

AN ACT

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.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
SECTION 1. Sections 22.094(a), (b), and (e), Education Code, are amended to read as follows:

(a) A person described by Section 22.093(b) and who is the subject of a report that alleges misconduct described by Section 22.093(c)(1)(A) or (B) 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, Government Code, to contest the allegation in the report or search engine.

(b) On receiving a report filed under Section 22.093(f) or making an identification described by Subsection (a), the commissioner shall promptly send to the person who is the subject of the report or identification a notice that includes:

(1) a statement informing the person that the person must request a hearing on the merits of the allegations of misconduct within the period provided by Subsection (c);

(2) a request that the person submit a written response within the period provided by Subsection (c) to show cause why the commissioner should not pursue an investigation; and

(3) a statement informing the person that if the person does not timely submit a written response to show cause as provided by Subdivision (2), the agency shall provide information indicating the person is under investigation in the manner provided by Subsection (d).

(e) If a person entitled to a hearing under Subsection (a) does not request a hearing as provided by Subsection (c), the commissioner shall:

(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) if the commissioner determines that the person engaged in misconduct described by Section 22.093(c)(1)(A) or (B), instruct the agency to add the person's name to the registry maintained under Section 22.092.

SECTION 2. Section 253.010, Health and Safety Code, is amended to read as follows:

Sec. 253.010. REMOVAL FROM REGISTRY. (a) The Health and Human Services Commission [department] may remove a person from the employee misconduct registry if, after receiving a written request from the person, the commission [department] determines that the person does not meet the requirements for inclusion in the employee misconduct registry.

(b) The executive commissioner by rule may establish:
(1) criteria for a person to submit a request for removal under Subsection (a); and

(2) a process for the Health and Human Services Commission to determine whether the person meets the requirements for inclusion in the employee misconduct registry.

SECTION 3. Title 9, Health and Safety Code, is amended by adding Subtitle D to read as follows:

SUBTITLE D. INTERAGENCY SAFETY INITIATIVES

CHAPTER 810. INTERAGENCY REPORTABLE CONDUCT SEARCH ENGINE

Sec. 810.001. DEFINITIONS. In this chapter:

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

(2) "Department" means the Department of Information Resources.

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

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

(5) "Participating state agency" means a state agency listed in Section 810.002.

(6) "Reportable conduct" means a participating state agency's determination:

(A) that an individual engaged in abuse, neglect, exploitation, or misconduct; and

(B) for which the agency has:

(i) provided any required notice or opportunity to contest the determination; and

(ii) issued a final determination.

(7) "Search engine" means the interagency reportable conduct search engine established under this chapter.

Sec. 810.002. APPLICABILITY. This chapter applies to the following state agencies:

(1) the Department of Family and Protective Services;

(2) the Health and Human Services Commission;

(3) the Texas Education Agency; and

(4) the Texas Juvenile Justice Department.

Sec. 810.003. ESTABLISHMENT OF INTERAGENCY REPORTABLE CONDUCT SEARCH ENGINE. (a) The department, in collaboration with each participating state agency, shall 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 by:

(1) the Department of Family and Protective Services in the central registry established under Section 261.002, Family Code;

(2) the Health and Human Services Commission in the employee misconduct registry established under Chapter 253;

(3) the Texas Education Agency in the registry established under Section 22.092, Education Code; and

(4) the Texas Juvenile Justice Department in the integrated certification information system and in any informal list the Texas Juvenile Justice Department maintains.

(b) The department shall 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) The executive head of each participating state agency shall 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) In addition to the eligible individuals described by Subsection (a), each participating state agency shall designate additional users who are eligible to access the search engine and may require those users to determine whether an individual has engaged in reportable conduct. The additional designated users may include controlling persons, hiring managers, or administrators of:

(1) licensed or certified long-term care providers, including:

(A) home and community support services agencies licensed under Chapter 142;

(B) nursing facilities licensed under Chapter 242;

(C) assisted living facilities licensed under Chapter 247;

(D) prescribed pediatric extended care centers licensed under Chapter 248A;

(E) intermediate care facilities for individuals with an intellectual disability licensed under Chapter 252;

(F) state supported living centers, as defined by Section 531.002; and

(G) day activity and health services facilities licensed under Chapter 103, Human Resources Code;

(2) providers under a Section 1915(c) waiver program, as defined by Section 531.001, Government Code;

(3) juvenile probation departments and registered juvenile justice facilities;

(4) independent school districts, districts of innovation, open-enrollment charter schools, other charter entities, as defined by Section 21.006, Education Code, regional education service centers, education shared services arrangements, or any other educational entity or provider that is authorized to access the registry established under Section 22.092, Education Code;

(5) private schools that:

(A) offer a course of instruction for students in this state in one or more grades from prekindergarten through grade 12; and

(B) are:

(i) accredited by an organization recognized by the Texas Education Agency or the Texas Private School Accreditation Commission;

(ii) listed in the database of the National Center for Education Statistics of the United States Department of Education; or

(iii) otherwise authorized by Texas Education Agency rule to access the search engine; and

(6) nonprofit teacher organizations approved by the commissioner of education for the purpose of participating in the tutoring program established under Section 33.913, Education Code.

