

1-1 By: Villarreal, et al. (Senate Sponsor - Uresti) H.B. No. 1385
1-2 (In the Senate - Received from the House May 14, 2007;
1-3 May 15, 2007, read first time and referred to Committee on Health
1-4 and Human Services; May 18, 2007, reported favorably by the
1-5 following vote: Yeas 6, Nays 0; May 18, 2007, sent to printer.)

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

1-8 relating to the regulation of and licensing exemptions for certain
1-9 child-care facilities.

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

1-11 SECTION 1. Section 42.041, Human Resources Code, is amended
1-12 by amending Subsection (b) and adding Subsection (b-1) to read as
1-13 follows:

1-14 (b) This section does not apply to:

1-15 (1) a state-operated facility;

1-16 (2) an agency foster home or agency foster group home;

1-17 (3) a facility that is operated in connection with a
1-18 shopping center, business, religious organization, or
1-19 establishment where children are cared for during short periods
1-20 while parents or persons responsible for the children are attending
1-21 religious services, shopping, or engaging in other activities on or
1-22 near the premises, including but not limited to retreats or classes
1-23 for religious instruction;

1-24 (4) a school or class for religious instruction that
1-25 does not last longer than two weeks and is conducted by a religious
1-26 organization during the summer months;

1-27 (5) a youth camp licensed by the [~~Texas~~] Department of
1-28 State Health Services;

1-29 (6) a facility licensed, operated, certified, or
1-30 registered by another state agency;

1-31 (7) subject to Subsection (b-1), an educational
1-32 facility that is accredited by the Texas Education Agency, [~~or~~] the
1-33 Southern Association of Colleges and Schools, or an accreditation
1-34 body that is a member of the Texas Private School Accreditation
1-35 Commission and that operates primarily for educational purposes in
1-36 grades kindergarten and above, an after-school program operated
1-37 directly by an accredited educational facility, or an after-school
1-38 program operated by another entity under contract with the
1-39 educational facility, if the Texas Education Agency, the [~~or~~]
1-40 Southern Association of Colleges and Schools, or the other
1-41 accreditation body, as applicable, has approved the curriculum
1-42 content of the after-school program operated under the contract;

1-43 (8) an educational facility that operates solely for
1-44 educational purposes in grades kindergarten through at least grade
1-45 two, that does not provide custodial care for more than one hour
1-46 during the hours before or after the customary school day, and that
1-47 is a member of an organization that promulgates, publishes, and
1-48 requires compliance with health, safety, fire, and sanitation
1-49 standards equal to standards required by state, municipal, and
1-50 county codes;

1-51 (9) a kindergarten or preschool educational program
1-52 that is operated as part of a public school or a private school
1-53 accredited by the Texas Education Agency, that offers educational
1-54 programs through grade six, and that does not provide custodial
1-55 care during the hours before or after the customary school day;

1-56 (10) a family home, whether registered or listed;

1-57 (11) subject to Subsection (b-1), an educational
1-58 facility that is integral to and inseparable from its sponsoring
1-59 religious organization or an educational facility both of which do
1-60 not provide custodial care for more than two hours maximum per day,
1-61 and that offers educational programs for children age four [~~five~~]
1-62 and above in one or more of the following: preschool, kindergarten
1-63 through at least grade three, elementary, or secondary grades;

1-64 (12) an emergency shelter facility providing shelter

2-1 to minor mothers who are the sole support of their natural children
2-2 under Section 32.201, Family Code, unless the facility would
2-3 otherwise require a license as a child-care facility under this
2-4 section;

2-5 (13) a juvenile detention facility certified under
2-6 Section 51.12, Family Code, or Section 141.042(d), a juvenile
2-7 facility providing services solely for the Texas Youth Commission,
2-8 or any other correctional facility for children operated or
2-9 regulated by another state agency or by a political subdivision of
2-10 the state;

2-11 (14) an elementary-age (ages 5-13) recreation program
2-12 operated by a municipality provided the governing body of the
2-13 municipality annually adopts standards of care by ordinance after a
2-14 public hearing for such programs, that such standards are provided
2-15 to the parents of each program participant, and that the ordinances
2-16 shall include, at a minimum, staffing ratios, minimum staff
2-17 qualifications, minimum facility, health, and safety standards,
2-18 and mechanisms for monitoring and enforcing the adopted local
2-19 standards; and further provided that parents be informed that the
2-20 program is not licensed by the state and the program may not be
2-21 advertised as a child-care facility; or

2-22 (15) an annual youth camp held in a municipality with a
2-23 population of more than 1.5 million that operates for not more than
2-24 three months and that has been operated for at least 10 years by a
2-25 nonprofit organization that provides care for the homeless.

2-26 (b-1) The following exemptions apply only to an educational
2-27 facility that operates in a county that has a population of less
2-28 than 25,000:

2-29 (1) the exemption provided under Subsection (b)(7) to
2-30 a facility accredited by an accreditation body that is a member of
2-31 the Texas Private School Accreditation Commission, an after-school
2-32 program operated directly by the accredited educational facility,
2-33 or an after-school program operated by another entity under
2-34 contract with the accredited educational facility; and

2-35 (2) the exemption provided under Subsection (b)(11) to
2-36 a facility that offers educational programs for children who are
2-37 four years of age.

