

## **BILL ANALYSIS**

C.S.S.B. 81  
By: Nelson  
Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Cases of criminal offenders receiving money to care for their relatives and, in some cases, for care they do not actually provide have been reported. This legislation will help ensure the safety of children and combat waste and abuse by requiring background and criminal background checks and by precluding certain persons from providing unregulated self-arranged child care.

C.S.S.B. 81 requires Federal Bureau of Investigation and Texas Department of Public Safety criminal history and fingerprint-based background checks to be conducted on relative child-care providers who receive subsidies for that care under the federal Child Care and Development Block Grant Act of 1990. The bill requires the Texas Workforce Commission to ensure that money appropriated to it or to a workforce development board to pay for child-care services provided by an unregulated self-arranged child-care provider is used only to pay for care provided by a person who, after completion of the background and criminal history check, is not precluded from providing that care.

### **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 and the Department of Family and Protective Services in SECTION 1 of this bill.

### **ANALYSIS**

C.S.S.B. 81 amends the Labor Code to require an individual seeking to provide unregulated self-arranged child care, before providing that care, to submit the individual's name to the Department of Family and Protective Services (DFPS) and a complete set of fingerprints to the Department of Public Safety (DPS) for conducting a criminal history check. The bill requires the fingerprints to be in a form and of a quality acceptable to DPS and the Federal Bureau of Investigation. The bill sets out procedures for DFPS to conduct background and criminal history checks and specifies the information to be used for that purpose. The bill requires DFPS to use the standards that apply in conducting background and criminal history checks for listed or registered family home providers in determining whether to preclude an individual from providing unregulated self-arranged child care. The bill establishes procedures for conducting ongoing background and criminal history checks after the initial check for a provider of unregulated self-arranged child care who has continuously received payments for providing care, and procedures for conducting a check for a provider who ceased providing care and who seeks to resume providing care. The bill requires the Texas Workforce Commission (TWC) to provide notice of the background and criminal history check requirement to the parent or guardian of a child who will receive care through an unregulated self-arranged child-care provider before the parent or guardian selects the provider. The bill authorizes the executive commissioner of the Health and Human Services Commission to adopt rules to implement criminal history and background check requirements, including rules that require fingerprints to be submitted electronically through an applicant fingerprinting service center. The bill requires an individual seeking to provide unregulated self-arranged child care to pay the cost of submitting the individual's fingerprints.

C.S.S.B. 81 requires TWC and DFPS to adopt a memorandum of understanding regarding the administration and payment of costs of background and criminal history checks. The bill requires TWC to ensure that money appropriated to TWC and used by TWC or a local workforce development board to pay for unregulated self-arranged child-care services is used only to pay a provider who is not precluded from providing care after undergoing a criminal history and background check.

C.S.S.B. 81 requires TWC to pay DFPS the costs incurred by DFPS in conducting background and criminal history checks using funds available under the federal Child Care and Development Block Grant Act of 1990. The bill establishes procedures for the notification of prospective providers of unregulated self-arranged child care that the provider is precluded from providing that care based on the results of the individual's background and criminal and history check, and the process by which an individual may dispute the accuracy of the results. The bill requires an unregulated self-arranged child-care provider and the parent or guardian of the child who receives care through the provider to quarterly submit a statement to TWC specifying the number of hours the provider cared for the child during each month of the applicable calendar quarter that includes the signature and a sworn statement of the provider or parent or guardian. The bill authorizes the statement to be on a form provided by TWC and requires TWC to give notice to each individual required to submit a statement that knowingly making, presenting, or using a false governmental record is a criminal offense.

C.S.S.B. 81 requires TWC, if feasible, to use an electronic validation system to verify that a provider of unregulated self-arranged child care is providing care and that the child for whom the care is provided is in attendance during the period the provider states that child-care services are being provided. The bill establishes that an unregulated self-arranged child-care provider and a parent or guardian of a child who receives care through the provider is not required to submit the sworn statement if TWC verifies the provision of care and the attendance of the child using an electronic validation system. The bill requires TWC to audit on a regular basis a random sample of unregulated self-arranged child-care providers to determine the accuracy of the submitted statements or the electronic validation system used to verify child-care services and attendance and ensure that TWC and local workforce development boards are paying unregulated self-arranged child-care provider only for care that is actually provided.

C.S.S.B. 81 amends the Government Code to make a conforming change to add a provider or prospective provider of unregulated self-arranged child care to the list of individuals for whom DFPS is required to obtain criminal history record information from DPS. The bill defines "unregulated self-arranged child care" to mean child care that is funded wholly or partly from money received under the federal Child Care and Development Block Grant Act of 1990 and provided by a provider who meets minimum age requirements, complies with applicable federal or state subsidized child-care requirements, provides child-care services for less than 24 hours a day to a child who meets certain relationship and residency requirements and does not hold a license, listing, or registration to provide care for children for less than 24 hours a day. The bill defines "department."

C.S.S.B. 81 requires a state agency that is affected by a provision of the bill to request a federal waiver or authorization if the agency determines that a waiver or authorization is necessary for the implementation of the provision, and it authorizes the agency to delay implementation until the federal waiver or authorization is obtained. The bill requires TWC and DFPS to adopt the memorandum of understanding not later than October 1, 2009. The bill requires TWC to ensure that payments made on or after November 1, 2009, to providers of unregulated self-arranged child care are made only to providers with respect to whom a background and criminal history check has been conducted as required by the bill.

**EFFECTIVE DATE**

September 1, 2009.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 81 adds a provision not included in the original requiring an individual seeking to provide unregulated self-arranged child care to pay the cost of submitting the individual's fingerprints. The substitute omits a provision included in the original requiring the Texas Workforce Commission (TWC) by rule to require a local workforce development board to reimburse TWC for costs for conducting background and criminal history checks paid by the commission with respect to an individual who, after a check is conducted, is not precluded from providing unregulated self-arranged child care and begins receiving payments for providing that care. The substitute omits a provision included in the original requiring the board to withhold the amount necessary for the reimbursement from the first child-care payment made to the individual and to remit that amount to TWC. The substitute differs from the original by requiring an unregulated self-arranged child-care provider and the parent or guardian of the child who receives care through the provider to each submit a sworn statement, whereas the original requires each to submit an affidavit. The substitute adds provisions not included in the original relating to the electronic validation system used to verify child-care services and attendance. The substitute differs from the original by specifying that the audit required to be performed by TWC is for the purpose of determining the accuracy of submitted statements or the electronic validation system, rather than the accuracy of the affidavits as in the original.