

CHAPTER 1048

S.B. No. 200

AN ACT

relating to mandatory criminal history checks of certain persons applying for employment at nursing homes and custodial care homes.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 18, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 18. INVESTIGATION OF INSTITUTION EMPLOYEES. (a) The *Texas Department of Human Services, on behalf of the* Licensing Agency, is entitled to obtain criminal conviction records maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division to investigate an employee or a person applying for employment at a nursing home or custodial care home licensed or applying for a license under this Act.

(b) *Except as provided by Subsection (c) of this section, before a nursing home or custodial care home makes an offer of employment to a person applying for employ-*

ment at the institution, the institution shall provide to the Texas Department of Human Services the name and relevant information relating to the person as required by the Texas Department of Human Services. Immediately after receiving the information from the institution, the Texas Department of Human Services shall request that the Department of Public Safety conduct a criminal conviction check on the person. If the nursing home or custodial care home is part of a larger complex of buildings, the requirement of a criminal conviction check applies to an offer of employment made to a person who will work primarily in the immediate boundaries of the nursing home or custodial care home. The requirement of a criminal conviction check does not apply to an offer of employment made to a nursing home administrator, a nurse, or other person licensed under other law. At the request of an institution, the Texas Department of Human Services, on behalf of the Licensing Agency, shall investigate any [a] person employed [~~or applying for employment~~] at a nursing home or custodial care home, including an administrator, nurse, or other person licensed under other law.

(c) A nursing home or custodial care home may make an offer of temporary employment to a person applying for employment at the institution pending the results of the criminal conviction check on the person. The institution shall provide to the Texas Department of Human Services the name and relevant information relating to the person not later than the 72nd hour after the hour on which the person accepts temporary employment. The institution may not hire a person on a permanent basis until the institution receives the results of the criminal conviction check.

(d) Immediately after receiving the results of the criminal conviction check, the Texas Department of Human Services shall notify the institution of the results and provide a copy of the results to the Licensing Agency. The Department of Public Safety [~~Licensing Agency~~] may not provide to the Texas Department of Human Services, the Licensing Agency, or the institution the criminal conviction records of a person being investigated unless the criminal records relate to:

- (1) any felony or misdemeanor classified as an offense against the person or the family;
- (2) any felony or misdemeanor classified as public indecency;
- (3) a felony violation of any statute intended to control the possession or distribution of a substance included in the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes); or
- (4) any [~~misdemeanor or~~] felony violation of Section 31.03, Penal Code.

(e) [~~(d)~~] The Texas Department of Human Services [~~Licensing Agency~~] may require the institution to submit a complete set of fingerprints, social security number, or the complete name of the person being investigated.

~~[(e) The Licensing Agency may charge a reasonable fee to cover the costs of the investigation.]~~

(f) A nursing home or custodial care home shall inform each applicant for employment that the institution is required to conduct a criminal conviction check before it may make an offer of employment to a person and that the institution may request a criminal conviction check on that person.

(g) Except as provided by Subsection (h) of this section, if the results of a criminal conviction check reveal that an applicant for employment at a nursing home or custodial care home has been convicted of an offense listed in Subsection (d) of this section, the institution may not hire the person. Except as provided by Subsection (h) of this section, if the results of a criminal conviction check reveal that an employee or a person hired on a temporary basis under Subsection (c) of this section has been convicted of an offense listed in Subsection (d) of this section, the institution shall immediately terminate the person's employment.

(h) A nursing home or custodial care home may employ or continue employing a person convicted of an offense under the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), other than an offense under Section 4.052 or 4.053, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Stat-

utes), or an offense listed in Subsection (b) of Section 4.012 of that Act if the person produces evidence that the person has successfully completed a drug rehabilitation program.

(i) All criminal records received by the Texas Department of Human Services [~~Licensing Agency~~] are privileged information and are for the exclusive use of the Texas Department of Human Services, the Licensing Agency, and the institution for which the department [~~Licensing Agency~~] requested the information. Except on court order or with the written consent of the person being investigated, the records may not be released or otherwise disclosed to any other person or agency.

(j) [~~(g)~~] A person commits an offense if the person releases or discloses any information received under this section without the authorization prescribed by Subsection (i) [~~(f)~~] of this section. An offense under this subsection is a felony of the second degree.

(k) [~~(h)~~] An institution as defined above or any of its officers or employees shall not be held liable civilly for failure to comply with this section if the institution makes a good faith effort to comply [~~request an investigation~~].

SECTION 2. This Act takes effect September 1, 1987.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 24, 1987, by a viva-voce vote; and that the Senate concurred in House amendment on May 25, 1987, by a viva-voce vote. Passed the House, with amendment, on May 22, 1987, by a non-record vote.

Approved June 20, 1987.

Effective Sept. 1, 1987.