

A Bill for an Act Relating to Education.

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

SECTION 1. The legislature finds that Hawaii's preschools and K-12 schools have increasingly served as safe havens for persons who aim to exploit their positions at schools to carry out acts that harm children, violating the trust inherent in those positions. Recent investigations and reports indicate that offenses, including sexual abuse, physical assault, and other forms of harassment, have been committed against students at various public and private preschools and K-12 campuses throughout the State. The school personnel involved in these offenses often seek to continue harming children by taking advantage of the inability of educational institutions to effectively share information.

The legislature further finds that, all too often, based on real or perceived legal restrictions, schools fail to provide vital information to one another to consider in rendering their decisions. This lack of communication allows these perpetrators continued contact with students and creates a revolving door for the perpetrators at preschools and K-12 schools in the State.

The legislature recognizes that it is essential to prevent the presence of these individuals on any preschool and K-12 campus and to prevent them from serving in any capacity that requires interaction with, or close proximity to, students. Action is required to ensure the safety of both private and public preschools and K-12 campuses and to bolster efforts to protect students from harm.

Accordingly, the purpose of this Act is to create a registry for all preschools and K-12 educational institutions within the State containing information on school employees, contractors, or volunteers for whom, as a result of an investigation, a final finding has been issued that the individual has inflicted harm on a student, with the goal of preventing those individuals from subsequently gaining employment in any other public or private preschools and K-12 institutions in Hawaii.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to part IV, subpart B, to be appropriately designated and to read as follows:

**“§302A- Harm to students registry; requirements; due process; immunity.**

(a) The department shall establish a harm to students registry, which shall be a database of employees found to have inflicted harm on a student in the State. The harm to students registry shall contain:

- (1) The employee's full legal name and any prior names used, such as maiden name or married name;
- (2) The employee's date of birth;
- (3) The employee's photograph;
- (4) The employee's last known address; and
- (5) The name of the reporting institution.

(b) The reporting institution shall certify to the department that any employee whose name and information has been transmitted to the department

for inclusion on the harm to students registry has been afforded appropriate due process, as set forth in this section.

(c) The reporting institution shall certify that there has been a final finding, including the date of the institution's final finding, resulting from the institution's investigation into whether the institution's employee engaged in acts or omissions that resulted in the infliction of harm to a student, notwithstanding whether the employee was terminated, retired, resigned, or was banned from the school pending completion of the investigation. Each institution shall complete an investigation without regard to the employment status of the employee under investigation or the status of the employee's future involvement with the institution.

(d) For purposes of this section, in order for an employee's name to be placed on the harm to students registry, the investigation conducted by the reporting institution that rendered a final finding of infliction of harm to a student shall involve, at a minimum:

- (1) An investigator who was not a party or witness to the incident under investigation and who does not report to a complaining party or accused party;
- (2) An opportunity for the complaining party and accused party to provide information to the investigator regarding the alleged misconduct or other circumstances that caused initiation of the investigation;
- (3) Representation for the accused party if required by law or any applicable collective bargaining agreement; provided that the department shall not provide representation for an accused party that is not entitled to representation pursuant to a collective bargaining agreement;
- (4) Consideration of the information provided by all parties and witnesses who participated in the investigation; and
- (5) Reasoned findings based on the information gathered that support the conclusion, by a preponderance of the evidence, that the accused party inflicted harm on a student.

(e) The reporting institution shall certify, before transmitting the employee's name and other information to the department, that:

- (1) The employee whose name is transmitted to the department for inclusion on the harm to students registry was given prior written notice of the institution's decision to transmit the employee's name for this purpose;
- (2) The employee was given the opportunity to appeal the decision; and
- (3) The employee either waived the right to appeal or lost the appeal.

The department shall rely on an institution's certification that the employee was provided due process in accordance with this section.

(f) Each institution in the State, when requested by another institution, shall share with that institution the existence of any employee investigation that includes allegations of infliction of harm to a student, including ongoing investigations.

(g) An institution that provides information or an opinion about an employee's job performance to a prospective employing institution shall be presumed to be acting in good faith and shall have qualified immunity from civil or criminal liability for disclosing the information and for the consequences of the disclosure.

(h) The good faith presumption under subsection (g) shall be rebuttable upon a showing, by a preponderance of the evidence, that the information or opinion disclosed was:

- (1) Knowingly false; or
- (2) Knowingly misleading.

