
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 to exercise caution when employing or
5 retaining workers, including volunteers, contractors, and others
6 whose positions place them in close proximity with persons who
7 may be at risk.

8 Accordingly, the purpose of this Act is to help ensure the
9 safety of vulnerable persons by authorizing the department to
10 conduct comprehensive background checks on current or
11 prospective employees; volunteers; contractors; and contractors'
12 employees, agents, and volunteers whose position places or would
13 place them in close proximity to certain vulnerable persons.

14 SECTION 2. 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



1 verifiable information regarding the criminal history of any
2 person who is employed or seeking employment, including a
3 contractor and its employees or agents if prior authority to
4 access federal tax information has been provided by the United
5 States Department of the Treasury, if the person will require
6 access to federal tax information. The procedures shall include
7 criminal history record checks in accordance with section
8 846-2.7. Information obtained pursuant to this subsection shall
9 be used exclusively by the department for the purpose of
10 determining whether a person is suitable for accessing federal
11 tax information in accordance with applicable federal laws.

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



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

8 (c) The department shall develop procedures for obtaining
9 verifiable information regarding the criminal history, and
10 information confirming the reputable and responsible character,
11 of any current or prospective employee; volunteer; contractor;
12 or contractor's employee, agent, or volunteer, who will be in
13 close proximity to minors, young adults, or vulnerable adults
14 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; or contractor's employee, agent, or volunteer, whose
3 position places or would place them in close proximity to
4 minors, young adults, or vulnerable adults as described in
5 subsection (c), shall, :

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

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

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

12 (4) Consent to the department conducting searches of the
13 adult abuse registry and child abuse and neglect
14 registry;

15 provided that a new department employee or volunteer shall be
16 fingerprinted prior to beginning employment or volunteer work;
17 provided further that the information obtained pursuant to this
18 subsection and subsection (e) shall be used exclusively by the
19 department to determine whether it is appropriate for the person
20 to work in close proximity to minors, young adults, or
21 vulnerable adults.



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

4 (f) The department may terminate or deny employment to a
5 current or prospective employee or volunteer, or terminate or
6 refuse to secure the services of a contractor and its employees
7 or agents, if the department finds, based on the results of the
8 background investigation conducted pursuant to subsections (d)
9 and (e), that the current or prospective employee; volunteer;
10 contractor; or contractor's employee, agent, or volunteer may
11 pose a risk to the health, safety, security, or well-being of
12 minors, young adults, or vulnerable adults as described in
13 subsection (c). Termination or denial of employment or refusal
14 to secure services under this subsection shall occur only after
15 the department notifies the current or prospective employee or
16 contractor of the findings of the background investigation, and
17 after the current or prospective employee or contractor is given
18 an opportunity to respond to the findings. Nothing in this
19 subsection shall abrogate any applicable rights to appeal under
20 chapters 76 and 89 or the administrative rules of the
21 department.



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1 [~~e~~] (g) The department shall be exempt from section
2 831-3.1 and need not conduct investigations, notifications, or
3 hearings under this section in accordance with chapter 91.

4 (h) For purposes of this section:

5 "Child welfare services" has the same meaning as defined in
6 section 346-1.

7 "Social services" has the same meaning as defined in
8 section 346-1.

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

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

17 SECTION 3. Section 378-2.5, Hawaii Revised Statutes, is
18 amended by amending subsection (d) to read as follows:

19 "(d) Notwithstanding subsections (b) and (c), the
20 requirement that inquiry into and consideration of a prospective
21 employee's conviction record may take place only after the



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

- 9 (1) The State or any of its branches, political
10 subdivisions, or agencies pursuant to sections 78-2.7
11 and 831-3.1;
- 12 (2) The department of education pursuant to section
13 302A-601.5;
- 14 (3) The department of health with respect to employees,
15 providers, or subcontractors in positions that place
16 them in direct contact with clients when providing
17 non-witnessed direct mental health services pursuant
18 to section 321-171.5;
- 19 (4) The judiciary pursuant to section 571-34;
- 20 (5) The counties pursuant to section 846-2.7(b)(5), (33),
21 (34), (35), (36), and (38);



