

SENATE AMENDMENTS

2nd Printing

By: Anchia, Moody

H.B. No. 3737

A BILL TO BE ENTITLED

AN ACT

relating to criminal history checks for employees of, and applicants for employment at, special care facilities.

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

SECTION 1. The heading to Chapter 250, Health and Safety Code, is amended to read as follows:

CHAPTER 250. NURSE AIDE REGISTRY AND CRIMINAL HISTORY CHECKS OF
EMPLOYEES AND APPLICANTS FOR EMPLOYMENT IN CERTAIN FACILITIES
SERVING THE ELDERLY, ~~[OR]~~ PERSONS WITH DISABILITIES, OR PERSONS
WITH TERMINAL ILLNESSES

SECTION 2. Section 250.001(3), Health and Safety Code, is amended to read as follows:

(3) "Facility" means:

(A) a nursing home, custodial care home, or other institution licensed by the ~~[Texas]~~ Department of Aging and Disability ~~[Human]~~ Services under Chapter 242;

(B) an assisted living facility licensed by the ~~[Texas]~~ Department of Aging and Disability ~~[Human]~~ Services under Chapter 247;

(C) a home and community support services agency licensed under Chapter 142;

(D) an adult day care facility licensed by the ~~[Texas]~~ Department of Aging and Disability ~~[Human]~~ Services under Chapter 103, Human Resources Code;

1 (E) a facility for persons with mental
2 retardation licensed under Chapter 252;

3 (F) an adult foster care provider that contracts
4 with the ~~[Texas]~~ Department of Aging and Disability ~~[Human]~~
5 Services;

6 (G) a facility that provides mental health
7 services and that is operated by or contracts with the ~~[Texas]~~
8 Department of State ~~[Mental]~~ Health Services ~~[and—Mental]~~
9 ~~Retardation]~~;

10 (H) a local mental health or mental retardation
11 authority designated under Section 533.035; ~~[or]~~

12 (I) a person exempt from licensing under Section
13 142.003(a)(19); or

14 (J) a special care facility licensed by the
15 Department of State Health Services under Chapter 248.

16 SECTION 3. This Act takes effect September 1, 2009.

ADOPTED

MAY 25 2009

FLOOR AMENDMENT NO. 1

BY: Nelson

Atty. Gen.
Secretary of the Senate

Amend H.B. No. 3737 (senate committee printing) as follows:

(1) Strike SECTION 3 of the bill (page 1, line 45) and substitute the following:

SECTION 3. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2009.

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

(2) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly:

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

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

(1) when applying for a license from the department, 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) a director, owner, or operator of the facility or agency;

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

(C) a person 14 years of age or older, other than a resident or client in care, who will regularly or

1 frequently be staying or working at the facility or agency while
2 residents or clients are being provided care; and

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

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

8 (B) volunteer at the facility or with the
9 agency.

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

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

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

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

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

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

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

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

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

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

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

24 (f) A director, owner, or operator of a facility or agency
25 licensed by the department commits an offense if, after the date
26 the director, owner, or operator discovers that, based on the
27 results of a person's background or criminal history check, the
28 person is precluded from providing direct care or having direct
29 access to a resident or client in the facility or of the agency,
30 the director, owner, or operator knowingly:

31 (1) employs the person at the facility or agency; or

1 (2) otherwise allows the person to regularly or
2 frequently stay or work at the facility or agency while
3 residents or clients are being provided care.

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

6 SECTION ___. Subchapter F, Chapter 411, Government Code, is
7 amended by adding Section 411.1146 to read as follows:

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

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

16 (2) an employee or an applicant for employment at a
17 facility or agency licensed by the Department of Aging and
18 Disability Services;

19 (3) a volunteer or applicant to be a volunteer at a
20 facility or agency licensed by the Department of Aging and
21 Disability Services; or

22 (4) at least 14 years of age, other than a person who
23 is a resident or client of a licensed facility or licensed
24 agency, who will regularly or frequently be staying or working
25 at a licensed facility or working with residents or clients of a
26 licensed agency, other than a person who is a resident or client
27 of a licensed facility or licensed agency.

