

By: Nelson

S. B. No. 277

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the Department of Family and Protective Services,
3 including protective services and investigations of alleged abuse,
4 neglect, or exploitation for certain adults who are elderly or
5 disabled; providing a criminal penalty.

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

7 SECTION 1. Section 59.006(a), Finance Code, is amended to
8 read as follows:

14 (1) a demand or inquiry from a state or federal
15 government agency authorized by law to conduct an examination of
16 the financial institution;

1 of 1986;

2 (3) a record request from or report to a government
3 agency arising out of the investigation or prosecution of a
4 criminal offense or the investigation of alleged abuse, neglect, or
5 exploitation of an elderly or disabled person in accordance with
6 Chapter 48, Human Resources Code;

7 (4) a record request in connection with a garnishment
8 proceeding in which the financial institution is garnishee and the
9 customer is debtor;

10 (5) a record request by a duly appointed receiver for
11 the customer;

12 (6) an investigative demand or inquiry from a state
13 legislative investigating committee;

14 (7) an investigative demand or inquiry from the
15 attorney general of this state as authorized by law other than the
16 procedural law governing discovery in civil cases; or

17 (8) the voluntary use or disclosure of a record by a
18 financial institution subject to other applicable state or federal
19 law.

20 SECTION 2. Section 411.114, Government Code, is amended to
21 read as follows:

22 Sec. 411.114. ACCESS TO CRIMINAL HISTORY RECORD
23 INFORMATION: DEPARTMENT OF FAMILY AND PROTECTIVE [AND REGULATORY]
24 SERVICES. (a)(1) In this subsection:

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

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

3 (C) "Maternity home" has the meaning assigned by
4 Section 249.001, Health and Safety Code.

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

7 [(E) "Ward" has the meaning assigned by Section
8 601, Texas Probate Code.]

13 (A) an applicant for a license, registration,
14 certification, or listing under Chapter 42, Human Resources Code,
15 or Chapter 249, Health and Safety Code;

16 (B) an owner, operator, or employee of or an
17 applicant for employment by a child-care facility, child-placing
18 agency, family home, or maternity home licensed, registered,
19 certified, or listed under Chapter 42, Human Resources Code, or
20 Chapter 249, Health and Safety Code;

21 (C) a person 14 years of age or older who will be
22 regularly or frequently working or staying in a child-care
23 facility, family home, or maternity home while children are being
24 provided care, other than a child in the care of the home or
25 facility;

26 (D) an applicant selected for a position with the
27 Department of Family and Protective Services, the duties of which

1 include direct delivery of protective services to children, elderly
2 persons, or persons with a disability;

3 (E) an employee of, an applicant for employment
4 with, or a volunteer or an applicant volunteer with a business
5 entity or person that contracts with the Department of Family and
6 Protective Services to provide direct delivery of protective
7 services to children, elderly persons, or persons with a
8 disability, if the person's duties or responsibilities include
9 direct contact with children, elderly persons, or persons with a
10 disability;

11 (F) a registered volunteer with the Department of
12 Family and Protective Services;

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

17 (H) a Department of Family and Protective
18 Services employee who is engaged in the direct delivery of
19 protective services to children, elderly persons, or persons with a
20 disability;

21 (I) an alleged perpetrator in [a person who is
22 ~~the subject of~~] a report the Department of Family and Protective
23 Services receives alleging that the person has abused, neglected,
24 or exploited a child, an elderly person, or a person with a
25 disability, provided that:

26 (i) the report alleges the person has
27 engaged in conduct that meets the statutory definition of abuse,

1 neglect, or exploitation under Chapter 261, Family Code, or Chapter
2 48, Human Resources Code; and

3 (ii) the person ~~who is the subject of the~~
4 ~~report~~ is not also the victim of the alleged conduct;

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

8 (K) through a contract with a nonprofit
9 management center, an employee of, an applicant for employment
10 with, or a volunteer or an applicant volunteer with a nonprofit,
11 tax-exempt organization that provides any service that involves the
12 care of or access to a child ~~[children]~~, an elderly person
13 ~~[persons]~~, or a person ~~[persons]~~ with a disability; or

14 (L) an applicant for a child-care administrator
15 or child-placing agency administrator license under Chapter 43,
16 Human Resources Code.

