

1-1 By: Nelson S.B. No. 1178
1-2 (In the Senate - Filed March 4, 2011; March 16, 2011, read
1-3 first time and referred to Committee on Health and Human Services;
1-4 April 7, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 0; April 7, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1178 By: Nelson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of certain shelter day-care facilities,
1-11 child-care facilities, and individuals providing child-care
1-12 services, and access to certain criminal history record
1-13 information; providing an administrative penalty.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Subdivision (18), Section 42.002, Human
1-16 Resources Code, is amended to read as follows:

1-17 (18) "Controlling person" means a person who, either
1-18 alone or in connection with others, has the ability to directly or
1-19 indirectly influence or direct the management, expenditures, or
1-20 policies of a [~~residential child-care~~] facility or family home.

1-21 SECTION 2. Section 42.044, Human Resources Code, is amended
1-22 by amending Subsection (b) and adding Subsections (c-1) and (c-2)
1-23 to read as follows:

1-24 (b) The department shall inspect all licensed or certified
1-25 facilities at least once a year and may inspect other facilities or
1-26 registered family homes as necessary. [~~The department shall
1-27 investigate a listed family home when the department receives a
1-28 complaint of abuse or neglect of a child, as defined by Section
1-29 261.401, Family Code.~~] At least one of the annual visits must be
1-30 unannounced and all may be unannounced.

1-31 (c-1) The department:

1-32 (1) shall investigate a listed family home if the
1-33 department receives a complaint that:

1-34 (A) a child in the home has been abused or
1-35 neglected, as defined by Section 261.401, Family Code; or

1-36 (B) otherwise alleges an immediate risk of danger
1-37 to the health or safety of a child being cared for in the home; and

1-38 (2) may investigate a listed family home to ensure
1-39 that the home is providing care for compensation to not more than
1-40 three children, excluding children who are related to the
1-41 caretaker.

1-42 (c-2) The department must notify the operator of a listed
1-43 family home when a complaint is being investigated under this
1-44 section and report in writing the results of the investigation to
1-45 the family home's operator.

1-46 SECTION 3. Section 42.052, Human Resources Code, is amended
1-47 by amending Subsection (j) and adding Subsection (j-1) to read as
1-48 follows:

1-49 (j) The operator of a listed family home shall undergo
1-50 initial and subsequent background and criminal history checks
1-51 required under Section 42.056. If the operator of a listed family
1-52 home fails to submit the information required by Section 42.056 for
1-53 a subsequent background and criminal history check, the department
1-54 shall automatically:

1-55 (1) suspend the home's listing until the required
1-56 information is submitted; and

1-57 (2) revoke the home's listing if the required
1-58 information is not submitted within six months after the date the
1-59 automatic suspension begins.

1-60 (j-1) A suspension or revocation under Subsection (j) is not
1-61 a suspension or revocation under Section 42.072.

1-62 SECTION 4. Subsection (f), Section 42.054, Human Resources
1-63 Code, is amended to read as follows:

2-1 (f) If a facility, agency, or home fails to pay the annual
2-2 fee when due, the license, listing, or registration, as
2-3 appropriate, is automatically suspended until the fee is paid. The
2-4 license, listing, or registration shall be revoked if the fee is not
2-5 paid within six months after the date the automatic suspension
2-6 begins. A suspension or revocation under this subsection is not a
2-7 suspension or revocation under Section 42.072.

2-8 SECTION 5. Section 42.056, Human Resources Code, is amended
2-9 by amending Subsection (a-2) and adding Subsection (1) to read as
2-10 follows:

2-11 (a-2) In accordance with rules adopted by the executive
2-12 commissioner, the director, owner, or operator of a day-care
2-13 center, before-school or after-school program, or school-age
2-14 program shall submit a complete set of fingerprints of each person
2-15 whose name is required to be submitted by the director, owner, or
2-16 operator under Subsection (a), unless the person is only required
2-17 to have the person's name submitted based on criteria specified by
2-18 Subsection (a)(7). This subsection does not apply to a program that
2-19 is exempt from the licensing requirements of Section 42.041.

2-20 (1) In accordance with rules adopted by the executive
2-21 commissioner, a person that contracts to provide one or more
2-22 substitute employees to a facility or family home must submit to the
2-23 department for use in conducting background and criminal history
2-24 checks the name of each substitute employee. Before a substitute
2-25 employee may be present at a facility or family home, the employee
2-26 must meet the same requirements under this section as an employee
2-27 present at the facility or family home who performs similar duties.
2-28 The director, owner, or operator of a facility or family home must
2-29 verify with the department that a substitute employee is eligible
2-30 to be present at the facility or family home before allowing the
2-31 employee to begin work.

