#### H.B. NO. <sup>777</sup> H.D. 2 S.D. 2 C.D. 1

### 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 of human services to exercise caution when
5	employing or retaining workers, including volunteers,
6	contractors, and others, whose positions place them in close
7	proximity with persons who may be at risk.
8	The purpose of this Act is to:
9	(1) Help ensure the safety of vulnerable persons by
10	authorizing the department of human services to
11	conduct comprehensive background checks on current or
12	prospective employees, volunteers, contractors,
13	contractors' employees and volunteers, subcontractors,
14	and subcontractors' employees and volunteers, whose
15	position places or would place them in close proximity
16	to certain minors, young adults, or vulnerable adults;
17	and

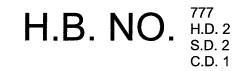
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1 (2) Clarify that any state law permitting a more extensive 2 inquiry into an individual's criminal history by the 3 State and any of its branches, political subdivisions, 4 agencies, or semi-autonomous public bodies corporate 5 and politic will prevail over conflicting conviction 6 record inquiries under the State's employment 7 practices law. SECTION 2. Section 323F-5.5, Hawaii Revised Statutes, is 8 9 amended by amending subsection (d) to read as follows: 10 "(d) Any inquiry into or consideration of the criminal 11 history record of an employee or prospective employee of the 12 corporation shall be limited to that which is [allowed under 13 section 378-2.5 or] required under federal law." 14 SECTION 3. Section 346-2.5, Hawaii Revised Statutes, is 15 amended to read as follows: 16 "[<del>]</del>]\$346-2.5[<del>] Criminal history record</del>] Background checks. 17 The department shall develop procedures for obtaining (a) 18 verifiable information regarding the criminal history of any person who is employed or seeking employment, including a 19 20 contractor and its employees or [agents] subcontractor and its 21 employees if prior authority to access federal tax information

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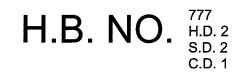
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1 has been provided by the United States Department of the 2 Treasury, if the person will require access to federal tax 3 information. The procedures shall include criminal history record checks in accordance with section 846-2.7. Information 4 5 obtained pursuant to this subsection shall be used exclusively 6 by the department for the purpose of determining whether a 7 person is suitable for accessing federal tax information in 8 accordance with applicable federal laws.

9 The department may terminate or deny employment to any (b) 10 current or prospective employee [or applicant,] or terminate or 11 refuse to secure the services of a contractor and its employees 12 or [agents] subcontractor and its employees authorized under 13 subsection (a), if the department finds by reason of the nature 14 and circumstances of the background investigation conducted 15 under subsection (a) that the current or prospective employee, 16 [applicant, ] contractor, [or] contractor's employees [or 17 agents], subcontractor, or subcontractor's employees pose a risk 18 to the security of federal tax information. Termination or 19 denial of employment or refusal to secure services under this 20 subsection shall only occur after appropriate notification to 21 the current or prospective employee, [applicant, or] contractor,

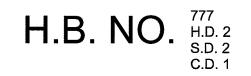
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1	or subcontractor of the findings of the background			
2	investigation, and after the current or prospective employee,			
3	[applicant, or] contractor, or subcontractor is given an			
4	opportunity to respond to the findings. Nothing in this			
5	subsection shall abrogate any applicable appeal rights under			
6	chapters 76 and 89, or administrative rules of the department.			
7	(c) The department shall develop procedures for obtaining			
8	verifiable information regarding the criminal history, and			
9	information confirming the reputable and responsible character,			
10	of any current or prospective employee, volunteer, contractor,			
11	contractor's employee or volunteer, subcontractor, or			
12	subcontractor's employee or volunteer, whose position places or			
13	would place them in close proximity to minors, young adults, or			
14	vulnerable adults 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.			