17 (3) The Department of Family and Protective ~~and~~
18 ~~Regulatory~~ Services is entitled to obtain from the department
19 criminal history record information maintained by the department
20 that relates to a person who is:

21 (A) a volunteer or applicant volunteer with a
22 local affiliate in this state of Big Brothers/Big Sisters of
23 America;

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

26 (C) a volunteer or applicant volunteer with an
27 organization that provides court-appointed special advocates for

1 abused or neglected children;

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

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

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

10 (G) a child who is related to the caretaker, as
11 determined under Section 42.002, Human Resources Code, and who
12 resides in or is present in a child-care facility, family home, or
13 maternity home, other than a child described by Subdivision (2)(C),
14 or any other person who has unsupervised access to a child in the
15 care of a child-care facility, family home, or maternity home;

16 (H) an applicant for a position with the
17 Department of Family and Protective [and ~~Regulatory~~] Services,
18 other than a position described by Subdivision (2)(D), regardless
19 of the duties of the position;

20 (I) a volunteer or applicant volunteer with the
21 Department of Family and Protective ~~[and Regulatory]~~ Services,
22 other than a registered volunteer, regardless of the duties to be
23 performed;

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

27 (K) a Department of Family and Protective [and]

1 ~~Regulatory~~ Services employee, other than an employee described by
2 Subdivision (2)(H), regardless of the duties of the employee's
3 position;

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

7 (M) a person, other than an alleged perpetrator
8 in ~~[the subject of]~~ a report described in Subdivision (2)(I),
9 living in the residence in which the alleged victim of the report
10 resides;

11 (N) ~~[a contractor or an employee of a contractor~~
12 ~~who delivers services to a ward of the Department of Protective and~~
13 ~~Regulatory Services under a contract with the estate of the ward,~~

14 ~~[(O) a person who seeks unsupervised visits with~~
15 ~~a ward of the Department of Protective and Regulatory Services,~~
16 ~~including a relative of the ward, or~~

17 ~~[(P)] an employee, volunteer, or applicant~~
18 volunteer of a children's advocacy center under Subchapter E,
19 Chapter 264, Family Code, including a member of the governing board
20 of a center; or

21 (O) an employee of, an applicant for employment
22 with, or a volunteer or an applicant volunteer with an entity or
23 person that contracts with the Department of Family and Protective
24 Services and has access to confidential information in the
25 department's records, if the employee, applicant, volunteer, or
26 applicant volunteer has or will have access to that confidential
27 information.

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

(A) obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to a person described by Subdivision (2) or (3); and

7 (B) obtain from any other criminal justice agency
8 in this state criminal history record information maintained by
9 that criminal justice agency that relates to a person described by
10 Subdivision (2) or (3). Law enforcement entities shall expedite
11 the furnishing of such information to Department of Family and
12 Protective ~~and Regulatory~~ Services workers to ensure prompt
13 criminal background checks for the safety of alleged victims and
14 Department of Family and Protective ~~and Regulatory~~ Services
15 workers.

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

26 (A) on court order;

27 (B) with the consent of the person who is the

1 subject of the criminal history record information;

2 (C) for purposes of an administrative hearing

3 held by the Department of Family and Protective ~~and Regulatory~~

4 Services concerning the person who is the subject of the criminal

5 history record information; or

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

7 (7) The Department of Family and Protective ~~and~~

8 ~~Regulatory~~ Services is not prohibited from releasing criminal

9 history record information obtained under this subsection to:

10 (A) the person who is the subject of the criminal

11 history record information;

12 (B) a child-care facility, child-placing agency,

13 family home, or maternity home listed in Subdivision (2) that

14 employs or is considering employing the person who is the subject of

15 the criminal history record information;

16 (C) a person or business entity described by

17 Subdivision (2)(E) or (3) who uses or intends to use the services of

18 the volunteer or employs or is considering employing the person who

19 is the subject of the criminal history record information; ~~or~~

20 (D) an adult residing with a child, elderly

21 person, or person with a disability and the person who is the

22 subject of the criminal history record information, if the

23 Department of Family and Protective ~~and Regulatory~~ Services

24 determines that the release of information to the adult is

25 necessary to ensure the safety or welfare of the child, elderly

26 person, or person with a disability or the adult; or

27 (E) an elderly or disabled person who is an

1 alleged victim of abuse, neglect, or exploitation, or an adult who
2 resides with the alleged victim, and who also resides with the
3 alleged perpetrator of that abuse, neglect, or exploitation if:

4 (i) the alleged perpetrator is the subject
5 of the criminal history record information; and

6 (ii) the Department of Family and
7 Protective Services determines that the release of information to
8 the elderly or disabled person or adult is necessary to ensure the
9 safety or welfare of the elderly or disabled person.

10 (b) The failure or refusal to provide a complete set of
11 fingerprints or a complete name on request constitutes good cause
12 for dismissal or refusal to hire, as applicable, with regard to a
13 volunteer of or an employee or applicant for permanent or temporary
14 employment with the Department of Family and Protective [and
15 Regulatory] Services, or a facility, home, business, or other
16 entity, if the volunteer position, employment, or potential
17 employment involves direct interaction with or the opportunity to
18 interact and associate with children.

