

JAN 27 2016

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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.] ;

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- 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  
22 two years of: results of its inspections; notifications to

1 providers of deficiencies; corrective action taken; complaints  
2 of violations of rules adopted under this part; results of its  
3 investigations; resolution of substantiated complaints; and  
4 suspensions, revocations, reinstatements, restorations, and  
5 reissuances of licenses, temporary permits, and registrations  
6 issued under this part. Notwithstanding any other law to the  
7 contrary, [~~sueh~~] records of deficiencies and substantiated  
8 complaints shall be available for inspection in the manner set  
9 forth in section [~~92-51;~~] 92F-11 and may be posted by the  
10 department on a public website; provided that with respect to  
11 records of family child care homes and group child care homes,  
12 sensitive personal information, including home addresses, or  
13 information provided to the department with the understanding  
14 that it would not be publicly divulged shall be deleted or  
15 obliterated prior to making the records available to the  
16 public. Nothing in this section shall authorize the department  
17 to release the names of or any other identifying information on  
18 complainants. The department may withhold information on a  
19 complaint for which an investigation is being conducted for not  
20 more than ten working days following the date of filing of the  
21 complaint; provided that if an investigation relates to an  
22 alleged criminal offense, no information shall be released until

1 the investigation has been completed and the director has  
2 determined that no legal proceeding will be jeopardized by its  
3 release."

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

6 "§346-154 [~~Criminal history checks, child abuse record~~  
7 ~~checks, and adult abuse perpetrator]~~ Background checks. (a)

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

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

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

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

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1           (2) Submit to the department or its designee a statement  
2           signed by any household member or any employee hired  
3           after the initial licensure or registration that  
4           requires the household member or employee to indicate,  
5           under penalty of law, whether the household member or  
6           employee has ever been confirmed to have abused or  
7           neglected a child or vulnerable adult, including  
8           threatened harm; and

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

17          (d) The department or its designee shall obtain [~~eriminal~~]  
18          information on the applicant, household member, and any  
19          prospective employee of the applicant, including any household  
20          member or new employee retained after the applicant is issued a  
21          registration or license under this part, from the following  
22          sources:

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

4        (2) National and state sex offender registries; and  
5                [~~child~~]

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

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

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

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

8           (f) The department may request the provider to terminate  
9           the employment or residency of a new employee or household  
10          member or may suspend or revoke the license or registration of  
11          the provider who employs a new employee or who allows continued  
12          residency of a household member if:

13           (1) The employee or household member has been convicted of  
14           a crime other than a minor traffic violation involving  
15           a fine of \$50 or less, or ever been confirmed to have  
16           abused or neglected a child or vulnerable adult[  
17           ~~including threatened harm~~]; [and] or

18           (2) The department finds that the criminal history,  
19           history of registration as a sex offender, or child  
20           abuse record or adult abuse perpetrator check record  
21           of the new employee or household member indicates that

1           the new employee or household member may pose a risk  
2           to the health, safety, or well-being of children.

3           (g) The department shall deny an application for a license  
4 or registration, shall request the provider to terminate the  
5 employment or residency of a new employee or household member,  
6 or shall suspend or revoke the license or registration of the  
7 provider who employs a new employee or who allows continued  
8 residency of a household member if the applicant, employee, or  
9 household member:

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

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

13           (3) Is registered, or required to be registered, on the  
14           national sex offender registry or any state sex  
15           offender registry.

16           (h) The department or its designee, in obtaining and  
17 relying upon the background check information, is presumed to be  
18 acting in good faith and shall be immune from civil liability  
19 for taking or recommending action based upon the background  
20 check information. The presumption of good faith may be  
21 rebutted upon a showing of proof by a preponderance of the  
22 evidence that the department or its designee relied upon

1 information or opinion that it knew was false or misleading or  
2 that such reliance was not reasonable."

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

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

6 (1) The department of health or its designee on operators  
7 of adult foster homes for individuals with  
8 developmental disabilities or developmental  
9 disabilities domiciliary homes and their employees, as  
10 provided by section 321-15.2;

11 (2) The department of health or its designee on  
12 prospective employees, persons seeking to serve as  
13 providers, or subcontractors in positions that place  
14 them in direct contact with clients when providing  
15 non-witnessed direct mental health or health care  
16 services as provided by section 321-171.5;

17 (3) The department of health or its designee on all  
18 applicants for licensure or certification for,  
19 operators for, prospective employees, adult  
20 volunteers, and all adults, except adults in care, at  
21 health care facilities as defined in section 321-15.2;