(i) Nothing in subsections (g) and (h) shall affect the rights, obligations, remedies, liabilities, or standards of proof under chapters 89, 92F, 368, and 378.

(j) The harm to students registry shall be made accessible to all institutions within the State.

(k) A person whose name is listed on the harm to students registry may request the reporting institution to submit a certified request to the department to remove the person's name from the registry if new information is discovered that proves that the person has not inflicted harm on a student such that the person's name does not belong on the registry. The department shall remove the person's name from the harm to students registry upon receiving a certified request from the reporting institution to remove the person's name from the registry.

(l) Any institution certifying the inclusion of an employee on or removal of an employee from the harm to students registry, or refusing to certify the removal of an employee from the harm to students registry, shall defend and indemnify the department from any liability resulting from any claim or cause of action relating to the employee's inclusion on or removal from the registry, or relating to the institution's refusal to certify the removal of the employee from the registry.

(m) As part of the procedures followed pursuant to section 302A-601.5, the department shall consult the harm to students registry to determine whether a candidate for employment is listed on the registry.

(n) The department shall consult the harm to students registry before authorizing a volunteer's assistance in a role that involves the volunteer's interaction with, or close proximity to, a student or students.

(o) If a candidate for employment or a potential volunteer's name is listed on the harm to students registry, the department shall cease to consider the candidate for employment or shall prohibit the volunteer's assistance in a role that involves interaction with, or close proximity to, a student or students.

(p) The harm to students registry shall be exempt from disclosure under chapter 92F.

(q) As used in this section:

"Employee" means a person currently or formerly employed by the institution and includes contractors and volunteers for an institution.

"Final finding" means the conclusion of an institution's investigation that results in a determination by the institution.

"Harm to students registry" or "registry" means a database of employees and any related documents compiled by the department that a reporting institution certifies and transmits to the department.

"Inflicted harm on a student" or "infliction of harm on a student" means the act of subjecting a student to abusive acts or sexual exploitation, whether with, to, or in the presence of a student, including any:

- (1) Sexual act;
- (2) Solicitation of a sexual act, whether written, visual, verbal, or physical;
- (3) Inappropriate sexual contact or conduct, whether written, visual, verbal, or physical;
- (4) Act of child abuse;
- (5) Intentional solicitation, encouragement, or consummation of a romantic or physical relationship, which includes dating a student; or
- (6) Acts of abuse or violence, including assault, torture, or physical punishment or restraint that results in serious bodily injury.

“Institution” means any public or private educational institution that services students in early learning programs or schools, and from kindergarten through twelfth grade within the State.

“Investigation” means any fact finding by an institution relating to an accusation of infliction of harm on a student that meets the requirements of subsection (d).”

SECTION 3. Chapter 302C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§302C- Investigation of misconduct; reporting to the department of education; harm to students registry; due process; indemnity.** (a) Pursuant to the requirements of section 302A- , each private school shall certify to the department any final finding resulting from the private school’s investigation that an employee inflicted harm on a student, notwithstanding whether the employee was terminated, retired, resigned, or was banned from the school pending completion of the investigation. Each private school shall complete an investigation without regard to the status of employment of the employee under investigation or the status of the employee’s future involvement with the institution.

(b) The reporting private school shall certify, before transmitting an employee’s name and other information to the department, that:

- (1) The employee whose name and information are transmitted to the department for inclusion on the harm to students registry was given prior written notice of the private school’s decision to transmit the employee’s name and information for this purpose;
- (2) The employee was given the opportunity to appeal the decision; and
- (3) The employee either waived the right to appeal or lost the appeal.

The department shall rely on the certification of the private school that the employee was provided due process in accordance with this section.

(c) Each private school shall consult the harm to students registry to determine whether a candidate for employment at the school is listed on the registry.

(d) Each private school shall consult the harm to students registry before authorizing a volunteer’s assistance in a role that involves the volunteer’s interaction with, or close proximity to, a student or students.

(e) If a candidate for employment or a potential volunteer’s name is listed on the harm to students registry, the private school shall cease to consider the candidate for employment or shall prohibit the volunteer’s assistance in a role that involves interaction with, or close proximity to, a student or students.

