

By: Villarreal, et al.

H.B. No. 1385

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the regulation of and licensing exemptions for certain
3 child-care facilities.

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

5 SECTION 1. Section 42.041, Human Resources Code, is amended
6 by amending Subsection (b) and adding Subsection (b-1) to read as
7 follows:

8 (b) This section does not apply to:

- 9 (1) a state-operated facility;
- 10 (2) an agency foster home or agency foster group home;
- 11 (3) a facility that is operated in connection with a
12 shopping center, business, religious organization, or
13 establishment where children are cared for during short periods
14 while parents or persons responsible for the children are attending
15 religious services, shopping, or engaging in other activities on or
16 near the premises, including but not limited to retreats or classes
17 for religious instruction;
- 18 (4) a school or class for religious instruction that
19 does not last longer than two weeks and is conducted by a religious
20 organization during the summer months;
- 21 (5) a youth camp licensed by the [~~Texas~~] Department of
22 State Health Services;
- 23 (6) a facility licensed, operated, certified, or
24 registered by another state agency;

1 (7) subject to Subsection (b-1), an educational
2 facility that is accredited by the Texas Education Agency, ~~[or]~~ the
3 Southern Association of Colleges and Schools, or an accreditation
4 body that is a member of the Texas Private School Accreditation
5 Commission and that operates primarily for educational purposes in
6 grades kindergarten and above, an after-school program operated
7 directly by an accredited educational facility, or an after-school
8 program operated by another entity under contract with the
9 educational facility, if the Texas Education Agency, the ~~[or]~~
10 Southern Association of Colleges and Schools, or the other
11 accreditation body, as applicable, has approved the curriculum
12 content of the after-school program operated under the contract;

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

21 (9) a kindergarten or preschool educational program
22 that is operated as part of a public school or a private school
23 accredited by the Texas Education Agency, that offers educational
24 programs through grade six, and that does not provide custodial
25 care during the hours before or after the customary school day;

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

27 (11) subject to Subsection (b-1), an educational

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

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

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

18 (14) an elementary-age (ages 5-13) recreation program
19 operated by a municipality provided the governing body of the
20 municipality annually adopts standards of care by ordinance after a
21 public hearing for such programs, that such standards are provided
22 to the parents of each program participant, and that the ordinances
23 shall include, at a minimum, staffing ratios, minimum staff
24 qualifications, minimum facility, health, and safety standards,
25 and mechanisms for monitoring and enforcing the adopted local
26 standards; and further provided that parents be informed that the
27 program is not licensed by the state and the program may not be

1 advertised as a child-care facility; or

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

6 (b-1) The following exemptions apply only to an educational
7 facility that operates in a county that has a population of less
8 than 25,000:

9 (1) the exemption provided under Subsection (b)(7) to
10 a facility accredited by an accreditation body that is a member of
11 the Texas Private School Accreditation Commission, an after-school
12 program operated directly by the accredited educational facility,
13 or an after-school program operated by another entity under
14 contract with the accredited educational facility; and

15 (2) the exemption provided under Subsection (b)(11) to
16 a facility that offers educational programs for children who are
17 four years of age.

18 SECTION 2. Chapter 42, Human Resources Code, is amended by
19 adding Subchapter F to read as follows:

20 SUBCHAPTER F. REGULATION OF EMPLOYER-BASED DAY-CARE FACILITIES

21 Sec. 42.151. DEFINITIONS. In this subchapter:

22 (1) "Employer-based day-care facility" means a
23 day-care facility that is:

24 (A) operated by a small employer to provide care
25 to not more than 12 children of the employer's employees; and

26 (B) located on the employer's premises.

27 (2) "Small employer" means a corporation,

1 partnership, sole proprietorship, or other legal entity that
2 employs fewer than 50 full-time employees.

3 Sec. 42.152. PERMIT REQUIRED. (a) Except as provided by
4 Subsection (b), a small employer may not operate an employer-based
5 day-care facility unless the employer holds a permit issued by the
6 department under this subchapter.

