

By: Nelson

S.B. No. 68

A BILL TO BE ENTITLED

AN ACT

relating to licensing and inspection requirements of the Department of Family and Protective Services for certain facilities and homes providing child care; providing penalties.

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

SECTION 1. Section 42.002, Human Resources Code, is amended by amending Subdivisions (7), (8), (17), and (19) and adding Subdivisions (20) and (21) to read as follows:

(7) "Day-care center" means 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 [~~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.

(8) "Group day-care home" means 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 [~~7 to 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.

(17) "Regular care" means care that is provided at least:

(A) four hours a day, three or more days a week, for three or more [~~than nine~~] consecutive weeks; or

(B) four hours a day for 40 or more days in a period of 12 months.

1 (19) "Residential child-care facility" means a
2 facility licensed or certified by the department that operates [~~to~~
3 ~~provide assessment, care, training, education, custody, treatment,~~
4 ~~or supervision for a child who is not related by blood, marriage, or~~
5 ~~adoption to the owner or operator of the facility,~~] for all of the
6 24-hour day [~~, whether or not the facility is operated for profit or~~
7 ~~charges for the services it offers]. The term includes child-care~~
8 institutions, child-placing agencies, foster group homes, foster
9 homes, agency foster group homes, and agency foster homes.

10 (20) "Before-school or after-school program" means a
11 child-care facility that provides care before or after, or before
12 and after, the customary school day and during school holidays, for
13 at least two hours a day, three days a week, to children who attend
14 prekindergarten through grade six.

15 (21) "School-age program" means a child-care facility
16 that provides supervision, along with recreation or skills
17 instruction or training, and may provide transportation, before or
18 after the customary school day, for at least two hours a day, three
19 days a week, to children attending prekindergarten through grade
20 six. A school-age program may also operate during school holidays,
21 the summer period, or any other time when school is not in session.

22 SECTION 2. The heading to Section 42.041, Human Resources
23 Code, is amended to read as follows:

24 Sec. 42.041. REQUIRED LICENSE [~~OR ACCREDITATION~~].

25 SECTION 3. Subsection (b), Section 42.041, Human Resources
26 Code, is amended to read as follows:

27 (b) This section does not apply to:

- 1 (1) a state-operated facility;
- 2 (2) an agency foster home or agency foster group home;
- 3 (3) a facility that is operated in connection with a
4 shopping center, business, religious organization, or
5 establishment where children are cared for during short periods
6 while parents or persons responsible for the children are attending
7 religious services, shopping, or engaging in other activities,
8 including retreats or classes for religious instruction, on or near
9 the premises, that does not advertise as a child-care facility or
10 day-care center, and that informs parents that it is not licensed by
11 the state~~[, including but not limited to retreats or classes for~~
12 ~~religious instruction]~~;
- 13 (4) a school or class for religious instruction that
14 does not last longer than two weeks and is conducted by a religious
15 organization during the summer months;
- 16 (5) a youth camp licensed by the Department of State
17 Health Services;
- 18 (6) a facility licensed, operated, certified, or
19 registered by another state agency;
- 20 (7) [~~subject to Subsection (b-1)~~], an educational
21 facility that is accredited by the Texas Education Agency, the
22 Southern Association of Colleges and Schools, or an accreditation
23 body that is a member of the Texas Private School Accreditation
24 Commission and that operates primarily for educational purposes
25 for prekindergarten [~~in grades kindergarten~~] and above, a
26 before-school or [~~an~~] after-school program operated directly by an
27 accredited educational facility, or a before-school or [~~an~~]

1 after-school program operated by another entity under contract with
2 the educational facility, if the Texas Education Agency, the
3 Southern Association of Colleges and Schools, or the other
4 accreditation body, as applicable, has approved the curriculum
5 content of the before-school or after-school program operated under
6 the contract;

7 (8) an educational facility that operates solely for
8 educational purposes for prekindergarten [~~in grades kindergarten~~]
9 through at least grade two, that does not provide custodial care for
10 more than one hour during the hours before or after the customary
11 school day, and that is a member of an organization that
12 promulgates, publishes, and requires compliance with health,
13 safety, fire, and sanitation standards equal to standards required
14 by state, municipal, and county codes;

