

By: Kolkhorst, et al.
(Noble, et al.)

S.B. No. 1849

Substitute the following for S.B. No. 1849:

By: Frank

C.S.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 use of
6 certain information by certain state agencies to conduct background
7 checks.

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

9 SECTION 1. Sections 22.094(a), (b), and (e), Education
10 Code, are amended to read as follows:

11 (a) A person described by Section 22.093(b) and who is the
12 subject of a report that alleges misconduct described by Section
13 22.093(c)(1)(A) or (B) or who is identified as having engaged in
14 that misconduct using the interagency reportable conduct search
15 engine established under Chapter 810, Health and Safety Code, is
16 entitled to a hearing on the merits of the allegations of misconduct
17 under the procedures provided by Chapter 2001, Government Code, to
18 contest the allegation in the report or search engine.

19 (b) On receiving a report filed under Section 22.093(f) or
20 making an identification described by Subsection (a), the
21 commissioner shall promptly send to the person who is the subject of
22 the report or identification a notice that includes:

23 (1) a statement informing the person that the person
24 must request a hearing on the merits of the allegations of

1 misconduct within the period provided by Subsection (c);

2 (2) a request that the person submit a written
3 response within the period provided by Subsection (c) to show cause
4 why the commissioner should not pursue an investigation; and

5 (3) a statement informing the person that if the
6 person does not timely submit a written response to show cause as
7 provided by Subdivision (2), the agency shall provide information
8 indicating the person is under investigation in the manner provided
9 by Subsection (d).

10 (e) If a person entitled to a hearing under Subsection (a)
11 does not request a hearing as provided by Subsection (c), the
12 commissioner shall:

13 (1) based on the report filed under Section 22.093(f)
14 or the identification described by Subsection (a), make a
15 determination whether the person engaged in misconduct; and

16 (2) if the commissioner determines that the person
17 engaged in misconduct described by Section 22.093(c)(1)(A) or (B),
18 instruct the agency to add the person's name to the registry
19 maintained under Section 22.092.

20 SECTION 2. Section 253.010, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 253.010. REMOVAL FROM REGISTRY. (a) The Health and
23 Human Services Commission [~~department~~] may remove a person from the
24 employee misconduct registry if, after receiving a written request
25 from the person, the commission [~~department~~] determines that the
26 person does not meet the requirements for inclusion in the employee
27 misconduct registry.

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

2 (1) criteria for a person to submit a request for
3 removal under Subsection (a); and

4 (2) a process for the Health and Human Services
5 Commission to determine whether the person meets the requirements
6 for inclusion in the employee misconduct registry.

7 SECTION 3. Title 9, Health and Safety Code, is amended by
8 adding Subtitle D to read as follows:

9 SUBTITLE D. INTERAGENCY SAFETY INITIATIVES

10 CHAPTER 810. INTERAGENCY REPORTABLE CONDUCT SEARCH ENGINE

11 Sec. 810.001. DEFINITIONS. In this chapter:

12 (1) "Client" means a child, an individual with a
13 disability, or an elderly individual receiving services or care
14 from a participating state agency, a designated user, or a facility
15 or entity that is licensed, certified, or otherwise regulated by a
16 participating state agency.

17 (2) "Department" means the Department of Information
18 Resources.

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

22 (4) "License" has the meaning assigned by Section
23 2001.003, Government Code.

24 (5) "Participating state agency" means a state agency
25 listed in Section 810.002.

26 (6) "Reportable conduct" means a participating state
27 agency's determination:

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

3 (B) for which the agency has:

4 (i) provided any required notice or
5 opportunity to contest the determination; and

6 (ii) issued a final determination.

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

9 Sec. 810.002. APPLICABILITY. This chapter applies to the
10 following state agencies:

11 (1) the Department of Family and Protective Services;

12 (2) the Health and Human Services Commission;

13 (3) the Texas Education Agency; and

14 (4) the Texas Juvenile Justice Department.

15 Sec. 810.003. ESTABLISHMENT OF INTERAGENCY REPORTABLE
16 CONDUCT SEARCH ENGINE. (a) The department, in collaboration with
17 each participating state agency, shall establish an interagency
18 reportable conduct search engine for persons to search information
19 on reportable conduct in accordance with this chapter and rules
20 adopted under this chapter maintained by:

21 (1) the Department of Family and Protective Services
22 in the central registry established under Section 261.002, Family
23 Code;

24 (2) the Health and Human Services Commission in the
25 employee misconduct registry established under Chapter 253;

26 (3) the Texas Education Agency in the registry
27 established under Section 22.092, Education Code; and

1 (4) the Texas Juvenile Justice Department in the
2 integrated certification information system and in any informal
3 list the Texas Juvenile Justice Department maintains.

