

HEALTH AND SAFETY CODE CHAPTER 250. NURSE AIDE REGISTRY AND
CRIMINAL HISTORY CHECKS OF EMPLOYEES AND APPLICANTS FOR EMPLOYMENT
IN CERTAIN FACILITIES SERVING THE ELDERLY OR PERSONS WITH
DISABILITIES

HEALTH AND SAFETY CODE

TITLE 4. HEALTH FACILITIES

SUBTITLE B. LICENSING OF HEALTH FACILITIES

CHAPTER 250. NURSE AIDE REGISTRY AND CRIMINAL HISTORY CHECKS OF
EMPLOYEES AND APPLICANTS FOR EMPLOYMENT IN CERTAIN FACILITIES
SERVING THE ELDERLY OR PERSONS WITH DISABILITIES

Sec. 250.001. DEFINITIONS. In this chapter:

(1) "Nurse aide registry" means a list maintained by the Texas Department of Human Services of nurse aides under the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203).

(2) "Direct contact with a consumer" means any contact with a resident or client in a facility covered by this chapter.

(3) "Facility" means:

(A) a nursing home, custodial care home, or other institution licensed by the Texas Department of Human Services under Chapter 242;

(B) an assisted living facility licensed by the Texas Department of Human Services under Chapter 247;

(C) a home and community support services agency licensed under Chapter 142;

(D) an adult day care facility licensed by the Texas Department of Human Services under Chapter 103, Human Resources Code;

(E) a facility for persons with mental retardation licensed under Chapter 252;

(F) an adult foster care provider that contracts with the Texas Department of Human Services;

(G) a facility that provides mental health services and that is operated by or contracts with the Texas Department of Mental Health and Mental Retardation;

(H) a local mental health or mental retardation authority designated under Section 533.035; or

(I) a person exempt from licensing under Section 142.003(a)(19).

(4) "Private agency" means a person engaged in the business of obtaining criminal history checks on behalf of a facility.

(5) "Regulatory agency" means a state agency referred to in Subdivision (3).

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 233, Sec. 3, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1209, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.198, eff. Sept. 1, 2003.

Sec. 250.002. INFORMATION OBTAINED BY FACILITY, REGULATORY AGENCY, OR PRIVATE AGENCY. (a) A facility, a regulatory agency, or a private agency on behalf of a facility is entitled to obtain from the Department of Public Safety of the State of Texas criminal history record information maintained by the Department of Public Safety that relates to a person who is:

(1) an applicant for employment at a facility other than a facility licensed under Chapter 142;

(2) an employee of a facility other than a facility licensed under Chapter 142; or

(3) an applicant for employment at or an employee of a facility licensed under Chapter 142 whose employment duties would or do involve direct contact with a consumer in the facility.

(b) A facility may:

(1) pay a private agency to obtain criminal history record information for an applicant or employee described by Subsection (a) directly from the Department of Public Safety of the State of Texas; or

(2) obtain the information directly from the Department of Public Safety.

(c) The private agency shall forward criminal history record information received under this section to the facility requesting the information.

(d) A regulatory agency may adopt rules relating to the

processing of information requested or obtained under this chapter. Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995; Acts 2001, 77th Leg., ch. 1025, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1267, Sec. 2, eff. Sept. 1, 2001.

Sec. 250.003. VERIFICATION OF EMPLOYABILITY; DISCHARGE.

(a) A facility may not employ a person if the facility determines, as a result of a criminal history check, that a person has been convicted of an offense listed in this chapter that bars employment or that a conviction is a contraindication to employment with the consumers the facility serves, and if the applicant is a nurse aide, until the facility further verifies that the applicant is listed in the nurse aide registry and verifies that the applicant is not designated in the registry as having a finding entered into the registry concerning abuse, neglect, or mistreatment of a consumer of a facility, or misappropriation of a consumer's property. Except for an applicant for employment at or an employee of a facility licensed under Chapter 242 or 247, a person licensed under another law of this state is exempt from the requirements of this chapter.

(b) The facility may not employ an applicant covered by Subsection (a), except that in an emergency requiring immediate employment, a facility may hire on a temporary or interim basis a person not listed in the registry pending the results of a criminal conviction check, which must be requested:

- (1) within 72 hours of employment; or
- (2) if the facility is licensed under Chapter 242 or 247, within 24 hours of employment.

(c) A facility shall immediately discharge any employee who is designated in the nurse aide registry or the employee misconduct registry established under Chapter 253 as having committed an act of abuse, neglect, or mistreatment of a consumer of a facility, or misappropriation of a consumer's property, or whose criminal history check reveals conviction of a crime that bars employment or that the facility determines is a contraindication to employment as provided by this chapter.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 250.002 and amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995. Amended by Acts 2001, 77th Leg., ch. 1025, Sec. 4, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1267, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 911, Sec. 1, eff. June 20, 2003.

Sec. 250.004. CRIMINAL HISTORY RECORD OF EMPLOYEES.

(a) Identifying information of an employee in a covered facility shall be submitted electronically, on disk, or on a typewritten form to the Department of Public Safety to obtain the person's criminal conviction record when the person applies for employment and at other times as the facility may determine appropriate. In this subsection, "identifying information" includes:

- (1) the complete name, race, and sex of the employee;
- (2) any known identifying number of the employee, including social security number, driver's license number, or state identification number; and
- (3) the employee's date of birth.

(b) If the Department of Public Safety reports that a person has a criminal conviction of any kind, the conviction shall be reviewed by the facility to determine if the conviction may bar the person from employment in a facility under Section 250.006 or if the conviction may be a contraindication to employment.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 250.003 and amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 629, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1025, Sec. 5, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1267, Sec. 4, eff. Sept. 1, 2001.

