

ACT 88

H.B. NO. 777

A Bill for an Act Relating to Background Checks.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the department of human services assists vulnerable persons, including minors, young adults, and vulnerable adults. It is therefore necessary for the department of human services to exercise caution when employing or retaining workers, including volunteers, contractors, and others, whose positions place them in close proximity with persons who may be at risk.

The purpose of this Act is to:

- (1) Help ensure the safety of vulnerable persons by authorizing the department of human services to conduct comprehensive background

checks on current or prospective employees, volunteers, contractors, contractors' employees and volunteers, subcontractors, and subcontractors' employees and volunteers, whose position places or would place them in close proximity to certain minors, young adults, or vulnerable adults; and

- (2) Clarify that any state law permitting a more extensive inquiry into an individual's criminal history by the State and any of its branches, political subdivisions, agencies, or semi-autonomous public bodies corporate and politic will prevail over conflicting conviction record inquiries under the State's employment practices law.

SECTION 2. Section 323F-5.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Any inquiry into or consideration of the criminal history record of an employee or prospective employee of the corporation shall be limited to that which is ~~[allowed under section 378-2.5 or]~~ required under federal law."

SECTION 3. Section 346-2.5, Hawaii Revised Statutes, is amended to read as follows:

~~"[§346-2.5]—Criminal history record]~~ **Background checks.** (a) The department shall develop procedures for obtaining verifiable information regarding the criminal history of any person who is employed or seeking employment, including a contractor and its employees or ~~[agents]~~ subcontractor and its employees if prior authority to access federal tax information has been provided by the United States Department of the Treasury, if the person will require access to federal tax information. The procedures shall include criminal history record checks in accordance with section 846-2.7. Information obtained pursuant to this subsection shall be used exclusively by the department for the purpose of determining whether a person is suitable for accessing federal tax information in accordance with applicable federal laws.

(b) The department may terminate or deny employment to any current or prospective employee ~~[or applicant,]~~ or terminate or refuse to secure the services of a contractor and its employees or ~~[agents]~~ subcontractor and its employees authorized under subsection (a), if the department finds by reason of the nature and circumstances of the background investigation conducted under subsection (a) that the current or prospective employee, [applicant,] contractor, [or] contractor's employees [or agents], subcontractor, or subcontractor's employees pose a risk to the security of federal tax information. Termination or denial of employment or refusal to secure services under this subsection shall only occur after appropriate notification to the current or prospective employee, [applicant, or] contractor, or subcontractor of the findings of the background investigation, and after the current or prospective employee, [applicant, or] contractor, or subcontractor is given an opportunity to respond to the findings. Nothing in this subsection shall abrogate any applicable appeal rights under chapters 76 and 89, or administrative rules of the department.

(c) The department shall develop procedures for obtaining verifiable information regarding the criminal history, and information confirming the reputable and responsible character, of any current or prospective employee, volunteer, contractor, contractor's employee or volunteer, subcontractor, or subcontractor's employee or volunteer, whose position places or would place them in close proximity to minors, young adults, or vulnerable adults who are receiving from the department:

- (1) Child welfare services;
- (2) Social services;

- (3) Services intended to prevent abuse or neglect; or
- (4) Services intended to assist youth aging out of foster care with obtaining and maintaining independent living skills.
- (d) Any current or prospective employee, volunteer, contractor, contractor's employee or volunteer, subcontractor, or subcontractor's employee or volunteer, whose position places or would place them in close proximity to minors, young adults, or vulnerable adults as described in subsection (c) shall:
 - (1) Be fingerprinted for purposes of a criminal history record check;
 - (2) Submit to a criminal history record check in accordance with section 846-2.7;
 - (3) Consent to the department obtaining other criminal history records for verification; and
 - (4) Consent to the department conducting searches of the state adult protective services central registry of reported cases established in section 346-224 and child abuse and neglect registry;

provided that a new department employee or volunteer shall be fingerprinted before beginning employment or volunteer work; provided further that the information obtained pursuant to this subsection and subsection (e) shall be used exclusively by the department to determine whether it is appropriate for the person to work in close proximity to minors, young adults, or vulnerable adults.

