

JAN 19 2018

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# A BILL FOR AN ACT

RELATING TO LIQUOR COMMISSIONS.

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

1           SECTION 1. Section 281-11, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:  
3           "(a) A liquor commission or liquor control adjudication  
4 board, consisting of not less than five members, no more than  
5 the minimum required for a quorum of whom shall belong to the  
6 same political party at the time of appointment, may be created  
7 for each of the counties. The elected executive head of each  
8 county may nominate, and by and with the advice and consent of  
9 the legislative body of the county, shall appoint the members of  
10 the commissions and boards. The elected executive head of each  
11 county, by and with the advice and consent of the legislative  
12 body of the county, may remove from office any of the members.  
13 The commission or board shall designate one of its members as  
14 chairperson. Each member shall be a citizen of the United  
15 States and shall have resided in the county for which appointed  
16 for at least three years immediately preceding the date of the



1 member's appointment. Each member shall submit to an annual  
2 criminal history record check pursuant to section 281-53.5."

3 SECTION 2. Section 281-11.5, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§281-11.5 **Liquor commission and board attorney.** The  
6 liquor commission or liquor control adjudication board may hire  
7 attorneys to assist it in carrying out its administrative  
8 functions under this chapter. The assistance may include  
9 providing legal advice and prosecuting and defending legal  
10 claims under this chapter or arising in connection with this  
11 chapter. Each attorney hired by the liquor commission or liquor  
12 control adjudication board shall submit to an annual criminal  
13 history record check pursuant to section 281-53.5."

14 SECTION 3. Section 281-17, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "§281-17 **Jurisdiction and powers.** (a) The liquor  
17 commission, within its own county, shall have the jurisdiction,  
18 power, authority, and discretion, subject only to this chapter:

19 (1) To grant, refuse, suspend, and revoke any license for  
20 the manufacture, importation, and sale of liquors;



- 1           (2) To take appropriate action against a person who,  
2           directly or indirectly, manufactures, sells, or  
3           purchases any liquor without being authorized pursuant  
4           to this chapter; provided that in counties that have  
5           established by charter a liquor control adjudication  
6           board, the board shall have the jurisdiction, power,  
7           authority, and discretion to hear and determine  
8           administrative complaints of the director regarding  
9           violations of the liquor laws of the State or of the  
10          rules of the liquor commission, and impose penalties  
11          for violations thereof as may be provided by law;
- 12          (3) To control, supervise, and regulate the manufacture,  
13          importation, and sale of liquors by investigation,  
14          enforcement, and education; provided that any  
15          educational program shall be limited to the commission  
16          staff, commissioners, liquor control adjudication  
17          board members, and licensees and their employees, and  
18          shall be financed through the money collected from the  
19          assessment of fines against licensees; provided that  
20          fine moneys, not to exceed ten per cent a year of



1 fines accumulated, may be used to fund public liquor-  
2 related educational or enforcement programs;

3 (4) From time to time to make, amend, and repeal rules,  
4 not inconsistent with this chapter, as in the judgment  
5 of the commission are deemed appropriate for carrying  
6 out this chapter and for the efficient administration  
7 thereof, and the proper conduct of the business of all  
8 licensees, including every matter or thing required to  
9 be done or which may be done with the approval or  
10 consent, by order, under the direction or supervision  
11 of, or as prescribed by the commission; which rules,  
12 when adopted as provided in chapter 91 shall have the  
13 force and effect of law;

14 (5) [~~Subject to chapter 76, to~~] To appoint and remove an  
15 administrator, who may also be appointed an  
16 investigator and who shall be responsible for the  
17 operations and activities of the staff. The  
18 administrator may hire and remove hearing officers,  
19 investigators, and clerical or other assistants as its  
20 business may from time to time require, prescribe  
21 their duties and fix their compensation, and engage



1 the services of experts and persons engaged in the  
2 practice of a profession, if deemed expedient. Every  
3 investigator, within the scope of the investigator's  
4 duties, shall have the powers of a police officer;

5 (6) To limit the number of licenses of any class or kind  
6 within the county, or the number of licenses of any  
7 class or kind to do business in any given locality,  
8 when in the judgment of the commission such  
9 limitations are in the public interest;

10 (7) To prescribe the nature of the proof to be furnished,  
11 the notices to be given, and the conditions to be met  
12 or observed in case of the issuance of a duplicate  
13 license in place of one alleged to have been lost or  
14 destroyed, including a requirement of any indemnity  
15 deemed appropriate to the case;

