

1-1 By: Nelson S.B. No. 67
1-2 (In the Senate - Filed November 10, 2008; February 10, 2009,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; March 30, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 March 30, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 67 By: Nelson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the imposition of background and criminal history check
1-11 requirements for operators and employees of certain facilities and
1-12 agencies serving children, the elderly, or persons who are
1-13 disabled; providing criminal penalties.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Section 42.056, Human Resources Code, is amended
1-16 by amending Subsections (a), (a-1), (a-2), (b), (b-1), (c), (f),
1-17 (g), (h), (i), and (j) and adding Subsection (a-3) to read as
1-18 follows:

1-19 (a) In accordance with rules adopted by the executive
1-20 commissioner [~~department~~], the director, owner, or operator of a
1-21 child-care facility, child-placing agency, or family home shall ~~[~~
1-22 ~~when applying to operate a child-care facility or when listing or~~
1-23 ~~registering a family home and at least once during each 24 months~~
1-24 ~~after receiving a license, listing, registration, or certification~~
1-25 ~~of approval,~~ submit to the department for use in conducting
1-26 background and criminal history checks:

1-27 (1) when applying to operate a child-care facility or
1-28 child-placing agency or when listing or registering a family home
1-29 and at least once during each 24 months after receiving a license,
1-30 listing, registration, or certification of approval, the name of:

1-31 (A) the director, owner, and operator of the
1-32 facility, agency, or home;

1-33 (B) ~~[, and the name of]~~ each person employed at
1-34 the facility, agency, or home; and

1-35 (C) ~~[(2) the name of]~~ each person 14 years of age
1-36 or older, other than a client in care, who:

1-37 (i) is counted in child-to-caregiver ratios
1-38 in accordance with the minimum standards of the department;

1-39 (ii) has unsupervised access to children in
1-40 care at the facility or family home;

1-41 (iii) resides in the facility or family
1-42 home; or

1-43 (iv) will regularly or frequently be
1-44 staying or working at a [the] facility, family [or] home, or
1-45 prospective adoptive home, while children are being provided care;
1-46 and

1-47 (2) at the time specified by the rules adopted by the
1-48 executive commissioner, the name of:

1-49 (A) each prospective employee of the child-care
1-50 facility, child-placing agency, or family home;

1-51 (B) each prospective foster parent who will
1-52 provide care through a child-placing agency;

1-53 (C) each prospective adoptive parent seeking to
1-54 adopt through a child-placing agency; and

1-55 (D) each person 14 years of age or older, other
1-56 than a client in care, who will reside in a prospective adoptive
1-57 home if the adoption is through a child-placing agency.

1-58 (a-1) ~~[In accordance with rules adopted by the executive~~
1-59 ~~commissioner, the director, owner, or operator of a residential~~
1-60 ~~child-care facility shall submit to the department for use in~~
1-61 ~~conducting background and criminal history checks the name of each~~
1-62 ~~prospective employee who will provide direct care or have direct~~
1-63 ~~access to a child in the residential child-care facility.~~

2-1 ~~[(a-2)]~~ In accordance with rules adopted by the executive
 2-2 commissioner, the director, owner, or operator of a child-care
 2-3 facility, other than a family home, or a child-placing agency
 2-4 [day-care center] shall submit a complete set of fingerprints of
 2-5 each person whose name is required to be submitted [by the director,
 2-6 owner, or operator] under Subsection (a) if the person will provide
 2-7 direct care or have direct access to a child in the child-care
 2-8 facility or child-placing agency, unless the person is:

2-9 (1) a child who resides in the facility or prospective
 2-10 adoptive home;

2-11 (2) only required to have the person's name submitted
 2-12 based on the criteria specified in Subsection (a)(1)(C)(iv);

2-13 (3) an employee of the facility or agency for whom
 2-14 fingerprints have previously been submitted on behalf of the
 2-15 facility or agency under this section; or

2-16 (4) precluded from being present at the facility or
 2-17 agency based on the information resulting from the state criminal
 2-18 history check and the background check completed under Subsection
 2-19 (b).

