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# 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  
6 others, whose positions place them in close proximity with  
7 persons who 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 of  
10 human services to conduct comprehensive background checks on  
11 current or prospective employees, volunteers, contractors,  
12 contractors' employees and volunteers, subcontractors, and  
13 subcontractors' employees and volunteers whose position places  
14 or would place them in close proximity to certain minors, young  
15 adults, or vulnerable adults.

16           SECTION 2. Section 346-2.5, Hawaii Revised Statutes, is  
17 amended to read as follows:



1 " ~~[f]§346-2.5 [f]—Criminal history record~~ Background checks.

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

15 (b) The department may terminate or deny employment to any  
16 current or prospective employee ~~[or applicant,]~~ or terminate or  
17 refuse to secure the services of a contractor and its employees  
18 or ~~[agents]~~ subcontractor and its employees authorized under  
19 subsection (a), if the department finds by reason of the nature  
20 and circumstances of the background investigation conducted  
21 under subsection (a) that the current or prospective employee,



1 ~~[applicant,]~~ contractor, ~~[or]~~ contractor's employees ~~[or~~  
2 ~~agents]~~, subcontractor, or subcontractor's employees pose a risk  
3 to the security of federal tax information. Termination or  
4 denial of employment or refusal to secure services under this  
5 subsection shall only occur after appropriate notification to  
6 the current or prospective employee, ~~[applicant, or]~~ contractor,  
7 or subcontractor of the findings of the background  
8 investigation, and after the current or prospective employee,  
9 ~~[applicant, or]~~ contractor, or subcontractor is given an  
10 opportunity to respond to the findings. Nothing in this  
11 subsection shall abrogate any applicable appeal rights under  
12 chapters 76 and 89, or administrative rules of the department.

13 (c) The department shall develop procedures for obtaining  
14 verifiable information regarding the criminal history, and  
15 information confirming the reputable and responsible character,  
16 of any current or prospective employee, volunteer, contractor,  
17 contractor's employee or volunteer, subcontractor, or  
18 subcontractor's employee or volunteer who will be in close  
19 proximity to minors, young adults, or vulnerable adults who are  
20 receiving from the department:

21 (1) Child welfare services;



1       (2) Social services;

2       (3) Services intended to prevent abuse or neglect; or

3       (4) Services intended to assist youth aging out of foster  
4       care with obtaining and maintaining independent living  
5       skills.

6       (d) Any current or prospective employee, volunteer,  
7       contractor, contractor's employee or volunteer, subcontractor,  
8       or subcontractor's employee or volunteer whose position places  
9       or would place them in close proximity to minors, young adults,  
10      or vulnerable adults as described in subsection (c) shall:

11      (1) Be fingerprinted for purposes of a criminal record  
12      check;

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

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

17      (4) Consent to the department conducting searches of the  
18      adult abuse registry and child abuse and neglect  
19      registry;

20      provided that a new department employee or volunteer shall be  
21      fingerprinted before beginning employment or volunteer work;



1 provided further that the information obtained pursuant to this  
2 subsection and subsection (e) shall be used exclusively by the  
3 department to determine whether it is appropriate for the person  
4 to work in close proximity to minors, young adults, or  
5 vulnerable adults.

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

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



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

9       ~~[-(e)]~~ (g) The department shall be exempt from section  
10 831-3.1 and need not conduct investigations, notifications, or  
11 hearings under this section in accordance with chapter 91.

12       (h) For purposes of this section:

13       "Vulnerable adult" has the same meaning as defined in  
14 section 346-222.

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



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

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

14 (1) Employers of individuals or supervisors of individuals  
15 responsible for screening passengers or property under  
16 title 49 United States Code section 44901 or  
17 individuals with unescorted access to an aircraft of  
18 an air carrier or foreign carrier or in a secured area  
19 of an airport in the United States pursuant to title  
20 49 United States Code section 44936(a);