16 (8) To fix the hours between which licensed premises of  
17 any class or classes may regularly be open for the  
18 transaction of business, which shall be uniform  
19 throughout the county as to each class respectively;

20 (9) To prescribe all forms to be used for the purposes of  
21 this chapter not otherwise provided for in this



1 chapter, and the character and manner of keeping of  
2 books, records, and accounts to be kept by licensees  
3 in any matter pertaining to their business;

4 (10) To investigate violations of this chapter, chapter  
5 244D and, notwithstanding any law to the contrary,  
6 violations of the applicable department of health's  
7 allowable noise levels, through its investigators or  
8 otherwise, to include covert operations, and to report  
9 violations to the prosecuting officer for prosecution  
10 and, where appropriate, the director of taxation to  
11 hear and determine complaints against any licensee;

12 (11) To prescribe, by rule, the terms, conditions, and  
13 circumstances under which persons or any class of  
14 persons may be employed by holders of licenses;

15 (12) To prescribe, by rule, the term of any license or  
16 solicitor's and representative's permit authorized by  
17 this chapter, the annual or prorated amount, the  
18 manner of payment of fees for the licenses and  
19 permits, and the amount of filing fees;

20 (13) To prescribe, by rule, regulations on dancing in  
21 licensed premises; and



1           (14) To prescribe, by rule, the circumstances and penalty  
2                   for the unauthorized manufacturing or selling of any  
3                   liquor.

4           (b) Subject only to this chapter, the commission or board  
5 and each member thereof shall have the same powers respecting  
6 the administering of oaths, compelling the attendance of  
7 witnesses and the production of documentary evidence, and  
8 examining the witnesses as are possessed by a circuit court,  
9 except that the commission or board and each member thereof  
10 shall not be bound by the strict legal rules of evidence. In  
11 addition, the commission or board shall have the power to  
12 require the production of, and to examine any books, papers, and  
13 records of any licensee which may pertain to the licensee's  
14 business under the license or which may pertain to a matter at a  
15 hearing before the commission or board or to an investigation by  
16 the commission or board.

17           ~~[The exercise by the commission or board of the power,~~  
18 ~~authority, and discretion vested in it pursuant to this chapter~~  
19 ~~shall be final and shall not be reviewable by or appealable to~~  
20 ~~any court or tribunal, except as otherwise provided in this~~



1 ~~chapter or chapter 91.]~~ A final decision by the commission  
2 shall be subject to review under chapter 91."

3 SECTION 4. Section 281-53.5, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§281-53.5 County liquor commissions; criminal history  
6 record check. (a) [The] Each member of the respective county  
7 liquor commissions and each attorney hired by the liquor  
8 commissions shall submit to an annual criminal history record  
9 check, and the respective county liquor commissions may request  
10 a criminal history record check of an applicant for a liquor  
11 license in accordance with section 846-2.7; provided that  
12 neither a criminal history record check nor compliance with this  
13 section shall be required for the officers and directors of  
14 publicly-traded companies or entities ultimately solely owned by  
15 a publicly-traded company, who are not designated as primary  
16 decision-makers regarding the sale or purchase of liquor. The  
17 criminal history record check, at a minimum, shall require the  
18 member, attorney, or applicant to disclose whether:

19 (1) The member, attorney, or applicant has been convicted  
20 in any jurisdiction of a crime that would tend to  
21 indicate the member, attorney, or applicant may be



1           unsuited [~~for obtaining~~] to serve on the liquor  
2           commission, serve the liquor commission, or obtain a  
3           liquor license[+], respectively; and

4           (2) The judgment of conviction has not been vacated.

5           For the purpose of this section, the criminal history  
6 disclosure made by the member, attorney, or applicant may be  
7 verified by the liquor commission by means of information  
8 obtained through the Hawaii criminal justice data center. The  
9 member, attorney, or applicant shall provide the Hawaii criminal  
10 justice data center with personal identifying information which  
11 shall include but not be limited to the member's, attorney's, or  
12 applicant's name, social security number, date of birth, and  
13 gender. This information shall be secured only for the purpose  
14 of conducting the criminal history record check authorized by  
15 this section.

16           (b) The member, attorney, or applicant shall submit to the  
17 liquor commission:

18           (1) A statement signed under penalty of law as to whether  
19           the member, attorney, or applicant has ever been  
20           convicted of a crime other than a minor traffic  
21           violation;



1           (2) Written consent to request and obtain criminal history  
2                    record information for verification; and

3           (3) Permission to be fingerprinted.