- 1           (4) The department of education on employees, prospective  
2           employees, and teacher trainees in any public school  
3           in positions that necessitate close proximity to  
4           children as provided by section 302A-601.5;
- 5           (5) The counties on employees and prospective employees  
6           who may be in positions that place them in close  
7           proximity to children in recreation or child care  
8           programs and services;
- 9           (6) The county liquor commissions on applicants for liquor  
10          licenses as provided by section 281-53.5;
- 11          (7) The county liquor commissions on employees and  
12          prospective employees involved in liquor  
13          administration, law enforcement, and liquor control  
14          investigations;
- 15          (8) The department of human services on operators and  
16          employees of child caring institutions, child placing  
17          organizations, and foster boarding homes as provided  
18          by section 346-17;
- 19          (9) The department of human services on prospective  
20          adoptive parents as established under section  
21          346-19.7;

- 1           (10) The department of human services or its designee on  
2           applicants to operate child care facilities, household  
3           members, prospective employees of the applicant, and  
4           new employees and household members of the provider  
5           after registration or licensure as provided by section  
6           346-154, and persons subject to the provisions of  
7           section 346-152.5;
- 8           (11) The department of human services on persons exempt  
9           pursuant to section 346-152 to be eligible to provide  
10          child care and receive child care subsidies as  
11          provided by section 346-152.5;
- 12          (12) The department of health on operators and employees of  
13          home and community-based case management agencies and  
14          operators and other adults, except for adults in care,  
15          residing in community care foster family homes as  
16          provided by section 321-15.2;
- 17          (13) The department of human services on staff members of  
18          the Hawaii youth correctional facility as provided by  
19          section 352-5.5;
- 20          (14) The department of human services on employees,  
21          prospective employees, and volunteers of contracted  
22          providers and subcontractors in positions that place

- 1           them in close proximity to youth when providing  
2           services on behalf of the office or the Hawaii youth  
3           correctional facility as provided by section 352D-4.3;  
4       (15) The judiciary on employees and applicants at detention  
5           and shelter facilities as provided by section 571-34;  
6       (16) The department of public safety on employees and  
7           prospective employees who are directly involved with  
8           the treatment and care of persons committed to a  
9           correctional facility or who possess police powers  
10          including the power of arrest as provided by section  
11          353C-5;  
12       (17) The board of private detectives and guards on  
13          applicants for private detective or private guard  
14          licensure as provided by section 463-9;  
15       (18) Private schools and designated organizations on  
16          employees and prospective employees who may be in  
17          positions that necessitate close proximity to  
18          children; provided that private schools and designated  
19          organizations receive only indications of the states  
20          from which the national criminal history record  
21          information was provided pursuant to section 302C-1;

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- 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 health on licensed adult day care  
14                  center operators, employees, new employees,  
15                  subcontracted service providers and their employees,  
16                  and adult volunteers as provided by section 321-15.2;
- 17          (22) The department of human services on purchase of service  
18                  contracted and subcontracted service providers and  
19                  their employees serving clients of the [adult  
20                  protective and community services branch], as provided  
21                  by section 346-97;

- 1       (23) The department of human services on foster grandparent  
2           program, senior companion program, and respite  
3           companion program participants as provided by section  
4           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;

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- 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, as provided by  
12                           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

- 1 (D) Current or prospective volunteers, providers, or  
2 contractors, in any of the corporation's health  
3 facilities as provided by section 323F-5.5;
- 4 (31) The department of commerce and consumer affairs on:  
5 (A) An applicant for a mortgage loan originator  
6 license; and  
7 (B) Each control person, executive officer, director,  
8 general partner, and manager of an applicant for  
9 a mortgage loan originator company license, as  
10 provided by chapter 454F;
- 11 (32) The state public charter school commission or public  
12 charter schools on employees, teacher trainees,  
13 prospective employees, and prospective teacher  
14 trainees in any public charter school for any position  
15 that places them in close proximity to children, as  
16 provided in section 302D-33;
- 17 (33) The counties on prospective employees who work with  
18 children, vulnerable adults, or senior citizens in  
19 community-based programs;
- 20 (34) The counties on prospective employees for fire  
21 department positions which involve contact with  
22 children or vulnerable adults;

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- 1           (35) The counties on prospective employees for emergency  
2                    medical services positions which involve contact with  
3                    children or 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 citizens  
10                  during emergencies or crises;
- 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 State and counties on employees and prospective  
17                    employees whose positions involve the handling or use  
18                    of firearms for other than law enforcement purposes;
- 19          (39) The State and counties on current and prospective  
20                    systems analysts and others involved in an agency's  
21                    information technology operation whose position

1 responsibilities provide them with access to  
2 proprietary, confidential, or sensitive information;

3 (40) The department of commerce and consumer affairs on  
4 applicants for real estate appraiser licensure or  
5 certification as provided by chapter 466K;

6 (41) The department of health or its designee on all  
7 license applicants, licensees, employees, contractors,  
8 and prospective employees of medical marijuana  
9 dispensaries, and individuals permitted to enter and  
10 remain in medical marijuana dispensary facilities as  
11 provided under sections 329D-15(a)(4) and 329D-  
12 16(a)(3); and

13 (42) Any other organization, entity, or the State, its  
14 branches, political subdivisions, or agencies as may  
15 be authorized by state law.

