

By: Carona

S.B. No. 1194

A BILL TO BE ENTITLED

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AN ACT

relating to the regulation of certain facilities, homes, and agencies that provide child-care services.

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

SECTION 1. Section 42.001, Human Resources Code, is amended to read as follows:

Sec. 42.001. PURPOSE. The purpose of this chapter is to protect the health, safety, and well-being of the children of the state who reside in child-care facilities by establishing statewide minimum standards for their safety and protection and by regulating the facilities through a licensing program ~~[or by requiring child-care facilities to be regulated by alternative accreditation bodies]~~. It is the policy of the state to ensure the protection of all children under care in child-care facilities and to encourage and assist in the improvement of child-care programs. It is also the intent of the legislature that freedom of religion of all citizens is inviolate. With respect to a school or child-care facility sponsored by a religious organization, nothing in this chapter gives a governmental agency authority to regulate, control, supervise, or in any way be involved in the:

- (1) form, manner, or content of religious instruction, ministry, teaching, or the curriculum offered by the school or facility;
- (2) ability of the school or facility to select and

1 supervise qualified personnel, and otherwise control the terms of  
2 employment, including the right to employ individuals who share the  
3 religious views of the school or facility;

4 (3) internal self-governance and autonomy of the  
5 school or facility; or

6 (4) religious environment of the school or facility,  
7 such as symbols, art, icons, and scripture.

8 SECTION 2. Subdivisions (4) through (11), Section 42.002,  
9 Human Resources Code, are amended to read as follows:

10 (4) "Child-care institution" means a child-care  
11 facility that is licensed to provide [~~provides~~] care for more than  
12 12 children for 24 hours a day, including facilities known as  
13 children's homes, halfway houses, residential treatment centers,  
14 emergency shelters, and therapeutic camps.

15 (5) "Foster group home" means a child-care facility  
16 that is licensed to provide [~~provides~~] care for 7 to 12 children,  
17 including children who are related to the caretaker, for 24 hours a  
18 day.

19 (6) "Foster home" means a child-care facility that is  
20 licensed to provide [~~provides~~] care for not more than six children,  
21 including children who are related to the caretaker, for 24 hours a  
22 day.

23 (7) "Day-care center" means a child-care facility that  
24 is licensed to provide [~~provides~~] care for more than 12 children  
25 under 14 years of age for less than 24 hours a day.

26 (8) "Group day-care home" means a child-care facility  
27 that is licensed to provide [~~provides~~] care for 7 to 12 children

1 under 14 years of age for less than 24 hours a day.

2 (9) "Family home" means a home that provides regular  
3 care in the caretaker's own residence for not more than six children  
4 under 14 years of age, excluding children who are related to the  
5 caretaker, and that provides care after school hours for not more  
6 than six additional elementary school children, but the total  
7 number of children, including children who are related to the  
8 caretaker, does not exceed 12 at any given time. The term does not  
9 include a home that provides care exclusively for any number of  
10 children who are related to the caretaker. A family home must be  
11 listed or registered with the department, depending on the number  
12 of children who receive care in the home.

13 (10) "Agency foster group home" means a facility that  
14 is verified to provide [~~provides~~] care for seven to 12 children,  
15 including children who are related to the caretaker, for 24 hours a  
16 day, is used only by a licensed child-placing agency, and meets  
17 department standards.

18 (11) "Agency foster home" means a facility that is  
19 verified to provide [~~provides~~] care for not more than six children,  
20 including children who are related to the caretaker, for 24 hours a  
21 day, is used only by a licensed child-placing agency, and meets  
22 department standards.

23 SECTION 3. The heading to Section 42.041, Human Resources  
24 Code, is amended to read as follows:

25 Sec. 42.041. REQUIRED LICENSE [~~OR ACCREDITATION~~].

26 SECTION 4. Subsections (a), (b), and (d), Section 42.041,  
27 Human Resources Code, are amended to read as follows:

1 (a) No person may operate a child-care facility or  
2 child-placing agency without a license issued by the department [~~or~~  
3 ~~a certificate to operate under accreditation issued by the~~  
4 ~~department under Subchapter E~~].