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

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

16 (b) In addition to the eligible individuals described by
17 Subsection (a), each participating state agency shall designate
18 additional users who are eligible to access the search engine and
19 may require those users to determine whether an individual has
20 engaged in reportable conduct. The additional designated users may
21 include controlling persons, hiring managers, or administrators
22 of:

23 (1) licensed or certified long-term care providers,
24 including:

25 (A) home and community support services agencies
26 licensed under Chapter 142;

27 (B) nursing facilities licensed under Chapter

- 1 [242](#);
- 2 (C) assisted living facilities licensed under
3 Chapter [247](#);
- 4 (D) prescribed pediatric extended care centers
5 licensed under Chapter [248A](#);
- 6 (E) intermediate care facilities for individuals
7 with an intellectual disability licensed under Chapter [252](#);
- 8 (F) state supported living centers, as defined by
9 Section [531.002](#); and
- 10 (G) day activity and health services facilities
11 licensed under Chapter [103](#), Human Resources Code;
- 12 (2) providers under a Section 1915(c) waiver program,
13 as defined by Section [531.001](#), Government Code;
- 14 (3) juvenile probation departments and registered
15 juvenile justice facilities;
- 16 (4) independent school districts, districts of
17 innovation, open-enrollment charter schools, other charter
18 entities, as defined by Section [21.006](#), Education Code, regional
19 education service centers, education shared services arrangements,
20 or any other educational entity or provider that is authorized to
21 access the registry established under Section [22.092](#), Education
22 Code;
- 23 (5) private schools that:
- 24 (A) offer a course of instruction for students
25 in this state in one or more grades from prekindergarten through
26 grade 12; and
- 27 (B) are:

1 (i) accredited by an organization
2 recognized by the Texas Education Agency or the Texas Private
3 School Accreditation Commission;

4 (ii) listed in the database of the
5 National Center for Education Statistics of the United States
6 Department of Education; or

7 (iii) otherwise authorized by Texas
8 Education Agency rule to access the search engine; and

9 (6) nonprofit teacher organizations approved by the
10 commissioner of education for the purpose of participating in the
11 tutoring program established under Section 33.913, Education Code.

12 (c) The department and each participating state agency
13 shall develop a process to issue user credentials to each
14 designated user that authorizes the user to access the search
15 engine. The process must require the revocation of user
16 credentials for a person who is no longer eligible to access the
17 search engine.

18 Sec. 810.005. INFORMATION ACCESSIBLE THROUGH SEARCH
19 ENGINE; ADDITIONAL INFORMATION SHARING. (a) For each individual
20 identified by a participating state agency as having engaged in
21 reportable conduct, the search engine results for that individual
22 must include:

23 (1) the individual's full name;

24 (2) at least one of the following:

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

26 (B) the last four digits of the individual's
27 social security number;

1 (3) at least one of the following:

2 (A) information relevant to determining whether
3 the individual is eligible for employment, a contract,
4 certification, or licensure; or

5 (B) the type or a description of the reportable
6 conduct;

7 (4) any available date on which:

8 (A) the reportable conduct occurred; or

9 (B) a final determination was issued on the
10 reportable conduct; and

11 (5) the participating state agency that maintains the
12 reportable conduct information.

13 (b) An individual who engaged in reportable conduct that
14 requires the individual's inclusion in search engine results is not
15 entitled to notice or an opportunity for a hearing before the
16 individual's information is included in the search engine results
17 or shared with the department, a participating state agency, or a
18 designated user in accordance with this chapter and rules adopted
19 under this chapter.

20 (c) A participating state agency may share with other
21 participating agencies additional information on an individual
22 included in search engine results to supplement the information
23 contained in those results for purposes authorized under this
24 chapter.

25 Sec. 810.006. REQUIRED SEARCH QUERY AND USE OF SEARCH
26 ENGINE RESULTS. (a) Each participating state agency and
27 designated user shall conduct a search query using the search

1 engine to determine whether an individual who may have access to a
2 client has engaged in reportable conduct and, if the individual has
3 engaged in reportable conduct, whether the individual is ineligible
4 for:

5 (1) employment, a volunteer position, or a contract
6 with the agency, the user, or a facility or entity licensed,
7 certified, or otherwise regulated by the agency; or

8 (2) licensure or certification by the agency in a
9 profession or for the operation of a facility or entity that the
10 agency regulates.

11 (b) A participating state agency's or designated user's
12 determination under Subsection (a) that an individual is ineligible
13 for employment, a volunteer position, a contract, a license, or a
14 certification must be based on standards authorized or required by
15 law, including agency rules.

16 (c) A participating state agency or designated user must
17 conduct a search query required under Subsection (a) before the
18 agency or user employs, places in a volunteer position, enters into
19 a contract with, or issues a license or certification to an
20 individual. Each participating state agency by rule shall
21 establish procedures for conducting periodic search queries using
22 the search engine to monitor whether an individual the agency or a
23 designated user employs, places in a volunteer position, contracts
24 with, or issues a license or certification to engages in reportable
25 conduct.

