



GOV. MSG. NO. 1189

EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

June 14, 2023

The Honorable Ronald D. Kouchi
President of the Senate,
and Members of the Senate
Thirty-Second State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

✓ The Honorable Scott K. Saiki
Speaker, and Members of the
House of Representatives
Thirty-Second State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 14, 2023, the following bill was signed into law:

HB777 HD2 SD2 CD1

RELATING TO BACKGROUND CHECKS.
ACT 088

Sincerely,



Josh Green, M.D.
Governor, State of Hawai'i

on JUN 14 2023

HOUSE OF REPRESENTATIVES
THIRTY-SECOND LEGISLATURE, 2023
STATE OF HAWAII

H.B. NO. 777
H.D. 2
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO BACKGROUND CHECKS.

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

1 SECTION 1. The legislature finds that the department of
2 human services assists vulnerable persons, including minors,
3 young adults, and vulnerable adults. It is therefore necessary
4 for the department of human services to exercise caution when
5 employing or retaining workers, including volunteers,
6 contractors, and others, whose positions place them in close
7 proximity with persons who may be at risk.

8 The purpose of this Act is to:

- 9 (1) Help ensure the safety of vulnerable persons by
10 authorizing the department of human services to
11 conduct comprehensive background checks on current or
12 prospective employees, volunteers, contractors,
13 contractors' employees and volunteers, subcontractors,
14 and subcontractors' employees and volunteers, whose
15 position places or would place them in close proximity
16 to certain minors, young adults, or vulnerable adults;
17 and



1 (2) Clarify that any state law permitting a more extensive
2 inquiry into an individual's criminal history by the
3 State and any of its branches, political subdivisions,
4 agencies, or semi-autonomous public bodies corporate
5 and politic will prevail over conflicting conviction
6 record inquiries under the State's employment
7 practices law.

8 SECTION 2. Section 323F-5.5, Hawaii Revised Statutes, is
9 amended by amending subsection (d) to read as follows:

10 "(d) Any inquiry into or consideration of the criminal
11 history record of an employee or prospective employee of the
12 corporation shall be limited to that which is [~~allowed under~~
13 ~~section 378-2.5 or~~] required under federal law."

14 SECTION 3. Section 346-2.5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[~~+~~§346-2.5~~]~~ ~~Criminal history record~~ Background checks.

17 (a) The department shall develop procedures for obtaining
18 verifiable information regarding the criminal history of any
19 person who is employed or seeking employment, including a
20 contractor and its employees or [~~agents~~] subcontractor and its
21 employees if prior authority to access federal tax information



1 has been provided by the United States Department of the
2 Treasury, if the person will require access to federal tax
3 information. The procedures shall include criminal history
4 record checks in accordance with section 846-2.7. Information
5 obtained pursuant to this subsection shall be used exclusively
6 by the department for the purpose of determining whether a
7 person is suitable for accessing federal tax information in
8 accordance with applicable federal laws.

9 (b) The department may terminate or deny employment to any
10 current or prospective employee [~~or applicant,~~] or terminate or
11 refuse to secure the services of a contractor and its employees
12 or [~~agents~~] subcontractor and its employees authorized under
13 subsection (a), if the department finds by reason of the nature
14 and circumstances of the background investigation conducted
15 under subsection (a) that the current or prospective employee,
16 [~~applicant,~~] contractor, [~~or~~] contractor's employees [~~or~~
17 ~~agents~~], subcontractor, or subcontractor's employees pose a risk
18 to the security of federal tax information. Termination or
19 denial of employment or refusal to secure services under this
20 subsection shall only occur after appropriate notification to
21 the current or prospective employee, [~~applicant, or~~] contractor,



1 or subcontractor of the findings of the background
2 investigation, and after the current or prospective employee,
3 [~~applicant, or~~] contractor, or subcontractor is given an
4 opportunity to respond to the findings. Nothing in this
5 subsection shall abrogate any applicable appeal rights under
6 chapters 76 and 89, or administrative rules of the department.

7 (c) The department shall develop procedures for obtaining
8 verifiable information regarding the criminal history, and
9 information confirming the reputable and responsible character,
10 of any current or prospective employee, volunteer, contractor,
11 contractor's employee or volunteer, subcontractor, or
12 subcontractor's employee or volunteer, whose position places or
13 would place them in close proximity to minors, young adults, or
14 vulnerable adults who are receiving from the department:

- 15 (1) Child welfare services;
16 (2) Social services;
17 (3) Services intended to prevent abuse or neglect; or
18 (4) Services intended to assist youth aging out of foster
19 care with obtaining and maintaining independent living
20 skills.