5 (b) This section does not apply to:

6 (1) a state-operated facility;

7 (2) an agency foster home or agency foster group home;

8 (3) a facility that is operated in connection with a  
9 shopping center, business, religious organization, or  
10 establishment where children are cared for during short periods  
11 while parents or persons responsible for the children are attending  
12 religious services, shopping, or engaging in other activities on or  
13 near the premises, including but not limited to retreats or classes  
14 for religious instruction;

15 (4) a school or class for religious instruction that  
16 does not last longer than two weeks and is conducted by a religious  
17 organization during the summer months;

18 (5) a youth camp licensed by the Texas Department of  
19 Health;

20 (6) a facility licensed, [~~operated,~~] certified, or  
21 registered by another state agency;

22 (7) an educational facility accredited by the Texas  
23 Education Agency, the Texas Private School Accreditation  
24 Commission, or the Southern Association of Colleges and Schools, or  
25 an open-enrollment charter school granted a charter under  
26 Subchapter D, Chapter 12, Education Code, that operates primarily  
27 for educational purposes for children who are at least five years of

1 age;

2           (7-a) [~~in grades kindergarten and above,~~] an  
3 after-school program operated directly by an accredited  
4 educational facility or open-enrollment charter school, or an  
5 after-school program operated by another entity under contract with  
6 the educational facility or open-enrollment charter school, if the  
7 Texas Education Agency, the Texas Private School Accreditation  
8 Commission, or the Southern Association of Colleges and Schools has  
9 approved the curriculum content of the after-school program  
10 operated under the contract;

11           (8) an educational facility that operates solely for  
12 educational purposes for children who are at least five years of age  
13 [~~in grades kindergarten~~] through at least grade two, that does not  
14 provide custodial care for more than one hour during the hours  
15 before or after the customary school day, and that is a member of an  
16 organization that promulgates, publishes, and requires compliance  
17 with health, safety, fire, and sanitation standards equal to  
18 standards required by state, municipal, and county codes;

19           (9) a kindergarten or prekindergarten [~~preschool~~]  
20 educational program for children who are at least three years of age  
21 but younger than six years of age that is operated as part of a  
22 public school or a private school accredited by the Texas Education  
23 Agency, the Texas Private School Accreditation Commission, or the  
24 Southern Association of Colleges and Schools, that offers  
25 educational programs through grade six, and that does not provide  
26 custodial care during the hours before or after the customary  
27 school day;

1           (10) a family home, whether registered or listed;

2           (11) an educational facility that is integral to and  
3 inseparable from its sponsoring religious organization or an  
4 educational facility both of which do not provide custodial care  
5 for more than two hours maximum per day, and that offers educational  
6 programs for children age five and above in one or more of the  
7 following: kindergarten through at least grade three, elementary,  
8 or secondary grades;

9           (12) an emergency shelter facility providing shelter  
10 to minor mothers who are the sole support of their natural children  
11 under Section 32.201, Family Code, unless the facility would  
12 otherwise require a license as a child-care facility under this  
13 section;

14           (13) a juvenile detention facility certified under  
15 Section 51.12, Family Code, or Section 141.042(d), a juvenile  
16 facility providing services solely for the Texas Youth Commission,  
17 or any other correctional facility for children operated or  
18 regulated by another state agency or by a political subdivision of  
19 the state;

20           (14) an elementary-age (ages 5-13) recreation program  
21 operated by a municipality provided the governing body of the  
22 municipality annually adopts standards of care by ordinance after a  
23 public hearing for such programs, that such standards are provided  
24 to the parents of each program participant, and that the ordinances  
25 shall include, at a minimum, staffing ratios, minimum staff  
26 qualifications, minimum facility, health, and safety standards,  
27 and mechanisms for monitoring and enforcing the adopted local

1 standards; and further provided that parents be informed that the  
2 program is not licensed by the state and the program may not be  
3 advertised as a child-care facility; or

4 (15) an annual youth camp held in a municipality with a  
5 population of more than 1.5 million that operates for not more than  
6 three months and that has been operated for at least 10 years by a  
7 nonprofit organization that provides care for the homeless.

8 (d) A [~~Unless accredited under Subchapter E, a~~] facility  
9 exempt from the provisions of Subsection (a) of this section that  
10 desires to receive or participate in federal or state funding shall  
11 be required to comply with all other provisions of this chapter and  
12 with all regulations promulgated under this chapter.

13 SECTION 5. Section 42.042, Human Resources Code, is amended  
14 by adding Subsection (j-1) to read as follows:

15 (j-1) The department may grant a variance of an individual  
16 standard prescribed in the applicable standards for good and just  
17 cause.

18 SECTION 6. Subsections (c) and (d), Section 42.046, Human  
19 Resources Code, are amended to read as follows:

20 (c) After receiving an application, the department shall  
21 inspect [~~investigate~~] the applicant and the plan of care for  
22 children, if applicable.