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

18 SECTION 7. This Act, upon its approval, shall take effect  
19 on July 1, 2016.

20  
21 INTRODUCED BY:   
22 BY REQUEST

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**Report Title:**

Requirements for Child Care Providers

**Description:**

Brings state law into alignment with changes to federal law regarding the Child Care and Development Block Grant, Public Law 113-186. Requires the Department of Human Services to establish minimum health and safety requirements for child care providers, including applicants, household members, employees, and prospective employees of licensed and registered child care homes and facilities, as well as persons exempt pursuant to section 346-152, Hawaii Revised Statutes, to be eligible to provide care to a child whose family receives a child care subsidy from the Department.

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

JUSTIFICATION SHEET

DEPARTMENT: Human Services.

TITLE: A BILL FOR AN ACT RELATING TO REQUIREMENTS FOR CHILD CARE PROVIDERS.

PURPOSE: This bill would bring state law into alignment with changes to federal law regarding the Child Care and Development Block Grant, Public Law 113-186. Specifically, this bill adds requirements for non-licensed providers caring for a child whose family receives a child care subsidy from the Department, creates mandatory disqualifications, and requires the Department of Human Services to establish minimum health and safety requirements for persons exempt pursuant to section 346-152, Hawaii Revised Statutes, to be eligible to provide child care to a child whose family receives a child care subsidy from the Department. The requirements include allowing the Department to require training and monitoring of persons exempt pursuant to section 346-152, Hawaii Revised Statutes, to be eligible to provide child care to a child whose family receives a child care subsidy from the Department.

MEANS: Amend sections 346-151, 346-152.5, 346-153, 346-154, and 846-2.7(b), Hawaii Revised Statutes.

JUSTIFICATION: The Department of Human Services is authorized to license group child care centers and homes, infant and toddler centers, and before- and after-school programs. Family child care homes are also registered with the Department of Human Services. The Department of Human Services also provides child care subsidies to families whose children may be cared for by persons who are exempt from licensure or registration, under section 346-152.

These amendments would clarify that persons who are exempt from licensure or registration, under section 346-152, and are caring for a child whose family receives child care subsidies from the Department are required to meet minimum requirements determined by the Department, including training and monitoring inspections. These amendments clarify that background checks for licensed and registered child care providers as well as license-exempt child care providers caring for children whose families receive child care subsidies shall include sex offender registry checks and child abuse and neglect registry checks in states where the individual has previously resided. These requirements for child care providers are required under the Child Care and Development Block Grant, Public Law 113-186, to ensure the health and safety of children in care.

Impact on the public: Amendments will increase health and safety requirements for children in care as license-exempt child care providers of children of current and future families receiving child care subsidies from the Department would be required to meet minimum requirements established by the Department, including training and monitoring inspections. Increased health and safety requirements for children in care as the background checks conducted by the Department would include searches of sex offender registry checks and child abuse and neglect registry checks in other states where the individual has resided, and the background checks would apply to current and future applicants, household members, employees, and prospective employees of licensed and registered child care homes and facilities as well as persons exempt pursuant to section 346-152.

Impact on the department and other agencies:  
The Department of Human Services currently

conducts background checks for license-exempt child care providers caring for children whose families receiving child care subsidies as well as applicants, household members, employees, and prospective employees of licensed and registered child care providers.

The Department of Human Services may deny or revoke a license or registration for child care home or facility if the Department determines the applicant, household member, employee, or prospective employee may pose a risk to the health, safety, or well-being of children in care.

The Department of Human Services would need to establish minimum requirements for license-exempt providers caring for children whose families receive child care subsidies, including training and monitoring inspections, and to include in background checks conducted by the Department of Human Services the child abuse and neglect registry checks from states the individual has previously resided in and the sex offender registry checks, as required by the Child Care and Development Block Grant, Public Law 113-186.

Impact to the Department may include need for more resources to meet the increased responsibilities for training and monitoring of minimum health and safety requirements for license-exempt providers caring for children whose families receive child care subsidies.

GENERAL FUND: None.  
OTHER FUNDS: None.  
PPBS PROGRAM DESIGNATION: HMS 302.

OTHER AFFECTED

AGENCIES: None.

EFFECTIVE DATE: July 1, 2016.