



GOV. MSG. NO. 1402

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 06, 2012

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

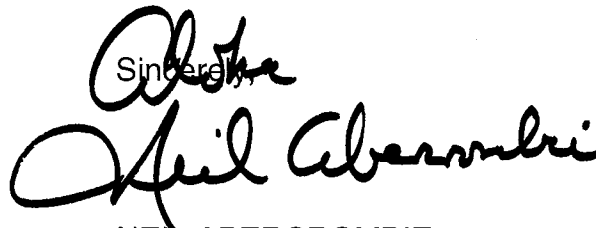
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

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

This is to inform you that on July 06, 2012, the following bill was signed into law:

HB2568 HD2 SD1 CD1

RELATING TO BACKGROUND CHECKS.
Act 285 (12)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

A BILL FOR AN ACT

RELATING TO BACKGROUND CHECKS.

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

1 SECTION 1. The purpose of this Act is to allow the
2 department of health to designate an entity to perform services
3 on its behalf relating to background checks for employment,
4 volunteer, contracting, licensure, or certification purposes.

5 SECTION 2. Section 321-15.2, Hawaii Revised Statutes, is
6 amended as follows:

7 1. By amending subsections (b), (c), (d), (e), (f), and
8 (g) to read:

9 "(b) The department shall adopt rules pursuant to chapter
10 91 to ensure the reputable and responsible character of all
11 prospective applicants, operators, direct patient access
12 employees, and adult volunteers of a healthcare facility, and,
13 in the case of any healthcare facility operated in a private
14 residence, all adults living in the home other than the clients.
15 These rules, among other things, shall specify how the
16 department or the department's designee may conduct criminal
17 history record checks in accordance with section 846-2.7.

18 (c) All applicants and prospective operators shall:



- 1 (1) Be subject to criminal history record checks in
2 accordance with section 846-2.7;
- 3 (2) Authorize the disclosure to the department or the
4 department's designee of criminal history record
5 information;
- 6 (3) Sign a waiver form stating that the department or the
7 department's designee shall not be liable to the
8 applicant or prospective operator; and
- 9 (4) Consent to be fingerprinted for the purpose of
10 requesting criminal history record information from
11 the Federal Bureau of Investigation and the Hawaii
12 criminal justice data center.
- 13 (d) All prospective direct patient access employees and
14 adult volunteers of healthcare facilities and, in the case of
15 any healthcare facility operated in a private residence, all
16 adults living in the home other than the clients shall:
- 17 (1) Consent to be fingerprinted;
- 18 (2) Provide all necessary information for the purpose of
19 enabling the department or the department's designee
20 to conduct the criminal history record checks; and



1 (3) Sign a waiver form stating that the department or the
2 department's designee shall not be liable to the
3 employee or volunteer.

4 (e) The department or the department's designee may
5 request criminal history record information which includes
6 Federal Bureau of Investigation data through the Hawaii criminal
7 justice data center on all prospective applicants, operators,
8 direct patient access employees, and adult volunteers of
9 healthcare facilities. In addition, in the case of any
10 healthcare facility to be operated in a private residence, the
11 department of health or the department's designee may request
12 criminal history record information which includes Federal
13 Bureau of Investigation data through the Hawaii criminal justice
14 data center for all adults residing in the home who are not
15 clients.

16 (f) The department or the department's designee shall make
17 a name inquiry into the criminal history records or conduct
18 criminal history record checks of all prospective applicants,
19 operators, direct patient access employees, and adult volunteers
20 at the healthcare facility, and, in the case of any healthcare
21 facility operated in a private residence, all adults living in
22 the home other than the clients.



1 (g) The department may revoke or suspend a current
2 license, impose penalties or fines, or deny an application for a
3 license under rules adopted pursuant to chapter 91 if the
4 applicant, operator, employee, or adult volunteer at the
5 healthcare facility or, in the case of any healthcare facility
6 operated in a private residence, any adult living in the home
7 other than the client, refuses to authorize the department or
8 the department's designee to conduct a criminal history record
9 check, obtain criminal history record information for
10 verification, or consent to be fingerprinted. In addition, the
11 department may revoke or suspend a current license, impose
12 penalties or fines, or deny an application for a license if the
13 applicant, operator, direct patient access employee, or adult
14 volunteer at the healthcare facility, or, in the case of a
15 healthcare facility operated in a private residence, any adult
16 living in the home other than the client, has any disqualifying
17 information. The department may also revoke or suspend a
18 current license, impose penalties or fines, or deny an
19 application for a license if the department determines, based
20 upon consideration of the criminal history information, that the
21 applicant, operator, direct patient access employee, or adult
22 volunteer at the healthcare facility, or, in the case of a



1 healthcare facility operated in a private residence, any adult
2 living in the home other than the client, is unsuitable to work
3 or live in close proximity to the residents of the healthcare
4 facility such that the health, safety, and welfare of the
5 residents of the healthcare facility could be at risk."