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1	(d)	Any current or prospective employee, volunteer,
2	<u>contracto</u>	r, contractor's employee or volunteer, subcontractor,
3	or subcon	tractor's employee or volunteer, whose position places
4	or would	place them in close proximity to minors, young adults,
5	<u>or vulner</u>	able adults as described in subsection (c) shall:
6	(1)	Be fingerprinted for purposes of a criminal history
7		record check;
8	(2)	Submit to a criminal history record check in
9		accordance with section 846-2.7;
10	(3)	Consent to the department obtaining other criminal
11		history records for verification; and
12	(4)	Consent to the department conducting searches of the
13		state adult protective services central registry of
14		reported cases established in section 346-224 and
15		child abuse and neglect registry;
16	provided	that a new department employee or volunteer shall be
17	fingerpri	nted before beginning employment or volunteer work;
18	provided	further that the information obtained pursuant to this
19	subsectio	n and subsection (e) shall be used exclusively by the
20	departmen	t to determine whether it is appropriate for the person

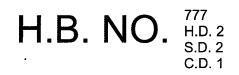
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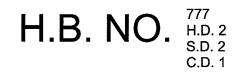
1	to work in close proximity to minors, young adults, or
2	vulnerable adults.
3	(e) The department may periodically obtain criminal
4	history information on all persons who are subject to this
5	section through the Hawaii criminal justice data center.
6	(f) The department may terminate or deny employment to a
7	current or prospective employee or volunteer, or terminate or
8	refuse to secure the services of a contractor or the
9	contractor's employees or volunteers, or a subcontractor or the
10	subcontractor's employees or volunteers, if the department
11	finds, based on the results of the background investigation
12	conducted pursuant to subsections (d) and (e), that the current
13	or prospective employee, volunteer, contractor, contractor's
14	employee or volunteer, subcontractor, or subcontractor's
15	employee or volunteer may pose a risk to the health, safety,
16	security, or well-being of minors, young adults, or vulnerable
17	adults as described in subsection (c). Termination or denial of
18	employment or termination or refusal to secure services under
19	this subsection shall occur only after the department notifies
20	the current or prospective employee, contractor, or
21	subcontractor of the findings of the background investigation,





1	and after the current or prospective employee, contractor, or
2	subcontractor is given an opportunity to respond to the
3	findings. Nothing in this subsection shall abrogate any
4	applicable rights to appeal under chapters 76 and 89 or the
5	administrative rules of the department.
6	[ <del>(c)</del> ] <u>(g)</u> The department shall be exempt from section
7	831-3.1 and need not conduct investigations, notifications, or
8	hearings under this section in accordance with chapter 91.
9	(h) For purposes of this section:
10	"Vulnerable adult" has the same meaning as defined in
11	section 346-222.
12	"Young adult" means a person between the ages of eighteen
13	and twenty-one or a person authorized by the Foster Care
14	Independence Act of 1999, P.L. 106-169, or other applicable law,
15	regardless of age, to receive benefits and services aimed at
16	assisting youth aging out of foster care in the United States in
17	obtaining and maintaining independent living skills."
18	SECTION 4. Section 378-2.5, Hawaii Revised Statutes, is
19	amended by amending subsection (d) to read as follows:
20	"(d) Notwithstanding subsections (b) and (c), the
21	requirement that inquiry into and consideration of a prospective

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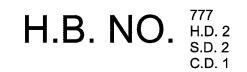
1	employee's conviction record may take place only after the			
2	individual has received a conditional job offer, and the			
3	limitation to the most recent seven-year period for felony			
4	convictions and the most recent five-year period for misdemeanor			
5	convictions, excluding the period of incarceration, shall not			
6	apply to employers who are expressly permitted to inquire into			
7	an individual's criminal history for employment purposes			
8	pursuant to any federal or state law other than subsection (a),			
9	including:			
10	(1) The State or any of its branches, political			
11	subdivisions, or agencies pursuant to sections 78-2.7			
12	and 831-3.1; provided that any state law permitting			
13	the State and any of its branches, political			
14	subdivisions, agencies, or semi-autonomous public			
15	bodies corporate and politic to conduct more extensive			
16	inquiries into an individual's criminal history for			
17	employment purposes than those permitted under this			
18	section shall prevail;			
19	(2) The department of education pursuant to section			
20	302A-601.5;			

