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AN ACT

1
2 relating to the regulation of certain shelter day-care facilities,
3 child-care facilities, and individuals providing child-care
4 services, and access to certain criminal history record
5 information; providing an administrative penalty.

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

7 SECTION 1. Subdivision (18), Section 42.002, Human
8 Resources Code, is amended to read as follows:

9 (18) "Controlling person" means a person who, either
10 alone or in connection with others, has the ability to directly or
11 indirectly influence or direct the management, expenditures, or
12 policies of a [~~residential child-care~~] facility or family home.

13 SECTION 2. Section 42.041, Human Resources Code, is amended
14 by adding Subsection (f) to read as follows:

15 (f) Notwithstanding the requirements of Subsection (b)(14),
16 a municipality that operates an elementary-age (ages 5-13)
17 recreation program may, in lieu of an annual public hearing, accept
18 public comment through the municipality's Internet website for at
19 least 30 days before the municipality adopts standards of care by
20 ordinance if the municipality:

21 (1) has a population of 300,000 or more; and

22 (2) has held at least two annual public hearings on the
23 standards of care and adopted standards of care by ordinance after
24 those public hearings.

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1 SECTION 3. Section 42.044, Human Resources Code, is amended
2 by amending Subsection (b) and adding Subsections (c-1) and (c-2)
3 to read as follows:

4 (b) The department shall inspect all licensed or certified
5 facilities at least once a year and may inspect other facilities or
6 registered family homes as necessary. [~~The department shall~~
7 ~~investigate a listed family home when the department receives a~~
8 ~~complaint of abuse or neglect of a child, as defined by Section~~
9 ~~261.401, Family Code.~~] At least one of the annual visits must be
10 unannounced and all may be unannounced.

11 (c-1) The department:

12 (1) shall investigate a listed family home if the
13 department receives a complaint that:

14 (A) a child in the home has been abused or
15 neglected, as defined by Section 261.401, Family Code; or

16 (B) otherwise alleges an immediate risk of danger
17 to the health or safety of a child being cared for in the home; and

18 (2) may investigate a listed family home to ensure
19 that the home is providing care for compensation to not more than
20 three children, excluding children who are related to the
21 caretaker.

22 (c-2) The department must notify the operator of a listed
23 family home when a complaint is being investigated under this
24 section and report in writing the results of the investigation to
25 the family home's operator.

26 SECTION 4. Section 42.052, Human Resources Code, is amended
27 by amending Subsection (j) and adding Subsection (j-1) to read as

1 follows:

2 (j) The operator of a listed family home shall undergo
3 initial and subsequent background and criminal history checks
4 required under Section 42.056. If the operator of a listed family
5 home fails to submit the information required by Section 42.056 for
6 a subsequent background and criminal history check, the department
7 shall automatically:

8 (1) suspend the home's listing until the required
9 information is submitted; and

10 (2) revoke the home's listing if the required
11 information is not submitted within six months after the date the
12 automatic suspension begins.

13 (j-1) A suspension or revocation under Subsection (j) is not
14 a suspension or revocation under Section 42.072.

15 SECTION 5. Subsection (f), Section 42.054, Human Resources
16 Code, is amended to read as follows:

17 (f) If a facility, agency, or home fails to pay the annual
18 fee when due, the license, listing, or registration, as
19 appropriate, is automatically suspended until the fee is paid. The
20 license, listing, or registration shall be revoked if the fee is not
21 paid within six months after the date the automatic suspension
22 begins. A suspension or revocation under this subsection is not a
23 suspension or revocation under Section 42.072.

24 SECTION 6. Section 42.056, Human Resources Code, is amended
25 by amending Subsection (a-2) and adding Subsection (1) to read as
26 follows:

27 (a-2) In accordance with rules adopted by the executive

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1 commissioner, the director, owner, or operator of a day-care
2 center, before-school or after-school program, or school-age
3 program shall submit a complete set of fingerprints of each person
4 whose name is required to be submitted by the director, owner, or
5 operator under Subsection (a), unless the person is only required
6 to have the person's name submitted based on criteria specified by
7 Subsection (a)(7). This subsection does not apply to a program that
8 is exempt from the licensing requirements of Section 42.041.