4           (c) The liquor commission shall obtain criminal history  
5 record information through the Hawaii criminal justice data  
6 center on the member, attorney, or applicant. The information  
7 obtained shall be used exclusively for the stated purpose for  
8 which it was obtained and shall be subject to applicable federal  
9 laws and regulations currently or hereafter in effect."

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 healthcare facilities as defined in section 321-15.2;
- 8 (4) The department of education on employees, prospective  
9 employees, and teacher trainees in any public school  
10 in positions that necessitate close proximity to  
11 children as provided by section 302A-601.5;
- 12 (5) The counties on employees and prospective employees  
13 who may be in positions that place them in close  
14 proximity to children in recreation or child care  
15 programs and services;
- 16 (6) The county liquor commissions on members of the  
17 commissions and applicants for liquor licenses as  
18 provided by section 281-53.5[+] and on attorneys hired  
19 by the liquor commission or liquor control  
20 adjudicatory board as provided by section 281-11.5;



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



1 child care and receive child care subsidies as  
2 provided by section 346-152.5;

3 (12) The department of health on operators and employees of  
4 home and community-based case management agencies and  
5 operators and other adults, except for adults in care,  
6 residing in community care foster family homes as  
7 provided by section 321-15.2;

8 (13) The department of human services on staff members of  
9 the Hawaii youth correctional facility as provided by  
10 section 352-5.5;

11 (14) The department of human services on employees,  
12 prospective employees, and volunteers of contracted  
13 providers and subcontractors in positions that place  
14 them in close proximity to youth when providing  
15 services on behalf of the office or the Hawaii youth  
16 correctional facility as provided by section 352D-4.3;

17 (15) The judiciary on employees and applicants at detention  
18 and shelter facilities as provided by section 571-34;

19 (16) The department of public safety on employees and  
20 prospective employees who are directly involved with  
21 the treatment and care of persons committed to a



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1           correctional facility or who possess police powers  
2           including the power of arrest as provided by section  
3           353C-5;

4       (17) The board of private detectives and guards on  
5           applicants for private detective or private guard  
6           licensure as provided by section 463-9;

7       (18) Private schools and designated organizations on  
8           employees and prospective employees who may be in  
9           positions that necessitate close proximity to  
10          children; provided that private schools and designated  
11          organizations receive only indications of the states  
12          from which the national criminal history record  
13          information was provided pursuant to section 302C-1;

14       (19) The public library system on employees and prospective  
15          employees whose positions place them in close  
16          proximity to children as provided by section  
17          302A-601.5;

18       (20) The State or any of its branches, political  
19          subdivisions, or agencies on applicants and employees  
20          holding a position that has the same type of contact  
21          with children, vulnerable adults, or persons committed



1 to a correctional facility as other public employees  
2 who hold positions that are authorized by law to  
3 require criminal history record checks as a condition  
4 of employment as provided by section 78-2.7;

5 (21) The department of health on licensed adult day care  
6 center operators, employees, new employees,  
7 subcontracted service providers and their employees,  
8 and adult volunteers as provided by section 321-15.2;

9 (22) The department of human services on purchase of  
10 service contracted and subcontracted service providers  
11 and their employees serving clients of the adult  
12 protective and community services branch, as provided  
13 by section 346-97;

14 (23) The department of human services on foster grandparent  
15 program, senior companion program, and respite  
16 companion program participants as provided by section  
17 346-97;

18 (24) The department of human services on contracted and  
19 subcontracted service providers and their current and  
20 prospective employees that provide home and community-  
21 based services under section 1915(c) of the Social



1 Security Act, title 42 United States Code section  
2 1396n(c), or under any other applicable section or  
3 sections of the Social Security Act for the purposes  
4 of providing home and community-based services, as  
5 provided by section 346-97;

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

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

15 (27) The department of commerce and consumer affairs on the  
16 original chartering applicants and proposed executive  
17 officers of a credit union as provided by section  
18 412:10-103;

19 (28) The department of commerce and consumer affairs on:

20 (A) Each principal of every non-corporate applicant  
21 for a money transmitter license;



1 (B) Each person who upon approval of an application  
2 by a corporate applicant for a money transmitter  
3 license will be a principal of the licensee; and

4 (C) Each person who upon approval of an application  
5 requesting approval of a proposed change in  
6 control of licensee will be a principal of the  
7 licensee,

8 as provided by sections 489D-9 and 489D-15;