19 (c) The Department of Family and Protective [and
20 Regulatory] Services may charge an organization or person that
21 requests criminal history record information under Subsection
22 (a)(3) a fee in an amount necessary to cover the costs of obtaining
23 the information on the organization's or person's behalf.

24 SECTION 3. Section 48.002(a)(5), Human Resources Code, is
25 amended to read as follows:

26 (5) "Protective services" means the services
27 furnished by the department or by a protective services agency to an

1 elderly or disabled person who has been determined to be in a state
2 of abuse, neglect, or exploitation or to a relative or caretaker of
3 an elderly or disabled person if the department determines the
4 services are necessary to prevent the elderly or disabled person
5 from returning to a state of abuse, neglect, or exploitation. The
6 term does not include the services of the department or another
7 protective services agency in conducting an investigation
8 regarding alleged abuse, neglect, or exploitation of an elderly or
9 disabled person. These services may include social casework, case
10 management, and arranging for psychiatric and health evaluation,
11 home care, day care, social services, health care, respite
12 services, and other services consistent with this chapter.

13 SECTION 4. Section 48.006(a), Human Resources Code, is
14 amended to read as follows:

15 (a) Subject to the availability of funds, the department
16 shall develop a community satisfaction survey that solicits
17 information regarding the department's performance with respect to
18 providing investigative and adult protective services. In each
19 region, the department shall send the survey at least biennially
20 [annually] to:

21 (1) stakeholders in the adult protective services
22 system, including local law enforcement agencies and prosecutors'
23 offices;

24 (2) protective services agencies, including nonprofit
25 agencies; and

26 (3) courts with jurisdiction over probate matters.

27 SECTION 5. Section 48.053, Human Resources Code, is amended

1 to read as follows:

2 Sec. 48.053. FALSE REPORT; PENALTY. (a) A person commits
3 an offense if the person knowingly or intentionally reports
4 information as provided in this chapter that the person knows is
5 false or lacks factual foundation.

6 (b) An offense under this section is a Class A [B]
7 misdemeanor.

8 SECTION 6. Section 48.152, Human Resources Code, is amended
9 to read as follows:

10 Sec. 48.152. INVESTIGATION. (a) An investigation by the
11 department or a state agency shall include an interview with the
12 elderly or disabled person, if appropriate, and with persons
13 thought to have knowledge of the circumstances. If the elderly or
14 disabled person refuses to be interviewed or cannot be interviewed
15 because of a physical or mental impairment, the department shall
16 continue the investigation by interviewing other persons thought to
17 have knowledge relevant to the investigation.

18 (b) The investigation may include an interview with an
19 alleged juvenile perpetrator of the alleged abuse, neglect, or
20 exploitation.

21 (c) The department or state agency may conduct an interview
22 under this section in private or may include any person the
23 department or agency determines is necessary.

24 SECTION 7. Section 48.1521(b), Human Resources Code, is
25 amended to read as follows:

26 (b) Each county with a population of 250,000 or more shall
27 appoint persons to serve as standing members of a special task unit

1 to monitor cases that arise in the county and require monitoring as
2 provided by Subsection (a). The standing members of each special
3 task unit must include:

4 (1) a provider of mental health services or aging
5 services or a representative of a nonprofit entity serving persons
6 with disabilities;

7 (2) a representative of a law enforcement agency;
8 [and]

9 (3) a legal expert; and
10 (4) a physician, nurse, or other medical professional.

11 SECTION 8. Sections 48.154(a), (b), (c), (d), and (e),
12 Human Resources Code, are amended to read as follows:

13 (a) The department or another state agency, as appropriate,
14 shall have access to any records or documents, including
15 client-identifying information, financial records, and medical and
16 psychological records, necessary to the performance of the
17 department's or state agency's duties under this chapter. The
18 duties include but are not limited to the investigation of abuse,
19 neglect, or exploitation or the provisions of services to an
20 elderly or disabled person. A person, [or] agency, or institution
21 that has a record or document that the department or state agency
22 needs to perform its duties under this chapter shall, without
23 unnecessary delay, make the record or document available to the
24 department or state agency that requested the record or document.

25 (b) The department is exempt from the payment of a fee
26 otherwise required or authorized by law to obtain a financial
27 record from a person or a medical record, including a mental health

1 record, from a hospital or health care provider if the request for a
2 record is made in the course of an investigation by the department.

3 (c) If the department or another state agency cannot obtain
4 access to a record or document that is necessary to properly conduct
5 an investigation or to perform another duty under this chapter, the
6 department or state agency may petition the probate court or the
7 statutory or constitutional county court having probate
8 jurisdiction for access to the record or document.

9 (d) On good cause shown, the court shall order the person,
10 agency, or institution who has ~~[denied access to]~~ a requested
11 record or document to allow the department or state agency to have
12 access to that record or document under the terms and conditions
13 prescribed by the court.