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1	(3)	The department of health with respect to employees,
2		providers, or subcontractors in positions that place
3		them in direct contact with clients when providing
4		non-witnessed direct mental health services pursuant
5		to section 321-171.5;
6	(4)	The judiciary pursuant to section 571-34;
7	(5)	The counties pursuant to section 846-2.7(b)(5), (33),
8		(34), (35), (36), and (38);
9	(6)	Armed security services pursuant to section 261-17(b);
10	(7)	Providers of a developmental disabilities domiciliary
11		home pursuant to section 321-15.2;
12	(8)	Private schools pursuant to sections 302C-1 and
13		378-3(8);
14	(9)	Financial institutions in which deposits are insured
15		by a federal agency having jurisdiction over the
16		financial institution pursuant to section 378-3(9);
17	(10)	Detective agencies and security guard agencies
18		pursuant to sections $463-6$ (b) and $463-8$ (b);
19	(11)	Employers in the business of insurance pursuant to
20		section 431:2-201.3;

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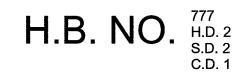
1	(12)	Employers of individuals or supervisors of individuals
2		responsible for screening passengers or property under
3		title 49 United States Code section 44901 or
4		individuals with unescorted access to an aircraft of
5		an air carrier or foreign carrier or in a secured area
6		of an airport in the United States pursuant to title
7		49 United States Code section 44936(a);
8	(13)	The department of human services pursuant to sections
9		<u>346-2.5</u> , 346-97, and 352-5.5;
10	(14)	The public library system pursuant to section
11		302A-601.5;
12	(15)	The department of public safety pursuant to section
13		353C-5;
14	(16)	The board of directors of a cooperative housing
15		corporation or the manager of a cooperative housing
16		project pursuant to section 4211-12;
17	(17)	The board of directors of an association under chapter
18		514B, or the managing agent or resident manager of a
19		condominium pursuant to section 514B-133; and
20	(18)	The department of health pursuant to section
21		321-15.2."





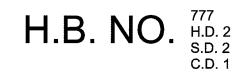
1	SECT	ION 5. Section 846-2.7, Hawaii Revised Statutes, is
2	amended b	y amending subsection (b) to read as follows:
3	"(b)	Criminal history record checks may be conducted by:
4	(1)	The department of health or its designee on operators
5		of adult foster homes for individuals with
6		developmental disabilities or developmental
7		disabilities domiciliary homes and their employees, as
8		provided by section 321-15.2;
9	(2)	The department of health or its designee on
10		prospective employees, persons seeking to serve as
11		providers, or subcontractors in positions that place
12		them in direct contact with clients when providing
13		non-witnessed direct mental health or health care
14		services as provided by section 321-171.5;
15	(3)	The department of health or its designee on all
16		applicants for licensure or certification for,
17		operators for, prospective employees, adult
18		volunteers, and all adults, except adults in care, at
19		healthcare facilities as defined in section 321-15.2;
20	(4)	The department of education on employees, prospective
21		employees, and teacher trainees in any public school

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1		in positions that necessitate close proximity to
2		children as provided by section 302A-601.5;
3	(5)	The counties on employees and prospective employees
4		who may be in positions that place them in close
5		proximity to children in recreation or child care
6		programs and services;
7	(6)	The county liquor commissions on applicants for liquor
8		licenses as provided by section 281-53.5;
9	(7)	The county liquor commissions on employees and
10		prospective employees involved in liquor
11		administration, law enforcement, and liquor control
12		investigations;
13	(8)	The department of human services on operators and
14		employees of child caring institutions, child placing
15		organizations, and [ <del>foster boarding</del> ] <u>resource family</u>
16		homes as provided by section 346-17;
17	(9)	The department of human services on prospective
18		adoptive parents as established under section
19		346-19.7;
20	(10)	The department of human services or its designee on
21		applicants to operate child care facilities, household

