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S.B. No. 1849

A BILL TO BE ENTITLED

AN ACT

1
2 relating to an interagency reportable conduct search engine,
3 standards for a person's removal from the employee misconduct
4 registry and eligibility for certification as certain Texas
5 Juvenile Justice Department officers and employees, and the
6 Department of Family and Protective Services' use of certain
7 information to conduct background checks.

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

9 SECTION 1. Section 253.010, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 253.010. REMOVAL FROM REGISTRY. (a) The commission
12 [~~department~~] may remove a person from the employee misconduct
13 registry if, after receiving a written request from the person, the
14 commission [~~department~~] determines that the person does not meet
15 the requirements for inclusion in the employee misconduct registry.

16 (b) The executive commissioner by rule may establish:

17 (1) criteria for a person to submit a request for
18 removal under Subsection (a); and

19 (2) a process for the commission to determine whether
20 the person meets the requirements for inclusion in the misconduct
21 registry.

22 SECTION 2. Title 9, Health and Safety Code, is amended by
23 adding Subtitle D to read as follows:

24 SUBTITLE D. INTERAGENCY SAFETY INITIATIVES

1 CHAPTER 810. INTERAGENCY REPORTABLE CONDUCT SEARCH ENGINE

2 Sec. 810.001. DEFINITIONS. In this chapter:

3 (1) "Client" means a child, an individual with a
4 disability, or an elderly individual receiving services or care
5 from a participating state agency, a designated user, or a facility
6 or entity that is licensed, certified, or otherwise regulated by a
7 participating state agency.

8 (2) "Department" means the Department of Information
9 Resources.

10 (3) "Designated user" means a person designated by the
11 department or a participating state agency under Section 810.004 to
12 use the search engine.

13 (4) "License" has the meaning assigned by Section
14 2001.003, Government Code.

15 (5) "Participating state agency" means a state agency
16 listed in Section 810.002.

17 (6) "Reportable conduct" means a participating state
18 agency's determination:

19 (A) that an individual engaged in abuse, neglect,
20 exploitation, or misconduct; and

21 (B) for which the agency has:

22 (i) provided any required notice or
23 opportunity to contest the determination; and

24 (ii) issued a final determination.

25 (7) "Search engine" means the interagency reportable
26 conduct search engine established under this chapter.

27 Sec. 810.002. APPLICABILITY. This chapter applies to the

1 following state agencies:

- 2 (1) the Department of Family and Protective Services;
- 3 (2) the Health and Human Services Commission;
- 4 (3) the Texas Education Agency; and
- 5 (4) the Texas Juvenile Justice Department.

6 Sec. 810.003. ESTABLISHMENT OF INTERAGENCY REPORTABLE
7 CONDUCT SEARCH ENGINE. (a) The department, in collaboration with
8 each participating state agency, shall establish an interagency
9 reportable conduct search engine for persons to search in
10 accordance with this chapter information on reportable conduct
11 maintained by:

- 12 (1) the Department of Family and Protective Services
13 in the central registry established under Section 261.002, Family
14 Code;
- 15 (2) the Health and Human Services Commission in the
16 employee misconduct registry established under Chapter 253;
- 17 (3) the Texas Education Agency in the registry
18 established under Section 22.092, Education Code; and
- 19 (4) the Texas Juvenile Justice Department in the
20 integrated certification information system and in any informal
21 list the Texas Juvenile Justice Department maintains.

22 (b) The department shall ensure the search engine results
23 are machine-readable and accessible to each participating state
24 agency and designated users in accordance with this chapter for the
25 purpose of identifying individuals who may be ineligible for
26 employment, a contract, certification, or licensure based on
27 reportable conduct.

1 Sec. 810.004. ELIGIBILITY TO ACCESS SEARCH ENGINE; USER
2 CREDENTIALS. (a) The executive head of each participating state
3 agency shall designate agency employees or contractors who are
4 eligible to access the search engine and the agency's automation
5 systems to determine whether an individual has engaged in
6 reportable conduct.

