

By: Nelson

S.B. No. 1178

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the regulation of certain shelter day-care facilities,
3 child-care facilities, and individuals providing child-care
4 services, and access to certain criminal history record
5 information; providing an administrative penalty.

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

7 SECTION 1. Subdivision (18), Section 42.002, Human
8 Resources Code, is amended to read as follows:

9 (18) "Controlling person" means a person who, either
10 alone or in connection with others, has the ability to directly or
11 indirectly influence or direct the management, expenditures, or
12 policies of a [~~residential child-care~~] facility or family home.

13 SECTION 2. Section 42.044, Human Resources Code, is amended
14 by amending Subsection (b) and adding Subsections (c-1) and (c-2)
15 to read as follows:

16 (b) The department shall inspect all licensed or certified
17 facilities at least once a year and may inspect other facilities or
18 registered family homes as necessary. [~~The department shall~~
19 ~~investigate a listed family home when the department receives a~~
20 ~~complaint of abuse or neglect of a child, as defined by Section~~
21 ~~261.401, Family Code.~~] At least one of the annual visits must be
22 unannounced and all may be unannounced.

23 (c-1) The department:

24 (1) shall investigate a listed family home if the

1 department receives a complaint that:

2 (A) a child in the home has been abused or
3 neglected, as defined by Section 261.401, Family Code; or

4 (B) otherwise alleges an immediate risk of danger
5 to the health or safety of a child being cared for in the home; and

6 (2) may investigate a listed family home to ensure
7 that the home is providing care for compensation to not more than
8 three children, excluding children who are related to the
9 caretaker.

10 (c-2) The department must notify the operator of a listed
11 family home when a complaint is being investigated under this
12 section and report in writing the results of the investigation to
13 the family home's operator.

14 SECTION 3. Section 42.052, Human Resources Code, is amended
15 by amending Subsection (j) and adding Subsection (j-1) to read as
16 follows:

17 (j) The operator of a listed family home shall undergo
18 initial and subsequent background and criminal history checks
19 required under Section 42.056. If the operator of a listed family
20 home fails to submit the information required by Section 42.056 for
21 a subsequent background and criminal history check, the department
22 shall automatically:

23 (1) suspend the home's listing until the required
24 information is submitted; and

25 (2) revoke the home's listing if the required
26 information is not submitted within six months after the date the
27 automatic suspension begins.

1 (j-1) A suspension or revocation under Subsection (j) is not
2 a suspension or revocation under Section 42.072.

3 SECTION 4. Subsection (f), Section 42.054, Human Resources
4 Code, is amended to read as follows:

5 (f) If a facility, agency, or home fails to pay the annual
6 fee when due, the license, listing, or registration, as
7 appropriate, is automatically suspended until the fee is paid. The
8 license, listing, or registration shall be revoked if the fee is not
9 paid within six months after the date the automatic suspension
10 begins. A suspension or revocation under this subsection is not a
11 suspension or revocation under Section 42.072.

12 SECTION 5. Section 42.056, Human Resources Code, is amended
13 by amending Subsection (a-2) and adding Subsection (l) to read as
14 follows:

15 (a-2) In accordance with rules adopted by the executive
16 commissioner, the director, owner, or operator of a day-care
17 center, before-school or after-school program, or school-age
18 program shall submit a complete set of fingerprints of each person
19 whose name is required to be submitted by the director, owner, or
20 operator under Subsection (a), unless the person is only required
21 to have the person's name submitted based on criteria specified by
22 Subsection (a)(7). This subsection does not apply to a program that
23 is exempt from the licensing requirements of Section 42.041.

24 (l) In accordance with rules adopted by the executive
25 commissioner, a person that contracts to provide one or more
26 substitute employees to a facility or family home must submit to the
27 department for use in conducting background and criminal history

1 checks the name of each substitute employee. Before a substitute
2 employee may be present at a facility or family home, the employee
3 must meet the same requirements under this section as an employee
4 present at the facility or family home who performs similar duties.
5 The director, owner, or operator of a facility or family home must
6 verify with the department that a substitute employee is eligible
7 to be present at the facility or family home before allowing the
8 employee to begin work.

