

By: Swinford

H.B. No. 1786

A BILL TO BE ENTITLED

AN ACT

relating to certain regulations and licensing exemptions applying to certain child-care programs.

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

SECTION 1. Section 42.041(b), Human Resources Code, is amended to read as follows:

(b) This section does not apply to:

(1) a state-operated facility;

(2) an agency foster home or agency foster group home;

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

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

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

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

(7) an educational facility accredited by the Texas

1 Education Agency or the Southern Association of Colleges and
2 Schools that operates primarily for educational purposes in grades
3 kindergarten and above, an after-school program operated directly
4 by an accredited educational facility, or an after-school program
5 operated by another entity under contract with the educational
6 facility, if the Texas Education Agency or Southern Association of
7 Colleges and Schools has approved the curriculum content of the
8 after-school program operated under the contract;

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

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

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

23 (11) an educational facility that is integral to and
24 inseparable from its sponsoring religious organization or an
25 educational facility both of which do not provide custodial care
26 for more than two hours maximum per day, and that offers educational
27 programs for children age five and above in one or more of the

1 following: kindergarten through at least grade three, elementary,
2 or secondary grades;

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

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

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

25 (15) an annual youth camp held in a municipality with a
26 population of more than 1.5 million that operates for not more than
27 three months and that has been operated for at least 10 years by a

1 nonprofit organization that provides care for the homeless;

2 (16) a food distribution program that:

3 (A) serves an evening meal to children two years
4 of age or older; and

5 (B) is operated by a nonprofit food bank in a
6 nonprofit, religious, or educational facility for not more than two
7 hours a day on regular business days; or

8 (17) an elementary-age (ages 5-13) recreational
9 program operated by a nonprofit corporation that:

10 (A) adopts standards of care, including
11 standards relating to staff ratios, staff training, health, and
12 safety;

13 (B) provides a mechanism for monitoring and
14 enforcing the standards and receiving complaints from parents of
15 enrolled children;

16 (C) does not advertise as a child-care facility
17 or day-care center and informs parents that it is not licensed by
18 the state;

19 (D) does not collect compensation for its
20 services;

21 (E) allows parents to enroll children in and
22 remove children from the program at will; and

23 (F) conducts background checks using information
24 from the Department of Public Safety for all program employees and
25 volunteers who work with children.

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

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

2 Sec. 42.151. DEFINITIONS. In this subchapter:

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

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

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

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

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

15 (b) A small employer is not required to obtain a permit to
16 operate an employer-based day-care facility under this subchapter
17 if the employer holds a license to operate a child-care facility
18 that is issued by the department under Subchapter C. An employer
19 that holds that license must comply with the applicable provisions
20 of Subchapter C, the applicable rules of the department, and any
21 specific terms of the license.

22 (c) Notwithstanding any other law, including Section
23 42.041, a small employer that holds a permit issued under this
24 subchapter is not required to hold a license under Subchapter C to
25 operate an employer-based day-care facility.

26 Sec. 42.153. APPLICATION; INITIAL INSPECTION AND
27 BACKGROUND AND CRIMINAL HISTORY CHECKS. (a) The department shall

1 develop and implement a streamlined procedure by which a small
2 employer may apply for and be issued a permit to operate an
3 employer-based day-care facility. The employer must submit an
4 application for the permit to the department on a form prescribed by
5 the department.

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

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

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

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

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

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

1 applying for the permit.

2 (b) The department may waive the requirements under Section
3 42.153(b) for an initial inspection or background and criminal
4 history checks with respect to a facility operated by a small
5 employer seeking to convert a license to a permit under this section
6 if the department determines that previously conducted inspections
7 or background and criminal history checks, as applicable, are
8 sufficient to ensure the safety of children receiving care at the
9 facility.

10 Sec. 42.155. PARENT OR GUARDIAN WITHIN IMMEDIATE VICINITY.
11 An employer-based day-care facility operating under this
12 subchapter may provide care only for a child whose parent or
13 guardian:

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

16 (2) works within the same building in which the
17 facility is located; and

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

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

25 Sec. 42.157. MINIMUM STANDARDS. The department shall
26 encourage an employer-based day-care facility operating under this
27 subchapter to comply with the minimum standards applicable to a

1 child-care facility licensed under Subchapter C.

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

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

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

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

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

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

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

24 (1) the name of any director of the employer-based
25 day-care facility and the name of each caregiver employed at the
26 facility to provide care to children; and

27 (2) the name of each person 14 years of age or older

1 who will regularly or frequently be staying or working at the
2 facility while children are being provided care.

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

8 (c) The department shall conduct background and criminal
9 history checks using:

10 (1) the information provided under Subsection (a) or
11 (b), as applicable;

12 (2) the information made available by the Department
13 of Public Safety under Section 411.114, Government Code, or by the
14 Federal Bureau of Investigation or other criminal justice agency
15 under Section 411.087, Government Code; and

16 (3) the department's records of reported abuse and
17 neglect.

18 (d) For purposes of Sections 411.114 and 411.087,
19 Government Code:

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

22 (2) an employer-based day-care facility operating
23 under a permit issued under this subchapter is considered a
24 child-care facility licensed under this chapter.

25 (e) The department shall require the small employer to pay
26 to the department a fee in an amount not to exceed the
27 administrative costs the department incurs in conducting a

1 background and criminal history check under this section.

2 Sec. 42.160. APPLICABILITY OF OTHER LAW. Except as
3 otherwise provided by this subchapter, an employer-based day-care
4 facility operating under this subchapter is not a child-care
5 facility, as defined by Section 42.002, and the provisions of this
6 chapter and the department's rules that apply to a child-care
7 facility licensed under Subchapter C do not apply to an
8 employer-based day-care facility.

9 Sec. 42.161. REPORTING OF INCIDENTS AND VIOLATIONS. An
10 employer-based day-care facility operating under this subchapter
11 and each employee of that facility are subject to the reporting
12 requirements of Section 42.063 to the same extent a licensed
13 child-care facility and employees of licensed child-care
14 facilities are subject to that section.

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

20 (b) If the department inspects an employer-based day-care
21 facility as authorized by this section, the department may require
22 the small employer operating the facility to take appropriate
23 corrective action the department determines necessary to comply
24 with the requirements of this subchapter and to ensure the health
25 and safety of children receiving care at the facility. The
26 department may continue to inspect the facility until corrective
27 action is taken and for a reasonable time after that action is taken

1 to ensure continued compliance.

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

6 Sec. 42.163. SUSPENSION, DENIAL, OR REVOCATION. (a) The
7 department may suspend, deny, or revoke a permit issued to a small
8 employer under this subchapter if the employer does not comply with
9 the provisions of this subchapter or any applicable department
10 rules.

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

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

20 Sec. 42.164. EXPIRATION. (a) This subchapter expires
21 September 1, 2009.

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

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