7 (b) In addition to the eligible individuals described by
8 Subsection (a), each participating state agency shall designate
9 additional users who are eligible to access the search engine and
10 may require those users to determine whether an individual has
11 engaged in reportable conduct. The additional designated users may
12 include controlling persons, hiring managers, or administrators
13 of:

14 (1) licensed or certified long-term care providers,
15 including:

16 (A) home and community support services agencies
17 licensed under Chapter 142;

18 (B) nursing facilities licensed under Chapter
19 242;

20 (C) assisted living facilities licensed under
21 Chapter 247;

22 (D) prescribed pediatric extended care centers
23 licensed under Chapter 248A;

24 (E) intermediate care facilities for individuals
25 with an intellectual disability licensed under Chapter 252;

26 (F) state supported living centers, as defined by
27 Section 531.002; and

- 1 (G) day activity and health services facilities
2 licensed under Chapter 103, Human Resources Code;
3 (2) providers under a Section 1915(c) waiver program,
4 as defined by Section 531.001, Government Code;
5 (3) juvenile probation departments and registered
6 juvenile justice facilities;
7 (4) independent school districts, districts of
8 innovation, open-enrollment charter schools, other charter
9 entities, as defined by Section 21.006, Education Code, regional
10 education service centers, education shared services arrangements,
11 or any other educational entity or provider that is authorized to
12 access the registry established under Section 22.092, Education
13 Code;
14 (5) private schools that:
15 (A) offer a course of instruction for students
16 in this state in one or more grades from prekindergarten through
17 grade 12; and
18 (B) are:
19 (i) accredited by an organization
20 recognized by the Texas Education Agency or the Texas Private
21 School Accreditation Commission;
22 (ii) listed in the database of the
23 National Center for Education Statistics of the United States
24 Department of Education; or
25 (iii) otherwise authorized by Texas
26 Education Agency rule to access the search engine; and
27 (6) nonprofit teacher organizations approved by the

1 commissioner of education for the purpose of participating in the
2 tutoring program established under Section 33.913, Education Code.

3 (c) The department and each participating state agency
4 shall develop a process to issue user credentials to each
5 designated user that authorizes the user to access the search
6 engine. The process must require the revocation of user
7 credentials for a person who is no longer eligible to access the
8 search engine.

9 Sec. 810.005. INFORMATION ACCESSIBLE THROUGH SEARCH
10 ENGINE; ADDITIONAL INFORMATION SHARING. (a) For each individual
11 identified by a participating state agency as having engaged in
12 reportable conduct, the search engine results for that individual
13 must include:

14 (1) the individual's full name;

15 (2) at least one of the following:

16 (A) the individual's date of birth; or

17 (B) the last four digits of the individual's
18 social security number;

19 (3) at least one of the following:

20 (A) information relevant to determining whether
21 the individual is eligible for employment, a contract,
22 certification, or licensure; or

23 (B) the type or a description of the reportable
24 conduct;

25 (4) any available date on which:

26 (A) the reportable conduct occurred; or

27 (B) a final determination was issued on the

1 reportable conduct; and

2 (5) the participating state agency that maintains the
3 reportable conduct information.

4 (b) An individual who engaged in reportable conduct that
5 requires the individual's inclusion in search engine results is not
6 entitled to notice or an opportunity for a hearing before the
7 individual's information is included in the search engine results
8 or shared with the department, a participating state agency, or a
9 designated user in accordance with this chapter and rules adopted
10 under this chapter.

11 (c) A participating state agency may share with other
12 participating agencies additional information on an individual
13 included in search engine results to supplement the information
14 contained in those results for purposes authorized under this
15 chapter.

16 Sec. 810.006. REQUIRED SEARCH QUERY AND USE OF SEARCH
17 ENGINE RESULTS. (a) Each participating state agency and
18 designated user shall conduct a search query using the search
19 engine to determine whether an individual who may have access to a
20 client has engaged in reportable conduct and, if the individual has
21 engaged in reportable conduct, whether the individual is ineligible
22 for:

23 (1) employment, a volunteer position, or a contract
24 with the agency, the user, or a facility or entity licensed,
25 certified, or otherwise regulated by the agency; or

26 (2) licensure or certification by the agency in a
27 profession or for the operation of a facility or entity that the

1 agency regulates.

