

BILL ANALYSIS

Senate Research Center

S.B. 1849
By: Kolkhorst
Health & Human Services
6/12/2023
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1849 seeks to reduce the risk of harm to vulnerable populations in schools, child-care and juvenile justice facilities, and long-term care facilities by creating a search engine connecting the databases of reportable conduct at the Texas Education Agency (TEA), the Texas Juvenile Justice Department (TJJD), the Health and Human Services Commission (HHSC), and the Department of Family and Protective Services' (DFPS) Central Registry of abuse and neglect findings to ensure that workers who committed reportable conduct cannot gain employment in another setting.

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 "bad actors" with a demonstrated history of harming children or vulnerable adults.

S.B. 1849 seeks to fill the gap by directing the Department of Information Resources to develop the "Texas Interagency Reportable Conduct Search Engine," 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, childcare, or juvenile justice settings.

S.B. 1849 also requires licensed providers that serve vulnerable populations in schools, long-term care settings, and juvenile justice facilities to conduct a search of these registries when they are hiring applicants seeking employment in these facilities. It further requires the HHSC Centralized Background Check Unit to include a search of these registries or databases when conducting background checks for applicants to child-care facility employment.

S.B. 1849 also directs agencies to adopt rules outlining bars to employment considerations and requirements and due process for TJJD related applicants.

Key Provisions:

Directs the Department of Information Resources to establish a machine-readable search engine capable of searching all four agency data sources containing reportable employee conduct for the purpose of identifying individuals who may be ineligible for employment or licensure based on past reportable conduct.

Requires all school districts and charter schools, long-term care providers, and county juvenile justice departments, and the Centralized Background Check Unit within HHSC's Child Care Regulation division to check this registry prior to hiring.

Directs the leadership of TEA, DFPS, TJJD, and HHSC to develop processes and to designate individuals who should have access to the new search engine.

Directs the agencies to enter a Memorandum of Understanding (MOU) with one another to provide confidential and credentialed access to each registry.

Sets the minimum data that should be accessed to include an individual's name, birthdate, social security number, description of reportable conduct that individual engaged in, and date of conduct.

Clarifies that the information collected through the search engine remains confidential under law.

Committee Substitute Changes:

Adds private schools as employers that may utilize the search engine but are not required to search.

Establishes the search engine as the Texas Interagency Reportable Conduct Search Engine.

Clarifies that information obtained from the search engine and contained in each agency data source is authorized under existing law.

Makes clear that HHSC will continue to conduct background checks for childcare facilities but that the Centralized Background Check Unit will conduct the search of the interagency data.

Revises the required information accessible through the search engine.

Directs rulemaking to allow individuals found in the search process with reportable conduct to be able to seek employment subject to conditions set forth by the agencies.

Establishes the "Office of Interagency Coordination on Reportable Conduct" at DFPS to administer and coordinate issues related to the search engine.

Directs rulemaking processes to provide a mechanism for an individual to seek removal from the HHSC long-term care employee misconduct registry.

Codifies due process procedures for TJJD workers and county juvenile justice workers.

S.B. 1849 amends current law relating to an interagency reportable conduct search engine, standards for a person's removal from the employee misconduct registry and eligibility for certification as certain Texas Juvenile Justice Department officers and employees, and the use of certain information by certain state agencies to conduct background checks.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Section 253.010, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Department of Family and Protective Services in SECTION 3 (Sections 810.006 and 810.008, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Health and Human Services Commission in SECTION 3 (Section 810.006, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Texas Education Agency in SECTION 3 (Section 810.006, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Texas Juvenile Justice Department in SECTION 3 (Section 810.006, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of the Department of Family and Protective Services in SECTION 11 of this bill.

Rulemaking authority is expressly granted to the commissioner of education in SECTION 11 of this bill.

Rulemaking authority is expressly granted to the Texas Juvenile Justice Board in SECTION 11 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 22.094(a), (b), and (e), Education Code, as follows:

(a) Provides that a person described by Section 22.093(b) (relating to providing that Section 22.093 (Requirement to Report Employee Misconduct) applies to certain persons) and who is the subject of a report that alleges misconduct described by Section 22.093(c)(1)(A) (relating to requiring certain superintendents or directors to notify the commissioner of education (commissioner) if an employee's employment was terminated and there is evidence that the employee abused or otherwise committed an unlawful act with a student or minor) or (B) (relating to requiring certain superintendents or directors to notify the commissioner if an employee's employment was terminated and there is evidence that the employee was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor) or who is identified as having engaged in that misconduct using the interagency reportable conduct search engine established under Chapter 810, Health and Safety Code, is entitled to a hearing on the merits of the allegations of misconduct under the procedures provided by Chapter 2001 (Administrative Procedure), Government Code, to contest the allegation in the report or search engine.

(b) Requires the commissioner, on receiving a report filed under Section 22.093(f) (relating to requiring the superintendent or director to notify the commissioner by filing a report with the commissioner not later than the seventh business day after the date the superintendent or director receives a report from a principal or knew about an employee's termination of employment or resignation following an alleged incident of misconduct) or making an identification described by Subsection (a), to promptly send to the person who is the subject of the report or identification a notice that includes certain information.

(e) Requires the commissioner, if a person entitled to a hearing under Subsection (a) does not request a hearing as provided by Subsection (c) (relating to requiring a person entitled to a hearing to request a hearing and submit a written response to show cause not later than the 10th day after the date the person receives the notice from the commissioner), to:

(1) based on the report filed under Section 22.093(f) or the identification described by Subsection (a), make a determination whether the person engaged in misconduct; and

(2) makes no changes to this subdivision.

SECTION 2. Amends Section 253.010, Health and Safety Code, as follows:

Sec. 253.010. REMOVAL FROM REGISTRY. (a) Authorizes the Health and Human Services Commission (HHSC), rather than the Department of Aging and Disability Services, to remove a person from the employee misconduct registry if, after receiving a written request from the person, HHSC determines that the person does not meet the requirements for inclusion in the employee misconduct registry. Makes a conforming change.

(b) Authorizes the executive commissioner of HHSC (executive commissioner) by rule to establish:

(1) criteria for a person to submit a request for removal under Subsection (a); and

(2) a process for HHSC to determine whether the person meets the requirements for inclusion in the employee misconduct registry.

SECTION 3. Amends Title 9, Health and Safety Code, by adding Subtitle D, as follows:

SUBTITLE D. INTERAGENCY SAFETY INITIATIVES

CHAPTER 810. INTERAGENCY REPORTABLE CONDUCT SEARCH ENGINE

Sec. 810.001. DEFINITIONS. Defines "client," "department," "designated user," "license," "participating state agency," "reportable conduct," and "search engine."

Sec. 810.002. APPLICABILITY. Provides that this chapter applies to the Department of Family and Protective Services (DFPS), HHSC, the Texas Education Agency (TEA), and the Texas Juvenile Justice Department (TJJD).

Sec. 810.003. ESTABLISHMENT OF INTERAGENCY REPORTABLE CONDUCT SEARCH ENGINE. (a) Requires the Texas 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 this chapter and rules adopted under this chapter maintained certain state agencies.

(b) Requires DIR to ensure the search engine results are machine-readable and accessible to each participating state agency and designated users in accordance with this chapter for the purpose of identifying individuals who may be ineligible for employment, a contract, certification, or licensure based on reportable conduct.

Sec. 810.004. ELIGIBILITY TO ACCESS SEARCH ENGINE; USER CREDENTIALS.

(a) Requires the executive head of each participating state agency to designate agency employees or contractors who are eligible to access the search engine and the agency's automation systems to determine whether an individual has engaged in reportable conduct.