15 (9) a kindergarten or preschool educational program
16 that is operated as part of a public school or a private school
17 accredited by the Texas Education Agency, that offers educational
18 programs through grade six, and that does not provide custodial
19 care during the hours before or after the customary school day;

20 (10) a family home, whether registered or listed;

21 (11) [~~subject to Subsection (b-1),~~] an educational
22 facility that is integral to and inseparable from its sponsoring
23 religious organization or an educational facility both of which do
24 not provide custodial care for more than two hours maximum per day,
25 and that offers an educational program [~~programs for children age~~
26 ~~four and above~~] in one or more of the following: prekindergarten
27 [~~preschool, kindergarten~~] through at least grade three, elementary

1 grades, or secondary grades;

2 (12) an emergency shelter facility providing shelter
3 to minor mothers who are the sole support of their natural children
4 under Section 32.201, Family Code, unless the facility would
5 otherwise require a license as a child-care facility under this
6 section;

7 (13) a juvenile detention facility certified under
8 Section 51.12, Family Code, a juvenile correctional facility
9 certified under Section 51.125, Family Code, a juvenile facility
10 providing services solely for the Texas Youth Commission, or any
11 other correctional facility for children operated or regulated by
12 another state agency or by a political subdivision of the state;

13 (14) an elementary-age (ages 5-13) recreation program
14 operated by a municipality provided the governing body of the
15 municipality annually adopts standards of care by ordinance after a
16 public hearing for such programs, that such standards are provided
17 to the parents of each program participant, and that the ordinances
18 shall include, at a minimum, staffing ratios, minimum staff
19 qualifications, minimum facility, health, and safety standards,
20 and mechanisms for monitoring and enforcing the adopted local
21 standards; and further provided that parents be informed that the
22 program is not licensed by the state and the program may not be
23 advertised as a child-care facility;

24 (15) an annual youth camp held in a municipality with a
25 population of more than 1.5 million that operates for not more than
26 three months and that has been operated for at least 10 years by a
27 nonprofit organization that provides care for the homeless; [~~or~~]

- 1 (16) a food distribution program that:
- 2 (A) serves an evening meal to children two years
3 of age or older; and
- 4 (B) is operated by a nonprofit food bank in a
5 nonprofit, religious, or educational facility for not more than two
6 hours a day on regular business days;
- 7 (17) a child-care facility that operates for less than
8 three consecutive weeks and less than 40 days in a period of 12
9 months;
- 10 (18) a program:
- 11 (A) in which a child receives direct instruction
12 in a single skill, talent, ability, expertise, or proficiency;
- 13 (B) that does not provide services or offerings
14 that are not directly related to the single talent, ability,
15 expertise, or proficiency;
- 16 (C) that does not advertise or otherwise
17 represent that the program is a child-care facility, day-care
18 center, or licensed before-school or after-school program or that
19 the program offers child-care services;
- 20 (D) that informs the parent or guardian:
- 21 (i) that the program is not licensed by the
22 state; and
- 23 (ii) about the physical risks a child may
24 face while participating in the program; and
- 25 (E) that conducts background checks for all
26 program employees and volunteers who work with children in the
27 program using information that is obtained from the Department of

1 Public Safety;

2 (19) an elementary-age (ages 5-13) recreation program
3 that:

4 (A) adopts standards of care, including
5 standards relating to staff ratios, staff training, health, and
6 safety;

7 (B) provides a mechanism for monitoring and
8 enforcing the standards and receiving complaints from parents of
9 enrolled children;

10 (C) does not advertise as or otherwise represent
11 the program as a child-care facility, day-care center, or licensed
12 before-school or after-school program or that the program offers
13 child-care services;

14 (D) informs parents that the program is not
15 licensed by the state;

16 (E) is organized as a nonprofit organization or
17 is located on the premises of a participant's residence;

18 (F) does not accept any remuneration other than a
19 nominal annual membership fee;

20 (G) does not solicit donations as compensation or
21 payment for any good or service provided as part of the program; and

22 (H) conducts background checks for all program
23 employees and volunteers who work with children in the program
24 using information that is obtained from the Department of Public
25 Safety;

26 (20) a living arrangement in a caretaker's home
27 involving one or more children or a sibling group, excluding

1 children who are related to the caretaker, in which the caretaker:

2 (A) had a prior relationship with the child or
3 sibling group or other family members of the child or sibling group;

4 (B) does not care for more than one unrelated
5 child or sibling group;

6 (C) does not receive compensation or solicit
7 donations for the care of the child or sibling group; and

8 (D) has a written agreement with the parent to
9 care for the child or sibling group;

10 (21) a living arrangement in a caretaker's home
11 involving one or more children or a sibling group, excluding
12 children who are related to the caretaker, in which:

13 (A) the department is the managing conservator of
14 the child or sibling group;

15 (B) the department placed the child or sibling
16 group in the caretaker's home; and

17 (C) the caretaker had a long-standing and
18 significant relationship with the child or sibling group before the
19 child or sibling group was placed with the caretaker; or

20 (22) a living arrangement in a caretaker's home
21 involving one or more children or a sibling group, excluding
22 children who are related to the caretaker, in which the child is in
23 the United States on a time-limited visa under the sponsorship of
24 the caretaker or of a sponsoring organization.

25 SECTION 4. Section 42.042, Human Resources Code, is amended
26 by amending Subsections (g) and (i) and adding Subsection (g-1) to
27 read as follows:

1 (g) In promulgating minimum standards the department may
2 recognize and treat differently the types of services provided by
3 the following:

4 (1) registered family homes;

5 (2) child-care facilities, including child-care
6 institutions, foster group homes, foster homes, group day-care
7 homes, and day-care centers;

8 (3) child-placing agencies;

9 (4) agency foster homes; ~~and~~

10 (5) agency foster group homes;

11 (6) before-school or after-school programs; and

12 (7) school-age programs.

13 (g-1) In determining and enforcing minimum standards for a
14 school-age program, the department shall consider commonly
15 accepted training methods for the development of a skill, talent,
16 ability, expertise, or proficiency that are implemented with the
17 consent of the parent or guardian of the participant and that are
18 fundamental to the core purpose of the program.

19 (i) Before adopting minimum standards, the department shall
20 ~~[present the proposed standards to the State Advisory Committee on~~
21 ~~Child-Care Facilities for review and comment, and shall]~~ send a
22 copy of the proposed standards to each licensee covered by the
23 proposed standards at least 60 days before the standards take
24 effect to provide the licensee an opportunity to review and to send
25 written suggestions to ~~[the committee and]~~ the department.

26 SECTION 5. Subsection (b), Section 42.044, Human Resources
27 Code, is amended to read as follows:

1 (b) The department shall inspect all licensed or certified
2 facilities at least once a year and may inspect other facilities or
3 registered family homes as necessary. The department shall
4 investigate a listed family home when the department receives a
5 complaint of abuse or neglect of a child, as defined by Section
6 261.401 [~~261.001~~], Family Code. At least one of the annual visits
7 must be unannounced and all may be unannounced.

8 SECTION 6. Subchapter C, Chapter 42, Human Resources Code,
9 is amended by adding Section 42.04412 to read as follows:

10 Sec. 42.04412. INTERFERENCE WITH INSPECTION; COURT ORDER.

11 (a) A person may not interfere with an investigation or inspection
12 of a facility or family home conducted by the department under this
13 chapter.

14 (b) During an investigation or inspection of a facility or
15 family home under this chapter, the facility or family home shall
16 cooperate with the department and allow the department to:

17 (1) access the records of the facility or family home;

18 (2) access any part of the premises of the facility or
19 family home; and

20 (3) interview any child, employee, or other person who
21 is present at the facility or family home and who may have
22 information relevant to the investigation or inspection.

23 (c) If access to the records or premises of the facility or
24 family home cannot be obtained, a district court in Travis County or
25 in the county in which the facility or family home is located, for
26 good cause shown and without prior notice or a hearing, shall issue
27 an order granting the department access to the records or premises

1 in order to conduct the inspection, investigation, or interview.

2 (d) To assist the department in investigating whether a
3 person is operating a facility or family home without a required
4 license, certification, registration, or listing, a district court
5 in Travis County or in the county in which the suspected facility or
6 family home is located may, for good cause shown and without prior
7 notice or a hearing, issue an order allowing the department to enter
8 the suspected facility or family home at a time when the
9 department's evidence shows that the suspected facility or family
10 home may be providing child care subject to regulation under this
11 chapter.