2 (b) A participating state agency's or designated user's
3 determination under Subsection (a) that an individual is ineligible
4 for employment, a volunteer position, a contract, a license, or a
5 certification must be based on standards authorized or required by
6 law.

7 (c) A participating state agency or designated user must
8 conduct a search query required under Subsection (a) before the
9 agency or user employs, places in a volunteer position, enters into
10 a contract with, or issues a license or certification to an
11 individual. Each participating state agency by rule shall
12 establish procedures for conducting periodic search queries using
13 the search engine to monitor whether an individual the agency or a
14 designated user employs, places in a volunteer position, contracts
15 with, or issues a license or certification to engages in reportable
16 conduct.

17 (d) Each participating state agency, including the Texas
18 Education Agency in collaboration with the State Board for Educator
19 Certification, by rule may:

20 (1) authorize an individual who is determined to have
21 engaged in reportable conduct to be employed or placed in a
22 volunteer position by, enter into a contract with, or receive a
23 license or certification from the agency or a designated user in
24 accordance with standards prescribed by agency rules and as
25 otherwise permitted by law; and

26 (2) prescribe the manner in which information
27 contained in search engine results may be used based on:

- 1 (A) the nature of the reportable conduct;
- 2 (B) the date the reportable conduct occurred;
- 3 (C) the severity of the reportable conduct; and
- 4 (D) any other factors the agency determines
5 necessary.

6 (e) Notwithstanding any provision of this chapter, a
7 private school is not required to conduct search queries using the
8 search engine for the purposes described by this chapter.

9 Sec. 810.007. NOTICE AND HEARING. (a) A participating
10 state agency or designated user that does not enter into a contract
11 with or issue a license or certification to an individual based on a
12 determination under Section 810.006 that the individual has engaged
13 in reportable conduct shall notify the individual of that
14 determination.

15 (b) Each participating state agency may provide an
16 individual to whom notice is provided under this section an
17 opportunity for a hearing regarding the determination on the
18 individual's written request. The hearing must be conducted in
19 accordance with Chapter 2001, Government Code.

20 (c) Notwithstanding any other law, in a hearing conducted
21 under this section a participating state agency is not required to
22 prove that an individual engaged in reportable conduct.

23 Sec. 810.008. OFFICE OF INTERAGENCY COORDINATION ON
24 REPORTABLE CONDUCT. (a) The Office of Interagency Coordination on
25 Reportable Conduct is established within the Department of Family
26 and Protective Services to facilitate:

- 27 (1) coordination among the department and each

1 participating state agency in administering this chapter; and

2 (2) communication between the department, each
3 participating state agency, designated users, interested persons,
4 and the public regarding any relevant search engine information.

5 (b) The Department of Family and Protective Services, in
6 collaboration with the department and each other participating
7 state agency, shall adopt rules on the establishment and operation
8 of the Office of Interagency Coordination on Reportable Conduct.

9 Sec. 810.009. MEMORANDUM OF UNDERSTANDING. The department
10 and each participating state agency shall enter into a memorandum
11 of understanding on the implementation and administration of this
12 chapter. The memorandum must specify each agency's roles and
13 duties with respect to establishing and maintaining the search
14 engine.

15 Sec. 810.010. CONFIDENTIALITY. Information contained in
16 search engine results and additional information shared by a
17 participating state agency under Section 810.005(c), including
18 documents, is confidential and not subject to disclosure under
19 Chapter 552, Government Code.

20 SECTION 3. Section 42.056(b), Human Resources Code, is
21 amended to read as follows:

22 (b) The department shall conduct background checks using:

23 (1) the information provided under Subsection (a);

24 (2) the information made available by the Department
25 of Public Safety under Section 411.114, Government Code, or by the
26 Federal Bureau of Investigation or other criminal justice agency
27 under Section 411.087, Government Code;

1 (3) the department's records of reported abuse and
2 neglect; ~~and~~

3 (4) any other registry, repository, or database
4 required by federal law;

5 (5) any information provided by the Texas Juvenile
6 Justice Department under a memorandum of understanding; and

7 (6) the interagency reportable conduct search engine
8 established under Chapter 810, Health and Safety Code.