9 (1) In accordance with rules adopted by the executive
10 commissioner, a person that contracts to provide one or more
11 substitute employees to a facility or family home must submit to the
12 department for use in conducting background and criminal history
13 checks the name of each substitute employee. Before a substitute
14 employee may be present at a facility or family home, the employee
15 must meet the same requirements under this section as an employee
16 present at the facility or family home who performs similar duties.
17 The director, owner, or operator of a facility or family home must
18 verify with the department that a substitute employee is eligible
19 to be present at the facility or family home before allowing the
20 employee to begin work.

21 SECTION 7. Section 42.062, Human Resources Code, is amended
22 to read as follows:

23 Sec. 42.062. CERTAIN EMPLOYMENT AND SERVICE PROHIBITED. A
24 person may not be employed as a controlling person or serve in that
25 capacity in a [~~residential child-care~~] facility or family home if
26 the person [~~may not employ in any capacity a person who~~] is not
27 eligible to receive a license or certification for the operation of

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1 a [~~residential child-care~~] facility or family home under Section
2 42.072(g) or [~~who~~] has been denied a license under Section 42.046
3 for a substantive reason.

4 SECTION 8. Section 42.072, Human Resources Code, is amended
5 by adding Subsection (c-1) and amending Subsections (e) and (g) to
6 read as follows:

7 (c-1) A person described by Subsection (c) may not be a
8 controlling person in any facility or family home during the
9 five-year period in which the person is ineligible to receive a
10 license, listing, registration, or certification.

11 (e) A person may continue to operate a facility or family
12 home during an appeal of a license, listing, or registration
13 [~~denial or~~] revocation unless the operation of the facility or
14 family home poses a risk to the health or safety of children. The
15 executive commissioner shall by rule establish the criteria for
16 determining whether the operation of a facility or family home
17 poses a risk to the health or safety of children. The department
18 shall notify the facility or family home of the criteria the
19 department used to determine that the operation of the facility or
20 family home poses a risk to health or safety and that the facility
21 or family home may not operate. A person who has been notified by
22 the department that the facility or home may not operate under this
23 section may seek injunctive relief from a district court in Travis
24 County or in the county in which the facility or home is located to
25 allow operation during the pendency of an appeal. The court may
26 grant injunctive relief against the agency's action only if the
27 court finds that the child-care operation does not pose a health or

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1 safety risk to children. A court granting injunctive relief under
2 this subsection shall have no other jurisdiction over an appeal of
3 final agency action unless conferred by Chapter 2001, Government
4 Code.

5 (g) Notwithstanding Subsection (c), the department may
6 refuse to issue a license, listing, registration, or certification
7 to:

8 (1) a person whose license, listing, registration, or
9 certification for a [~~residential child-care~~] facility or family
10 home was revoked by the department or by court order;

11 (2) a person who was a controlling person of a
12 [~~residential child-care~~] facility or family home at the time
13 conduct occurred that resulted in the revocation of the license,
14 listing, registration, or certification of the facility or family
15 home;

16 (3) a person who voluntarily closed a [~~residential~~
17 ~~child-care~~] facility or family home or relinquished the person's
18 license, listing, registration, or certification after:

19 (A) the department took an action under
20 Subsection (a) in relation to the facility, family home, or person;
21 or

22 (B) the person received notice that the
23 department intended to take an action under Subsection (a) in
24 relation to the facility, family home, or person; or

25 (4) a person who was a controlling person of a
26 [~~residential child-care~~] facility or family home at the time
27 conduct occurred that resulted in the closure of the facility or

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1 family home or relinquishment of the license, listing,
2 registration, or certification in the manner described by
3 Subdivision (3).

