

By: Rose

H.B. No. 3040

A BILL TO BE ENTITLED

AN ACT

relating to background and criminal history checks for certain providers of subsidized child care.

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

SECTION 1. Subtitle B, Title 4, Labor Code, is amended by adding Chapter 312 to read as follows:

CHAPTER 312. BACKGROUND AND CRIMINAL HISTORY CHECKS FOR PROVIDERS
OF UNREGULATED SELF-ARRANGED CHILD CARE

Sec. 312.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of Family and Protective Services.

(2) "Unregulated self-arranged child care" means child care that is:

(A) funded wholly or partly from money received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. Section 9858 et seq.); and

(B) provided by a provider who:

(i) is at least 18 years of age;

(ii) complies with any federal or state requirements regarding subsidized child care that apply to the provider;

(iii) provides child-care services for less than 24 hours a day to a child who is, by marriage, blood relationship, or court decree:

- 1 (a) the grandchild of the provider;
2 (b) the great-grandchild of the
3 provider;
4 (c) the sibling of the provider, and
5 the child resides in a separate residence from the provider; or
6 (d) the niece or nephew of the
7 provider; and
8 (iv) does not hold a license, listing, or
9 registration issued under Chapter 42, Human Resources Code, to
10 provide care for children for less than 24 hours a day.

11 Sec. 312.002. MEMORANDUM OF UNDERSTANDING. The commission
12 and the department shall adopt a memorandum of understanding
13 regarding the administration and payment of costs of background and
14 criminal history checks required under this chapter.

15 Sec. 312.003. REQUIREMENTS FOR UNREGULATED SELF-ARRANGED
16 CHILD CARE. The commission shall ensure that money appropriated to
17 the commission that is used by the commission or a workforce
18 development board to pay for child-care services provided by an
19 unregulated self-arranged child-care provider is used only to pay
20 for care provided by a provider who, after completion of a
21 background and criminal history check required by this chapter, is
22 not precluded from providing that care.

23 Sec. 312.004. REQUIRED BACKGROUND AND CRIMINAL HISTORY
24 CHECK. (a) In accordance with department rules, an individual
25 seeking to provide unregulated self-arranged child care shall,
26 before beginning to provide that care, submit to the department for
27 use in conducting a background and criminal history check:

1 (1) the individual's name; and

2 (2) a complete set of the individual's fingerprints in
3 a form and of a quality acceptable to the Department of Public
4 Safety and the Federal Bureau of Investigation for conducting a
5 criminal history check.

6 (b) The department shall conduct background and criminal
7 history checks using:

8 (1) the information provided by an individual under
9 this section;

10 (2) the information made available by the Department
11 of Public Safety under Section 411.114, Government Code, and by the
12 Federal Bureau of Investigation and any other criminal justice
13 agency under Section 411.087, Government Code, after the department
14 submits fingerprints provided by an individual under this section
15 to the Department of Public Safety for the purpose of conducting a
16 state and federal criminal history check; and

17 (3) the department's registry of reported abuse and
18 neglect established under Section 261.002, Family Code.

19 (c) In determining whether to preclude an individual from
20 providing unregulated self-arranged child care, the department
21 shall use the standards that apply in conducting background and
22 criminal history checks under Section 42.056, Human Resources Code,
23 for employees of licensed day-care centers.

24 (d) A provider of unregulated self-arranged child care for
25 whom a background and criminal history check was conducted under
26 this section and who, following that check, has continuously
27 received payments for providing that care shall, not later than the

1 fifth anniversary of the date the previous check was completed,
2 submit the information described by Subsection (a) to the
3 department. The department shall use that information to conduct a
4 background and criminal history check in the manner prescribed by
5 Subsections (b) and (c). A provider of unregulated self-arranged
6 child care for whom a background and criminal history check was
7 conducted who ceased providing that care and who seeks to resume
8 providing that care must provide the information described by
9 Subsection (a) and undergo another background and criminal history
10 check unless the department determines that the check is
11 unnecessary based on the length of elapsed time since the previous
12 check was conducted.

13 (e) The commission must provide notice of the background and
14 criminal history check requirement to the parent or guardian of the
15 child who will receive care through an unregulated self-arranged
16 child-care provider before the parent or guardian selects the
17 provider.

18 Sec. 312.005. COSTS. (a) In accordance with the
19 memorandum of understanding adopted under Section 312.002, the
20 commission shall pay to the department the costs incurred by the
21 department in conducting background and criminal history checks
22 under this chapter using funds available for that purpose under the
23 Child Care and Development Block Grant Act of 1990 (42 U.S.C.
24 Section 9858 et seq.).

