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# A BILL FOR AN ACT

RELATING TO REQUIREMENTS FOR CHILD CARE PROVIDERS.

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

1 SECTION 1. Section 346-151, Hawaii Revised Statutes, is  
2 amended by amending the definition of "child abuse record check"  
3 to read as follows:

4 "Child abuse record check" means an examination of an  
5 individual's child abuse confirmation history through:

- 6 (1) An initial name inquiry into the state child welfare  
7 record files;
- 8 (2) Subsequent child abuse confirmation history checks for  
9 new hires [~~and~~], rehires [~~+~~], and household members;
- 10 (3) [~~An annual~~] A name inquiry into state child welfare  
11 record files [~~-~~]; and
- 12 (4) A name inquiry into other states' child abuse and  
13 neglect registries in states where the individual has  
14 resided during the past five years."

15 SECTION 2. Section 346-152.5, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "§346-152.5 [~~Criminal history record checks, child abuse~~  
18 ~~record checks, and adult abuse perpetrator checks] Requirements~~



1 for persons exempt pursuant to section 346-152. (a) To be  
2 eligible to provide child care [~~and to receive~~] for a child  
3 whose family receives a child care subsidy from the department,  
4 persons exempt pursuant to section 346-152 shall be required to  
5 agree to [a]:

6 (1) A criminal history record check, a sex offender  
7 registry check, a child abuse record check, and an  
8 adult abuse perpetrator check in the same manner as a  
9 prospective applicant or licensed provider in  
10 accordance with section 346-154; provided that the  
11 criminal history record check shall be limited to a  
12 criminal history record check conducted through files  
13 maintained by the Hawaii criminal justice data center  
14 for the following relatives of the child who requires  
15 care: grandparents, great-grandparents, aunts,  
16 uncles, and siblings aged eighteen or older living in  
17 a separate residence [~~shall be required to agree to a~~  
18 criminal history record check conducted through files  
19 maintained by the Hawaii criminal justice data center,  
20 a child abuse record check, and an adult abuse  
21 perpetrator check.] ;



- 1        (2) Completion of a pre-service or orientation training
- 2                    and ongoing training in health and safety topics; and
- 3        (3) Any monitoring inspection visits by the department or
- 4                    its designee to determine compliance with minimum
- 5                    health and safety standards at the location where
- 6                    child care is being provided for a child whose family
- 7                    receives a child care subsidy from the department,
- 8                    including investigations by the department when the
- 9                    department has received a report of health and safety
- 10                   concerns.

11        (b) For the purposes of this section, "adult abuse  
 12 perpetrator check" means a search to determine whether an  
 13 individual is known to the department as a perpetrator of abuse  
 14 as defined in section 346-222, by means of a search of the  
 15 individual's name and birth date in the department's adult  
 16 protective services file."

17        SECTION 3. Section 346-153, Hawaii Revised Statutes, is  
 18 amended to read as follows:

19        "[+]§346-153[+] Records of deficiencies and complaints;  
 20 release to public. For every child care facility, the  
 21 department shall maintain records for the current and previous



1 two years of: results of its inspections; notifications to  
 2 providers of deficiencies; corrective action taken; complaints  
 3 of violations of rules adopted under this part; results of its  
 4 investigations; resolution of complaints; and suspensions,  
 5 revocations, reinstatements, restorations, and reissuances of  
 6 licenses, temporary permits, and registrations issued under this  
 7 part. Notwithstanding any other law to the contrary, [~~such~~  
 8 ~~records~~] the records described in this section shall be  
 9 available for inspection in the manner set forth in [~~section 92-~~  
 10 ~~517~~] chapter 92F and may be posted by the department on a public  
 11 website; provided that with respect to records of family child  
 12 care homes and group child care homes, sensitive personal  
 13 information, including home addresses, or information provided  
 14 to the department with the understanding that it would not be  
 15 publicly divulged shall be deleted or obliterated prior to  
 16 making the records available to the public. Nothing in this  
 17 section shall authorize the department to release the names of  
 18 or any other identifying information on complainants. The  
 19 department may withhold information on a complaint for which an  
 20 investigation is being conducted for not more than ten working  
 21 days following the date of filing of the complaint; provided



1 that if an investigation relates to an alleged criminal offense,  
2 no information shall be released until the investigation has  
3 been completed and the director has determined that no legal  
4 proceeding will be jeopardized by its release."

