

BILL ANALYSIS

C.S.S.B. 1849
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Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There is a need to reduce the risk of harm to vulnerable populations in schools, child-care and juvenile justice facilities, and long-term care facilities. C.S.S.B. 1849 seeks to reduce this risk by creating a search engine that connects the databases of reportable conduct at the Texas Education Agency, the Texas Juvenile Justice Department, the Health and Human Services Commission, and the Department of Family and Protective Services' central registry of abuse and neglect findings to identify workers who committed reportable conduct in various settings. Although some data-sharing agreements are in place between these agencies, there is no centralized source of data to ensure providers who serve vulnerable populations do not hire individuals with a demonstrated history of harming children or vulnerable adults. C.S.S.B. 1849 seeks to fill the gap by directing the Department of Information Resources to develop the Texas Interagency Reportable Conduct Search Engine as a centralized technology platform that searches data registries within four state agencies that contain the list of individuals who have been determined to have engaged in abuse, neglect, exploitation, or misconduct within school, long-term care, child-care, or juvenile justice settings. C.S.S.B. 1849, among other provisions, requires certain licensed providers that serve vulnerable populations in these settings to conduct a search using the search engine to determine the eligibility of an applicant seeking employment in applicable facilities.

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 rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 of this bill and to the executive commissioner of the Health and Human Services Commission, the commissioner of the Department of Family and Protective Services, the commissioner of education, and the Texas Juvenile Justice Board in SECTION 3 of this bill.

ANALYSIS

C.S.S.B. 1849 amends the Health and Safety Code to require the Department of Information Resources (DIR), in collaboration with each participating state agency, to establish an interagency reportable conduct search engine for persons to search information on reportable conduct in accordance with the bill's search engine provisions and applicable rules adopted under those provisions maintained by the following agencies:

- the Department of Family and Protective Services (DFPS) in the child abuse and neglect central registry;
- the Health and Human Services Commission (HHSC) in the employee misconduct registry;

- the Texas Education Agency (TEA) in the registry of persons who are not eligible for employment in public schools; and
- the Texas Juvenile Justice Department (TJJD) in the integrated certification information system and in any informal list TJJD maintains.

The bill establishes that each of those agencies is considered a participating state agency for purposes of the search engine. The bill requires DIR to ensure the search engine results are machine-readable and accessible to each participating state agency and to designated users for the purpose of identifying individuals who may be ineligible for employment, a contract, certification, or licensure based on reportable conduct. The bill defines reportable conduct, for the purposes of the search engine, as a determination by a participating state agency that an individual engaged in abuse, neglect, exploitation, or misconduct and for which the agency has provided any required notice or opportunity to contest the determination and issued a final determination.

C.S.S.B. 1849 requires the executive head of each participating state agency to designate agency employees or contractors who are eligible to access the search engine and TEA's automation systems to determine whether an individual has engaged in reportable conduct. In addition to those eligible individuals, the bill requires each participating state agency to designate additional users who are eligible to access the search engine and authorizes such an agency to require those users to determine whether an individual has engaged in reportable conduct. The additional designated users may include controlling persons, hiring managers, or administrators of the following:

- licensed or certified long-term care providers, including home and community support services agencies, nursing facilities, assisted living facilities, prescribed pediatric extended care centers, intermediate care facilities for individuals with an intellectual disability, state supported living centers, and day activity and health services facilities;
- providers under a Section 1915(c) Medicaid waiver program;
- juvenile probation departments and registered juvenile justice facilities;
- independent public school districts, districts of innovation, open-enrollment charter schools, other charter entities as defined by reference to the Education Code, regional education service centers, education shared services arrangements, or any other educational entity or provider that is authorized to access the TEA registry of persons ineligible for employment in public schools;
- private schools that offer a course of instruction for students in Texas in one or more grades from prekindergarten through grade 12 and meet one of the following criteria:
 - are accredited by an organization recognized by TEA or the Texas Private School Accreditation Commission;
 - are listed in the database of the National Center for Education Statistics of the U.S. Department of Education; or
 - are otherwise authorized by TEA rule to access the search engine; and
- nonprofit teacher organizations approved by the commissioner of education for the purpose of participating in the tutoring program for students in kindergarten through grade 12.

The bill requires the determinations by DIR, each applicable participating state agency, and the executive head of each participating state agency regarding the ineligibility of an individual for employment or licensure to be based on standards authorized or required by law, including agency rules.

C.S.S.B. 1849 requires DIR and each participating state agency to develop a process to issue user credentials to each designated user that authorizes the user to access the search engine. The process must require the revocation of user credentials for a person who is no longer eligible to access the search engine. The bill requires the search engine to include the following information for each individual identified by a participating state agency as having engaged in reportable conduct:

- the individual's full name;
- at least one of the following:

- the individual's date of birth; or
- the last four digits of the individual's social security number;
- at least one of the following:
 - information relevant to determining whether the individual is eligible for employment, a contract, certification, or licensure; or
 - the type or a description of the reportable conduct;
- any available date on which the reportable conduct occurred or on which a final determination was issued on the reportable conduct; and
- the participating state agency that maintains the reportable conduct information.

C.S.S.B. 1849 establishes that an individual who engaged in reportable conduct that requires the individual's inclusion in search engine results is not entitled to notice or an opportunity for a hearing before the individual's information is included in the search engine results or shared with DIR, a participating state agency, or a designated user. The bill authorizes a participating state agency to share with other participating agencies additional information on an individual included in search engine results to supplement the information contained in those results for the purposes authorized by the bill.

C.S.S.B. 1849 requires each participating state agency and designated user, before the agency or user employs, places in a volunteer position, enters into a contract with, or issues a license or certification to an individual who may have access to a client, to conduct a search query using the search engine to determine whether an individual who may have such access has engaged in reportable conduct and, if the individual has engaged in reportable conduct, whether the individual is ineligible for the following:

- employment, a volunteer position, or a contract with the agency, the user, or a facility or entity licensed, certified, or otherwise regulated by the agency; or
- licensure or certification by the agency in a profession or for the operation of a facility or entity that the agency regulates.

The bill requires each participating state agency by rule to establish procedures for conducting periodic search queries using the search engine to monitor whether an individual the agency or a designated user employs, places in a volunteer position, contracts with, or issues a license or certification to engages in reportable conduct.

C.S.S.B. 1849 authorizes each participating state agency, including TEA in collaboration with the State Board for Educator Certification, by rule to do the following:

- authorize an individual who is determined to have engaged in reportable conduct to be employed or placed in a volunteer position by, enter into a contract with, or receive a license or certification from TEA or a designated user in accordance with standards prescribed by TEA rules and as otherwise permitted by law; and
- prescribe the manner in which information contained in search engine results may be used based on the nature of the reportable conduct, the date the reportable conduct occurred, the severity of the reportable conduct, and any other factors TEA determines necessary.

C.S.S.B. 1849 expressly does not require a private school to conduct search queries using the search engine for the purposes described by the bill.

C.S.S.B. 1849 requires a participating state agency or designated user that does not enter into a contract with or issue a license or certification to an individual based on a determination of the individual's ineligibility to notify the individual of that determination. The bill authorizes the agency to provide an individual to whom such notice is provided an opportunity for a hearing regarding the determination of the individual's ineligibility on the individual's written request and sets out provisions that do the following with respect to the hearing:

- requires the hearing to be conducted in accordance with the Administrative Procedure Act;

- establishes that the agency is not required to prove that an individual engaged in reportable conduct; and
- requires the agency to prove by a preponderance of the evidence that the individual is ineligible.

C.S.S.B. 1849 establishes the Office of Interagency Coordination on Reportable Conduct within DFPS to facilitate coordination among DIR and each participating state agency in administering the bill's search engine provisions and communication between DIR, each participating state agency, designated users, interested persons, and the public regarding any relevant search engine information. The bill requires DFPS, in collaboration with DIR and each other participating state agency, to adopt rules on the establishment and operation of the Office of Interagency Coordination on Reportable Conduct.

C.S.S.B. 1849 requires DIR and each participating state agency to enter into a memorandum of understanding on the implementation and administration of the bill's search engine provisions and requires the memorandum to specify each agency's roles and duties with respect to establishing and maintaining the search engine. The bill establishes that information contained in the search engine results and additional information shared between participating state agencies to supplement search engine information, including documents, is confidential and not subject to disclosure under state public information law.

C.S.S.B. 1849 authorizes the executive commissioner of HHSC by rule to establish criteria for a person to submit a request for removal from the employee misconduct registry and a process for HHSC to determine whether the person meets the requirements for inclusion in the employee misconduct registry.

C.S.S.B. 1849 amends the Education Code to subject a person who is identified as having engaged in misconduct involving abuse or other unlawful act with a student or minor or involving a romantic relationship or the solicitation or act of sexual contact with a student or minor using the interagency reportable conduct search engine to statutory requirements regarding a notice of alleged misconduct and an investigation and a hearing in the same manner as other individuals subject to the registry of persons not eligible for employment in public schools.

C.S.S.B. 1849 amends the Human Resources Code to include any information provided by TJJJ under a memorandum of understanding and the interagency reportable conduct search engine among the sources of information that DFPS must use to conduct background and criminal history checks for applicable individuals with respect to certain DFPS-regulated facilities, homes, and agencies that provide child-care services, including employer-based daycare facilities and temporary shelter day-care facilities.