Sec. 250.005. NOTICE AND OPPORTUNITY TO BE HEARD CONCERNING ACCURACY OF INFORMATION. (a) If a facility believes that a conviction may bar a person from employment in a facility under Section 250.006 or may be a contraindication to employment, the facility shall notify the applicant or employee.

(b) The Department of Public Safety of the State of Texas

shall give a person notified under Subsection (a) the opportunity to be heard concerning the accuracy of the criminal history record information and shall notify the facility if inaccurate information is discovered.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995. Renumbered from Health & Safety Code Sec. 250.004 and amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995.

Sec. 250.006. CONVICTIONS BARRING EMPLOYMENT. (a) A person for whom the facility is entitled to obtain criminal history record information may not be employed in a facility if the person has been convicted of an offense listed in this subsection:

(1) an offense under Chapter 19, Penal Code (criminal homicide);

(2) an offense under Chapter 20, Penal Code (kidnapping and unlawful restraint);

(3) an offense under Section 21.02, Penal Code (continuous sexual abuse of young child or children), or Section 21.11, Penal Code (indecent with a child);

(4) an offense under Section 22.011, Penal Code (sexual assault);

(5) an offense under Section 22.02, Penal Code (aggravated assault);

(6) an offense under Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual);

(7) an offense under Section 22.041, Penal Code (abandoning or endangering child);

(8) an offense under Section 22.08, Penal Code (aiding suicide);

(9) an offense under Section 25.031, Penal Code (agreement to abduct from custody);

(10) an offense under Section 25.08, Penal Code (sale or purchase of a child);

(11) an offense under Section 28.02, Penal Code (arson);

(12) an offense under Section 29.02, Penal Code (robbery);

(13) an offense under Section 29.03, Penal Code (aggravated robbery);

(14) an offense under Section 21.08, Penal Code (indecent exposure);

(15) an offense under Section 21.12, Penal Code (improper relationship between educator and student);

(16) an offense under Section 21.15, Penal Code (improper photography or visual recording);

(17) an offense under Section 22.05, Penal Code (deadly conduct);

(18) an offense under Section 22.021, Penal Code (aggravated sexual assault);

(19) an offense under Section 22.07, Penal Code (terroristic threat);

(20) an offense under Section 33.021, Penal Code (online solicitation of a minor);

(21) an offense under Section 34.02, Penal Code (money laundering);

(22) an offense under Section 35A.02, Penal Code (Medicaid fraud);

(23) an offense under Section 42.09, Penal Code (cruelty to animals); or

(24) a conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed by this subsection.

(b) A person may not be employed in a position the duties of which involve direct contact with a consumer in a facility before the fifth anniversary of the date the person is convicted of:

(1) an offense under Section 22.01, Penal Code (assault), that is punishable as a Class A misdemeanor or as a felony;

(2) an offense under Section 30.02, Penal Code (burglary);

(3) an offense under Chapter 31, Penal Code (theft),

that is punishable as a felony;

(4) an offense under Section 32.45, Penal Code (misapplication of fiduciary property or property of a financial institution), that is punishable as a Class A misdemeanor or a felony;

(5) an offense under Section 32.46, Penal Code (securing execution of a document by deception), that is punishable as a Class A misdemeanor or a felony;

(6) an offense under Section 37.12, Penal Code (false identification as peace officer); or

(7) an offense under Section 42.01(a)(7), (8), or (9), Penal Code (disorderly conduct).

(c) In addition to the prohibitions on employment prescribed by Subsections (a) and (b), a person for whom a facility licensed under Chapter 242 or 247 is entitled to obtain criminal history record information may not be employed in a facility licensed under Chapter 242 or 247 if the person has been convicted:

(1) of an offense under Section 30.02, Penal Code (burglary); or

(2) under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense under Section 30.02, Penal Code.

(d) For purposes of this section, a person who is placed on deferred adjudication community supervision for an offense listed in this section, successfully completes the period of deferred adjudication community supervision, and receives a dismissal and discharge in accordance with Section 5(c), Article 42.12, Code of Criminal Procedure, is not considered convicted of the offense for which the person received deferred adjudication community supervision.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.39, eff. Sept. 1, 1995. Renumbered from Health & Safety Code Sec. 250.005 and amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995. Amended by Acts 1997, 75th Leg., ch. 482, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1159, Sec. 1.33, eff. Sept. 1,

1997; Acts 2001, 77th Leg., ch. 1025, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1267, Sec. 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 911, Sec. 2, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1084, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1209, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593, Sec. 3.44, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 971, Sec. 1, eff. September 1, 2007.

Sec. 250.007. RECORDS PRIVILEGED. (a) The criminal history records are for the exclusive use of the regulatory agency, the requesting facility, the private agency on behalf of the requesting facility, and the applicant or employee who is the subject of the records.

(b) All criminal records and reports and the information they contain that are received by the regulatory agency or private agency for the purpose of being forwarded to the requesting facility are privileged information.

(c) The criminal records and reports and the information they contain may not be released or otherwise disclosed to any person or agency except on court order or with the written consent of the person being investigated.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995.

Sec. 250.008. CRIMINAL PENALTY. (a) A person commits an offense if the person releases or otherwise discloses any information received under this chapter except as prescribed by Section 250.007(b) or (c).

(b) An offense under this section is a Class A misdemeanor. Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995.

Sec. 250.009. CIVIL LIABILITY. (a) A facility or an officer or employee of a facility is not civilly liable for failure to comply with this chapter if the facility makes a good faith effort to comply.

(b) A regulatory agency is not civilly liable to a person for criminal history record information forwarded to a requesting facility in accordance with this chapter.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995.