4 SECTION 9. Subsection (a), Section 42.078, Human Resources
5 Code, is amended to read as follows:

6 (a) The department may impose an administrative penalty
7 against a facility or family home licensed, [~~or~~] registered, or
8 listed under this chapter that violates this chapter or a rule or
9 order adopted under this chapter. In addition, the department may
10 impose an administrative penalty against a residential child-care
11 facility or a controlling person of a residential child-care
12 facility if the facility or controlling person:

13 (1) violates a term of a license or registration
14 issued under this chapter;

15 (2) makes a statement about a material fact that the
16 facility or person knows or should know is false:

17 (A) on an application for the issuance of a
18 license or registration or an attachment to the application; or

19 (B) in response to a matter under investigation;

20 (3) refuses to allow a representative of the
21 department to inspect:

22 (A) a book, record, or file required to be
23 maintained by the facility; or

24 (B) any part of the premises of the facility;

25 (4) purposefully interferes with the work of a
26 representative of the department or the enforcement of this
27 chapter; or

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1 (5) fails to pay a penalty assessed under this chapter
2 on or before the date the penalty is due, as determined under this
3 section.

4 SECTION 10. Chapter 42, Human Resources Code, is amended by
5 adding Subchapter G to read as follows:

6 SUBCHAPTER G. REGULATION OF TEMPORARY SHELTER DAY-CARE FACILITIES

7 Sec. 42.201. DEFINITIONS. In this subchapter:

8 (1) "Shelter" means a supervised publicly or privately
9 operated shelter or other facility that is designed to provide
10 temporary living accommodations to individuals and families,
11 including a family violence shelter, a homeless shelter, and an
12 emergency shelter. The term does not include a temporary facility
13 established in response to a natural or other disaster.

14 (2) "Shelter care" means child care that is provided:

15 (A) to seven or more children under 14 years of
16 age who temporarily reside at a shelter each with an adult who is
17 related to the child by blood or who is the child's managing
18 conservator;

19 (B) by a person who is not a temporary resident of
20 a shelter; and

21 (C) while the adult described by Paragraph (A) is
22 away from the shelter.

23 (3) "Shelter day-care facility" means a shelter that
24 provides shelter care for not more than 24 hours a day, but at least
25 four hours a day, three or more days a week.

26 Sec. 42.202. PERMIT REQUIRED. (a) Except as provided by
27 subsections (b) and (e), a shelter may not provide shelter care

1 unless the shelter holds a permit issued by the department under
2 this subchapter.

3 (b) A shelter is not required to obtain a permit to provide
4 shelter care under this subchapter if the shelter holds a license to
5 operate a child-care facility that is issued by the department
6 under Subchapter C. A shelter that holds that license must comply
7 with the applicable provisions of Subchapter C, the applicable
8 rules of the department, and any specific terms of the license.

9 (c) Notwithstanding any other law, including Section
10 42.041, a shelter that holds a permit issued under this subchapter
11 is not required to hold a license under Subchapter C to operate a
12 shelter day-care facility.

13 (d) The department may not issue a permit under this
14 subchapter to a shelter that provides child care to a child who is
15 not a resident of the shelter. A shelter that provides child care
16 described by this subsection must hold a license to operate a
17 child-care facility issued under Subchapter C.

18 (e) A shelter is not required to obtain a permit under this
19 subchapter or a license under Subchapter C if the shelter provides
20 shelter care for:

21 (1) less than four hours a day or for less than three
22 days a week; or

23 (2) six or fewer children.

24 Sec. 42.203. APPLICATION; INITIAL INSPECTION AND
25 BACKGROUND AND CRIMINAL HISTORY CHECKS. (a) The department shall
26 develop and implement a streamlined procedure by which a shelter
27 may apply for and be issued a permit to operate a shelter day-care

1 facility. The shelter must submit an application for the permit to
2 the department on a form prescribed by the department.

3 (b) Except as provided by Section 42.204, on receipt of a
4 shelter's application for a permit, the department shall:

5 (1) conduct an initial inspection of the shelter
6 day-care facility to ensure that the shelter is able to comply with
7 the provisions of this subchapter and that the facility complies
8 with the fire safety and sanitation standards of the political
9 subdivision in which the facility is located; and

10 (2) conduct a background and criminal history check on
11 each prospective caregiver whose name is submitted as required by
12 Section 42.206(a).

13 (c) The department may charge an applicant an
14 administrative fee in a reasonable amount that is sufficient to
15 cover the costs of the department in processing the application.

16 (d) The department shall process an application not later
17 than the 30th day after the date the department receives all of the
18 required information.