2-32 SECTION 6. Section 42.062, Human Resources Code, is amended
2-33 to read as follows:

2-34 Sec. 42.062. CERTAIN EMPLOYMENT AND SERVICE PROHIBITED. A
2-35 person may not be employed as a controlling person or serve in that
2-36 capacity in a [~~residential child-care~~] facility or family home if
2-37 the person [~~may not employ in any capacity a person who~~] is not
2-38 eligible to receive a license or certification for the operation of
2-39 a [~~residential child-care~~] facility or family home under Section
2-40 42.072(g) or [~~who~~] has been denied a license under Section 42.046
2-41 for a substantive reason.

2-42 SECTION 7. Section 42.072, Human Resources Code, is amended
2-43 by adding Subsection (c-1) and amending Subsections (e) and (g) to
2-44 read as follows:

2-45 (c-1) A person described by Subsection (c) may not be a
2-46 controlling person in any facility or family home during the
2-47 five-year period in which the person is ineligible to receive a
2-48 license, listing, registration, or certification.

2-49 (e) A person may continue to operate a facility or family
2-50 home during an appeal of a license, listing, or registration
2-51 [~~denial or~~] revocation unless the operation of the facility or
2-52 family home poses a risk to the health or safety of children. The
2-53 executive commissioner shall by rule establish the criteria for
2-54 determining whether the operation of a facility or family home
2-55 poses a risk to the health or safety of children. The department
2-56 shall notify the facility or family home of the criteria the
2-57 department used to determine that the operation of the facility or
2-58 family home poses a risk to health or safety and that the facility
2-59 or family home may not operate. A person who has been notified by
2-60 the department that the facility or home may not operate under this
2-61 section may seek injunctive relief from a district court in Travis
2-62 County or in the county in which the facility or home is located to
2-63 allow operation during the pendency of an appeal. The court may
2-64 grant injunctive relief against the agency's action only if the
2-65 court finds that the child-care operation does not pose a health or
2-66 safety risk to children. A court granting injunctive relief under
2-67 this subsection shall have no other jurisdiction over an appeal of
2-68 final agency action unless conferred by Chapter 2001, Government
2-69 Code.

3-1 (g) Notwithstanding Subsection (c), the department may
3-2 refuse to issue a license, listing, registration, or certification
3-3 to:

3-4 (1) a person whose license, listing, registration, or
3-5 certification for a [~~residential child-care~~] facility or family
3-6 home was revoked by the department or by court order;

3-7 (2) a person who was a controlling person of a
3-8 [~~residential child-care~~] facility or family home at the time
3-9 conduct occurred that resulted in the revocation of the license,
3-10 listing, registration, or certification of the facility or family
3-11 home;

3-12 (3) a person who voluntarily closed a [~~residential~~
3-13 ~~child-care~~] facility or family home or relinquished the person's
3-14 license, listing, registration, or certification after:

3-15 (A) the department took an action under
3-16 Subsection (a) in relation to the facility, family home, or person;
3-17 or

3-18 (B) the person received notice that the
3-19 department intended to take an action under Subsection (a) in
3-20 relation to the facility, family home, or person; or

3-21 (4) a person who was a controlling person of a
3-22 [~~residential child-care~~] facility or family home at the time
3-23 conduct occurred that resulted in the closure of the facility or
3-24 family home or relinquishment of the license, listing,
3-25 registration, or certification in the manner described by
3-26 Subdivision (3).

3-27 SECTION 8. Subsection (a), Section 42.078, Human Resources
3-28 Code, is amended to read as follows:

3-29 (a) The department may impose an administrative penalty
3-30 against a facility or family home licensed, [~~or~~] registered, or
3-31 listed under this chapter that violates this chapter or a rule or
3-32 order adopted under this chapter. In addition, the department may
3-33 impose an administrative penalty against a residential child-care
3-34 facility or a controlling person of a residential child-care
3-35 facility if the facility or controlling person:

3-36 (1) violates a term of a license or registration
3-37 issued under this chapter;

3-38 (2) makes a statement about a material fact that the
3-39 facility or person knows or should know is false:

3-40 (A) on an application for the issuance of a
3-41 license or registration or an attachment to the application; or

3-42 (B) in response to a matter under investigation;

3-43 (3) refuses to allow a representative of the
3-44 department to inspect:

3-45 (A) a book, record, or file required to be
3-46 maintained by the facility; or

3-47 (B) any part of the premises of the facility;

3-48 (4) purposefully interferes with the work of a
3-49 representative of the department or the enforcement of this
3-50 chapter; or

3-51 (5) fails to pay a penalty assessed under this chapter
3-52 on or before the date the penalty is due, as determined under this
3-53 section.

