

BILL ANALYSIS

Senate Research Center

S.B. 1540
By: Perry
Health & Human Services
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Certain Health and Human Services Commission (HHSC) staff have broad access to information and/or systems that can be misused to conduct illegal activities. This includes the personal, financial, and health-related information of individuals applying for or receiving HHSC benefits.

In addition, the Department of Aging and Disability Services (DADS) allows employees direct access to residents or clients of a facility regulated by the department. Interested parties contend that such broad access to information about persons with whom employees are in direct contact provides little safety for vulnerable residents.

These parties assert that conducting DPS or FBI criminal background checks on prospective and current employees could mitigate the risk for illegal activities, but HHSC does not have the necessary statutory authority.

S.B. 1540 grants HHSC and DADS the statutory authority to obtain criminal history record information for certain employees. To prevent misuse of criminal history records by the agencies, these records must be destroyed after they are used for their intended purpose and may be disclosed only under limited circumstances.

S.B. 1540 amends current law relating to the authority of the Health and Human Services Commission and the Department of Aging and Disabilities Services to obtain criminal history record information regarding certain applicants for employment and current employees.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter F, Chapter 411, Government Code, by adding Section 411.1106, as follows:

Sec. 411.1106. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: HEALTH AND HUMAN SERVICES COMMISSION. (a) Defines "commission."

(b) Entitles the executive commissioner of the Health and Human Services Commission (executive commissioner) (HHSC) or the executive commissioner's designee to obtain from the Department of Public Safety of the State of Texas (DPS) criminal history record information maintained by DPS that relates to a person who is:

(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 HHSC; or

(B) HHSC's office of inspector general; or

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

(c) Prohibits criminal history record information obtained by the executive commissioner or by the executive commissioner's designee under Subsection (b) from being 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) Provides that HHSC is not prohibited from disclosing criminal history record information obtained under Subsection (b) in a criminal proceeding or in a hearing conducted by HHSC.

(e) Requires the executive commissioner to 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. Amends Section 411.13861, Government Code, by amending Subsection (a), as amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, and adding Subsection (f), as follows:

(a) Entitles the Department of Aging and Disability Services (DADS) to obtain from DPS criminal history record information maintained by DPS that relates to a person:

(1) and (2) Makes nonsubstantive changes to these subdivisions;

(3) 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 (commissioner); or

(4) 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.

(f) Requires DADS, notwithstanding Subsection (c), to destroy information obtained under Subsection (a)(3) or (4) after the information is used for the purposes authorized by this section.

SECTION 3. Amends Subchapter A, Chapter 531, Government Code, by adding Section 531.00553, as follows:

Sec. 531.00553. CRIMINAL BACKGROUND CHECKS. (a) Defines "eligible person."

(b) Authorizes the executive commissioner to require an eligible person 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 under Sections 411.1106 and 411.087.

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

(d) Authorizes the executive commissioner or the executive commissioner's designee, notwithstanding Subsection (c), to 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.

SECTION 4. Amends Subchapter C, Chapter 161, Human Resources Code, by adding Section 161.057, as follows:

Sec. 161.057. CRIMINAL BACKGROUND CHECKS. (a) Defines "eligible person."

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

SECTION 5. Effective date: upon passage or September 1, 2015.