

1-1 By: Carona S.B. No. 1194
1-2 (In the Senate - Filed March 12, 2003; March 19, 2003, read
1-3 first time and referred to Committee on Health and Human Services;
1-4 April 14, 2003, reported favorably by the following vote: Yeas 9,
1-5 Nays 0; April 14, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the regulation of certain facilities, homes, and
1-9 agencies that provide child-care services.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 42.001, Human Resources Code, is amended
1-12 to read as follows:

1-13 Sec. 42.001. PURPOSE. The purpose of this chapter is to
1-14 protect the health, safety, and well-being of the children of the
1-15 state who reside in child-care facilities by establishing statewide
1-16 minimum standards for their safety and protection and by regulating
1-17 the facilities through a licensing program [~~or by requiring~~
1-18 ~~child-care facilities to be regulated by alternative accreditation~~
1-19 ~~bodies~~]. It is the policy of the state to ensure the protection of
1-20 all children under care in child-care facilities and to encourage
1-21 and assist in the improvement of child-care programs. It is also the
1-22 intent of the legislature that freedom of religion of all citizens
1-23 is inviolate. With respect to a school or child-care facility
1-24 sponsored by a religious organization, nothing in this chapter
1-25 gives a governmental agency authority to regulate, control,
1-26 supervise, or in any way be involved in the:

1-27 (1) form, manner, or content of religious instruction,
1-28 ministry, teaching, or the curriculum offered by the school or
1-29 facility;

1-30 (2) ability of the school or facility to select and
1-31 supervise qualified personnel, and otherwise control the terms of
1-32 employment, including the right to employ individuals who share the
1-33 religious views of the school or facility;

1-34 (3) internal self-governance and autonomy of the
1-35 school or facility; or

1-36 (4) religious environment of the school or facility,
1-37 such as symbols, art, icons, and scripture.

1-38 SECTION 2. Subdivisions (4) through (11), Section 42.002,
1-39 Human Resources Code, are amended to read as follows:

1-40 (4) "Child-care institution" means a child-care
1-41 facility that is licensed to provide [~~provides~~] care for more than
1-42 12 children for 24 hours a day, including facilities known as
1-43 children's homes, halfway houses, residential treatment centers,
1-44 emergency shelters, and therapeutic camps.

1-45 (5) "Foster group home" means a child-care facility
1-46 that is licensed to provide [~~provides~~] care for 7 to 12 children,
1-47 including children who are related to the caretaker, for 24 hours a
1-48 day.

1-49 (6) "Foster home" means a child-care facility that is
1-50 licensed to provide [~~provides~~] care for not more than six children,
1-51 including children who are related to the caretaker, for 24 hours a
1-52 day.

1-53 (7) "Day-care center" means a child-care facility that
1-54 is licensed to provide [~~provides~~] care for more than 12 children
1-55 under 14 years of age for less than 24 hours a day.

1-56 (8) "Group day-care home" means a child-care facility
1-57 that is licensed to provide [~~provides~~] care for 7 to 12 children
1-58 under 14 years of age for less than 24 hours a day.

1-59 (9) "Family home" means a home that provides regular
1-60 care in the caretaker's own residence for not more than six children
1-61 under 14 years of age, excluding children who are related to the
1-62 caretaker, and that provides care after school hours for not more
1-63 than six additional elementary school children, but the total
1-64 number of children, including children who are related to the

2-1 caretaker, does not exceed 12 at any given time. The term does not
 2-2 include a home that provides care exclusively for any number of
 2-3 children who are related to the caretaker. A family home must be
 2-4 listed or registered with the department, depending on the number
 2-5 of children who receive care in the home.

2-6 (10) "Agency foster group home" means a facility that
 2-7 is verified to provide [provides] care for seven to 12 children,
 2-8 including children who are related to the caretaker, for 24 hours a
 2-9 day, is used only by a licensed child-placing agency, and meets
 2-10 department standards.

2-11 (11) "Agency foster home" means a facility that is
 2-12 verified to provide [provides] care for not more than six children,
 2-13 including children who are related to the caretaker, for 24 hours a
 2-14 day, is used only by a licensed child-placing agency, and meets
 2-15 department standards.

2-16 SECTION 3. The heading to Section 42.041, Human Resources
 2-17 Code, is amended to read as follows:

2-18 Sec. 42.041. REQUIRED LICENSE ~~[OR ACCREDITATION]~~.

