and respite companion program
13 participants as provided by section 346-97;
- 14 (23) The department of human services on contracted and
15 subcontracted service providers and their current and
16 prospective employees that provide home and community-
17 based services under Section 1915(c) of the Social
18 Security Act, Title 42 United States Code Section
19 1396n(c), or under any other applicable section or
20 sections of the Social Security Act for the purposes
21 of providing home and community-based services, as
22 provided by section 346-97;



- 1 (24) The department of commerce and consumer affairs on
2 proposed directors and executive officers of a bank,
3 savings bank, savings and loan association, trust
4 company, and depository financial services loan
5 company as provided by section 412:3-201;
- 6 (25) The department of commerce and consumer affairs on
7 proposed directors and executive officers of a
8 nondepository financial services loan company as
9 provided by section 412:3-301;
- 10 (26) The department of commerce and consumer affairs on the
11 original chartering applicants and proposed executive
12 officers of a credit union as provided by section
13 412:10-103;
- 14 (27) The department of commerce and consumer affairs on:
15 (A) Each principal of every non-corporate applicant
16 for a money transmitter license; and
17 (B) The executive officers, key shareholders, and
18 managers in charge of a money transmitter's
19 activities of every corporate applicant for a
20 money transmitter license,
21 as provided by section 489D-9;



- 1 (28) The department of commerce and consumer affairs on
- 2 applicants for licensure and persons licensed under
- 3 title 24;
- 4 (29) The Hawaii health systems corporation on:
- 5 (A) Employees;
- 6 (B) Applicants seeking employment;
- 7 (C) Current or prospective members of the corporation
- 8 board or regional system board; or
- 9 (D) Current or prospective volunteers, providers, or
- 10 contractors,
- 11 in any of the corporation's health facilities as
- 12 provided by section 323F-5.5;
- 13 (30) The department of commerce and consumer affairs on:
- 14 (A) An applicant for a mortgage loan originator
- 15 license; and
- 16 (B) Each control person, executive officer, director,
- 17 general partner, and manager of an applicant for
- 18 a mortgage loan originator company license,
- 19 as provided by chapter 454F; and
- 20 (31) Any other organization, entity, or the State, its
- 21 branches, political subdivisions, or agencies as may
- 22 be authorized by state law.



1 (c) The applicant or employee subject to a criminal
2 history record check shall provide to the requesting agency:

3 (1) Consent to obtain the applicant's or employee's
4 fingerprints and conduct the criminal history record
5 check;

6 (2) Identifying information required by the Federal Bureau
7 of Investigation which shall include but not be
8 limited to name, date of birth, height, weight, eye
9 color, hair color, gender, race, and place of birth;
10 and

11 (3) A statement indicating whether the applicant or
12 employee has ever been convicted of a crime.

13 (d) Fingerprints and information and records relating to
14 the fingerprints acquired by the Hawaii criminal justice data
15 center under this section shall be retained and maintained in an
16 appropriate form and in an appropriate office in the custody and
17 control of the Hawaii criminal justice data center, and shall at
18 all times be kept separate from any similar records relating to
19 the identification of criminals. The information shall be
20 available only to authorized entities and agencies as described
21 in subsection (b) and such other persons or agencies as the
22 attorney general shall authorize, subject to any restriction



1 that the attorney general shall prescribe. The Hawaii criminal
2 justice data center may dispose of any record of fingerprints
3 and information and records relating to the fingerprints without
4 regard to chapter 94, whenever, in the attorney general's
5 discretion, retention of the record is no longer required or
6 practicable. No officer or employee of the Hawaii criminal
7 justice data center shall disclose any records of fingerprints
8 or information and records relating to the fingerprints acquired
9 in the performance of any of the officer's or employee's duties
10 under this section to any person not authorized to receive the
11 same pursuant to this section or pursuant to the orders of the
12 attorney general. No person acquiring from the records of
13 fingerprints or information and records relating to the
14 fingerprints any information concerning any individual shall
15 disclose the information to any person not so authorized to
16 receive the same."

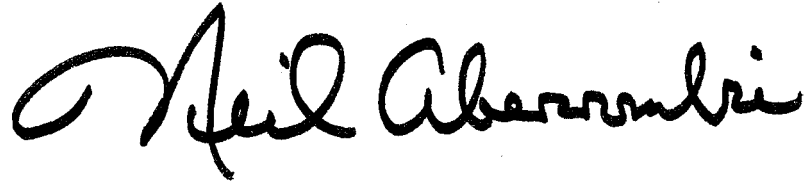
17 SECTION 3. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 4. This Act shall take effect on July 1, 2011.



H.B. NO. 1009
H.D. 2
S.D. 2

APPROVED this 14 day of JUN, 2011

A handwritten signature in black ink, reading "Neil Abernethy". The signature is written in a cursive style with a large initial "N".

GOVERNOR OF THE STATE OF HAWAII