

By: Nelson

S.B. No. 221

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the Department of Family and Protective Services,
3 including protective services and investigations of alleged abuse,
4 neglect, or exploitation for certain adults who are elderly or
5 disabled; providing a criminal penalty.

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

7 SECTION 1. Section 59.006(a), Finance Code, is amended to
8 read as follows:

9 (a) This section provides the exclusive method for
10 compelled discovery of a record of a financial institution relating
11 to one or more customers but does not create a right of privacy in a
12 record. This section does not apply to and does not require or
13 authorize a financial institution to give a customer notice of:

14 (1) a demand or inquiry from a state or federal
15 government agency authorized by law to conduct an examination of
16 the financial institution;

17 (2) a record request from a state or federal
18 government agency or instrumentality under statutory or
19 administrative authority that provides for, or is accompanied by, a
20 specific mechanism for discovery and protection of a customer
21 record of a financial institution, including a record request from
22 a federal agency subject to the Right to Financial Privacy Act of
23 1978 (12 U.S.C. Section 3401 et seq.), as amended, or from the
24 Internal Revenue Service under Section 1205, Internal Revenue Code

1 of 1986;

2 (3) a record request from or report to a government
3 agency arising out of the investigation or prosecution of a
4 criminal offense or the investigation of alleged abuse, neglect, or
5 exploitation of an elderly or disabled person in accordance with
6 Chapter 48, Human Resources Code;

7 (4) a record request in connection with a garnishment
8 proceeding in which the financial institution is garnishee and the
9 customer is debtor;

10 (5) a record request by a duly appointed receiver for
11 the customer;

12 (6) an investigative demand or inquiry from a state
13 legislative investigating committee;

14 (7) an investigative demand or inquiry from the
15 attorney general of this state as authorized by law other than the
16 procedural law governing discovery in civil cases; or

17 (8) the voluntary use or disclosure of a record by a
18 financial institution subject to other applicable state or federal
19 law.

20 SECTION 2. Section 411.114, Government Code, is amended to
21 read as follows:

22 Sec. 411.114. ACCESS TO CRIMINAL HISTORY RECORD
23 INFORMATION: DEPARTMENT OF FAMILY AND PROTECTIVE [~~AND REGULATORY~~]
24 SERVICES. (a)(1) In this subsection:

25 (A) "Child," "child-care facility,"
26 "child-placing agency," and "family home" have the meanings
27 assigned by Section 42.002, Human Resources Code.

1 (B) "Elderly person" has the meaning assigned by
2 Section 48.002, Human Resources Code.

3 (C) "Maternity home" has the meaning assigned by
4 Section 249.001, Health and Safety Code.

5 (D) "Person with a disability" means a disabled
6 person as defined by Section 48.002, Human Resources Code.

7 (E) "Ward" has the meaning assigned by Section
8 601, Texas Probate Code.

9 (2) The Department of Family and Protective Services
10 shall obtain from the department criminal history record
11 information maintained by the department that relates to a person
12 who is:

13 (A) an applicant for a license, registration,
14 certification, or listing under Chapter 42, Human Resources Code,
15 or Chapter 249, Health and Safety Code;

16 (B) an owner, operator, or employee of or an
17 applicant for employment by a child-care facility, child-placing
18 agency, family home, or maternity home licensed, registered,
19 certified, or listed under Chapter 42, Human Resources Code, or
20 Chapter 249, Health and Safety Code;

21 (C) a person 14 years of age or older who will be
22 regularly or frequently working or staying in a child-care
23 facility, family home, or maternity home while children are being
24 provided care, other than a child in the care of the home or
25 facility;

26 (D) an applicant selected for a position with the
27 Department of Family and Protective Services, the duties of which

1 include direct delivery of protective services to children, elderly
2 persons, or persons with a disability;

3 (E) an employee of, an applicant for employment
4 with, or a volunteer or an applicant volunteer with a business
5 entity or person that contracts with the Department of Family and
6 Protective Services to provide direct delivery of protective
7 services to children, elderly persons, or persons with a
8 disability, if the person's duties or responsibilities include
9 direct contact with children, elderly persons, or persons with a
10 disability;