(e) The department may periodically obtain criminal history information on all persons who are subject to this section through the Hawaii criminal justice data center.

(f) The department may terminate or deny employment to a current or prospective employee or volunteer, or terminate or refuse to secure the services of a contractor or the contractor's employees or volunteers, or a subcontractor or the subcontractor's employees or volunteers, if the department finds, based on the results of the background investigation conducted pursuant to subsections (d) and (e), that the current or prospective employee, volunteer, contractor, contractor's employee or volunteer, subcontractor, or subcontractor's employee or volunteer may pose a risk to the health, safety, security, or well-being of minors, young adults, or vulnerable adults as described in subsection (c). Termination or denial of employment or termination or refusal to secure services under this subsection shall occur only after the department notifies the current or prospective employee, contractor, or subcontractor of the findings of the background investigation, and after the current or prospective employee, contractor, or subcontractor is given an opportunity to respond to the findings. Nothing in this subsection shall abrogate any applicable rights to appeal under chapters 76 and 89 or the administrative rules of the department.

[(e)] (g) The department shall be exempt from section 831-3.1 and need not conduct investigations, notifications, or hearings under this section in accordance with chapter 91.

(h) For purposes of this section:

"Vulnerable adult" has the same meaning as defined in section 346-222.

"Young adult" means a person between the ages of eighteen and twenty-one or a person authorized by the Foster Care Independence Act of 1999, P.L. 106-169, or other applicable law, regardless of age, to receive benefits and services aimed at assisting youth aging out of foster care in the United States in obtaining and maintaining independent living skills."

SECTION 4. Section 378-2.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Notwithstanding subsections (b) and (c), the requirement that inquiry into and consideration of a prospective employee's conviction record

may take place only after the individual has received a conditional job offer, and the limitation to the most recent seven-year period for felony convictions and the most recent five-year period for misdemeanor convictions, excluding the period of incarceration, shall not apply to employers who are expressly permitted to inquire into an individual's criminal history for employment purposes pursuant to any federal or state law other than subsection (a), including:

- (1) The State or any of its branches, political subdivisions, or agencies pursuant to sections 78-2.7 and 831-3.1; provided that any state law permitting the State and any of its branches, political subdivisions, agencies, or semi-autonomous public bodies corporate and politic to conduct more extensive inquiries into an individual's criminal history for employment purposes than those permitted under this section shall prevail.
- (2) The department of education pursuant to section 302A-601.5;
- (3) The department of health with respect to employees, providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services pursuant to section 321-171.5;
- (4) The judiciary pursuant to section 571-34;
- (5) The counties pursuant to section 846-2.7(b)(5), (33), (34), (35), (36), and (38);
- (6) Armed security services pursuant to section 261-17(b);
- (7) Providers of a developmental disabilities domiciliary home pursuant to section 321-15.2;
- (8) Private schools pursuant to sections 302C-1 and 378-3(8);
- (9) Financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution pursuant to section 378-3(9);
- (10) Detective agencies and security guard agencies pursuant to sections 463-6(b) and 463-8(b);
- (11) Employers in the business of insurance pursuant to section 431:2-201.3;
- (12) Employers of individuals or supervisors of individuals responsible for screening passengers or property under title 49 United States Code section 44901 or individuals with unescorted access to an aircraft of an air carrier or foreign carrier or in a secured area of an airport in the United States pursuant to title 49 United States Code section 44936(a);
- (13) The department of human services pursuant to sections 346-2.5, 346-97, and 352-5.5;
- (14) The public library system pursuant to section 302A-601.5;
- (15) The department of public safety pursuant to section 353C-5;
- (16) The board of directors of a cooperative housing corporation or the manager of a cooperative housing project pursuant to section 421I-12;
- (17) The board of directors of an association under chapter 514B, or the managing agent or resident manager of a condominium pursuant to section 514B-133; and
- (18) The department of health pursuant to section 321-15.2."

