

BILL ANALYSIS

Senate Research Center
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S.B. 1061
By: Zaffirini
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Small Employer-Based Child Care (SEBCC) operations and Temporary Shelter Programs (TSP) currently are only required to submit the names of the directors, caregivers, and others regularly present at the facility to the Texas Department of Public Safety (DPS) for name-based criminal history checks. For TSP operations, a Federal Bureau of Investigation (FBI) fingerprint criminal history check is only required for persons who have lived outside of the state of Texas in the last five years or if there is reason to believe the person has a criminal history in another state.

There are several limitations with DPS name-based checks: they only capture crimes committed in Texas, they may not capture all the names a person has used, and there is no process to notify Health and Human Services-Child Care Regulation of a person's arrests after the background check. These limitations put children at risk of being cared for by persons who have committed crimes and are a potential danger to their safety. FBI fingerprint checks are preferred because they notify requesting entities of subsequent arrests and screen persons for crimes in all states.

S.B. 1061 would expand current SEBCC and TSP background checks by requiring these facilities to submit applicants' fingerprints for a complete FBI criminal history check. This change would make these programs safer for young Texans.

As proposed, S.B. 1061 amends current law relating to background and criminal history checks for operators and employees of certain child-care facilities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 42.159, Human Resources Code) and SECTION 2 (Section 42.206, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 42.159, Human Resources Code, by adding Subsections (b-1), (b-2), and (c-1), as follows:

(b-1) Requires a person subject to the background and criminal history check required by Subsection (a) or (b) (relating to certain information required to be submitted to the Department of Family and Protective Services (DFPS) by small businesses) to submit to the Health and Human Services Commission (HHSC) a complete set of fingerprints.

(b-2) Requires the executive commissioner of HHSC (executive commissioner) to adopt rules to implement Section 42.159 (Background and Criminal History Checks Required). Provides that the rules adopted under this section:

(1) are required to require that the fingerprints submitted be in a form and of a quality acceptable to the Texas Department of Public Safety (DPS) and the Federal Bureau of Investigation (FBI) for the purpose of conducting a criminal history check;

(2) are authorized to require that the fingerprints be submitted electronically through an applicant fingerprinting service center; and

(3) are authorized to allow HHSC to waive a fingerprint submission required by this section if:

(A) the person for whom the submission is required has a fingerprint-based criminal history check on file with HHSC or has a fingerprint-based criminal history clearinghouse record, as provided by Section 411.0845 (Criminal History Clearinghouse), Government Code, that is accessible to HHSC through DPS; and

(B) HHSC has an active subscription to FBI's National Record of Arrest and Prosecution Back Service for the person for whom the fingerprint submission is required.

(c-1) Requires DFPS, for each person whose fingerprints are submitted under Subsection (b-1), to conduct a state and FBI criminal history check by:

(1) submitting the person's fingerprints, or causing the fingerprints to be submitted electronically, to DPS for the purpose of conducting a state and federal criminal history check; and

(2) using the resulting information made available by DPS under Section 411.114 (Access to Criminal History Record Information: Department of Family and Protective Services and Health and Human Services Commission), Government Code, and by FBI and any other criminal justice agency under Section 411.087 (Access to Criminal History Record Information Maintained by Federal Bureau of Investigation or Local Criminal Justice Agency), Government Code.

SECTION 2. Amends Section 42.206, Human Resources Code, by amending Subsection (b) and adding Subsections (b-1) and (c-1), as follows:

(b) Deletes existing text requiring a shelter to submit a complete set of fingerprints of each person required to undergo a criminal history check under Subsection (a) (relating to certain information required to be submitted to DFPS by a shelter operating under a certain permit) if the person has lived outside Texas at any time during the previous five years or the shelter has reason to suspect that the person has a criminal history in another state.

(b-1) Requires the executive commissioner to adopt rules to implement this section. Provides that the rules adopted under Section 42.206 (Background and Criminal History Checks Required):

(1) are required to require that the fingerprints submitted be in a form and of a quality acceptable to DPS and FBI for purposes of conducting a criminal history check;

(2) are authorized to require that the fingerprints be submitted electronically through an applicant fingerprinting service center; and

(3) are authorized to allow HHSC to waive a fingerprint submission required by this section if:

(A) the person for whom the submission is required has a fingerprint-based criminal history check on file with HHSC or has a fingerprint-based criminal history clearinghouse record, as provided by Section 411.0845, Government Code, that is accessible to HHSC through DPS; and

(B) HHSC has an active subscription to FBI's National Record of Arrest and Prosecution Back Service for the person for whom the fingerprint submission is required.

(c-1) Requires DFPS, for each person whose fingerprints are submitted under Subsection (b), to conduct a state and FBI criminal history check by:

(1) submitting the person's fingerprints, or causing the fingerprints to be submitted electronically, to DPS for the purpose of conducting a state and federal criminal history check; and

(2) using the resulting information made available by DPS under Section 411.114, Government Code, and by FBI and any other criminal justice agency under Section 411.087, Government Code.

SECTION 3. Effective date: September 1, 2021.