



GOV. MSG. NO. 1416

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 09, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 09, 2012, the following bill was signed into law:

HB1765 HD2 SD1

RELATING TO CRIMINAL HISTORY RECORD
CHECKS FOR COUNTY EMPLOYEES.
Act 299 (12)

NEIL ABERCROMBIE
Governor, State of Hawaii

A BILL FOR AN ACT

RELATING TO CRIMINAL HISTORY RECORD CHECKS FOR COUNTY EMPLOYEES.

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

SECTION 1. 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 ten-year period, 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;

(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



1 them in direct contact with clients when providing
2 non-witnessed direct mental health services pursuant
3 to section 321-171.5;

4 (4) The judiciary pursuant to section 571-34;

5 (5) The counties pursuant to section [~~846-2.7,~~] 846-
6 2.7(b)(5), (32), (33), (34), and (35);

7 (6) Armed security services pursuant to section 261-17(b);

8 (7) Providers of a developmental disabilities domiciliary
9 home pursuant to section 333F-22;

10 (8) Private schools pursuant to sections 302C-1 and 378-
11 3(8);

12 (9) Financial institutions in which deposits are insured
13 by a federal agency having jurisdiction over the
14 financial institution pursuant to section 378-3(9);

15 (10) Detective agencies and security guard agencies
16 pursuant to sections 463-6(b) and 463-8(b);

17 (11) Employers in the business of insurance pursuant to
18 section 431:2-201.3;

19 (12) Employers of individuals or supervisors of individuals
20 responsible for screening passengers or property under
21 ~~[49 U.S.C. §44901]~~ Title 49 United States Code Section
22 44901 or individuals with unescorted access to an



1 aircraft of an air carrier or foreign carrier or in a
2 secured area of an airport in the United States
3 pursuant to [~~49 U.S.C. §44936(a);~~] Title 49 United
4 States Code Section 44936(a);

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

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

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

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

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

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

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

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



- 1 (1) The department of health on operators of adult foster
2 homes or developmental disabilities domiciliary homes
3 and their employees, as provided by section 333F-22;
- 4 (2) The department of health on prospective employees,
5 persons seeking to serve as providers, or
6 subcontractors in positions that place them in direct
7 contact with clients when providing non-witnessed
8 direct mental health services as provided by section
9 321-171.5;
- 10 (3) The department of health on all applicants for
11 licensure for, operators for, prospective employees,
12 and volunteers at one or more of the following:
13 skilled nursing facility, intermediate care facility,
14 adult residential care home, expanded adult
15 residential care home, assisted living facility, home
16 health agency, hospice, adult day health center,
17 special treatment facility, therapeutic living
18 program, intermediate care facility for individuals
19 with intellectual disabilities, hospital, rural health
20 center and rehabilitation agency, and, in the case of
21 any of the above facilities operating in a private



1 residence, on any adult living in the facility other
2 than the client as provided by section 321-15.2;

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

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

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

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

17 ~~(+7)~~ (8) 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)]~~ (9) The department of human services on prospective
2 adoptive parents as established under section 346-
3 19.7;

4 ~~[(9)]~~ (10) The department of human services on applicants
5 to operate child care facilities, prospective
6 employees of the applicant, and new employees of the
7 provider after registration or licensure as provided
8 by section 346-154;

9 ~~[(10)]~~ (11) The department of human services on persons
10 exempt pursuant to section 346-152 to be eligible to
11 provide child care and receive child care subsidies as
12 provided by section 346-152.5;

13 ~~[(11)]~~ (12) The department of human services on operators
14 and employees of home and community-based case
15 management agencies and operators and other adults,
16 except for adults in care, residing in foster family
17 homes as provided by section 346-335;

18 ~~[(12)]~~ (13) The department of human services on staff
19 members of the Hawaii youth correctional facility as
20 provided by section 352-5.5;

21 ~~[(13)]~~ (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 ~~[(14)]~~ (15) The judiciary on employees and applicants at
6 detention and shelter facilities as provided by
7 section 571-34;

8 ~~[(15)]~~ (16) The department of public safety on employees and
9 prospective employees who are directly involved with
10 the treatment and care of persons committed to a
11 correctional facility or who possess police powers
12 including the power of arrest as provided by section
13 353C-5;

14 ~~[(16)]~~ (17) The ~~[department of commerce and consumer~~
15 ~~affairs]~~ board of private detectives and guards on
16 applicants for private detective or private guard
17 licensure as provided by section 463-9;

18 ~~[(17)]~~ (18) Private schools and designated organizations on
19 employees and prospective employees who may be in
20 positions that necessitate close proximity to
21 children; provided that private schools and designated
22 organizations receive only indications of the states