9 SECTION 6. Section 42.062, Human Resources Code, is amended
10 to read as follows:

11 Sec. 42.062. CERTAIN EMPLOYMENT AND SERVICE PROHIBITED. A
12 person may not be employed as a controlling person or serve in that
13 capacity in a [~~residential child-care~~] facility or family home if
14 the person [~~may not employ in any capacity a person who~~] is not
15 eligible to receive a license or certification for the operation of
16 a [~~residential child-care~~] facility or family home under Section
17 42.072(g) or [~~who~~] has been denied a license under Section 42.046
18 for a substantive reason.

19 SECTION 7. Section 42.072, Human Resources Code, is amended
20 by adding Subsection (c-1) and amending Subsections (e) and (g) to
21 read as follows:

22 (c-1) A person described by Subsection (c) may not be a
23 controlling person in any facility or family home during the
24 five-year period in which the person is ineligible to receive a
25 license, listing, registration, or certification.

26 (e) A person may continue to operate a facility or family
27 home during an appeal of a license, listing, or registration

1 ~~[denial or]~~ revocation unless the operation of the facility or
2 family home poses a risk to the health or safety of children. The
3 executive commissioner shall by rule establish the criteria for
4 determining whether the operation of a facility or family home
5 poses a risk to the health or safety of children. The department
6 shall notify the facility or family home of the criteria the
7 department used to determine that the operation of the facility or
8 family home poses a risk to health or safety and that the facility
9 or family home may not operate. A person who has been notified by
10 the department that the facility or home may not operate under this
11 section may seek injunctive relief from a district court in Travis
12 County or in the county in which the facility or home is located to
13 allow operation during the pendency of an appeal. The court may
14 grant injunctive relief against the agency's action only if the
15 court finds that the child-care operation does not pose a health or
16 safety risk to children. A court granting injunctive relief under
17 this subsection shall have no other jurisdiction over an appeal of
18 final agency action unless conferred by Chapter 2001, Government
19 Code.

20 (g) Notwithstanding Subsection (c), the department may
21 refuse to issue a license, listing, registration, or certification
22 to:

23 (1) a person whose license, listing, registration, or
24 certification for a ~~[residential child-care]~~ facility or family
25 home was revoked by the department or by court order;

26 (2) a person who was a controlling person of a
27 ~~[residential child-care]~~ facility or family home at the time

1 conduct occurred that resulted in the revocation of the license,
2 listing, registration, or certification of the facility or family
3 home;

4 (3) a person who voluntarily closed a [~~residential~~
5 ~~child-care~~] facility or family home or relinquished the person's
6 license, listing, registration, or certification after:

7 (A) the department took an action under
8 Subsection (a) in relation to the facility, family home, or person;
9 or

10 (B) the person received notice that the
11 department intended to take an action under Subsection (a) in
12 relation to the facility, family home, or person; or

13 (4) a person who was a controlling person of a
14 [~~residential child-care~~] facility or family home at the time
15 conduct occurred that resulted in the closure of the facility or
16 family home or relinquishment of the license, listing,
17 registration, or certification in the manner described by
18 Subdivision (3).

19 SECTION 8. Subsection (a), Section 42.078, Human Resources
20 Code, is amended to read as follows:

21 (a) The department may impose an administrative penalty
22 against a facility or family home licensed, [~~or~~] registered, or
23 listed under this chapter that violates this chapter or a rule or
24 order adopted under this chapter. In addition, the department may
25 impose an administrative penalty against a residential child-care
26 facility or a controlling person of a residential child-care
27 facility if the facility or controlling person:

1 (1) violates a term of a license or registration
2 issued under this chapter;

3 (2) makes a statement about a material fact that the
4 facility or person knows or should know is false:

5 (A) on an application for the issuance of a
6 license or registration or an attachment to the application; or

7 (B) in response to a matter under investigation;

8 (3) refuses to allow a representative of the
9 department to inspect:

10 (A) a book, record, or file required to be
11 maintained by the facility; or

12 (B) any part of the premises of the facility;

13 (4) purposefully interferes with the work of a
14 representative of the department or the enforcement of this
15 chapter; or

16 (5) fails to pay a penalty assessed under this chapter
17 on or before the date the penalty is due, as determined under this
18 section.

