

By: Nelson

S.B. No. 277

A BILL TO BE ENTITLED

AN ACT

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

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

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

(a) This section provides the exclusive method for  
compelled discovery of a record of a financial institution relating  
to one or more customers but does not create a right of privacy in a  
record. This section does not apply to and does not require or  
authorize a financial institution to give a customer notice of:

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

(2) a record request from a state or federal  
government agency or instrumentality under statutory or  
administrative authority that provides for, or is accompanied by, a  
specific mechanism for discovery and protection of a customer  
record of a financial institution, including a record request from  
a federal agency subject to the Right to Financial Privacy Act of  
1978 (12 U.S.C. Section 3401 et seq.), as amended, or from the  
Internal Revenue Service under Section 1205, Internal Revenue Code

of 1986;

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

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

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

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

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

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

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

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

(A) "Child," "child-care facility," "child-placing agency," and "family home" have the meanings 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.]~~

9 (2) The Department of Family and Protective Services  
10 shall obtain from the department criminal history record  
11 information maintained by the department that relates to a person  
12 who is:

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,

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

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

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

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

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

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

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

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

(C) a volunteer or applicant volunteer with an 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

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

(5) The Department of Family and Protective [~~and Regulatory~~] Services may not use the authority granted under this section to harass an employee or volunteer. The executive commissioner of the Health and Human Services Commission [~~Board of Protective and Regulatory Services~~] shall adopt rules to prevent the harassment of an employee or volunteer through the request and use of criminal records.

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

(A) on court order;

(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

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

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

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

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

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

(3) courts with jurisdiction over probate matters.

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

to read as follows:

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

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

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

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

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

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

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

(b) Each county with a population of 250,000 or more shall 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);

1           (2) the 10-day [~~72-hour~~] period ends on a Saturday,  
2 Sunday, or legal holiday in which event the order is automatically  
3 extended to 4 p.m. on the first succeeding business day; or

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

6           (e-2) The court, after notice and a hearing, may extend an  
7 emergency order issued under this section for a period of not more  
8 than 30 days after the date the original emergency order for  
9 protective services was rendered. The court, after notice and a  
10 hearing and for good cause shown, may grant a second extension of an  
11 emergency order of not more than an additional 30 days. The court  
12 may not grant more than two extensions of the original emergency  
13 order. An extension order that ends on a Saturday, Sunday, or  
14 legal holiday is automatically extended to 4 p.m. on the first  
15 succeeding business day. The court may modify or terminate the  
16 emergency order on petition of the department, the incapacitated  
17 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.