

**House Bill 3737**  
Senate Amendments  
Section-by-Section Analysis

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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;

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

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

(G) a facility that provides mental health services and

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Same as House version.

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that is operated by or contracts with the [Texas] Department of State ~~[Mental]~~ Health Services ~~[and Mental Retardation]~~;

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

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

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

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No equivalent provision.

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;  
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(C) 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  
(2) 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:  
(A) employee of the facility or agency; or  
(B) volunteer at the facility or with the agency.  
(b) 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 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:  
(1) is a person for whom fingerprints have previously been submitted on behalf of the facility or agency under this section; or  
(2) 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) The director, owner, or operator of a facility or agency licensed by the department shall ensure that the facility or agency complies with this section and that the facility or agency immediately terminates the

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

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

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

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

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

(1) 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

(2) 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) A director, owner, or operator of a facility or agency licensed by the department commits an offense if, after

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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:

(1) employs the person at the facility or agency; or  
(2) 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) An offense under Subsection (e) or (f) is a Class B misdemeanor.

No equivalent provision.

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

Sec. 411.1146. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF AGING AND DISABILITY SERVICES LICENSEES.

(a) The Department of Aging and Disability Services is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(1) an applicant for a license issued by the Department of Aging and Disability Services;  
(2) an employee or an applicant for employment at a facility or agency licensed by the Department of Aging and Disability Services;  
(3) a volunteer or applicant to be a volunteer at a facility

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or agency licensed by the Department of Aging and Disability Services; or

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

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

(1) on court order;

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

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

(4) as provided by Subsection (c).

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

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

(2) a facility or agency:

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

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(B) at which the person regularly stays or works.  
(d) Subject to Section 411.087, the Department of Aging and Disability Services is entitled to:  
(1) obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to a person described by Subsection (a); and  
(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to a person described by Subsection (a).  
(e) The Department of Aging and Disability Services shall 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.

No equivalent provision.

SECTION \_\_. (a) The change in law made by this Act to Section 161.076(e), (f), and (g), Human Resources Code, relating to background and criminal history checks applies only to background and criminal history checks performed on or after September 1, 2011.  
(b) Not later than September 1, 2010, the executive commissioner of the Health and Human Services Commission shall adopt rules as required by Section 161.076, Human Resources Code, as added by this Act.

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

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SECTION \_\_. (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.

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