19 SECTION 9. Chapter 42, Human Resources Code, is amended by
20 adding Subchapter G to read as follows:

21 SUBCHAPTER G. REGULATION OF TEMPORARY SHELTER DAY-CARE FACILITIES

22 Sec. 42.201. DEFINITIONS. In this subchapter:

23 (1) "Shelter" means a supervised publicly or privately
24 operated shelter or other facility that is designed to provide
25 temporary living accommodations to individuals and families,
26 including a family violence shelter, a homeless shelter, and an
27 emergency shelter. The term does not include a temporary facility

1 established in response to a natural or other disaster.

2 (2) "Shelter care" means child care that is provided:

3 (A) to seven or more children under 14 years of
4 age who temporarily reside at a shelter each with an adult who is
5 related to the child by blood or who is the child's managing
6 conservator;

7 (B) by a person who is not a temporary resident of
8 a shelter; and

9 (C) while the adult described by Paragraph (A) is
10 away from the shelter.

11 (3) "Shelter day-care facility" means a shelter that
12 provides shelter care for not more than 24 hours a day, but at least
13 four hours a day, three or more days a week.

14 Sec. 42.202. PERMIT REQUIRED. (a) Except as provided by
15 Subsections (b) and (e), a shelter may not provide shelter care
16 unless the shelter holds a permit issued by the department under
17 this subchapter.

18 (b) A shelter is not required to obtain a permit to provide
19 shelter care under this subchapter if the shelter holds a license to
20 operate a child-care facility that is issued by the department
21 under Subchapter C. A shelter that holds that license must comply
22 with the applicable provisions of Subchapter C, the applicable
23 rules of the department, and any specific terms of the license.

24 (c) Notwithstanding any other law, including Section
25 42.041, a shelter that holds a permit issued under this subchapter
26 is not required to hold a license under Subchapter C to operate a
27 shelter day-care facility.

1 (d) The department may not issue a permit under this
2 subchapter to a shelter that provides child care to a child who is
3 not a resident of the shelter. A shelter that provides child care
4 described by this subsection must hold a license to operate a
5 child-care facility issued under Subchapter C.

6 (e) A shelter is not required to obtain a permit under this
7 subchapter or a license under Subchapter C if the shelter provides
8 shelter care for:

9 (1) less than four hours a day or for less than three
10 days a week; or

11 (2) six or fewer children.

12 Sec. 42.203. APPLICATION; INITIAL INSPECTION AND
13 BACKGROUND AND CRIMINAL HISTORY CHECKS. (a) The department shall
14 develop and implement a streamlined procedure by which a shelter
15 may apply for and be issued a permit to operate a shelter day-care
16 facility. The shelter must submit an application for the permit to
17 the department on a form prescribed by the department.

18 (b) Except as provided by Section 42.204, on receipt of a
19 shelter's application for a permit, the department shall:

20 (1) conduct an initial inspection of the shelter
21 day-care facility to ensure that the shelter is able to comply with
22 the provisions of this subchapter and that the facility complies
23 with the fire safety and sanitation standards of the political
24 subdivision in which the facility is located; and

25 (2) conduct a background and criminal history check on
26 each prospective caregiver whose name is submitted as required by
27 Section 42.206(a).

1 (c) The department may charge an applicant an
2 administrative fee in a reasonable amount that is sufficient to
3 cover the costs of the department in processing the application.

4 (d) The department shall process an application not later
5 than the 30th day after the date the department receives all of the
6 required information.