26 (d) Each participating state agency, including the Texas
27 Education Agency in collaboration with the State Board for Educator

1 Certification, by rule may:

2 (1) authorize an individual who is determined to have
3 engaged in reportable conduct to be employed or placed in a
4 volunteer position by, enter into a contract with, or receive a
5 license or certification from the agency or a designated user in
6 accordance with standards prescribed by agency rules and as
7 otherwise permitted by law; and

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

- 10 (A) the nature of the reportable conduct;
11 (B) the date the reportable conduct occurred;
12 (C) the severity of the reportable conduct; and
13 (D) any other factors the agency determines
14 necessary.

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

18 Sec. 810.007. NOTICE AND HEARING. (a) A participating
19 state agency or designated user that does not enter into a contract
20 with or issue a license or certification to an individual based on a
21 determination of the individual's ineligibility under Section
22 810.006 shall notify the individual of that determination.

23 (b) Each participating state agency may provide an
24 individual to whom notice is provided under this section an
25 opportunity for a hearing regarding the determination of the
26 individual's ineligibility under Section 810.006 on the
27 individual's written request. The hearing must be conducted in

1 accordance with Chapter 2001, Government Code.

2 (c) Notwithstanding any other law, in a hearing conducted
3 under this section a participating state agency:

4 (1) is not required to prove that an individual
5 engaged in reportable conduct; and

6 (2) must prove by a preponderance of the evidence that
7 an individual is ineligible under Section 810.006.

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

12 (1) coordination among the department and each
13 participating state agency in administering this chapter; and

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

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

21 Sec. 810.009. MEMORANDUM OF UNDERSTANDING. The department
22 and each participating state agency shall enter into a memorandum
23 of understanding on the implementation and administration of this
24 chapter. The memorandum must specify each agency's roles and
25 duties with respect to establishing and maintaining the search
26 engine.

27 Sec. 810.010. CONFIDENTIALITY. Information contained in

1 search engine results and additional information shared by a
2 participating state agency under Section 810.005(c), including
3 documents, is confidential and not subject to disclosure under
4 Chapter 552, Government Code.

5 SECTION 4. Section 42.056(b), Human Resources Code, is
6 amended to read as follows:

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

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

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

13 (3) the department's records of reported abuse and
14 neglect; ~~and~~

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

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

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

21 SECTION 5. Section 42.159(c), Human Resources Code, is
22 amended to read as follows:

23 (c) The department shall conduct background and criminal
24 history checks using:

25 (1) the information provided under Subsection (a) or
26 (b), as applicable;

27 (2) the information made available by the Department

1 of Public Safety under Section 411.114, Government Code, or by the
2 Federal Bureau of Investigation or other criminal justice agency
3 under Section 411.087, Government Code; ~~and~~

4 (3) the department's records of reported abuse and
5 neglect;

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

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

10 SECTION 6. Section 42.206(c), Human Resources Code, is
11 amended to read as follows:

12 (c) The department shall conduct background and criminal
13 history checks using:

14 (1) the information provided under Subsection (a) or
15 (b), as applicable;

16 (2) the information made available by the Department
17 of Public Safety under Section 411.114, Government Code, or by the
18 Federal Bureau of Investigation or another criminal justice agency
19 under Section 411.087, Government Code; ~~and~~

20 (3) the department's records of reported abuse and
21 neglect;

22 (4) any information provided by the Texas Juvenile
23 Justice Department under a memorandum of understanding; and

24 (5) the interagency reportable conduct search engine
25 established under Chapter 810, Health and Safety Code.

26 SECTION 7. The heading to Section 222.053, Human Resources
27 Code, is amended to read as follows:

1 Sec. 222.053. REVOCATION OR SUSPENSION OF CERTIFICATION OR
2 PROVISIONAL CERTIFICATION.

3 SECTION 8. Section 222.053, Human Resources Code, is
4 amended by adding Subsection (f) to read as follows:

5 (f) In this section, "certification" includes a provisional
6 certification.

7 SECTION 9. Subchapter B, Chapter 222, Human Resources Code,
8 is amended by adding Section 222.054 to read as follows:

9 Sec. 222.054. CERTIFICATION OR PROVISIONAL CERTIFICATION
10 INELIGIBILITY. (a) In this section, "certification" includes a
11 provisional certification.

12 (b) The department may designate as permanently ineligible
13 for certification under this chapter an individual who has been
14 terminated from employment with the department for engaging in
15 conduct that demonstrates the individual is not suitable for
16 certification under this chapter.

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

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

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

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

12 SECTION 10. (a) In this section, "search engine" means the
13 interagency reportable conduct search engine established under
14 Chapter 810, Health and Safety Code, as added by this Act.

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

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

1 include a pilot phase.

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

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

13 SECTION 12. This Act takes effect September 1, 2023.