6 2. By amending subsections (j) and (k) to read:

7 "(j) The department, or the department's designee, in
8 obtaining and relying upon the criminal history record checks,
9 is presumed to be acting in good faith and shall be immune from
10 civil liability for taking or recommending action based upon the
11 criminal history record information. The good faith presumption
12 may be rebutted upon a showing by the person or entity of a lack
13 of good faith, and proof by a preponderance of the evidence,
14 that the department relied upon information or opinion that it
15 knew was false or misleading.

16 (k) Any applicant or operator who receives information
17 from the department or the department's designee relating to a
18 criminal history record check of a direct patient access
19 employee or adult volunteer or, in the case of a healthcare
20 facility operated in a private residence, an adult living in the
21 home other than the clients, is presumed to be acting in good
22 faith and shall be immune from civil liability for taking or



1 recommending action based upon the department's recommendation
2 or direction. Nothing in this section shall affect rights,
3 obligations, remedies, liabilities, or standards of proof under
4 chapters 368 and 378.

5 Criminal history record information shall be used
6 exclusively by the department or the department's designee for
7 the sole purpose of determining whether an applicant, operator,
8 direct patient access employee, or adult volunteer at a
9 healthcare facility, or, in the case of a facility operated in a
10 private residence, any adult living in the home other than the
11 clients is suitable for working or living in close proximity to
12 residents of a healthcare facility such that the health, safety,
13 and welfare of the residents would not be at risk."

14 SECTION 3. Section 321-171.5, Hawaii Revised Statutes, is
15 amended as follows:

16 1. By amending subsection (b) to read:

17 "(b) Except as otherwise specified, any person who seeks
18 employment with the department of health, or who is employed or
19 seeks employment with a provider or subcontractor in a position
20 that necessitates non-witnessed direct contact with clients when
21 providing non-witnessed direct mental health services, shall:



1 (1) Be subject to criminal history record checks in
2 accordance with section 846-2.7; and
3 (2) Provide to the department of health or the
4 department's designee written consent for the
5 department or the department's designee to obtain
6 criminal history record information for verification.
7 Information obtained pursuant to subsection (a) and this
8 subsection shall be used exclusively by the department of health
9 for purposes of determining whether a person is suitable for
10 working in a position that necessitates non-witnessed direct
11 contact with clients when providing non-witnessed direct mental
12 health services. All such decisions shall be subject to federal
13 laws and regulations currently or hereafter in effect."

14 2. By amending subsection (d) to read:

15 "(d) This section shall not be used by the department of
16 health or the department's designee to secure criminal history
17 record checks on persons who have been employed continuously on
18 a salaried basis prior to July 1, 2000."

19 SECTION 4. Section 333F-22, Hawaii Revised Statutes, is
20 amended as follows:

21 1. By amending subsections (c), (d), and (e) to read:



1 "(c) An applicant to operate an adult foster home or
2 developmental disabilities domiciliary home and all current and
3 prospective employees of the applicant shall be subject to
4 criminal history record checks in accordance with section 846-
5 2.7, and shall provide consent to the department or the
6 department's designee to obtain criminal history record
7 information for verification.

8 (d) Each existing provider or provider and all employees
9 hired after the initial licensure or certification of the
10 existing provider or provider shall be subject to criminal
11 history record checks in accordance with section 846-2.7, and
12 shall provide consent to the department or the department's
13 designee to obtain criminal history record information for
14 verification.

15 (e) The department or the department's designee is
16 authorized to obtain criminal history record information through
17 the Hawaii criminal justice data center on existing providers
18 and their employees upon their next licensure or certification
19 renewal date, and on any applicant and all current and
20 prospective employees of the applicant, including all new
21 employees after the applicant is issued a certification or
22 license under this chapter."



1 2. By amending subsection (g) to read:
2 " (g) The department may revoke a current license or
3 certification or deny an application for a license or
4 certification to operate an adult foster home or developmental
5 disabilities domiciliary home under rules adopted pursuant to
6 chapter 91 if the existing provider or employee of an existing
7 provider, applicant, current or prospective employee of the
8 applicant, provider, or new employee of the provider refuses to
9 submit to the department or the department's designee statements
10 indicating criminal convictions, refuses to provide consent to
11 the department or the department's designee to conduct a
12 criminal history record check or obtain other criminal history
13 record information for verification, refuses to be
14 fingerprinted, has been convicted of a crime other than a minor
15 traffic violation involving a fine of \$50 or less; or if the
16 department or the department's designee finds that the criminal
17 history record of the existing provider or employee of an
18 existing provider, applicant, current or prospective employee of
19 the applicant, provider, or new employee of the provider
20 indicates that the individual may pose a risk to the health,
21 safety, or well-being of persons with developmental or
22 intellectual disabilities living in the home."