C.S.S.B. 1849 authorizes TJJJ to designate as permanently ineligible for certification, including a provisional certification, for certain TJJJ officers and employees an individual who has been terminated from employment with TJJJ for engaging in conduct that demonstrates the individual is not suitable for certification. The bill authorizes the executive director of TJJJ to convene, in person or telephonically, a panel of three Texas Juvenile Justice Board (TJJB) members to determine if a former TJJJ employee's continued eligibility to obtain such certification threatens juveniles in the juvenile justice system. The panel may only be convened if the danger posed by the person's continued eligibility for certification is imminent and may only meet telephonically if immediate action is required and convening the panel at one location is inconvenient for any panel member. The bill requires TJJJ to temporarily designate as ineligible for certification an individual for whom the panel determines eligibility for certification threatens such juveniles until an administrative hearing before the State Office of Administrative Hearings is held, which must occur as soon as possible following the temporary designation. The bill authorizes a person to appeal a ruling or order regarding the person's ineligibility for certification to a district court in the county in which the person resides or in

Travis County and establishes that the standard of review is under the substantial evidence rule. The bill specifies that statutory provisions relating to the revocation or suspension of a certification also apply to a provisional certification.

C.S.S.B. 1849 requires DIR to collaborate with DFPS, HHSC, TEA, and TJJJ as soon as practicable after the bill's effective date to establish the interagency reportable conduct search engine. The bill authorizes the establishment of the search engine to take place in phases in accordance with an implementation plan developed by these state agencies in collaboration with the Office of Interagency Coordination on Reportable Conduct and authorizes the implementation plan to include a pilot phase. The bill requires each state agency and other persons authorized to use the search engine to use the search engine as required by the bill at the conclusion of the implementation plan.

C.S.S.B. 1849 requires the commissioner of DFPS, the executive commissioner of HHSC, the commissioner of education, and TJJJ to adopt rules as necessary to implement the bill's provisions as soon as practicable after the bill's effective date.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1849 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute includes provisions not in the engrossed that subject a person who is identified as having engaged in misconduct involving abuse or other unlawful act with a student or minor or involving a romantic relationship or the solicitation or act of sexual contact with a student or minor using the interagency reportable conduct search engine to Education Code requirements regarding a notice of alleged misconduct and an investigation and a hearing in the same manner as other individuals subject to the persons not eligible for employment in public schools registry.

Both the engrossed and the substitute require DIR, in collaboration with each participating state agency, to establish the search engine for persons to search information on reportable conduct in accordance with the bill's search engine provisions. However, the substitute includes a specification absent from the engrossed that the search also be conducted in accordance with rules adopted under those provisions.

Both the engrossed and substitute require a participating state agency's or designated user's determination that an individual is ineligible for employment, a volunteer position, a contract, a license, or a certification from a school to be based on standards authorized or required by law. However, the substitute includes a specification absent from the engrossed that such legally authorized standards include agency rules.

Whereas the engrossed required a participating state agency or designated user that does not enter into a contract with or issue a license or certification to an individual based on a determination that an individual has engaged in reportable conduct to provide notice to the individual of that determination, the substitute instead requires a participating agency or designated user that does not enter into a contract with or issue a license or certification to an individual based on a determination of the individual's ineligibility to notify the individual of that determination.

Both the engrossed and substitute establish that a participating state agency in a hearing conducted regarding the determination of an individual's ineligibility for employment based on

search engine results is not required to prove that an individual engaged in reportable conduct. However, the substitute requires such an agency in the hearing to prove by a preponderance of the evidence that an individual is ineligible for employment based on those results, whereas the engrossed did not include such a requirement.

Both the engrossed and substitute include any information provided by TJJD under a memorandum of understanding and the interagency reportable conduct search engine among the sources of information that DFPS must use to conduct background and criminal history checks for applicable individuals with respect to certain DFPS-regulated facilities, homes, and agencies providing child care services. However, the substitute additionally includes provisions that were not in the engrossed including such sources among the information that DFPS must use to conduct background and criminal history checks for employer-based day-care facilities and temporary shelter day-care facilities.

While the engrossed authorized TJJD to designate as ineligible for certification, under statutory provisions or rules relating to standards for and regulation of certain officers and employees, an individual who has been terminated from employment with TJJD for engaging in conduct violating such provisions or rules or based on a determination by the panel that the individual's certification would threaten juveniles in the juvenile justice system, the substitute authorizes TJJD to designate as permanently ineligible for certification under those provisions an individual who has been terminated from employment with TJJD for engaging in conduct that demonstrates the individual is not suitable for certification under those provisions.

Both the engrossed and the substitute entitle a person to a hearing before the State Office of Administrative Hearings if TJJD proposes to designate a person as ineligible for certification. However, the substitute includes a specification not in the engrossed that this entitlement applies to a person TJJD proposes to permanently designate as ineligible for certification.