- 1 (6) Armed security services pursuant to section 261-17(b);
- 2 (7) Providers of a developmental disabilities domiciliary
- 3 home pursuant to section 321-15.2;
- 4 (8) Private schools pursuant to sections 302C-1 and
- 5 378-3(8);
- 6 (9) Financial institutions in which deposits are insured
- 7 by a federal agency having jurisdiction over the
- 8 financial institution pursuant to section 378-3(9);
- 9 (10) Detective agencies and security guard agencies
- 10 pursuant to sections 463-6(b) and 463-8(b);
- 11 (11) Employers in the business of insurance pursuant to
- 12 section 431:2-201.3;
- 13 (12) Employers of individuals or supervisors of individuals
- 14 responsible for screening passengers or property under
- 15 title 49 United States Code section 44901 or
- 16 individuals with unescorted access to an aircraft of
- 17 an air carrier or foreign carrier or in a secured area
- 18 of an airport in the United States pursuant to title
- 19 49 United States Code section 44936(a);
- 20 (13) The department of human services pursuant to sections
- 21 346-2.5, 346-97, and 352-5.5;



- 1 (14) The public library system pursuant to section
- 2 302A-601.5;
- 3 (15) The department of public safety pursuant to section
- 4 353C-5;
- 5 (16) The board of directors of a cooperative housing
- 6 corporation or the manager of a cooperative housing
- 7 project pursuant to section 421I-12;
- 8 (17) The board of directors of an association under chapter
- 9 514B, or the managing agent or resident manager of a
- 10 condominium pursuant to section 514B-133; and
- 11 (18) The department of health pursuant to section
- 12 321-15.2."

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

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

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



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



- 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



- 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 [~~servicing clients of the adult~~
12 ~~protective and community services branch~~], agents, and
13 volunteers, as provided by [~~section~~] sections 346-2.5
14 and 346-97;

15 (23) The department of human services on foster grandparent
16 program, senior companion program, and respite
17 companion program participants as provided by section
18 346-97;

19 (24) The department of human services on contracted and
20 subcontracted service providers and their current and
21 prospective employees that provide home and community-



1 based services under section 1915(c) of the Social
2 Security Act, title 42 United States Code section
3 1396n(c), or under any other applicable section or
4 sections of the Social Security Act for the purposes
5 of providing home and community-based services, as
6 provided by section 346-97;

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

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

16 (27) The department of commerce and consumer affairs on the
17 original chartering applicants and proposed executive
18 officers of a credit union as provided by section
19 412:10-103;

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



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

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

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

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

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

14 (30) The Hawaii health systems corporation on:

15 (A) Employees;

16 (B) Applicants seeking employment;

17 (C) Current or prospective members of the corporation
18 board or regional system board; or

19 (D) Current or prospective volunteers, providers, or
20 contractors,



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

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

4 (A) An applicant for a mortgage loan originator
5 license, or license renewal; and

6 (B) Each control person, executive officer, director,
7 general partner, and managing member of an
8 applicant for a mortgage loan originator company
9 license or license renewal,

10 as 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;



- 1 (34) The counties on prospective employees for fire
2 department positions that involve contact with
3 children or vulnerable adults;
- 4 (35) The counties on prospective employees for emergency
5 medical services positions that involve contact with
6 children or vulnerable adults;
- 7 (36) The counties on prospective employees for emergency
8 management positions and community volunteers whose
9 responsibilities involve planning and executing
10 homeland security measures including viewing,
11 handling, and engaging in law enforcement or
12 classified meetings and assisting vulnerable citizens
13 during emergencies or crises;
- 14 (37) The State and counties on employees, prospective
15 employees, volunteers, and contractors whose position
16 responsibilities require unescorted access to secured
17 areas and equipment related to a traffic management
18 center;
- 19 (38) The State and counties on employees and prospective
20 employees whose positions involve the handling or use
21 of firearms for other than law enforcement purposes;