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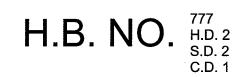
1		members of the applicant, prospective employees of the
2		applicant, and new employees and household members of
3		the provider after registration or licensure as
4		provided by section 346-154, and persons subject to
5		section 346-152.5;
6	(11)	The department of human services on persons exempt
7		pursuant to section 346-152 to be eligible to provide
8		child care and receive child care subsidies as
9		provided by section 346-152.5;
10	(12)	The department of health on operators and employees of
11		home and community-based case management agencies and
12		operators and other adults, except for adults in care,
13		residing in community care foster family homes as
14		provided by section 321-15.2;
15	(13)	The department of human services on staff members of
16		the Hawaii youth correctional facility as provided by
17		section 352-5.5;
18	(14)	The department of human services on employees,
19		prospective employees, and volunteers of contracted
20		providers and subcontractors in positions that place
21		them in close proximity to youth when providing

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1		services on behalf of the office or the Hawaii youth
2		correctional facility as provided by section 352D-4.3;
3	(15)	The judiciary on employees and applicants at detention
4		and shelter facilities as provided by section 571-34;
5	(16)	The department of public safety on employees and
6		prospective employees who are directly involved with
7		the treatment and care of persons committed to a
8		correctional facility or who possess police powers
9		including the power of arrest as provided by section
10		353C-5;
11	(17)	The board of private detectives and guards on
12		applicants for private detective or private guard
13		licensure as provided by section 463-9;
14	(18)	Private schools and designated organizations on
15		employees and prospective employees who may be in
16		positions that necessitate close proximity to
17		children; provided that private schools and designated
18		organizations receive only indications of the states
19		from which the national criminal history record
20		information was provided pursuant to section 302C-1;

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1	(19)	The public library system on employees and prospective
2		employees whose positions place them in close
3		proximity to children as provided by section
4		302A-601.5;
5	(20)	The State or any of its branches, political
6		subdivisions, or agencies on applicants and employees
7		holding a position that has the same type of contact
8		with children, vulnerable adults, or persons committed
9		to a correctional facility as other public employees
10		who hold positions that are authorized by law to
11		require criminal history record checks as a condition
12		of employment as provided by section 78-2.7;
13	(21)	The department of health on licensed adult day care
14		center operators, employees, new employees,
15		subcontracted service providers and their employees,
16		and adult volunteers as provided by section 321-15.2;
17	(22)	The department of human services on purchase of
18		service contracted and subcontracted service providers
19		and their employees [ <del>serving clients of the adult</del>
20		protective and community services branch, ] and

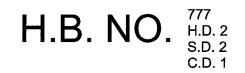
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1		volunteers, as provided by [section] sections 346-2.5
2		<u>and</u> 346-97;
3	(23)	The department of human services on foster grandparent
4		program, senior companion program, and respite
5		companion program participants as provided by section
6		346-97;
7	(24)	The department of human services on contracted and
8		subcontracted service providers and their current and
9		prospective employees that provide home and community-
10		based services under section 1915(c) of the Social
11		Security Act, title 42 United States Code section
12		1396n(c), or under any other applicable section or
13		sections of the Social Security Act for the purposes
14		of providing home and community-based services, as
15		provided by section 346-97;
16	(25)	The department of commerce and consumer affairs on
17		proposed directors and executive officers of a bank,
18		savings bank, savings and loan association, trust
19		company, and depository financial services loan
20		company as provided by section 412:3-201;