2-19 SECTION 4. Subsections (a), (b), and (d), Section 42.041,
 2-20 Human Resources Code, are amended to read as follows:

2-21 (a) No person may operate a child-care facility or
 2-22 child-placing agency without a license issued by the department ~~[or~~
 2-23 ~~a certificate to operate under accreditation issued by the~~
 2-24 ~~department under Subchapter E].~~

2-25 (b) This section does not apply to:

2-26 (1) a state-operated facility;
 2-27 (2) an agency foster home or agency foster group home;
 2-28 (3) a facility that is operated in connection with a
 2-29 shopping center, business, religious organization, or
 2-30 establishment where children are cared for during short periods
 2-31 while parents or persons responsible for the children are attending
 2-32 religious services, shopping, or engaging in other activities on or
 2-33 near the premises, including but not limited to retreats or classes
 2-34 for religious instruction;

2-35 (4) a school or class for religious instruction that
 2-36 does not last longer than two weeks and is conducted by a religious
 2-37 organization during the summer months;

2-38 (5) a youth camp licensed by the Texas Department of
 2-39 Health;

2-40 (6) a facility licensed, ~~[operated,]~~ certified, or
 2-41 registered by another state agency;

2-42 (7) an educational facility accredited by the Texas
 2-43 Education Agency, the Texas Private School Accreditation
 2-44 Commission, or the Southern Association of Colleges and Schools, or
 2-45 an open-enrollment charter school granted a charter under
 2-46 Subchapter D, Chapter 12, Education Code, that operates primarily
 2-47 for educational purposes for children who are at least five years of
 2-48 age;

2-49 (7-a) ~~[in grades kindergarten and above,]~~ an
 2-50 after-school program operated directly by an accredited
 2-51 educational facility or open-enrollment charter school, or an
 2-52 after-school program operated by another entity under contract with
 2-53 the educational facility or open-enrollment charter school, if the
 2-54 Texas Education Agency, the Texas Private School Accreditation
 2-55 Commission, or the Southern Association of Colleges and Schools has
 2-56 approved the curriculum content of the after-school program
 2-57 operated under the contract;

2-58 (8) an educational facility that operates solely for
 2-59 educational purposes for children who are at least five years of age
 2-60 ~~[in grades kindergarten]~~ through at least grade two, that does not
 2-61 provide custodial care for more than one hour during the hours
 2-62 before or after the customary school day, and that is a member of an
 2-63 organization that promulgates, publishes, and requires compliance
 2-64 with health, safety, fire, and sanitation standards equal to
 2-65 standards required by state, municipal, and county codes;

2-66 (9) a kindergarten or prekindergarten ~~[preschool]~~
 2-67 educational program for children who are at least three years of age
 2-68 but younger than six years of age that is operated as part of a
 2-69 public school or a private school accredited by the Texas Education

3-1 Agency, the Texas Private School Accreditation Commission, or the
 3-2 Southern Association of Colleges and Schools, that offers
 3-3 educational programs through grade six, and that does not provide
 3-4 custodial care during the hours before or after the customary
 3-5 school day;

3-6 (10) a family home, whether registered or listed;

3-7 (11) an educational facility that is integral to and
 3-8 inseparable from its sponsoring religious organization or an
 3-9 educational facility both of which do not provide custodial care
 3-10 for more than two hours maximum per day, and that offers educational
 3-11 programs for children age five and above in one or more of the
 3-12 following: kindergarten through at least grade three, elementary,
 3-13 or secondary grades;

3-14 (12) an emergency shelter facility providing shelter
 3-15 to minor mothers who are the sole support of their natural children
 3-16 under Section 32.201, Family Code, unless the facility would
 3-17 otherwise require a license as a child-care facility under this
 3-18 section;

3-19 (13) a juvenile detention facility certified under
 3-20 Section 51.12, Family Code, or Section 141.042(d), a juvenile
 3-21 facility providing services solely for the Texas Youth Commission,
 3-22 or any other correctional facility for children operated or
 3-23 regulated by another state agency or by a political subdivision of
 3-24 the state;

3-25 (14) an elementary-age (ages 5-13) recreation program
 3-26 operated by a municipality provided the governing body of the
 3-27 municipality annually adopts standards of care by ordinance after a
 3-28 public hearing for such programs, that such standards are provided
 3-29 to the parents of each program participant, and that the ordinances
 3-30 shall include, at a minimum, staffing ratios, minimum staff
 3-31 qualifications, minimum facility, health, and safety standards,
 3-32 and mechanisms for monitoring and enforcing the adopted local
 3-33 standards; and further provided that parents be informed that the
 3-34 program is not licensed by the state and the program may not be
 3-35 advertised as a child-care facility; or

3-36 (15) an annual youth camp held in a municipality with a
 3-37 population of more than 1.5 million that operates for not more than
 3-38 three months and that has been operated for at least 10 years by a
 3-39 nonprofit organization that provides care for the homeless.

3-40 (d) ~~A [Unless accredited under Subchapter E, a]~~ facility
 3-41 exempt from the provisions of Subsection (a) of this section that
 3-42 desires to receive or participate in federal or state funding shall
 3-43 be required to comply with all other provisions of this chapter and
 3-44 with all regulations promulgated under this chapter.

3-45 SECTION 5. Section 42.042, Human Resources Code, is amended
 3-46 by adding Subsection (j-1) to read as follows:

3-47 (j-1) The department may grant a variance of an individual
 3-48 standard prescribed in the applicable standards for good and just
 3-49 cause.

