

By: Villarreal

H.B. No. 1385

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain employer-based day-care facilities.

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

SECTION 1. Chapter 42, Human Resources Code, is amended by adding Subchapter F to read as follows:

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

Sec. 42.151. DEFINITIONS. In this subchapter:

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

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

(B) located on the employer's premises.

(2) "Small employer" means a corporation, partnership, sole proprietorship, or other legal entity that employs fewer than 50 full-time employees.

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

(b) A small employer is not required to obtain a permit to operate an employer-based day-care facility under this subchapter if the employer holds a license to operate a child-care facility that is issued by the department under Subchapter C. An employer

1 that holds that license must comply with the applicable provisions  
2 of Subchapter C, the applicable rules of the department, and any  
3 specific terms of the license.

4 (c) Notwithstanding any other law, including Section  
5 42.041, a small employer that holds a permit issued under this  
6 subchapter is not required to hold a license under Subchapter C to  
7 operate an employer-based day-care facility.

8 Sec. 42.153. APPLICATION; INITIAL INSPECTION AND  
9 BACKGROUND AND CRIMINAL HISTORY CHECKS. (a) The department shall  
10 develop and implement a streamlined procedure by which a small  
11 employer may apply for and be issued a permit to operate an  
12 employer-based day-care facility. The employer must submit an  
13 application for the permit to the department on a form prescribed by  
14 the department.

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

17 (1) conduct an initial inspection of the  
18 employer-based day-care facility to ensure that the employer is  
19 able to comply with the provisions of this subchapter and that the  
20 facility complies with the fire safety and sanitation standards of  
21 the political subdivision in which the facility is located; and

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

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

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

4        Sec. 42.154. CONVERSION OF LICENSE. (a) The department  
5 shall develop and implement a procedure by which a small employer  
6 that holds a license to operate a child-care facility that is issued  
7 under Subchapter C before September 1, 2007, may convert the  
8 license to a permit under this subchapter. The procedure must  
9 include an abbreviated application form for use by the employer in  
10 applying for the permit.

11        (b) The department may waive the requirements under Section  
12 42.153(b) for an initial inspection or background and criminal  
13 history checks with respect to a facility operated by a small  
14 employer seeking to convert a license to a permit under this section  
15 if the department determines that previously conducted inspections  
16 or background and criminal history checks, as applicable, are  
17 sufficient to ensure the safety of children receiving care at the  
18 facility.

19        Sec. 42.155. PARENT OR GUARDIAN WITHIN IMMEDIATE VICINITY.  
20 An employer-based day-care facility operating under this  
21 subchapter may provide care only for a child whose parent or  
22 guardian:

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

25            (2) works within the same building in which the  
26 facility is located; and

27            (3) is away from that building only for limited

1 periods, as defined by department rules, during the hours the child  
2 is receiving care.

3 Sec. 42.156. CAREGIVER-TO-CHILD RATIO. An employer-based  
4 day-care facility operating under this subchapter shall maintain a  
5 caregiver-to-child ratio of at least one caregiver to every three  
6 children receiving care.

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

11 Sec. 42.158. CAREGIVER QUALIFICATIONS. A caregiver  
12 employed by an employer-based day-care facility operating under  
13 this subchapter must:

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

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

17 (3) receive at least the minimum training required for  
18 an employee of a licensed day-care center as prescribed by  
19 department rules in accordance with Sections 42.042(p) and 42.0421;

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

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

27 Sec. 42.159. BACKGROUND AND CRIMINAL HISTORY CHECKS

1 REQUIRED. (a) In accordance with rules adopted by the executive  
2 commissioner, a small employer shall, when applying for a permit  
3 under this subchapter and at least once during each 24 months after  
4 receiving that permit, submit to the department for use in  
5 conducting background and criminal history checks:

6 (1) the name of any director of the employer-based  
7 day-care facility and the name of each caregiver employed at the  
8 facility to provide care to children; and

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

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

17 (c) The department shall conduct background and criminal  
18 history checks using:

19 (1) the information provided under Subsection (a) or  
20 (b), as applicable;

21 (2) the information made available by the Department  
22 of Public Safety under Section 411.114, Government Code, or by the  
23 Federal Bureau of Investigation or other criminal justice agency  
24 under Section 411.087, Government Code; and

25 (3) the department's records of reported abuse and  
26 neglect.

27 (d) For purposes of Sections 411.114 and 411.087,

1 Government Code:

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

4 (2) an employer-based day-care facility operating  
5 under a permit issued under this subchapter is considered a  
6 child-care facility licensed under this chapter.

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

11 Sec. 42.160. APPLICABILITY OF OTHER LAW. Except as  
12 otherwise provided by this subchapter, an employer-based day-care  
13 facility operating under this subchapter is not a child-care  
14 facility, as defined by Section 42.002, and the provisions of this  
15 chapter and the department's rules that apply to a child-care  
16 facility licensed under Subchapter C do not apply to an  
17 employer-based day-care facility.

18 Sec. 42.161. REPORTING OF INCIDENTS AND VIOLATIONS. An  
19 employer-based day-care facility operating under this subchapter  
20 and each employee of that facility are subject to the reporting  
21 requirements of Section 42.063 to the same extent a licensed  
22 child-care facility and employees of licensed child-care  
23 facilities are subject to that section.

24 Sec. 42.162. AUTHORITY TO CONDUCT LIMITED INSPECTIONS. (a)  
25 The department may inspect an employer-based day-care facility  
26 operating under this subchapter if the department receives a  
27 complaint or report of child abuse or neglect alleged to have

1 occurred at the facility.

2 (b) If the department inspects an employer-based day-care  
3 facility as authorized by this section, the department may require  
4 the small employer operating the facility to take appropriate  
5 corrective action the department determines necessary to comply  
6 with the requirements of this subchapter and to ensure the health  
7 and safety of children receiving care at the facility. The  
8 department may continue to inspect the facility until corrective  
9 action is taken and for a reasonable time after that action is taken  
10 to ensure continued compliance.

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

15 Sec. 42.163. SUSPENSION, DENIAL, OR REVOCATION. (a) The  
16 department may suspend, deny, or revoke a permit issued to a small  
17 employer under this subchapter if the employer does not comply with  
18 the provisions of this subchapter or any applicable department  
19 rules.

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

25 (c) An employer-based day-care facility is subject to the  
26 emergency suspension of its permit to operate and to closure under  
27 Section 42.073 to the same extent and in the same manner as a

1 licensed child-care facility is subject to that section.

2 Sec. 42.164. EXPIRATION. (a) This subchapter expires  
3 September 1, 2009.

4 (b) A small employer operating an employer-based day-care  
5 facility under this subchapter may not continue to operate the  
6 facility after the date this subchapter expires as provided by  
7 Subsection (a) unless the small employer applies for and is issued a  
8 license to operate a child-care facility under this chapter.

9 SECTION 2. This Act takes effect September 1, 2007.