

## **BILL ANALYSIS**

S.B. 68  
By: Nelson  
Human Services  
Committee Report (Amended)

### **BACKGROUND AND PURPOSE**

In July 2008, the attorney general of Texas issued an advisory opinion (GA-0649) that nullified rules the Department of Family and Protective Services (DFPS) had adopted exempting certain facilities from child-care licensing, including the Boys and Girls Clubs.

S.B. 68 exempts certain child-care facilities from licensing requirements, includes before-school or after-school programs and school-age programs in the types of services DFPS is authorized to recognize and treat differently when promulgating minimum regulatory standards, and repeals provisions relating to the accreditation of a facility. The bill sets forth requirements regarding an investigation of a facility by the DFPS.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 8 of this bill.

### **ANALYSIS**

S.B. 68 amends the Human Resources Code to specify that the exemption from child-care facility licensing requirements for 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, including retreats or classes for religious instruction, on or near the premises, applies to a facility that does not advertise as a child-care facility or day-care center, and that informs parents that it is not licensed by the state.

S.B. 68 amends the Human Resources Code to expand the exemption from child-care facility or child-placing agency licensing requirements for an educational facility accredited by the Texas Education Agency, the Southern Association of Colleges and Schools, or an accreditation body of the Texas Private School Accreditation Commission to include such a facility that operates primarily for educational purposes a before-school program, in addition to an after-school program, for prekindergarten and above, rather than kindergarten and above. The bill modifies the exemption from such licensing requirements for an educational facility that operates solely for educational purposes for certain grade levels, that does not provide custodial care for more than one hour during the hours before or after the customary school day, and that is a member of an organization that promulgates, publishes, and requires compliance with health, safety, fire, and sanitation standards equal to standards required by state, municipal, and county codes applies to change the grade level range at which the facility operates from kindergarten through at least grade two to prekindergarten through at least grade two.

S.B. 68 amends the exemption from such licensing requirements for an educational facility that is integral to and inseparable from its sponsoring religious organization or an educational facility both of which do not provide custodial care for more than two hours per day, and that offers educational programs for children age four and above at certain grade levels, by removing the

minimum age limit and specifying a prekindergarten level, rather than preschool and kindergarten, as the lower limit of the grade level range.

S.B. 68 adds to the facilities exempt from those licensing requirements:

- a child-care facility that operates for less than three consecutive weeks and less than 40 days in a period of 12 months;
- a program in which a child receives direct instruction in a single skill, talent, ability, expertise, or proficiency; that does not provide services or offerings that are not directly related to the single talent, ability, expertise, or proficiency; that does not present the program as a child-care facility, day-care center, or licensed before-school or after-school program or that the program offers child-care services; that informs the parent or guardian that the program is not licensed by the state and about the physical risks a child may face while participating in the program; and that conducts background checks for all program employees and volunteers who work with children in the program using information that is obtained from the Department of Public Safety (DPS);
- an elementary-age (ages 5-13) recreation program that adopts standards of care, including standards relating to staff ratios, staff training, health, and safety; provides a mechanism for monitoring and enforcing the standards and receiving complaints from parents of enrolled children; does not present the program as a child-care facility, day-care center, or licensed before-school or after-school program or that the program offers child-care services; informs parents that the program is not licensed by the state; is organized as a nonprofit organization or is located on the premises of a participant's residence; does not accept any remuneration other than a nominal annual membership fee; does not solicit donations as compensation or payment for any good or service provided as part of the program; and conducts background checks for all program employees and volunteers who work with children in the program using information that is obtained from DPS;
- a living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which the caretaker had a prior relationship with the child or sibling group or other family members of the child or sibling group; does not care for more than one unrelated child or sibling group; does not receive compensation or solicit donations for the care of the child or sibling group; and has a written agreement with the parent to care for the child or sibling group;
- a living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which the Department of Family and Protective Services (DFPS) is the managing conservator of the child or sibling group; DFPS placed the child or sibling group in the caretaker's home; and the caretaker had a long-standing and significant relationship with the child or sibling group before the child or sibling group was placed with the caretaker; or
- a living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which the child is in the United States on a time-limited visa under the sponsorship of the caretaker or of a sponsoring organization.