- 1 (39) The State and counties on current and prospective
- 2 systems analysts and others involved in an agency's
- 3 information technology operation whose position
- 4 responsibilities provide them with access to
- 5 proprietary, confidential, or sensitive information;
- 6 (40) The department of commerce and consumer affairs on:
- 7 (A) Applicants for real estate appraiser licensure or
- 8 certification as provided by chapter 466K;
- 9 (B) Each person who owns more than ten per cent of an
- 10 appraisal management company who is applying for
- 11 registration as an appraisal management company,
- 12 as provided by section 466L-7; and
- 13 (C) Each of the controlling persons of an applicant
- 14 for registration as an appraisal management
- 15 company, as provided by section 466L-7;
- 16 (41) The department of health or its designee on all
- 17 license applicants, licensees, employees, contractors,
- 18 and prospective employees of medical cannabis
- 19 dispensaries, and individuals permitted to enter and
- 20 remain in medical cannabis dispensary facilities as



- 1 provided under sections 329D-15(a)(4) and
2 329D-16(a)(3);
- 3 (42) The department of commerce and consumer affairs on
4 applicants for nurse licensure or license renewal,
5 reactivation, or restoration as provided by sections
6 457-7, 457-8, 457-8.5, and 457-9;
- 7 (43) The county police departments on applicants for
8 permits to acquire firearms pursuant to section 134-2
9 and on individuals registering their firearms pursuant
10 to section 134-3;
- 11 (44) The department of commerce and consumer affairs on:
- 12 (A) Each of the controlling persons of the applicant
13 for licensure as an escrow depository, and each
14 of the officers, directors, and principals who
15 will be in charge of the escrow depository's
16 activities upon licensure; and
- 17 (B) Each of the controlling persons of an applicant
18 for proposed change in control of an escrow
19 depository licensee, and each of the officers,
20 directors, and principals who will be in charge



1 of the licensee's activities upon approval of the
2 application,

3 as provided by chapter 449;

4 (45) The department of taxation on current or prospective
5 employees or contractors who have access to federal
6 tax information in order to comply with requirements
7 of federal law, regulation, or procedure, as provided
8 by section 231-1.6;

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

14 (47) The department of human services on current or
15 prospective employees or contractors who have access
16 to federal tax information in order to comply with
17 requirements of federal law, regulation, or procedure,
18 and on current or prospective employees; volunteers;
19 contractors; or contractors' employees, agents, or
20 volunteers, who are in a position that requires close



1 proximity to minors, young adults, or vulnerable
2 adults, as provided by section 346-2.5;

3 (48) The child support enforcement agency on current or
4 prospective employees or contractors who have access
5 to federal tax information in order to comply with
6 federal law, regulation, or procedure, as provided by
7 section 576D-11.5;

8 (49) The department of the attorney general on current or
9 prospective employees or employees or agents of
10 contractors who have access to federal tax information
11 to comply with requirements of federal law,
12 regulation, or procedure, as provided by section
13 28-17;

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

19 [†](51)[†] The University of Hawaii on current and prospective
20 employees and contractors whose duties include

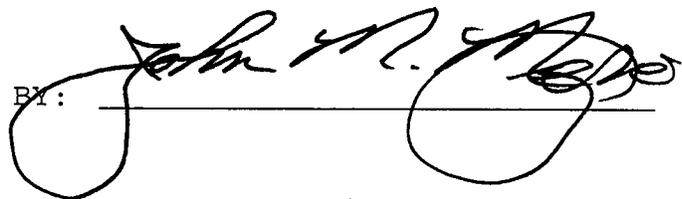


1 ensuring the security of campus facilities and
 2 persons; and
 3 [+] (52) [+] Any other organization, entity, or the State, its
 4 branches, political subdivisions, or agencies as may
 5 be authorized by state law."

6 SECTION 5. Statutory material to be repealed is bracketed
 7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act shall take effect upon its approval;
 9 provided that the amendments made to section 378-2.5, Hawaii
 10 Revised Statutes, by section 3 of this Act shall not be repealed
 11 when that section is reenacted on January 1, 2024, pursuant to
 12 section 27 of Act 278, Session Laws of Hawaii 2022.

13

INTRODUCED BY: 

JAN 20 2023



H.B. NO. 777

Report Title:

DHS; Criminal History Background Checks; Minors; Young Adults;
Vulnerable Adults

Description:

Authorizes the Department of Human Services to conduct national criminal background checks for current and prospective employees; volunteers; contractors; and contractors' employees, agents, and volunteers, who are in positions that require close proximity to certain minors, young adults, or vulnerable adults.

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

