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# 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 disabilities

22   or mental retardation 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, adult day care center, special  
22 treatment facility, therapeutic living program,



1 intermediate care facility for individuals with  
2 intellectual disabilities, hospital, rural health  
3 center and rehabilitation agency, and, in the case of  
4 any of the above facilities operating in a private  
5 residence, on any adult living in the facility other  
6 than the client as 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 on January 7, 2059.



**Report Title:**

Relating to Background Checks

**Description:**

Permits the Department of Health to allow a designee to conduct criminal history record checks on its behalf on certain healthcare workers, employees, and owners, operators of care homes, or other healthcare organizations. Effective January 7, 2059. (HB2568 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

