

By: Carona

S.B. No. 1194

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the regulation of certain facilities, homes, and
3 agencies that provide child-care services.

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

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

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

21 (1) form, manner, or content of religious instruction,
22 ministry, teaching, or the curriculum offered by the school or
23 facility;

24 (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. Sections 42.002(4), (5), (6), (7), (8), (9),
9 (10), and (11), Human Resources Code, are amended to read as
10 follows:

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

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

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

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

27 (8) "Group day-care home" means a child-care facility

1 that is licensed to provide [~~provides~~] care for 7 to 12 children
2 under 14 years of age for less than 24 hours a day.

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

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

19 (11) "Agency foster home" means a facility that is
20 verified 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, is used only by a licensed child-placing agency, and meets
23 department standards.

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

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

27 SECTION 4. Sections 42.041(a), (b), and (d), Human

1 Resources Code, are amended to read as follows:

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

6 (b) This section does not apply to:

7 (1) a state-operated facility;

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

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

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

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

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

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

1 for educational purposes for children who are at least five years of
2 age;

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

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

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

1 school day;

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

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

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

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

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

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

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

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

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

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

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

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

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

27 SECTION 7. Section 42.048, Human Resources Code, is amended

1 by adding Subsection (e-1) to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 SECTION 14. Section 43.003(c), Human Resources Code, is

1 amended to read as follows:

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

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

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

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