(c) The department and each participating state agency shall develop a process to issue user credentials to each designated user that authorizes the user to access the search engine. The process must 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) For each individual identified by a participating state agency as having engaged in reportable conduct, the search engine results for that individual must 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) 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 the department, a participating state agency, or a designated user in accordance with this chapter and rules adopted under this chapter.

(c) A participating state agency may 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) Each participating state agency and designated user shall conduct a search query using the search engine to determine whether an individual who may 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) 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 must be based on standards authorized or required by law, including agency rules.

(c) A participating state agency or designated user must 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. Each participating state agency by rule shall 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) Each participating state agency, including the Texas Education Agency in collaboration with the State Board for Educator Certification, by rule may:

(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 may 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) Notwithstanding any provision of this chapter, a private school 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) 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 shall notify the individual of that determination.

(b) Each participating state agency may 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. The hearing must be conducted in accordance with Chapter 2001, Government Code.

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

(1) is not required to prove that an individual engaged in reportable conduct; and

(2) must 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) The Office of Interagency Coordination on Reportable Conduct is established within the Department of Family and Protective Services to facilitate:

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

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

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

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

Sec. 810.010. CONFIDENTIALITY. 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, Government Code.

SECTION 4. Section 42.056(b), Human Resources Code, is amended to read as follows:

(b) The department shall conduct background checks using:

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

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

(3) the department's records of reported abuse and neglect; ~~and~~

(4) any other registry, repository, or database required by federal law;

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

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

SECTION 5. Section 42.159(c), Human Resources Code, is amended to read as follows:

(c) The department shall conduct background and criminal

history checks using:

- (1) the information provided under Subsection (a) or (b), as applicable;
- (2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal Bureau of Investigation or other criminal justice agency under Section 411.087, Government Code; ~~and~~
- (3) the department's records of reported abuse and neglect;
- (4) any information provided by the Texas Juvenile Justice Department under a memorandum of understanding; and
- (5) the interagency reportable conduct search engine established under Chapter 810, Health and Safety Code.

SECTION 6. Section 42.206(c), Human Resources Code, is amended to read as follows:

(c) The department shall conduct background and criminal history checks using:

- (1) the information provided under Subsection (a) or (b), as applicable;
- (2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal Bureau of Investigation or another criminal justice agency under Section 411.087, Government Code; ~~and~~
- (3) the department's records of reported abuse and neglect;
- (4) any information provided by the Texas Juvenile Justice Department under a memorandum of understanding; and
- (5) the interagency reportable conduct search engine established under Chapter 810, Health and Safety Code.

SECTION 7. The heading to Section 222.053, Human Resources Code, is amended to read as follows:

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

SECTION 8. Section 222.053, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) In this section, "certification" includes a provisional certification.

SECTION 9. Subchapter B, Chapter 222, Human Resources Code, is amended by adding Section 222.054 to read as follows:

Sec. 222.054. CERTIFICATION OR PROVISIONAL CERTIFICATION INELIGIBILITY. (a) In this section, "certification" includes a provisional certification.

(b) The department may designate as permanently ineligible for certification under this chapter an individual who has been terminated from employment with the department for engaging in conduct that demonstrates the individual is not suitable for certification under this chapter.

(c) The executive director may convene, in person or telephonically, a panel of three board members to determine if a former department employee's continued eligibility to obtain a certification under this chapter threatens juveniles in the juvenile justice system. If the panel determines an individual's eligibility for certification threatens juveniles in the juvenile justice system, the department shall temporarily designate the individual as ineligible for certification until an administrative hearing is held under Subsection (d). The hearing must be held as soon as possible following the temporary designation. The executive director may convene a panel under this subsection only if the danger posed by the person's continued eligibility for certification is imminent. The panel may 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) A person is entitled to a hearing before the State Office of Administrative Hearings if the department proposes to designate a person as permanently ineligible for certification.

(e) A person may 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. The standard of review is under the substantial evidence rule.

SECTION 10. (a) In this section, "search engine" means the interagency reportable conduct search engine established under Chapter 810, Health and Safety Code, as added by this Act.

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

(c) The establishment of the search engine may 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. The implementation plan may include a pilot phase.

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

SECTION 11. As soon as practicable after the effective date of this Act, the commissioner of the Department of Family and Protective Services, the executive commissioner of the Health and Human Services Commission, the commissioner of education, and the Texas Juvenile Justice Board shall adopt rules as necessary to implement the changes in law made by this Act.

SECTION 12. This Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1849 passed the Senate on April 11, 2023, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 19, 2023, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1849 passed the House, with amendment, on May 17, 2023, by the following vote: Yeas 143, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor