

SUBJECT: Criminal history checks for certain facility employees

COMMITTEE: Human Services — committee substitute recommended

VOTE: 7 ayes — Hilderbran, Naishtat, Davila, J. Jones, Krusee, Maxey, Wohlgemuth

0 nays

2 absent — Denny, Park

WITNESSES: For — Marie Wisdom, Advocates for Nursing Home Reform; Sara Speights, Texas Health Care Association; David Latimer, Texas Association of Homes for the Aging; Heather Fenstermaker, Texas Association of Home Care; James Cooley

Against — None

On — Chris Lopez, Texas Dept. of Mental Health and Mental Retardation

BACKGROUND: Nursing homes and other facilities are prohibited from employing persons with direct patient care duties if the results of a criminal history check reveals the person has been convicted of certain specified statutory offenses.

Facilities submit employee applicant names and social security numbers to their regulating agencies (the departments of health (TDH), human services (DHS) or mental health and mental retardation (TxMHMR), which obtain criminal history information from the Department of Public Safety (DPS). If the department believes that a conviction may bar a person from employment, the department is required to notify the facility and to conduct an administrative review upon request of the applicant.

DIGEST: CSHB 2704 would amend Chapter 250 of the Health and Safety Code governing criminal history background checks. It would add mental health facilities operated by or contracting with the Texas Department of Mental Health and Mental Retardation to the list of facilities protected under this chapter. It would also allow facilities to bar the employment of a person

convicted of an offense not listed in the chapter but that indicates a potentially unsafe employee.

The bill would entitle private agencies and regulatory agencies to obtain criminal history record information from the Department of Public Safety. Private agencies would be defined as a person engaged in the business of obtaining criminal history checks on behalf of a facility. Facilities would be required to determine whether an applicant should be barred from employment and could pay private agencies or regulatory agencies to receive the criminal background information. Regulatory agencies could adopt rules regarding the processing of information obtained under this act.

A facility would be required to notify the employee or applicant if it believes that a conviction could bar the person from employment. DPS would be required to give the notified person the opportunity to be heard concerning the accuracy of the criminal history record and would be required to notify the facility if inaccurate information is discovered.

Criminal history records would remain privileged information and would be for the exclusive use of the regulatory agency, the facility, the private agency and the applicant or employee.

Provisions regarding the emergency employment of a nurse aide not listed in the registry would be modified to allow hiring on a temporary or interim basis only pending a criminal conviction check that would be requested from the private agency or regulatory agency within 72 hours of employment.

CSHB 2704 would make some technical changes to conform the act with current Health and Safety and Penal Code provisions and to remove from Health and Safety Code, chapter 250 provisions regarding:

- department notification of criminal conviction findings to the facility and to the applicant;
- administrative review processes and
- persons convicted of certain offenses to be employed if the offense was punishable as a Class C misdemeanor and the department found through the administrative review process that the person would be an unlikely threat.

**SUPPORTERS
SAY:**

CSHB 2704 would streamline and speed up the process of criminal history background checks and would save the state money.

The current process is too long — it can take about 12 weeks for the department to process a background check, during which time the facility has spent time and effort training and employing the individual. CSHB 2704 would eliminate DHS as the "middleman" and allow facilities to access the information directly through a private agency to determine the safety of the employee.

The appeals process puts state agencies in the position of deciding the employability of individuals convicted of offenses that do not automatically bar the individual from employment but do raise questions of safety. An individual facility is in a better position to determine whether the conviction is relevant to the job the applicant is seeking. For example, a conviction for drunken driving 10 years ago may have little relevance to the facility if the individual has since become a recovered alcoholic.

CSHB 2704 would eliminate the need for the DHS administrative hearing panel, resulting in a savings of one staff position or about a \$10,000 savings from general revenue and \$18,000 savings in federal funds.

Disclosing information about arrest warrants as well as convictions raises constitutional questions. A person is considered innocent until proven guilty and arrest warrants could be used to unfairly discriminate against innocent people seeking needed employment.

**OPPONENTS
SAY:**

Facilities should be able to obtain information about arrest warrants as well as convictions so that they could prohibit someone from working who could potentially be a danger to clients. The person's civil rights would not be violated because if the person is found innocent, the facility would have no reason not to reconsider the application since bars from employment are based on convictions.

NOTES:

The committee substitute added facilities operated by TxMHMR to the requirements of the act and added provisions relating to the use of private agencies, the employment of persons convicted of other crimes, and the request for a criminal conviction check.