11 (F) a registered volunteer with the Department of
12 Family and Protective Services;

13 (G) a person providing or applying to provide
14 in-home, adoptive, or foster care for children in the care of the
15 Department of Family and Protective Services and other persons
16 living in the residence in which the child will reside;

17 (H) a Department of Family and Protective
18 Services employee who is engaged in the direct delivery of
19 protective services to children, elderly persons, or persons with a
20 disability;

21 (I) an alleged perpetrator in [~~a person who is~~
22 ~~the subject of~~] a report the Department of Family and Protective
23 Services receives alleging that the person has abused, neglected,
24 or exploited a child, an elderly person, or a person with a
25 disability, provided that:

26 (i) the report alleges the person has
27 engaged in conduct that meets the statutory definition of abuse,

1 neglect, or exploitation under Chapter 261, Family Code, or Chapter
2 48, Human Resources Code; and

3 (ii) the person [~~who is the subject of the~~
4 ~~report~~] is not also the victim of the alleged conduct;

5 (J) a person providing child care for a child who
6 is in the care of the Department of Family and Protective Services
7 and who is or will be receiving adoptive, foster, or in-home care;

8 (K) through a contract with a nonprofit
9 management center, an employee of, an applicant for employment
10 with, or a volunteer or an applicant volunteer with a nonprofit,
11 tax-exempt organization that provides any service that involves the
12 care of or access to a child [~~children~~], an elderly person
13 [~~persons~~], or a person [~~persons~~] with a disability; or

14 (L) an applicant for a child-care administrator
15 or child-placing agency administrator license under Chapter 43,
16 Human Resources Code.

17 (3) The Department of Family and Protective [~~and~~
18 ~~Regulatory~~] Services is entitled to obtain from the department
19 criminal history record information maintained by the department
20 that relates to a person who is:

21 (A) a volunteer or applicant volunteer with a
22 local affiliate in this state of Big Brothers/Big Sisters of
23 America;

24 (B) a volunteer or applicant volunteer with the
25 "I Have a Dream/Houston" program;

26 (C) a volunteer or applicant volunteer with an
27 organization that provides court-appointed special advocates for

1 abused or neglected children;

2 (D) a person providing, at the request of the
3 child's parent, in-home care for a child who is the subject of a
4 report alleging the child has been abused or neglected;

5 (E) a volunteer or applicant volunteer with a
6 Texas chapter of the Make-a-Wish Foundation of America;

7 (F) a person providing, at the request of the
8 child's parent, in-home care for a child only if the person gives
9 written consent to the release and disclosure of the information;

10 (G) a child who is related to the caretaker, as
11 determined under Section 42.002, Human Resources Code, and who
12 resides in or is present in a child-care facility, family home, or
13 maternity home, other than a child described by Subdivision (2)(C),
14 or any other person who has unsupervised access to a child in the
15 care of a child-care facility, family home, or maternity home;

16 (H) an applicant for a position with the
17 Department of Family and Protective [~~and Regulatory~~] Services,
18 other than a position described by Subdivision (2)(D), regardless
19 of the duties of the position;

20 (I) a volunteer or applicant volunteer with the
21 Department of Family and Protective [~~and Regulatory~~] Services,
22 other than a registered volunteer, regardless of the duties to be
23 performed;

24 (J) a person providing or applying to provide
25 in-home, adoptive, or foster care for children to the extent
26 necessary to comply with Subchapter B, Chapter 162, Family Code;

27 (K) a Department of Family and Protective [~~and~~

1 ~~Regulatory~~] Services employee, other than an employee described by
2 Subdivision (2)(H), regardless of the duties of the employee's
3 position;

4 (L) a relative of a child in the care of the
5 Department of Family and Protective ~~[and Regulatory]~~ Services, to
6 the extent necessary to comply with Section 162.007, Family Code;

7 (M) a person, other than an alleged perpetrator
8 in ~~[the subject of]~~ a report described in Subdivision (2)(I),
9 living in the residence in which the alleged victim of the report
10 resides;

11 (N) a contractor or an employee of a contractor
12 who delivers services to a ward of the Department of Protective and
13 Regulatory Services under a contract with the estate of the ward;

14 (O) a person who seeks unsupervised visits with a
15 ward of the Department of Protective and Regulatory Services,
16 including a relative of the ward; ~~[or]~~

17 (P) an employee, volunteer, or applicant
18 volunteer of a children's advocacy center under Subchapter E,
19 Chapter 264, Family Code, including a member of the governing board
20 of a center; or

21 (Q) an employee of, an applicant for employment
22 with, or a volunteer or an applicant volunteer with an entity or
23 person that contracts with the Department of Family and Protective
24 Services and has access to confidential information in the
25 department's records, if the employee, applicant, volunteer, or
26 applicant volunteer has or will have access to that confidential
27 information.

