

BILL ANALYSIS

Senate Research Center

S.B. 77
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Health & Human Services
7/21/2011
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under the federally-funded Child and Adult Care Food Program (CACFP), child-care centers and child-care homes may either contract directly with the Texas Agricultural Department (TDA) to obtain low-costs meals, or go through a sponsoring agency that will work with TDA. These sponsoring agencies collect enrollment data from day-care centers, provide their meals, and are then reimbursed by the USDA.

Most child-care centers do not have enough money to purchase meals in advance and be reimbursed later, so they choose to work through a sponsoring agency. Administratively, it is easier for TDA to deal with a limited number of sponsors rather than thousands of individual child-care centers.

Sponsors are currently not required to show proof of government identification, be bonded or insured, or undergo criminal background checks. S.B. 77 would strengthen the integrity of CACFP by requiring sponsoring agencies to maintain a performance bond and submit proof of a residential mailing address and government-issued identification to TDA. This bill allows TDA to conduct a criminal background history record check on each principal of the sponsoring agency and deny applications if background investigations reveal a criminal conviction in the past seven years related to fraud, theft, or obstruction of justice. This bill also allows TDA to obtain a criminal history record check on an individual applying as the principal of a sponsoring agency under this program.

This bill allows TDA to deny applications if background investigations reveal a criminal conviction related to fraud, violating an antitrust law, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstructing justice, or any other criminal offense that indicates a lack of business integrity as determined by TDA. S.B.77 clarifies that only nongovernmental sponsors are subject to these new requirements and makes the provisions retroactive so that TDA can require existing sponsors to meet these requirements. This bill also allows TDA to establish an appeals process for denied applicants.

S.B. 77 amends current law relating to certain requirements for certain sponsoring organizations and other institutions participating in the Child and Adult Care Food Program.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Agriculture as the agency that operates the Child and Adult Care Food Program in SECTION 3 (Section 33.0271, Human Resources Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of the Texas Department of Agriculture in SECTION 3 (Section 33.0271, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter F, Chapter 411, Government Code, by adding Section 411.1146, as follows:

Sec. 411.1146. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION:
DEPARTMENT OF AGRICULTURE. (a) Entitles the Texas Department of Agriculture

(TDA) to obtain criminal history record information maintained by the Department of Public Safety of the State of Texas that relates to a person who is a principal of a nongovernmental entity that is a participant in or an applicant for participation in the Child and Adult Care Food Program as provided by Section 33.0271(e), Human Resources Code.

(b) Prohibits the criminal history record information obtained by TDA under this section from being released or disclosed to any person except in a criminal proceeding, in an administrative proceeding, on court order, or with the consent of the person who is the subject of the information.

SECTION 2. Amends Section 33.026, Human Resource Code, by adding Subsection (d) to define "sponsoring organization."

SECTION 3. Amends Chapter 33, Human Resources Code, by adding Section 33.0271, as follows:

Sec. 33.0271. CHILD AND ADULT CARE FOOD PROGRAM: PROGRAM PARTICIPANT REQUIREMENTS. (a) Defines "institution" and "principal" in this section.

(b) Requires a sponsoring organization, to the extent permitted under federal law, to maintain a performance bond in an amount specified by TDA rule from a company holding a certificate of authority as an acceptable surety on federal bonds from the United States secretary of the treasury. Authorizes TDA and a sponsoring organization to rely on the list published by the United States Department of the Treasury in accordance with 31 C.F.R. Section 223.16 to determine whether a company holds a certificate of authority as an acceptable surety on federal bonds.

(c) Requires a nongovernmental entity applying to participate or to renew participation in the program as a sponsoring organization or other institution, to the extent permitted under federal law, on application for or renewal of participation in the Child and Adult Care Food Program to submit to TDA the following with respect to each of the entity's principals for use in conducting a background and criminal history check:

(1) a copy of a government-issued form of identification of the principal, which, may include a copy of:

(A) a driver's license issued by this state or another state;

(B) an identification card issued by this state, another state, or the federal government;

(C) a passport; or

(D) another form of identification approved by TDA; and

(2) proof of the principal's residential mailing address, with may include:

(A) official mail sent to the principal's address from a utility provider, governmental agency, or financial institution;

(B) a residential lease executed by the principal; or

(C) any other form of proof approved by TDA.

(d) Requires the entity, if there is a change in a principal or the residential mailing address of a principal of a nongovernmental entity participating in the Child and

Adult Care Food Program as a sponsoring organization or other institution, to submit to TDA the same information required under Subsection (c) with respect to the principal for use in conducting a background and criminal history check.

(e) Authorizes TDA to conduct a background and criminal history check on each principal of an entity subject to this section using:

(1) the information provided under Subsection (c) or (d), as applicable; and

(2) the information made available by DPS under Section 411.1146, Government Code, or by the Federal Bureau of Investigation or other criminal justice agency under Section 411.087, Government Code.

(f) Authorizes TDA, if the background and criminal history check authorized under Subsection (e) using information provided under Subsection (c) reveals that an entity knowingly falsified statements contained in the application, to refer that matter to an appropriate prosecuting attorney for criminal prosecution.

(g) Provides that if a background and criminal history check authorized under Subsection (e) reveals that the principal of an entity that is an applicant for or participant in the Child and Adult Care Food Program has been convicted of fraud, violating an antitrust law, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstructing justice, or any other criminal offense that indicates a lack of business integrity as determined by TDA, TDA:

(1) is required to deny the entity's application for participation in the program; or

(2) is authorized to, at the TDA's discretion, revoke the entity's authority to participate in the program.

(h) Authorizes the commissioner of agriculture by rule, to establish procedures that would allow an entity that had the entity's application to participate in the Child and Adult Care Food Program denied or authority to participate in the program revoked under Subsection (g) to appeal TDA's determination under that subsection.

SECTION 4. Effective date: September 1, 2011.