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

- "(b) Criminal history record checks may be conducted by:
- (1) The department of health or its designee on operators of adult foster homes for individuals with developmental disabilities or

- developmental disabilities domiciliary homes and their employees, as provided by section 321-15.2;
- (2) The department of health or its designee on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health or health care services as provided by section 321-171.5;
- (3) The department of health or its designee on all applicants for licensure or certification for, operators for, prospective employees, adult volunteers, and all adults, except adults in care, at healthcare facilities as defined in section 321-15.2;
- (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
- (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
- (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
- (7) The county liquor commissions on employees and prospective employees involved in liquor administration, law enforcement, and liquor control investigations;
- (8) The department of human services on operators and employees of child caring institutions, child placing organizations, and ~~foster boarding~~ resource family homes as provided by section 346-17;
- (9) The department of human services on prospective adoptive parents as established under section 346-19.7;
- (10) The department of human services or its designee on applicants to operate child care facilities, household members of the applicant, prospective employees of the applicant, and new employees and household members of the provider after registration or licensure as provided by section 346-154, and persons subject to section 346-152.5;
- (11) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;
- (12) The department of health on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in community care foster family homes as provided by section 321-15.2;
- (13) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (14) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
- (15) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (16) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;

- (17) The board of private detectives and guards on applicants for private detective or private guard licensure as provided by section 463-9;
- (18) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided pursuant to section 302C-1;
- (19) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- (20) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
- (21) The department of health on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 321-15.2;
- (22) The department of human services on purchase of service contracted and subcontracted service providers and their employees [~~serving clients of the adult protective and community services branch~~] and volunteers, as provided by [~~section~~] sections 346-2.5 and 346-97;
- (23) The department of human services on foster grandparent program, senior companion program, and respite companion program participants as provided by section 346-97;
- (24) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under section 1915(c) of the Social Security Act, title 42 United States Code section 1396n(c), or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97;
- (25) The department of commerce and consumer affairs on proposed directors and executive officers of a bank, savings bank, savings and loan association, trust company, and depository financial services loan company as provided by section 412:3-201;
- (26) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;
- (27) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103;
- (28) The department of commerce and consumer affairs on:
 - (A) Each principal of every non-corporate applicant for a money transmitter license;
 - (B) Each person who upon approval of an application by a corporate applicant for a money transmitter license will be a principal of the licensee; and
 - (C) Each person who upon approval of an application requesting approval of a proposed change in control of licensee will be a

- principal of the licensee,
as provided by sections 489D-9 and 489D-15;
- (29) The department of commerce and consumer affairs on applicants for licensure and persons licensed under title 24;
 - (30) The Hawaii health systems corporation on:
 - (A) Employees;
 - (B) Applicants seeking employment;
 - (C) Current or prospective members of the corporation board or regional system board; or
 - (D) Current or prospective volunteers, providers, or contractors, in any of the corporation's health facilities as provided by section 323F-5.5;
 - (31) The department of commerce and consumer affairs on:
 - (A) An applicant for a mortgage loan originator license, or license renewal; and
 - (B) Each control person, executive officer, director, general partner, and managing member of an applicant for a mortgage loan originator company license or license renewal,
 as provided by chapter 454F;
 - (32) The state public charter school commission or public charter schools on employees, teacher trainees, prospective employees, and prospective teacher trainees in any public charter school for any position that places them in close proximity to children, as provided in section 302D-33;
 - (33) The counties on prospective employees who work with children, vulnerable adults, or senior citizens in community-based programs;
 - (34) The counties on prospective employees for fire department positions that involve contact with children or vulnerable adults;
 - (35) The counties on prospective employees for emergency medical services positions that involve contact with children or vulnerable adults;
 - (36) The counties on prospective employees for emergency management positions and community volunteers whose responsibilities involve planning and executing homeland security measures including viewing, handling, and engaging in law enforcement or classified meetings and assisting vulnerable citizens during emergencies or crises;
 - (37) The State and counties on employees, prospective employees, volunteers, and contractors whose position responsibilities require unescorted access to secured areas and equipment related to a traffic management center;
 - (38) The State and counties on employees and prospective employees whose positions involve the handling or use of firearms for other than law enforcement purposes;
 - (39) The State and counties on current and prospective systems analysts and others involved in an agency's information technology operation whose position responsibilities provide them with access to proprietary, confidential, or sensitive information;
 - (40) The department of commerce and consumer affairs on:
 - (A) Applicants for real estate appraiser licensure or certification as provided by chapter 466K;
 - (B) Each person who owns more than ten per cent of an appraisal management company who is applying for registration as an appraisal management company, as provided by section 466L-7; and