- 1       ~~[(1)]~~ (2) The State or any of its branches, political  
2                   subdivisions, or agencies pursuant to sections 78-2.7  
3                   and 831-3.1;
- 4       (3) Armed security services pursuant to section 261-17(b);
- 5       ~~[(2)]~~ (4) The department of education and public library  
6                   system pursuant to section 302A-601.5;
- 7       (5) Private schools pursuant to sections 302C-1 and  
8                   378-3(8);
- 9       (6) The department of health and providers of a  
10                  developmental disabilities domiciliary home pursuant  
11                  to section 321-15.2;
- 12       ~~[(3)]~~ (7) The department of health with respect to  
13                  employees, providers, or subcontractors in positions  
14                  that place them in direct contact with clients when  
15                  providing non-witnessed direct mental health services  
16                  pursuant to section 321-171.5;
- 17       (8) The department of human services pursuant to sections  
18                  346-2.5, 346-97, and 352-5.5;
- 19       (9) The department of public safety pursuant to section  
20                  353C-5;



- 1        (10) Financial institutions in which deposits are insured  
2        by a federal agency having jurisdiction over the  
3        financial institution pursuant to section 378-3(9);
- 4        (11) The board of directors of a cooperative housing  
5        corporation or the manager of a cooperative housing  
6        project pursuant to section 421I-12;
- 7        (12) Employers in the business of insurance pursuant to  
8        section 431:2-201.3;
- 9        (13) Detective agencies and security guard agencies  
10       pursuant to sections 463-6(b) and 463-8(b);
- 11       (14) The board of directors of an association under chapter  
12       514B, or the managing agent or resident manager of a  
13       condominium pursuant to section 514B-133;
- 14       [~~4~~] (15) The judiciary pursuant to section 571-34; and
- 15       [~~5~~] (16) The counties pursuant to section 846-2.7(b)(5),  
16       [~~(33), (34), (35), (36), and (38);~~] (26), (27), (28),  
17       (29), and (31).
- 18       [~~6~~] ~~Armed security services pursuant to section 261-17(b);~~
- 19       [~~7~~] ~~Providers of a developmental disabilities domiciliary~~  
20       ~~home pursuant to section 321-15.2;~~



- 1       ~~(8) Private schools pursuant to sections 302C-1 and~~  
2               ~~378-3(8);~~
- 3       ~~(9) Financial institutions in which deposits are insured~~  
4               ~~by a federal agency having jurisdiction over the~~  
5               ~~financial institution pursuant to section 378-3(9);~~
- 6       ~~(10) Detective agencies and security guard agencies~~  
7               ~~pursuant to sections 463-6(b) and 463-8(b);~~
- 8       ~~(11) Employers in the business of insurance pursuant to~~  
9               ~~section 431:2-201.3;~~
- 10       ~~(12) Employers of individuals or supervisors of individuals~~  
11               ~~responsible for screening passengers or property under~~  
12               ~~title 49 United States Code section 44901 or~~  
13               ~~individuals with unescorted access to an aircraft of~~  
14               ~~an air carrier or foreign carrier or in a secured area~~  
15               ~~of an airport in the United States pursuant to title~~  
16               ~~49 United States Code section 44936(a);~~
- 17       ~~(13) The department of human services pursuant to sections~~  
18               ~~346-97 and 352-5.5;~~
- 19       ~~(14) The public library system pursuant to section~~  
20               ~~302A-601.5;~~



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

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

- 13           "(b) Criminal history record checks may be conducted by:
- 14           (1) The department of health or its designee on operators
- 15               of adult foster homes for individuals with
- 16               developmental disabilities or developmental
- 17               disabilities domiciliary homes and their employees, as
- 18               provided by section 321-15.2;
- 19           (2) The department of health or its designee on
- 20               prospective employees, persons seeking to serve as
- 21               providers, or subcontractors in positions that place



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



1 administration, law enforcement, and liquor control  
2 investigations;

3 (8) The department of human services on [~~operators~~]:

4 (A) Current or prospective employees or contractors  
5 who have access to federal tax information in  
6 order to comply with requirements of federal law,  
7 regulation, or procedure, and current or  
8 prospective employees, volunteers, contractors,  
9 contractors' employees or volunteers,  
10 subcontractors, or subcontractors' employees or  
11 volunteers who are in a position that requires  
12 close proximity to minors, young adults, or  
13 vulnerable adults, as provided by section  
14 346-2.5;

15 (B) Purchase of service contracted and subcontracted  
16 service providers and their employees and  
17 volunteers, as provided by sections 346-2.5 and  
18 346-97;

19 (C) Operators and employees of child caring  
20 institutions, child placing organizations, and