19 Sec. 42.204. CONVERSION OF LICENSE. (a) The department
20 shall develop and implement a procedure by which a shelter that
21 holds a license to operate a child-care facility that is issued
22 under Subchapter C before September 1, 2012, may convert the
23 license to a permit under this subchapter. The procedure must
24 include an abbreviated application form for use by the shelter in
25 applying for the permit.

26 (b) The department may waive the requirements under Section
27 42.203(b) for an initial inspection or background and criminal

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1 history checks with respect to a licensed child-care facility
2 seeking to convert a license to a permit under this section if the
3 department determines that previously conducted inspections or
4 background and criminal history checks, as applicable, are
5 sufficient to ensure the safety of children receiving care at the
6 facility.

7 Sec. 42.205. CAREGIVER QUALIFICATIONS AND TRAINING;
8 CHILD-TO-CAREGIVER RATIOS. (a) The executive commissioner shall
9 adopt rules that specify the minimum:

10 (1) qualifications and training required for a person
11 providing child care in a shelter day-care facility; and

12 (2) child-to-caregiver ratios in a shelter day-care
13 facility.

14 (b) In adopting rules under this section, the executive
15 commissioner shall consider:

16 (1) the special circumstances and needs of families
17 that seek temporary shelter; and

18 (2) the role of a shelter in assisting and supporting
19 families in crisis.

20 Sec. 42.206. BACKGROUND AND CRIMINAL HISTORY CHECKS
21 REQUIRED. (a) In accordance with rules adopted by the executive
22 commissioner, a shelter shall, when applying for a permit under
23 this subchapter and at least once during each 24-month period after
24 receiving that permit, submit to the department for use in
25 conducting background and criminal history checks:

26 (1) the name of any director or prospective director
27 of the shelter day-care facility and the name of each caregiver or

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1 prospective caregiver employed at the facility to provide care to
2 children;

3 (2) the name of each person counted in
4 child-to-caregiver ratios at the shelter day-care facility; and

5 (3) the name of each person 14 years of age or older
6 who will have unsupervised access to one or more children while in
7 the care of the shelter day-care facility.

8 (b) In addition to the requirements of Subsection (a), a
9 shelter shall submit a complete set of fingerprints of each person
10 required to undergo a criminal history check under Subsection (a)
11 if:

12 (1) the person has lived outside the state at any time
13 during the previous five years; or

14 (2) the shelter has reason to suspect that the person
15 has a criminal history in another state.

16 (c) The department shall conduct background and criminal
17 history checks using:

18 (1) the information provided under Subsection (a) or
19 (b), as applicable;

20 (2) the information made available by the Department
21 of Public Safety under Section 411.114, Government Code, or by the
22 Federal Bureau of Investigation or another criminal justice agency
23 under Section 411.087, Government Code; and

24 (3) the department's records of reported abuse and
25 neglect.

26 (d) For purposes of Sections 411.114 and 411.087,
27 Government Code:

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1 (1) a shelter that applies for a permit is considered
2 to be an applicant for a license under this chapter; and

3 (2) a shelter day-care facility operating under a
4 permit issued under this subchapter is considered to be a
5 child-care facility licensed under this chapter.

6 (e) The department shall require the shelter to pay to the
7 department a fee in an amount not to exceed the administrative costs
8 the department incurs in conducting a background and criminal
9 history check under this section.

10 Sec. 42.207. APPLICABILITY OF OTHER LAW. Except as
11 otherwise provided by this subchapter, a shelter day-care facility
12 operating under this subchapter is not a child-care facility, as
13 defined by Section 42.002, and the provisions of this chapter and
14 the department's rules that apply to a child-care facility licensed
15 under Subchapter C do not apply to a shelter day-care facility.

16 Sec. 42.208. REPORTING OF INCIDENTS AND VIOLATIONS. A
17 shelter day-care facility operating under this subchapter and each
18 employee of that facility are subject to the reporting requirements
19 of Section 42.063 to the same extent a licensed child-care facility
20 and employees of licensed child-care facilities are subject to that
21 section.

22 Sec. 42.209. AUTHORITY TO CONDUCT LIMITED INSPECTIONS.

23 (a) The department may inspect a shelter day-care facility
24 operating under this subchapter if the department receives a
25 complaint or report of child abuse or neglect alleged to have
26 occurred at the shelter day-care facility.

27 (b) If the department inspects a shelter day-care facility

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1 as authorized by this section, the department may require the
2 facility to take appropriate corrective action the department
3 determines necessary to comply with the requirements of this
4 subchapter and to ensure the health and safety of children
5 receiving care at the facility. The department may continue to
6 inspect the facility until corrective action is taken and for a
7 reasonable time after that action is taken to ensure continued
8 compliance.

9 (c) The department may charge a shelter issued a permit
10 under this subchapter a reasonable fee for the cost of services
11 provided by the department in formulating, monitoring, and
12 implementing a corrective action plan under this section.

13 Sec. 42.210. SUSPENSION, DENIAL, OR REVOCATION. (a) The
14 department may suspend, deny, or revoke a permit issued to a shelter
15 under this subchapter if the shelter does not comply with the
16 provisions of this subchapter or any applicable department rules.

17 (b) The department may refuse to issue a permit under this
18 subchapter to a shelter that had its authorization to operate a
19 child-care facility issued under another subchapter revoked,
20 suspended, or not renewed for a reason relating to child health or
21 safety as determined by the department.

22 (c) A shelter day-care facility is subject to the emergency
23 suspension of its permit to operate and to closure under Section
24 42.073 to the same extent and in the same manner as a licensed
25 child-care facility is subject to that section.

26 SECTION 11. Subsection (a), Section 43.010, Human Resources
27 Code, is amended to read as follows:

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1 (a) The department may deny, revoke, suspend, or refuse to
2 renew a license, or place on probation or reprimand a license holder
3 for:

4 (1) violating this chapter or a rule adopted under
5 this chapter;

6 (2) circumventing or attempting to circumvent the
7 requirements of this chapter or a rule adopted under this chapter;

8 (3) engaging in fraud or deceit related to the
9 requirements of this chapter or a rule adopted under this chapter;

10 (4) providing false or misleading information to the
11 department during the license application or renewal process for
12 any person's license;

13 (5) making a statement about a material fact during
14 the license application or renewal process that the person knows or
15 should know is false;

16 (6) having:

17 (A) a criminal history or central registry record
18 that would prohibit a person from working in a child-care facility,
19 as defined by Section 42.002, under rules applicable to that type of
20 facility; or

21 (B) a criminal history relevant to the duties of
22 a licensed child-care or child-placing administrator, as those
23 duties are specified in rules adopted by the executive
24 commissioner;

25 (7) using drugs or alcohol in a manner that
26 jeopardizes the person's ability to function as an administrator;
27 or

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1 (8) performing duties as a child-care administrator in
2 a negligent manner.

3 SECTION 12. Section 411.087, Government Code, is amended by
4 amending Subsections (a) and (e) and adding Subsection (f) to read
5 as follows:

6 (a) Unless otherwise authorized by Subsection (e), a [A]
7 person, agency, department, political subdivision, or other entity
8 that is authorized by this subchapter to obtain from the department
9 criminal history record information maintained by the department
10 that relates to another person is authorized to:

11 (1) obtain through the Federal Bureau of Investigation
12 criminal history record information maintained or indexed by that
13 bureau that pertains to that person; or

14 (2) obtain from any other criminal justice agency in
15 this state criminal history record information maintained by that
16 criminal justice agency that relates to that person.

17 (e) The department may provide access to state and national
18 criminal history record information to qualified ~~[nongovernmental]~~
19 entities entitled to that information under 42 U.S.C. Section
20 5119a. The department must follow federal law and regulation,
21 federal executive orders, and federal policy in releasing
22 information under this subsection.

23 (f) Notwithstanding any other law, a person, agency,
24 department, political subdivision, or other entity entitled to
25 access the criminal history record information of a person under
26 Subsection (e) is not required to collect or submit the person's
27 fingerprints if:

1 (1) a complete set of the person's fingerprints was
2 previously submitted under Subsection (d)(1);

3 (2) the department retained the fingerprints;

4 (3) the fingerprints are acceptable to the Federal
5 Bureau of Investigation for access to criminal history record
6 information; and

7 (4) the only purpose for which the person's
8 fingerprints are collected is to access criminal history record
9 information under Subsection (e).