7 (b) A small employer is not required to obtain a permit to
8 operate an employer-based day-care facility under this subchapter
9 if the employer holds a license to operate a child-care facility
10 that is issued by the department under Subchapter C. An employer
11 that holds that license must comply with the applicable provisions
12 of Subchapter C, the applicable rules of the department, and any
13 specific terms of the license.

14 (c) Notwithstanding any other law, including Section
15 42.041, a small employer that holds a permit issued under this
16 subchapter is not required to hold a license under Subchapter C to
17 operate an employer-based day-care facility.

18 Sec. 42.153. APPLICATION; INITIAL INSPECTION AND
19 BACKGROUND AND CRIMINAL HISTORY CHECKS. (a) The department shall
20 develop and implement a streamlined procedure by which a small
21 employer may apply for and be issued a permit to operate an
22 employer-based day-care facility. The employer must submit an
23 application for the permit to the department on a form prescribed by
24 the department.

25 (b) Except as provided by Section 42.154, on receipt of a
26 small employer's application for a permit, the department shall:

27 (1) conduct an initial inspection of the

1 employer-based day-care facility to ensure that the employer is
2 able to comply with the provisions of this subchapter and that the
3 facility complies with the fire safety and sanitation standards of
4 the political subdivision in which the facility is located; and

5 (2) conduct a background and criminal history check on
6 each prospective caregiver whose name is submitted as required by
7 Section 42.159(a).

8 (c) The department may charge an applicant an
9 administrative fee in a reasonable amount that is sufficient to
10 cover the costs of the department in processing the application.

11 (d) The department shall process an application not later
12 than the 30th day after the date the department receives all of the
13 required information.

14 Sec. 42.154. CONVERSION OF LICENSE. (a) The department
15 shall develop and implement a procedure by which a small employer
16 that holds a license to operate a child-care facility that is issued
17 under Subchapter C before September 1, 2007, may convert the
18 license to a permit under this subchapter. The procedure must
19 include an abbreviated application form for use by the employer in
20 applying for the permit.

21 (b) The department may waive the requirements under Section
22 42.153(b) for an initial inspection or background and criminal
23 history checks with respect to a facility operated by a small
24 employer seeking to convert a license to a permit under this section
25 if the department determines that previously conducted inspections
26 or background and criminal history checks, as applicable, are
27 sufficient to ensure the safety of children receiving care at the

1 facility.

2 Sec. 42.155. PARENT OR GUARDIAN WITHIN IMMEDIATE VICINITY.

3 An employer-based day-care facility operating under this
4 subchapter may provide care only for a child whose parent or
5 guardian:

6 (1) is an employee of the small employer to which the
7 permit to operate the facility was issued;

8 (2) works within the same building in which the
9 facility is located; and

10 (3) is away from that building only for limited
11 periods, as defined by department rules, during the hours the child
12 is receiving care.

13 Sec. 42.156. CAREGIVER-TO-CHILD RATIO. An employer-based
14 day-care facility operating under this subchapter shall maintain a
15 caregiver-to-child ratio of at least one caregiver to every four
16 children receiving care.

17 Sec. 42.157. MINIMUM STANDARDS. The department shall
18 encourage an employer-based day-care facility operating under this
19 subchapter to comply with the minimum standards applicable to a
20 child-care facility licensed under Subchapter C.

21 Sec. 42.158. CAREGIVER QUALIFICATIONS. A caregiver
22 employed by an employer-based day-care facility operating under
23 this subchapter must:

24 (1) be at least 18 years of age;

25 (2) have received a high school diploma or its
26 equivalent, as determined by the department;

27 (3) receive at least the minimum training required for

1 an employee of a licensed day-care center as prescribed by
2 department rules in accordance with Sections 42.042(p) and 42.0421;

3 (4) have a Child Development Associate or Certified
4 Child-Care Professional credential or an equivalent credential, as
5 determined by the department; and

6 (5) not have been precluded from providing direct care
7 or having direct access to a child by the department based on the
8 results of a background and criminal history check conducted under
9 Section 42.159.