- (C) Each of the controlling persons of an applicant for registration as an appraisal management company, as provided by section 466L-7;
- (41) The department of health or its designee on all license applicants, licensees, employees, contractors, and prospective employees of medical cannabis dispensaries, and individuals permitted to enter and remain in medical cannabis dispensary facilities as provided under sections 329D-15(a)(4) and 329D-16(a)(3);
- (42) The department of commerce and consumer affairs on applicants for nurse licensure or license renewal, reactivation, or restoration as provided by sections 457-7, 457-8, 457-8.5, and 457-9;
- (43) The county police departments on applicants for permits to acquire firearms pursuant to section 134-2 and on individuals registering their firearms pursuant to section 134-3;
- (44) The department of commerce and consumer affairs on:
 - (A) Each of the controlling persons of the applicant for licensure as an escrow depository, and each of the officers, directors, and principals who will be in charge of the escrow depository's activities upon licensure; and
 - (B) Each of the controlling persons of an applicant for proposed change in control of an escrow depository licensee, and each of the officers, directors, and principals who will be in charge of the licensee's activities upon approval of the application, as provided by chapter 449;
- (45) The department of taxation on current or prospective employees or contractors who have access to federal tax information in order to comply with requirements of federal law, regulation, or procedure, as provided by section 231-1.6;
- (46) The department of labor and industrial relations on current or prospective employees or contractors who have access to federal tax information in order to comply with requirements of federal law, regulation, or procedure, as provided by section 383-110;
- (47) The department of human services on current or prospective employees or contractors who have access to federal tax information in order to comply with requirements of federal law, regulation, or procedure, and on current or prospective employees, volunteers, contractors, or contractors' employees or volunteers, subcontractors, or subcontractors' employees or volunteers, whose position places or would place them in close proximity to minors, young adults, or vulnerable adults, as provided by section 346-2.5;
- (48) The child support enforcement agency on current or prospective employees or contractors who have access to federal tax information in order to comply with federal law, regulation, or procedure, as provided by section 576D-11.5;
- (49) The department of the attorney general on current or prospective employees or employees or agents of contractors who have access to federal tax information to comply with requirements of federal law, regulation, or procedure, as provided by section 28-17;
- [(50)] The department of commerce and consumer affairs on each control person, executive officer, director, general partner, and managing member of an installment loan licensee, or an applicant for an installment loan license, as provided in chapter 480J;

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- ~~[(51)]~~ The University of Hawaii on current and prospective employees and contractors whose duties include ensuring the security of campus facilities and persons; and
- ~~[(52)]~~ Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.”

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

SECTION 7. This Act shall take effect upon its approval; provided that the amendments made to sections 378-2.5 and 846-2.7, Hawaii Revised Statutes, by sections 4 and 5 of this Act, respectively, shall not be repealed when those sections are amended on January 1, 2024, pursuant to section 62 of Act 278, Session Laws of Hawaii 2022.

(Approved June 14, 2023.)