

BILL ANALYSIS

C.S.H.B. 2990
By: Keough
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that certain employees of health and human services agencies have significant access to sensitive information and systems, including personal, financial, and health information for individuals who are applying for or receiving benefits through the Health and Human Services Commission, as well as direct access to residents and clients of certain regulated facilities. There is concern that this access could potentially be misused to conduct illegal activities, and the parties assert that criminal background checks should be conducted on such employees or prospective employees to mitigate the risk for illegal activities in these situations. C.S.H.B. 2990 seeks to ensure that certain health and human services agencies have the authority to obtain criminal history record information for certain employees.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2990 amends the Government Code, including provisions amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, to entitle the executive commissioner of the Health and Human Services Commission, or the executive commissioner's designee, to obtain from the Department of Public Safety (DPS) criminal history record information maintained by DPS that relates to a person who is an applicant for employment for a position in which the person, as an employee, would have access to sensitive personal or financial information, as determined by the executive commissioner, in the eligibility services division of the Health and Human Services Commission (HHSC) or HHSC's office of inspector general, or that relates to a person who is an employee of HHSC who has access to sensitive personal or financial information, as determined by the executive commissioner.

C.S.H.B. 2990 prohibits the release or disclosure of criminal history record information obtained by the executive commissioner or the executive commissioner's designee under the bill's provisions, except if the information is in a public record at the time the information is obtained, on court order, to a criminal justice agency on request, or with the consent of the person who is the subject of the criminal history record information. The bill establishes that HHSC is not prohibited from disclosing criminal history record information obtained under the bill's provisions in a criminal proceeding or in a hearing conducted by HHSC. The bill requires the executive commissioner to destroy all criminal history record information obtained under the bill's provisions as soon as practicable after the information is used for its authorized purpose.

C.S.H.B. 2990 includes among the persons for whom the Department of Aging and Disability Services (DADS) is entitled to obtain criminal history record information from DPS a person who is an applicant for employment with DADS for a position in which the person, as an employee, would have direct access to residents or clients of a facility regulated by DADS, as determined by the commissioner of aging and disability services, and a person who is an employee of DADS and who has direct access to residents or clients of a facility regulated by DADS, as determined by the commissioner of aging and disability services. The bill requires DADS to destroy the criminal history record information obtained by DADS for such individuals after the information is used for the authorized purpose.

C.S.H.B. 2990 authorizes the executive commissioner of HHSC to require a person for whom the executive commissioner is entitled to obtain criminal history record information from DPS under the bill's provisions to submit fingerprints in a form and of a quality acceptable to DPS and the Federal Bureau of Investigation (FBI) for use in conducting a criminal history background check by obtaining criminal history record information from DPS, the FBI, or a local criminal justice agency. The bill limits the use of criminal history record information obtained by the executive commissioner from such an agency to the evaluation of the qualification or suitability for employment, including continued employment, of an applicable applicant or employee. The bill authorizes the executive commissioner or the executive commissioner's designee to release or disclose criminal history record information obtained from the FBI or a local criminal justice agency only to a governmental entity or as otherwise authorized by federal law, including federal regulations and executive orders.

C.S.H.B. 2990 amends the Human Resources Code to authorize DADS to obtain criminal history record information regarding a person for whom DADS is entitled to obtain criminal history record information from DPS in the manner provided by applicable Government Code provisions. The bill establishes that such criminal history record information is subject to applicable restrictions and requirements.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2990 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.1410 to read as follows:

Sec. 411.1410. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: HEALTH AND HUMAN SERVICES COMMISSION.

(a) The executive commissioner of the health and human services commission or his designee is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.1106 to read as follows:

Sec. 411.1106. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: HEALTH AND HUMAN SERVICES COMMISSION. (a) In this section, "commission" means the Health and Human Services Commission.

(b) The executive commissioner of the commission, or the executive commissioner's designee, is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(1) an applicant for employment for a position in which the employee has access to sensitive personal or financial information, as determined by the executive commissioner, in the following divisions or programs:

(A) the Office of Eligibility Services, as established by Section 531.008(c)(1), Government Code;

(B) the Office of Inspector General, as established by Section 531.008(c)(2), Government Code; or

(2) a person who is currently employed by the commission and has access to sensitive personal or financial information, as determined by the executive commissioner.

(b) Except as provided by Subsection (c), criminal history record information obtained by the executive commissioner of the health and human services commission or his designee under Subsection (a) may not be released or disclosed, unless:

(1) the information is a public record at the time the executive commissioner obtains the information;

(2) by order of a court;

(3) to a criminal justice agency, upon request; or

(4) with the consent of the person who is the subject of the criminal history record information.

(c) The commission is not prohibited from disclosing criminal history record information obtained under Subsection (a) in a criminal proceeding or in a hearing conducted by the commission.

(d) All criminal history record information obtained about an individual under Subsection (a) shall be destroyed by the commission as soon as practicable after the information is used for its authorized purpose.

No equivalent provision.

(1) an applicant for employment for a position in which the person, as an employee, would have access to sensitive personal or financial information, as determined by the executive commissioner, in:

(A) the eligibility services division of the commission; or

(B) the commission's office of inspector general; or

(2) an employee of the commission who has access to sensitive personal or financial information, as determined by the executive commissioner.

