

BILL ANALYSIS

Senate Research Center

C.S.S.B. 67
By: Nelson
Health & Human Services
3/27/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 67 requires certain direct care employees who care for children, the elderly, or persons with disabilities to submit background and criminal history checks to the Department of Family and Protective Services and requires those employees to provide fingerprints for criminal background checks.

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.

Rulemaking authority previously granted to the Department of Family and Protective Services is modified in SECTION 1 (Section 42.056, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

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

(a) Requires the director, owner, or operator of a child-care facility, child-placing agency, or family home, 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 when applying to operate a child-care facility or child-placing agency or when listing or registering a family home and at least once during each 24 months after receiving a license, listing, registration, or certification of approval, the name of the director, owner, and operator of the facility, agency, or home; each person employed at the facility, agency, or home; and each person 14 years of age or older, other than a client in care, who is counted in child-to-caregiver ratios in accordance with the minimum standards of DFPS, has unsupervised access to children in care at the facility or family home; resides in the facility or family home; or will regularly or frequently be staying or working at a facility, family home, or prospective adoptive home, while children are being provided care; and at the time specified by the rules adopted by the executive commissioner, the name of each prospective employee of the child-care facility, child-placing agency or family home; each prospective foster parent who will provide care through a child-placing agency; each prospective adoptive parent seeking to adopt through a child-placing agency; and each person 14 years of age or older, other than a client in care, who will reside in a prospective adoptive home if the adoption is through a child-placing agency. Deletes existing text requiring the director, owner, or operator of a child-care facility or family home, in accordance with rules adopted by DFPS, when applying to operate a child-care facility or when listing or registering a family home and at least once during each 24 months after receiving a license, listing, registration, or certification of approval, submit to DFPS for use in conducting background and criminal history checks the name of the of the director, owner, and operator of the facility or home, and the name of each person employed at the facility or home; and the name of each person 14 years of age or older who will regularly or frequently be staying or working at the facility or home while children are being provided care.

(a-1) Requires the director, owner, or operator of a child-care facility, other than a family home, or a child-placing agency, in accordance with rules adopted by the executive commissioner, to submit a complete set of fingerprints of each person whose name is required to be submitted under Subsection (a) if the person will provide direct care or have direct access to a child in the child-care facility or child-placing agency, unless the person is a child who resides in the facility or prospective adoptive home; only required to have the person's name submitted based on the criteria specified in Subsection (a)(1)(C)(iv); an employee of the facility or agency for whom fingerprints have previously been submitted on behalf of the facility or agency under this section; or precluded from being present at the facility or agency based on the information resulting from the state criminal history check and the background check completed under Subsection (b). Deletes existing text requiring the director, owner, or operator of a day-care center, in accordance with rules adopted by the executive commissioner, to submit a complete set of fingerprints of the person whose name is submitted by the director, owner, or operator under Subsection (a). Deletes existing text requiring the director, owner, or operator of a residential child-care facility, in accordance with rules adopted by the 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 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 family home, in accordance with rules adopted by the executive commissioner, to submit a complete set of fingerprints of each person whose name is required to be submitted under Subsection (a) if the person will provide direct care or have direct access to a child in the family home; is not precluded from being present at the family home based on the information resulting from the state criminal history check and the background check completed under Subsection (b); has not had the person's fingerprints previously submitted on behalf of the family home under this section; and resided in another state during the five years preceding the date the person's name was required to be submitted under Subsection (a); or the director, owner, or operator has reason to suspect that the person has a criminal history in another state.

(a-3) Provides that the rules regarding the submission of fingerprints adopted by the executive commissioner under Subsections (a-1) and (a-2) require that the fingerprints be submitted in a form and of a quality acceptable to the Department of Public Safety (DPS) and the Federal Bureau of Investigation (FBI) for conducting a criminal history check; and are authorized to require that the fingerprints be submitted electronically through an applicant fingerprinting service center.

(b) Requires DFPS to initially conduct background and criminal history checks using the information provided under Subsection (a), rather than Subsections (a) and (a-1).

(b-1) Requires DFPS, in addition to and after the completion of any other background or criminal history check conducted under Subsection (b), for each person whose fingerprints are, is submitted under Subsection (a-1) or (a-2) to conduct a state and FBI criminal history check by submitting the person's fingerprints or causing the fingerprints to be submitted electronically to DPS for the purpose of conducting a state and federal criminal history check. Deletes existing text requiring DFPS in addition to any other background or criminal history check conducted under Subsection (b), for each person whose name is submitted by the director, owner, or operator of a day-care center under Subsection (a) to conduct a state and FBI criminal history check by submitting the person's fingerprints provided under Subsection (a-2), or causing the fingerprints to be submitted electronically as authorized by that subsection, to DPS for the purpose of conducting a state and federal criminal check.

(c) Requires DFPS by rule to require a child-care facility, child-placing agency, or registered family home to pay 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.

(f) Requires DFPS, as part of a background check under this section, to provide any relevant information available in DFPS's records regarding a person's previous employment in a facility or family home, rather than residential child-care facility, to the person submitting the request.