5 SECTION 4. Section 346-154, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "§346-154 [~~Criminal history checks, child abuse record~~  
8 ~~checks, and adult abuse perpetrator~~] Background checks. (a)

9 The department shall develop standards to ensure the reputable  
10 and responsible character of an applicant to operate a child  
11 care facility, prospective employees of the applicant, household  
12 members, and new employees or household members of the provider  
13 after registration or licensure, which shall include criminal  
14 history record checks in accordance with section 846-2.7, sex  
15 offender registry checks, child abuse record checks, and adult  
16 abuse perpetrator checks.

17 For the purposes of this section, "adult abuse perpetrator  
18 check" means a search to determine whether an individual is  
19 known to the department as a perpetrator of abuse as defined in  
20 section 346-222, by means of a search of the individual's name



1 and birth date in the department's adult protective services  
2 file.

3 (b) An applicant to operate a child care facility shall:

4 (1) Be subject to criminal history record checks in  
5 accordance with section 846-2.7;

6 (2) Submit to the department or its designee, under  
7 penalty of law, statements signed by the applicant  
8 [~~and~~], prospective employees of the applicant, and  
9 household members of the applicant indicating whether  
10 the applicant [~~or~~], any of the prospective employees,  
11 or any of the household members has ever been  
12 confirmed to have abused or neglected a child or  
13 vulnerable adult, including threatened harm; and

14 (3) Provide consent to the department or its designee to  
15 conduct a criminal history record check in accordance  
16 with section 846-2.7, a sex offender registry check, a  
17 child abuse record check, and an adult abuse  
18 perpetrator check, and to obtain criminal history  
19 information, sex offender registry information, child  
20 abuse record information, and adult abuse perpetrator  
21 information for verification.



- 1 (c) A provider shall:
- 2 (1) Be subject to criminal history record checks in
- 3 accordance with section 846-2.7 [~~7~~] and sex offender
- 4 registry checks;
- 5 (2) Submit to the department or its designee a statement
- 6 signed by any household member or any employee hired
- 7 after the initial licensure or registration that
- 8 requires the household member or employee to indicate,
- 9 under penalty of law, whether the household member or
- 10 employee has ever been confirmed to have abused or
- 11 neglected a child or vulnerable adult, including
- 12 threatened harm; and
- 13 (3) Provide consent to the department or its designee to
- 14 conduct a criminal history record check in accordance
- 15 with section 846-2.7, a sex offender registry check, a
- 16 child abuse record check, and an adult abuse
- 17 perpetrator check, and to obtain criminal history
- 18 information, sex offender registry information, child
- 19 abuse record information, and adult abuse perpetrator
- 20 check information for verification.



1 (d) The department or its designee shall obtain [~~criminal~~]  
2 information on the applicant, any household member, and any  
3 prospective employee of the applicant, including any household  
4 member or new employee retained after the applicant is issued a  
5 registration or license under this part, from the following  
6 sources:

7 (1) Criminal history record information through the Hawaii  
8 criminal justice data center in accordance with  
9 section 846-2.7 [~~r~~];

10 (2) National and state sex offender registries; and  
11 [~~child~~]

12 (3) Child abuse record information and adult abuse  
13 perpetrator check information from the department in  
14 accordance with departmental procedures [~~on the~~  
15 ~~applicant and any prospective employee of the~~  
16 ~~applicant, including any new employee retained after~~  
17 ~~the applicant is issued a registration or license~~  
18 ~~under this part, which shall include an annual name~~  
19 ~~inquiry into the state criminal history record files].~~

