

BILL ANALYSIS

C.S.S.B. 21
By: Nelson
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, prospective employees at licensed child care facilities and registered homes are not required to submit fingerprints for a thorough background check. Recent child deaths in day care facilities have revealed that criminals are working around children.

C.S.S.B. 21 requires prospective employees at licensed child care facilities and registered homes to submit fingerprints to the Department of Family and Protective Services (DFPS) for a background check to be conducted by the Department of Public Safety and the Federal Bureau of Investigation.

C.S.S.B. 21 also adds criminal penalties for all day-care owners and/or operators who do not perform these mandatory criminal history checks through fingerprint identification, or if they continue to allow said person to continue to be present, whether employed or not, at the day-care center after the criminal history checks determine that the person is unsuitable to work in a day-care center.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 3 of this bill.

ANALYSIS

[While the statutory reference in this bill is to the Texas Department of Human Services (DHS), the following amendments affect the Texas Department of Family and Protective Services, as the successor agency to DHS.]

The bill amends Section 42.044, Human Resources Code, by adding Subsection (b-1), to require the Texas Department of Family and Protective Services (DFPS) to meet with the director of a day-care center with daily, on-site responsibility for the operation of the center, to assess whether the director meets the qualifications specified in this chapter and DFPS rules during an unannounced annual inspection of a day-care center. The bill requires DFPS to schedule a subsequent meeting with the director at the center if the director is not present during the unannounced annual inspection.

The bill amends the heading to Section 42.056, Human Resources Code, to read as follows: **REQUIRED BACKGROUND AND CRIMINAL HISTORY CHECKS; CRIMINAL PENALTIES.**

The bill amends Section 42.056, Human Resources Code, by adding Subsections (a-2), (b-1), (g), (h), (i), (j), and (k).

In accordance with rules adopted by the executive commissioner of the Health and Human Services Commission, the bill requires the director, owner, or operator of a day-care center to submit a complete set of fingerprints of each person whose name is submitted by the director, owner, or operator under Subsection (a). The rules adopted by the executive commissioner require that fingerprints be submitted in a form and of a quality acceptable to the Department of

Public Safety (DPS) and the Federal Bureau of Investigation (FBI) to perform a criminal history check and authorizes the rules to require that the fingerprints be submitted electronically through an applicant fingerprinting service center.

In addition to any other background or criminal history check, the bill requires DFPS to conduct a state and FBI criminal history check by submitting prints to DPS and the FBI, and to use resulting information as authorized under Section 411.114, Government Code, and Section 411.087, Government Code.

The bill prohibits anyone from providing direct care or having access to a child in a day-care center before the person's background and criminal history checks are completed. The bill provides that a person may be employed at a day-care center and may provide direct care or have direct access to a child in the day-care center before the person's criminal history check under Subsection (b-1) is completed if: the state criminal history check and the background check using the DFPS records of reported abuse and neglect have been completed under Subsection (b) and the resulting information does not preclude the person from being present at the day-care center; and the day-care center is experiencing a staffing shortage and is in danger of violating DFPS' minimum staff-to-child ratio standards.

The bill requires the director, owner, or operator of the day-care center to immediately terminate a person's employment if the results of a criminal history check under Subsection (b-1) for a person employed by a day-care center during a staffing shortage preclude the person from being present at the day-care center.

The bill creates an offense, a Class B misdemeanor, of a director, owner, or operator of a day-care center knowingly: fails to submit to DFPS information about a person as required by this section and DFPS rules for use in conducting background and criminal history checks with respect to the person; and employs the person at the day-care center or otherwise allows the person to regularly or frequently stay or work at the day-care center while children are being provided care.

The bill creates an offense, a Class B misdemeanor, of a director, owner, or operator, after being notified by the DFPS that, based on a person's criminal history check, the person is precluded from being present at the day-care center, but the director, owner or operator knowingly employs a person or otherwise allows the person to regularly or frequently stay or work at the day-care center while children are being provided care.

The bill amends Subchapter D, Chapter 42 of the Human Resources Code, by adding Section 42.0761. Section 42.0761 creates an offense of a Class B Misdemeanor if an owner or operator of a day-care center knowingly operates the day-care center without a director who meets the qualifications of a director as prescribed by DFPS rules, or without the routine presence of a director during the day-care center's hours of operation.

The bill makes application of Sections 42.056 (a-2), (b-1), (g), and (h) of the Human Resources Code, as added by this Act, prospective.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute differs from the original in that it adds the text "providing criminal penalties" to the relating clause.

The substitute amends the heading to Section 42.056, Human Resources Code, to read as follows: **REQUIRED BACKGROUND AND CRIMINAL HISTORY CHECKS; CRIMINAL PENALTIES.**

The substitute differs from the original by amending Section 42.056, Human Resource Code, by adding exceptions to Subsection (g), which prohibits anyone from providing direct care or

having access to a child in a day-care center before the person's background and criminal history checks are completed. The exceptions to Subsection (g) allow for a day-care center to hire a person before the criminal history check is completed under Subsection (b-1) if: the state criminal history check and the background check using the DFPS' records of reported abuse and neglect have been completed and the resulting information does not preclude the person from being present at the day-care center; and the day-care center is experiencing a staffing shortage and is in danger of violating DFPS' minimum staff-to-child ratio standards.

The substitute differs from the original by amending Section 42.056, Human Resource Code, by adding Subsection (h), which requires a director, owner or operator who hired a person before the criminal history check was completed, to immediately terminate employment of a person once the criminal history check is completed, if the criminal history check precludes the person from being present at the day-care center.

The substitute differs from the original by amending Section 42.056, Human Resource Code, by adding Subsection (i), which creates an offense, a Class B misdemeanor, of a director, owner, or operator of a day-care who knowingly: fails to submit to DFPS information about a person as required by this section and DFPS rules for use in conducting background and criminal history checks with respect to the person; and employs the person at the day-care center or otherwise allows the person to regularly or frequently stay or work at the day-care center while children are being provided care.

The substitute differs from the original by amending Section 42.056, Human Resource Code, by adding Subsection (j), which creates an offense, a Class B misdemeanor, of a director, owner, or operator, after being notified by DFPS that, based on a person's criminal history check, the person is precluded from being present at the day-care center, but the director, owner or operator knowingly continues to employ or otherwise allows the person to be present at the day-care center while children are present.

The substitute differs from the original by amending Section 42.056, Human Resource Code, by adding Subsection (k), which makes the offenses listed under Subsection (i) and (j) a Class B Misdemeanor.

The substitute differs from the original by amending Subchapter D, Chapter 42, Human Resources Code, by adding Section 42.0761 which creates a Class B Misdemeanor if an owner or operator knowingly operates a day-care center with a director who does not meet the qualifications of a director prescribed by DFPS rules, or if the director is not routinely present during the center's hours of operation.

The substitute makes application of Section 42.056, Subsections (a-2), (b-1), (g), and (h) of the Human Resource Code, as amended by this Act, prospective.