(g) Prohibits a person whose name is required to be submitted under Subsection (a), except as otherwise provided by Subsection (e) and this subsection, from providing direct care or having direct access to a child in a facility or family home before the person's background and criminal history checks under Subsections (b) and, as applicable, (b-1) are completed. Prohibits a person from being employed at a facility or family home or may provide direct care or have direct access to a child in the facility or family home before the person's criminal history check under Subsection (b-1) is completed if the facility or family home is experiencing a staffing shortage; the state criminal history check and the background check using DFPS's records of reported abuse and neglect have been completed under Subsection (b), and the resulting information does not preclude the person from being present at the facility or family home; and the person's fingerprints are submitted as soon as possible, but not later than the 30th day after the earliest of the date the person first provides direct care to a child in the facility or family home; first has direct access to a child in the facility or family home; or is hired. Deletes existing text that prohibits a person whose name is submitted by the director, owner, or operator of a day-care center under Subsection (a), except as otherwise provided by this subsection, from providing direct care or having direct access to a child in a day-care center before the person's background and criminal history checks under Subsections (b) and (b-1) are completed and prohibits a person from being employed at a day-care center and being authorized to provide direct care or have direct access to a child in the day-care center before the person's criminal history check under Subsection (b-1) is completed if the state criminal history check and the background check using DFPS records of reported abuse and neglect have been completed under Subsection (b), and resulting information does not preclude the person from being present at the day-care center; and the day-care center is experiencing a staffing shortage that, if the day-care center were not allowed to employ the person until completion of the federal criminal history check, would result in a staff-to-child ratio that violates DFPS's minimum standards. Makes nonsubstantive changes.

(h) Makes conforming changes.

(i) Provides that a director, owner, or operator of a facility or family home commits an offense if the director, owner, or operator knowingly fails to submit to DFPS information about a person as required by this section or DFPS rules for use in conducting background and criminal history checks with respect to the person. Makes a conforming change.

(j) 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 a conforming change.

(c) Requires DFPS to conduct a criminal history and background check of the applicant using the information provided by an individual under this section; made available by 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, after conducting a state and federal criminal history check using the fingerprints provided by the applicant under this section; and 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. Makes nonsubstantive changes.

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; CRIMINAL PENALTIES.** (a) Requires the director, owner, or operator of a facility or agency licensed by DFPS, in accordance with rules adopted by the executive commissioner, to submit to DPS for use in conducting background and criminal history checks when applying for a license from DFPS, the name of each person who will provide direct care or who has direct access to residents or clients of the facility or agency and who is a director, owner, or operator of the facility or agency; a person employed at the facility or by the agency; or a person 14 years of age or older, other than a resident or client in care, who will regularly or frequently be staying or working at the facility or agency while residents or clients are being provided care; and at the time specified by the rules adopted by the executive commissioner, the name of each person who will provide direct care or who will have direct access to residents or clients of the facility or agency and who is a prospective employee of the facility or agency, or volunteer at the facility or with the agency.

(b) Requires the director, owner, or operator of a facility or agency licensed by DFPS, in accordance with rules adopted by the executive commissioner, to submit a complete set of fingerprints of each employee or prospective employee whose name is required to be submitted under Subsection (a) and who will provide direct care or have direct access to a resident or client in the facility or of the agency, unless the person is a person for whom fingerprints have previously been submitted on behalf of the facility or agency under this section; or is precluded from providing direct care or having direct access to a resident or client in the facility or of the agency based on the information resulting from a completed state criminal history check.

(c) Requires the director, owner, or operator of a facility or agency licensed by DFPS to ensure that the facility or agency complies with this section and that the facility or agency immediately terminates the employment of a person who, as a result of a background check completed under this section, is precluded from providing direct care or having direct access to a resident or client in the facility or of the agency.

(d) Provides that the rules adopted under Subsections (a) and (b) are required to require that the fingerprints be submitted in a form and of a quality acceptable to DPS and the FBI for conducting a criminal history check; are authorized to require that the fingerprints be submitted electronically through an applicant fingerprinting service center; and are required to require a facility or agency licensed by DFPS to pay to DFPS a fee in an amount not to exceed the administrative costs DFPS incurs in processing background and criminal history checks conducted under this section.

(e) Provides that a director, owner, or operator of a facility or agency licensed by DFPS commits an offense if the director, owner, or operator knowingly fails to submit information about a person as required by this section or rules adopted by the executive commissioner to conduct background and criminal history checks with respect to the person; and employs the person at the facility or agency or otherwise allows the person to regularly or frequently stay or work at the facility or agency while residents or clients are being provided care.

(f) Provides that a director, owner, or operator of a facility or agency licensed by DFPS commits an offense if, after the date the director, owner, or operator discovers that, based on the results of a person's background or criminal history check, the person is precluded from providing direct care or having direct access

to a resident or client in the facility or of the agency, the director, owner, or operator knowingly employs the person at the facility or agency; or otherwise allows the person to regularly or frequently stay or work at the facility or agency while residents or clients are being provided care.

(g) Provides that an offense under Subsection (e) or (f) is a Class B misdemeanor.

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 applying, working, volunteering, or of a certain age who will be at the facility or agency licensed by DADS.

(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 providing the information to a facility or agency 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. Repealer: Section 42.056(d) (regarding the requirement that a person is prohibited from providing direct care or have access to a child in a residential child-care facility before completion of a background and criminal history check), Human Resources Code.

SECTION 6. (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 42.056, Human Resources Code, as amended by this Act, and Section 161.076, Human Resources Code, as added by this Act.

SECTION 7. (a) Provides that Sections 42.056(i) and (j), Human Resources Code, as amended by this Act, take effect September 1, 2011.

(b) Provides that Sections 161.076(e)-(g), Human Resources Code, as added by this Act, take effect September 1, 2011.

SECTION 8. Effective date, except as otherwise provided by this Act: September 1, 2009.