

ACT 88

H.B. NO. 2343

A Bill for an Act Relating to Requirements for Child Care Providers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 346-151, Hawaii Revised Statutes, is amended by amending the definition of “child abuse record check” to read as follows:

““Child abuse record check” means an examination of an individual’s child abuse confirmation history through:

- (1) An initial name inquiry into the state child welfare record files;
- (2) Subsequent child abuse confirmation history checks for new hires ~~[and]~~, rehires~~[-]~~, and household members;
- (3) ~~[An annual]~~ A name inquiry into state child welfare record files~~[-]~~; and
- (4) A name inquiry into other states’ child abuse and neglect registries in states where the individual has resided during the past five years.”

SECTION 2. Section 346-152.5, Hawaii Revised Statutes, is amended to read as follows:

~~“§346-152.5 [Criminal history record checks, child abuse record checks, and adult abuse perpetrator checks] Requirements for persons exempt pursuant to section 346-152. (a) To be eligible to provide child care [and to receive] for a child whose family receives a child care subsidy from the department, persons exempt pursuant to section 346-152 shall be required to agree to [a]:~~

- ~~(1) A criminal history record check, a sex offender registry check, a child abuse record check, and an adult abuse perpetrator check in the same manner as a prospective applicant or licensed provider in accordance with section 346-154; provided that the criminal history record check shall be limited to a criminal history record check conducted through files maintained by the Hawaii criminal justice data center for the following relatives of the child who requires care: grandparents, great-grandparents, aunts, uncles, and siblings aged eighteen or older living in a separate residence [shall be required to agree to a criminal history record check conducted through files maintained by the Hawaii criminal justice data center, a child abuse record check, and an adult abuse perpetrator check.];~~
- ~~(2) Completion of a pre-service or orientation training and ongoing training in health and safety topics; and~~
- ~~(3) Any monitoring inspection visits by the department or its designee to determine compliance with minimum health and safety standards at the location where child care is being provided for a child whose family receives a child care subsidy from the department, including investigations by the department when the department has received a report of health and safety concerns.~~

~~(b) For the purposes of this section, “adult abuse perpetrator check” means a search to determine whether an individual is known to the department as a perpetrator of abuse as defined in section 346-222, by means of a search of the individual’s name and birth date in the department’s adult protective services file.”~~

SECTION 3. Section 346-153, Hawaii Revised Statutes, is amended to read as follows:

~~“[H]§346-153[H] Records of deficiencies and complaints; release to public.~~

For every child care facility, the department shall maintain records for the current and previous two years of: results of its inspections; notifications to providers of deficiencies; corrective action taken; complaints of violations of rules adopted under this part; results of its investigations; resolution of complaints; and suspensions, revocations, reinstatements, restorations, and reissuances of licenses, temporary permits, and registrations issued under this part. Notwithstanding any other law to the contrary, ~~[such records]~~ the records described in this section shall be available for inspection in the manner set forth in [section 92-54;] chapter 92F and may be posted by the department on a public website; provided that with respect to records of family child care homes and group child care homes, sensitive personal information, including home addresses, or information provided to the department with the understanding that it would not be publicly divulged shall be deleted or obliterated prior to making the records available to the public. Nothing in this section shall authorize the department to release the names of or any other identifying information on complainants. The department may withhold information on a complaint for which an investigation is being conducted for not more than ten working days following the date of filing of the complaint; provided that if an investigation relates to an alleged criminal offense, no information shall be released until the investigation has been

completed and the director has determined that no legal proceeding will be jeopardized by its release.”

SECTION 4. Section 346-154, Hawaii Revised Statutes, is amended to read as follows:

“~~§346-154 [Criminal history checks, child abuse record checks, and adult abuse perpetrator]~~ Background checks. (a) The department shall develop standards to ensure the reputable and responsible character of an applicant to operate a child care facility, prospective employees of the applicant, household members, and new employees or household members of the provider after registration or licensure, which shall include criminal history record checks in accordance with section 846-2.7, sex offender registry checks, child abuse record checks, and adult abuse perpetrator checks.

For the purposes of this section, “adult abuse perpetrator check” means a search to determine whether an individual is known to the department as a perpetrator of abuse as defined in section 346-222, by means of a search of the individual’s name and birth date in the department’s adult protective services file.