7 Sec. 42.204. CONVERSION OF LICENSE. (a) The department
8 shall develop and implement a procedure by which a shelter that
9 holds a license to operate a child-care facility that is issued
10 under Subchapter C before September 1, 2012, may convert the
11 license to a permit under this subchapter. The procedure must
12 include an abbreviated application form for use by the shelter in
13 applying for the permit.

14 (b) The department may waive the requirements under Section
15 42.203(b) for an initial inspection or background and criminal
16 history checks with respect to a licensed child-care facility
17 seeking to convert a license to a permit under this section if the
18 department determines that previously conducted inspections or
19 background and criminal history checks, as applicable, are
20 sufficient to ensure the safety of children receiving care at the
21 facility.

22 Sec. 42.205. CAREGIVER QUALIFICATIONS AND TRAINING;
23 CHILD-TO-CAREGIVER RATIOS. (a) The executive commissioner shall
24 adopt rules that specify the minimum:

25 (1) qualifications and training required for a person
26 providing child care in a shelter day-care facility; and

27 (2) child-to-caregiver ratios in a shelter day-care

1 facility.

2 (b) In adopting rules under this section, the executive
3 commissioner shall consider:

4 (1) the special circumstances and needs of families
5 that seek temporary shelter; and

6 (2) the role of a shelter in assisting and supporting
7 families in crisis.

8 Sec. 42.206. BACKGROUND AND CRIMINAL HISTORY CHECKS

9 REQUIRED. (a) In accordance with rules adopted by the executive
10 commissioner, a shelter shall, when applying for a permit under
11 this subchapter and at least once during each 24-month period after
12 receiving that permit, submit to the department for use in
13 conducting background and criminal history checks:

14 (1) the name of any director or prospective director
15 of the shelter day-care facility and the name of each caregiver or
16 prospective caregiver employed at the facility to provide care to
17 children;

18 (2) the name of each person counted in
19 child-to-caregiver ratios at the shelter day-care facility; and

20 (3) the name of each person 14 years of age or older
21 who will have unsupervised access to one or more children while in
22 the care of the shelter day-care facility.

23 (b) In addition to the requirements of Subsection (a), a
24 shelter shall submit a complete set of fingerprints of each person
25 required to undergo a criminal history check under Subsection (a)
26 if:

27 (1) the person has lived outside the state at any time

1 during the previous five years; or

2 (2) the shelter has reason to suspect that the person
3 has a criminal history in another state.

4 (c) The department shall conduct background and criminal
5 history checks using:

6 (1) the information provided under Subsection (a) or
7 (b), as applicable;

8 (2) the information made available by the Department
9 of Public Safety under Section 411.114, Government Code, or by the
10 Federal Bureau of Investigation or another criminal justice agency
11 under Section 411.087, Government Code; and

12 (3) the department's records of reported abuse and
13 neglect.

14 (d) For purposes of Sections 411.114 and 411.087,
15 Government Code:

16 (1) a shelter that applies for a permit is considered
17 to be an applicant for a license under this chapter; and

18 (2) a shelter day-care facility operating under a
19 permit issued under this subchapter is considered to be a
20 child-care facility licensed under this chapter.

21 (e) The department shall require the shelter to pay to the
22 department a fee in an amount not to exceed the administrative costs
23 the department incurs in conducting a background and criminal
24 history check under this section.

25 Sec. 42.207. APPLICABILITY OF OTHER LAW. Except as
26 otherwise provided by this subchapter, a shelter day-care facility
27 operating under this subchapter is not a child-care facility, as

1 defined by Section 42.002, and the provisions of this chapter and
2 the department's rules that apply to a child-care facility licensed
3 under Subchapter C do not apply to a shelter day-care facility.

4 Sec. 42.208. REPORTING OF INCIDENTS AND VIOLATIONS. A
5 shelter day-care facility operating under this subchapter and each
6 employee of that facility are subject to the reporting requirements
7 of Section 42.063 to the same extent a licensed child-care facility
8 and employees of licensed child-care facilities are subject to that
9 section.

