

1-1 By: Kolkhorst S.B. No. 1849
1-2 (In the Senate - Filed March 8, 2023; March 20, 2023, read
1-3 first time and referred to Committee on Health & Human Services;
1-4 April 4, 2023, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 4, 2023,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	<u>X</u>			
1-10	<u>X</u>			
1-11	<u>X</u>			
1-12	<u>X</u>			
1-13	<u>X</u>			
1-14	<u>X</u>			
1-15	<u>X</u>			
1-16	<u>X</u>			
1-17	<u>X</u>			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1849 By: Miles

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to an interagency reportable conduct search engine,
1-22 standards for a person's removal from the employee misconduct
1-23 registry and eligibility for certification as certain Texas
1-24 Juvenile Justice Department officers and employees, and the
1-25 Department of Family and Protective Services' use of certain
1-26 information to conduct background checks.

1-27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-28 SECTION 1. Section 253.010, Health and Safety Code, is
1-29 amended to read as follows:

1-30 Sec. 253.010. REMOVAL FROM REGISTRY. (a) The commission
1-31 [~~department~~] may remove a person from the employee misconduct
1-32 registry if, after receiving a written request from the person, the
1-33 commission [~~department~~] determines that the person does not meet
1-34 the requirements for inclusion in the employee misconduct registry.

1-35 (b) The executive commissioner by rule may establish:

1-36 (1) criteria for a person to submit a request for
1-37 removal under Subsection (a); and

1-38 (2) a process for the commission to determine whether
1-39 the person meets the requirements for inclusion in the misconduct
1-40 registry.

1-41 SECTION 2. Title 9, Health and Safety Code, is amended by
1-42 adding Subtitle D to read as follows:

1-43 SUBTITLE D. INTERAGENCY SAFETY INITIATIVES

1-44 CHAPTER 810. INTERAGENCY REPORTABLE CONDUCT SEARCH ENGINE

1-45 Sec. 810.001. DEFINITIONS. In this chapter:

1-46 (1) "Client" means a child, an individual with a
1-47 disability, or an elderly individual receiving services or care
1-48 from a participating state agency, a designated user, or a facility
1-49 or entity that is licensed, certified, or otherwise regulated by a
1-50 participating state agency.

1-51 (2) "Department" means the Department of Information
1-52 Resources.

1-53 (3) "Designated user" means a person designated by the
1-54 department or a participating state agency under Section 810.004 to
1-55 use the search engine.

1-56 (4) "License" has the meaning assigned by Section
1-57 2001.003, Government Code.

1-58 (5) "Participating state agency" means a state agency
1-59 listed in Section 810.002.

1-60 (6) "Reportable conduct" means a participating state

2-1 agency's determination:
 2-2 (A) that an individual engaged in abuse, neglect,
 2-3 exploitation, or misconduct; and
 2-4 (B) for which the agency has:
 2-5 (i) provided any required notice or
 2-6 opportunity to contest the determination; and
 2-7 (ii) issued a final determination.
 2-8 (7) "Search engine" means the interagency reportable
 2-9 conduct search engine established under this chapter.
 2-10 Sec. 810.002. APPLICABILITY. This chapter applies to the
 2-11 following state agencies:
 2-12 (1) the Department of Family and Protective Services;
 2-13 (2) the Health and Human Services Commission;
 2-14 (3) the Texas Education Agency; and
 2-15 (4) the Texas Juvenile Justice Department.
 2-16 Sec. 810.003. ESTABLISHMENT OF INTERAGENCY REPORTABLE
 2-17 CONDUCT SEARCH ENGINE. (a) The department, in collaboration with
 2-18 each participating state agency, shall establish an interagency
 2-19 reportable conduct search engine for persons to search in
 2-20 accordance with this chapter information on reportable conduct
 2-21 maintained by:
 2-22 (1) the Department of Family and Protective Services
 2-23 in the central registry established under Section 261.002, Family
 2-24 Code;
 2-25 (2) the Health and Human Services Commission in the
 2-26 employee misconduct registry established under Chapter 253;
 2-27 (3) the Texas Education Agency in the registry
 2-28 established under Section 22.092, Education Code; and
 2-29 (4) the Texas Juvenile Justice Department in the
 2-30 integrated certification information system and in any informal
 2-31 list the Texas Juvenile Justice Department maintains.
 2-32 (b) The department shall ensure the search engine results
 2-33 are machine-readable and accessible to each participating state
 2-34 agency and designated users in accordance with this chapter for the
 2-35 purpose of identifying individuals who may be ineligible for
 2-36 employment, a contract, certification, or licensure based on
 2-37 reportable conduct.
 2-38 Sec. 810.004. ELIGIBILITY TO ACCESS SEARCH ENGINE; USER
 2-39 CREDENTIALS. (a) The executive head of each participating state
 2-40 agency shall designate agency employees or contractors who are
 2-41 eligible to access the search engine and the agency's automation
 2-42 systems to determine whether an individual has engaged in
 2-43 reportable conduct.
 2-44 (b) In addition to the eligible individuals described by
 2-45 Subsection (a), each participating state agency shall designate
 2-46 additional users who are eligible to access the search engine and
 2-47 may require those users to determine whether an individual has
 2-48 engaged in reportable conduct. The additional designated users may
 2-49 include controlling persons, hiring managers, or administrators
 2-50 of:
 2-51 (1) licensed or certified long-term care providers,
 2-52 including:
 2-53 (A) home and community support services agencies
 2-54 licensed under Chapter 142;
 2-55 (B) nursing facilities licensed under Chapter
 2-56 242;
 2-57 (C) assisted living facilities licensed under
 2-58 Chapter 247;
 2-59 (D) prescribed pediatric extended care centers
 2-60 licensed under Chapter 248A;
 2-61 (E) intermediate care facilities for individuals
 2-62 with an intellectual disability licensed under Chapter 252;
 2-63 (F) state supported living centers, as defined by
 2-64 Section 531.002; and
 2-65 (G) day activity and health services facilities
 2-66 licensed under Chapter 103, Human Resources Code;
 2-67 (2) providers under a Section 1915(c) waiver program,
 2-68 as defined by Section 531.001, Government Code;
 2-69 (3) juvenile probation departments and registered