(b) An applicant to operate a child care facility shall:

- (1) Be subject to criminal history record checks in accordance with section 846-2.7;
- (2) Submit to the department or its designee, under penalty of law, statements signed by the applicant ~~[and]~~, prospective employees of the applicant, and household members of the applicant indicating whether the applicant ~~[or]~~, any of the prospective employees, or any of the household members has ever been confirmed to have abused or neglected a child or vulnerable adult, including threatened harm; and
- (3) Provide consent to the department or its designee to conduct a criminal history record check in accordance with section 846-2.7, a sex offender registry check, a child abuse record check, and an adult abuse perpetrator check, and to obtain criminal history information, sex offender registry information, child abuse record information, and adult abuse perpetrator information for verification.

(c) A provider shall:

- (1) Be subject to criminal history record checks in accordance with section 846-2.7~~[;]~~ and sex offender registry checks;
- (2) Submit to the department or its designee a statement signed by any household member or any employee hired after the initial licensure or registration that requires the household member or employee to indicate, under penalty of law, whether the household member or employee has ever been confirmed to have abused or neglected a child or vulnerable adult, including threatened harm; and
- (3) Provide consent to the department or its designee to conduct a criminal history record check in accordance with section 846-2.7, a sex offender registry check, a child abuse record check, and an adult abuse perpetrator check, and to obtain criminal history information, sex offender registry information, child abuse record information, and adult abuse perpetrator check information for verification.

(d) The department or its designee shall obtain ~~[criminal]~~ information on the applicant, any household member, and any prospective employee of the applicant, including any household member or new employee retained after the applicant is issued a registration or license under this part, from the following sources:

- (1) Criminal history record information through the Hawaii criminal justice data center in accordance with section 846-2.7[~~5~~];
 - (2) National and state sex offender registries; and [~~child~~]
 - (3) Child abuse record information and adult abuse perpetrator check information from the department in accordance with departmental procedures [~~on the applicant and any prospective employee of the applicant, including any new employee retained after the applicant is issued a registration or license under this part, which shall include an annual name inquiry into the state criminal history record files~~].
- (e) The department may deny an application for or revoke a license or registration to operate a child care facility if:
- (1) The applicant, a household member, or any prospective employee has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less, or ever been confirmed to have abused or neglected a child or vulnerable adult [~~including threatened harm~~]; [~~and~~] or
 - (2) The department finds that the criminal history, history of registration as a sex offender, or child abuse record or adult abuse perpetrator check record of that applicant, household member, or prospective employee indicates that the applicant, household member, or prospective employee may pose a risk to the health, safety, or well-being of children.
- (f) The department may request the provider to terminate the employment or residency of a new employee or household member or may suspend or revoke the license or registration of the provider who employs a new employee or who allows continued residency of a household member if:
- (1) The employee or household member has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less, or ever been confirmed to have abused or neglected a child or vulnerable adult [~~including threatened harm~~]; [~~and~~] or
 - (2) The department finds that the criminal history, history of registration as a sex offender, or child abuse record or adult abuse perpetrator check record of the new employee or household member indicates that the new employee or household member may pose a risk to the health, safety, or well-being of children.
- (g) The department shall deny an application for a license or registration, shall request the provider to terminate the employment or residency of a new employee or household member, or shall suspend or revoke the license or registration of the provider who employs a new employee or who allows continued residency of a household member if the applicant, employee, or household member:
- (1) Refuses to consent to the background checks;
 - (2) Knowingly makes a materially false statement in connection with the background checks; or
 - (3) Is registered, or required to be registered, on the national sex offender registry or any state sex offender registry.
- (h) The department or its designee, in obtaining and relying upon the background check information, is presumed to be acting in good faith and shall be immune from civil liability for taking or recommending action based upon the background check information. The presumption of good faith may be rebutted upon a showing of proof by a preponderance of the evidence that the department or its designee relied upon information or opinion that it knew was false or misleading or that such reliance was not reasonable.”