9 SECTION 4. The heading to Section 222.053, Human Resources
10 Code, is amended to read as follows:

11 Sec. 222.053. REVOCATION OR SUSPENSION OF CERTIFICATION OR
12 PROVISIONAL CERTIFICATION.

13 SECTION 5. Section 222.053, Human Resources Code, is
14 amended by amending Subsection (c) and adding Subsection (f) to
15 read as follows:

16 (c) The executive director may convene, in person or
17 telephonically, a panel of three board members to determine if a
18 person's continued certification threatens juveniles in the
19 juvenile justice system. If the panel determines that the person's
20 continued certification threatens juveniles in the juvenile
21 justice system, the person's certification [~~license~~] is
22 temporarily suspended until an administrative hearing is held as
23 soon as possible under Subsection (d). The executive director may
24 convene a panel under this subsection only if the danger posed by
25 the person's continued certification is imminent. The panel may
26 hold a telephonic meeting only if immediate action is required and
27 convening the panel at one location is inconvenient for any member

1 of the panel.

2 (f) In this section, "certification" includes a provisional
3 certification.

4 SECTION 6. Subchapter B, Chapter 222, Human Resources Code,
5 is amended by adding Section 222.054 to read as follows:

6 Sec. 222.054. CERTIFICATION OR PROVISIONAL CERTIFICATION
7 INELIGIBILITY. (a) In this section, "certification" includes a
8 provisional certification.

9 (b) The department may designate an individual who has been
10 terminated from employment with the department as ineligible for
11 certification under this chapter or rules adopted under this
12 chapter if:

13 (1) the individual engaged in conduct violating this
14 chapter or a department rule; or

15 (2) a panel under Subsection (c) determines the
16 individual's certification would threaten juveniles in the
17 juvenile justice system.

18 (c) The executive director may convene, in person or
19 telephonically, a panel of three board members to determine if a
20 former department employee's continued eligibility to obtain a
21 certification under this chapter threatens juveniles in the
22 juvenile justice system. The department shall temporarily
23 designate an individual as ineligible for certification if the
24 panel determines the individual's eligibility for certification
25 threatens juveniles in the juvenile justice system until an
26 administrative hearing under Subsection (d). The hearing must be
27 held as soon as possible following the temporary designation. The

1 executive director may convene a panel under this subsection only
2 if the danger posed by the person's continued eligibility is
3 imminent. The panel may hold a telephonic meeting only if immediate
4 action is required and convening the panel at one location is
5 inconvenient for any member of the panel.

6 (d) A person is entitled to a hearing before the State
7 Office of Administrative Hearings if the department proposes to
8 designate a person as ineligible for certification.

9 (e) A person may appeal a ruling or order issued under this
10 section to a district court in the county in which the person
11 resides or in Travis County. The standard of review is under the
12 substantial evidence rule.

13 SECTION 7. (a) In this section, "search engine" means the
14 interagency reportable conduct search engine established under
15 Chapter 810, Health and Safety Code, as added by this Act.

16 (b) As soon as practicable after the effective date of this
17 Act, the Department of Information Resources shall collaborate with
18 the Department of Family and Protective Services, the Health and
19 Human Services Commission, the Texas Education Agency, and the
20 Texas Juvenile Justice Department to establish the search engine as
21 required by Chapter 810, Health and Safety Code, as added by this
22 Act.

23 (c) The establishment of the search engine may take place in
24 phases in accordance with an implementation plan developed by the
25 state agencies listed under Subsection (b) of this section in
26 collaboration with the Office of Interagency Coordination on
27 Reportable Conduct established under Section 810.008, Health and

1 Safety Code, as added by this Act. The implementation plan may
2 include a pilot phase.

3 (d) At the conclusion of the implementation plan described
4 by Subsection (c) of this section, each state agency and other
5 persons authorized to use the search engine shall use the search
6 engine as required by Chapter 810, Health and Safety Code, as added
7 by this Act.

8 SECTION 8. As soon as practicable after the effective date
9 of this Act, the commissioner of the Department of Family and
10 Protective Services, the executive commissioner of the Health and
11 Human Services Commission, the commissioner of education, and the
12 Texas Juvenile Justice Board shall adopt rules as necessary to
13 implement the changes in law made by this Act.

14 SECTION 9. This Act takes effect September 1, 2023.