3-1 juvenile justice facilities;
3-2 (4) independent school districts, districts of
3-3 innovation, open-enrollment charter schools, other charter
3-4 entities, as defined by Section 21.006, Education Code, regional
3-5 education service centers, education shared services arrangements,
3-6 private schools, or any other educational entity or provider that
3-7 is authorized to access the registry established under Section
3-8 22.092, Education Code; and
3-9 (5) nonprofit teacher organizations approved by the
3-10 commissioner of education for the purpose of participating in the
3-11 tutoring program established under Section 33.913, Education Code.
3-12 (c) The department and each participating state agency
3-13 shall develop a process to issue user credentials to each
3-14 designated user that authorizes the user to access the search
3-15 engine. The process must require the revocation of user
3-16 credentials for a person who is no longer eligible to access the
3-17 search engine.
3-18 Sec. 810.005. INFORMATION ACCESSIBLE THROUGH SEARCH
3-19 ENGINE; ADDITIONAL INFORMATION SHARING. (a) For each individual
3-20 identified by a participating state agency as having engaged in
3-21 reportable conduct, the search engine results for that individual
3-22 must include:
3-23 (1) the individual's full name;
3-24 (2) at least one of the following:
3-25 (A) the individual's date of birth; or
3-26 (B) the last four digits of the individual's
3-27 social security number;
3-28 (3) at least one of the following:
3-29 (A) information relevant to determining whether
3-30 the individual is eligible for employment, a contract,
3-31 certification, or licensure; or
3-32 (B) the type or a description of the reportable
3-33 conduct;
3-34 (4) any available date on which:
3-35 (A) the reportable conduct occurred; or
3-36 (B) a final determination was issued on the
3-37 reportable conduct; and
3-38 (5) the participating state agency that maintains the
3-39 reportable conduct information.
3-40 (b) An individual who engaged in reportable conduct that
3-41 requires the individual's inclusion in search engine results is not
3-42 entitled to notice or an opportunity for a hearing before the
3-43 individual's information is included in the search engine results
3-44 or shared with the department, a participating state agency, or a
3-45 designated user in accordance with this chapter and rules adopted
3-46 under this chapter.
3-47 (c) A participating state agency may share with other
3-48 participating agencies additional information on an individual
3-49 included in search engine results to supplement the information
3-50 contained in those results for purposes authorized under this
3-51 chapter.
3-52 Sec. 810.006. REQUIRED SEARCH QUERY AND USE OF SEARCH
3-53 ENGINE RESULTS. (a) Each participating state agency and
3-54 designated user shall conduct a search query using the search
3-55 engine to determine whether an individual who may have access to a
3-56 client has engaged in reportable conduct and, if the individual has
3-57 engaged in reportable conduct, whether the individual is ineligible
3-58 for:
3-59 (1) employment, a volunteer position, or a contract
3-60 with the agency, the user, or a facility or entity licensed,
3-61 certified, or otherwise regulated by the agency; or
3-62 (2) licensure or certification by the agency in a
3-63 profession or for the operation of a facility or entity that the
3-64 agency regulates.
3-65 (b) A participating state agency's or designated user's
3-66 determination under Subsection (a) that an individual is ineligible
3-67 for employment, a volunteer position, a contract, a license, or a
3-68 certification must be based on standards authorized or required by
3-69 law.