1 (4) Subject to Section 411.087, the Department of
2 Family and Protective [~~and Regulatory~~] Services is entitled to:

3 (A) obtain through the Federal Bureau of
4 Investigation criminal history record information maintained or
5 indexed by that bureau that pertains to a person described by
6 Subdivision (2) or (3); and

7 (B) obtain from any other criminal justice agency
8 in this state criminal history record information maintained by
9 that criminal justice agency that relates to a person described by
10 Subdivision (2) or (3). Law enforcement entities shall expedite
11 the furnishing of such information to Department of Family and
12 Protective [~~and Regulatory~~] Services workers to ensure prompt
13 criminal background checks for the safety of alleged victims and
14 Department of Family and Protective [~~and Regulatory~~] Services
15 workers.

16 (5) The Department of Family and Protective [~~and~~
17 ~~Regulatory~~] Services may not use the authority granted under this
18 section to harass an employee or volunteer. The executive
19 commissioner of the Health and Human Services Commission [~~Board of~~
20 ~~Protective and Regulatory Services~~] shall adopt rules to prevent
21 the harassment of an employee or volunteer through the request and
22 use of criminal records.

23 (6) Criminal history record information obtained by
24 the Department of Family and Protective [~~and Regulatory~~] Services
25 under this subsection may not be released to any person except:

26 (A) on court order;

27 (B) with the consent of the person who is the

1 subject of the criminal history record information;

2 (C) for purposes of an administrative hearing
3 held by the Department of Family and Protective [~~and Regulatory~~]
4 Services concerning the person who is the subject of the criminal
5 history record information; or

6 (D) as provided by Subdivision (7).

7 (7) The Department of Family and Protective [~~and~~
8 ~~Regulatory~~] Services is not prohibited from releasing criminal
9 history record information obtained under this subsection to:

10 (A) the person who is the subject of the criminal
11 history record information;

12 (B) a child-care facility, child-placing agency,
13 family home, or maternity home listed in Subdivision (2) that
14 employs or is considering employing the person who is the subject of
15 the criminal history record information;

16 (C) a person or business entity described by
17 Subdivision (2)(E) or (3) who uses or intends to use the services of
18 the volunteer or employs or is considering employing the person who
19 is the subject of the criminal history record information; [~~or~~]

20 (D) an adult who resides [~~residing~~] with an
21 alleged victim of abuse, neglect, or exploitation of a child,
22 elderly person, or person with a disability and who also resides
23 with the alleged perpetrator of that abuse, neglect, or
24 exploitation if:

25 (i) the alleged perpetrator [~~person who~~] is
26 the subject of the criminal history record information; and

27 (ii) [~~if~~] the Department of Family and

1 Protective [~~and Regulatory~~] Services determines that the release of
2 information to the adult is necessary to ensure the safety or
3 welfare of the alleged victim [~~child, elderly person, or person~~
4 ~~with a disability~~] or the adult; or

5 (E) an elderly or disabled person who is an
6 alleged victim of abuse, neglect, or exploitation and who resides
7 with the alleged perpetrator of that abuse, neglect, or
8 exploitation if:

9 (i) the alleged perpetrator is the subject
10 of the criminal history record information; and

11 (ii) the Department of Family and
12 Protective Services determines that the release of information to
13 the elderly or disabled person or adult is necessary to ensure the
14 safety or welfare of the elderly or disabled person.