14 (e) A person, agency, or institution who has a requested
15 record or document is entitled to notice and a hearing on a ~~[the]~~
16 petition filed under this section.

17 SECTION 9. Section 48.203(d), Human Resources Code, is
18 amended to read as follows:

19 (d) Except as provided by Section 48.208, if ~~[if]~~ an elderly
20 or disabled person withdraws from or refuses consent to voluntary
21 protective services, the services may not be provided.

22 SECTION 10. Section 48.204, Human Resources Code, is
23 amended to read as follows:

24 Sec. 48.204. AGENCY POWERS. A protective services agency
25 may furnish protective services to an elderly or disabled person
26 with the person's consent or to a relative or caretaker of an
27 elderly or disabled person on behalf of the elderly or disabled

1 person with the relative's or caregiver's consent or, if the elderly
2 or disabled person lacks the capacity to consent, without that
3 person's consent as provided by this chapter.

4 SECTION 11. Sections 48.208(c-3), (e), (e-2), (f), and (h),
5 Human Resources Code, are amended to read as follows:

6 (c-3) An assessment of the elderly or disabled person's
7 psychological status must be performed by a licensed psychologist,
8 licensed professional counselor, or master social worker who has
9 training and expertise in issues related to abuse, neglect, and
10 exploitation. The person performing the assessment shall sign a
11 report stating:

12 (1) that the elderly or disabled person is reported to
13 be suffering from abuse, neglect, or exploitation, which may
14 present a threat to the person's life or physical safety; and

15 (2) that in the professional opinion of the licensed
16 psychologist, licensed professional counselor, or master social
17 worker, as applicable, the issuance of an emergency order
18 authorizing protective services without the elderly or disabled
19 person's consent is necessary under the circumstances.

20 (e) The emergency order expires on the earlier of [at] the
21 end of the 10th day after [72 hours from] the date [time] the order
22 is rendered or the end of the 10th day after the date the person was
23 removed to safer surroundings if the emergency order was rendered
24 subsequent to the removal of the person to safer surroundings in
25 accordance with Subsection (h), unless:

26 (1) the emergency order terminates as provided by
27 Subsection (e-1);

4 (3) the court extends the order as provided by
5 Subsection (e-2).

(e-2) The court, after notice and a hearing, may extend an emergency order issued under this section for a period of not more than 30 days after the date the original emergency order for protective services was rendered. The court, after notice and a hearing and for good cause shown, may grant a second extension of an emergency order of not more than an additional 30 days. The court may not grant more than two extensions of the original emergency order. An extension order that ends on a Saturday, Sunday, or legal holiday is automatically extended to 4 p.m. on the first succeeding business day. The court may modify or terminate the emergency order on petition of the department, the incapacitated person, or any person interested in the person's [his] welfare.

18 (f) Any medical facility, emergency medical services
19 provider, or physician who provides treatment to or who transports
20 [treating] an elderly or disabled person pursuant to an emergency
21 order under Subsection (d) or an emergency authorization under
22 Subsection (h) [this chapter] is not liable for any damages arising
23 from the treatment or transportation, except those damages
24 resulting from the negligence of the facility, provider, or
25 physician.

26 (h) If the department cannot obtain an emergency order under
27 this section because the court is closed on a Saturday, Sunday, or

1 legal holiday or after 5 p.m., the department may remove or
2 authorize an appropriate transportation service, including an
3 emergency medical services provider, to remove the elderly or
4 disabled person to safer surroundings, authorize medical
5 treatment, or authorize [order] or provide other available services
6 necessary to remove conditions creating the threat to life or
7 physical safety. The department must obtain an emergency order
8 under this section not later than 4 p.m. on the first succeeding
9 business day after the date on which protective services are
10 provided. If the department does not obtain an emergency order, the
11 department shall cease providing protective services and, if
12 necessary, make arrangements for the immediate return of the person
13 to the place from which the person was removed, to the person's
14 place of residence in the state, or to another suitable place.

15 SECTION 12. The change made by this Act to Section 48.053,
16 Human Resources Code, applies only to an offense committed on or
17 after the effective date of this Act. An offense committed before
18 the effective date of this Act is governed by the law in effect when
19 the offense was committed, and the former law is continued in effect
20 for that purpose. For the purposes of this section, an offense was
21 committed before the effective date of this Act if any element of
22 the offense occurred before that date.

23 SECTION 13. If before implementing any provision of this
24 Act a state agency determines that a waiver or authorization from a
25 federal agency is necessary for implementation of that provision,
26 the agency affected by the provision shall request the waiver or
27 authorization and may delay implementing that provision until the

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1 waiver or authorization is granted.

2 SECTION 14. This Act takes effect September 1, 2009.