

By: Nelson

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 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 using:

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

10 (2) the information made available by the Department
11 of Public Safety under Section 411.114, Government Code, and by the
12 Federal Bureau of Investigation and any other criminal justice
13 agency under Section 411.087, Government Code, after the
14 fingerprints provided by an individual under this section are
15 received by the Department of Public Safety for the purpose of
16 conducting a state and federal criminal history check; and

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

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

25 (d) A provider of unregulated self-arranged child care for
26 whom a background and criminal history check was conducted under
27 this section and who, following that check, has continuously

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

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

20 (f) The executive commissioner of the Health and Human
21 Services Commission may adopt rules to implement this section.

22 Sec. 312.005. COSTS. (a) In accordance with the
23 memorandum of understanding adopted under Section 312.002, the
24 commission shall pay to the department the costs incurred by the
25 department in conducting background and criminal history checks
26 under this chapter using funds available for that purpose under the
27 Child Care and Development Block Grant Act of 1990 (42 U.S.C.

1 Section 9858 et seq.).

2 (b) The commission by rule shall require a local workforce
3 development board to reimburse the commission for costs paid by the
4 commission under Subsection (a) with respect to an individual who,
5 after a background and criminal history check is conducted, is not
6 precluded from providing unregulated self-arranged child care and
7 begins receiving payments for providing that care. To reimburse
8 the commission, the board shall withhold the amount of those costs
9 for that individual from the first child-care payment made to the
10 individual and shall remit that amount to the commission.

11 Sec. 312.006. NOTICE AND OPPORTUNITY TO BE HEARD CONCERNING
12 ACCURACY OF INFORMATION. (a) If the department determines that a
13 provider or prospective provider of unregulated self-arranged
14 child care is precluded from providing that care because of the
15 individual's background and criminal history check under Section
16 312.004, the department shall notify the individual of that
17 determination.

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

25 Sec. 312.007. AFFIDAVITS. (a) An unregulated
26 self-arranged child care provider and the parent or guardian of the
27 child who receives care through the provider shall each submit an

1 affidavit to the commission not later than the 15th day of the month
2 following the end of each calendar quarter during which the
3 provider provided the care. The affidavit must:

4 (1) specify the number of hours the provider cared for
5 the child during each month of the previous calendar quarter;

6 (2) include the sworn statement of the provider or the
7 parent or guardian, as applicable, that the record of the hours is
8 accurate; and

9 (3) be signed by the provider or the parent or
10 guardian, as applicable.

11 (b) The affidavit in Subsection (a) may be on a form
12 provided by the commission.

13 (c) The commission shall provide notice to each individual
14 required to submit an affidavit under this section that knowingly
15 making, presenting, or using a false governmental record is a
16 criminal offense under Section 37.10, Penal Code.

17 Sec. 312.008. AUDITS. The commission shall audit on a
18 regular basis a random sample of unregulated self-arranged
19 child-care providers to:

20 (1) determine whether affidavits submitted under
21 Section 312.007 are accurate; and

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

25 SECTION 2. Section 411.114(a)(2), Government Code, is
26 amended to read as follows:

27 (2) The Department of Family and Protective Services

1 shall obtain from the department criminal history record
2 information maintained by the department that relates to a person
3 who is:

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

7 (B) an owner, operator, or employee of or an
8 applicant for employment by a child-care facility, child-placing
9 agency, family home, or maternity home licensed, registered,
10 certified, or listed under Chapter 42, Human Resources Code, or
11 Chapter 249, Health and Safety Code;

12 (C) a person 14 years of age or older who will be
13 regularly or frequently working or staying in a child-care
14 facility, family home, or maternity home while children are being
15 provided care, other than a child in the care of the home or
16 facility;

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

21 (E) an employee of, an applicant for employment
22 with, or a volunteer or an applicant volunteer with a business
23 entity or person that contracts with the Department of Family and
24 Protective Services to provide direct delivery of protective
25 services to children, elderly persons, or persons with a
26 disability, if the person's duties or responsibilities include
27 direct contact with children, elderly persons, or persons with a

1 disability;

2 (F) a registered volunteer with the Department of
3 Family and Protective Services;

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

8 (H) a Department of Family and Protective
9 Services employee who is engaged in the direct delivery of
10 protective services to children, elderly persons, or persons with a
11 disability;

12 (I) a person who is the subject of a report the
13 Department of Family and Protective Services receives alleging that
14 the person has abused, neglected, or exploited a child, an elderly
15 person, or a person with a disability, provided that:

16 (i) the report alleges the person has
17 engaged in conduct that meets the statutory definition of abuse,
18 neglect, or exploitation under Chapter 261, Family Code, or Chapter
19 48, Human Resources Code; and

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

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

25 (K) through a contract with a nonprofit
26 management center, an employee of, an applicant for employment
27 with, or a volunteer or an applicant volunteer with a nonprofit,

1 tax-exempt organization that provides any service that involves the
2 care of or access to children, elderly persons, or persons with a
3 disability; [~~or~~]

4 (L) an applicant for a child-care administrator
5 or child-placing agency administrator license under Chapter 43,
6 Human Resources Code; or

7 (M) a provider or prospective provider of
8 unregulated self-arranged child care, as defined by Section
9 312.001, Labor Code.

10 SECTION 3. If before implementing any provision of this Act
11 a state agency determines that a waiver or authorization from a
12 federal agency is necessary for implementation of that provision,
13 the agency affected by the provision shall request the waiver or
14 authorization and may delay implementing that provision until the
15 waiver or authorization is granted.

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

20 SECTION 5. Notwithstanding Chapter 312, Labor Code, as
21 added by this Act, the Texas Workforce Commission shall ensure that
22 payments made on or after November 1, 2009, to providers of
23 unregulated self-arranged child care, as defined by Section
24 312.001, Labor Code, as added by this Act, are made only to
25 providers with respect to whom a background and criminal history
26 check has been conducted as required by that chapter.

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