4-1 (c) A participating state agency or designated user must
 4-2 conduct a search query required under Subsection (a) before the
 4-3 agency or user employs, places in a volunteer position, enters into
 4-4 a contract with, or issues a license or certification to an
 4-5 individual. Each participating state agency by rule shall
 4-6 establish procedures for conducting periodic search queries using
 4-7 the search engine to monitor whether an individual the agency or a
 4-8 designated user employs, places in a volunteer position, contracts
 4-9 with, or issues a license or certification to engages in reportable
 4-10 conduct.

4-11 (d) Each participating state agency, including the Texas
 4-12 Education Agency in collaboration with the State Board for Educator
 4-13 Certification, by rule may:

4-14 (1) authorize an individual who is determined to have
 4-15 engaged in reportable conduct to be employed or placed in a
 4-16 volunteer position by, enter into a contract with, or receive a
 4-17 license or certification from the agency or a designated user in
 4-18 accordance with standards prescribed by agency rules and as
 4-19 otherwise permitted by law; and

4-20 (2) prescribe the manner in which information
 4-21 contained in search engine results may be used based on:

4-22 (A) the nature of the reportable conduct;

4-23 (B) the date the reportable conduct occurred;

4-24 (C) the severity of the reportable conduct; and

4-25 (D) any other factors the agency determines
 4-26 necessary.

4-27 (e) Notwithstanding any provision of this chapter, a
 4-28 private school is not required to conduct search queries using the
 4-29 search engine for the purposes described by this chapter.

4-30 Sec. 810.007. NOTICE AND HEARING. (a) A participating
 4-31 state agency or designated user that does not employ, place in a
 4-32 volunteer position, enter into a contract with, or issue a license
 4-33 or certification to an individual based on a determination under
 4-34 Section 810.006 that the individual has engaged in reportable
 4-35 conduct shall notify the individual of that determination.

4-36 (b) Each participating state agency may provide an
 4-37 individual to whom notice is provided under this section an
 4-38 opportunity for a hearing regarding the determination on the
 4-39 individual's written request. The hearing must be conducted in
 4-40 accordance with Chapter 2001, Government Code.

4-41 (c) Notwithstanding any other law, in a hearing conducted
 4-42 under this section a participating state agency is not required to
 4-43 prove that:

4-44 (1) an individual engaged in reportable conduct; or

4-45 (2) an individual's inclusion in search engine results
 4-46 was appropriate.

4-47 Sec. 810.008. OFFICE OF INTERAGENCY COORDINATION ON
 4-48 REPORTABLE CONDUCT. (a) The Office of Interagency Coordination on
 4-49 Reportable Conduct is established within the Department of Family
 4-50 and Protective Services to facilitate:

4-51 (1) coordination among the department and each
 4-52 participating state agency in administering this chapter; and

4-53 (2) communication between the department, each
 4-54 participating state agency, designated users, interested persons,
 4-55 and the public regarding any relevant search engine information.

4-56 (b) The Department of Family and Protective Services, in
 4-57 collaboration with the department and each other participating
 4-58 state agency, shall adopt rules on the establishment and operation
 4-59 of the Office of Interagency Coordination on Reportable Conduct.

4-60 Sec. 810.009. MEMORANDUM OF UNDERSTANDING. The department
 4-61 and each participating state agency shall enter into a memorandum
 4-62 of understanding on the implementation and administration of this
 4-63 chapter. The memorandum must specify each agency's roles and
 4-64 duties with respect to establishing and maintaining the search
 4-65 engine.

4-66 Sec. 810.010. CONFIDENTIALITY. Information contained in
 4-67 search engine results and additional information shared by a
 4-68 participating state agency under Section 810.005(c), including
 4-69 documents, is confidential and not subject to disclosure under

5-1 Chapter 552, Government Code.

5-2 SECTION 3. Section 42.056(b), Human Resources Code, is
 5-3 amended to read as follows:

5-4 (b) The department shall conduct background checks using:

5-5 (1) the information provided under Subsection (a);

5-6 (2) the information made available by the Department
 5-7 of Public Safety under Section 411.114, Government Code, or by the
 5-8 Federal Bureau of Investigation or other criminal justice agency
 5-9 under Section 411.087, Government Code;

5-10 (3) the department's records of reported abuse and
 5-11 neglect; ~~and~~

5-12 (4) any other registry, repository, or database
 5-13 required by federal law;

5-14 (5) any information provided by the Texas Juvenile
 5-15 Justice Department under a memorandum of understanding; and

5-16 (6) the interagency reportable conduct search engine
 5-17 established under Chapter 810, Health and Safety Code.