1 from which the national criminal history record
2 information was provided pursuant to section 302C-1;

3 ~~[(18)]~~ (19) The public library system on employees and
4 prospective employees whose positions place them in
5 close proximity to children as provided by section
6 302A-601.5;

7 ~~[(19)]~~ (20) The State or any of its branches, political
8 subdivisions, or agencies on applicants and employees
9 holding a position that has the same type of contact
10 with children, vulnerable adults, or persons committed
11 to a correctional facility as other public employees
12 who hold positions that are authorized by law to
13 require criminal history record checks as a condition
14 of employment as provided by section 78-2.7;

15 ~~[(20)]~~ (21) The department of human services on licensed
16 adult day care center operators, employees, new
17 employees, subcontracted service providers and their
18 employees, and adult volunteers as provided by section
19 346-97;

20 ~~[(21)]~~ (22) The department of human services on purchase of
21 service contracted and subcontracted service providers
22 and their employees serving clients of the adult and



1 community care services branch, as provided by section
2 346-97;

3 ~~[(+22)]~~ (23) The department of human services on foster
4 grandparent program, retired and senior volunteer
5 program, senior companion program, and respite
6 companion program participants as provided by section
7 346-97;

8 ~~[(+23)]~~ (24) The department of human services on contracted
9 and subcontracted service providers and their current
10 and prospective employees that provide home and
11 community-based services under Section 1915(c) of the
12 Social Security Act, Title 42 United States Code
13 Section 1396n(c), or under any other applicable
14 section or sections of the Social Security Act for the
15 purposes of providing home and community-based
16 services, as provided by section 346-97;

17 ~~[(+24)]~~ (25) The department of commerce and consumer affairs
18 on proposed directors and executive officers of a
19 bank, savings bank, savings and loan association,
20 trust company, and depository financial services loan
21 company as provided by section 412:3-201;



1 ~~[(+25)]~~ (26) The department of commerce and consumer affairs
2 on proposed directors and executive officers of a
3 nondepository financial services loan company as
4 provided by section 412:3-301;

5 ~~[(+26)]~~ (27) The department of commerce and consumer affairs
6 on the original chartering applicants and proposed
7 executive officers of a credit union as provided by
8 section 412:10-103;

9 ~~[(+27)]~~ (28) The department of commerce and consumer affairs
10 on:

11 (A) Each principal of every non-corporate applicant
12 for a money transmitter license; and

13 (B) The executive officers, key shareholders, and
14 managers in charge of a money transmitter's
15 activities of every corporate applicant for a
16 money transmitter license,

17 as provided by section 489D-9;

18 ~~[(+28)]~~ (29) The department of commerce and consumer affairs
19 on applicants for licensure and persons licensed under
20 title 24;

21 ~~[(+29)]~~ (30) The Hawaii health systems corporation on:

22 (A) Employees;



1 (B) Applicants seeking employment;

2 (C) Current or prospective members of the corporation
3 board or regional system board; or

4 (D) Current or prospective volunteers, providers, or
5 contractors,

6 in any of the corporation's health facilities as
7 provided by section 323F-5.5;

8 ~~[(30)]~~ (31) The department of commerce and consumer affairs
9 on:

10 (A) An applicant for a mortgage loan originator
11 license; and

12 (B) Each control person, executive officer, director,
13 general partner, and manager of an applicant for
14 a mortgage loan originator company license,
15 as provided by chapter 454F; [and]

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

19 (33) The counties on prospective employees for fire
20 department positions which involve contact with
21 children or dependent adults;



1 (34) The counties on prospective employees for emergency
2 medical services positions which involve contact with
3 children or dependent adults;

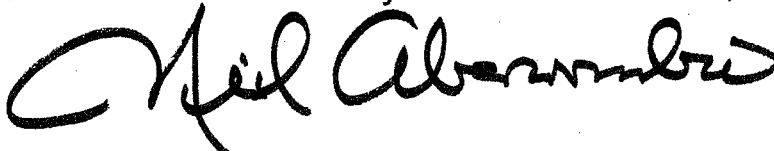
4 (35) The counties on prospective employees for emergency
5 management positions and community volunteers whose
6 responsibilities involve planning and executing
7 homeland security measures including viewing,
8 handling, and engaging in law enforcement or
9 classified meetings and assisting vulnerable and
10 disabled citizens during emergencies or crises; and

11 ~~[(31)]~~ (36) Any other organization, entity, or the State,
12 its branches, political subdivisions, or agencies as
13 may be authorized by state law."

14 SECTION 3. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

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

APPROVED this 9 day of JUL, 2012



GOVERNOR OF THE STATE OF HAWAII

