

By: Nelson

S.B. No. 67

A BILL TO BE ENTITLED

AN ACT

relating to the imposition of background and criminal history check requirements for operators and employees of certain facilities and agencies serving children, the elderly, or persons who are disabled; providing criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 42.056, Human Resources Code, is amended by amending Subsections (a), (a-1), (a-2), (b), (b-1), (c), (f), (g), (h), (i), and (j) and adding Subsection (a-3) to read as follows:

(a) In accordance with rules adopted by the executive commissioner [~~department~~], the director, owner, or operator of a child-care facility, child-placing agency, or family home shall [~~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 the department for use in conducting background and criminal history checks:

(1) 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:

(A) the director, owner, and operator of the facility, agency, or home;

1 (B) [~~and the name of~~] each person employed at
2 the facility, agency, or home; and

3 (C) [~~(2) the name of~~] each person 14 years of age
4 or older, other than a client in care, who:

5 (i) is counted in child-to-caregiver ratios
6 in accordance with the minimum standards of the department;

7 (ii) has unsupervised access to children in
8 care at the facility or family home;

9 (iii) resides in the facility or family
10 home; or

11 (iv) will regularly or frequently be
12 staying or working at a [the] facility, family [or] home, or
13 prospective adoptive home, while children are being provided care;
14 and

15 (2) at the time specified by the rules adopted by the
16 executive commissioner, the name of:

17 (A) each prospective employee of the child-care
18 facility, child-placing agency, or family home;

19 (B) each prospective foster parent who will
20 provide care through a child-placing agency;

21 (C) each prospective adoptive parent seeking to
22 adopt through a child-placing agency; and

23 (D) each person 14 years of age or older, other
24 than a client in care, who will reside in a prospective adoptive
25 home if the adoption is through a child-placing agency.

26 ~~(a-1) [In accordance with rules adopted by the executive~~
27 ~~commissioner, the director, owner, or operator of a residential~~

1 ~~child-care facility shall submit to the department for use in~~
2 ~~conducting background and criminal history checks the name of each~~
3 ~~prospective employee who will provide direct care or have direct~~
4 ~~access to a child in the residential child-care facility.~~

5 ~~[(a-2)]~~ In accordance with rules adopted by the executive
6 commissioner, the director, owner, or operator of a child-care
7 facility, other than a family home, or a child-placing agency
8 ~~[day-care center]~~ shall submit a complete set of fingerprints of
9 each person whose name is required to be submitted ~~[by the director,~~
10 ~~owner, or operator]~~ under Subsection (a) if the person will provide
11 direct care or have direct access to a child in the child-care
12 facility or child-placing agency, unless the person is:

13 (1) a child who resides in the facility or prospective
14 adoptive home;

15 (2) only required to have the person's name submitted
16 based on the criteria specified in Subsection (a)(1)(C)(iv);

17 (3) an employee of the facility or agency for whom
18 fingerprints have previously been submitted on behalf of the
19 facility or agency under this section; or

20 (4) precluded from being present at the facility or
21 agency based on the information resulting from the state criminal
22 history check and the background check completed under Subsection
23 (b).

24 (a-2) In accordance with rules adopted by the executive
25 commissioner, the director, owner, or operator of a family home
26 shall submit a complete set of fingerprints of each person whose
27 name is required to be submitted under Subsection (a) if:

1 (1) the person:

2 (A) will provide direct care or have direct
3 access to a child in the family home;

4 (B) is not precluded from being present at the
5 family home based on the information resulting from the state
6 criminal history check and the background check completed under
7 Subsection (b);

8 (C) has not had the person's fingerprints
9 previously submitted on behalf of the family home under this
10 section; and

11 (D) resided in another state during the five
12 years preceding the date the person's name was required to be
13 submitted under Subsection (a); or

14 (2) the director, owner, or operator has reason to
15 suspect that the person has a criminal history in another state.

16 (a-3) The rules regarding the submission of fingerprints
17 adopted by the executive commissioner under Subsections (a-1) and
18 (a-2):

19 (1) must require that the fingerprints be submitted in
20 a form and of a quality acceptable to the Department of Public
21 Safety and the Federal Bureau of Investigation for conducting a
22 criminal history check; and

23 (2) may require that the fingerprints be submitted
24 electronically through an applicant fingerprinting service center.

25 (b) The department shall initially conduct background and
26 criminal history checks using:

27 (1) the information provided under Subsection (a)

1 ~~[Subsections (a) and (a-1)]~~;

2 (2) the information made available by the Department
3 of Public Safety under Section 411.114, Government Code, or by the
4 Federal Bureau of Investigation or other criminal justice agency
5 under Section 411.087, Government Code; and

6 (3) the department's records of reported abuse and
7 neglect.