2-38 SECTION 2. Chapter 42, Human Resources Code, is amended by
2-39 adding Subchapter F to read as follows:

2-40 SUBCHAPTER F. REGULATION OF EMPLOYER-BASED DAY-CARE FACILITIES

2-41 Sec. 42.151. DEFINITIONS. In this subchapter:

2-42 (1) "Employer-based day-care facility" means a
2-43 day-care facility that is:

2-44 (A) operated by a small employer to provide care
2-45 to not more than 12 children of the employer's employees; and

2-46 (B) located on the employer's premises.

2-47 (2) "Small employer" means a corporation,
2-48 partnership, sole proprietorship, or other legal entity that
2-49 employs fewer than 50 full-time employees.

2-50 Sec. 42.152. PERMIT REQUIRED. (a) Except as provided by
2-51 Subsection (b), a small employer may not operate an employer-based
2-52 day-care facility unless the employer holds a permit issued by the
2-53 department under this subchapter.

2-54 (b) A small employer is not required to obtain a permit to
2-55 operate an employer-based day-care facility under this subchapter
2-56 if the employer holds a license to operate a child-care facility
2-57 that is issued by the department under Subchapter C. An employer
2-58 that holds that license must comply with the applicable provisions
2-59 of Subchapter C, the applicable rules of the department, and any
2-60 specific terms of the license.

2-61 (c) Notwithstanding any other law, including Section
2-62 42.041, a small employer that holds a permit issued under this
2-63 subchapter is not required to hold a license under Subchapter C to
2-64 operate an employer-based day-care facility.

2-65 Sec. 42.153. APPLICATION; INITIAL INSPECTION AND
2-66 BACKGROUND AND CRIMINAL HISTORY CHECKS. (a) The department shall
2-67 develop and implement a streamlined procedure by which a small
2-68 employer may apply for and be issued a permit to operate an
2-69 employer-based day-care facility. The employer must submit an

3-1 application for the permit to the department on a form prescribed by
 3-2 the department.

3-3 (b) Except as provided by Section 42.154, on receipt of a
 3-4 small employer's application for a permit, the department shall:

3-5 (1) conduct an initial inspection of the
 3-6 employer-based day-care facility to ensure that the employer is
 3-7 able to comply with the provisions of this subchapter and that the
 3-8 facility complies with the fire safety and sanitation standards of
 3-9 the political subdivision in which the facility is located; and

3-10 (2) conduct a background and criminal history check on
 3-11 each prospective caregiver whose name is submitted as required by
 3-12 Section 42.159(a).

3-13 (c) The department may charge an applicant an
 3-14 administrative fee in a reasonable amount that is sufficient to
 3-15 cover the costs of the department in processing the application.

3-16 (d) The department shall process an application not later
 3-17 than the 30th day after the date the department receives all of the
 3-18 required information.

3-19 Sec. 42.154. CONVERSION OF LICENSE. (a) The department
 3-20 shall develop and implement a procedure by which a small employer
 3-21 that holds a license to operate a child-care facility that is issued
 3-22 under Subchapter C before September 1, 2007, may convert the
 3-23 license to a permit under this subchapter. The procedure must
 3-24 include an abbreviated application form for use by the employer in
 3-25 applying for the permit.

3-26 (b) The department may waive the requirements under Section
 3-27 42.153(b) for an initial inspection or background and criminal
 3-28 history checks with respect to a facility operated by a small
 3-29 employer seeking to convert a license to a permit under this section
 3-30 if the department determines that previously conducted inspections
 3-31 or background and criminal history checks, as applicable, are
 3-32 sufficient to ensure the safety of children receiving care at the
 3-33 facility.

3-34 Sec. 42.155. PARENT OR GUARDIAN WITHIN IMMEDIATE VICINITY.
 3-35 An employer-based day-care facility operating under this
 3-36 subchapter may provide care only for a child whose parent or
 3-37 guardian:

3-38 (1) is an employee of the small employer to which the
 3-39 permit to operate the facility was issued;

3-40 (2) works within the same building in which the
 3-41 facility is located; and

3-42 (3) is away from that building only for limited
 3-43 periods, as defined by department rules, during the hours the child
 3-44 is receiving care.

3-45 Sec. 42.156. CAREGIVER-TO-CHILD RATIO. An employer-based
 3-46 day-care facility operating under this subchapter shall maintain a
 3-47 caregiver-to-child ratio of at least one caregiver to every four
 3-48 children receiving care.

3-49 Sec. 42.157. MINIMUM STANDARDS. The department shall
 3-50 encourage an employer-based day-care facility operating under this
 3-51 subchapter to comply with the minimum standards applicable to a
 3-52 child-care facility licensed under Subchapter C.