10 Sec. 42.209. AUTHORITY TO CONDUCT LIMITED INSPECTIONS.

11 (a) The department may inspect a shelter day-care facility
12 operating under this subchapter if the department receives a
13 complaint or report of child abuse or neglect alleged to have
14 occurred at the shelter day-care facility.

15 (b) If the department inspects a shelter day-care facility
16 as authorized by this section, the department may require the
17 facility to take appropriate corrective action the department
18 determines necessary to comply with the requirements of this
19 subchapter and to ensure the health and safety of children
20 receiving care at the facility. The department may continue to
21 inspect the facility until corrective action is taken and for a
22 reasonable time after that action is taken to ensure continued
23 compliance.

24 (c) The department may charge a shelter issued a permit
25 under this subchapter a reasonable fee for the cost of services
26 provided by the department in formulating, monitoring, and
27 implementing a corrective action plan under this section.

1 Sec. 42.210. SUSPENSION, DENIAL, OR REVOCATION. (a) The
2 department may suspend, deny, or revoke a permit issued to a shelter
3 under this subchapter if the shelter does not comply with the
4 provisions of this subchapter or any applicable department rules.

5 (b) The department may refuse to issue a permit under this
6 subchapter to a shelter that had its authorization to operate a
7 child-care facility issued under another subchapter revoked,
8 suspended, or not renewed for a reason relating to child health or
9 safety as determined by the department.

10 (c) A shelter day-care facility is subject to the emergency
11 suspension of its permit to operate and to closure under Section
12 42.073 to the same extent and in the same manner as a licensed
13 child-care facility is subject to that section.

14 SECTION 10. Subsection (a), Section 43.010, Human Resources
15 Code, is amended to read as follows:

16 (a) The department may deny, revoke, suspend, or refuse to
17 renew a license, or place on probation or reprimand a license holder
18 for:

19 (1) violating this chapter or a rule adopted under
20 this chapter;

21 (2) circumventing or attempting to circumvent the
22 requirements of this chapter or a rule adopted under this chapter;

23 (3) engaging in fraud or deceit related to the
24 requirements of this chapter or a rule adopted under this chapter;

25 (4) providing false or misleading information to the
26 department during the license application or renewal process for
27 any person's license;

1 (5) making a statement about a material fact during
2 the license application or renewal process that the person knows or
3 should know is false;

4 (6) having:

5 (A) a criminal history or central registry record
6 that would prohibit a person from working in a child-care facility,
7 as defined by Section 42.002, under rules applicable to that type of
8 facility; or

9 (B) a criminal history relevant to the duties of
10 a licensed child-care or child-placing administrator, as those
11 duties are specified in rules adopted by the executive
12 commissioner;

13 (7) using drugs or alcohol in a manner that
14 jeopardizes the person's ability to function as an administrator;
15 or

16 (8) performing duties as a child-care administrator in
17 a negligent manner.

18 SECTION 11. Section 411.087, Government Code, is amended by
19 amending Subsections (a) and (e) and adding Subsection (f) to read
20 as follows:

21 (a) Unless otherwise authorized by Subsection (e), a [A]
22 person, agency, department, political subdivision, or other entity
23 that is authorized by this subchapter to obtain from the department
24 criminal history record information maintained by the department
25 that relates to another person is authorized to:

26 (1) obtain through the Federal Bureau of Investigation
27 criminal history record information maintained or indexed by that

1 bureau that pertains to that person; or

2 (2) obtain from any other criminal justice agency in
3 this state criminal history record information maintained by that
4 criminal justice agency that relates to that person.

5 (e) The department may provide access to state and national
6 criminal history record information to qualified ~~[nongovernmental]~~
7 entities entitled to that information under 42 U.S.C. Section
8 5119a. The department must follow federal law and regulation,
9 federal executive orders, and federal policy in releasing
10 information under this subsection.

11 (f) Notwithstanding any other law, a person, agency,
12 department, political subdivision, or other entity entitled to
13 access the criminal history record information of a person under
14 Subsection (e) is not required to collect or submit the person's
15 fingerprints if:

16 (1) a complete set of the person's fingerprints was
17 previously submitted under Subsection (d)(1);

18 (2) the department retained the fingerprints;

19 (3) the fingerprints are acceptable to the Federal
20 Bureau of Investigation for access to criminal history record
21 information; and

22 (4) the only purpose for which the person's
23 fingerprints are collected is to access criminal history record
24 information under Subsection (e).

25 SECTION 12. Subsection (a), Section 411.114, Government
26 Code, is amended to read as follows:

27 (a)(1) In this subsection:

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

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

6 [~~(C) "Maternity home" has the meaning assigned by~~
7 ~~Section 249.001, Health and Safety Code.~~]

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

10 (E) "Ward" has the meaning assigned by Section
11 601, Texas Probate Code.

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

16 (A) an applicant for a license, registration,
17 certification, or listing under Chapter 42, Human Resources Code [~~7~~
18 ~~or Chapter 249, Health and Safety Code~~];

19 (B) an owner, operator, or employee of or an
20 applicant for employment by a child-care facility, child-placing
21 agency, or family home [~~7~~ ~~or maternity home~~] licensed, registered,
22 certified, or listed under Chapter 42, Human Resources Code [~~7~~ ~~or~~
23 ~~Chapter 249, Health and Safety Code~~];

24 (C) a person 14 years of age or older who will be
25 regularly or frequently working or staying in a child-care facility
26 or [~~7~~] family home [~~7~~ ~~or maternity home~~] while children are being
27 provided care, other than a child in the care of the home or

1 facility;

2 (D) an applicant selected for a position with the
3 Department of Family and Protective Services, the duties of which
4 include direct delivery of protective services to children, elderly
5 persons, or persons with a disability;

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

14 (F) a registered volunteer with the Department of
15 Family and Protective Services;

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

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

24 (I) a person who is the subject of a report the
25 Department of Family and Protective Services receives alleging that
26 the person has abused, neglected, or exploited a child, an elderly
27 person, or a person with a disability, provided that:

1 (i) the report alleges the person has
2 engaged in conduct that meets the statutory definition of abuse,
3 neglect, or exploitation under Chapter 261, Family Code, or Chapter
4 48, Human Resources Code; and

5 (ii) the person who is the subject of the
6 report is not also the victim of the alleged conduct;

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

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

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

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

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

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

1 (C) a volunteer or applicant volunteer with an
2 organization that provides court-appointed special advocates for
3 abused or neglected children;

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

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

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

12 (G) a child who is related to the caretaker, as
13 determined under Section 42.002, Human Resources Code, and who
14 resides in or is present in a child-care facility or[7] family
15 home[~~, or maternity home~~], other than a child described by
16 Subdivision (2)(C), or any other person who has unsupervised access
17 to a child in the care of a child-care facility or[7] family home[~~,
18 or maternity home~~];

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

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

27 (J) a person providing or applying to provide

1 in-home, adoptive, or foster care for children to the extent
2 necessary to comply with Subchapter B, Chapter 162, Family Code;

3 (K) a Department of Family and Protective [~~and~~
4 ~~Regulatory~~] Services employee, other than an employee described by
5 Subdivision (2)(H), regardless of the duties of the employee's
6 position;

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

10 (M) a person, other than the subject of a report
11 described in Subdivision (2)(I), living in the residence in which
12 the alleged victim of the report resides;

13 (N) a contractor or an employee of a contractor
14 who delivers services to a ward of the Department of Family and
15 Protective [~~and Regulatory~~] Services under a contract with the
16 estate of the ward;

17 (O) a person who seeks unsupervised visits with a
18 ward of the Department of Family and Protective [~~and Regulatory~~]
19 Services, including a relative of the ward; or

20 (P) an employee, volunteer, or applicant
21 volunteer of a children's advocacy center under Subchapter E,
22 Chapter 264, Family Code, including a member of the governing board
23 of a center.

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

26 (A) obtain through the Federal Bureau of
27 Investigation criminal history record information maintained or

1 indexed by that bureau that pertains to a person described by
2 Subdivision (2); and

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

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

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

22 (A) on court order;

23 (B) with the consent of the person who is the
24 subject of the criminal history record information;

25 (C) for purposes of an administrative hearing
26 held by the Department of Family and Protective [~~and Regulatory~~]
27 Services concerning the person who is the subject of the criminal

1 history record information; or

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

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

6 (A) the person who is the subject of the criminal
7 history record information;

8 (B) a child-care facility, child-placing agency,
9 or family home [~~, or maternity home~~] listed in Subdivision (2) that
10 employs or is considering employing the person who is the subject of
11 the criminal history record information;

12 (C) a person or business entity described by
13 Subdivision (2)(E) or (3) who uses or intends to use the services of
14 the volunteer or employs or is considering employing the person who
15 is the subject of the criminal history record information; or

16 (D) an adult residing with a child, elderly
17 person, or person with a disability and the person who is the
18 subject of the criminal history record information, if the
19 Department of Family and Protective [~~and Regulatory~~] Services
20 determines that the release of information to the adult is
21 necessary to ensure the safety or welfare of the child, elderly
22 person, or person with a disability or the adult.

23 SECTION 13. Subsection (e), Section 81.042, Health and
24 Safety Code, is amended to read as follows:

25 (e) The following persons shall report to the local health
26 authority or the department a suspected case of a reportable
27 disease and all information known concerning the person who has or

1 is suspected of having the disease if a report is not made as
2 required by Subsections (a)-(d):

3 (1) a professional registered nurse;

4 (2) an administrator or director of a public or
5 private temporary or permanent child-care facility;

6 (3) an administrator or director of a nursing home,
7 personal care home, [~~maternity home,~~] adult respite care center, or
8 adult day-care center;

9 (4) an administrator of a home health agency;

10 (5) an administrator or health official of a public or
11 private institution of higher education;

12 (6) an owner or manager of a restaurant, dairy, or
13 other food handling or processing establishment or outlet;

14 (7) a superintendent, manager, or health official of a
15 public or private camp, home, or institution;

16 (8) a parent, guardian, or householder;

17 (9) a health professional;

18 (10) an administrator or health official of a penal or
19 correctional institution; or

20 (11) emergency medical service personnel, a peace
21 officer, or a firefighter.

22 SECTION 14. (a) The Department of Family and Protective
23 Services shall develop and implement a procedure by which a
24 maternity home that provides residential child care to a minor
25 mother and that holds a license issued under Chapter 249, Health and
26 Safety Code, before September 1, 2012, may convert the license to a
27 residential child-care facility license issued under Chapter 42,

1 Human Resources Code.

2 (b) The Department of Family and Protective Services may
3 waive requirements for an initial inspection or initial background
4 and criminal history checks with respect to a maternity home
5 seeking to convert a license under Subsection (a) of this section if
6 the department determines that previously conducted inspections or
7 background and criminal history checks, as applicable, are
8 sufficient to ensure the safety of children receiving care at the
9 facility.

10 SECTION 15. The following laws are repealed:

11 (1) Chapter 249, Health and Safety Code; and

12 (2) Subsection (g-2), Section 42.042, Human Resources
13 Code.

14 SECTION 16. (a) Except as provided by Subsection (b) of
15 this section, this Act takes effect September 1, 2011.

16 (b) The changes in law made by this Act by the amendment of
17 Subsection (a), Section 411.114, Government Code, and Subsection
18 (e), Section 81.042, Health and Safety Code, the enactment of
19 Subchapter G, Chapter 42, Human Resources Code, and the repeal of
20 Chapter 249, Health and Safety Code, and Subsection (g-2), Section
21 42.042, Human Resources Code, take effect September 1, 2012.