25 (b) The commission by rule shall require a local workforce
26 development board to reimburse the commission for costs paid by the
27 commission under Subsection (a) with respect to an individual who,

1 after a background and criminal history check is conducted, is not
2 precluded from providing unregulated self-arranged child care and
3 begins receiving payments for providing that care. To reimburse
4 the commission, the board shall withhold the amount of those costs
5 for that individual from the first child-care payment made to the
6 individual and shall remit that amount to the commission.

7 SECTION 2. Section 411.114(a)(2), Government Code, is
8 amended to read as follows:

9 (2) The Department of Family and Protective Services
10 shall obtain from the department criminal history record
11 information maintained by the department that relates to a person
12 who is:

13 (A) an applicant for a license, registration,
14 certification, or listing under Chapter 42, Human Resources Code,
15 or Chapter 249, Health and Safety Code;

16 (B) an owner, operator, or employee of or an
17 applicant for employment by a child-care facility, child-placing
18 agency, family home, or maternity home licensed, registered,
19 certified, or listed under Chapter 42, Human Resources Code, or
20 Chapter 249, Health and Safety Code;

21 (C) a person 14 years of age or older who will be
22 regularly or frequently working or staying in a child-care
23 facility, family home, or maternity home while children are being
24 provided care, other than a child in the care of the home or
25 facility;

26 (D) an applicant selected for a position with the
27 Department of Family and Protective Services, the duties of which

1 include direct delivery of protective services to children, elderly
2 persons, or persons with a disability;

3 (E) an employee of, an applicant for employment
4 with, or a volunteer or an applicant volunteer with a business
5 entity or person that contracts with the Department of Family and
6 Protective Services to provide direct delivery of protective
7 services to children, elderly persons, or persons with a
8 disability, if the person's duties or responsibilities include
9 direct contact with children, elderly persons, or persons with a
10 disability;

11 (F) a registered volunteer with the Department of
12 Family and Protective Services;

13 (G) a person providing or applying to provide
14 in-home, adoptive, or foster care for children in the care of the
15 Department of Family and Protective Services and other persons
16 living in the residence in which the child will reside;

17 (H) a Department of Family and Protective
18 Services employee who is engaged in the direct delivery of
19 protective services to children, elderly persons, or persons with a
20 disability;

21 (I) a person who is the subject of a report the
22 Department of Family and Protective Services receives alleging that
23 the person has abused, neglected, or exploited a child, an elderly
24 person, or a person with a disability, provided that:

25 (i) the report alleges the person has
26 engaged in conduct that meets the statutory definition of abuse,
27 neglect, or exploitation under Chapter 261, Family Code, or Chapter

1 48, Human Resources Code; and

2 (ii) the person who is the subject of the
3 report is not also the victim of the alleged conduct;

4 (J) a person providing child care for a child who
5 is in the care of the Department of Family and Protective Services
6 and who is or will be receiving adoptive, foster, or in-home care;

7 (K) through a contract with a nonprofit
8 management center, an employee of, an applicant for employment
9 with, or a volunteer or an applicant volunteer with a nonprofit,
10 tax-exempt organization that provides any service that involves the
11 care of or access to children, elderly persons, or persons with a
12 disability; ~~[or]~~

13 (L) an applicant for a child-care administrator
14 or child-placing agency administrator license under Chapter 43,
15 Human Resources Code; or

16 (M) a provider or prospective provider of
17 unregulated self-arranged child care, as defined by Section
18 312.001, Labor Code.

19 SECTION 3. If before implementing any provision of this Act
20 a state agency determines that a waiver or authorization from a
21 federal agency is necessary for implementation of that provision,
22 the agency affected by the provision shall request the waiver or
23 authorization and may delay implementing that provision until the
24 waiver or authorization is granted.

25 SECTION 4. The Texas Workforce Commission and the
26 Department of Family and Protective Services shall adopt the
27 memorandum of understanding required by Section 312.002, Labor

1 Code, as added by this Act, not later than October 1, 2007.

2 SECTION 5. Notwithstanding Chapter 312, Labor Code, as
3 added by this Act, the Texas Workforce Commission shall ensure that
4 payments made on or after November 1, 2007, to providers of
5 unregulated self-arranged child care, as defined by Section
6 312.001, Labor Code, as added by this Act, are made only to
7 providers with respect to whom a background and criminal history
8 check has been conducted as required by that chapter.

9 SECTION 6. This Act takes effect September 1, 2007.