3-53 Sec. 42.158. CAREGIVER QUALIFICATIONS. A caregiver
 3-54 employed by an employer-based day-care facility operating under
 3-55 this subchapter must:

3-56 (1) be at least 18 years of age;

3-57 (2) have received a high school diploma or its
 3-58 equivalent, as determined by the department;

3-59 (3) receive at least the minimum training required for
 3-60 an employee of a licensed day-care center as prescribed by
 3-61 department rules in accordance with Sections 42.042(p) and 42.0421;

3-62 (4) have a Child Development Associate or Certified
 3-63 Child-Care Professional credential or an equivalent credential, as
 3-64 determined by the department; and

3-65 (5) not have been precluded from providing direct care
 3-66 or having direct access to a child by the department based on the
 3-67 results of a background and criminal history check conducted under
 3-68 Section 42.159.

3-69 Sec. 42.159. BACKGROUND AND CRIMINAL HISTORY CHECKS

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

4-6 (1) the name of any director of the employer-based
 4-7 day-care facility and the name of each caregiver employed at the
 4-8 facility to provide care to children; and

4-9 (2) the name of each person 14 years of age or older
 4-10 who will regularly or frequently be staying or working at the
 4-11 facility while children are being provided care.

4-12 (b) The small employer shall also submit to the department
 4-13 for use in conducting background and criminal history checks the
 4-14 name of each prospective caregiver who will provide care to
 4-15 children at the facility or other prospective employee who will
 4-16 have direct access to those children.

4-17 (c) The department shall conduct background and criminal
 4-18 history checks using:

4-19 (1) the information provided under Subsection (a) or
 4-20 (b), as applicable;

4-21 (2) the information made available by the Department
 4-22 of Public Safety under Section 411.114, Government Code, or by the
 4-23 Federal Bureau of Investigation or other criminal justice agency
 4-24 under Section 411.087, Government Code; and

4-25 (3) the department's records of reported abuse and
 4-26 neglect.

4-27 (d) For purposes of Sections 411.114 and 411.087,
 4-28 Government Code:

4-29 (1) a small employer that applies for a permit is
 4-30 considered an applicant for a license under this chapter; and

4-31 (2) an employer-based day-care facility operating
 4-32 under a permit issued under this subchapter is considered a
 4-33 child-care facility licensed under this chapter.

4-34 (e) The department shall require the small employer to pay
 4-35 to the department a fee in an amount not to exceed the
 4-36 administrative costs the department incurs in conducting a
 4-37 background and criminal history check under this section.

4-38 Sec. 42.160. APPLICABILITY OF OTHER LAW. Except as
 4-39 otherwise provided by this subchapter, an employer-based day-care
 4-40 facility operating under this subchapter is not a child-care
 4-41 facility, as defined by Section 42.002, and the provisions of this
 4-42 chapter and the department's rules that apply to a child-care
 4-43 facility licensed under Subchapter C do not apply to an
 4-44 employer-based day-care facility.

4-45 Sec. 42.161. REPORTING OF INCIDENTS AND VIOLATIONS. An
 4-46 employer-based day-care facility operating under this subchapter
 4-47 and each employee of that facility are subject to the reporting
 4-48 requirements of Section 42.063 to the same extent a licensed
 4-49 child-care facility and employees of licensed child-care
 4-50 facilities are subject to that section.

4-51 Sec. 42.162. AUTHORITY TO CONDUCT LIMITED INSPECTIONS. (a)
 4-52 The department may inspect an employer-based day-care facility
 4-53 operating under this subchapter if the department receives a
 4-54 complaint or report of child abuse or neglect alleged to have
 4-55 occurred at the facility.

4-56 (b) If the department inspects an employer-based day-care
 4-57 facility as authorized by this section, the department may require
 4-58 the small employer operating the facility to take appropriate
 4-59 corrective action the department determines necessary to comply
 4-60 with the requirements of this subchapter and to ensure the health
 4-61 and safety of children receiving care at the facility. The
 4-62 department may continue to inspect the facility until corrective
 4-63 action is taken and for a reasonable time after that action is taken
 4-64 to ensure continued compliance.

4-65 (c) The department may charge a small employer issued a
 4-66 permit under this subchapter a reasonable fee for the cost of
 4-67 services provided by the department in formulating, monitoring, and
 4-68 implementing a corrective action plan under this section.

4-69 Sec. 42.163. SUSPENSION, DENIAL, OR REVOCATION. (a) The

5-1 department may suspend, deny, or revoke a permit issued to a small
5-2 employer under this subchapter if the employer does not comply with
5-3 the provisions of this subchapter or any applicable department
5-4 rules.

5-5 (b) The department may refuse to issue a permit under this
5-6 subchapter to a small employer that had its authorization to
5-7 operate a child-care facility issued under another subchapter
5-8 revoked, suspended, or not renewed for a reason relating to child
5-9 health or safety as determined by the department.

5-10 (c) An employer-based day-care facility is subject to the
5-11 emergency suspension of its permit to operate and to closure under
5-12 Section 42.073 to the same extent and in the same manner as a
5-13 licensed child-care facility is subject to that section.

5-14 SECTION 3. This Act takes effect September 1, 2007.

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