12 SECTION 7. Subsection (a), Section 42.0461, Human Resources
13 Code, is amended to read as follows:

14 (a) Before the department may issue a license or certificate
15 ~~[to operate under Subchapter E]~~ for the operation or the expansion
16 of the capacity of a foster group home or foster family home that is
17 located in a county with a population of less than 300,000 and that
18 provides child care for 24 hours a day at a location other than the
19 actual residence of a child's primary caretaker or of a child care
20 institution, the applicant for the license, certificate, or
21 expansion shall, at the applicant's expense:

22 (1) conduct a public hearing on the application in
23 accordance with department rules after notifying the department of
24 the date, time, and location of the hearing; and

25 (2) publish notice of the application in a newspaper
26 of general circulation in the community in which the child-care
27 services are proposed to be provided.

1 SECTION 8. Subsections (c) and (e), Section 42.072, Human
2 Resources Code, are amended to read as follows:

3 (c) The department may not issue a license, listing,
4 registration, or certification to a person whose license, listing,
5 registration, or certification is revoked or whose application for
6 a license, listing, registration, or certification is denied for a
7 substantive reason under this chapter before[+]

8 [~~(1)~~] the fifth anniversary of the date on which the
9 revocation takes effect by department or court order or the
10 decision to deny the application is final[, ~~if the facility is a~~
11 ~~residential child-care facility; or~~

12 [~~(2) the second anniversary of the date on which the~~
13 ~~revocation takes effect by department or court order or the~~
14 ~~decision to deny the application is final, if the facility is not a~~
15 ~~residential child-care facility].~~

16 (e) A person may continue to operate a facility or family
17 home during an appeal of a license, listing, or registration denial
18 or revocation unless the operation of the facility or family home
19 [~~revocation or denial is based on a violation which~~] poses a risk to
20 the health or safety of children. The executive commissioner
21 [~~department~~] shall by rule establish the criteria for determining
22 whether the operation of a facility or family home poses
23 [~~violations which pose~~] a risk to the health or safety of children.
24 The department shall notify the facility or family home of the
25 criteria the department used to determine that the operation of the
26 facility or family home [~~violation which~~] poses a risk to health or
27 safety and that the facility or family home may not operate. A

1 person who has been notified by the department that the facility or
2 home may not operate under this section may seek injunctive relief
3 from a district court in Travis County or in the county in which the
4 facility or home is located to allow operation during the pendency
5 of an appeal. The court may grant injunctive relief against the
6 agency's action only if the court finds that the child-care
7 operation does not pose a health or safety risk to children. A
8 court granting injunctive relief under this subsection shall have
9 no other jurisdiction over an appeal of final agency action unless
10 conferred by Chapter 2001, Government Code.

11 SECTION 9. Subsection (c), Section 42.073, Human Resources
12 Code, is amended to read as follows:

13 (c) An order is valid for 30 [~~10~~] days after the effective
14 date of the order [~~, except that an order relating to a residential
15 child-care facility is valid for 30 days after the effective date of
16 the order~~].

17 SECTION 10. Subsection (a), Section 42.074, Human Resources
18 Code, is amended to read as follows:

19 (a) The department may file suit in a district court in
20 Travis County or in the county in which a facility or family home is
21 located for assessment and recovery of a civil penalty under
22 Section 42.075, for injunctive relief, including a temporary
23 restraining order, or for both a civil penalty and injunctive
24 relief when [~~When~~] it appears that a person:

25 (1) has violated, is violating, or is threatening to
26 violate the licensing, certification, listing, or registration
27 requirements of this chapter or the department's licensing,

1 certification, listing, or registration rules and standards; or
2 (2) knowingly fails to meet or maintain an exemption
3 authorized under Section 42.041 and engages in activities that
4 require a license or registration~~[, the department may file a suit~~
5 ~~in a district court in Travis County or in the county where the~~
6 ~~facility or family home is located for assessment and recovery of~~
7 ~~civil penalties under Section 42.075, for injunctive relief,~~
8 ~~including a temporary restraining order, or for both injunctive~~
9 ~~relief and civil penalties].~~