S.B. 68 includes before-school or after-school programs and school-age programs in the types of services DFPS is authorized to recognize and treat differently when promulgating minimum regulatory standards. The bill requires DFPS, in determining and enforcing minimum standards for a school-age program, to consider commonly accepted training methods for the development of a skill, talent, ability, expertise, or proficiency that are implemented with the consent of the parent or guardian of the participant and that are fundamental to the core purpose of the program. The bill removes the requirement that DFPS present proposed standards to the State Advisory Committee on Child-Care Facilities for review and comment before adopting the standards.

S.B. 68 prohibits a person from interfering with an investigation or inspection of a facility or family home conducted by DFPS. The bill requires a facility or family home during an investigation or inspection to cooperate with DFPS and allow DFPS to access the records of the facility or family home, access any part of the premises of the facility or family home, and interview any child, employee, or other person who is present at the facility or family home and who may have information relevant to the investigation or inspection. The bill requires a district court in Travis County or in the county in which a facility or family home is located for good cause shown and without prior notice or a hearing, to issue an order granting DFPS access to the records or premises of a facility or family home in order to conduct an inspection, investigation, or interview if access to the records or premises cannot be obtained. The bill authorizes the district court in Travis County or in the county in which a facility or family home suspected of operating without a required license, certification, registration, or listing is located for good cause shown and without prior notice or hearing, to issue an order allowing DFPS to enter the suspected facility or family home at a time when DFPS evidence shows that the suspected facility or family home may be providing child care subject to regulation, to assist DFPS in investigating whether a person is operating without the license, certification, registration, or listing.

S.B. 68 removes the condition that the prohibition against DFPS issuing a license, listing, registration, or certification to a person whose license, listing, registration, or certification is revoked or whose application for a license, listing, registration, or certification is denied for a substantive reason before the fifth anniversary of the date on which the revocation takes effect by DFPS or court order or the decision to deny the application is final applies only to a facility that is residential child-care facility. The bill removes the prohibition against DFPS issuing a license, listing, registration, or certification to a person whose license, listing, registration, or certification is revoked or whose application for a license, listing, registration, or certification is denied for a substantive reason before the second anniversary of the date on which the revocation takes effect by DFPS or court order or the decision to deny the application is final for a facility that is not a residential child-care facility.

S.B. 68 clarifies the exception to a person's authorization to continue to operate a facility or family home during an appeal of a license, listing, or registration denial or revocation unless the operation of the facility or family home poses a risk to the health or safety of children, rather than unless the revocation or denial is based on a violation which poses a risk to the health or safety of children. The bill makes related conforming changes.

S.B. 68 extends the period for which an order from DFPS to close a facility or family home is valid from 10 days to 30 days after the effective date of the order and removes the exception making only an order relating to a residential child-care facility valid for 30 days. The bill adds to the circumstances under which DFPS is authorized to file suit in a district court in Travis County or in the county in which a facility or family home is located for assessment and recovery of a civil penalty, injunctive relief, or both, the appearance that a person knowingly fails to meet or maintain a licensing exemption and engages in activities that require a license or registration. The bill adds a person who knowingly fails to meet or maintain any criterion of a licensing exemption and engages in activities that require a license or registration or who fails to inform DFPS of a change in status and the person knows the change in status requires the person to be licensed or registered to the persons subject to a civil penalty.

S.B. 68 requires DFPS to publish notice of an action to revoke or suspend a facility's license or a family home's listing or registration on the DFPS Internet website along with other information regarding child-care services in addition to publishing the notice in a newspaper of general circulation in the county in which the facility or home is located.