8 (b-1) In addition to and after the completion of any other
9 background or criminal history check conducted under Subsection
10 (b), for each person whose fingerprints are ~~[name is]~~ submitted ~~[by~~
11 ~~the director, owner, or operator of a day-care center]~~ under
12 Subsection (a-1) or (a-2) ~~[(a)]~~, the department shall conduct a
13 state and Federal Bureau of Investigation criminal history check
14 by:

15 (1) submitting the person's fingerprints ~~[provided~~
16 ~~under Subsection (a-2),]~~ or causing the fingerprints to be
17 submitted electronically ~~[as authorized by that subsection,]~~ to the
18 Department of Public Safety for the purpose of conducting a state
19 and federal criminal history check; and

20 (2) using the resulting information made available by
21 that department under Section 411.114, Government Code, and by the
22 Federal Bureau of Investigation and any other criminal justice
23 agency under Section 411.087, Government Code.

24 (c) The department by rule shall require a child-care
25 facility, child-placing agency, or registered family home to pay to
26 the department a fee in an amount not to exceed the administrative
27 costs the department incurs in conducting a background and criminal

1 history check under this section.

2 (f) As part of a background check under this section, the
3 department shall provide any relevant information available in the
4 department's records regarding a person's previous employment in a
5 ~~[residential child-care]~~ facility or family home to the person
6 submitting the request.

7 (g) Except as otherwise provided by Subsection (e) and this
8 subsection, a person whose name is required to be submitted ~~[by the~~
9 ~~director, owner, or operator of a day-care center]~~ under Subsection
10 (a) may not provide direct care or have direct access to a child in a
11 facility or family home ~~[day-care center]~~ before the person's
12 background and criminal history checks under Subsections (b) and,
13 as applicable, (b-1) are completed. A person may be employed at a
14 facility or family home or ~~[day-care center and]~~ may provide direct
15 care or have direct access to a child in the facility or family home
16 ~~[day-care center]~~ before the person's criminal history check under
17 Subsection (b-1) is completed if:

18 (1) the facility or family home is experiencing a
19 staffing shortage;

20 (2) the state criminal history check and the
21 background check using the department's records of reported abuse
22 and neglect have been completed under Subsection (b), and the
23 resulting information does not preclude the person from being
24 present at the facility or family home ~~[day-care center]~~; and

25 (3) ~~[-2-]~~ the person's fingerprints are submitted as
26 soon as possible, but not later than the 30th day after the earliest
27 of the date the person:

1 (A) first provides direct care to a child in the
2 facility or family home;

3 (B) first has direct access to a child in the
4 facility or family home; or

5 (C) is hired [~~day-care center is experiencing a~~
6 ~~staffing shortage that, if the day-care center were not allowed to~~
7 ~~employ the person until completion of the federal criminal history~~
8 ~~check, would result in a staff-to-child ratio that violates the~~
9 ~~department's minimum standards~~].

10 (h) If the results of a criminal history check under
11 Subsection (b-1) for a person employed by a facility or family home
12 [~~day-care center~~] during a staffing shortage as authorized by
13 Subsection (g) preclude the person from being present at the
14 facility or family home [~~day-care center~~], the director, owner, or
15 operator of the facility or family home [~~day-care center~~] shall
16 immediately terminate the person's employment.

17 (i) A director, owner, or operator of a facility or family
18 home [~~day-care center~~] commits an offense if the director, owner,
19 or operator knowingly:

20 (1) fails to submit to the department information
21 about a person as required by this section or [~~and~~] department rules
22 for use in conducting background and criminal history checks with
23 respect to the person; and

24 (2) employs the person at the facility or family home
25 [~~day-care center~~] or otherwise allows the person to regularly or
26 frequently stay or work at the facility or family home [~~day-care~~
27 ~~center~~] while children are being provided care.

1 (j) A director, owner, or operator of a facility or family
2 home [~~day-care center~~] commits an offense if, after the date the
3 director, owner, or operator receives notice from the department
4 that, based on the results of a person's background or criminal
5 history check, the person is precluded from being present at the
6 facility or family home [~~day-care center~~], the director, owner, or
7 operator knowingly:

8 (1) employs the person at the facility or family home
9 [~~day-care center~~]; or

10 (2) otherwise allows the person to regularly or
11 frequently stay or work at the facility or family home [~~day-care~~
12 ~~center~~] while children are being provided care.

