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## A BILL FOR AN ACT

RELATING TO ADMINISTRATIVE FINDINGS RECORDS.

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

1           SECTION 1. Chapter 346, Hawaii Revised Statutes, is  
2 amended by adding a new section to part VIII to be appropriately  
3 designated and to read as follows:

4           "§346-A Release of administrative findings record checks  
5 to the department of health. Upon request by the department of  
6 health, the department shall prepare and transmit to the  
7 department of health administrative findings record information  
8 relating to findings of child abuse committed by a person  
9 subject to an administrative findings record check under section  
10 321-15.2."

11           SECTION 2. Chapter 346, Hawaii Revised Statutes, is  
12 amended by adding a new section to part X to be appropriately  
13 designated and to read as follows:

14           "§346-B Release of administrative findings record checks  
15 to the department of health. Upon request by the department of  
16 health, the department shall prepare and transmit to the  
17 department of health administrative findings record information  
18 relating to findings of adult abuse committed by a person



1 subject to an administrative findings record check under section  
2 321-15.2."

3 SECTION 3. Section 321-15.2, Hawaii Revised Statutes, is  
4 amended as follows:

5 1. By amending the title to read:

6 "§321-15.2 Criminal history record checks[-];  
7 administrative findings record checks."

8 2. By amending the definition of "disqualifying  
9 information" in subsection (a) to read:

10 ""Disqualifying information" means a conviction for a  
11 relevant crime or [a] an administrative finding of [~~patient or~~  
12 ~~resident~~] adult or child abuse[-] or neglect."

13 3. By amending subsection (b), (c), (d), (e), (f), and (g)  
14 to read:

15 "(b) The department shall adopt rules pursuant to chapter  
16 91 to ensure the reputable and responsible character of all  
17 prospective applicants, operators, direct patient access  
18 employees, and adult volunteers of a healthcare facility, and,  
19 in the case of any healthcare facility operated in a private  
20 residence, all adults living in the home other than the clients.  
21 These rules, among other things, shall specify how the  
22 department or the department's designee may conduct criminal



1 history record checks in accordance with section 846-2.7[~~-~~], or  
2 administrative findings record checks pursuant to sections 346-A  
3 and 346-B.

- 4 (c) All applicants and prospective operators shall:
- 5 (1) Be subject to criminal history record checks in  
6 accordance with section 846-2.7[~~-~~] and administrative  
7 findings record checks pursuant to sections 346-A and  
8 346-B;
- 9 (2) Authorize the disclosure to the department or the  
10 department's designee of criminal history record or  
11 administrative findings record information;
- 12 (3) Sign a waiver form stating that the department or the  
13 department's designee shall not be liable to the  
14 applicant or prospective operator; and
- 15 (4) Consent to be fingerprinted for the purpose of  
16 requesting criminal history record information from  
17 the Federal Bureau of Investigation and the Hawaii  
18 criminal justice data center.

19 (d) All prospective direct patient access employees and  
20 adult volunteers of healthcare facilities and, in the case of  
21 any healthcare facility operated in a private residence, all  
22 adults living in the home other than the clients shall:



- 1 (1) Consent to be fingerprinted;
- 2 (2) Provide all necessary information for the purpose of  
3 enabling the department or the department's designee  
4 to conduct the criminal history record checks[~~;~~and]  
5 or administrative findings record checks; and
- 6 (3) Sign a waiver form stating that the department or the  
7 department's designee shall not be liable to the  
8 employee or volunteer.
- 9 (e) The department or the department's designee may  
10 request criminal history record information which includes  
11 Federal Bureau of Investigation data through the Hawaii criminal  
12 justice data center, or administrative findings record  
13 information through the department of human services, on all  
14 prospective applicants, operators, direct patient access  
15 employees, and adult volunteers of healthcare facilities[~~;~~], and  
16 on department of health employees and prospective employees  
17 whose job duties involve work at a healthcare facility. In  
18 addition, in the case of any healthcare facility to be operated  
19 in a private residence, the department of health or the  
20 department's designee may request criminal history record  
21 information which includes Federal Bureau of Investigation data  
22 through the Hawaii criminal justice data center, or



1 administrative findings record information through the  
2 department of human services, for all adults residing in the  
3 home who are not clients.

4 (f) The department or the department's designee shall make  
5 a name inquiry into the criminal history and administrative  
6 findings records or conduct criminal history and administrative  
7 findings record checks of all prospective applicants, operators,  
8 direct patient access employees, and adult volunteers at the  
9 healthcare facility, and, in the case of any healthcare facility  
10 operated in a private residence, all adults living in the home  
11 other than the clients.