(b) Provides that each participating state agency, in addition to the eligible individuals described by Subsection (a), is required to designate additional users who are eligible to access the search engine and is authorized to require those users to determine whether an individual has engaged in reportable conduct. Authorizes the additional designated users to include controlling persons, hiring managers, or administrators of certain entities.

(c) 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. Requires that the process require the revocation of user credentials for a person who is no longer eligible to access the search engine.

Sec. 810.005. INFORMATION ACCESSIBLE THROUGH SEARCH ENGINE; ADDITIONAL INFORMATION SHARING. (a) Requires that the search engine results for each individual identified by a participating state agency as having engaged in reportable conduct include:

(1) the individual's full name;

(2) at least one of the following:

(A) the individual's date of birth; or

(B) the last four digits of the individual's social security number;

(3) at least one of the following:

(A) information relevant to determining whether the individual is eligible for employment, a contract, certification, or licensure; or

(B) the type or a description of the reportable conduct;

(4) any available date on which:

(A) the reportable conduct occurred; or

(B) a final determination was issued on the reportable conduct; and

(5) the participating state agency that maintains the reportable conduct information.

(b) Provides 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 in accordance with this chapter and rules adopted under this chapter.

(c) 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 purposes authorized under this chapter.

Sec. 810.006. REQUIRED SEARCH QUERY AND USE OF SEARCH ENGINE RESULTS. (a) Requires each participating state agency and designated user to conduct a search query using the search engine to determine whether an individual who is authorized to have access to a client has engaged in reportable conduct and, if the individual has engaged in reportable conduct, whether the individual is ineligible for:

(1) 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

(2) licensure or certification by the agency in a profession or for the operation of a facility or entity that the agency regulates.

(b) Requires that a participating state agency's or designated user's determination under Subsection (a) that an individual is ineligible for employment, a volunteer position, a contract, a license, or a certification be based on standards authorized or required by law, including agency rules.

(c) Requires a participating state agency or designated user to conduct a search query required under Subsection (a) 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. 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.

(d) Authorizes each participating state agency, including TEA in collaboration with the State Board for Educator Certification, by rule to:

(1) 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 the agency or a designated user in accordance with standards prescribed by agency rules and as otherwise permitted by law; and

(2) prescribe the manner in which information contained in search engine results is authorized to be used based on:

- (A) the nature of the reportable conduct;
- (B) the date the reportable conduct occurred;
- (C) the severity of the reportable conduct; and
- (D) any other factors the agency determines necessary.

(e) Provides that a private school, notwithstanding any provision of this chapter, is not required to conduct search queries using the search engine for the purposes described by this chapter.

Sec. 810.007. NOTICE AND HEARING. (a) 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 under Section 810.006 to notify the individual of that determination.

(b) Authorizes each participating state agency to provide an individual to whom notice is provided under this section an opportunity for a hearing regarding the determination of the individual's ineligibility under Section 810.006 on the individual's written request. Requires that the hearing be conducted in accordance with Chapter 2001, Government Code.

(c) Provides that a participating state agency in a hearing conducted under this section, notwithstanding any other law:

- (1) is not required to prove that an individual engaged in reportable conduct; and
- (2) is required to prove by a preponderance of the evidence that an individual is ineligible under Section 810.006.

Sec. 810.008. OFFICE OF INTERAGENCY COORDINATION ON REPORTABLE CONDUCT. (a) Provides that the Office of Interagency Coordination on Reportable Conduct is established within DFPS to facilitate:

- (1) coordination among DIR and each participating state agency in administering this chapter; and
- (2) communication between DIR, each participating state agency, designated users, interested persons, and the public regarding any relevant search engine information.

(b) 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.

Sec. 810.009. MEMORANDUM OF UNDERSTANDING. Requires DIR and each participating state agency to enter into a memorandum of understanding on the implementation and administration of this chapter. Requires that the memorandum specify each agency's roles and duties with respect to establishing and maintaining the search engine.