10 SECTION 13. Subsection (a), Section 411.114, Government
11 Code, is amended to read as follows:

12 (a)(1) In this subsection:

13 (A) "Child," "child-care facility,"
14 "child-placing agency," and "family home" have the meanings
15 assigned by Section 42.002, Human Resources Code.

16 (B) "Elderly person" has the meaning assigned by
17 Section 48.002, Human Resources Code.

18 ~~[(C) "Maternity home" has the meaning assigned by~~
19 ~~Section 249.001, Health and Safety Code.]~~

20 (D) "Person with a disability" means a disabled
21 person as defined by Section 48.002, Human Resources Code.

22 (E) "Ward" has the meaning assigned by Section
23 601, Texas Probate Code.

24 (2) The Department of Family and Protective Services
25 shall obtain from the department criminal history record
26 information maintained by the department that relates to a person
27 who is:

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1 (A) an applicant for a license, registration,
2 certification, or listing under Chapter 42, Human Resources Code [~~7~~
3 ~~or Chapter 249, Health and Safety Code~~];

4 (B) an owner, operator, or employee of or an
5 applicant for employment by a child-care facility, child-placing
6 agency, or family home [~~7~~ ~~or maternity home~~] licensed, registered,
7 certified, or listed under Chapter 42, Human Resources Code [~~7~~ ~~or~~
8 ~~Chapter 249, Health and Safety Code~~];

9 (C) a person 14 years of age or older who will be
10 regularly or frequently working or staying in a child-care facility
11 or [~~7~~] family home [~~7~~ ~~or maternity home~~] while children are being
12 provided care, other than a child in the care of the home or
13 facility;

14 (D) an applicant selected for a position with the
15 Department of Family and Protective Services, the duties of which
16 include direct delivery of protective services to children, elderly
17 persons, or persons with a disability;

18 (E) an employee of, an applicant for employment
19 with, or a volunteer or an applicant volunteer with a business
20 entity or person that contracts with the Department of Family and
21 Protective Services to provide direct delivery of protective
22 services to children, elderly persons, or persons with a
23 disability, if the person's duties or responsibilities include
24 direct contact with children, elderly persons, or persons with a
25 disability;

26 (F) a registered volunteer with the Department of
27 Family and Protective Services;

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1 (G) a person providing or applying to provide
2 in-home, adoptive, or foster care for children in the care of the
3 Department of Family and Protective Services and other persons
4 living in the residence in which the child will reside;

5 (H) a Department of Family and Protective
6 Services employee who is engaged in the direct delivery of
7 protective services to children, elderly persons, or persons with a
8 disability;

9 (I) a person who is the subject of a report the
10 Department of Family and Protective Services receives alleging that
11 the person has abused, neglected, or exploited a child, an elderly
12 person, or a person with a disability, provided that:

13 (i) the report alleges the person has
14 engaged in conduct that meets the statutory definition of abuse,
15 neglect, or exploitation under Chapter 261, Family Code, or Chapter
16 48, Human Resources Code; and

17 (ii) the person who is the subject of the
18 report is not also the victim of the alleged conduct;

19 (J) a person providing child care for a child who
20 is in the care of the Department of Family and Protective Services
21 and who is or will be receiving adoptive, foster, or in-home care;

22 (K) through a contract with a nonprofit
23 management center, an employee of, an applicant for employment
24 with, or a volunteer or an applicant volunteer with a nonprofit,
25 tax-exempt organization that provides any service that involves the
26 care of or access to children, elderly persons, or persons with a
27 disability; or

1 (L) an applicant for a child-care administrator
2 or child-placing agency administrator license under Chapter 43,
3 Human Resources Code.

4 (3) The Department of Family and Protective [~~and~~
5 ~~Regulatory~~] Services is entitled to obtain from the department
6 criminal history record information maintained by the department
7 that relates to a person who is:

8 (A) a volunteer or applicant volunteer with a
9 local affiliate in this state of Big Brothers/Big Sisters of
10 America;

11 (B) a volunteer or applicant volunteer with the
12 "I Have a Dream/Houston" program;

13 (C) a volunteer or applicant volunteer with an
14 organization that provides court-appointed special advocates for
15 abused or neglected children;

16 (D) a person providing, at the request of the
17 child's parent, in-home care for a child who is the subject of a
18 report alleging the child has been abused or neglected;

19 (E) a volunteer or applicant volunteer with a
20 Texas chapter of the Make-a-Wish Foundation of America;

21 (F) a person providing, at the request of the
22 child's parent, in-home care for a child only if the person gives
23 written consent to the release and disclosure of the information;

24 (G) a child who is related to the caretaker, as
25 determined under Section 42.002, Human Resources Code, and who
26 resides in or is present in a child-care facility or [~~r~~] family
27 home [~~, or maternity home~~], other than a child described by

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1 Subdivision (2)(C), or any other person who has unsupervised access
2 to a child in the care of a child-care facility or [7] family home [7
3 ~~or maternity home~~];

4 (H) an applicant for a position with the
5 Department of Family and Protective [~~and Regulatory~~] Services,
6 other than a position described by Subdivision (2)(D), regardless
7 of the duties of the position;

8 (I) a volunteer or applicant volunteer with the
9 Department of Family and Protective [~~and Regulatory~~] Services,
10 other than a registered volunteer, regardless of the duties to be
11 performed;

12 (J) a person providing or applying to provide
13 in-home, adoptive, or foster care for children to the extent
14 necessary to comply with Subchapter B, Chapter 162, Family Code;

15 (K) a Department of Family and Protective [~~and~~
16 ~~Regulatory~~] Services employee, other than an employee described by
17 Subdivision (2)(H), regardless of the duties of the employee's
18 position;

19 (L) a relative of a child in the care of the
20 Department of Family and Protective [~~and Regulatory~~] Services, to
21 the extent necessary to comply with Section 162.007, Family Code;

22 (M) a person, other than the subject of a report
23 described in Subdivision (2)(I), living in the residence in which
24 the alleged victim of the report resides;

25 (N) a contractor or an employee of a contractor
26 who delivers services to a ward of the Department of Family and
27 Protective [~~and Regulatory~~] Services under a contract with the

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1 estate of the ward;

2 (O) a person who seeks unsupervised visits with a
3 ward of the Department of Family and Protective [~~and Regulatory~~]
4 Services, including a relative of the ward; or

5 (P) an employee, volunteer, or applicant
6 volunteer of a children's advocacy center under Subchapter E,
7 Chapter 264, Family Code, including a member of the governing board
8 of a center.

9 (4) Subject to Section 411.087, the Department of
10 Family and Protective [~~and Regulatory~~] Services is entitled to:

11 (A) obtain through the Federal Bureau of
12 Investigation criminal history record information maintained or
13 indexed by that bureau that pertains to a person described by
14 Subdivision (2); and

15 (B) obtain from any other criminal justice agency
16 in this state criminal history record information maintained by
17 that criminal justice agency that relates to a person described by
18 Subdivision (2) or (3). Law enforcement entities shall expedite
19 the furnishing of such information to Department of Family and
20 Protective [~~and Regulatory~~] Services workers to ensure prompt
21 criminal background checks for the safety of alleged victims and
22 Department of Family and Protective [~~and Regulatory~~] Services
23 workers.

24 (5) The Department of Family and Protective [~~and~~
25 ~~Regulatory~~] Services may not use the authority granted under this
26 section to harass an employee or volunteer. The executive
27 commissioner of the Health and Human Services Commission [~~Board of~~

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1 ~~Protective and Regulatory Services~~] shall adopt rules to prevent
2 the harassment of an employee or volunteer through the request and
3 use of criminal records.

4 (6) Criminal history record information obtained by
5 the Department of Family and Protective [~~and Regulatory~~] Services
6 under this subsection may not be released to any person except:

7 (A) on court order;

8 (B) with the consent of the person who is the
9 subject of the criminal history record information;

10 (C) for purposes of an administrative hearing
11 held by the Department of Family and Protective [~~and Regulatory~~]
12 Services concerning the person who is the subject of the criminal
13 history record information; or

14 (D) as provided by Subdivision (7).