3-54 SECTION 9. Chapter 42, Human Resources Code, is amended by
3-55 adding Subchapter G to read as follows:

3-56 SUBCHAPTER G. REGULATION OF TEMPORARY SHELTER DAY-CARE FACILITIES

3-57 Sec. 42.201. DEFINITIONS. In this subchapter:

3-58 (1) "Shelter" means a supervised publicly or privately
3-59 operated shelter or other facility that is designed to provide
3-60 temporary living accommodations to individuals and families,
3-61 including a family violence shelter, a homeless shelter, and an
3-62 emergency shelter. The term does not include a temporary facility
3-63 established in response to a natural or other disaster.

3-64 (2) "Shelter care" means child care that is provided:

3-65 (A) to seven or more children under 14 years of
3-66 age who temporarily reside at a shelter each with an adult who is
3-67 related to the child by blood or who is the child's managing
3-68 conservator;

3-69 (B) by a person who is not a temporary resident of

4-1 a shelter; and
 4-2 (C) while the adult described by Paragraph (A) is
 4-3 away from the shelter.

4-4 (3) "Shelter day-care facility" means a shelter that
 4-5 provides shelter care for not more than 24 hours a day, but at least
 4-6 four hours a day, three or more days a week.

4-7 Sec. 42.202. PERMIT REQUIRED. (a) Except as provided by
 4-8 Subsections (b) and (e), a shelter may not provide shelter care
 4-9 unless the shelter holds a permit issued by the department under
 4-10 this subchapter.

4-11 (b) A shelter is not required to obtain a permit to provide
 4-12 shelter care under this subchapter if the shelter holds a license to
 4-13 operate a child-care facility that is issued by the department
 4-14 under Subchapter C. A shelter that holds that license must comply
 4-15 with the applicable provisions of Subchapter C, the applicable
 4-16 rules of the department, and any specific terms of the license.

4-17 (c) Notwithstanding any other law, including Section
 4-18 42.041, a shelter that holds a permit issued under this subchapter
 4-19 is not required to hold a license under Subchapter C to operate a
 4-20 shelter day-care facility.

4-21 (d) The department may not issue a permit under this
 4-22 subchapter to a shelter that provides child care to a child who is
 4-23 not a resident of the shelter. A shelter that provides child care
 4-24 described by this subsection must hold a license to operate a
 4-25 child-care facility issued under Subchapter C.

4-26 (e) A shelter is not required to obtain a permit under this
 4-27 subchapter or a license under Subchapter C if the shelter provides
 4-28 shelter care for:

4-29 (1) less than four hours a day or for less than three
 4-30 days a week; or

4-31 (2) six or fewer children.

4-32 Sec. 42.203. APPLICATION; INITIAL INSPECTION AND
 4-33 BACKGROUND AND CRIMINAL HISTORY CHECKS. (a) The department shall
 4-34 develop and implement a streamlined procedure by which a shelter
 4-35 may apply for and be issued a permit to operate a shelter day-care
 4-36 facility. The shelter must submit an application for the permit to
 4-37 the department on a form prescribed by the department.

4-38 (b) Except as provided by Section 42.204, on receipt of a
 4-39 shelter's application for a permit, the department shall:

4-40 (1) conduct an initial inspection of the shelter
 4-41 day-care facility to ensure that the shelter is able to comply with
 4-42 the provisions of this subchapter and that the facility complies
 4-43 with the fire safety and sanitation standards of the political
 4-44 subdivision in which the facility is located; and

4-45 (2) conduct a background and criminal history check on
 4-46 each prospective caregiver whose name is submitted as required by
 4-47 Section 42.206(a).

4-48 (c) The department may charge an applicant an
 4-49 administrative fee in a reasonable amount that is sufficient to
 4-50 cover the costs of the department in processing the application.

4-51 (d) The department shall process an application not later
 4-52 than the 30th day after the date the department receives all of the
 4-53 required information.

