

By: Nelson

S.B. No. 67

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the imposition of background and criminal history check
3 requirements for operators and employees of certain facilities and
4 agencies serving children, the elderly, or persons who are
5 disabled.

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

7 SECTION 1. Section 42.056, Human Resources Code, is amended
8 by amending Subsections (a-1), (a-2), (b), and (b-1) and adding
9 Subsection (a-3) to read as follows:

10 (a-1) In accordance with rules adopted by the executive
11 commissioner, the director, owner, or operator of a residential
12 child-care facility shall submit to the department for use in
13 conducting background and criminal history checks the name of each
14 prospective employee [~~who will provide direct care or have direct~~
15 ~~access to a child in the residential child-care facility~~].

16 (a-2) In accordance with rules adopted by the executive
17 commissioner, the director, owner, or operator of a child-care
18 facility or child-placing agency [~~day-care center~~] shall submit a
19 complete set of fingerprints of each person whose name is submitted
20 by the director, owner, or operator under Subsection (a), (a-1), or
21 (a-3). The rules adopted by the executive commissioner:

22 (1) must require that the fingerprints be submitted in
23 a form and of a quality acceptable to the Department of Public
24 Safety and the Federal Bureau of Investigation for conducting a

1 criminal history check; and

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

4 (a-3) In accordance with rules adopted by the executive
5 commissioner, the director, owner, or operator of a child-placing
6 agency shall, when applying to operate a child-placing agency and
7 at least once during each 24 months after receiving a license,
8 submit to the department for use in conducting background and
9 criminal history checks the name of the director, owner, and
10 operator of the child-placing agency and the name of each person
11 employed by the child-placing agency.

12 (b) The department shall conduct background and criminal
13 history checks using:

14 (1) the information provided under Subsections (a),
15 ~~[and]~~ (a-1), and (a-3);

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

20 (3) the department's records of reported abuse and
21 neglect.

22 (b-1) In addition to any other background or criminal
23 history check conducted under Subsection (b), for each person whose
24 name is submitted by the director, owner, or operator of a
25 child-care facility ~~[day-care center]~~ under Subsection (a) or
26 (a-1), or by the director, owner, or operator of a child-placing
27 agency under Subsection (a-3), the department shall conduct a state

1 and Federal Bureau of Investigation criminal history check by:

2 (1) submitting the person's fingerprints provided
3 under Subsection (a-2), or causing the fingerprints to be submitted
4 electronically as authorized by that subsection, to the Department
5 of Public Safety for the purpose of conducting a state and federal
6 criminal history check; and

7 (2) using the resulting information made available by
8 that department under Section 411.114, Government Code, and by the
9 Federal Bureau of Investigation and any other criminal justice
10 agency under Section 411.087, Government Code.

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

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

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

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

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

23 (4) have one of the following educational and
24 experience qualifications:

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

27 (B) a bachelor's degree and two years' full-time

1 experience in child care or a closely related field.

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

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

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

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

13 (4) have one of the following educational and
14 experience qualifications:

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

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

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

23 (1) the information made available by the Department
24 of Public Safety under Section 411.114, Government Code, and ~~or~~
25 by the Federal Bureau of Investigation or other criminal justice
26 agency under Section 411.087, Government Code; and

27 (2) the information in the central registry of

1 reported cases of child abuse or neglect established under Section
2 261.002, Family Code.

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

5 Sec. 161.076. REQUIRED BACKGROUND AND CRIMINAL HISTORY
6 CHECKS. (a) The director, owner, or operator of a facility or
7 agency licensed by the department shall, when applying for a
8 license from the department and at least once during each 24 months
9 after receiving a license from the department, submit to the
10 department for use in conducting background and criminal history
11 checks a complete set of fingerprints of each:

12 (1) director, owner, and operator of the facility or
13 agency;

14 (2) person employed at the facility or by the agency;
15 and

16 (3) person at least 14 years of age who will regularly
17 or frequently be staying or working at the facility or working with
18 people served by the agency.

19 (b) The director, owner, or operator of a facility or agency
20 licensed by the department shall submit to the department for use in
21 conducting background and criminal history checks the name and a
22 complete set of fingerprints of each prospective employee.

23 (c) The executive commissioner shall adopt rules necessary
24 to administer this section. The rules adopted under this section:

25 (1) must require that the fingerprints be submitted in
26 a form and of a quality acceptable to the Department of Public
27 Safety and the Federal Bureau of Investigation for conducting a

1 criminal history check;

2 (2) may require that the fingerprints be submitted
3 electronically through an applicant fingerprinting service center;
4 and

5 (3) may require a facility or agency licensed by the
6 department to pay to the department a fee in an amount not to exceed
7 the administrative costs the department incurs in conducting a
8 background and criminal history check under this section.

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

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

16 (1) a person:

17 (A) who is:

18 (i) an applicant for employment with the
19 Department of Aging and Disability Services;

20 (ii) an employee of the Department of Aging
21 and Disability Services;

22 (iii) an applicant for employment with or
23 an employee of a person that contracts with the Department of Aging
24 and Disability Services to provide services to patients who are
25 elderly or disabled;

26 (iv) a volunteer with the Department of
27 Aging and Disability Services; or

1 (v) a volunteer applicant; and

2 (B) who would be placed in direct contact with a
3 resident or client who is elderly or disabled; or

4 (2) a person who is:

5 (A) an applicant for a license issued by the
6 Department of Aging and Disability Services;

7 (B) an employee or an applicant for employment at
8 a facility or agency licensed by the Department of Aging and
9 Disability Services; or

10 (C) at least 14 years of age who will regularly or
11 frequently be staying or working at a licensed facility or working
12 with residents or clients of a licensed agency.

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

16 (1) on court order;

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

19 (3) for purposes of an administrative hearing held by
20 the Department of Aging and Disability Services concerning the
21 person who is the subject of the criminal history record
22 information; or

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

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

27 (1) the person who is the subject of the criminal

1 history record information; or

2 (2) a facility or agency:

3 (A) that employs or is considering employing the
4 person who is the subject of the criminal history record
5 information; or

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

7 (d) Subject to Section 411.087, the Department of Aging and
8 Disability Services is entitled to:

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

12 (2) obtain from any other criminal justice agency in
13 this state criminal history record information maintained by that
14 criminal justice agency that relates to a person described by
15 Subsection (a).

16 (e) The Department of Aging and Disability Services shall
17 collect and destroy criminal history record information that
18 relates to a person immediately after making an employment decision
19 or taking a personnel action relating to the person who is the
20 subject of the criminal history record information.

21 SECTION 5. (a) The changes in law made by this Act relating
22 to background and criminal history checks apply only to background
23 and criminal history checks performed on or after September 1,
24 2011.

25 (b) Not later than September 1, 2010, the executive
26 commissioner of the Health and Human Services Commission shall
27 adopt rules as required by Section 161.076, Human Resources Code,

1 as added by this Act.

2 SECTION 6. This Act takes effect September 1, 2009.