

JAN 28 2026

---

# A BILL FOR AN ACT

---

RELATING TO BACKGROUND CHECKS.

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

1       SECTION 1. The purpose of this Act clarify and streamline  
2 the background check requirements for applicants, operators,  
3 employees, and volunteers at healthcare facilities.

4       SECTION 2. Section 321-15.2, Hawaii Revised Statutes, is  
5 amended to read as follows:

6       "**§321-15.2 Background checks.** (a) For the purposes of  
7 this section:

8       "Adults" means individuals aged eighteen years or older.

9       "Applicant" means a person or entity seeking licensure or  
10 certification to operate a healthcare facility. If the  
11 applicant is an entity, the term "applicant" shall also include  
12 its principals, directors, partners, managers, agents, and  
13 representatives to the extent that any of these individuals will  
14 have access to or contact with clients, their finances, assets,  
15 personal property, medical records, or individually identifiable  
16 information.



1 "Background check" means a review of records stored in  
2 state or national record repositories for history of abuse,  
3 neglect, threatened harm, or other maltreatment against children  
4 or adults, and for any criminal history, including:

5 (1) Adult abuse perpetrator records by means of a search  
6 of the individual's name and birth date in the state  
7 adult protective services central registry of reported  
8 cases established in section 346-224;

9 (2) Child abuse and neglect records by means of:

10 (A) An initial name inquiry in the state child  
11 welfare record files;

12 (B) A subsequent child abuse confirmation history  
13 check for new hires and rehires; and

14 (C) An annual name inquiry into state child welfare  
15 record files;

16 (3) Criminal history records in accordance with section  
17 846-2.7;

18 (4) Sex offender registry records;

19 (5) Certified nurse aide registry for information or  
20 findings pursuant to section 457A-3; ~~and~~



(6) Adult abuse perpetrator records, child abuse and neglect records, criminal history records, sex offender registry records, and certified nurse aide registry records of another state where a prospective employee or adult volunteer previously resided~~[-]~~; and

(7) Fingerprints submitted pursuant to subsection (c).

"Conviction for a relevant crime" means any federal or state conviction for any relevant crime as defined in this section.

"Criminal history record name inquiry" means a record check by name for any federal or state conviction for any relevant crime as defined in this section.

"Department" means the department of health.

"Direct patient access employee" means any individual, including a volunteer, who has access to a patient or resident of a healthcare facility, or any provider through employment or through an agreement or contract with such a facility or provider. ~~[Such individuals include but are not limited to:]~~

"Direct patient access employee" includes but is not limited to physicians, nurses, nursing assistants, home health aides, therapists, activities personnel, and support staff (i.e.,



1 housekeeping, dietary, etc.) who have direct access to patients  
2 or patient belongings.

3 "Disqualifying information" means a conviction for a  
4 relevant crime or a finding of patient or resident abuse.

5 "Healthcare facility" means a facility, setting, or agency  
6 licensed or certified by the department of health that provides  
7 mental health or health care services or living accommodations  
8 to individuals, such as a skilled nursing facility, intermediate  
9 care facility, adult residential care home, expanded adult  
10 residential care home, assisted living facility, home health  
11 agency, home care agency, hospice, adult day health center,  
12 special treatment facility, therapeutic living program,  
13 intermediate care facility for individuals with intellectual  
14 disabilities, hospital, rural health center, community care  
15 foster family home, home and community-based case management  
16 agency, adult day care center, developmental disabilities  
17 domiciliary home, adult foster home for individuals with  
18 developmental disabilities, community mental health center, and  
19 rehabilitation agency.



1 "Name inquiry" means a criminal history record check  
2 conducted by using the name and other identifying information of  
3 the individual, in lieu of a fingerprint check.

4 "Operator" means an individual or entity that is licensed  
5 or is seeking licensure to operate a healthcare facility and is  
6 responsible for the management and overall operations of that  
7 healthcare facility.

8 "Relevant crime" means:

9 (1) Any offense described in title 42 United States Code

10 [~~\$1320a-7~~] section 1320a-7 (section 1128(a) of the  
11 Social Security Act); or

12 (2) A crime of such a serious nature or circumstance that  
13 the department finds its perpetrator to pose a risk to  
14 the health, safety, or well-being of a patient or  
15 resident. This includes but is not limited to murder,  
16 manslaughter, assault, sex offenses, domestic  
17 violence, theft or forgery, arson, kidnapping, or  
18 possession, use, sale, manufacture, or distribution of  
19 dangerous drugs or controlled substances.