12 (g) The department may revoke or suspend a current  
13 license, impose penalties or fines, or deny an application for a  
14 license under rules adopted pursuant to chapter 91 if the  
15 applicant, operator, employee, or adult volunteer at the  
16 healthcare facility or, in the case of any healthcare facility  
17 operated in a private residence, any adult living in the home  
18 other than the client, refuses to authorize the department or  
19 the department's designee to conduct a criminal history record  
20 check, obtain criminal history record information for  
21 verification, or consent to be fingerprinted. In addition, the  
22 department may revoke or suspend a current license, impose



1 penalties or fines, or deny an application for a license if the  
2 applicant, operator, direct patient access employee, or adult  
3 volunteer at the healthcare facility, or, in the case of a  
4 healthcare facility operated in a private residence, any adult  
5 living in the home other than the client, has any disqualifying  
6 information. The department may also revoke or suspend a  
7 current license, impose penalties or fines, ~~[or]~~ deny an  
8 application for a license, or take personnel action against a  
9 department employee or prospective employee, if the department  
10 determines, based upon consideration of the criminal history  
11 information~~[,]~~ or the administrative findings information, that  
12 ~~[the]~~:

13 (1) The applicant, operator, direct patient access  
14 employee, or adult volunteer at the healthcare  
15 facility~~[, or, in]~~;

16 (2) In the case of a healthcare facility operated in a  
17 private residence, any adult living in the home other  
18 than the client~~[,]~~; or

19 (3) In the case of the department, any employee or  
20 prospective employee of the department whose job  
21 duties involve work at a healthcare facility,



1 is unsuitable to work or live in close proximity to the  
2 residents of [~~the~~] a healthcare facility such that the health,  
3 safety, and welfare of the residents of the healthcare facility  
4 could be at risk."

5 4. By amending subsections (i), (j), and (k) to read:

6 "(i) The fee charged by the Federal Bureau of  
7 Investigation and the Hawaii criminal justice data center to  
8 perform criminal history record checks, or any fee charged by  
9 the department of human services to perform administrative  
10 findings record checks, may be passed on to [~~all~~]:

11 (1) All applicants, operators, direct patient access  
12 employees, and adult volunteers at the healthcare  
13 facility [~~and, in~~];

14 (2) In the case of a facility operated in a private  
15 residence, all adults living in the home other than  
16 the clients[~~-~~]; and

17 (3) In the case of the department of health, all employees  
18 and prospective employees of the department of health.

19 (j) The department, or the department's designee, in  
20 obtaining and relying upon the criminal history and  
21 administrative findings record checks, is presumed to be acting  
22 in good faith and shall be immune from civil liability for



1 taking or recommending action based upon the criminal history  
2 record or administrative findings information. The good faith  
3 presumption may be rebutted upon a showing by the person or  
4 entity of a lack of good faith, and proof by a preponderance of  
5 the evidence, that the department relied upon information or  
6 opinion that it knew was false or misleading.

7 (k) Any applicant or operator who receives information  
8 from the department or the department's designee relating to a  
9 criminal history record check or an administrative findings  
10 record check of a direct patient access employee or adult  
11 volunteer or, in the case of a healthcare facility operated in a  
12 private residence, an adult living in the home other than the  
13 clients, is presumed to be acting in good faith and shall be  
14 immune from civil liability for taking or recommending action  
15 based upon the department's recommendation or direction.  
16 Nothing in this section shall affect rights, obligations,  
17 remedies, liabilities, or standards of proof under chapters 368  
18 and 378.

19 Criminal history record and administrative findings record  
20 information shall be used exclusively by the department or the  
21 department's designee for the sole purpose of determining  
22 whether an applicant, operator, direct patient access employee,





1 or adult volunteer at a healthcare facility, or, in the case of  
 2 a facility operated in a private residence, any adult living in  
 3 the home other than the clients is suitable for working or  
 4 living in close proximity to residents of a healthcare facility  
 5 such that the health, safety, and welfare of the residents would  
 6 not be at risk."

7 SECTION 4. In codifying the new sections added by sections  
 8 1 and 2 of this Act, the revisor of statutes shall substitute  
 9 appropriate section numbers for the letters used in designating  
 10 the new sections in this Act.

11 SECTION 5. Statutory material to be repealed is bracketed  
 12 and stricken. New statutory material is underscored.

13 SECTION 6. This Act shall take effect upon its approval.  
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JAN 21 2014



# H.B. NO. 2223

**Report Title:**

DOH; Adult or Child Abuse; Background Checks

**Description:**

Broadens the scope of "disqualifying information" for purposes of licensing sanctions to include administrative findings of adult or child abuse or neglect. Extends the use of "disqualifying information" to apply to DOH employees or prospective employees. Authorizes DOH to obtain administrative findings record checks from DHS relating to child and adult abuse. Authorizes DHS to release administrative findings record checks to DOH.

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

