

JAN 17 2014

A BILL FOR AN ACT

RELATING TO CRIMINAL HISTORY RECORD CHECKS FOR STATE AND COUNTY
EMPLOYEES.

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

1 SECTION 1. Section 378-2.5, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:

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

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

15 (2) The department of education pursuant to section
16 302A-601.5;



- 1 (3) The department of health with respect to employees,
2 providers, or subcontractors in positions that place
3 them in direct contact with clients when providing
4 non-witnessed direct mental health services pursuant
5 to section 321-171.5;
- 6 (4) The judiciary pursuant to section 571-34;
- 7 (5) The counties pursuant to section 846-2.7(b) (5), (33),
8 (34), (35), [and] (36) [+], (37), (38), and (39);
- 9 (6) Armed security services pursuant to section 261-17(b);
- 10 (7) Providers of a developmental disabilities domiciliary
11 home pursuant to section 333F-22;
- 12 (8) Private schools pursuant to sections 302C-1 and
13 378-3(8);
- 14 (9) Financial institutions in which deposits are insured
15 by a federal agency having jurisdiction over the
16 financial institution pursuant to section 378-3(9);
- 17 (10) Detective agencies and security guard agencies
18 pursuant to sections 463-6(b) and 463-8(b);
- 19 (11) Employers in the business of insurance pursuant to
20 section 431:2-201.3;
- 21 (12) Employers of individuals or supervisors of individuals
22 responsible for screening passengers or property under



1 title 49 United States Code section 44901 or
2 individuals with unescorted access to an aircraft of
3 an air carrier or foreign carrier or in a secured area
4 of an airport in the United States pursuant to title
5 49 United States Code section 44936(a);

6 (13) The department of human services pursuant to sections
7 346-97 and 352-5.5;

8 (14) The public library system pursuant to section
9 302A-601.5;

10 (15) The department of public safety pursuant to section
11 353C-5;

12 (16) The board of directors of a cooperative housing
13 corporation or the manager of a cooperative housing
14 project pursuant to section 421I-12;

15 (17) The board of directors of an association of owners
16 under chapter 514A or 514B, or the manager of a
17 condominium project pursuant to section 514A-82.1 or
18 514B-133; and

19 (18) The department of health pursuant to section
20 321-15.2."

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



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

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

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

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



1 agency, and, in the case of any of the above
2 facilities operating in a private residence, on any
3 adult living in the facility other than the client as
4 provided by section 321-15.2;

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

9 (5) The counties on employees and prospective employees
10 who may be in positions that place them in close
11 proximity to children in recreation or child care
12 programs and services;

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

15 (7) The county liquor commissions on employees and
16 prospective employees involved in liquor
17 administration, law enforcement, and liquor control
18 investigations;

19 (8) 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 (9) The department of human services on prospective
2 adoptive parents as established under section
3 346-19.7;
- 4 (10) 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 (11) 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 (12) 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 (13) The department of human services on staff members of
19 the Hawaii youth correctional facility as provided by
20 section 352-5.5;
- 21 (14) 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 (15) The judiciary on employees and applicants at detention
6 and shelter facilities as provided by section 571-34;

7 (16) 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 (17) The board of private detectives and guards on
14 applicants for private detective or private guard
15 licensure as provided by section 463-9;

16 (18) 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 (19) The public library system on employees and prospective
2 employees whose positions place them in close
3 proximity to children as provided by section
4 302A-601.5;
- 5 (20) 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 (21) 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 (22) 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 (23) 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 (24) 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 (25) 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 (26) 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 (27) 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 (28) 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 sections 489D-9 and 489D-15;

13 (29) The department of commerce and consumer affairs on
14 applicants for licensure and persons licensed under
15 title 24;

16 (30) 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 (31) 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;

10 (32) The state public charter school commission or public
11 charter schools on employees, teacher trainees,
12 prospective employees, and prospective teacher
13 trainees in any public charter school for any position
14 that places them in close proximity to children, as
15 provided in section 302D-33;

16 (33) The counties on prospective employees who work with
17 children, vulnerable adults, or senior citizens in
18 community-based programs;

19 (34) The counties on prospective employees for fire
20 department positions which involve contact with
21 children or [~~dependent~~] vulnerable adults;



- 1 (35) The counties on prospective employees for emergency
2 medical services positions which involve contact with
3 children or [~~dependent~~] vulnerable adults;
- 4 (36) The counties on prospective employees for emergency
5 management positions and community volunteers whose
6 responsibilities involve planning and executing
7 homeland security measures including viewing,
8 handling, and engaging in law enforcement or
9 classified meetings and assisting vulnerable [~~and~~
10 disabled] citizens during emergencies or crises; [~~and~~
- 11 (37) The State and counties on employees, prospective
12 employees, volunteers, and contractors whose position
13 responsibilities require unescorted access to secured
14 areas and equipment related to a traffic management
15 center;
- 16 (38) The counties on employees and prospective employees
17 whose positions involve the handling or use of
18 firearms for other than law enforcement purposes;
- 19 (39) The counties on current and prospective systems
20 analysts and others involved in an agency's
21 information technology operation whose position
22 responsibilities provide them with access to



1 proprietary, confidential, or sensitive information;
 2 and
 3 [~~37~~] (40) Any other organization, entity, or the State,
 4 its branches, political subdivisions, or agencies as
 5 may be authorized by state law."

6 SECTION 3. Statutory material to be repealed is bracketed
 7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act shall take effect upon its approval.

9

INTRODUCED BY:

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S.B. NO. 2420

Report Title:

Criminal History Record Checks; State and County Employees

Description:

Allows the State and counties to perform criminal history record checks on employees, prospective employees, volunteers, and contractors whose positions allow them access to sensitive information, firearms, and secured areas and on employees, prospective employees, volunteers, and contractors whose positions require them to work with county community-based programs for children.

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