10 Sec. 42.159. BACKGROUND AND CRIMINAL HISTORY CHECKS
11 REQUIRED. (a) In accordance with rules adopted by the executive
12 commissioner, a small employer shall, when applying for a permit
13 under this subchapter and at least once during each 24 months after
14 receiving that permit, submit to the department for use in
15 conducting background and criminal history checks:

16 (1) the name of any director of the employer-based
17 day-care facility and the name of each caregiver employed at the
18 facility to provide care to children; and

19 (2) the name of each person 14 years of age or older
20 who will regularly or frequently be staying or working at the
21 facility while children are being provided care.

22 (b) The small employer shall also submit to the department
23 for use in conducting background and criminal history checks the
24 name of each prospective caregiver who will provide care to
25 children at the facility or other prospective employee who will
26 have direct access to those children.

27 (c) The department shall conduct background and criminal

1 history checks using:

2 (1) the information provided under Subsection (a) or
3 (b), as applicable;

4 (2) the information made available by the Department
5 of Public Safety under Section 411.114, Government Code, or by the
6 Federal Bureau of Investigation or other criminal justice agency
7 under Section 411.087, Government Code; and

8 (3) the department's records of reported abuse and
9 neglect.

10 (d) For purposes of Sections 411.114 and 411.087,
11 Government Code:

12 (1) a small employer that applies for a permit is
13 considered an applicant for a license under this chapter; and

14 (2) an employer-based day-care facility operating
15 under a permit issued under this subchapter is considered a
16 child-care facility licensed under this chapter.

17 (e) The department shall require the small employer to pay
18 to the department a fee in an amount not to exceed the
19 administrative costs the department incurs in conducting a
20 background and criminal history check under this section.

21 Sec. 42.160. APPLICABILITY OF OTHER LAW. Except as
22 otherwise provided by this subchapter, an employer-based day-care
23 facility operating under this subchapter is not a child-care
24 facility, as defined by Section 42.002, and the provisions of this
25 chapter and the department's rules that apply to a child-care
26 facility licensed under Subchapter C do not apply to an
27 employer-based day-care facility.

1 Sec. 42.161. REPORTING OF INCIDENTS AND VIOLATIONS. An
2 employer-based day-care facility operating under this subchapter
3 and each employee of that facility are subject to the reporting
4 requirements of Section 42.063 to the same extent a licensed
5 child-care facility and employees of licensed child-care
6 facilities are subject to that section.

7 Sec. 42.162. AUTHORITY TO CONDUCT LIMITED INSPECTIONS. (a)
8 The department may inspect an employer-based day-care facility
9 operating under this subchapter if the department receives a
10 complaint or report of child abuse or neglect alleged to have
11 occurred at the facility.

12 (b) If the department inspects an employer-based day-care
13 facility as authorized by this section, the department may require
14 the small employer operating the facility to take appropriate
15 corrective action the department determines necessary to comply
16 with the requirements of this subchapter and to ensure the health
17 and safety of children receiving care at the facility. The
18 department may continue to inspect the facility until corrective
19 action is taken and for a reasonable time after that action is taken
20 to ensure continued compliance.

21 (c) The department may charge a small employer issued a
22 permit under this subchapter a reasonable fee for the cost of
23 services provided by the department in formulating, monitoring, and
24 implementing a corrective action plan under this section.

25 Sec. 42.163. SUSPENSION, DENIAL, OR REVOCATION. (a) The
26 department may suspend, deny, or revoke a permit issued to a small
27 employer under this subchapter if the employer does not comply with

1 the provisions of this subchapter or any applicable department
2 rules.

3 (b) The department may refuse to issue a permit under this
4 subchapter to a small employer that had its authorization to
5 operate a child-care facility issued under another subchapter
6 revoked, suspended, or not renewed for a reason relating to child
7 health or safety as determined by the department.

8 (c) An employer-based day-care facility is subject to the
9 emergency suspension of its permit to operate and to closure under
10 Section 42.073 to the same extent and in the same manner as a
11 licensed child-care facility is subject to that section.

12 SECTION 3. This Act takes effect September 1, 2007.