(c) Criminal history record information obtained by the executive commissioner of the commission, or by the executive commissioner's designee, under Subsection (b) may not be released or disclosed, except:

(1) if the information is in a public record at the time the information is obtained;

(2) on court order;

(3) to a criminal justice agency, upon request;

(4) with the consent of the person who is the subject of the criminal history record information; or

(5) as provided by Subsection (d).

(d) The commission is not prohibited from disclosing criminal history record information obtained under Subsection (b) in a criminal proceeding or in a hearing conducted by the commission.

(e) The executive commissioner shall destroy all criminal history record information obtained under Subsection (b) as soon as practicable after the information is used for its authorized purpose.

SECTION 2. Section 411.13861, Government Code, is amended by amending Subsection (a), as amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, and adding Subsection (f) to read as follows:

(a) The Department of Aging and Disability Services is entitled to obtain from the Department of Public Safety criminal history record information maintained by the Department of Public Safety that relates

to a person:

(1) required to undergo a background and criminal history check under Chapter 248A, Health and Safety Code; [ø]

(2) who seeks unsupervised visits with a ward of the department, including a relative of the ward;

(3) who is an applicant for employment with the Department of Aging and Disability Services for a position in which the person, as an employee, would have direct access to residents or clients of a facility regulated by the department, as determined by the commissioner of aging and disability services; or

(4) who is an employee of the Department of Aging and Disability Services and who has direct access to residents or clients of a facility regulated by the department, as determined by the commissioner of aging and disability services.

(f) Notwithstanding Subsection (c), the Department of Aging and Disability Services shall destroy information obtained under Subsection (a)(3) or (4) after the information is used for the purposes authorized by this section.

SECTION 2. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.00551 to read as follows:

Sec. 531.00551. CRIMINAL BACKGROUND CHECKS. (a) The executive commissioner is entitled to obtain from the department of public safety criminal history record information maintained by the department that relates to a person who is:

(1) an applicant for employment for a position in which the employee has access to sensitive personal or financial information, as determined by the executive commissioner, in the following divisions or program:

(A) the Office of Eligibility Services, as established by Section 531.008(c)(1), Government Code;

(B) the Office of Inspector General, as established by Section 531.008(c)(2), Government Code; or

(2) a person who is currently employed by the commission and has access to sensitive personal or financial information, as determined by the executive commissioner.

(b) The executive commissioner may

SECTION 3. Subchapter A, Chapter 531, Government Code, is amended by adding Section 531.00553 to read as follows:

Sec. 531.00553. CRIMINAL BACKGROUND CHECKS. (a) In this section, "eligible person" means a person whose criminal history record information the executive commissioner, or the executive commissioner's designee, is entitled to obtain from the Department of Public Safety under Section 411.1106.

(b) The executive commissioner may

require a person described by Subsection (a) to submit fingerprints in a form and of a quality acceptable to the Department of Public Safety and the Federal Bureau of Investigation for use in conducting a criminal history background check.

(c) Criminal history record information obtained by the executive commissioner under Subsection (a) may be used only to evaluate the qualification or suitability for employment of:

(1) an applicant for employment for a position in which the employee has access to sensitive personal or financial information in the following divisions or programs:

(A) the Office of Eligibility Services, as established by Section 531.008(c)(1), Government Code;

(B) the Office of Inspector General, as established by Section 531.008(c)(2), Government Code; or

(2) a person who is currently employed by the commission and has access to sensitive personal or financial information, as determined by the executive commissioner.

(d) Except as provided by Subsection (d) the executive commissioner shall keep confidential any background information obtained under this section and may not disclose or release the information unless:

(1) the information is a public record at the time the executive commissioner obtains the information; or

(2) the executive commissioner releases the information:

(A) under order from a court;

(B) with the permission of the applicant or employee; or

(C) to a governmental agency entitled to receive such information.

(e) The commission is not prohibited from disclosing criminal history record information obtained under Subsection (a) in a criminal proceeding or in a hearing conducted by the commission.

(f) Notwithstanding Subsections (b) and (c), criminal history record information obtained from the Federal Bureau of Investigation may be released or disclosed only to a governmental entity or as authorized by federal statute, federal rule, or federal executive order.

require an eligible person to submit fingerprints in a form and of a quality acceptable to the Department of Public Safety and the Federal Bureau of Investigation for use in conducting a criminal history background check by obtaining criminal history record information under Sections 411.1106 and 411.087.

(c) Criminal history record information obtained by the executive commissioner under Sections 411.1106 and 411.087 may be used only to evaluate the qualification or suitability for employment, including continued employment, of an eligible person.

(d) Notwithstanding Subsection (c), the executive commissioner or the executive commissioner's designee may release or disclose criminal history record information obtained under Section 411.087 only to a governmental entity or as otherwise authorized by federal law, including federal

regulations and executive orders.

No equivalent provision.

SECTION 4. Subchapter C, Chapter 161, Human Resources Code, is amended by adding Section 161.057 to read as follows:

Sec. 161.057. CRIMINAL BACKGROUND CHECKS. (a) In this section, "eligible person" means a person whose criminal history record information the department is entitled to obtain from the Department of Public Safety under Section 411.13861, Government Code.

(b) The department may obtain criminal history record information regarding an eligible person as provided by Section 411.13861, Government Code. Criminal history record information obtained under Section 411.13861 is subject to the restrictions and requirements of that section.

SECTION 3. 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, 2015.

SECTION 5. Same as introduced version.