13 SECTION 2. Section 43.004, Human Resources Code, is amended
14 to read as follows:

15 Sec. 43.004. QUALIFICATIONS FOR LICENSE. (a) To be
16 eligible for a child-care administrator's license a person must:

17 (1) provide information and fingerprints for the
18 department's use in conducting a criminal history and background
19 check under Subsection (c);

20 (2) pass an examination developed and administered by
21 the department that demonstrates competence in the field of
22 child-care administration;

23 (3) have one year of full-time experience in
24 management or supervision of child-care personnel and programs; and

25 (4) have one of the following educational and
26 experience qualifications:

27 (A) a master's or doctoral degree in social work

1 or other area of study; or

2 (B) a bachelor's degree and two years' full-time
3 experience in child care or a closely related field.

4 (b) To be eligible for a child-placing agency
5 administrator's license a person must:

6 (1) provide information and fingerprints for the
7 department's use in conducting a criminal history and background
8 check under Subsection (c);

9 (2) pass an examination developed and administered by
10 the department that demonstrates competence in the field of placing
11 children in residential settings or adoptive homes;

12 (3) have one year of full-time experience in
13 management or supervision of child-placing personnel and programs;
14 and

15 (4) have one of the following educational and
16 experience qualifications:

17 (A) a master's or doctoral degree in social work
18 or other area of study; or

19 (B) a bachelor's degree and two years' full-time
20 experience in the field of placing children in residential settings
21 or adoptive homes or a closely related field.

22 (c) Before the department issues a license under this
23 chapter, the department must conduct a criminal history and
24 background check of the applicant using the information:

25 (1) provided by an individual under this section;

26 (2) [the information] made available by the Department
27 of Public Safety under Section 411.114, Government Code, and ~~[or]~~

1 by the Federal Bureau of Investigation or other criminal justice
2 agency under Section 411.087, Government Code, after conducting a
3 state and federal criminal history check using the fingerprints
4 provided by the applicant under this section; and

5 (3) [(2) — the information] in the central registry of
6 reported cases of child abuse or neglect established under Section
7 261.002, Family Code.

8 SECTION 3. Subchapter D, Chapter 161, Human Resources Code,
9 is amended by adding Section 161.076 to read as follows:

10 Sec. 161.076. REQUIRED BACKGROUND AND CRIMINAL HISTORY
11 CHECKS; CRIMINAL PENALTIES. (a) In accordance with rules adopted
12 by the executive commissioner, the director, owner, or operator of
13 a facility or agency licensed by the department shall submit to the
14 Department of Public Safety for use in conducting background and
15 criminal history checks:

16 (1) when applying for a license from the department,
17 the name of each person who will provide direct care or who has
18 direct access to residents or clients of the facility or agency and
19 who is:

20 (A) a director, owner, or operator of the
21 facility or agency;

22 (B) a person employed at the facility or by the
23 agency; or

24 (C) a person 14 years of age or older, other than
25 a resident or client in care, who will regularly or frequently be
26 staying or working at the facility or agency while residents or
27 clients are being provided care; and

1 (2) at the time specified by the rules adopted by the
2 executive commissioner, the name of each person who will provide
3 direct care or who will have direct access to residents or clients
4 of the facility or agency and who is a prospective:

5 (A) employee of the facility or agency; or

6 (B) volunteer at the facility or with the agency.

7 (b) In accordance with rules adopted by the executive
8 commissioner, the director, owner, or operator of a facility or
9 agency licensed by the department shall submit a complete set of
10 fingerprints of each employee or prospective employee whose name is
11 required to be submitted under Subsection (a) and who will provide
12 direct care or have direct access to a resident or client in the
13 facility or of the agency, unless the person:

14 (1) is a person for whom fingerprints have previously
15 been submitted on behalf of the facility or agency under this
16 section; or

17 (2) is precluded from providing direct care or having
18 direct access to a resident or client in the facility or of the
19 agency based on the information resulting from a completed state
20 criminal history check.

21 (c) The director, owner, or operator of a facility or agency
22 licensed by the department shall ensure that the facility or agency
23 complies with this section and that the facility or agency
24 immediately terminates the employment of a person who, as a result
25 of a background check completed under this section, is precluded
26 from providing direct care or having direct access to a resident or
27 client in the facility or of the agency.

1 (d) The rules adopted under Subsections (a) and (b):

2 (1) must require that the fingerprints be submitted in
3 a form and of a quality acceptable to the Department of Public
4 Safety and the Federal Bureau of Investigation for conducting a
5 criminal history check;

6 (2) may require that the fingerprints be submitted
7 electronically through an applicant fingerprinting service center;
8 and

9 (3) shall require a facility or agency licensed by the
10 department to pay to the department a fee in an amount not to exceed
11 the administrative costs the department incurs in processing
12 background and criminal history checks conducted under this
13 section.