20 (e) The department may deny an application for or revoke a  
21 license or registration to operate a child care facility if:

1 (1) The applicant, a household member, or any prospective  
2 employee has been convicted of a crime other than a  
3 minor traffic violation involving a fine of \$50 or  
4 less, or ever been confirmed to have abused or  
5 neglected a child or vulnerable adult [~~, including~~  
6 ~~threatened harm~~]; [~~and~~] or

7 (2) The department finds that the criminal history,  
8 history of registration as a sex offender, or child  
9 abuse record or adult abuse perpetrator check record  
10 of that applicant, household member, or prospective  
11 employee indicates that the applicant, household  
12 member, or prospective employee may pose a risk to the  
13 health, safety, or well-being of children.

14 (f) The department may request the provider to terminate  
15 the employment or residency of a new employee or household  
16 member or may suspend or revoke the license or registration of  
17 the provider who employs a new employee or who allows continued  
18 residency of a household member if:

19 (1) The employee or household member has been convicted of  
20 a crime other than a minor traffic violation involving  
21 a fine of \$50 or less, or ever been confirmed to have



1 abused or neglected a child or vulnerable adult [~~7~~  
2 ~~including threatened harm~~]; [and] or

3 (2) The department finds that the criminal history,  
4 history of registration as a sex offender, or child  
5 abuse record or adult abuse perpetrator check record  
6 of the new employee or household member indicates that  
7 the new employee or household member may pose a risk  
8 to the health, safety, or well-being of children.

9 (g) The department shall deny an application for a license  
10 or registration, shall request the provider to terminate the  
11 employment or residency of a new employee or household member,  
12 or shall suspend or revoke the license or registration of the  
13 provider who employs a new employee or who allows continued  
14 residency of a household member if the applicant, employee, or  
15 household member:

16 (1) Refuses to consent to the background checks;

17 (2) Knowingly makes a materially false statement in  
18 connection with the background checks; or

19 (3) Is registered, or required to be registered, on the  
20 national sex offender registry or any state sex  
21 offender registry.



1       (h) The department or its designee, in obtaining and  
2 relying upon the background check information, is presumed to be  
3 acting in good faith and shall be immune from civil liability  
4 for taking or recommending action based upon the background  
5 check information. The presumption of good faith may be  
6 rebutted upon a showing of proof by a preponderance of the  
7 evidence that the department or its designee relied upon  
8 information or opinion that it knew was false or misleading or  
9 that such reliance was not reasonable."

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

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

13       (1) The department of health or its designee on operators  
14       of adult foster homes for individuals with  
15       developmental disabilities or developmental  
16       disabilities domiciliary homes and their employees, as  
17       provided by section 321-15.2;

18       (2) The department of health or its designee on  
19       prospective employees, persons seeking to serve as  
20       providers, or subcontractors in positions that place  
21       them in direct contact with clients when providing



- 1 non-witnessed direct mental health or health care  
2 services as provided by section 321-171.5;
- 3 (3) The department of health or its designee on all  
4 applicants for licensure or certification for,  
5 operators for, prospective employees, adult  
6 volunteers, and all adults, except adults in care, at  
7 ~~[health-care]~~ healthcare facilities as defined in  
8 section 321-15.2;
- 9 (4) The department of education on employees, prospective  
10 employees, and teacher trainees in any public school  
11 in positions that necessitate close proximity to  
12 children as provided by section 302A-601.5;
- 13 (5) The counties on employees and prospective employees  
14 who may be in positions that place them in close  
15 proximity to children in recreation or child care  
16 programs and services;
- 17 (6) The county liquor commissions on applicants for liquor  
18 licenses as provided by section 281-53.5;
- 19 (7) The county liquor commissions on employees and  
20 prospective employees involved in liquor



