

By: Nelson

S.B. No. 75

A BILL TO BE ENTITLED

AN ACT

relating to the imposition of background and criminal history check requirements for operators and employees of, and certain other persons at, facilities and agencies licensed by the Department of Aging and Disability Services; providing criminal penalties.

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

SECTION 1. Subchapter D, Chapter 161, Human Resources Code, is amended by adding Section 161.083 to read as follows:

Sec. 161.083. 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 or applying for a license from 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; or

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

(2) after receiving a license from the department, at the time specified by the rules adopted by the executive

1 commissioner, the name of each person who will provide direct care  
2 or who will have direct access to residents or clients of the  
3 facility or agency and who is a prospective:

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

5 (B) volunteer at the facility or with the agency.

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

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

16 (2) is precluded from providing direct care or having  
17 direct access to a resident or client in the facility or of the  
18 agency based on the information resulting from a completed state  
19 criminal history check.

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

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

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

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

8           (3) shall require a facility or agency licensed by the  
9 department to pay to the department a fee in an amount not to exceed  
10 the administrative costs the department incurs in processing  
11 background and criminal history checks conducted under this  
12 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 with  
19 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 work  
22 at the facility or agency while residents or clients are being  
23 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 the  
26 director, owner, or operator discovers that, based on the results  
27 of a person's background or criminal history check, the person is

1 precluded from providing direct care or having direct access to a  
2 resident or client in the facility or of the agency, the director,  
3 owner, or operator knowingly:

- 4 (1) employs the person at the facility or agency; or  
5 (2) otherwise allows the person to regularly or  
6 frequently stay or work at the facility or agency while residents or  
7 clients are being provided care.

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

10 SECTION 2. Subchapter F, Chapter 411, Government Code, is  
11 amended by adding Section 411.1146 to read as follows:

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

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

20 (2) an employee or an applicant for employment at a  
21 facility or agency licensed by the Department of Aging and  
22 Disability Services; or

23 (3) a volunteer or applicant to be a volunteer at a  
24 facility or agency licensed by the Department of Aging and  
25 Disability Services.

26 (b) Criminal history record information obtained by the  
27 Department of Aging and Disability Services under Subsection (a)

1 may not be released or disclosed to any person except:

2 (1) on court order;

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

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

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

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

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

15 (2) a facility or agency:

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

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

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

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

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

1 Subsection (a).

2 (e) The Department of Aging and Disability Services shall  
3 collect and destroy criminal history record information that  
4 relates to a person immediately after providing the information to  
5 a facility or agency making an employment decision or taking a  
6 personnel action relating to the person who is the subject of the  
7 criminal history record information.

8 SECTION 3. (a) The changes in law made by this Act relating  
9 to background and criminal history checks apply only to background  
10 and criminal history checks performed on or after September 1,  
11 2013.

12 (b) Not later than September 1, 2012, the executive  
13 commissioner of the Health and Human Services Commission shall  
14 adopt rules as required by Section 161.083, Human Resources Code,  
15 as added by this Act.

16 SECTION 4. Sections 161.083(e), (f), and (g), Human  
17 Resources Code, as added by this Act, take effect September 1, 2013.

18 SECTION 5. Except as otherwise provided by this Act, this  
19 Act takes effect September 1, 2011.