2-20 (a-2) In accordance with rules adopted by the executive
 2-21 commissioner, the director, owner, or operator of a family home
 2-22 shall submit a complete set of fingerprints of each person whose
 2-23 name is required to be submitted under Subsection (a) if:

2-24 (1) the person:

2-25 (A) will provide direct care or have direct
 2-26 access to a child in the family home;

2-27 (B) is not precluded from being present at the
 2-28 family home based on the information resulting from the state
 2-29 criminal history check and the background check completed under
 2-30 Subsection (b);

2-31 (C) has not had the person's fingerprints
 2-32 previously submitted on behalf of the family home under this
 2-33 section; and

2-34 (D) resided in another state during the five
 2-35 years preceding the date the person's name was required to be
 2-36 submitted under Subsection (a); or

2-37 (2) the director, owner, or operator has reason to
 2-38 suspect that the person has a criminal history in another state.

2-39 (a-3) The rules regarding the submission of fingerprints
 2-40 adopted by the executive commissioner under Subsections (a-1) and
 2-41 (a-2):

2-42 (1) must require that the fingerprints be submitted in
 2-43 a form and of a quality acceptable to the Department of Public
 2-44 Safety and the Federal Bureau of Investigation for conducting a
 2-45 criminal history check; and

2-46 (2) may require that the fingerprints be submitted
 2-47 electronically through an applicant fingerprinting service center.

2-48 (b) The department shall initially conduct background and
 2-49 criminal history checks using:

2-50 (1) the information provided under Subsection (a)
 2-51 [Subsections (a) and (a-1)];

2-52 (2) the information made available by the Department
 2-53 of Public Safety under Section 411.114, Government Code, or by the
 2-54 Federal Bureau of Investigation or other criminal justice agency
 2-55 under Section 411.087, Government Code; and

2-56 (3) the department's records of reported abuse and
 2-57 neglect.

2-58 (b-1) In addition to and after the completion of any other
 2-59 background or criminal history check conducted under Subsection
 2-60 (b), for each person whose fingerprints are [name is] submitted [by
 2-61 the director, owner, or operator of a day-care center] under
 2-62 Subsection (a-1) or (a-2) [~~(a)~~], the department shall conduct a
 2-63 state and Federal Bureau of Investigation criminal history check
 2-64 by:

2-65 (1) submitting the person's fingerprints [provided
 2-66 under Subsection (a-2)], or causing the fingerprints to be
 2-67 submitted electronically [as authorized by that subsection], to the
 2-68 Department of Public Safety for the purpose of conducting a state
 2-69 and federal criminal history check; and

3-1 (2) using the resulting information made available by
 3-2 that department under Section 411.114, Government Code, and by the
 3-3 Federal Bureau of Investigation and any other criminal justice
 3-4 agency under Section 411.087, Government Code.

3-5 (c) The department by rule shall require a child-care
 3-6 facility, child-placing agency, or registered family home to pay to
 3-7 the department a fee in an amount not to exceed the administrative
 3-8 costs the department incurs in conducting a background and criminal
 3-9 history check under this section.

3-10 (f) As part of a background check under this section, the
 3-11 department shall provide any relevant information available in the
 3-12 department's records regarding a person's previous employment in a
 3-13 ~~[residential child-care]~~ facility or family home to the person
 3-14 submitting the request.

3-15 (g) Except as otherwise provided by Subsection (e) and this
 3-16 subsection, a person whose name is required to be submitted ~~[by the~~
 3-17 ~~director, owner, or operator of a day-care center]~~ under Subsection
 3-18 (a) may not provide direct care or have direct access to a child in a
 3-19 facility or family home ~~[day-care center]~~ before the person's
 3-20 background and criminal history checks under Subsections (b) and,
 3-21 as applicable, (b-1) are completed. A person may be employed at a
 3-22 facility or family home or ~~[day-care center and]~~ may provide direct
 3-23 care or have direct access to a child in the facility or family home
 3-24 ~~[day-care center]~~ before the person's criminal history check under
 3-25 Subsection (b-1) is completed if:

3-26 (1) the facility or family home is experiencing a
 3-27 staffing shortage;

3-28 (2) the state criminal history check and the
 3-29 background check using the department's records of reported abuse
 3-30 and neglect have been completed under Subsection (b), and the
 3-31 resulting information does not preclude the person from being
 3-32 present at the facility or family home ~~[day-care center]; and~~

3-33 (3) ~~[(2)]~~ the person's fingerprints are submitted as
 3-34 soon as possible, but not later than the 30th day after the earliest
 3-35 of the date the person:

3-36 (A) first provides direct care to a child in the
 3-37 facility or family home;

3-38 (B) first has direct access to a child in the
 3-39 facility or family home; or

3-40 (C) is hired ~~[day-care center is experiencing a~~
 3-41 ~~staffing shortage that, if the day-care center were not allowed to~~
 3-42 ~~employ the person until completion of the federal criminal history~~
 3-43 ~~check, would result in a staff-to-child ratio that violates the~~
 3-44 ~~department's minimum standards].~~

3-45 (h) If the results of a criminal history check under
 3-46 Subsection (b-1) for a person employed by a facility or family home
 3-47 ~~[day-care center]~~ during a staffing shortage as authorized by
 3-48 Subsection (g) preclude the person from being present at the
 3-49 facility or family home ~~[day-care center]~~, the director, owner, or
 3-50 operator of the facility or family home ~~[day-care center]~~ shall
 3-51 immediately terminate the person's employment.

3-52 (i) A director, owner, or operator of a facility or family
 3-53 home ~~[day-care center]~~ commits an offense if the director, owner,
 3-54 or operator knowingly:

3-55 (1) fails to submit to the department information
 3-56 about a person as required by this section or ~~[and]~~ department rules
 3-57 for use in conducting background and criminal history checks with
 3-58 respect to the person; and

3-59 (2) employs the person at the facility or family home
 3-60 ~~[day-care center]~~ or otherwise allows the person to regularly or
 3-61 frequently stay or work at the facility or family home ~~[day-care~~
 3-62 ~~center]~~ while children are being provided care.

3-63 (j) A director, owner, or operator of a facility or family
 3-64 home ~~[day-care center]~~ commits an offense if, after the date the
 3-65 director, owner, or operator receives notice from the department
 3-66 that, based on the results of a person's background or criminal
 3-67 history check, the person is precluded from being present at the
 3-68 facility or family home ~~[day-care center]~~, the director, owner, or
 3-69 operator knowingly:

4-1 (1) employs the person at the facility or family home
4-2 [~~day-care center~~]; or

4-3 (2) otherwise allows the person to regularly or
4-4 frequently stay or work at the facility or family home [~~day-care~~
4-5 ~~center~~] while children are being provided care.

4-6 SECTION 2. Section 43.004, Human Resources Code, is amended
4-7 to read as follows:

4-8 Sec. 43.004. QUALIFICATIONS FOR LICENSE. (a) To be
4-9 eligible for a child-care administrator's license a person must:

4-10 (1) provide information and fingerprints for the
4-11 department's use in conducting a criminal history and background
4-12 check under Subsection (c);

4-13 (2) pass an examination developed and administered by
4-14 the department that demonstrates competence in the field of
4-15 child-care administration;

4-16 (3) have one year of full-time experience in
4-17 management or supervision of child-care personnel and programs; and

4-18 (4) have one of the following educational and
4-19 experience qualifications:

4-20 (A) a master's or doctoral degree in social work
4-21 or other area of study; or

4-22 (B) a bachelor's degree and two years' full-time
4-23 experience in child care or a closely related field.

4-24 (b) To be eligible for a child-placing agency
4-25 administrator's license a person must:

4-26 (1) provide information and fingerprints for the
4-27 department's use in conducting a criminal history and background
4-28 check under Subsection (c);

4-29 (2) pass an examination developed and administered by
4-30 the department that demonstrates competence in the field of placing
4-31 children in residential settings or adoptive homes;

4-32 (3) have one year of full-time experience in
4-33 management or supervision of child-placing personnel and programs;
4-34 and

4-35 (4) have one of the following educational and
4-36 experience qualifications:

4-37 (A) a master's or doctoral degree in social work
4-38 or other area of study; or

4-39 (B) a bachelor's degree and two years' full-time
4-40 experience in the field of placing children in residential settings
4-41 or adoptive homes or a closely related field.

