

**ACT 97**

H.B. NO. 1756

A Bill for an Act Relating to Nursing.

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

SECTION 1. The legislature finds there is a need to protect public safety by ensuring that licensed nurses are safe to practice and care for patients. While nearly all jurisdictions require applicants for nurse licensure to self-report any criminal history upon application for licensure, data reflects that many nurses with criminal histories fail to do so. According to information published by the National Council of State Boards of Nursing, there may be criminal history within the background of an applicant that could violate public trust and jeopardize the safety of patients.

The legislature further finds that the Council of State Governments recommends that each state work with its board of nursing to develop plans to conduct comprehensive federal and state criminal background checks as part of nurse licensure protocol. Of the fifty-five boards of nursing nationwide, currently Hawaii is one of only twelve states that do not conduct federal and state criminal background checks. The legislature finds that boards of nursing, employers, and other stakeholders need criminal history information to ensure that a nurse is safe and unlikely to harm patients.

Accordingly, the purpose of this Act is to:

- (1) Require all nurse licensure applicants, beginning with the July 1, 2017, licensing biennium, and all nurse license renewal and reactivation applicants, beginning with the July 1, 2019, licensing biennium, to comply with criminal history record checks; and
- (2) Authorize the state board of nursing to:
  - (A) Reactivate licenses and conduct investigations of applicants; and
  - (B) Request, beginning July 1, 2017, criminal history records of qualified applicants and request, no later than July 1, 2023, criminal history records required for licensees who were issued licenses prior to July 1, 2017.

SECTION 2. Section 457-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to any other powers and duties authorized by law, the board may:

- (1) Adopt, amend, or repeal rules, pursuant to chapter 91, not inconsistent with the law, as may be necessary to enable it to carry into effect this chapter, including the definition of the scope of practice of nursing and the delegation of nursing tasks based upon professional nursing standards, which include but are not limited to the standards set forth by national certifying bodies recognized by the board;
- (2) Prescribe standards for preparing persons for licensure as practical nurses, registered nurses, and advanced practice registered nurses under this chapter;
- (3) Conduct surveys of educational programs as it may deem necessary and practical;
- (4) Approve educational programs that meet the requirements of this chapter and the rules of the board;
- (5) Deny or withdraw approval of educational programs for failure to meet or maintain the standards prescribed in this chapter;
- (6) License qualified applicants by examination or endorsement, including advanced practice registered nurses, and renew, reinstate, reactivate, and restore licenses[;] and shall conduct an investigation of the qualified applicant’s background, character, competency, and integrity, as the board deems appropriate. The board shall:
  - (A) Request, beginning July 1, 2017, the criminal history records of qualified applicants, in accordance with section 846-2.7; and
  - (B) Request the criminal history records, pursuant to section 846-2.7, of licensees who were issued licenses by the board prior to July 1, 2017;

provided that the board shall request criminal history records under this paragraph not less than once for each individual qualified applicant or licensee; provided further that all requests for criminal history records required for licensees issued a license by the board prior to July 1, 2017, shall be made by the board no later than July 1, 2023. The Hawaii criminal justice data center shall provide the information on request to the director of commerce and consumer affairs;
- (7) Conduct hearings upon request of a denied applicant or upon charges calling for discipline of a licensee;

- (8) Exercise the power to issue subpoenas, compel the attendance of witnesses, and administer oaths to persons giving testimony at hearings;
- (9) Cause the prosecution of all persons violating this chapter and incur necessary expenses therefor;
- (10) Keep a record of all its proceedings;
- (11) Provide consultation, conduct conferences, forums, studies, and research on nursing education and practice;
- (12) Communicate with national organizations that promote the improvement of the legal standards of practice of nursing for the protection of public health, safety, and welfare;
- (13) Authorize the administration of examinations to eligible applicants for licensure as registered nurses or licensed practical nurses, or other examinations required by the board as designated in its rules;
- (14) Employ, contract, and cooperate, to the extent allowable by law, with any board-approved organization in the preparation and grading of an appropriate nationally uniform examination; provided the board shall retain sole discretion and responsibility for determining the standard of successful completion of such an examination. When such a national examination is used, access to questions and answers shall be restricted by the board; and
- (15) Develop and adopt rules as necessary relating to the practice of nursing in telehealth.”

SECTION 3. Section 457-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An applicant for a license to practice nursing as a registered nurse shall submit ~~[an]~~:

- (1) An application on a form prescribed by the board;
- (2) Beginning with the July 1, 2017, licensing biennium, a full set of electronic fingerprints for the purpose of obtaining federal and state criminal history record checks in accordance with section 846-2.7 directly to the Hawaii criminal justice data center for processing with the Federal Bureau of Investigation. The applicant shall bear the cost of the fingerprint processing and the application shall not be considered complete until the results of the criminal history record check have been received by the board; and ~~[shall provide written]~~
- (3) Written evidence that the applicant has completed a nursing program approved by the board.”

SECTION 4. Section 457-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An applicant for a license to practice nursing as a licensed practical nurse shall submit ~~[an]~~:

- (1) An application on a form prescribed by the board;
- (2) Beginning with the July 1, 2017, licensing biennium, a full set of electronic fingerprints for the purpose of obtaining federal and state criminal history record checks in accordance with section 846-2.7 directly to the Hawaii criminal justice data center for processing with the Federal Bureau of Investigation. The applicant shall bear the cost of the fingerprint processing and the application shall not be considered complete until the results of the criminal history

record check have been received by the board; and [shall provide written]

- (3) Written evidence that the applicant has completed a licensed practical nurse program, or its equivalent, approved by the board, and holds a diploma or certificate therefrom.”