4-54 Sec. 42.204. CONVERSION OF LICENSE. (a) The department
 4-55 shall develop and implement a procedure by which a shelter that
 4-56 holds a license to operate a child-care facility that is issued
 4-57 under Subchapter C before September 1, 2012, may convert the
 4-58 license to a permit under this subchapter. The procedure must
 4-59 include an abbreviated application form for use by the shelter in
 4-60 applying for the permit.

4-61 (b) The department may waive the requirements under Section
 4-62 42.203(b) for an initial inspection or background and criminal
 4-63 history checks with respect to a licensed child-care facility
 4-64 seeking to convert a license to a permit under this section if the
 4-65 department determines that previously conducted inspections or
 4-66 background and criminal history checks, as applicable, are
 4-67 sufficient to ensure the safety of children receiving care at the
 4-68 facility.

4-69 Sec. 42.205. CAREGIVER QUALIFICATIONS AND TRAINING;

5-1 CHILD-TO-CAREGIVER RATIOS. (a) The executive commissioner shall
5-2 adopt rules that specify the minimum:

5-3 (1) qualifications and training required for a person
5-4 providing child care in a shelter day-care facility; and

5-5 (2) child-to-caregiver ratios in a shelter day-care
5-6 facility.

5-7 (b) In adopting rules under this section, the executive
5-8 commissioner shall consider:

5-9 (1) the special circumstances and needs of families
5-10 that seek temporary shelter; and

5-11 (2) the role of a shelter in assisting and supporting
5-12 families in crisis.

5-13 Sec. 42.206. BACKGROUND AND CRIMINAL HISTORY CHECKS
5-14 REQUIRED. (a) In accordance with rules adopted by the executive
5-15 commissioner, a shelter shall, when applying for a permit under
5-16 this subchapter and at least once during each 24-month period after
5-17 receiving that permit, submit to the department for use in
5-18 conducting background and criminal history checks:

5-19 (1) the name of any director or prospective director
5-20 of the shelter day-care facility and the name of each caregiver or
5-21 prospective caregiver employed at the facility to provide care to
5-22 children;

5-23 (2) the name of each person counted in
5-24 child-to-caregiver ratios at the shelter day-care facility; and

5-25 (3) the name of each person 14 years of age or older
5-26 who will have unsupervised access to one or more children while in
5-27 the care of the shelter day-care facility.

5-28 (b) In addition to the requirements of Subsection (a), a
5-29 shelter shall submit a complete set of fingerprints of each person
5-30 required to undergo a criminal history check under Subsection (a)
5-31 if:

5-32 (1) the person has lived outside the state at any time
5-33 during the previous five years; or

5-34 (2) the shelter has reason to suspect that the person
5-35 has a criminal history in another state.

5-36 (c) The department shall conduct background and criminal
5-37 history checks using:

5-38 (1) the information provided under Subsection (a) or
5-39 (b), as applicable;

5-40 (2) the information made available by the Department
5-41 of Public Safety under Section 411.114, Government Code, or by the
5-42 Federal Bureau of Investigation or another criminal justice agency
5-43 under Section 411.087, Government Code; and

5-44 (3) the department's records of reported abuse and
5-45 neglect.

5-46 (d) For purposes of Sections 411.114 and 411.087,
5-47 Government Code:

5-48 (1) a shelter that applies for a permit is considered
5-49 to be an applicant for a license under this chapter; and

5-50 (2) a shelter day-care facility operating under a
5-51 permit issued under this subchapter is considered to be a
5-52 child-care facility licensed under this chapter.

5-53 (e) The department shall require the shelter to pay to the
5-54 department a fee in an amount not to exceed the administrative costs
5-55 the department incurs in conducting a background and criminal
5-56 history check under this section.

5-57 Sec. 42.207. APPLICABILITY OF OTHER LAW. Except as
5-58 otherwise provided by this subchapter, a shelter day-care facility
5-59 operating under this subchapter is not a child-care facility, as
5-60 defined by Section 42.002, and the provisions of this chapter and
5-61 the department's rules that apply to a child-care facility licensed
5-62 under Subchapter C do not apply to a shelter day-care facility.

5-63 Sec. 42.208. REPORTING OF INCIDENTS AND VIOLATIONS. A
5-64 shelter day-care facility operating under this subchapter and each
5-65 employee of that facility are subject to the reporting requirements
5-66 of Section 42.063 to the same extent a licensed child-care facility
5-67 and employees of licensed child-care facilities are subject to that
5-68 section.

5-69 Sec. 42.209. AUTHORITY TO CONDUCT LIMITED INSPECTIONS.