4-42 (c) Before the department issues a license under this
4-43 chapter, the department must conduct a criminal history and
4-44 background check of the applicant using the information:

4-45 (1) provided by an individual under this section;

4-46 (2) [~~the information~~] made available by the Department
4-47 of Public Safety under Section 411.114, Government Code, and [~~or~~]
4-48 by the Federal Bureau of Investigation or other criminal justice
4-49 agency under Section 411.087, Government Code, after conducting a
4-50 state and federal criminal history check using the fingerprints
4-51 provided by the applicant under this section; and

4-52 (3) [~~(2) the information~~] in the central registry of
4-53 reported cases of child abuse or neglect established under Section
4-54 261.002, Family Code.

4-55 SECTION 3. Subchapter D, Chapter 161, Human Resources Code,
4-56 is amended by adding Section 161.076 to read as follows:

4-57 Sec. 161.076. REQUIRED BACKGROUND AND CRIMINAL HISTORY
4-58 CHECKS; CRIMINAL PENALTIES. (a) In accordance with rules adopted
4-59 by the executive commissioner, the director, owner, or operator of
4-60 a facility or agency licensed by the department shall submit to the
4-61 Department of Public Safety for use in conducting background and
4-62 criminal history checks:

4-63 (1) when applying for a license from the department,
4-64 the name of each person who will provide direct care or who has
4-65 direct access to residents or clients of the facility or agency and
4-66 who is:

4-67 (A) a director, owner, or operator of the
4-68 facility or agency;

4-69 (B) a person employed at the facility or by the

5-1 agency; or
5-2 (C) a person 14 years of age or older, other than
5-3 a resident or client in care, who will regularly or frequently be
5-4 staying or working at the facility or agency while residents or
5-5 clients are being provided care; and
5-6 (2) at the time specified by the rules adopted by the
5-7 executive commissioner, the name of each person who will provide
5-8 direct care or who will have direct access to residents or clients
5-9 of the facility or agency and who is a prospective:
5-10 (A) employee of the facility or agency; or
5-11 (B) volunteer at the facility or with the agency.
5-12 (b) In accordance with rules adopted by the executive
5-13 commissioner, the director, owner, or operator of a facility or
5-14 agency licensed by the department shall submit a complete set of
5-15 fingerprints of each employee or prospective employee whose name is
5-16 required to be submitted under Subsection (a) and who will provide
5-17 direct care or have direct access to a resident or client in the
5-18 facility or of the agency, unless the person:
5-19 (1) is a person for whom fingerprints have previously
5-20 been submitted on behalf of the facility or agency under this
5-21 section; or
5-22 (2) is precluded from providing direct care or having
5-23 direct access to a resident or client in the facility or of the
5-24 agency based on the information resulting from a completed state
5-25 criminal history check.
5-26 (c) The director, owner, or operator of a facility or agency
5-27 licensed by the department shall ensure that the facility or agency
5-28 complies with this section and that the facility or agency
5-29 immediately terminates the employment of a person who, as a result
5-30 of a background check completed under this section, is precluded
5-31 from providing direct care or having direct access to a resident or
5-32 client in the facility or of the agency.
5-33 (d) The rules adopted under Subsections (a) and (b):
5-34 (1) must require that the fingerprints be submitted in
5-35 a form and of a quality acceptable to the Department of Public
5-36 Safety and the Federal Bureau of Investigation for conducting a
5-37 criminal history check;
5-38 (2) may require that the fingerprints be submitted
5-39 electronically through an applicant fingerprinting service center;
5-40 and
5-41 (3) shall require a facility or agency licensed by the
5-42 department to pay to the department a fee in an amount not to exceed
5-43 the administrative costs the department incurs in processing
5-44 background and criminal history checks conducted under this
5-45 section.
5-46 (e) A director, owner, or operator of a facility or agency
5-47 licensed by the department commits an offense if the director,
5-48 owner, or operator knowingly:
5-49 (1) fails to submit information about a person as
5-50 required by this section or rules adopted by the executive
5-51 commissioner to conduct background and criminal history checks with
5-52 respect to the person; and
5-53 (2) employs the person at the facility or agency or
5-54 otherwise allows the person to regularly or frequently stay or work
5-55 at the facility or agency while residents or clients are being
5-56 provided care.
5-57 (f) A director, owner, or operator of a facility or agency
5-58 licensed by the department commits an offense if, after the date the
5-59 director, owner, or operator discovers that, based on the results
5-60 of a person's background or criminal history check, the person is
5-61 precluded from providing direct care or having direct access to a
5-62 resident or client in the facility or of the agency, the director,
5-63 owner, or operator knowingly:
5-64 (1) employs the person at the facility or agency; or
5-65 (2) otherwise allows the person to regularly or
5-66 frequently stay or work at the facility or agency while residents or
5-67 clients are being provided care.
5-68 (g) An offense under Subsection (e) or (f) is a Class B
5-69 misdemeanor.

