88R10128 MLH-F

By:  Noble H.B. No. 3198

A BILL TO BE ENTITLED

AN ACT

relating to criminal history record information and certain registry information accessible to certain educational and child-care entities and information required for employment in certain child-care facilities.

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

SECTION 1.  Section 22.0825(b), Education Code, is amended to read as follows:

(b)  The agency shall subscribe to the criminal history clearinghouse as provided by Section 411.0845, Government Code, and may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for employment or current or former employee of a school district, district of innovation, open-enrollment charter school, other charter entity, private school that is accredited by an accrediting agency that is a member of the Texas Private School Accreditation Commission, regional education service center, or shared services arrangement.

SECTION 2.  Section 22.083, Education Code, is amended by adding Subsection (b-1) to read as follows:

(b-1)  A private school that is accredited by an accrediting agency that is a member of the Texas Private School Accreditation Commission may obtain the criminal history record information described by Subsection (b) from the agency.

SECTION 3.  Section 22.092(d), Education Code, is amended to read as follows:

(d)  The agency shall provide equivalent access to the registry maintained under this section to:

(1)  private schools;

(2)  public schools; [~~and~~]

(3)  child-care facilities and family homes licensed, certified, registered, or listed under Chapter 42, Human Resources Code; and

(4)  nonprofit teacher organizations approved by the commissioner for the purpose of participating in the tutoring program established under Section 33.913.

SECTION 4.  Section 261.002, Family Code, is amended by amending Subsection (b) and adding Subsections (d), (e), and (f) to read as follows:

(b)  The executive commissioner shall adopt rules necessary to carry out this section. The rules shall:

(1)  prohibit the department from making a finding of abuse or neglect against a person in a case in which the department is named managing conservator of a child who has a severe emotional disturbance only because the child's family is unable to obtain mental health services for the child;

(2)  establish guidelines for reviewing the records in the registry and removing those records in which the department was named managing conservator of a child who has a severe emotional disturbance only because the child's family was unable to obtain mental health services for the child;

(3)  require the department to remove a person's name from the central registry maintained under this section not later than the 10th business day after the date the department receives notice that a finding of abuse and neglect against the person is overturned in:

(A)  an administrative review or an appeal of the review conducted under Section 261.309(c);

(B)  a review or an appeal of the review conducted by the office of consumer affairs of the department; or

(C)  a hearing or an appeal conducted by the State Office of Administrative Hearings; [~~and~~]

(4)  require the department to update any relevant department files to reflect an overturned finding of abuse or neglect against a person not later than the 10th business day after the date the finding is overturned in a review, hearing, or appeal described by Subdivision (3); and

(5)  establish guidelines for providing access to the registry to entities as required by Subsection (d).

(d)  The department shall provide access to the central registry maintained under this section to:

(1)  a facility, home, or agency:

(A)  licensed, certified, registered, or listed under Chapter 42, Human Resources Code; or

(B)  exempt from the licensing requirements under Section 42.041(b), Human Resources Code;

(2)  an independent school district;

(3)  an open-enrollment charter school; and

(4)  a private school accredited by an organization recognized by:

(A)  the Texas Education Agency; or

(B)  the Texas Private School Accreditation Commission.

(e)  A state agency that maintains records of abuse and neglect findings, including the Texas Education Agency, shall:

(1)  provide a copy of the records to the department not later than the 10th day after the date the state agency receives the records; or

(2)  if the state agency makes a finding of abuse or neglect, provide a copy of the record to the department not later than the 10th day after the date the agency makes the finding.

(f)  The department shall include information from a record provided under Subsection (e) in the central registry under this section.

SECTION 5.  Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0563 to read as follows:

Sec. 42.0563.  PRE-EMPLOYMENT AFFIDAVIT. (a) An applicant for a position with a child-care facility must submit, using a form adopted by the department, a pre-employment affidavit disclosing whether the applicant has ever been charged with, adjudicated for, or convicted of having an inappropriate relationship with a minor.

(b)  An applicant who answers affirmatively concerning an inappropriate relationship with a minor must disclose in the affidavit all relevant facts pertaining to the charge, adjudication, or conviction, including, for a charge, whether the charge was determined to be true or false.

(c)  An applicant is not precluded from being employed based on a disclosed charge if the employing entity determines based on the information disclosed in the affidavit that the charge was false.

(d)  A determination that an employee failed to disclose information required to be disclosed by an applicant under this section is grounds for termination of employment.

SECTION 6.  Section 411.0901(a), Government Code, is amended to read as follows:

(a)  The Texas Education Agency is entitled to obtain criminal history record information maintained by the department about a person who:

(1)  is employed or is an applicant for employment by a school district, [~~or~~] open-enrollment charter school, or private school that is accredited by an accrediting agency that is a member of the Texas Private School Accreditation Commission;

(2)  is employed or is an applicant for employment by a shared services arrangement, if the employee's or applicant's duties are or will be performed on school property or at another location where students are regularly present; or

(3)  is employed or is an applicant for employment by an entity that contracts with a school district, open-enrollment charter school, or shared services arrangement if:

(A)  the employee or applicant has or will have continuing duties relating to the contracted services; and

(B)  the employee or applicant has or will have direct contact with students.

SECTION 7.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.