6-1 (a) The department may inspect a shelter day-care facility
 6-2 operating under this subchapter if the department receives a
 6-3 complaint or report of child abuse or neglect alleged to have
 6-4 occurred at the shelter day-care facility.

6-5 (b) If the department inspects a shelter day-care facility
 6-6 as authorized by this section, the department may require the
 6-7 facility to take appropriate corrective action the department
 6-8 determines necessary to comply with the requirements of this
 6-9 subchapter and to ensure the health and safety of children
 6-10 receiving care at the facility. The department may continue to
 6-11 inspect the facility until corrective action is taken and for a
 6-12 reasonable time after that action is taken to ensure continued
 6-13 compliance.

6-14 (c) The department may charge a shelter issued a permit
 6-15 under this subchapter a reasonable fee for the cost of services
 6-16 provided by the department in formulating, monitoring, and
 6-17 implementing a corrective action plan under this section.

6-18 Sec. 42.210. SUSPENSION, DENIAL, OR REVOCATION. (a) The
 6-19 department may suspend, deny, or revoke a permit issued to a shelter
 6-20 under this subchapter if the shelter does not comply with the
 6-21 provisions of this subchapter or any applicable department rules.

6-22 (b) The department may refuse to issue a permit under this
 6-23 subchapter to a shelter that had its authorization to operate a
 6-24 child-care facility issued under another subchapter revoked,
 6-25 suspended, or not renewed for a reason relating to child health or
 6-26 safety as determined by the department.

6-27 (c) A shelter day-care facility is subject to the emergency
 6-28 suspension of its permit to operate and to closure under Section
 6-29 42.073 to the same extent and in the same manner as a licensed
 6-30 child-care facility is subject to that section.

6-31 SECTION 10. Subsection (a), Section 43.010, Human Resources
 6-32 Code, is amended to read as follows:

6-33 (a) The department may deny, revoke, suspend, or refuse to
 6-34 renew a license, or place on probation or reprimand a license holder
 6-35 for:

6-36 (1) violating this chapter or a rule adopted under
 6-37 this chapter;

6-38 (2) circumventing or attempting to circumvent the
 6-39 requirements of this chapter or a rule adopted under this chapter;

6-40 (3) engaging in fraud or deceit related to the
 6-41 requirements of this chapter or a rule adopted under this chapter;

6-42 (4) providing false or misleading information to the
 6-43 department during the license application or renewal process for
 6-44 any person's license;

6-45 (5) making a statement about a material fact during
 6-46 the license application or renewal process that the person knows or
 6-47 should know is false;

6-48 (6) having:

6-49 (A) a criminal history or central registry record
 6-50 that would prohibit a person from working in a child-care facility,
 6-51 as defined by Section 42.002, under rules applicable to that type of
 6-52 facility; or

6-53 (B) a criminal history relevant to the duties of
 6-54 a licensed child-care or child-placing administrator, as those
 6-55 duties are specified in rules adopted by the executive
 6-56 commissioner;

6-57 (7) using drugs or alcohol in a manner that
 6-58 jeopardizes the person's ability to function as an administrator;
 6-59 or

6-60 (8) performing duties as a child-care administrator in
 6-61 a negligent manner.

6-62 SECTION 11. Section 411.087, Government Code, is amended by
 6-63 amending Subsections (a) and (e) and adding Subsection (f) to read
 6-64 as follows:

6-65 (a) Unless otherwise authorized by Subsection (e), a [A]
 6-66 person, agency, department, political subdivision, or other entity
 6-67 that is authorized by this subchapter to obtain from the department
 6-68 criminal history record information maintained by the department
 6-69 that relates to another person is authorized to:

7-1 (1) obtain through the Federal Bureau of Investigation
7-2 criminal history record information maintained or indexed by that
7-3 bureau that pertains to that person; or

7-4 (2) obtain from any other criminal justice agency in
7-5 this state criminal history record information maintained by that
7-6 criminal justice agency that relates to that person.

7-7 (e) The department may provide access to state and national
7-8 criminal history record information to qualified [nongovernmental]
7-9 entities entitled to that information under 42 U.S.C. Section
7-10 5119a. The department must follow federal law and regulation,
7-11 federal executive orders, and federal policy in releasing
7-12 information under this subsection.