1                    ~~[foster boarding]~~ resource family homes as  
2                    provided by section 346-17;  
3        ~~[(9) The department of human services on prospective]~~  
4                    (D) Prospective adoptive parents as established under  
5                    section 346-19.7;  
6                    (E) Foster grandparent program, senior companion  
7                    program, and respite companion program  
8                    participants as provided by section 346-97;  
9                    (F) Contracted and subcontracted service providers  
10                   and their current and prospective employees that  
11                   provide home and community-based services under  
12                   section 1915(c) of the Social Security Act, title  
13                   42 United States Code section 1396n(c), or under  
14                   any other applicable section or sections of the  
15                   Social Security Act for the purposes of providing  
16                   home and community-based services, as provided by  
17                   section 346-97;  
18                   (G) Persons exempt pursuant to section 346-152 to be  
19                   eligible to provide child care and receive child  
20                   care subsidies as provided by section 346-152.5;



1           (H) Staff members of the Hawaii youth correctional  
2           facility as provided by section 352-5.5; and

3           (I) Employees, prospective employees, and volunteers  
4           of contracted providers and subcontractors in  
5           positions that place them in close proximity to  
6           youth when providing services on behalf of the  
7           office or the Hawaii youth correctional facility  
8           as provided by section 352D-4.3;

9       ~~[(10)]~~ (9) The department of human services or its designee  
10       on applicants to operate child care facilities,  
11       household members of the applicant, prospective  
12       employees of the applicant, and new employees and  
13       household members of the provider after registration  
14       or licensure as provided by section 346-154, and  
15       persons subject to section 346-152.5;

16       ~~[(11)]~~ ~~The department of human services on persons exempt~~  
17       ~~pursuant to section 346-152 to be eligible to provide~~  
18       ~~child care and receive child care subsidies as~~  
19       ~~provided by section 346-152.5;~~

20       ~~[(12)]~~ (10) The department of health on operators and  
21       employees of home and community-based case management



1 agencies and operators and other adults, except for  
2 adults in care, residing in community care foster  
3 family homes as provided by section 321-15.2;

4 ~~[(13) The department of human services on staff members of~~  
5 ~~the Hawaii youth correctional facility as provided by~~  
6 ~~section 352-5.5;~~

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

13 ~~(15)]~~ (11) The judiciary on employees and applicants at  
14 detention and shelter facilities as provided by  
15 section 571-34;

16 ~~[(16)]~~ (12) The department of public safety on employees and  
17 prospective employees who are directly involved with  
18 the treatment and care of persons committed to a  
19 correctional facility or who possess police powers  
20 including the power of arrest as provided by section  
21 353C-5;





1 require criminal history record checks as a condition  
2 of employment as provided by section 78-2.7;

3 ~~[(21)]~~ (17) The department of health on licensed adult day  
4 care center operators, employees, new employees,  
5 subcontracted service providers and their employees,  
6 and adult volunteers as provided by section 321-15.2;

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

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

16 ~~(24)~~ ~~The department of human services on contracted and~~  
17 ~~subcontracted service providers and their current and~~  
18 ~~prospective employees that provide home and community-~~  
19 ~~based services under section 1915(c) of the Social~~  
20 ~~Security Act, title 42 United States Code section~~  
21 ~~1396n(c), or under any other applicable section or~~



1 ~~sections of the Social Security Act for the purposes~~  
2 ~~of providing home and community based services, as~~  
3 ~~provided by section 346-97;~~

4 ~~(25)]~~ (18) The department of commerce and consumer affairs  
5 on proposed directors and executive officers of a  
6 bank, savings bank, savings and loan association,  
7 trust company, and depository financial services loan  
8 company as provided by section 412:3-201;

9 ~~[(26)]~~ (19) The department of commerce and consumer affairs  
10 on proposed directors and executive officers of a  
11 nondepository financial services loan company as  
12 provided by section 412:3-301;

13 ~~[(27)]~~ (20) The department of commerce and consumer affairs  
14 on the original chartering applicants and proposed  
15 executive officers of a credit union as provided by  
16 section 412:10-103;

17 ~~[(28)]~~ (21) The department of commerce and consumer affairs  
18 on:

19 (A) Each principal of every non-corporate applicant  
20 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~~] (22) The department of commerce and consumer affairs  
10 on applicants for licensure and persons licensed under  
11 title 24;