1 (d) Any current or prospective employee, volunteer,
2 contractor, contractor's employee or volunteer, subcontractor,
3 or subcontractor's employee or volunteer, whose position places
4 or would place them in close proximity to minors, young adults,
5 or vulnerable adults as described in subsection (c) shall:

6 (1) Be fingerprinted for purposes of a criminal history
7 record check;

8 (2) Submit to a criminal history record check in
9 accordance with section 846-2.7;

10 (3) Consent to the department obtaining other criminal
11 history records for verification; and

12 (4) Consent to the department conducting searches of the
13 state adult protective services central registry of
14 reported cases established in section 346-224 and
15 child abuse and neglect registry;

16 provided that a new department employee or volunteer shall be
17 fingerprinted before beginning employment or volunteer work;
18 provided further that the information obtained pursuant to this
19 subsection and subsection (e) shall be used exclusively by the
20 department to determine whether it is appropriate for the person



1 to work in close proximity to minors, young adults, or
2 vulnerable adults.

3 (e) The department may periodically obtain criminal
4 history information on all persons who are subject to this
5 section through the Hawaii criminal justice data center.

6 (f) The department may terminate or deny employment to a
7 current or prospective employee or volunteer, or terminate or
8 refuse to secure the services of a contractor or the
9 contractor's employees or volunteers, or a subcontractor or the
10 subcontractor's employees or volunteers, if the department
11 finds, based on the results of the background investigation
12 conducted pursuant to subsections (d) and (e), that the current
13 or prospective employee, volunteer, contractor, contractor's
14 employee or volunteer, subcontractor, or subcontractor's
15 employee or volunteer may pose a risk to the health, safety,
16 security, or well-being of minors, young adults, or vulnerable
17 adults as described in subsection (c). Termination or denial of
18 employment or termination or refusal to secure services under
19 this subsection shall occur only after the department notifies
20 the current or prospective employee, contractor, or
21 subcontractor of the findings of the background investigation,



1 and after the current or prospective employee, contractor, or
2 subcontractor is given an opportunity to respond to the
3 findings. Nothing in this subsection shall abrogate any
4 applicable rights to appeal under chapters 76 and 89 or the
5 administrative rules of the department.

6 [~~e~~] (g) The department shall be exempt from section
7 831-3.1 and need not conduct investigations, notifications, or
8 hearings under this section in accordance with chapter 91.

9 (h) For purposes of this section:

10 "Vulnerable adult" has the same meaning as defined in
11 section 346-222.

12 "Young adult" means a person between the ages of eighteen
13 and twenty-one or a person authorized by the Foster Care
14 Independence Act of 1999, P.L. 106-169, or other applicable law,
15 regardless of age, to receive benefits and services aimed at
16 assisting youth aging out of foster care in the United States in
17 obtaining and maintaining independent living skills."

18 SECTION 4. Section 378-2.5, Hawaii Revised Statutes, is
19 amended by amending subsection (d) to read as follows:

20 "(d) Notwithstanding subsections (b) and (c), the
21 requirement that inquiry into and consideration of a prospective



1 employee's conviction record may take place only after the
2 individual has received a conditional job offer, and the
3 limitation to the most recent seven-year period for felony
4 convictions and the most recent five-year period for misdemeanor
5 convictions, excluding the period of incarceration, shall not
6 apply to employers who are expressly permitted to inquire into
7 an individual's criminal history for employment purposes
8 pursuant to any federal or state law other than subsection (a),
9 including:

10 (1) The State or any of its branches, political
11 subdivisions, or agencies pursuant to sections 78-2.7
12 and 831-3.1; provided that any state law permitting
13 the State and any of its branches, political
14 subdivisions, agencies, or semi-autonomous public
15 bodies corporate and politic to conduct more extensive
16 inquiries into an individual's criminal history for
17 employment purposes than those permitted under this
18 section shall prevail;

19 (2) The department of education pursuant to section
20 302A-601.5;



- 1 (3) The department of health with respect to employees,
- 2 providers, or subcontractors in positions that place
- 3 them in direct contact with clients when providing
- 4 non-witnessed direct mental health services pursuant
- 5 to section 321-171.5;
- 6 (4) The judiciary pursuant to section 571-34;
- 7 (5) The counties pursuant to section 846-2.7(b) (5), (33),
- 8 (34), (35), (36), and (38);
- 9 (6) Armed security services pursuant to section 261-17(b);
- 10 (7) Providers of a developmental disabilities domiciliary
- 11 home pursuant to section 321-15.2;
- 12 (8) Private schools pursuant to sections 302C-1 and
- 13 378-3(8);
- 14 (9) Financial institutions in which deposits are insured
- 15 by a federal agency having jurisdiction over the
- 16 financial institution pursuant to section 378-3(9);
- 17 (10) Detective agencies and security guard agencies
- 18 pursuant to sections 463-6(b) and 463-8(b);
- 19 (11) Employers in the business of insurance pursuant to
- 20 section 431:2-201.3;