Sec. 810.010. CONFIDENTIALITY. Provides that information contained in search engine results and additional information shared by a participating state agency under Section 810.005(c), including documents, is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code.

SECTION 4. Amends Section 42.056(b), Human Resources Code, to require DFPS to conduct background checks using certain information, including any information provided by TJJD under a memorandum of understanding and the interagency reportable conduct search engine established under Chapter 810, Health and Safety Code. Makes nonsubstantive changes.

SECTION 5. Amends Section 42.159(c), Human Resources Code, to require DFPS to conduct background and criminal history checks using certain information, including any information provided by TJJD under a memorandum of understanding and the interagency reportable conduct search engine established under Chapter 810, Health and Safety Code.

SECTION 6. Amends Section 42.206(c), Human Resources Code, to require DFPS to conduct background and criminal history checks using certain information, including any information provided by TJJD under a memorandum of understanding and the interagency reportable conduct search engine established under Chapter 810, Health and Safety Code.

SECTION 7. Amends the heading to Section 222.053, Human Resources Code, to read as follows:

Sec. 222.053. REVOCATION OR SUSPENSION OF CERTIFICATION OR PROVISIONAL CERTIFICATION.

SECTION 8. Amends Section 222.053, Human Resources Code, by adding Subsection (f) to define "certification."

SECTION 9. Amends Subchapter B, Chapter 222, Human Resources Code, by adding Section 222.054, as follows:

Sec. 222.054. CERTIFICATION OR PROVISIONAL CERTIFICATION INELIGIBILITY. (a) Defines "certification."

(b) Authorizes TJJD to designate as permanently ineligible for certification under Chapter 222 (Standards for and Regulation of Certain Officers and Employees) an individual who has been terminated from employment with TJJD for engaging in conduct that demonstrates the individual is not suitable for certification under this chapter.

(c) Authorizes the executive director of TJJD (executive director) to convene, in person or telephonically, a panel of three Texas Juvenile Justice Board (TJJB) members to determine if a former TJJD employee's continued eligibility to obtain a certification under this chapter threatens juveniles in the juvenile justice system. Requires TJJD, if the panel determines an individual's eligibility for certification threatens juveniles in the juvenile justice system, to temporarily designate the individual as ineligible for certification until an administrative hearing is held under Subsection (d). Requires that the hearing be held as soon as possible following the temporary designation. Authorizes the executive director to convene a panel under this subsection only if the danger posed by the person's continued eligibility for certification is imminent. Authorizes the panel to hold a telephonic meeting only if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

(d) Provides that a person is entitled to a hearing before the State Office of Administrative Hearings if TJJD proposes to designate a person as permanently ineligible for certification.

(e) Authorizes a person to appeal a ruling or order issued under this section to a district court in the county in which the person resides or in Travis County. Provides that the standard of review is under the substantial evidence rule.

SECTION 10. (a) Defines "search engine."

(b) Requires DIR, as soon as practicable after the effective date of this Act, to collaborate with DFPS, HHSC, TEA, and TJJJ to establish the search engine as required by Chapter 810, Health and Safety Code, as added by this Act.

(c) Authorizes the establishment of the search engine to take place in phases in accordance with an implementation plan developed by the state agencies listed under Subsection (b) of this section in collaboration with the Office of Interagency Coordination on Reportable Conduct established under Section 810.008, Health and Safety Code, as added by this Act. Authorizes the implementation plan to include a pilot phase.

(d) Requires each state agency and other persons authorized to use the search engine, at the conclusion of the implementation plan described by Subsection (c) of this section, to use the search engine as required by Chapter 810, Health and Safety Code, as added by this Act.

SECTION 11. Requires the commissioner of DFPS, the executive commissioner, the commissioner of education, and TJJJ as soon as practicable after the effective date of this Act, to adopt rules as necessary to implement the changes in law made by this Act.

SECTION 12. Effective date: September 1, 2023.