

By: Castro

H.B. No. 4373

A BILL TO BE ENTITLED

AN ACT

relating to the independent office of consumer affairs for the Department of Family and Protective Services.

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

SECTION 1. Subtitle D, Title 2, Human Resources Code, is amended by adding Chapter 41 to read as follows:

CHAPTER 41. INDEPENDENT OFFICE OF CONSUMER AFFAIRS FOR THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 41.001. DEFINITIONS. In this chapter:

(1) "Director" means the director of the independent office of consumer affairs created under this chapter.

(2) "Office" means the independent office of consumer affairs for the Department of Family and Protective Services created under this chapter.

Sec. 41.002. ESTABLISHMENT; PURPOSE. The independent office of consumer affairs for the Department of Family and Protective Services is a state agency established for the purpose of investigating, evaluating, and securing the rights of the children and families receiving child protection or child welfare services from the department.

Sec. 41.003. INDEPENDENCE. (a) The office in the performance of its duties and powers under this chapter acts independently of the commission and the department.

1 (b) Funding for the office is appropriated separately from
2 funding for the commission and the department.

3 [Sections 41.004-41.050 reserved for expansion]

4 SUBCHAPTER B. APPOINTMENT AND MANAGEMENT OF OFFICE

5 Sec. 41.051. APPOINTMENT BY GOVERNOR. (a) The governor
6 shall appoint the director of the office with the advice and consent
7 of the senate for a term of two years, expiring February 1 of
8 odd-numbered years.

9 (b) A person appointed as director of the office is eligible
10 for reappointment.

11 Sec. 41.052. ASSISTANTS. The director may hire assistants
12 to perform, under the direction of the director, the same duties and
13 exercise the same powers as the director.

14 Sec. 41.053. CONFLICT OF INTEREST. (a) A person may not
15 serve as director or as an assistant to the director if the person
16 or the person's spouse:

17 (1) is employed by or participates in the management
18 of a business entity or other organization receiving funds from the
19 commission or department;

20 (2) owns or controls, directly or indirectly, any
21 interest in a business entity or other organization receiving funds
22 from the commission or department; or

23 (3) uses or receives any amount of tangible goods,
24 services, or funds from the commission or department.

25 (b) A person may not serve as director or as an assistant to
26 the director if the person or the person's spouse is required to
27 register as a lobbyist under Chapter 305, Government Code, because

1 of the person's activities for compensation on behalf of a
2 profession related to the operation of the department.

3 Sec. 41.054. SUNSET PROVISION. The office is subject to
4 review under Chapter 325, Government Code (Texas Sunset Act), but
5 is not abolished under that chapter. The office shall be reviewed
6 during the periods in which state agencies abolished in 2011 and
7 every 12th year after 2011 are reviewed.

8 Sec. 41.055. REPORT. The director shall submit on a
9 quarterly basis to the governor, the lieutenant governor, and each
10 member of the legislature a report that describes:

11 (1) the work of the office;

12 (2) the results of any review or investigation
13 undertaken by the office, including reviews or investigation of
14 services contracted by the commission; and

15 (3) any recommendations that the director has in
16 relation to the duties of the office.

17 Sec. 41.056. COMMUNICATION AND CONFIDENTIALITY. The name,
18 address, or other personally identifiable information of a person
19 who files a complaint with the office, information generated by the
20 office in the course of an investigation, and confidential records
21 obtained by the office are confidential and not subject to
22 disclosure under Chapter 552, Government Code, except that the
23 information and records, other than confidential information and
24 records concerning a pending law enforcement investigation or
25 criminal action, may be disclosed to the appropriate person if the
26 office determines that disclosure is:

27 (1) in the general public interest;

1 (2) necessary to enable the office to perform the
2 responsibilities provided under this section; or

3 (3) necessary to identify, prevent, or treat the abuse
4 or neglect of a child.

5 Sec. 41.057. PROMOTION OF AWARENESS OF OFFICE. The office
6 shall promote awareness among the public and the children and
7 families receiving services from the department of:

8 (1) how the office may be contacted;

9 (2) the purpose of the office; and

10 (3) the services the office provides.

11 Sec. 41.058. RULEMAKING AUTHORITY. The office by rule
12 shall establish policies and procedures for the operations of the
13 office.

14 Sec. 41.059. AUTHORITY OF STATE AUDITOR. The office is
15 subject to audit by the state auditor in accordance with Chapter
16 321, Government Code.

17 [Sections 41.060-41.100 reserved for expansion]

18 SUBCHAPTER C. DUTIES AND POWERS

19 Sec. 41.101. DUTIES AND POWERS. (a) The office shall:

20 (1) review the procedures established by the
21 department and evaluate the delivery of services to children and
22 families to ensure that the rights of individuals receiving
23 services are fully observed;

24 (2) review complaints filed with the office concerning
25 the actions of the department and investigate each complaint in
26 which it appears that an individual may be in need of assistance
27 from the office;

1 (3) conduct investigations of complaints, other than
2 complaints alleging criminal behavior, if the office determines
3 that:

4 (A) a child or the child's family may be in need
5 of assistance from the office; or

6 (B) a systemic issue in the department's
7 provision of services is raised by a complaint;

8 (4) provide assistance to a child or family who the
9 office determines is in need of assistance, including advocating
10 with an agency, provider, or other person in the best interests of
11 the child or family; and

12 (5) make appropriate referrals under any of the duties
13 and powers listed in this subsection.

14 (b) To assess if an individual's rights have been violated,
15 the office may, in any matter that does not involve alleged criminal
16 behavior, contact or consult with an administrator, employee,
17 child, parent, expert, or any other individual in the course of its
18 investigation or to secure information.

19 (c) Notwithstanding any other provision of this chapter,
20 the office may not investigate alleged criminal behavior.

21 Sec. 41.102. TREATMENT OF EMPLOYEES WHO COOPERATE WITH
22 OFFICE. The commission and the department may not discharge or in
23 any manner discriminate or retaliate against an employee who in
24 good faith makes a complaint to the office or cooperates with the
25 office in an investigation.

26 Sec. 41.103. TRAINING. The director or the director's
27 designee may participate in appropriate professional training.

1 [Sections 41.104-41.150 reserved for expansion]

2 SUBCHAPTER D. ACCESS TO INFORMATION

3 Sec. 41.151. ACCESS TO INFORMATION OF GOVERNMENTAL
4 ENTITIES. The commission and the department shall allow the office
5 access to its records relating to the individuals receiving
6 services from the department.

7 SECTION 2. As soon as practicable after the effective date
8 of this Act, the governor shall appoint the director of the
9 independent office of consumer affairs for the Department of Family
10 and Protective Services as required by Section 41.051, Human
11 Resources Code, as added by this Act, for a term expiring February
12 1, 2011.

13 SECTION 3. On the effective date of this Act:

14 (1) all functions and activities performed by, and all
15 records and property of, the center for consumer affairs of the
16 Department of Family and Protective Services are transferred to the
17 independent office of consumer affairs for that department as
18 established under Chapter 41, Human Resources Code, as added by
19 this Act;

20 (2) a reference in law to the center for consumer
21 affairs of the Department of Family and Protective Services is a
22 reference to the independent office of consumer affairs for that
23 department as established under Chapter 41, Human Resources Code,
24 as added by this Act; and

25 (3) an investigation being conducted by the center for
26 consumer affairs of the Department of Family and Protective
27 Services is transferred to and considered an investigation of the

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1 independent office of consumer affairs for that department as
2 established under Chapter 41, Human Resources Code, as added by
3 this Act.

4 SECTION 4. This Act takes effect September 1, 2009.