12 [~~30~~] (23) 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;



1        [~~31~~] (24)    The department of commerce and consumer affairs

2                    on:

3                    (A)    An applicant for a mortgage loan originator

4                    license, or license renewal; and

5                    (B)    Each control person, executive officer, director,

6                    general partner, and managing member of an

7                    applicant for a mortgage loan originator company

8                    license or license renewal,

9                    as provided by chapter 454F;

10        [~~32~~] (25)    The state public charter school commission or

11                    public charter schools on employees, teacher trainees,

12                    prospective employees, and prospective teacher

13                    trainees in any public charter school for any position

14                    that places them in close proximity to children, as

15                    provided in section 302D-33;

16        [~~33~~] (26)    The counties on prospective employees who work

17                    with children, vulnerable adults, or senior citizens

18                    in community-based programs;

19        [~~34~~] (27)    The counties on prospective employees for fire

20                    department positions that involve contact with

21                    children or vulnerable adults;





1 agency's information technology operation whose  
2 position responsibilities provide them with access to  
3 proprietary, confidential, or sensitive information;

4 [~~40~~] (33) The department of commerce and consumer affairs  
5 on:

6 (A) Applicants for real estate appraiser licensure or  
7 certification as provided by chapter 466K;

8 (B) Each person who owns more than ten per cent of an  
9 appraisal management company who is applying for  
10 registration as an appraisal management company,  
11 as provided by section 466L-7; and

12 (C) Each of the controlling persons of an applicant  
13 for registration as an appraisal management  
14 company, as provided by section 466L-7;

15 [~~41~~] (34) The department of health or its designee on all  
16 license applicants, licensees, employees, contractors,  
17 and prospective employees of medical cannabis  
18 dispensaries, and individuals permitted to enter and  
19 remain in medical cannabis dispensary facilities as  
20 provided under sections 329D-15(a)(4) and  
21 329D-16(a)(3);





1 as provided by chapter 449;

2 ~~[(45)]~~ (38) The department of taxation on current or  
3 prospective employees or contractors who have access  
4 to federal tax information in order to comply with  
5 requirements of federal law, regulation, or procedure,  
6 as provided by section 231-1.6;

7 ~~[(46)]~~ (39) The department of labor and industrial relations  
8 on current or prospective employees or contractors who  
9 have access to federal tax information in order to  
10 comply with requirements of federal law, regulation,  
11 or procedure, as provided by section 383-110;

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

17 ~~(48)]~~ (40) The child support enforcement agency on current  
18 or prospective employees or contractors who have  
19 access to federal tax information in order to comply  
20 with federal law, regulation, or procedure, as  
21 provided by section 576D-11.5;



1       ~~[(49)]~~ (41) The department of the attorney general on  
2                   current or prospective employees or employees or  
3                   agents of contractors who have access to federal tax  
4                   information to comply with requirements of federal  
5                   law, regulation, or procedure, as provided by section  
6                   28-17;

7       ~~[(50)]~~ (42) The department of commerce and consumer affairs  
8                   on each control person, executive officer, director,  
9                   general partner, and managing member of an installment  
10                  loan licensee, or an applicant for an installment loan  
11                  license, as provided in chapter 480J;

12       ~~[(51)]~~ (43) The University of Hawaii on current and  
13                  prospective employees and contractors whose duties  
14                  include ensuring the security of campus facilities and  
15                  persons; and

16       ~~[(52)]~~ (44) Any other organization, entity, or the State,  
17                  its branches, political subdivisions, or agencies as  
18                  may be authorized by state law."

19           SECTION 5. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.



1 SECTION 6. This Act shall take effect on June 30, 3000;  
2 provided that the amendments made to section 378-2.5, Hawaii  
3 Revised Statutes, by section 3 of this Act shall not be repealed  
4 when that section is amended on January 1, 2024, pursuant to  
5 section 62 of Act 278, Session Laws of Hawaii 2022.

6



**Report Title:**

DHS; Criminal History Background Checks; Vulnerable Persons

**Description:**

Authorizes the department of human services to conduct background checks for current and prospective employees, volunteers, contractors, contractors' employees and volunteers, subcontractors, and subcontractors' employees and volunteers who are in positions that require close proximity to certain minors, young adults, or vulnerable adults. Effective 6/30/3000. (HD2)

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