- 1 (12) Employers of individuals or supervisors of individuals
- 2 responsible for screening passengers or property under
- 3 title 49 United States Code section 44901 or
- 4 individuals with unescorted access to an aircraft of
- 5 an air carrier or foreign carrier or in a secured area
- 6 of an airport in the United States pursuant to title
- 7 49 United States Code section 44936(a);
- 8 (13) The department of human services pursuant to sections
- 9 346-2.5, 346-97, and 352-5.5;
- 10 (14) The public library system pursuant to section
- 11 302A-601.5;
- 12 (15) The department of public safety pursuant to section
- 13 353C-5;
- 14 (16) The board of directors of a cooperative housing
- 15 corporation or the manager of a cooperative housing
- 16 project pursuant to section 421I-12;
- 17 (17) The board of directors of an association under chapter
- 18 514B, or the managing agent or resident manager of a
- 19 condominium pursuant to section 514B-133; and
- 20 (18) The department of health pursuant to section
- 21 321-15.2."



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

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

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

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

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

20 (4) The department of education on employees, prospective
21 employees, and teacher trainees in any public school



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



1 members of the applicant, prospective employees of the
2 applicant, and new employees and household members of
3 the provider after registration or licensure as
4 provided by section 346-154, and persons subject to
5 section 346-152.5;

6 (11) The department of human services on persons exempt
7 pursuant to section 346-152 to be eligible to provide
8 child care and receive child care subsidies as
9 provided by section 346-152.5;

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

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

18 (14) The department of human services on employees,
19 prospective employees, and volunteers of contracted
20 providers and subcontractors in positions that place
21 them in close proximity to youth when providing



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



- 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
18 service contracted and subcontracted service providers
19 and their employees [~~serving clients of the adult~~
20 ~~protective and community services branch,~~] and



1 volunteers, as provided by [~~section~~] sections 346-2.5
2 and 346-97;

3 (23) The department of human services on foster grandparent
4 program, senior companion program, and respite
5 companion program participants as provided by section
6 346-97;

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

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



- 1 (26) The department of commerce and consumer affairs on
2 proposed directors and executive officers of a
3 nondepository financial services loan company as
4 provided by section 412:3-301;
- 5 (27) The department of commerce and consumer affairs on the
6 original chartering applicants and proposed executive
7 officers of a credit union as provided by section
8 412:10-103;
- 9 (28) The department of commerce and consumer affairs on:
- 10 (A) Each principal of every non-corporate applicant
11 for a money transmitter license;
- 12 (B) Each person who upon approval of an application
13 by a corporate applicant for a money transmitter
14 license will be a principal of the licensee; and
- 15 (C) Each person who upon approval of an application
16 requesting approval of a proposed change in
17 control of licensee will be a principal of the
18 licensee,
- 19 as provided by sections 489D-9 and 489D-15;



- 1 (29) The department of commerce and consumer affairs on
2 applicants for licensure and persons licensed under
3 title 24;
- 4 (30) The Hawaii health systems corporation on:
- 5 (A) Employees;
- 6 (B) Applicants seeking employment;
- 7 (C) Current or prospective members of the corporation
8 board or regional system board; or
- 9 (D) Current or prospective volunteers, providers, or
10 contractors,
- 11 in any of the corporation's health facilities as
12 provided by section 323F-5.5;
- 13 (31) The department of commerce and consumer affairs on:
- 14 (A) An applicant for a mortgage loan originator
15 license, or license renewal; and
- 16 (B) Each control person, executive officer, director,
17 general partner, and managing member of an
18 applicant for a mortgage loan originator company
19 license or license renewal,
- 20 as provided by chapter 454F;



- 1 (32) The state public charter school commission or public
2 charter schools on employees, teacher trainees,
3 prospective employees, and prospective teacher
4 trainees in any public charter school for any position
5 that places them in close proximity to children, as
6 provided in section 302D-33;
- 7 (33) The counties on prospective employees who work with
8 children, vulnerable adults, or senior citizens in
9 community-based programs;
- 10 (34) The counties on prospective employees for fire
11 department positions that involve contact with
12 children or vulnerable adults;
- 13 (35) The counties on prospective employees for emergency
14 medical services positions that involve contact with
15 children or vulnerable adults;
- 16 (36) The counties on prospective employees for emergency
17 management positions and community volunteers whose
18 responsibilities involve planning and executing
19 homeland security measures including viewing,
20 handling, and engaging in law enforcement or



1 classified meetings and assisting vulnerable citizens
2 during emergencies or crises;

3 (37) The State and counties on employees, prospective
4 employees, volunteers, and contractors whose position
5 responsibilities require unescorted access to secured
6 areas and equipment related to a traffic management
7 center;

8 (38) The State and counties on employees and prospective
9 employees whose positions involve the handling or use
10 of firearms for other than law enforcement purposes;

11 (39) The State and counties on current and prospective
12 systems analysts and others involved in an agency's
13 information technology operation whose position
14 responsibilities provide them with access to
15 proprietary, confidential, or sensitive information;

16 (40) The department of commerce and consumer affairs on:
17 (A) Applicants for real estate appraiser licensure or
18 certification as provided by chapter 466K;
19 (B) Each person who owns more than ten per cent of an
20 appraisal management company who is applying for



- 1 registration as an appraisal management company,
2 as provided by section 466L-7; and
- 3 (C) Each of the controlling persons of an applicant
4 for registration as an appraisal management
5 company, as provided by section 466L-7;
- 6 (41) The department of health or its designee on all
7 license applicants, licensees, employees, contractors,
8 and prospective employees of medical cannabis
9 dispensaries, and individuals permitted to enter and
10 remain in medical cannabis dispensary facilities as
11 provided under sections 329D-15(a) (4) and 329D-
12 16(a) (3);
- 13 (42) The department of commerce and consumer affairs on
14 applicants for nurse licensure or license renewal,
15 reactivation, or restoration as provided by sections
16 457-7, 457-8, 457-8.5, and 457-9;
- 17 (43) The county police departments on applicants for
18 permits to acquire firearms pursuant to section 134-2
19 and on individuals registering their firearms pursuant
20 to section 134-3;
- 21 (44) The department of commerce and consumer affairs on:



1 (A) Each of the controlling persons of the applicant
2 for licensure as an escrow depository, and each
3 of the officers, directors, and principals who
4 will be in charge of the escrow depository's
5 activities upon licensure; and

6 (B) Each of the controlling persons of an applicant
7 for proposed change in control of an escrow
8 depository licensee, and each of the officers,
9 directors, and principals who will be in charge
10 of the licensee's activities upon approval of the
11 application,

12 as provided by chapter 449;

13 (45) The department of taxation on current or prospective
14 employees or contractors who have access to federal
15 tax information in order to comply with requirements
16 of federal law, regulation, or procedure, as provided
17 by section 231-1.6;

18 (46) The department of labor and industrial relations on
19 current or prospective employees or contractors who
20 have access to federal tax information in order to



1 comply with requirements of federal law, regulation,
2 or procedure, as provided by section 383-110;

3 (47) The department of human services on current or
4 prospective employees or contractors who have access
5 to federal tax information in order to comply with
6 requirements of federal law, regulation, or procedure,
7 and on current or prospective employees, volunteers,
8 contractors, or contractors' employees or volunteers,
9 subcontractors, or subcontractors' employees or
10 volunteers, whose position places or would place them
11 in close proximity to minors, young adults, or
12 vulnerable adults, as provided by section 346-2.5;

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

18 (49) The department of the attorney general on current or
19 prospective employees or employees or agents of
20 contractors who have access to federal tax information
21 to comply with requirements of federal law,



1 regulation, or procedure, as provided by section
 2 28-17;

3 [†] (50) [†] The department of commerce and consumer affairs on
 4 each control person, executive officer, director,
 5 general partner, and managing member of an installment
 6 loan licensee, or an applicant for an installment loan
 7 license, as provided in chapter 480J;

8 [†] (51) [†] The University of Hawaii on current and prospective
 9 employees and contractors whose duties include
 10 ensuring the security of campus facilities and
 11 persons; and

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

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

17 SECTION 7. This Act shall take effect upon its approval;
 18 provided that the amendments made to sections 378-2.5 and
 19 846-2.7, Hawaii Revised Statutes, by sections 4 and 5 of this
 20 Act, respectively, shall not be repealed when those sections are



- 1 amended on January 1, 2024, pursuant to section 62 of Act 278,
- 2 Session Laws of Hawaii 2022.

APPROVED this 14th day of June , 2023



GOVERNOR OF THE STATE OF HAWAII



HB No. 777, HD 2, SD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2023
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-Second Legislature of the State of Hawaii, Regular Session of 2023.



Scott K. Saiki
Speaker
House of Representatives

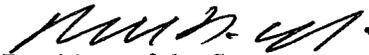


Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI'I

Date: May 2, 2023
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-Second Legislature of the State of Hawai'i, Regular Session of 2023.


President of the Senate


Clerk of the Senate