7-13 (f) Notwithstanding any other law, a person, agency,
7-14 department, political subdivision, or other entity entitled to
7-15 access the criminal history record information of a person under
7-16 Subsection (e) is not required to collect or submit the person's
7-17 fingerprints if:

7-18 (1) a complete set of the person's fingerprints was
7-19 previously submitted under Subsection (d)(1);

7-20 (2) the department retained the fingerprints;

7-21 (3) the fingerprints are acceptable to the Federal
7-22 Bureau of Investigation for access to criminal history record
7-23 information; and

7-24 (4) the only purpose for which the person's
7-25 fingerprints are collected is to access criminal history record
7-26 information under Subsection (e).

7-27 SECTION 12. Subsection (a), Section 411.114, Government
7-28 Code, is amended to read as follows:

7-29 (a)(1) In this subsection:

7-30 (A) "Child," "child-care facility,"
7-31 "child-placing agency," and "family home" have the meanings
7-32 assigned by Section 42.002, Human Resources Code.

7-33 (B) "Elderly person" has the meaning assigned by
7-34 Section 48.002, Human Resources Code.

7-35 [~~(C) "Maternity home" has the meaning assigned by~~
7-36 ~~Section 249.001, Health and Safety Code.]~~

7-37 (D) "Person with a disability" means a disabled
7-38 person as defined by Section 48.002, Human Resources Code.

7-39 (E) "Ward" has the meaning assigned by Section
7-40 601, Texas Probate Code.

7-41 (2) The Department of Family and Protective Services
7-42 shall obtain from the department criminal history record
7-43 information maintained by the department that relates to a person
7-44 who is:

7-45 (A) an applicant for a license, registration,
7-46 certification, or listing under Chapter 42, Human Resources Code [~~7~~
7-47 ~~or Chapter 249, Health and Safety Code]~~;

7-48 (B) an owner, operator, or employee of or an
7-49 applicant for employment by a child-care facility, child-placing
7-50 agency, or family home [~~7~~, ~~or maternity home~~] licensed, registered,
7-51 certified, or listed under Chapter 42, Human Resources Code [~~7~~, ~~or~~
7-52 ~~Chapter 249, Health and Safety Code]~~;

7-53 (C) a person 14 years of age or older who will be
7-54 regularly or frequently working or staying in a child-care facility
7-55 or [~~7~~] family home [~~7~~, ~~or maternity home~~] while children are being
7-56 provided care, other than a child in the care of the home or
7-57 facility;

7-58 (D) an applicant selected for a position with the
7-59 Department of Family and Protective Services, the duties of which
7-60 include direct delivery of protective services to children, elderly
7-61 persons, or persons with a disability;

7-62 (E) an employee of, an applicant for employment
7-63 with, or a volunteer or an applicant volunteer with a business
7-64 entity or person that contracts with the Department of Family and
7-65 Protective Services to provide direct delivery of protective
7-66 services to children, elderly persons, or persons with a
7-67 disability, if the person's duties or responsibilities include
7-68 direct contact with children, elderly persons, or persons with a
7-69 disability;

8-1 (F) a registered volunteer with the Department of
8-2 Family and Protective Services;

8-3 (G) a person providing or applying to provide
8-4 in-home, adoptive, or foster care for children in the care of the
8-5 Department of Family and Protective Services and other persons
8-6 living in the residence in which the child will reside;

8-7 (H) a Department of Family and Protective
8-8 Services employee who is engaged in the direct delivery of
8-9 protective services to children, elderly persons, or persons with a
8-10 disability;

8-11 (I) a person who is the subject of a report the
8-12 Department of Family and Protective Services receives alleging that
8-13 the person has abused, neglected, or exploited a child, an elderly
8-14 person, or a person with a disability, provided that:

8-15 (i) the report alleges the person has
8-16 engaged in conduct that meets the statutory definition of abuse,
8-17 neglect, or exploitation under Chapter 261, Family Code, or Chapter
8-18 48, Human Resources Code; and

8-19 (ii) the person who is the subject of the
8-20 report is not also the victim of the alleged conduct;

8-21 (J) a person providing child care for a child who
8-22 is in the care of the Department of Family and Protective Services
8-23 and who is or will be receiving adoptive, foster, or in-home care;

8-24 (K) through a contract with a nonprofit
8-25 management center, an employee of, an applicant for employment
8-26 with, or a volunteer or an applicant volunteer with a nonprofit,
8-27 tax-exempt organization that provides any service that involves the
8-28 care of or access to children, elderly persons, or persons with a
8-29 disability; or

8-30 (L) an applicant for a child-care administrator
8-31 or child-placing agency administrator license under Chapter 43,
8-32 Human Resources Code.