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

31 (1) on court order;

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

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

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

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

11 (1) the person who is the subject of the criminal
12 history record information; or

13 (2) a facility or agency:

14 (A) that employs or is considering employing the
15 person who is the subject of the criminal history record
16 information; or

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

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

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

25 (2) obtain from any other criminal justice agency in
26 this state criminal history record information maintained by
27 that criminal justice agency that relates to a person described
28 by Subsection (a).

29 (e) The Department of Aging and Disability Services shall
30 collect and destroy criminal history record information that
31 relates to a person immediately after providing the information

1 to a facility or agency making an employment decision or taking
2 a personnel action relating to the person who is the subject of
3 the criminal history record information.

4 SECTION __. (a) The change in law made by this Act to
5 Section 161.076(e), (f), and (g), Human Resources Code, relating
6 to background and criminal history checks applies only to
7 background and criminal history checks performed on or after
8 September 1, 2011.

9 (b) Not later than September 1, 2010, the executive
10 commissioner of the Health and Human Services Commission shall
11 adopt rules as required by Section 161.076, Human Resources
12 Code, as added by this Act.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 28, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3737 by Anchia (Relating to criminal history checks for employees of, and applicants for employment at, special care facilities.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3737, As Passed 2nd House: a negative impact of (\$1,689,531) through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$0
2011	(\$1,689,531)
2012	\$19,037,818
2013	\$19,047,045
2014	\$19,047,055

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from General Revenue Fund 1	Probable Revenue Gain/(Loss) from Appropriated Receipts 666	Probable (Cost) from General Revenue Fund 1	Probable (Cost) from GR Match For Medicaid 758
2010	\$0	\$0	\$0	\$0
2011	\$0	\$0	(\$1,689,118)	(\$413)
2012	\$19,526,713	\$2,695,623	(\$488,657)	(\$238)
2013	\$19,526,713	\$2,695,623	(\$479,472)	(\$196)
2014	\$19,526,723	\$2,695,623	(\$479,472)	(\$196)

Fiscal Year	Probable (Cost) from Federal Funds 555	Probable (Cost) from State Highway Fund 6	Probable (Cost) from Appropriated Receipts 666	Change in Number of State Employees from FY 2009
2010	\$0	\$0	\$0	0.0
2011	(\$4,667)	\$0	\$0	25.8
2012	(\$3,748)	(\$10,414,230)	(\$2,695,623)	73.7
2013	(\$2,279)	(\$10,414,230)	(\$2,695,623)	73.7
2014	(\$2,279)	(\$10,414,230)	(\$2,695,623)	73.7

Fiscal Analysis

The bill would amend the Health and Safety Code as it relates to criminal history checks for employees of, and applicants for employment at, special care facilities.

The bill would expand the name of Chapter 250, Health and Safety Code, to include Persons with Terminal Illness. The bill would also amend Section 250.001(3), Health and Safety Code, to replace references to Texas Department of Human Services and Texas Department of Mental Health and Mental Retardation with the Department of Aging and Disability Services (DADS) and add a special care facility licensed by the Department of State Health Services (DSHS) under Chapter 248 to the definition of a facility for purposes of Chapter 250, Health and Safety Code.

House Floor Amendment #1 would amend Chapter 161 of the Human Resources Code by adding a new section that would require the submission of a set of fingerprints for all employees and prospective employees by a director, owner or operator of a facility or agency serving patients who are elderly and/or disabled and licensed by the Department of Aging and Disability Services (DADS). The bill authorizes DADS to charge a fee equal to administrative costs.

The bill would specify that the provisions relating to background and criminal history checks apply only to those checks performed on or after September 1, 2011, and that adoption of rules must occur no later than September 1, 2010. For all other provisions of the bill, the effective date would be September 1, 2009.

Methodology

It is assumed that any cost related to sections 1-2 of the bill can be absorbed by the agencies.