(f) Each private school, when requested by another institution, shall share with that institution the existence of any employee investigation that includes allegations of infliction of harm to a student, including ongoing investigations.

(g) A private school that provides information or an opinion about an employee’s job performance to a prospective employing institution shall be presumed to be acting in good faith and shall have qualified immunity from civil or criminal liability for disclosing the information and for the consequences of the disclosure.

(h) The good faith presumption under subsection (g) shall be rebuttable upon a showing, by a preponderance of the evidence, that the information or opinion disclosed was:

- (1) Knowingly false; or
- (2) Knowingly misleading.

(i) Nothing in subsections (g) and (h) shall affect the rights, obligations, remedies, liabilities, or standards of proof under chapters 89, 92F, 368, and 378.

(j) A person whose name is listed on the harm to students registry may request the reporting private school to submit a certified request to the department to remove the person's name from the registry if new information is discovered that proves that the person has not inflicted harm on a student such that the person's name does not belong on the registry.

(k) A private school certifying the inclusion of an employee on or removal of an employee from the harm to students registry, or refusing to certify the removal of an employee from the harm to students registry, shall defend and indemnify the department from any liability resulting from any claim or cause of action relating to the employee's inclusion on or removal from the registry, or relating to the private school's refusal to certify the removal of the employee from the registry.

(l) As used in this section:

“Department” means the department of education.

“Employee” has the same meaning as defined in section 302A- (q).

“Final finding” has the same meaning as defined in section 302A- (q).

“Harm to students registry” or “registry” has the same meaning as defined in section 302A- (q).

“Inflicted harm on a student” or “infliction of harm on a student” has the same meaning as defined in section 302A- (q).

“Institution” has the same meaning as defined in section 302A- (q).

“Investigation” has the same meaning as defined in section 302A- (q).”

SECTION 4. Chapter 302D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§302D- Investigation of misconduct; reporting to the department of education; harm to students registry; due process; indemnity.** (a) Pursuant to the requirements of section 302A- , each public charter school shall certify to the department any final finding resulting from the public charter school's investigation that an employee inflicted harm on a student, notwithstanding whether the employee was terminated, retired, resigned, or was banned from the school pending completion of the investigation. Each public charter school shall complete an investigation without regard to the status of employment of the employee under investigation or the status of the employee's future involvement with the institution.

(b) The reporting public charter school shall certify, before transmitting the employee's name and other information to the department, that:

(1) The employee whose name and information are transmitted to the department for inclusion on the harm to students registry was given prior written notice of the public charter school's decision to transmit the employee's name and information for this purpose;

(2) The employee was given the opportunity to appeal the decision; and

(3) The employee either waived the right to appeal or lost the appeal.

The department shall rely on the certification of the public charter school that the employee was provided due process in accordance with this section.

(c) Each public charter school shall consult the harm to students registry to determine whether a candidate for employment at the school is listed on the registry.

(d) Each public charter school shall consult the harm to students registry before authorizing a volunteer's assistance in a role that involves the volunteer's interaction with, or close proximity to, a student or students.

(e) If a candidate for employment or a potential volunteer's name is listed on the harm to students registry, the public charter school shall cease to consider the candidate for employment or shall prohibit the volunteer's assistance in a role that involves interaction with, or close proximity to, a student or students.

(f) Each public charter school, when requested by another institution, shall share with that institution the existence of any employee investigation that includes allegations of infliction of harm to a student, including ongoing investigations.

(g) A public charter school that provides information or an opinion about an employee's job performance to a prospective employing institution shall be presumed to be acting in good faith and shall have qualified immunity from civil or criminal liability for disclosing the information and for the consequences of the disclosure.

(h) The good faith presumption under subsection (g) shall be rebuttable upon a showing, by a preponderance of the evidence, that the information or opinion disclosed was:

- (1) Knowingly false; or
- (2) Knowingly misleading.

(i) Nothing in subsections (g) and (h) shall affect the rights, obligations, remedies, liabilities, or standards of proof under chapters 89, 92F, 368, and 378.

(j) A person whose name is listed on the harm to students registry may request the reporting public charter school to submit a certified request to the department to remove the person's name from the registry if new information is discovered that proves that the person has not inflicted harm on a student such that the person's name does not belong on the registry.