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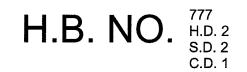
1	(26)	The department of commerce and consumer affairs on
2		proposed directors and executive officers of a
3		nondepository financial services loan company as
4		provided by section 412:3-301;
5	(27)	The department of commerce and consumer affairs on the
6		original chartering applicants and proposed executive
7		officers of a credit union as provided by section
8		412:10-103;
9	(28)	The department of commerce and consumer affairs on:
10		(A) Each principal of every non-corporate applicant
11		for a money transmitter license;
12		(B) Each person who upon approval of an application
13		by a corporate applicant for a money transmitter
14		license will be a principal of the licensee; and
15		(C) Each person who upon approval of an application
16		requesting approval of a proposed change in
17		control of licensee will be a principal of the
18		licensee,
19		as provided by sections 489D-9 and 489D-15;

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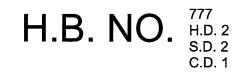
1	(29)	The department of commerce and consumer affairs on
2		applicants for licensure and persons licensed under
3		title 24;
4	(30)	The Hawaii health systems corporation on:
5		(A) Employees;
6		(B) Applicants seeking employment;
7		(C) Current or prospective members of the corporation
8		board or regional system board; or
9		(D) Current or prospective volunteers, providers, or
10		contractors,
11		in any of the corporation's health facilities as
12		provided by section 323F-5.5;
13	(31)	The department of commerce and consumer affairs on:
14		(A) An applicant for a mortgage loan originator
15		license, or license renewal; and
16		(B) Each control person, executive officer, director,
17		general partner, and managing member of an
18		applicant for a mortgage loan originator company
19		license or license renewal,
20		as provided by chapter 454F;

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1	(32)	The state public charter school commission or public
2		charter schools on employees, teacher trainees,
3		prospective employees, and prospective teacher
4		trainees in any public charter school for any position
5		that places them in close proximity to children, as
6		provided in section 302D-33;
7	(33)	The counties on prospective employees who work with
8		children, vulnerable adults, or senior citizens in
9		community-based programs;
10	(34)	The counties on prospective employees for fire
11		department positions that involve contact with
12		children or vulnerable adults;
13	(35)	The counties on prospective employees for emergency
14		medical services positions that involve contact with
15		children or vulnerable adults;
16	(36)	The counties on prospective employees for emergency
17		management positions and community volunteers whose
18		responsibilities involve planning and executing
19		homeland security measures including viewing,
20		handling, and engaging in law enforcement or

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1		classified meetings and assisting vulnerable citizens
2		during emergencies or crises;
3	(37)	The State and counties on employees, prospective
4		employees, volunteers, and contractors whose position
5		responsibilities require unescorted access to secured
6		areas and equipment related to a traffic management
7		center;
8	(38)	The State and counties on employees and prospective
9		employees whose positions involve the handling or use
10		of firearms for other than law enforcement purposes;
11	(39)	The State and counties on current and prospective
12		systems analysts and others involved in an agency's
13		information technology operation whose position
14		responsibilities provide them with access to
15		proprietary, confidential, or sensitive information;
16	(40)	The department of commerce and consumer affairs on:
17		(A) Applicants for real estate appraiser licensure or
18		certification as provided by chapter 466K;
19		(B) Each person who owns more than ten per cent of an
20		appraisal management company who is applying for

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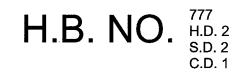
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1		registration as an appraisal management company,
2		as provided by section 466L-7; and
3		(C) Each of the controlling persons of an applicant
4		for registration as an appraisal management
5		company, as provided by section 466L-7;
6	(41)	The department of health or its designee on all
7		license applicants, licensees, employees, contractors,
8		and prospective employees of medical cannabis
9		dispensaries, and individuals permitted to enter and
10		remain in medical cannabis dispensary facilities as
11		provided under sections 329D-15(a)(4) and 329D-
12		16(a)(3);
13	(42)	The department of commerce and consumer affairs on
14		applicants for nurse licensure or license renewal,
15		reactivation, or restoration as provided by sections
16		457-7, 457-8, 457-8.5, and 457-9;
17	(43)	The county police departments on applicants for
18		permits to acquire firearms pursuant to section 134-2
19		and on individuals registering their firearms pursuant
20		to section 134-3;
21	(44)	The department of commerce and consumer affairs on:

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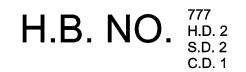
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1		(A)	Each of the controlling persons of the applicant
2			for licensure as an escrow depository, and each
3			of the officers, directors, and principals who
4			will be in charge of the escrow depository's
5			activities upon licensure; and
6		(B)	Each of the controlling persons of an applicant
7			for proposed change in control of an escrow
8			depository licensee, and each of the officers,
9			directors, and principals who will be in charge
10			of the licensee's activities upon approval of the
11			application,
12		as p	rovided by chapter 449;
13	(45)	The	department of taxation on current or prospective
14		empl	oyees or contractors who have access to federal
15		tax	information in order to comply with requirements
16		of f	ederal law, regulation, or procedure, as provided
17		by s	ection 231-1.6;
18	(46)	The	department of labor and industrial relations on
19		curr	ent or prospective employees or contractors who
20		have	access to federal tax information in order to

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1		comply with requirements of federal law, regulation,
2		or procedure, as provided by section 383-110;
3	(47)	The department of human services on current or
4		prospective employees or contractors who have access
5	·	to federal tax information in order to comply with
6		requirements of federal law, regulation, or procedure,
7		and on current or prospective employees, volunteers,
8		contractors, or contractors' employees or volunteers,
9		subcontractors, or subcontractors' employees or
10		volunteers, whose position places or would place them
11		in close proximity to minors, young adults, or
12		vulnerable adults, as provided by section 346-2.5;
13	(48)	The child support enforcement agency on current or
14		prospective employees or contractors who have access
15		to federal tax information in order to comply with
16		federal law, regulation, or procedure, as provided by
17		section 576D-11.5;
18	(49)	The department of the attorney general on current or
19		prospective employees or employees or agents of
20		contractors who have access to federal tax information
• 4		

21 to comply with requirements of federal law,

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1	regulation, or procedure, as provided by section
2	28-17;
3	[+](50)[+]The department of commerce and consumer affairs on
4	each control person, executive officer, director,
5	general partner, and managing member of an installment
6	loan licensee, or an applicant for an installment loan
7	license, as provided in chapter 480J;
8	[+](51)[+]The University of Hawaii on current and prospective
9	employees and contractors whose duties include
10	ensuring the security of campus facilities and
11	persons; and
12	[+](52)[+]Any other organization, entity, or the State, its
13	branches, political subdivisions, or agencies as may
14	be authorized by state law."
15	SECTION 6. Statutory material to be repealed is bracketed
16	and stricken. New statutory material is underscored.
17	SECTION 7. This Act shall take effect upon its approval;
18	provided that the amendments made to sections 378-2.5 and
19	846-2.7, Hawaii Revised Statutes, by sections 4 and 5 of this
20	Act, respectively, shall not be repealed when those sections are

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- 1 amended on January 1, 2024, pursuant to section 62 of Act 278,
- 2 Session Laws of Hawaii 2022.





#### Report Title:

DHS; Employees; Volunteers; Contractors; Subcontractors; Criminal History Background Checks; Minors; Young Adults; Vulnerable Adults; Employment Practices; Conviction Records

#### 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 whose position places them or would place them in close proximity to certain minors, young adults, or vulnerable adults. Clarifies that any state law permitting a more extensive inquiry into an individual's criminal history by the State and any of its branches, political subdivisions, agencies, or semiautonomous public bodies corporate and politic will prevail over conflicting conviction record inquiries under the State's employment practices law. (CD1)

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