20 "Third-party employer" means any person or entity other  
21 than the applicant or operator that employs, contracts with, or



1 otherwise retains an individual who provides services at a  
2 healthcare facility pursuant to a contract, subcontract,  
3 agreement, or other arrangement, including but not limited to a  
4 staffing agency, contractor, or subcontractor.

5 (b) The department shall adopt rules pursuant to chapter  
6 91 to ensure the reputable and responsible character of all  
7 prospective applicants, operators, direct patient access  
8 employees, and adult volunteers of a healthcare facility, and,  
9 in the case of any healthcare facility operated in a private  
10 residence, all adults living in the home other than the clients.  
11 These rules, among other things, shall specify how [~~the~~  
12 ~~department or its designee~~] applicants, operators, and third-  
13 party employers may conduct background checks in accordance with  
14 this section.

15 (c) All applicants [~~and~~], prospective operators,  
16 prospective direct patient access employees, prospective adult  
17 volunteers, and, in the case of any healthcare facility operated  
18 in a private residence, any adult living in the home other than  
19 the client shall:

20 (1) Be subject to background checks; [~~and~~]



(2) Provide consent to the ~~[department or its designee]~~  
applicant, operator, or third-party employer to  
conduct background checks[-]; and

(3) Submit fingerprints; provided that fingerprints shall  
not be required for:

(A) Individuals who have submitted fingerprints as a  
condition of their licensure; and

(B) Adult volunteers for whom all other reviews  
required by this section have been completed.

~~[(d) All prospective direct patient access employees and~~  
~~adult volunteers of healthcare facilities and, in the case of~~  
~~any healthcare facility operated in a private residence, all~~  
~~adults living in the home other than the clients shall:~~

~~(1) Be subject to background checks in accordance with~~  
~~this section; and~~

~~(2) Provide consent to the department or its designee to~~  
~~conduct background checks.~~

~~(e) The department or its designee shall obtain background~~  
~~check information in accordance with this section from an~~  
~~applicant or operator, on the applicant or operator, and on any~~  
~~prospective employees of the applicant or operator including any~~



~~new employee retained after the applicant is issued a license or certificate under this part, which shall include an annual name inquiry into state criminal history record files.~~

~~(f)]~~ (d) All applicants or operators shall obtain and ensure completion of the background checks required by this section, including background checks of any prospective direct patient access employee or adult volunteer retained after the applicant is issued a license or certification under this part; provided that for purposes of any prospective direct patient access employee of a third-party employer described under subsection (f), the applicant or operator may satisfy the requirements of this section by obtaining and maintaining the written certification required by subsection (g); provided further that the applicant or operator shall provide background check information to the department upon request.

(e) No applicant or operator shall employ, contract with, or permit any direct patient access employee to work at, or an adult volunteer to serve at, a healthcare facility unless:

(1) The individual has completed the background check required by this section; and

(2) No disqualifying information is found.





1        (f) A third-party employer shall be responsible for  
2 obtaining and ensuring the completion of the background check  
3 required by this section for any prospective direct patient  
4 access employee who is employed, retained, or assigned by the  
5 third-party employer prior to assigning the direct patient  
6 access employee to work at a healthcare facility.

7        (g) An applicant or operator may satisfy the requirements  
8 of this section with respect to a prospective direct patient  
9 access employee of a third-party employer by obtaining and  
10 maintaining written certification from the third-party employer  
11 that:

12        (1) The background check required by this section has been  
13 completed; and

14        (2) No disqualifying information has been found.

15 The applicant or operator shall submit this information to the  
16 department upon request.

17        (h) Any use of background check information to make an  
18 employment decision based on conviction record information shall  
19 comply with the requirements of section 378-2.5(c), including  
20 any applicable limitation on the consideration of conviction  
21 record information.