6-1 SECTION 4. Subchapter F, Chapter 411, Government Code, is
6-2 amended by adding Section 411.1146 to read as follows:

6-3 Sec. 411.1146. ACCESS TO CRIMINAL HISTORY RECORD
6-4 INFORMATION: DEPARTMENT OF AGING AND DISABILITY SERVICES
6-5 LICENSEES. (a) The Department of Aging and Disability Services is
6-6 entitled to obtain from the department criminal history record
6-7 information maintained by the department that relates to a person
6-8 who is:

6-9 (1) an applicant for a license issued by the
6-10 Department of Aging and Disability Services;

6-11 (2) an employee or an applicant for employment at a
6-12 facility or agency licensed by the Department of Aging and
6-13 Disability Services;

6-14 (3) a volunteer or applicant to be a volunteer at a
6-15 facility or agency licensed by the Department of Aging and
6-16 Disability Services; or

6-17 (4) at least 14 years of age, other than a person who
6-18 is a resident or client of a licensed facility or licensed agency,
6-19 who will regularly or frequently be staying or working at a licensed
6-20 facility or working with residents or clients of a licensed agency,
6-21 other than a person who is a resident or client of a licensed
6-22 facility or licensed agency.

6-23 (b) Criminal history record information obtained by the
6-24 Department of Aging and Disability Services under Subsection (a)
6-25 may not be released or disclosed to any person except:

6-26 (1) on court order;

6-27 (2) with the consent of the person who is the subject
6-28 of the criminal history record information;

6-29 (3) for purposes of an administrative hearing held by
6-30 the Department of Aging and Disability Services concerning the
6-31 person who is the subject of the criminal history record
6-32 information; or

6-33 (4) as provided by Subsection (c).

6-34 (c) The Department of Aging and Disability Services is not
6-35 prohibited from releasing criminal history record information
6-36 obtained under this section to:

6-37 (1) the person who is the subject of the criminal
6-38 history record information; or

6-39 (2) a facility or agency:

6-40 (A) that employs or is considering employing the
6-41 person who is the subject of the criminal history record
6-42 information; or

6-43 (B) at which the person regularly stays or works.

6-44 (d) Subject to Section 411.087, the Department of Aging and
6-45 Disability Services is entitled to:

6-46 (1) obtain through the Federal Bureau of Investigation
6-47 criminal history record information maintained or indexed by that
6-48 bureau that pertains to a person described by Subsection (a); and

6-49 (2) obtain from any other criminal justice agency in
6-50 this state criminal history record information maintained by that
6-51 criminal justice agency that relates to a person described by
6-52 Subsection (a).

6-53 (e) The Department of Aging and Disability Services shall
6-54 collect and destroy criminal history record information that
6-55 relates to a person immediately after providing the information to
6-56 a facility or agency making an employment decision or taking a
6-57 personnel action relating to the person who is the subject of the
6-58 criminal history record information.

6-59 SECTION 5. Subsection (d), Section 42.056, Human Resources
6-60 Code, is repealed.

6-61 SECTION 6. (a) The changes in law made by this Act relating
6-62 to background and criminal history checks apply only to background
6-63 and criminal history checks performed on or after September 1,
6-64 2011.

6-65 (b) Not later than September 1, 2010, the executive
6-66 commissioner of the Health and Human Services Commission shall
6-67 adopt rules as required by Section 42.056, Human Resources Code, as
6-68 amended by this Act, and Section 161.076, Human Resources Code, as
6-69 added by this Act.

7-1 SECTION 7. (a) Subsections (i) and (j), Section 42.056,
7-2 Human Resources Code, as amended by this Act, take effect September
7-3 1, 2011.

7-4 (b) Subsection (e), (f), and (g), Section 161.076, Human
7-5 Resources Code, as added by this Act, take effect September 1, 2011.

7-6 SECTION 8. Except as otherwise provided by this Act, this
7-7 Act takes effect September 1, 2009.

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