- 1 administration, law enforcement, and liquor control  
2 investigations;
- 3 (8) The department of human services on operators and  
4 employees of child caring institutions, child placing  
5 organizations, and foster boarding homes as provided  
6 by section 346-17;
- 7 (9) The department of human services on prospective  
8 adoptive parents as established under section  
9 346-19.7;
- 10 (10) The department of human services or its designee on  
11 applicants to operate child care facilities, household  
12 members of the applicant, prospective employees of the  
13 applicant, and new employees and household members of  
14 the provider after registration or licensure as  
15 provided by section 346-154 [7], and persons subject to  
16 section 346-152.5;
- 17 (11) The department of human services on persons exempt  
18 pursuant to section 346-152 to be eligible to provide  
19 child care and receive child care subsidies as  
20 provided by section 346-152.5;



- 1       (12) The department of health on operators and employees of
- 2             home and community-based case management agencies and
- 3             operators and other adults, except for adults in care,
- 4             residing in community care foster family homes as
- 5             provided by section 321-15.2;
  
- 6       (13) The department of human services on staff members of
- 7             the Hawaii youth correctional facility as provided by
- 8             section 352-5.5;
  
- 9       (14) The department of human services on employees,
- 10            prospective employees, and volunteers of contracted
- 11            providers and subcontractors in positions that place
- 12            them in close proximity to youth when providing
- 13            services on behalf of the office or the Hawaii youth
- 14            correctional facility as provided by section 352D-4.3;
  
- 15       (15) The judiciary on employees and applicants at detention
- 16            and shelter facilities as provided by section 571-34;
  
- 17       (16) The department of public safety on employees and
- 18            prospective employees who are directly involved with
- 19            the treatment and care of persons committed to a
- 20            correctional facility or who possess police powers



- 1 including the power of arrest as provided by section  
2 353C-5;
- 3 (17) The board of private detectives and guards on  
4 applicants for private detective or private guard  
5 licensure as provided by section 463-9;
- 6 (18) Private schools and designated organizations on  
7 employees and prospective employees who may be in  
8 positions that necessitate close proximity to  
9 children; provided that private schools and designated  
10 organizations receive only indications of the states  
11 from which the national criminal history record  
12 information was provided pursuant to section 302C-1;
- 13 (19) The public library system on employees and prospective  
14 employees whose positions place them in close  
15 proximity to children as provided by section  
16 302A-601.5;
- 17 (20) The State or any of its branches, political  
18 subdivisions, or agencies on applicants and employees  
19 holding a position that has the same type of contact  
20 with children, vulnerable adults, or persons committed  
21 to a correctional facility as other public employees



- 1           who hold positions that are authorized by law to  
2           require criminal history record checks as a condition  
3           of employment as provided by section 78-2.7;
- 4       (21) The department of health on licensed adult day care  
5           center operators, employees, new employees,  
6           subcontracted service providers and their employees,  
7           and adult volunteers as provided by section 321-15.2;
- 8       (22) The department of human services on purchase of  
9           service contracted and subcontracted service providers  
10          and their employees serving clients of the adult  
11          protective and community services branch, as provided  
12          by section 346-97;
- 13       (23) The department of human services on foster grandparent  
14          program, senior companion program, and respite  
15          companion program participants as provided by section  
16          346-97;
- 17       (24) The department of human services on contracted and  
18          subcontracted service providers and their current and  
19          prospective employees that provide home and community-  
20          based services under section 1915(c) of the Social  
21          Security Act, title 42 United States Code section



1 1396n(c), or under any other applicable section or  
2 sections of the Social Security Act for the purposes  
3 of providing home and community-based services, as  
4 provided by section 346-97;

5 (25) The department of commerce and consumer affairs on  
6 proposed directors and executive officers of a bank,  
7 savings bank, savings and loan association, trust  
8 company, and depository financial services loan  
9 company as provided by section 412:3-201;