SECTION 5. Section 457-8.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The board shall grant an advanced practice registered nurse license to a nurse who has:

- (1) A current, unencumbered license as a registered nurse in this State;
- (2) An unencumbered license as a registered nurse in all other states in which the nurse has a current and active license;
- (3) An unencumbered license as an advanced practice registered nurse or similar designation in all other states in which the nurse has a current and active license as an advanced practice registered nurse;
- (4) Completed an accredited graduate-level education program preparing the nurse for one of the four recognized advanced practice registered nurse roles;
- (5) A current, unencumbered certification of having passed a national certification examination that measures role and population-focused competencies and is recognized by the board;
- (6) Maintained continued competencies through recertification in role and population-focused competencies through a national certification program recognized by the board;
- (7) Acquired advanced clinical knowledge and skills preparing the nurse to provide direct care to patients through a significant educational and practical concentration on the direct care of patients;
- (8) Demonstrated a greater breadth of knowledge, a greater synthesis of data, greater complexity of skills and interventions, and greater role autonomy than demonstrated by a registered nurse;
- (9) Been educationally prepared to assume responsibility and accountability for health promotion and maintenance and to assess, diagnose, and manage patient problems through the use and prescription of pharmacologic and non-pharmacologic interventions;
- (10) Acquired clinical experience of sufficient depth and breadth to reflect the intended license; ~~and~~
- (11) Beginning with the July 1, 2017, licensing biennium, submitted a full set of electronic fingerprints for the purpose of obtaining federal and state criminal history record checks in accordance with section 846-2.7 directly to the Hawaii criminal justice data center for processing with the Federal Bureau of Investigation. The applicant shall bear the cost of the fingerprint processing and the application shall not be considered complete until the results of the criminal history record check have been received by the board; and
- ~~(11)~~ (12) Paid the appropriate fees.”

SECTION 6. Section 457-9, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The license of every person licensed or granted prescriptive authority shall expire on June 30 of every odd-numbered year and shall be renewed biennially, except as provided in this section. Biennially in each odd-numbered year, the board shall make available an application for renewal of license before the deadline set forth by the board to every person to whom a license was issued

or renewed during the biennium. The applicant shall complete the application and submit it to the board with a renewal fee, and shall also submit, beginning with the July 1, 2019, licensing biennium, a full set of electronic fingerprints for the purpose of obtaining federal and state criminal history record checks in accordance with section 846-2.7 directly to the Hawaii criminal justice data center for processing with the Federal Bureau of Investigation. The applicant shall bear the cost of the fingerprint processing and the application shall not be considered complete until the results of the criminal history record check has been received by the board; and all required documents on or before the deadline set by the board. The applicant shall provide documents from proper agencies or parties of any criminal conviction or any disciplinary action taken or pending in this State or any other state in the United States or any territory or possession under the jurisdiction of the United States within the two years prior to application for renewal of license. Upon receipt of the application and fee, the board shall verify the accuracy of the application and issue to the applicant a certificate of renewal for the biennium expiring two years hence on the deadline set by the board. The renewal shall render the holder thereof a legal practitioner of nursing for the period stated on the renewal form.

(b) Any licensee who fails to renew a license as provided in subsection (a) but continues to practice shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of this chapter. The failure to timely renew a license, the failure to pay all applicable fees, the dishonoring of any check upon first deposit, or the failure to comply with any other requirement provided by law shall cause the license to be automatically forfeited; provided that the person's license may be restored by the board within two years after the date of forfeiture upon compliance with the licensing renewal fees, penalty fees, and compliance resolution fund fees.

A nurse who does not intend to practice nursing in the State and elects to be placed on inactive status shall so indicate in writing during the license renewal period or by so indicating on the license renewal application, and paying inactivation and all appropriate fees. Should the nurse wish to resume nursing at some future time, the nurse shall notify the board in writing and remit the reactivation and renewal fees ~~and~~; submit an application form as provided in subsection (a) ~~and~~; and beginning with the July 1, 2019, licensing biennium, submit a full set of electronic fingerprints for the purpose of obtaining federal and state criminal history record checks in accordance with section 846-2.7 directly to the Hawaii criminal justice data center for processing with the Federal Bureau of Investigation. The applicant shall bear the cost of the fingerprint processing and the application shall not be considered complete until the results of the criminal history record check has been received by the board. A nurse who has not actively practiced in this State or any other state in the United States or any territory or possession under the jurisdiction of the United States for more than five years may be required by the board to submit proof of continued competency by retaking and passing the licensing examination or successfully completing appropriate continuing education recognized by the board.”

SECTION 7. 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 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 on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;
- (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) The department of commerce and consumer affairs on applicants for nurse licensure or license renewal, reactivation, or restoration as provided by sections 457-7, 457-8, 457-8.5, and 457-9; and
- ~~(42)~~ (43) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law."

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



**ACT 97**

**SECTION 9.** This Act shall take effect on July 1, 2016.

(Approved June 21, 2016.)