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

- “(b) Criminal history record checks may be conducted by:
- (1) The department of health or its designee on operators of adult foster homes for individuals with developmental disabilities or developmental disabilities domiciliary homes and their employees, as provided by section 321-15.2;
 - (2) The department of health or its designee on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health or health care services as provided by section 321-171.5;
 - (3) The department of health or its designee on all applicants for licensure or certification for, operators for, prospective employees, adult volunteers, and all adults, except adults in care, at ~~[health-care]~~ healthcare facilities as defined in section 321-15.2;
 - (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
 - (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
 - (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
 - (7) The county liquor commissions on employees and prospective employees involved in liquor administration, law enforcement, and liquor control investigations;
 - (8) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
 - (9) The department of human services on prospective adoptive parents as established under section 346-19.7;
 - (10) The department of human services or its designee on applicants to operate child care facilities, household members of the applicant, prospective employees of the applicant, and new employees and household members of the provider after registration or licensure as provided by section 346-154[;]. and persons subject to section 346-152.5;
 - (11) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;
 - (12) The department of health on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in community care foster family homes as provided by section 321-15.2;
 - (13) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
 - (14) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
 - (15) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;

- (16) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
- (17) The board of private detectives and guards on applicants for private detective or private guard licensure as provided by section 463-9;
- (18) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided pursuant to section 302C-1;
- (19) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- (20) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
- (21) The department of health on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 321-15.2;
- (22) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult protective and community services branch, as provided by section 346-97;
- (23) The department of human services on foster grandparent program, senior companion program, and respite companion program participants as provided by section 346-97;
- (24) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under section 1915(c) of the Social Security Act, title 42 United States Code section 1396n(c), or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97;
- (25) The department of commerce and consumer affairs on proposed directors and executive officers of a bank, savings bank, savings and loan association, trust company, and depository financial services loan company as provided by section 412:3-201;
- (26) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;
- (27) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103;
- (28) The department of commerce and consumer affairs on:
 - (A) Each principal of every non-corporate applicant for a money transmitter license; and

- (B) The executive officers, key shareholders, and managers in charge of a money transmitter's activities of every corporate applicant for a money transmitter license, as provided by sections 489D-9 and 489D-15;
- (29) The department of commerce and consumer affairs on applicants for licensure and persons licensed under title 24;
- (30) The Hawaii health systems corporation on:
 - (A) Employees;
 - (B) Applicants seeking employment;
 - (C) Current or prospective members of the corporation board or regional system board; or
 - (D) Current or prospective volunteers, providers, or contractors, in any of the corporation's health facilities as provided by section 323F-5.5;
- (31) The department of commerce and consumer affairs on:
 - (A) An applicant for a mortgage loan originator license; and
 - (B) Each control person, executive officer, director, general partner, and manager of an applicant for a mortgage loan originator company license, as provided by chapter 454F;
- (32) The state public charter school commission or public charter schools on employees, teacher trainees, prospective employees, and prospective teacher trainees in any public charter school for any position that places them in close proximity to children, as provided in section 302D-33;
- (33) The counties on prospective employees who work with children, vulnerable adults, or senior citizens in community-based programs;
- (34) The counties on prospective employees for fire department positions which involve contact with children or vulnerable adults;
- (35) The counties on prospective employees for emergency medical services positions which involve contact with children or vulnerable adults;
- (36) The counties on prospective employees for emergency management positions and community volunteers whose responsibilities involve planning and executing homeland security measures including viewing, handling, and engaging in law enforcement or classified meetings and assisting vulnerable citizens during emergencies or crises;
- (37) The State and counties on employees, prospective employees, volunteers, and contractors whose position responsibilities require unescorted access to secured areas and equipment related to a traffic management center;
- (38) The State and counties on employees and prospective employees whose positions involve the handling or use of firearms for other than law enforcement purposes;
- (39) The State and counties on current and prospective systems analysts and others involved in an agency's information technology operation whose position responsibilities provide them with access to proprietary, confidential, or sensitive information;
- (40) The department of commerce and consumer affairs on applicants for real estate appraiser licensure or certification as provided by chapter 466K;
- (41) The department of health or its designee on all license applicants, licensees, employees, contractors, and prospective employees of medical marijuana dispensaries, and individuals permitted to enter

- and remain in medical marijuana dispensary facilities as provided under sections 329D-15(a)(4) and 329D-16(a)(3); and
- (42) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.”

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

SECTION 7. This Act shall take effect on July 1, 2016.

(Approved June 21, 2016.)