15 (b) The failure or refusal to provide a complete set of
16 fingerprints or a complete name on request constitutes good cause
17 for dismissal or refusal to hire, as applicable, with regard to a
18 volunteer of or an employee or applicant for permanent or temporary
19 employment with the Department of Family and Protective [~~and~~
20 ~~Regulatory~~] Services, or a facility, home, business, or other
21 entity, if the volunteer position, employment, or potential
22 employment involves direct interaction with or the opportunity to
23 interact and associate with children.

24 (c) The Department of Family and Protective [~~and~~
25 ~~Regulatory~~] Services may charge an organization or person that
26 requests criminal history record information under Subsection
27 (a)(3) a fee in an amount necessary to cover the costs of obtaining

1 the information on the organization's or person's behalf.

2 SECTION 3. Section 142.018(a), Health and Safety Code, is
3 amended to read as follows:

4 (a) In this section, "abuse," "exploitation," and "neglect"
5 have the meanings assigned as provided by Section 48.002(c)
6 [~~48.002~~], Human Resources Code.

7 SECTION 4. Section 40.0315(b), Human Resources Code, is
8 amended to read as follows:

9 (b) An investigator in the unit shall determine whether an
10 elderly or disabled person who is the subject of a report made under
11 Section 48.051(a) may have suffered from abuse, neglect, or
12 exploitation as a result of the criminal conduct of another person.
13 If the investigator determines that criminal conduct may have
14 occurred, the investigator shall immediately notify:

15 (1) the commission's office of inspector general if
16 the disabled person who is the subject of the report resides in a
17 state supported living center or the ICF-MR component of the Rio
18 Grande State Center; and [~~or~~]

19 (2) the appropriate law enforcement agency, unless the
20 law enforcement agency reported the alleged abuse, neglect, or
21 exploitation to the department.

22 SECTION 5. Sections 48.002(a)(3) and (5), Human Resources
23 Code, are amended to read as follows:

24 (3) "Exploitation" means the illegal or improper act
25 or process of a caretaker, family member, or other individual who
26 has an ongoing relationship with an [~~the~~] elderly or disabled
27 person that involves using, or attempting to use, the resources of

1 the [an] elderly or disabled person, including the person's social
2 security number or other identifying information, for monetary or
3 personal benefit, profit, or gain without the informed consent of
4 the elderly or disabled person.

5 (5) "Protective services" means the services
6 furnished by the department or by a protective services agency to an
7 elderly or disabled person who has been determined to be in a state
8 of abuse, neglect, or exploitation or to a relative or caretaker of
9 an elderly or disabled person if the department determines the
10 services are necessary to prevent the elderly or disabled person
11 from returning to a state of abuse, neglect, or exploitation. These
12 services may include social casework, case management, and
13 arranging for psychiatric and health evaluation, home care, day
14 care, social services, health care, respite services, and other
15 services consistent with this chapter. The term does not include
16 the services of the department or another protective services
17 agency in conducting an investigation regarding alleged abuse,
18 neglect, or exploitation of an elderly or disabled person.

19 SECTION 6. Section 48.002, Human Resources Code, is amended
20 by adding Subsection (c) to read as follows:

21 (c) Notwithstanding Subsection (a), the executive
22 commissioner may adopt rules defining "abuse," "neglect," and
23 "exploitation" for use in an investigation of a caretaker who is an
24 employee, contractor, agent, or volunteer of an entity licensed
25 under Chapter 142, Health and Safety Code.

26 SECTION 7. Section 48.006(a), Human Resources Code, is
27 amended to read as follows:

1 (a) Subject to the availability of funds, the department
2 shall develop a community satisfaction survey that solicits
3 information regarding the department's performance with respect to
4 providing investigative and adult protective services. In each
5 region, the department shall send the survey at least biennially
6 [~~annually~~] to:

7 (1) stakeholders in the adult protective services
8 system, including local law enforcement agencies and prosecutors'
9 offices;

10 (2) protective services agencies, including nonprofit
11 agencies; and

12 (3) courts with jurisdiction over probate matters.

13 SECTION 8. Section 48.053, Human Resources Code, is amended
14 to read as follows:

15 Sec. 48.053. FALSE REPORT; PENALTY. (a) A person commits
16 an offense if the person knowingly or intentionally reports
17 information as provided in this chapter that the person knows is
18 false or lacks factual foundation.