9 (29) The department of commerce and consumer affairs on  
10 applicants for licensure and persons licensed under  
11 title 24;

12 (30) The Hawaii health systems corporation on:

13 (A) Employees;

14 (B) Applicants seeking employment;

15 (C) Current or prospective members of the corporation  
16 board or regional system board; or

17 (D) Current or prospective volunteers, providers, or  
18 contractors,

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

21 (31) The department of commerce and consumer affairs on:



- 1           (A) An applicant for a mortgage loan originator  
2           license, or license renewal; and
- 3           (B) Each control person, executive officer, director,  
4           general partner, and managing member of an  
5           applicant for a mortgage loan originator company  
6           license or license renewal,  
7           as provided by chapter 454F;
- 8       (32) The state public charter school commission or public  
9       charter schools on employees, teacher trainees,  
10       prospective employees, and prospective teacher  
11       trainees in any public charter school for any position  
12       that places them in close proximity to children, as  
13       provided in section 302D-33;
- 14       (33) The counties on prospective employees who work with  
15       children, vulnerable adults, or senior citizens in  
16       community-based programs;
- 17       (34) The counties on prospective employees for fire  
18       department positions which involve contact with  
19       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           (A) Applicants for real estate appraiser licensure or  
5           certification as provided by chapter 466K;
- 6           (B) Each person who owns more than ten per cent of an  
7           appraisal management company who is applying for  
8           registration as an appraisal management company,  
9           as provided by section 466L-7; and
- 10          (C) Each of the controlling persons of an applicant  
11          for registration as an appraisal management  
12          company, as provided by section 466L-7;
- 13       (41) The department of health or its designee on all  
14       license applicants, licensees, employees, contractors,  
15       and prospective employees of medical cannabis  
16       dispensaries, and individuals permitted to enter and  
17       remain in medical cannabis dispensary facilities as  
18       provided under sections 329D-15(a)(4) and  
19       329D-16(a)(3);
- 20       (42) The department of commerce and consumer affairs on  
21       applicants for nurse licensure or license renewal,



1 reactivation, or restoration as provided by sections  
2 457-7, 457-8, 457-8.5, and 457-9;

3 (43) The county police departments on applicants for  
4 permits to acquire firearms pursuant to section 134-2  
5 and on individuals registering their firearms pursuant  
6 to section 134-3;

7 (44) The department of commerce and consumer affairs on:

8 (A) Each of the controlling persons of the applicant  
9 for licensure as an escrow depository, and each  
10 of the officers, directors, and principals who  
11 will be in charge of the escrow depository's  
12 activities upon licensure; and

13 (B) Each of the controlling persons of an applicant  
14 for proposed change in control of an escrow  
15 depository licensee, and each of the officers,  
16 directors, and principals who will be in charge  
17 of the licensee's activities upon approval of  
18 such application,

19 as provided by chapter 449;

20 (45) The department of taxation on current or prospective  
21 employees or contractors who have access to federal



1 tax information in order to comply with requirements  
2 of federal law, regulation, or procedure, as provided  
3 by section 231-1.6;

4 (46) The department of labor and industrial relations on  
5 current or prospective employees or contractors who  
6 have access to federal tax information in order to  
7 comply with requirements of federal law, regulation,  
8 or procedure, as provided by section 383-110;

9 (47) The department of human services on current or  
10 prospective employees or contractors who have access  
11 to federal tax information in order to comply with  
12 requirements of federal law, regulation, or procedure,  
13 as provided by section 346-2.5;

14 (48) The child support enforcement agency on current or  
15 prospective employees, or contractors who have access  
16 to federal tax information in order to comply with  
17 federal law, regulation, or procedure, as provided by  
18 section 576D-11.5; and

19 (49) Any other organization, entity, or the State, its  
20 branches, political subdivisions, or agencies as may  
21 be authorized by state law."



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

3           SECTION 7. This Act shall take effect upon its approval.  
4

INTRODUCED BY: ~~\_\_\_\_\_~~

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**Report Title:**

Liquor Commission; Criminal History Record Checks

**Description:**

Requires members of the county liquor commissions and liquor control adjudication boards to submit to annual criminal history record checks. Requires attorneys hired by the liquor commission or liquor control adjudication board to submit to annual criminal background checks. Removes the requirement that the liquor commission appoints and removes an administrator subject to the civil service laws. Makes final decisions by the liquor commission reviewable under chapter 91, Hawaii Revised Statutes.

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