8-33 (3) The Department of Family and Protective [~~and~~
8-34 ~~Regulatory~~] Services is entitled to obtain from the department
8-35 criminal history record information maintained by the department
8-36 that relates to a person who is:

8-37 (A) a volunteer or applicant volunteer with a
8-38 local affiliate in this state of Big Brothers/Big Sisters of
8-39 America;

8-40 (B) a volunteer or applicant volunteer with the
8-41 "I Have a Dream/Houston" program;

8-42 (C) a volunteer or applicant volunteer with an
8-43 organization that provides court-appointed special advocates for
8-44 abused or neglected children;

8-45 (D) a person providing, at the request of the
8-46 child's parent, in-home care for a child who is the subject of a
8-47 report alleging the child has been abused or neglected;

8-48 (E) a volunteer or applicant volunteer with a
8-49 Texas chapter of the Make-a-Wish Foundation of America;

8-50 (F) a person providing, at the request of the
8-51 child's parent, in-home care for a child only if the person gives
8-52 written consent to the release and disclosure of the information;

8-53 (G) a child who is related to the caretaker, as
8-54 determined under Section 42.002, Human Resources Code, and who
8-55 resides in or is present in a child-care facility or [7] family
8-56 home [~~, or maternity home~~], other than a child described by
8-57 Subdivision (2)(C), or any other person who has unsupervised access
8-58 to a child in the care of a child-care facility or [7] family home [~~or maternity home~~];

8-59 (H) an applicant for a position with the
8-60 Department of Family and Protective [~~and Regulatory~~] Services,
8-61 other than a position described by Subdivision (2)(D), regardless
8-62 of the duties of the position;

8-63 (I) a volunteer or applicant volunteer with the
8-64 Department of Family and Protective [~~and Regulatory~~] Services,
8-65 other than a registered volunteer, regardless of the duties to be
8-66 performed;

8-67 (J) a person providing or applying to provide
8-68 in-home, adoptive, or foster care for children to the extent
8-69

9-1 necessary to comply with Subchapter B, Chapter 162, Family Code;

9-2 (K) a Department of Family and Protective [~~and~~
9-3 ~~Regulatory~~] Services employee, other than an employee described by
9-4 Subdivision (2)(H), regardless of the duties of the employee's
9-5 position;

9-6 (L) a relative of a child in the care of the
9-7 Department of Family and Protective [~~and Regulatory~~] Services, to
9-8 the extent necessary to comply with Section 162.007, Family Code;

9-9 (M) a person, other than the subject of a report
9-10 described in Subdivision (2)(I), living in the residence in which
9-11 the alleged victim of the report resides;

9-12 (N) a contractor or an employee of a contractor
9-13 who delivers services to a ward of the Department of Family and
9-14 Protective [~~and Regulatory~~] Services under a contract with the
9-15 estate of the ward;

9-16 (O) a person who seeks unsupervised visits with a
9-17 ward of the Department of Family and Protective [~~and Regulatory~~]
9-18 Services, including a relative of the ward; or

9-19 (P) an employee, volunteer, or applicant
9-20 volunteer of a children's advocacy center under Subchapter E,
9-21 Chapter 264, Family Code, including a member of the governing board
9-22 of a center.

9-23 (4) Subject to Section 411.087, the Department of
9-24 Family and Protective [~~and Regulatory~~] Services is entitled to:

9-25 (A) obtain through the Federal Bureau of
9-26 Investigation criminal history record information maintained or
9-27 indexed by that bureau that pertains to a person described by
9-28 Subdivision (2); and

9-29 (B) obtain from any other criminal justice agency
9-30 in this state criminal history record information maintained by
9-31 that criminal justice agency that relates to a person described by
9-32 Subdivision (2) or (3). Law enforcement entities shall expedite
9-33 the furnishing of such information to Department of Family and
9-34 Protective [~~and Regulatory~~] Services workers to ensure prompt
9-35 criminal background checks for the safety of alleged victims and
9-36 Department of Family and Protective [~~and Regulatory~~] Services
9-37 workers.

9-38 (5) The Department of Family and Protective [~~and~~
9-39 ~~Regulatory~~] Services may not use the authority granted under this
9-40 section to harass an employee or volunteer. The executive
9-41 commissioner of the Health and Human Services Commission [~~Board of~~
9-42 ~~Protective and Regulatory Services~~] shall adopt rules to prevent
9-43 the harassment of an employee or volunteer through the request and
9-44 use of criminal records.