19 (b) An offense under this section is a Class A [~~B~~]
20 misdemeanor.

21 SECTION 9. Section 48.152, Human Resources Code, is amended
22 to read as follows:

23 Sec. 48.152. INVESTIGATION. (a) An investigation by the
24 department or a state agency shall include an interview with the
25 elderly or disabled person, if appropriate, and with persons
26 thought to have knowledge of the circumstances. If the elderly or
27 disabled person refuses to be interviewed or cannot be interviewed

1 because of a physical or mental impairment, the department shall
2 continue the investigation by interviewing other persons thought to
3 have knowledge relevant to the investigation.

4 (b) The investigation may include an interview with an
5 alleged juvenile perpetrator of the alleged abuse, neglect, or
6 exploitation.

7 (c) The department or state agency may conduct an interview
8 under this section in private or may include any person the
9 department or agency determines is necessary.

10 SECTION 10. Section 48.1522, Human Resources Code, is
11 amended to read as follows:

12 Sec. 48.1522. REPORTS OF CRIMINAL CONDUCT TO LAW
13 ENFORCEMENT AGENCY. (a) Except as provided by Subsection (b), if
14 during the course of the department's or another state agency's
15 investigation of reported abuse, neglect, or exploitation a
16 caseworker of the department or other state agency, as applicable,
17 or the caseworker's supervisor has cause to believe that the
18 elderly or disabled person has been abused, neglected, or exploited
19 by another person in a manner that constitutes a criminal offense
20 under any law, including Section 22.04, Penal Code, the caseworker
21 or supervisor shall:

22 (1) immediately notify an appropriate law enforcement
23 agency, unless the law enforcement agency reported the alleged
24 abuse, neglect, or exploitation to the department; and

25 (2) provide the law enforcement agency with a copy of
26 the investigation report of the department or other state agency,
27 as applicable, in a timely manner.

1 (b) If during the course of the department's investigation
2 of reported abuse, neglect, or exploitation a caseworker of the
3 department or the caseworker's supervisor has cause to believe that
4 a disabled person who is a resident or client of a state supported
5 living center or the ICF-MR component of the Rio Grande State Center
6 has been abused, neglected, or exploited by another person in a
7 manner that constitutes a criminal offense under any law, including
8 Section 22.04, Penal Code, in addition to the report to the
9 appropriate law enforcement agency required by Subsection (a), the
10 caseworker shall immediately notify the commission's office of
11 inspector general and promptly provide the commission's office of
12 inspector general with a copy of the department's investigation
13 report.

14 SECTION 11. Sections 48.154(a), (b), (c), (d), and (e),
15 Human Resources Code, are amended to read as follows:

16 (a) The department or another state agency, as appropriate,
17 shall have access to any records or documents, including
18 client-identifying information, financial records, and medical and
19 psychological records, necessary to the performance of the
20 department's or state agency's duties under this chapter. The
21 duties include but are not limited to the investigation of abuse,
22 neglect, or exploitation or the provisions of services to an
23 elderly or disabled person. A person, ~~or~~ agency, or institution
24 that has a record or document that the department or state agency
25 needs to perform its duties under this chapter shall, without
26 unnecessary delay, make the record or document available to the
27 department or state agency that requested the record or document.

1 (b) The department is exempt from the payment of a fee
2 otherwise required or authorized by law to obtain a financial
3 record from a person, agency, or institution or a medical record,
4 including a mental health record, from a hospital or health care
5 provider if the request for a record is made in the course of an
6 investigation by the department.

7 (c) If the department or another state agency cannot obtain
8 access to a record or document that is necessary to properly conduct
9 an investigation or to perform another duty under this chapter, the
10 department or state agency may petition the probate court or the
11 statutory or constitutional county court having probate
12 jurisdiction for access to the record or document.

13 (d) On good cause shown, the court shall order the person,
14 agency, or institution who has [~~denied access to~~] a requested
15 record or document to allow the department or state agency to have
16 access to that record or document under the terms and conditions
17 prescribed by the court.

18 (e) A person, agency, or institution who has a requested
19 record or document is entitled to notice and a hearing on a [the]
20 petition filed under this section.

