

By: Nelson, Shapiro

S.B. No. 206

A BILL TO BE ENTITLED

AN ACT

relating to 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. REQUIREMENTS 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:

(a) the grandchild of the provider;

1 (b) the great-grandchild of the
2 provider;

3 (c) the sibling of the provider, and
4 the child resides in a separate residence from the provider; or

5 (d) the niece or nephew of the
6 provider; and

7 (iv) does not hold a license, listing, or
8 registration issued under Chapter 42, Human Resources Code, to
9 provide care for children for less than 24 hours a day.

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

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

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

27 (1) the individual's name to the department; and

1 (2) to the Department of Public Safety in accordance
2 with that department's rules, a complete set of the individual's
3 fingerprints in a form and of a quality acceptable to that
4 department 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
14 fingerprints provided by an individual under this section are
15 received by the Department of Public Safety for the purpose of
16 conducting a 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 listed or registered family home providers.

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

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

19 (f) The executive commissioner of the Health and Human
20 Services Commission may adopt rules to implement this section.

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

(b) The commission by rule shall require a local workforce development board to reimburse the commission for costs paid by the commission under Subsection (a) with respect to an individual who, after a background and criminal history check is conducted, is not precluded from providing unregulated self-arranged child care and begins receiving payments for providing that care. To reimburse the commission, the board shall withhold the amount of those costs for that individual from the first child-care payment made to the individual and shall remit that amount to the commission.

Sec. 312.006. NOTICE AND OPPORTUNITY TO BE HEARD CONCERNING ACCURACY OF INFORMATION. (a) If the department determines that a provider or prospective provider of unregulated self-arranged child care is precluded from providing that care because of the individual's background and criminal history check under Section 312.004, the department shall notify the individual of that determination.

(b) The department shall include in the notice provided under Subsection (a) a description of the process by which an individual may dispute the accuracy of the individual's criminal history record and listing on the department's registry of reported abuse and neglect and a description of any process for disputing the accuracy of the individual's criminal history record with the Department of Public Safety.

Sec. 312.007. AFFIDAVITS. (a) An unregulated self-arranged child-care provider and the parent or guardian of the child who receives care through the provider shall each submit an affidavit to the commission not later than the 15th day of the month

1 following the end of each calendar quarter during which the
2 provider provided the care. The affidavit must:

3 (1) specify the number of hours the provider cared for
4 the child during each month of the previous calendar quarter;

5 (2) include the sworn statement of the provider or the
6 parent or guardian, as applicable, that the record of the hours is
7 accurate; and

8 (3) be signed by the provider or the parent or
9 guardian, as applicable.

10 (b) The affidavit in Subsection (a) may be on a form
11 provided by the commission.

12 (c) The commission shall provide notice to each individual
13 required to submit an affidavit under this section that knowingly
14 making, presenting, or using a false governmental record is a
15 criminal offense under Section 37.10, Penal Code.

16 Sec. 312.008. AUDITS. The commission shall audit on a
17 regular basis a random sample of unregulated self-arranged
18 child-care providers to:

19 (1) determine whether affidavits submitted under
20 Section 312.007 are accurate; and

21 (2) ensure that the commission and local workforce
22 development boards are paying unregulated self-arranged child-care
23 providers only for care that is actually provided.

24 SECTION 2. Subdivision (2), Subsection (a), Section
25 411.114, Government Code, is amended to read as follows:

26 (2) The Department of Family and Protective Services
27 shall obtain from the department criminal history record

1 information maintained by the department that relates to a person
2 who is:

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

6 (B) an owner, operator, or employee of or an
7 applicant for employment by a child-care facility, child-placing
8 agency, family home, or maternity home licensed, registered,
9 certified, or listed under Chapter 42, Human Resources Code, or
10 Chapter 249, Health and Safety Code;

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

16 (D) an applicant selected for a position with the
17 Department of Family and Protective Services, the duties of which
18 include direct delivery of protective services to children, elderly
19 persons, or persons with a disability;

20 (E) an employee of, an applicant for employment
21 with, or a volunteer or an applicant volunteer with a business
22 entity or person that contracts with the Department of Family and
23 Protective Services to provide direct delivery of protective
24 services to children, elderly persons, or persons with a
25 disability, if the person's duties or responsibilities include
26 direct contact with children, elderly persons, or persons with a
27 disability;

1 (F) a registered volunteer with the Department of
2 Family and Protective Services;

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

7 (H) a Department of Family and Protective
8 Services employee who is engaged in the direct delivery of
9 protective services to children, elderly persons, or persons with a
10 disability;

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

15 (i) the report alleges the person has
16 engaged in conduct that meets the statutory definition of abuse,
17 neglect, or exploitation under Chapter 261, Family Code, or Chapter
18 48, Human Resources Code; and

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

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

24 (K) through a contract with a nonprofit
25 management center, an employee of, an applicant for employment
26 with, or a volunteer or an applicant volunteer with a nonprofit,
27 tax-exempt organization that provides any service that involves the

1 care of or access to children, elderly persons, or persons with a
2 disability; ~~[or]~~

3 (L) an applicant for a child-care administrator
4 or child-placing agency administrator license under Chapter 43,
5 Human Resources Code; or

6 (M) a provider or prospective provider of
7 unregulated self-arranged child care, as defined by Section
8 312.001, Labor Code.

9 SECTION 3. If before implementing any provision of this Act
10 a state agency determines that a waiver or authorization from a
11 federal agency is necessary for implementation of that provision,
12 the agency affected by the provision shall request the waiver or
13 authorization and may delay implementing that provision until the
14 waiver or authorization is granted.

15 SECTION 4. The Texas Workforce Commission and the
16 Department of Family and Protective Services shall adopt the
17 memorandum of understanding required by Section 312.002, Labor
18 Code, as added by this Act, not later than October 1, 2007.

19 SECTION 5. Notwithstanding Chapter 312, Labor Code, as
20 added by this Act, the Texas Workforce Commission shall ensure that
21 payments made on or after November 1, 2007, to providers of
22 unregulated self-arranged child care, as defined by Section
23 312.001, Labor Code, as added by this Act, are made only to
24 providers with respect to whom a background and criminal history
25 check has been conducted as required by that chapter.

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