23 (d) The department shall complete the inspection  
24 [~~investigation~~] and decide on an application within two months  
25 after the date the department receives a completed application.

26 SECTION 7. Section 42.048, Human Resources Code, is amended  
27 by adding Subsection (e-1) to read as follows:

1       (e-1) A licensed child-placing agency that maintains an  
2 office location at which no children reside may change the office  
3 location without automatically revoking the agency's license under  
4 Subsection (e) if the child-placing agency provides the department  
5 with written notice of the proposed relocation before the  
6 relocation occurs.

7       SECTION 8. Subsection (a), Section 42.0522, Human Resources  
8 Code, is amended to read as follows:

9       (a) A family home may not place a public advertisement that  
10 uses the title "registered family home" or any variation of that  
11 phrase unless the home is registered under this chapter. Any public  
12 advertisement for a registered family home that uses the title  
13 "registered family home" must contain a provision in bold type  
14 stating: "THIS HOME IS REGISTERED WITH THE DEPARTMENT OF  
15 PROTECTIVE AND REGULATORY SERVICES BUT IS NOT LICENSED [~~OR~~  
16 ~~REGULARLY INSPECTED~~]."

17       SECTION 9. Subsection (a), Section 42.071, Human Resources  
18 Code, is amended to read as follows:

19       (a) The department may suspend the license of a facility or  
20 the registration of a family home that has temporarily ceased  
21 operation but has definite plans for starting operations again  
22 [~~within the time limits of the issued license or registration~~].

23       SECTION 10. Subsection (c), Section 42.072, Human Resources  
24 Code, is amended to read as follows:

25       (c) A person whose license, listing, registration, or  
26 certification is revoked, or a corporation of which more than a 20  
27 percent interest is owned by a person whose license, listing, or

1 registration is revoked, may not apply for any license, listing,  
2 registration, or certification under this chapter before the second  
3 anniversary of the date on which the revocation takes effect by  
4 department or court order.

5 SECTION 11. Subsection (a), Section 42.076, Human Resources  
6 Code, is amended to read as follows:

7 (a) A person who operates a child-care facility or  
8 child-placing agency without a license [~~or certificate to operate~~  
9 ~~under accreditation under Subchapter E~~] commits a Class B  
10 misdemeanor.

11 SECTION 12. Subsection (d), Section 42.077, Human Resources  
12 Code, is amended to read as follows:

13 (d) A facility or family home that receives from the  
14 department notice that the facility's or home's [~~has its~~] license,  
15 listing, or registration is revoked or suspended shall mail  
16 notification of this action by certified mail to the parents or  
17 guardian of the child served by the facility or family home. The  
18 facility or family home shall mail the notification within five  
19 days of the effective date of the revocation or suspension of the  
20 license, listing, or registration, regardless of whether the  
21 facility or home files an appeal of the revocation or suspension  
22 with the State Office of Administrative Hearings.

23 SECTION 13. The heading to Section 43.003, Human Resources  
24 Code, is amended to read as follows:

25 Sec. 43.003. LICENSE [~~OR ACCREDITATION~~] REQUIRED.

26 SECTION 14. Subsection (c), Section 43.003, Human Resources  
27 Code, is amended to read as follows:

1           (c) An individual is not required to have a child-care  
2 administrator license to serve as a child-care administrator for an  
3 agency foster home or an agency foster group home [~~A person may~~  
4 ~~serve as the child-care administrator of a child-care institution~~  
5 ~~if the person is accredited by a private organization that has~~  
6 ~~qualifications that apply to the child-care administrators and that~~  
7 ~~meet or exceed the state's qualifications, as determined by the~~  
8 ~~department, with the exception of those qualifications relating to~~  
9 ~~the internal self-governance of the child-care institution and to~~  
10 ~~the curriculum, teaching, or instruction of the institution. This~~  
11 ~~subsection applies only to a child-care institution that operates~~  
12 ~~under a certificate to operate under accreditation issued by the~~  
13 ~~department under Subchapter E, Chapter 42].~~

14           SECTION 15. The following provisions of the Human Resources  
15 Code are repealed:

- 16           (1) Subsection (c), Section 42.0431;
- 17           (2) Subsection (c), Section 42.048;
- 18           (3) Section 42.0505; and
- 19           (4) Subchapter E, Chapter 42.

20           SECTION 16. This Act takes effect September 1, 2003.