9-45 (6) Criminal history record information obtained by
9-46 the Department of Family and Protective [~~and Regulatory~~] Services
9-47 under this subsection may not be released to any person except:

9-48 (A) on court order;

9-49 (B) with the consent of the person who is the
9-50 subject of the criminal history record information;

9-51 (C) for purposes of an administrative hearing
9-52 held by the Department of Family and Protective [~~and Regulatory~~]
9-53 Services concerning the person who is the subject of the criminal
9-54 history record information; or

9-55 (D) as provided by Subdivision (7).

9-56 (7) The Department of Family and Protective [~~and~~
9-57 ~~Regulatory~~] Services is not prohibited from releasing criminal
9-58 history record information obtained under this subsection to:

9-59 (A) the person who is the subject of the criminal
9-60 history record information;

9-61 (B) a child-care facility, child-placing agency,
9-62 or family home [~~, or maternity home~~] listed in Subdivision (2) that
9-63 employs or is considering employing the person who is the subject of
9-64 the criminal history record information;

9-65 (C) a person or business entity described by
9-66 Subdivision (2)(E) or (3) who uses or intends to use the services of
9-67 the volunteer or employs or is considering employing the person who
9-68 is the subject of the criminal history record information; or

9-69 (D) an adult residing with a child, elderly

10-1 person, or person with a disability and the person who is the
10-2 subject of the criminal history record information, if the
10-3 Department of Family and Protective [~~and Regulatory~~] Services
10-4 determines that the release of information to the adult is
10-5 necessary to ensure the safety or welfare of the child, elderly
10-6 person, or person with a disability or the adult.

10-7 SECTION 13. Subsection (e), Section 81.042, Health and
10-8 Safety Code, is amended to read as follows:

10-9 (e) The following persons shall report to the local health
10-10 authority or the department a suspected case of a reportable
10-11 disease and all information known concerning the person who has or
10-12 is suspected of having the disease if a report is not made as
10-13 required by Subsections (a)-(d):

- 10-14 (1) a professional registered nurse;
- 10-15 (2) an administrator or director of a public or
10-16 private temporary or permanent child-care facility;
- 10-17 (3) an administrator or director of a nursing home,
10-18 personal care home, [~~maternity home,~~] adult respite care center, or
10-19 adult day-care center;
- 10-20 (4) an administrator of a home health agency;
- 10-21 (5) an administrator or health official of a public or
10-22 private institution of higher education;
- 10-23 (6) an owner or manager of a restaurant, dairy, or
10-24 other food handling or processing establishment or outlet;
- 10-25 (7) a superintendent, manager, or health official of a
10-26 public or private camp, home, or institution;
- 10-27 (8) a parent, guardian, or householder;
- 10-28 (9) a health professional;
- 10-29 (10) an administrator or health official of a penal or
10-30 correctional institution; or
- 10-31 (11) emergency medical service personnel, a peace
10-32 officer, or a firefighter.

10-33 SECTION 14. (a) The Department of Family and Protective
10-34 Services shall develop and implement a procedure by which a
10-35 maternity home that provides residential child care to a minor
10-36 mother and that holds a license issued under Chapter 249, Health and
10-37 Safety Code, before September 1, 2012, may convert the license to a
10-38 residential child-care facility license issued under Chapter 42,
10-39 Human Resources Code.

10-40 (b) The Department of Family and Protective Services may
10-41 waive requirements for an initial inspection or initial background
10-42 and criminal history checks with respect to a maternity home
10-43 seeking to convert a license under Subsection (a) of this section if
10-44 the department determines that previously conducted inspections or
10-45 background and criminal history checks, as applicable, are
10-46 sufficient to ensure the safety of children receiving care at the
10-47 facility.

10-48 SECTION 15. The following laws are repealed:

- 10-49 (1) Chapter 249, Health and Safety Code; and
- 10-50 (2) Subsection (g-2), Section 42.042, Human Resources
10-51 Code.

10-52 SECTION 16. (a) Except as provided by Subsection (b) of
10-53 this section, this Act takes effect September 1, 2011.

10-54 (b) The changes in law made by this Act by the amendment of
10-55 Subsection (a), Section 411.114, Government Code, and Subsection
10-56 (e), Section 81.042, Health and Safety Code, the enactment of
10-57 Subchapter G, Chapter 42, Human Resources Code, and the repeal of
10-58 Chapter 249, Health and Safety Code, and Subsection (g-2), Section
10-59 42.042, Human Resources Code, take effect September 1, 2012.

10-60 * * * * *