S.B. 68 revises the definition of "day-care center" to mean a child-care facility that provides care at a location other than the residence of the director, owner, or operator of the child-care facility for seven or more children, rather than more than 12 children, under 14 years of age for less than

24 hours a day, but at least two hours a day, three or more days a week. The bill revises the definition of "group day-care home" to mean a child-care facility that provides care at the residence of the director, owner, or operator of the child-care facility for seven or more children, rather than 7 to 12 children, under the age of 14 for less than 24 hours a day, but at least two hours a day, three or more days a week. The bill revises the definition of "regular care" to mean care that is provided at least four hours a day three or more days a week, for three or more consecutive weeks, rather than for more than nine consecutive weeks, and to include the condition that the care may be provided for four hours a day for 40 or more days in a period of 12 months.

S.B. 68 defines "before-school or after-school program" and "school-age program."

S.B. 68 amends the Family Code to make a technical correction to clarify that a listed facility is included in provisions requiring a prompt, thorough investigation of a report that a child has been or may be abused, neglected, or exploited in certain facilities or programs.

S.B. 68 makes provisions relating to licensing requirements for a school-age program effective on the later of the date on which DFPS adopts minimum standards for school-age programs as required by the bill's provisions or September 1, 2010. The bill makes provisions relating to licensing requirements for before-school or after-school programs effective on the later of the date on which DFPS adopts minimum standards for before-school or after-school programs or September 1, 2010. The bill requires DFPS to adopt minimum standards for school-age programs and before-school and after-school programs not later than September 1, 2010.

S.B. 68 makes technical corrections to conform to obsolete provisions. The bill repeals Section 42.041(b-1), Human Resources Code, limiting the licensing exemption for the facilities mentioned above to a facility that operates in a county with a population of less than 25,000, and Section 42.0431(c), Human Resources Code, exempting certain a day-care centers or group day-care homes from screening requirements relating to vision, hearing, and other special senses and communication disorders.

### **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2009.

### **EXPLANATION OF AMENDMENTS**

Committee Amendment No. 1.

S.B. 68 requires the executive commissioner of the Health and Human Services Commission to adopt specific rules and minimum standards, including standards relating to background check information, for a child-care facility that is located in a temporary shelter, including a family violence or homeless shelter, in which an adult, accompanied by a child related to the adult or child for whom the adult is the managing conservator, may temporarily reside and that provides care for less than 24 hours a day for a child accompanying an adult temporarily residing in the shelter while the adult is not present at the shelter. The bill requires the executive commissioner, in adopting the rules and minimum standards, to consider the special circumstances and needs of families that seek temporary shelter; consider the role of the shelter in assisting and supporting families in crisis; and distinguish between a child-care facility that provides care only for children temporarily residing in the shelter and a child-care facility that also provides care for children who are not temporarily residing in the shelter.

S.B. 68 makes provisions relating to licensing requirements for a child-care facility located in a temporary shelter that provides care only for children temporarily residing in the shelter effective on the later of the date on which the executive commissioner adopts minimum standards for those child-care facilities or September 1, 2010. The bill makes provisions relating to licensing

requirements for a child-care facility located in a temporary shelter that provides care for children temporarily residing in the shelter and other children effective on the effective date of the bill.

S.B. 68 requires the executive commissioner to adopt rules and minimum standards regarding a child-care facility located in a temporary shelter as soon as practicable after the effective date of the bill, but not later than September 1, 2010.

Committee Amendment No. 2.

S.B. 68 requires the Department of Family and Protective Services (DFPS), before adopting minimum standards for a school-age program, to convene a temporary work group to advise DFPS regarding the proposed standards, composed of at least six members who represent the diverse geographic regions of Texas, including a DFPS official designated by the commissioner of DFPS to facilitate the work group's activities; a person with demonstrated expertise or knowledge regarding the different types and classifications of child-care facilities, homes, agencies, or programs that will be covered by the proposed standards; a parent with experience related to one of the different types or classifications of child-care facilities, homes, agencies, or programs that will be covered by the proposed standards; and a representative of a licensed nonprofit entity. The bill removes the requirement that DFPS present proposed standards to the State Advisory Committee on child-care facilities for review and comment before adopting the standards.