

BILL ANALYSIS

Senate Research Center
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S.B. 67
By: Nelson
Health & Human Services
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 67 is intended to ensure the safety of vulnerable populations and combat fraud by preventing persons convicted of certain crimes from falsifying their identities to work in occupations in which they have access to children, the elderly, or the disabled.

As proposed, S.B. 67 requires Federal Bureau of Investigation fingerprint-based criminal background checks for certain direct care employees who care for children, the elderly, or the disabled.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to executive commissioner of the Health and Human Service Commission in SECTION 1 (Section 42.056, Human Resources Code) and SECTION 3 (Section 161.076, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 42.056, Human Resources Code, by amending Subsections (a-1), (a-2), (b), and (b-1), and adding Subsection (a-3), as follows:

(a-1) Requires the director, owner, or operator of a residential child-care facility, in accordance with rules adopted by the executive commissioner of the Health and Human Service Commission (executive commissioner), to submit to the Department of Family and Protective Services (DFPS) for use in conducting background and criminal history checks the name of each prospective employee, rather than the name of each prospective employee who will provide direct care or have direct access to a child in the residential child-care facility.

(a-2) Requires the director, owner, or operator of a child-care facility or child-placing agency, rather than a day-care center, in accordance with rules adopted by the executive commissioner, to submit a complete set of fingerprints of each person whose name is submitted by the director, owner, or operator under Subsection (a), (a-1), or (a-3).

(a-3) Requires the director, owner, or operator of a child-placing agency in accordance with rules adopted by the executive commissioner, when applying to operate a child-placing agency and at least once during each 24 months after receiving a license, to submit to DFPS for use in conducting background and criminal history checks the name of the director, owner, and operator of the child-placing agency and the name of each person employed by the child-placing agency.

(b) Requires DFPS to conduct background and history checks using certain information, including information provided under Subsection (a-3).

(b-1) Includes each person whose name is submitted by the director, owner, or operator of a child-care facility under Subsection (a-1), or the director, owner, or operator of a child-placing agency under Subsection (a-3) in the list of persons for whom DFPS is required to conduct a state and Federal Bureau of Investigation (FBI) criminal history check. Makes conforming changes.

SECTION 2. Amends Section 43.004, Human Resources Code, as follows:

Sec. 43.004. QUALIFICATIONS FOR LICENSE. (a) Requires a person to provide fingerprints and to meet certain other requirements to be eligible for a child-care administrator's license.

(b) Makes conforming changes.

(c) Requires DFPS to conduct a criminal history and background check of the applicant using information made available by the Department of Public Safety (DPS) under Section 411.114 (Access to Criminal History Record Information: Department of Protective and Regulatory Services), Government Code, and by the FBI or other criminal justice agency under Section 411.087 (Access to Criminal History Record Information Maintained by Federal Bureau of Investigation or Local Criminal Justice Agency), Government Code, and the information in the central registry of reported cases of child abuse or neglect established under Section 261.002 (Central Registry), Family Code, before DFPS issues a license under this chapter.

SECTION 3. Amends Subchapter D Chapter 161, Human Resources Code, by adding Section 161.076, as follows:

Sec. 161.076. REQUIRED BACKGROUND AND CRIMINAL HISTORY CHECKS.

(a) Requires the director, owner, or operator of a facility or agency licensed by DFPS, when applying for a license from the department and at least once during each 24 months after receiving a license from DFPS, to submit to DFPS for use in conducting background and criminal history checks a complete set of fingerprints of each director, owner, and operator of the facility or agency, each person employed at the facility or by the agency, and each person at least 14 years of age who will regularly or frequently be staying or working at the facility or working with people served by the agency.

(b) Requires the director, owner, or operator of a facility or agency licensed by DFPS to submit to DFPS for use in conducting background and criminal history checks the name and a complete set of fingerprints of each prospective employee.

(c) Requires the executive commissioner to adopt rules necessary to administer this section. Provides that rules adopted under this section require that the fingerprints be submitted in a form and of a quality acceptable to the Department of Public Safety (DPS) and the FBI for conducting a criminal history check. Authorizes the rules to require that the fingerprints be submitted electronically through an applicant fingerprinting service center. Authorizes the rules to require that the facility or agency licensed by DFPS pay to DFPS a fee in an amount not to exceed the administrative costs DFPS incurs in conducting a background and criminal history check under this section.

SECTION 4. Amends Subchapter F, Chapter 411, Government Code, by adding Section 411.1146, as follows:

Sec. 411.1146. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF AGING AND DISABILITY SERVICES. (a) Entitles the Department of Aging and Disability Services (DADS) to obtain from DFPS criminal history record information maintained by DFPS that relates to certain persons

(b) Prohibits DADS from releasing or disclosing the criminal history record information obtained under Subsection (a) to any person except on court order, with the consent of the person who is the subject of the information, for the purposes of an administrative hearing held by DADS concerning the person who is the subject of the information, or as provided by Subsection (c).

(c) Authorizes DADS to release criminal history record information to the person who is the subject of the information, or a facility or agency that employs or is

considering employing the person who is the subject of the information or at which the person regularly stays or works.

(d) Entitles DADS, subject to Section 411.087, to obtain criminal history record information maintained or indexed by the FBI or any other criminal justice agency in this state that relates to a person described by Subsection (a).

(e) Requires DADS to collect and destroy criminal history record information that relates to a person immediately after making an employment decision or taking a personnel action relating to the person who is the subject of the criminal history record information.

SECTION 5. (a) Makes application of this Act prospective to September 1, 2011.

(b) Requires the executive commissioner, not later than September 1, 2010, to adopt rules as required by Section 161.076, Human Resources Code, as added by this Act.

SECTION 6. Effective date: September 1, 2009.