5-18 SECTION 4. The heading to Section 222.053, Human Resources
 5-19 Code, is amended to read as follows:

5-20 Sec. 222.053. REVOCATION OR SUSPENSION OF CERTIFICATION OR
 5-21 PROVISIONAL CERTIFICATION.

5-22 SECTION 5. Section 222.053, Human Resources Code, is
 5-23 amended by amending Subsection (c) and adding Subsection (f) to
 5-24 read as follows:

5-25 (c) The executive director may convene, in person or
 5-26 telephonically, a panel of three board members to determine if a
 5-27 person's continued certification threatens juveniles in the
 5-28 juvenile justice system. If the panel determines that the person's
 5-29 continued certification threatens juveniles in the juvenile
 5-30 justice system, the person's certification ~~[license]~~ is
 5-31 temporarily suspended until an administrative hearing is held as
 5-32 soon as possible under Subsection (d). The executive director may
 5-33 convene a panel under this subsection only if the danger posed by
 5-34 the person's continued certification is imminent. The panel may
 5-35 hold a telephonic meeting only if immediate action is required and
 5-36 convening the panel at one location is inconvenient for any member
 5-37 of the panel.

5-38 (f) In this section, "certification" includes a provisional
 5-39 certification.

5-40 SECTION 6. Subchapter B, Chapter 222, Human Resources Code,
 5-41 is amended by adding Section 222.054 to read as follows:

5-42 Sec. 222.054. CERTIFICATION OR PROVISIONAL CERTIFICATION
 5-43 INELIGIBILITY. (a) In this section, "certification" includes a
 5-44 provisional certification.

5-45 (b) The department may designate an individual who has been
 5-46 terminated from employment with the department as ineligible for
 5-47 certification under this chapter or rules adopted under this
 5-48 chapter if:

5-49 (1) the individual engaged in conduct violating this
 5-50 chapter or a department rule; or

5-51 (2) a panel under Subsection (c) determines the
 5-52 individual's certification would threaten juveniles in the
 5-53 juvenile justice system.

5-54 (c) The executive director may convene, in person or
 5-55 telephonically, a panel of three board members to determine if a
 5-56 former department employee's continued eligibility to obtain a
 5-57 certification under this chapter threatens juveniles in the
 5-58 juvenile justice system. The department shall temporarily
 5-59 designate an individual as ineligible for certification if the
 5-60 panel determines the individual's eligibility for certification
 5-61 threatens juveniles in the juvenile justice system until an
 5-62 administrative hearing under Subsection (d). The hearing must be
 5-63 held as soon as possible following the temporary designation. The
 5-64 executive director may convene a panel under this subsection only
 5-65 if the danger posed by the person's continued eligibility is
 5-66 imminent. The panel may hold a telephonic meeting only if immediate
 5-67 action is required and convening the panel at one location is
 5-68 inconvenient for any member of the panel.

5-69 (d) A person is entitled to a hearing before the State

6-1 Office of Administrative Hearings if the department proposes to
6-2 designate a person as ineligible for certification.

6-3 (e) A person may appeal a ruling or order issued under this
6-4 section to a district court in the county in which the person
6-5 resides or in Travis County. The standard of review is under the
6-6 substantial evidence rule.

6-7 SECTION 7. (a) In this section, "search engine" means the
6-8 interagency reportable conduct search engine established under
6-9 Chapter 810, Health and Safety Code, as added by this Act.

6-10 (b) As soon as practicable after the effective date of this
6-11 Act, the Department of Information Resources shall collaborate with
6-12 the Department of Family and Protective Services, the Health and
6-13 Human Services Commission, the Texas Education Agency, and the
6-14 Texas Juvenile Justice Department to establish the search engine as
6-15 required by Chapter 810, Health and Safety Code, as added by this
6-16 Act.

6-17 (c) The establishment of the search engine may take place in
6-18 phases in accordance with an implementation plan developed by the
6-19 state agencies listed under Subsection (b) of this section in
6-20 collaboration with the Office of Interagency Coordination on
6-21 Reportable Conduct established under Section 810.008, Health and
6-22 Safety Code, as added by this Act. The implementation plan may
6-23 include a pilot phase.

6-24 (d) At the conclusion of the implementation plan described
6-25 by Subsection (c) of this section, each state agency and other
6-26 persons authorized to use the search engine shall use the search
6-27 engine as required by Chapter 810, Health and Safety Code, as added
6-28 by this Act.

6-29 SECTION 8. As soon as practicable after the effective date
6-30 of this Act, the commissioner of the Department of Family and
6-31 Protective Services, the executive commissioner of the Health and
6-32 Human Services Commission, the commissioner of education, and the
6-33 Texas Juvenile Justice Board shall adopt rules as necessary to
6-34 implement the changes in law made by this Act.

6-35 SECTION 9. This Act takes effect September 1, 2023.

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