

By: Nelson, et al.

S.B. No. 81

Substitute the following for S.B. No. 81:

By: Rose

C.S.S.B. No. 81

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 must,
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 by:

8 (1) using the information provided by an individual
9 under this section;

10 (2) submitting the fingerprints provided by an
11 individual under this section or causing the fingerprints to be
12 submitted electronically as authorized by Subsection (f) to the
13 Department of Public Safety for the purpose of conducting a state
14 and federal criminal history check and using the resulting
15 information made available by the Department of Public Safety under
16 Section 411.114, Government Code, and by the Federal Bureau of
17 Investigation and any other criminal justice agency under Section
18 411.087, Government Code; and

19 (3) using the department's central registry of
20 reported cases of child abuse and neglect established under Section
21 261.002, Family Code.

22 (c) In determining whether to preclude an individual from
23 providing unregulated self-arranged child care, the department
24 shall use the standards that apply in conducting background and
25 criminal history checks under Section 42.056, Human Resources Code,
26 for listed or registered family home providers.

27 (d) A provider of unregulated self-arranged child care for

1 whom a background and criminal history check was conducted under
2 this section and who, following that check, has continuously
3 received payments for providing that care shall, not later than the
4 fifth anniversary of the date the previous check was completed,
5 submit the information described by Subsection (a) in the manner
6 provided by that subsection. The department shall use that
7 information to conduct a background and criminal history check in
8 the manner prescribed by Subsections (b) and (c). A provider of
9 unregulated self-arranged child care for whom a background and
10 criminal history check was conducted who ceased providing that care
11 and who seeks to resume providing that care must provide the
12 information described by Subsection (a) in the manner provided by
13 that subsection and undergo another background and criminal history
14 check unless the department determines that the check is
15 unnecessary based on the length of elapsed time since the previous
16 check was conducted.

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

22 (f) The executive commissioner of the Health and Human
23 Services Commission may adopt rules to implement this section,
24 including rules that require fingerprints to be submitted
25 electronically through an applicant fingerprinting service center.

26 (g) An individual seeking to provide unregulated
27 self-arranged child care shall pay the cost of submitting the

1 individual's fingerprints under this section.

2 Sec. 312.005. COSTS. In accordance with the memorandum of
3 understanding adopted under Section 312.002, the commission shall
4 pay to the department the costs incurred by the department in
5 conducting background and criminal history checks under this
6 chapter using funds available for that purpose under the Child Care
7 and Development Block Grant Act of 1990 (42 U.S.C. Section 9858 et
8 seq.).

9 Sec. 312.006. NOTICE AND OPPORTUNITY TO BE HEARD CONCERNING
10 ACCURACY OF INFORMATION. (a) If the department determines that a
11 provider or prospective provider of unregulated self-arranged
12 child care is precluded from providing that care because of the
13 individual's background and criminal history check under Section
14 312.004, the department shall notify the individual of that
15 determination.

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

23 Sec. 312.007. REQUIRED STATEMENT. (a) Except as provided
24 by Section 312.008, an unregulated self-arranged child-care
25 provider and the parent or guardian of the child who receives care
26 through the provider shall each submit a statement to the
27 commission not later than the 15th day of the month following the

1 end of each calendar quarter during which the provider provided the
2 care. The statement 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 statement 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 a statement 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. ELECTRONIC VALIDATION OF CHILD-CARE SERVICES
17 AND ATTENDANCE. (a) If feasible, the commission shall use an
18 electronic validation system to verify that a provider of
19 unregulated self-arranged child care is providing care and that the
20 child for whom the care is provided is in attendance during the
21 period the provider states that child-care services are being
22 provided.

23 (b) An unregulated self-arranged child-care provider and a
24 parent or guardian of a child who receives care through the provider
25 is not required to submit a statement under Section 312.007 if the
26 commission verifies the provision of care and the attendance of the
27 child using an electronic validation system.

1 Sec. 312.009. AUDITS. The commission shall audit on a
2 regular basis a random sample of unregulated self-arranged
3 child-care providers to:

4 (1) determine the accuracy, as applicable, of
5 statements submitted under Section 312.007 or the electronic
6 validation system used to verify child-care services and attendance
7 under Section 312.008; and

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

11 SECTION 2. Subdivision (2), Subsection (a), Section
12 411.114, Government Code, is amended to read as follows:

13 (2) The Department of Family and Protective Services
14 shall obtain from the department criminal history record
15 information maintained by the department that relates to a person
16 who is:

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

20 (B) an owner, operator, or employee of or an
21 applicant for employment by a child-care facility, child-placing
22 agency, family home, or maternity home licensed, registered,
23 certified, or listed under Chapter 42, Human Resources Code, or
24 Chapter 249, Health and Safety Code;

25 (C) a person 14 years of age or older who will be
26 regularly or frequently working or staying in a child-care
27 facility, family home, or maternity home while children are being

1 provided care, other than a child in the care of the home or
2 facility;

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

7 (E) an employee of, an applicant for employment
8 with, or a volunteer or an applicant volunteer with a business
9 entity or person that contracts with the Department of Family and
10 Protective Services to provide direct delivery of protective
11 services to children, elderly persons, or persons with a
12 disability, if the person's duties or responsibilities include
13 direct contact with children, elderly persons, or persons with a
14 disability;

15 (F) a registered volunteer with the Department of
16 Family and Protective Services;

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

21 (H) a Department of Family and Protective
22 Services employee who is engaged in the direct delivery of
23 protective services to children, elderly persons, or persons with a
24 disability;

25 (I) a person who is the subject of a report the
26 Department of Family and Protective Services receives alleging that
27 the person has abused, neglected, or exploited a child, an elderly

1 person, or a person with a disability, provided that:

2 (i) the report alleges the person has
3 engaged in conduct that meets the statutory definition of abuse,
4 neglect, or exploitation under Chapter 261, Family Code, or Chapter
5 48, Human Resources Code; and

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

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

11 (K) through a contract with a nonprofit
12 management center, an employee of, an applicant for employment
13 with, or a volunteer or an applicant volunteer with a nonprofit,
14 tax-exempt organization that provides any service that involves the
15 care of or access to children, elderly persons, or persons with a
16 disability; [~~or~~]

17 (L) an applicant for a child-care administrator
18 or child-placing agency administrator license under Chapter 43,
19 Human Resources Code; or

20 (M) a provider or prospective provider of
21 unregulated self-arranged child care, as defined by Section
22 312.001, Labor Code.

23 SECTION 3. If before implementing any provision of this Act
24 a state agency determines that a waiver or authorization from a
25 federal agency is necessary for implementation of that provision,
26 the agency affected by the provision shall request the waiver or
27 authorization and may delay implementing that provision until the

1 waiver or authorization is granted.

2 SECTION 4. The Texas Workforce Commission and the
3 Department of Family and Protective Services shall adopt the
4 memorandum of understanding required by Section 312.002, Labor
5 Code, as added by this Act, not later than October 1, 2009.

6 SECTION 5. Notwithstanding Chapter 312, Labor Code, as
7 added by this Act, the Texas Workforce Commission shall ensure that
8 payments made on or after November 1, 2009, to providers of
9 unregulated self-arranged child care, as defined by Section
10 312.001, Labor Code, as added by this Act, are made only to
11 providers with respect to whom a background and criminal history
12 check has been conducted as required by that chapter.

13 SECTION 6. This Act takes effect September 1, 2009.