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

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

4 (1) The department of health or the department's designee
5 on operators of adult foster homes or developmental
6 disabilities domiciliary homes and their employees, as
7 provided by section 333F-22;

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

14 (3) The department of health or the department's designee
15 on all applicants for licensure for, operators for,
16 prospective employees, and volunteers at one or more
17 of the following: skilled nursing facility,
18 intermediate care facility, adult residential care
19 home, expanded adult residential care home, assisted
20 living facility, home health agency, hospice, adult
21 day health center, special treatment facility,
22 therapeutic living program, intermediate care facility



- 1 for individuals with intellectual disabilities,
2 hospital, rural health center and rehabilitation
3 agency, and, in the case of any of the above
4 facilities operating in a private residence, on any
5 adult living in the facility other than the client as
6 provided by section 321-15.2;
- 7 (4) The department of education on employees, prospective
8 employees, and teacher trainees in any public school
9 in positions that necessitate close proximity to
10 children as provided by section 302A-601.5;
- 11 (5) The counties on employees and prospective employees
12 who may be in positions that place them in close
13 proximity to children in recreation or child care
14 programs and services;
- 15 (6) The county liquor commissions on applicants for liquor
16 licenses as provided by section 281-53.5;
- 17 (7) The department of human services on operators and
18 employees of child caring institutions, child placing
19 organizations, and foster boarding homes as provided
20 by section 346-17;



- 1 (8) The department of human services on prospective
2 adoptive parents as established under section 346-
3 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
22 information was provided pursuant to section 302C-1;



- 1 (18) The public library system on employees and prospective
2 employees whose positions place them in close
3 proximity to children as provided by section 302A-
4 601.5;
- 5 (19) The State or any of its branches, political
6 subdivisions, or agencies on applicants and employees
7 holding a position that has the same type of contact
8 with children, vulnerable adults, or persons committed
9 to a correctional facility as other public employees
10 who hold positions that are authorized by law to
11 require criminal history record checks as a condition
12 of employment as provided by section 78-2.7;
- 13 (20) The department of human services on licensed adult day
14 care center operators, employees, new employees,
15 subcontracted service providers and their employees,
16 and adult volunteers as provided by section 346-97;
- 17 (21) The department of human services on purchase of
18 service contracted and subcontracted service providers
19 and their employees serving clients of the adult and
20 community care services branch, as provided by section
21 346-97;



- 1 (22) The department of human services on foster grandparent
2 program, retired and senior volunteer program, senior
3 companion program, and respite companion program
4 participants as provided by section 346-97;
- 5 (23) The department of human services on contracted and
6 subcontracted service providers and their current and
7 prospective employees that provide home and community-
8 based services under Section 1915(c) of the Social
9 Security Act, Title 42 United States Code Section
10 1396n(c), or under any other applicable section or
11 sections of the Social Security Act for the purposes
12 of providing home and community-based services, as
13 provided by section 346-97;
- 14 (24) The department of commerce and consumer affairs on
15 proposed directors and executive officers of a bank,
16 savings bank, savings and loan association, trust
17 company, and depository financial services loan
18 company as provided by section 412:3-201;
- 19 (25) The department of commerce and consumer affairs on
20 proposed directors and executive officers of a
21 nondepository financial services loan company as
22 provided by section 412:3-301;



- 1 (26) The department of commerce and consumer affairs on the
2 original chartering applicants and proposed executive
3 officers of a credit union as provided by section
4 412:10-103;
- 5 (27) The department of commerce and consumer affairs on:
6 (A) Each principal of every non-corporate applicant
7 for a money transmitter license; and
8 (B) The executive officers, key shareholders, and
9 managers in charge of a money transmitter's
10 activities of every corporate applicant for a
11 money transmitter license,
12 as provided by section 489D-9;
- 13 (28) The department of commerce and consumer affairs on
14 applicants for licensure and persons licensed under
15 title 24;
- 16 (29) The Hawaii health systems corporation on:
17 (A) Employees;
18 (B) Applicants seeking employment;
19 (C) Current or prospective members of the corporation
20 board or regional system board; or
21 (D) Current or prospective volunteers, providers, or
22 contractors,



1 in any of the corporation's health facilities as
2 provided by section 323F-5.5;

3 (30) The department of commerce and consumer affairs on:

4 (A) An applicant for a mortgage loan originator
5 license; and

6 (B) Each control person, executive officer, director,
7 general partner, and manager of an applicant for
8 a mortgage loan originator company license,
9 as provided by chapter 454F; and

10 (31) Any other organization, entity, or the State, its
11 branches, political subdivisions, or agencies as may
12 be authorized by state law."

13 SECTION 6. New statutory material is underscored.

14 SECTION 7. This Act shall take effect upon its approval.

APPROVED this 6 day of JUL , 2012

Neil Abernethy
GOVERNOR OF THE STATE OF HAWAII