House Floor Amendment #1:

Calculations assume that implementation of the bill would require that 570,123 additional background and criminal history checks that would include FBI fingerprint-based checks, be performed in each fiscal year from 2012 through 2014. This analysis assumes that, since DFPS already processes fingerprint check results for certain individuals and systems and procedures are already in place, DADS would contract with DFPS for their fingerprint check processing requirements.

The bill would result in a total increase in revenue of \$66,667,008 for the five years covered by this cost estimate from fees collected for the fingerprint checks. Costs for the Department of Public Safety (DPS) listed below are assumed to be offset by this revenue increase starting in fiscal year 2012. However, a portion of this revenue (approximately \$29.5 million for the five year period) is returned to the FBI for professional services as required by federal statute.

Costs for DFPS are estimated to be \$512,199 in All Funds for fiscal year 2011, \$963,894 for fiscal year 2012, and \$960,660 for fiscal years 2013 and 2014. Full-time-equivalent (FTE) needs are estimated at 7.8 in 2011 and 15.6 in each fiscal year thereafter. These costs and FTEs include the additional fingerprint check processing for DADS. Although the provisions of the bill do not impact fiscal year 2011 directly, the agency indicates a need to begin hiring and training staff to handle the influx expected at the start of fiscal year 2012.

Costs for DPS are estimated to be \$10,414,230 in All Funds in fiscal years 2012-2014, including approximately \$9.8 million per year returned to the FBI. These costs include 22.0 FTEs in fiscal years 2012-2014.

Costs for DADS are estimated to be \$1,181,998 in All Funds in fiscal year 2011, \$2,224,370 in fiscal year 2012, and \$2,216,907 in fiscal years 2013-2014 for 18 FTEs in fiscal year 2011 and 36.1 FTEs in fiscal years 2012-2014, for the additional workload associated with the fingerprint check results.

Technology

There would be an estimated technology impact at DPS of \$111,482 in fiscal years 2012-2014 for computers, printers, and enterprise agreements. These amounts are included in the costs above.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 405 Department of Public Safety, 537 State Health Services, Department of, 539 Aging and Disability Services, Department of, 530 Family and Protective Services, Department of

LBB Staff: JOB, SJ, CL, PP, VJC, MB

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 12, 2009

TO: Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3737 by Anchia (Relating to criminal history checks for employees of, and applicants for employment at, special care facilities.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Health and Safety Code as it relates to criminal history checks for employees of, and applicants for employment at, special care facilities.

The bill would expand the name of Chapter 250, Health and Safety Code, to include Persons with Terminal Illness. The bill would also amend Section 250.001(3), Health and Safety Code, to replace references to Texas Department of Human Services and Texas Department of Mental Health and Mental Retardation with the Department of Aging and Disability Services (DADS) and add a special care facility licensed by the Department of State Health Services (DSHS) under Chapter 248 to the definition of a facility for purposes of Chapter 250, Health and Safety Code.

It is assumed any cost to implement provisions of the bill would be minimal and can be absorbed within existing agency resources.

The bill would take effect September 1, 2009.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 537 State Health Services, Department of, 539 Aging and Disability Services, Department of

LBB Staff: JOB, CL, SJ, LR

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 8, 2009

TO: Honorable Patrick M. Rose, Chair, House Committee on Human Services

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB3737** by Anchia (Relating to criminal history checks for employees of, and applicants for employment at, special care facilities.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Health and Safety Code as it relates to criminal history checks for employees of, and applicants for employment at, special care facilities.

The bill would expand the name of Chapter 250, Health and Safety Code, to include Persons with Terminal Illness. The bill would also amend Section 250.001(3), Health and Safety Code, to replace references to Texas Department of Human Services and Texas Department of Mental Health and Mental Retardation with the Department of Aging and Disability Services (DADS) and add a special care facility licensed by the Department of State Health Services (DSHS) under Chapter 248 to the definition of a facility for purposes of Chapter 250, Health and Safety Code.

It is assumed any cost to implement provisions of the bill would be minimal and can be absorbed within existing agency resources.

The bill would take effect September 1, 2009.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 537 State Health Services, Department of, 539 Aging and Disability Services, Department of

LBB Staff: JOB, CL, SJ, LR