(k) A public charter school certifying the inclusion of an employee on or removal of an employee from the harm to students registry, or refusing to certify the removal of an employee from the harm to students registry, shall defend and indemnify the department from any liability resulting from any claim or cause of action relating to the employee's inclusion on or removal from the registry, or relating to the public charter school's refusal to certify the removal of the employee from the registry.

(l) As used in this section:

“Department” means department of education.

“Employee” has the same meaning as defined in section 302A- (q).

“Final finding” has the same meaning as defined in section 302A- (q).

“Harm to students registry” or “registry” has the same meaning as defined in section 302A- (q).

“Inflicted harm on a student” or “infliction of harm on a student” has the same meaning as defined in section 302A- (q).

“Institution” has the same meaning as defined in section 302A- (q).

“Investigation” has the same meaning as defined in section 302A- (q).”

SECTION 5. Chapter 302L, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**§302L- Investigation of misconduct; reporting to the department of education; harm to students registry; due process; indemnity.** (a) Pursuant to the requirements of section 302A- , each early learning program or school shall certify to the department any final finding resulting from the early learning program or school's investigation that an employee inflicted harm on a student, notwithstanding whether the employee was terminated, retired, resigned, or was banned from the program or school pending completion of the investigation.

Each early learning program and school shall complete an investigation without regard to the status of employment of the employee under investigation or status of the employee's future involvement with the institution.

(b) The reporting early learning program or school shall certify, before transmitting the employee's name and other information to the department, that:

- (1) The employee whose name and information are transmitted to the department for inclusion on the harm to students registry was given prior written notice of the early learning program or school's decision to transmit the employee's name and information for this purpose;
- (2) The employee was given the opportunity to appeal the decision; and
- (3) The employee either waived the right to appeal or lost the appeal.

The department shall rely on the certification of the early learning program or school that the employee was provided due process in accordance with this section.

(c) Each early learning program or school shall consult the harm to students registry to determine whether a candidate for employment at the program or school is listed on the registry.

(d) Each early learning program or school shall consult the harm to students registry before authorizing a volunteer's assistance in a role that involves the volunteer's interaction with, or close proximity to, a student or students.

(e) If a candidate for employment or a potential volunteer's name is listed on the harm to students registry, the early learning program or school shall cease to consider the candidate for employment or shall prohibit the volunteer's assistance in a role that involves interaction with, or close proximity to, a student or students.

(f) Each early learning program or school, when requested by another institution, shall share with that institution the existence of any employee investigation that includes allegations of infliction of harm to a student, including ongoing investigations.

(g) An early learning program or school that provides information or an opinion about an employee's job performance to a prospective employing institution shall be presumed to be acting in good faith and shall have qualified immunity from civil or criminal liability for disclosing the information and for the consequences of the disclosure.

(h) The good faith presumption under subsection (g) shall be rebuttable upon a showing, by a preponderance of the evidence, that the information or opinion disclosed was:

- (1) Knowingly false; or
- (2) Knowingly misleading.

(i) Nothing in subsections (g) and (h) shall affect the rights, obligations, remedies, liabilities, or standards of proof under chapters 89, 92F, 368, and 378.

(j) A person whose name is listed on the harm to students registry may request the reporting early learning program or school to submit a certified request to the department to remove the person's name from the registry if new information is discovered that proves that the person has not inflicted harm on a student such that the person's name does not belong on the registry.

(k) An early learning program or school certifying the inclusion of an employee on or removal of an employee from the harm to students registry, or refusing to certify the removal of an employee from the harm to students registry, shall defend and indemnify the department from any liability resulting from any claim or cause of action relating to the employee's inclusion on or removal

from the registry, or relating to the early learning program or school's refusal to certify the removal of the employee from the registry.

(l) As used in this section:

“Department” means the department of education.

“Employee” has the same meaning as defined in section 302A- (q).

“Final finding” has the same meaning as defined in section 302A- (q).

“Harm to students registry” or “registry” has the same meaning as defined in section 302A- (q).

“Inflicted harm on a student” or “infliction of harm on a student” has the same meaning as defined in section 302A- (q).

“Institution” has the same meaning as defined in section 302A- (q).

“Investigation” has the same meaning as defined in section 302A- (q).”

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 7. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect on July 1, 2024.

(Approved July 1, 2024.)

**Note**

1. Edited pursuant to HRS §23G-16.5.