10 (26) The department of commerce and consumer affairs on  
11 proposed directors and executive officers of a  
12 nondepository financial services loan company as  
13 provided by section 412:3-301;

14 (27) The department of commerce and consumer affairs on the  
15 original chartering applicants and proposed executive  
16 officers of a credit union as provided by section  
17 412:10-103;

18 (28) The department of commerce and consumer affairs on:  
19 (A) Each principal of every non-corporate applicant  
20 for a money transmitter license; and



- 1 (B) The executive officers, key shareholders, and
- 2 managers in charge of a money transmitter's
- 3 activities of every corporate applicant for a
- 4 money transmitter license,
- 5 as provided by sections 489D-9 and 489D-15;
- 6 (29) The department of commerce and consumer affairs on
- 7 applicants for licensure and persons licensed under
- 8 title 24;
- 9 (30) The Hawaii health systems corporation on:
- 10 (A) Employees;
- 11 (B) Applicants seeking employment;
- 12 (C) Current or prospective members of the corporation
- 13 board or regional system board; or
- 14 (D) Current or prospective volunteers, providers, or
- 15 contractors,
- 16 in any of the corporation's health facilities as
- 17 provided by section 323F-5.5;
- 18 (31) The department of commerce and consumer affairs on:
- 19 (A) An applicant for a mortgage loan originator
- 20 license; and



1 (B) Each control person, executive officer, director,  
2 general partner, and manager of an applicant for  
3 a mortgage loan originator company license,  
4 as provided by chapter 454F;

5 (32) The state public charter school commission or public  
6 charter schools on employees, teacher trainees,  
7 prospective employees, and prospective teacher  
8 trainees in any public charter school for any position  
9 that places them in close proximity to children, as  
10 provided in section 302D-33;

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

14 (34) The counties on prospective employees for fire  
15 department positions which involve contact with  
16 children or vulnerable adults;

17 (35) The counties on prospective employees for emergency  
18 medical services positions which involve contact with  
19 children or vulnerable adults;

20 (36) The counties on prospective employees for emergency  
21 management positions and community volunteers whose



- 1           responsibilities involve planning and executing  
2           homeland security measures including viewing,  
3           handling, and engaging in law enforcement or  
4           classified meetings and assisting vulnerable citizens  
5           during emergencies or crises;
- 6       (37) The State and counties on employees, prospective  
7           employees, volunteers, and contractors whose position  
8           responsibilities require unescorted access to secured  
9           areas and equipment related to a traffic management  
10          center;
- 11       (38) The State and counties on employees and prospective  
12           employees whose positions involve the handling or use  
13           of firearms for other than law enforcement purposes;
- 14       (39) The State and counties on current and prospective  
15           systems analysts and others involved in an agency's  
16           information technology operation whose position  
17           responsibilities provide them with access to  
18           proprietary, confidential, or sensitive information;
- 19       (40) The department of commerce and consumer affairs on  
20           applicants for real estate appraiser licensure or  
21           certification as provided by chapter 466K;



1 (41) The department of health or its designee on all  
2 license applicants, licensees, employees, contractors,  
3 and prospective employees of medical marijuana  
4 dispensaries, and individuals permitted to enter and  
5 remain in medical marijuana dispensary facilities as  
6 provided under sections 329D-15(a)(4) and 329D-  
7 16(a)(3); and

8 (42) Any other organization, entity, or the State, its  
9 branches, political subdivisions, or agencies as may  
10 be authorized by state law."

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

13 SECTION 7. This Act shall take effect on July 1, 2016.



**Report Title:**

Child Care Providers; Background Checks; Health and Safety

**Description:**

Brings state law into alignment with changes to the federal Child Care and Development Block Grant, P.L. 113-186. Requires DHS to conduct background checks, including sex offender registry checks, on household members and all employees of child care facilities and providers that are licensed or registered by or receive subsidies from the State, to set health and safety standards, and enforce requirements. (HB2343 CD1)

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