1        (i) The department may revoke or suspend a current license  
2 or certificate, impose penalties or fines, or deny an  
3 application for a license or certificate under rules adopted  
4 pursuant to chapter 91 if the applicant, operator, employee, or  
5 adult volunteer at the healthcare facility or, in the case of  
6 any healthcare facility operated in a private residence, any  
7 adult living in the home other than the client:

8        (1) Refuses to [~~authorize the department or its designee~~  
9        ~~to conduct a background check,~~] provide the results of  
10        a background check to the department upon request,  
11        refuses to authorize the department [~~or its designee~~]  
12        to obtain background check record information for  
13        verification, or refuses to consent to be  
14        fingerprinted[+] when required under this section;

15        (2) Refuses or fails to submit [~~to the department or its~~  
16        ~~designee~~] information required to perform a background  
17        check;

18        (3) Has any disqualifying information; or

19        (4) Has any background check information that the  
20        department finds may pose a risk to the health,



1 safety, or welfare of the residents or patients of the  
2 healthcare facility.

3 ~~[(g)]~~ (j) The fee charged ~~[by the Federal Bureau of~~  
4 ~~Investigation and the Hawaii criminal justice data center to~~  
5 ~~perform criminal history record]~~ for conducting background  
6 checks may be passed on to all applicants, operators, direct  
7 patient access employees, and adult volunteers at the healthcare  
8 facility and, in the case of a facility operated in a private  
9 residence, all adults living in the home other than the clients.

10 ~~[(h)]~~ (k) The department ~~[or its designee]~~, in obtaining  
11 and relying upon the background check information, is presumed  
12 to be acting in good faith and shall be immune from civil  
13 liability for taking or recommending action based upon the  
14 background check information. The presumption of good faith may  
15 be rebutted upon a showing of proof by a preponderance of the  
16 evidence that the department ~~[or its designee]~~ relied upon  
17 information or opinion that it knew was false or misleading or  
18 that such reliance was not reasonable.

19 ~~[(i)]~~ (l) Any applicant or operator who receives  
20 information ~~[from the department or its designee]~~ relating to a  
21 background check of a direct patient access employee or adult



1 volunteer or, in the case of a healthcare facility operated in a  
2 private residence, an adult living in the home other than the  
3 clients, is presumed to be acting in good faith and shall be  
4 immune from civil liability for reasonably taking or  
5 recommending action based upon ~~[the department's recommendation~~  
6 ~~or direction.]~~ background check information obtained in  
7 accordance with this subsection or a written certification  
8 received from a third-party employer pursuant to subsection (g).

9 Nothing in this section shall affect rights, obligations,  
10 remedies, liabilities, or standards of proof under chapters 368  
11 and 378.

12 (m) Background check record information obtained in  
13 accordance with subsection (1) shall be used exclusively by the  
14 department ~~[or its designee]~~, applicant, operator, or third-  
15 party employer for the sole purpose of determining whether an  
16 applicant, operator, direct patient access employee, or adult  
17 volunteer at a healthcare facility, or, in the case of a  
18 facility operated in a private residence, any adult living in  
19 the home other than the clients is suitable for working or  
20 living in close proximity to residents of a healthcare facility



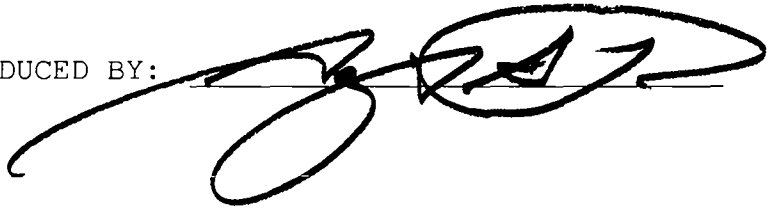
1 such that the health, safety, and welfare of the residents would  
2 not be at risk.

3 (n) An applicant, operator, or third-party employer may  
4 apply to register as a qualified entity under section 846-2.7(c)  
5 for the purposes of obtaining the background checks required by  
6 this section."

7 SECTION 3. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 4. This Act shall take effect upon its approval.

10  
INTRODUCED BY:

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be the name of the bill's sponsor.

# S.B. NO. 3207

**Report Title:**

Healthcare Facilities; Background Checks; Applicants; Operators;  
Third-Party Employers; Department of Health

**Description:**

Authorizes applicants, operators, and third-party employers, rather than the Department of Health, to conduct background checks of employees and adult volunteers at healthcare facilities.

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