3-50 SECTION 6. Subsections (c) and (d), Section 42.046, Human
 3-51 Resources Code, are amended to read as follows:

3-52 (c) After receiving an application, the department shall
 3-53 inspect ~~[investigate]~~ the applicant and the plan of care for
 3-54 children, if applicable.

3-55 (d) The department shall complete the inspection
 3-56 ~~[investigation]~~ and decide on an application within two months
 3-57 after the date the department receives a completed application.

3-58 SECTION 7. Section 42.048, Human Resources Code, is amended
 3-59 by adding Subsection (e-1) to read as follows:

3-60 (e-1) A licensed child-placing agency that maintains an
 3-61 office location at which no children reside may change the office
 3-62 location without automatically revoking the agency's license under
 3-63 Subsection (e) if the child-placing agency provides the department
 3-64 with written notice of the proposed relocation before the
 3-65 relocation occurs.

3-66 SECTION 8. Subsection (a), Section 42.0522, Human Resources
 3-67 Code, is amended to read as follows:

3-68 (a) A family home may not place a public advertisement that
 3-69 uses the title "registered family home" or any variation of that

4-1 phrase unless the home is registered under this chapter. Any public
4-2 advertisement for a registered family home that uses the title
4-3 "registered family home" must contain a provision in bold type
4-4 stating: "THIS HOME IS REGISTERED WITH THE DEPARTMENT OF
4-5 PROTECTIVE AND REGULATORY SERVICES BUT IS NOT LICENSED [~~OR~~
4-6 ~~REGULARLY INSPECTED~~]."

4-7 SECTION 9. Subsection (a), Section 42.071, Human Resources
4-8 Code, is amended to read as follows:

4-9 (a) The department may suspend the license of a facility or
4-10 the registration of a family home that has temporarily ceased
4-11 operation but has definite plans for starting operations again
4-12 [~~within the time limits of the issued license or registration~~].

4-13 SECTION 10. Subsection (c), Section 42.072, Human Resources
4-14 Code, is amended to read as follows:

4-15 (c) A person whose license, listing, registration, or
4-16 certification is revoked, or a corporation of which more than a 20
4-17 percent interest is owned by a person whose license, listing, or
4-18 registration is revoked, may not apply for any license, listing,
4-19 registration, or certification under this chapter before the second
4-20 anniversary of the date on which the revocation takes effect by
4-21 department or court order.

4-22 SECTION 11. Subsection (a), Section 42.076, Human Resources
4-23 Code, is amended to read as follows:

4-24 (a) A person who operates a child-care facility or
4-25 child-placing agency without a license [~~or certificate to operate~~
4-26 ~~under accreditation under Subchapter E~~] commits a Class B
4-27 misdemeanor.

4-28 SECTION 12. Subsection (d), Section 42.077, Human Resources
4-29 Code, is amended to read as follows:

4-30 (d) A facility or family home that receives from the
4-31 department notice that the facility's or home's [has its] license,
4-32 listing, or registration is revoked or suspended shall mail
4-33 notification of this action by certified mail to the parents or
4-34 guardian of the child served by the facility or family home. The
4-35 facility or family home shall mail the notification within five
4-36 days of the effective date of the revocation or suspension of the
4-37 license, listing, or registration, regardless of whether the
4-38 facility or home files an appeal of the revocation or suspension
4-39 with the State Office of Administrative Hearings.

4-40 SECTION 13. The heading to Section 43.003, Human Resources
4-41 Code, is amended to read as follows:

4-42 Sec. 43.003. LICENSE [~~OR ACCREDITATION~~] REQUIRED.

4-43 SECTION 14. Subsection (c), Section 43.003, Human Resources
4-44 Code, is amended to read as follows:

4-45 (c) An individual is not required to have a child-care
4-46 administrator license to serve as a child-care administrator for an
4-47 agency foster home or an agency foster group home [A person may
4-48 serve as the child-care administrator of a child-care institution
4-49 if the person is accredited by a private organization that has
4-50 qualifications that apply to the child-care administrators and that
4-51 meet or exceed the state's qualifications, as determined by the
4-52 department, with the exception of those qualifications relating to
4-53 the internal self-governance of the child-care institution and to
4-54 the curriculum, teaching, or instruction of the institution. This
4-55 subsection applies only to a child-care institution that operates
4-56 under a certificate to operate under accreditation issued by the
4-57 department under Subchapter E, Chapter 42].

4-58 SECTION 15. The following provisions of the Human Resources
4-59 Code are repealed:

- 4-60 (1) Subsection (c), Section 42.0431;
- 4-61 (2) Subsection (c), Section 42.048;
- 4-62 (3) Section 42.0505; and
- 4-63 (4) Subchapter E, Chapter 42.

4-64 SECTION 16. This Act takes effect September 1, 2003.

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