10 SECTION 11. Subsection (a), Section 42.075, Human Resources
11 Code, is amended to read as follows:

12 (a) A person is subject to a civil penalty of not less than
13 \$50 nor more than \$100 for each day of violation and for each act of
14 violation if the person:

15 (1) threatens serious harm to a child in a facility or
16 family home by violating a provision of this chapter or a department
17 rule or standard;

18 (2) violates a provision of this chapter or a
19 department rule or standard three or more times within a 12-month
20 period; ~~or~~

21 (3) places a public advertisement for an unlicensed
22 facility or an unlisted or unregistered family home;

23 (4) knowingly fails to meet or maintain any criterion
24 of an exemption authorized under Section 42.041 and engages in
25 activities that require a license or registration; or

26 (5) fails to inform the department of a change in
27 status and the person knows the change in status requires the person

1 to be licensed or registered under this chapter.

2 SECTION 12. Section 42.077, Human Resources Code, is
3 amended by amending Subsection (a) and adding Subsection (a-1) to
4 read as follows:

5 (a) If the department revokes or suspends a facility's
6 license or a family home's listing or registration, the department
7 shall publish notice of this action:

8 (1) in a newspaper of general circulation in the
9 county in which the facility or family home is located; or

10 (2) on the department's Internet website along with
11 other information regarding child-care services.

12 (a-1) If notice is published in a newspaper under Subsection
13 (a), the [The] newspaper shall place the notice in the section in
14 which advertisements for day-care services are normally published.

15 SECTION 13. Subsection (b), Section 261.401, Family Code,
16 is amended to read as follows:

17 (b) A state agency that operates, licenses, certifies, [~~or~~]
18 registers, or lists a facility in which children are located or
19 provides oversight of a program that serves children shall make a
20 prompt, thorough investigation of a report that a child has been or
21 may be abused, neglected, or exploited in the facility or program.
22 The primary purpose of the investigation shall be the protection of
23 the child.

24 SECTION 14. The following provisions of the Human Resources
25 Code are repealed:

26 (1) Subsection (b-1), Section 42.041; and

27 (2) Subsection (c), Section 42.0431.

1 SECTION 15. (a) The change in law made by this Act to
2 Subsection (c), Section 42.072, Human Resources Code, applies only
3 to the issuance of a license, listing, registration, or
4 certification to a person whose license, listing, registration, or
5 certification is revoked or whose application for a license,
6 listing, registration, or certification is denied for a substantive
7 reason on or after the effective date of this Act. The issuance of a
8 license, listing, registration, or certification to a person whose
9 license, listing, registration, or certification was revoked or
10 whose application for a license, listing, registration, or
11 certification was denied for a substantive reason before the
12 effective date of this Act is governed by the law in effect when the
13 license, listing, registration, or certification was revoked or the
14 application was denied for a substantive reason, and the former law
15 is continued in effect for that purpose.

16 (b) Sections 42.074 and 42.075, Human Resources Code, as
17 amended by this Act, apply only to conduct that occurs on or after
18 the effective date of this Act. Conduct that occurs before the
19 effective date of this Act is governed by the law in effect
20 immediately before that date, and that law is continued in effect
21 for that purpose.

22 SECTION 16. (a) The change in law made by this Act by which
23 a school-age program is required to be licensed under Chapter 42,
24 Human Resources Code, as amended by this Act, takes effect on the
25 later of:

26 (1) the date on which the Department of Family and
27 Protective Services adopts minimum standards for school-age

1 programs in accordance with Section 42.042, Human Resources Code,
2 as amended by this Act; or

3 (2) September 1, 2010.

4 (b) The change in law made by this Act by which a
5 before-school or after-school program is required to be licensed
6 under Chapter 42, Human Resources Code, as amended by this Act,
7 takes effect on the later of:

8 (1) the date on which the Department of Family and
9 Protective Services adopts minimum standards for before-school or
10 after-school programs in accordance with Section 42.042, Human
11 Resources Code, as amended by this Act; or

12 (2) September 1, 2010.

13 (c) The Department of Family and Protective Services shall
14 adopt minimum standards as provided by Section 42.042, Human
15 Resources Code, as amended by this Act, as soon as practicable after
16 the effective date of this Act, but not later than September 1,
17 2010.

18 SECTION 17. Except as otherwise provided by this Act, this
19 Act takes effect September 1, 2009.