14 (e) A director, owner, or operator of a facility or agency
15 licensed by the department commits an offense if the director,
16 owner, or operator knowingly:

17 (1) fails to submit information about a person as
18 required by this section or rules adopted by the executive
19 commissioner to conduct background and criminal history checks with
20 respect to the person; and

21 (2) employs the person at the facility or agency or
22 otherwise allows the person to regularly or frequently stay or work
23 at the facility or agency while residents or clients are being
24 provided care.

25 (f) A director, owner, or operator of a facility or agency
26 licensed by the department commits an offense if, after the date the
27 director, owner, or operator discovers that, based on the results

1 of a person's background or criminal history check, the person is
2 precluded from providing direct care or having direct access to a
3 resident or client in the facility or of the agency, the director,
4 owner, or operator knowingly:

- 5 (1) employs the person at the facility or agency; or
6 (2) otherwise allows the person to regularly or
7 frequently stay or work at the facility or agency while residents or
8 clients are being provided care.

9 (g) An offense under Subsection (e) or (f) is a Class B
10 misdemeanor.

11 SECTION 4. Subchapter F, Chapter 411, Government Code, is
12 amended by adding Section 411.1146 to read as follows:

13 Sec. 411.1146. ACCESS TO CRIMINAL HISTORY RECORD
14 INFORMATION: DEPARTMENT OF AGING AND DISABILITY SERVICES
15 LICENSEES. (a) The Department of Aging and Disability Services is
16 entitled to obtain from the department criminal history record
17 information maintained by the department that relates to a person
18 who is:

19 (1) an applicant for a license issued by the
20 Department of Aging and Disability Services;

21 (2) an employee or an applicant for employment at a
22 facility or agency licensed by the Department of Aging and
23 Disability Services;

24 (3) a volunteer or applicant to be a volunteer at a
25 facility or agency licensed by the Department of Aging and
26 Disability Services; or

27 (4) at least 14 years of age, other than a person who

1 is a resident or client of a licensed facility or licensed agency,
2 who will regularly or frequently be staying or working at a licensed
3 facility or working with residents or clients of a licensed agency,
4 other than a person who is a resident or client of a licensed
5 facility or licensed agency.

6 (b) Criminal history record information obtained by the
7 Department of Aging and Disability Services under Subsection (a)
8 may not be released or disclosed to any person except:

9 (1) on court order;

10 (2) with the consent of the person who is the subject
11 of the criminal history record information;

12 (3) for purposes of an administrative hearing held by
13 the Department of Aging and Disability Services concerning the
14 person who is the subject of the criminal history record
15 information; or

16 (4) as provided by Subsection (c).

17 (c) The Department of Aging and Disability Services is not
18 prohibited from releasing criminal history record information
19 obtained under this section to:

20 (1) the person who is the subject of the criminal
21 history record information; or

22 (2) a facility or agency:

23 (A) that employs or is considering employing the
24 person who is the subject of the criminal history record
25 information; or

26 (B) at which the person regularly stays or works.

27 (d) Subject to Section 411.087, the Department of Aging and

1 Disability Services is entitled to:

2 (1) obtain through the Federal Bureau of Investigation
3 criminal history record information maintained or indexed by that
4 bureau that pertains to a person described by Subsection (a); and

5 (2) obtain from any other criminal justice agency in
6 this state criminal history record information maintained by that
7 criminal justice agency that relates to a person described by
8 Subsection (a).

9 (e) The Department of Aging and Disability Services shall
10 collect and destroy criminal history record information that
11 relates to a person immediately after providing the information to
12 a facility or agency making an employment decision or taking a
13 personnel action relating to the person who is the subject of the
14 criminal history record information.

15 SECTION 5. Subsection (d), Section 42.056, Human Resources
16 Code, is repealed.

17 SECTION 6. (a) The changes in law made by this Act relating
18 to background and criminal history checks apply only to background
19 and criminal history checks performed on or after September 1,
20 2011.

21 (b) Not later than September 1, 2010, the executive
22 commissioner of the Health and Human Services Commission shall
23 adopt rules as required by Section 42.056, Human Resources Code, as
24 amended by this Act, and Section 161.076, Human Resources Code, as
25 added by this Act.

26 SECTION 7. (a) Subsections (i) and (j), Section 42.056,
27 Human Resources Code, as amended by this Act, take effect September

1 1, 2011.

2 (b) Subsections (e), (f), and (g), Section 161.076, Human
3 Resources Code, as added by this Act, take effect September 1, 2011.

4 SECTION 8. This Act does not make an appropriation. A
5 provision in this Act that creates a new governmental program,
6 creates a new entitlement, or imposes a new duty on a governmental
7 entity is not mandatory during a fiscal period for which the
8 legislature has not made a specific appropriation to implement the
9 provision.

10 SECTION 9. Except as otherwise provided by this Act, this
11 Act takes effect September 1, 2009.