21 SECTION 12. Section 48.203(d), Human Resources Code, is
22 amended to read as follows:

23 (d) Except as provided by Section 48.208, if [~~if~~] an elderly
24 or disabled person withdraws from or refuses consent to voluntary
25 protective services, the services may not be provided.

26 SECTION 13. Section 48.204, Human Resources Code, is
27 amended to read as follows:

1 Sec. 48.204. AGENCY POWERS. A protective services agency
2 may furnish protective services to an elderly or disabled person
3 with the person's consent or to a relative or caretaker of an
4 elderly or disabled person on behalf of the elderly or disabled
5 person with the relative's or caregiver's consent or, if the elderly
6 or disabled person lacks the capacity to consent, without that
7 person's consent as provided by this chapter.

8 SECTION 14. Section 48.208, Human Resources Code, is
9 amended by amending Subsections (e), (e-2), (f), and (h) and adding
10 Subsection (i) to read as follows:

11 (e) The emergency order expires on the earlier of [~~at~~] the
12 end of the 10th day after [~~72 hours from~~] the date [~~time~~] the order
13 is rendered or the end of the 10th day after the date the person was
14 removed to safer surroundings if the emergency order was rendered
15 subsequent to the removal of the person to safer surroundings in
16 accordance with Subsection (h), unless:

17 (1) the emergency order terminates as provided by
18 Subsection (e-1);

19 (2) the 10-day [~~72-hour~~] period ends on a Saturday,
20 Sunday, or legal holiday in which event the order is automatically
21 extended to 4 p.m. on the first succeeding business day; or

22 (3) the court extends the order as provided by
23 Subsection (e-2).

24 (e-2) The court, after notice and a hearing, may extend an
25 emergency order issued under this section for a period of not more
26 than 30 days after the date the original emergency order for
27 protective services was rendered. The court, after notice and a

1 hearing and for good cause shown, may grant a second extension of an
2 emergency order of not more than an additional 30 days. The court
3 may not grant more than two extensions of the original emergency
4 order. An extension order that ends on a Saturday, Sunday, or legal
5 holiday is automatically extended to 4 p.m. on the first succeeding
6 business day. The court may modify or terminate the emergency order
7 on petition of the department, the incapacitated person, or any
8 person interested in the person's ~~[his]~~ welfare.

9 (f) Any medical facility, emergency medical services
10 provider, or physician who provides treatment to or who transports
11 ~~[treating]~~ an elderly or disabled person pursuant to an emergency
12 order under Subsection (d) or an emergency authorization under
13 Subsection (h) [this chapter] is not liable for any damages arising
14 from the treatment or transportation, except those damages
15 resulting from the negligence of the facility, provider, or
16 physician.

17 (h) If the department cannot obtain an emergency order under
18 this section because the court is closed on a Saturday, Sunday, or
19 legal holiday or after 5 p.m., the department may remove or
20 authorize an appropriate transportation service, including an
21 emergency medical services provider, to remove the elderly or
22 disabled person to safer surroundings, authorize medical
23 treatment, or authorize ~~[order]~~ or provide other available services
24 necessary to remove conditions creating the threat to life or
25 physical safety. The department must obtain an emergency order
26 under this section not later than 4 p.m. on the first succeeding
27 business day after the date on which protective services are

1 provided. If the department does not obtain an emergency order, the
2 department shall cease providing protective services and, if
3 necessary, make arrangements for the immediate return of the person
4 to the place from which the person was removed, to the person's
5 place of residence in the state, or to another suitable place.

6 (i) If the department's removal of a person from the
7 person's place of residence under this section results in that
8 residence being vacant, the department shall notify the appropriate
9 law enforcement agency of the vacancy to facilitate the law
10 enforcement agency's monitoring of the residence.

11 SECTION 15. The change made by this Act to Section 48.053,
12 Human Resources Code, applies only to an offense committed on or
13 after the effective date of this Act. An offense committed before
14 the effective date of this Act is governed by the law in effect when
15 the offense was committed, and the former law is continued in effect
16 for that purpose. For the purposes of this section, an offense was
17 committed before the effective date of this Act if any element of
18 the offense occurred before that date.

19 SECTION 16. This Act takes effect September 1, 2011.