15 (7) The Department of Family and Protective [~~and~~
16 ~~Regulatory~~] Services is not prohibited from releasing criminal
17 history record information obtained under this subsection to:

18 (A) the person who is the subject of the criminal
19 history record information;

20 (B) a child-care facility, child-placing agency,
21 or family home [~~, or maternity home~~] listed in Subdivision (2) that
22 employs or is considering employing the person who is the subject of
23 the criminal history record information;

24 (C) a person or business entity described by
25 Subdivision (2)(E) or (3) who uses or intends to use the services of
26 the volunteer or employs or is considering employing the person who
27 is the subject of the criminal history record information; or

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1 (D) an adult residing with a child, elderly
2 person, or person with a disability and the person who is the
3 subject of the criminal history record information, if the
4 Department of Family and Protective [~~and Regulatory~~] Services
5 determines that the release of information to the adult is
6 necessary to ensure the safety or welfare of the child, elderly
7 person, or person with a disability or the adult.

8 SECTION 14. Subsection (e), Section 81.042, Health and
9 Safety Code, is amended to read as follows:

10 (e) The following persons shall report to the local health
11 authority or the department a suspected case of a reportable
12 disease and all information known concerning the person who has or
13 is suspected of having the disease if a report is not made as
14 required by Subsections (a)-(d):

- 15 (1) a professional registered nurse;
- 16 (2) an administrator or director of a public or
17 private temporary or permanent child-care facility;
- 18 (3) an administrator or director of a nursing home,
19 personal care home, [~~maternity home,~~] adult respite care center, or
20 adult day-care center;
- 21 (4) an administrator of a home health agency;
- 22 (5) an administrator or health official of a public or
23 private institution of higher education;
- 24 (6) an owner or manager of a restaurant, dairy, or
25 other food handling or processing establishment or outlet;
- 26 (7) a superintendent, manager, or health official of a
27 public or private camp, home, or institution;

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- 1 (8) a parent, guardian, or householder;
- 2 (9) a health professional;
- 3 (10) an administrator or health official of a penal or
- 4 correctional institution; or
- 5 (11) emergency medical service personnel, a peace
- 6 officer, or a firefighter.

7 SECTION 15. (a) The Department of Family and Protective
8 Services shall develop and implement a procedure by which a
9 maternity home that provides residential child care to a minor
10 mother and that holds a license issued under Chapter 249, Health and
11 Safety Code, before September 1, 2012, may convert the license to a
12 residential child-care facility license issued under Chapter 42,
13 Human Resources Code.

14 (b) The Department of Family and Protective Services may
15 waive requirements for an initial inspection or initial background
16 and criminal history checks with respect to a maternity home
17 seeking to convert a license under Subsection (a) of this section if
18 the department determines that previously conducted inspections or
19 background and criminal history checks, as applicable, are
20 sufficient to ensure the safety of children receiving care at the
21 facility.

22 SECTION 16. The following laws are repealed:

- 23 (1) Chapter 249, Health and Safety Code; and
- 24 (2) Subsection (g-2), Section 42.042, Human Resources
- 25 Code.

26 SECTION 17. (a) Except as provided by Subsection (b) of
27 this section, this Act takes effect September 1, 2011.

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1 (b) The changes in law made by this Act by the amendment of
2 Subsection (a), Section 411.114, Government Code, and Subsection
3 (e), Section 81.042, Health and Safety Code, the enactment of
4 Subchapter G, Chapter 42, Human Resources Code, and the repeal of
5 Chapter 249, Health and Safety Code, and Subsection (g-2), Section
6 42.042, Human Resources Code, take effect September 1, 2012._____

David Dewhurst
President of the Senate

Joe Straus
Speaker of the House

I hereby certify that S.B. No. 1178 passed the Senate on April 21, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 27, 2011, by the following vote: Yeas 31, Nays 0._____

Daisy Jewell
Secretary of the Senate

I hereby certify that S.B. No. 1178 passed the House, with amendment, on May 20, 2011, by the following vote: Yeas 149, Nays 0, one present not voting._____

Robert Honey
Chief Clerk of the House

Approved:

17 JUN '11
Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
O'CLOCK

John Rowland
Secretary of State