

1-1 By: Nelson S.B. No. 81
1-2 (In the Senate - Filed November 10, 2008; February 10, 2009,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; March 9, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;
1-6 March 9, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 81 By: Shapleigh

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to certain providers of subsidized child care.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. Subtitle B, Title 4, Labor Code, is amended by
1-13 adding Chapter 312 to read as follows:
1-14 CHAPTER 312. REQUIREMENTS FOR PROVIDERS OF UNREGULATED
1-15 SELF-ARRANGED CHILD CARE
1-16 Sec. 312.001. DEFINITIONS. In this chapter:
1-17 (1) "Department" means the Department of Family and
1-18 Protective Services.
1-19 (2) "Unregulated self-arranged child care" means
1-20 child care that is:
1-21 (A) funded wholly or partly from money received
1-22 under the Child Care and Development Block Grant Act of 1990 (42
1-23 U.S.C. Section 9858 et seq.); and
1-24 (B) provided by a provider who:
1-25 (i) is at least 18 years of age;
1-26 (ii) complies with any federal or state
1-27 requirements regarding subsidized child care that apply to the
1-28 provider;
1-29 (iii) provides child-care services for less
1-30 than 24 hours a day to a child who is, by marriage, blood
1-31 relationship, or court decree:
1-32 (a) the grandchild of the provider;
1-33 (b) the great-grandchild of the
1-34 provider;
1-35 (c) the sibling of the provider, and
1-36 the child resides in a separate residence from the provider; or
1-37 (d) the niece or nephew of the
1-38 provider; and
1-39 (iv) does not hold a license, listing, or
1-40 registration issued under Chapter 42, Human Resources Code, to
1-41 provide care for children for less than 24 hours a day.
1-42 Sec. 312.002. MEMORANDUM OF UNDERSTANDING. The commission
1-43 and the department shall adopt a memorandum of understanding
1-44 regarding the administration and payment of costs of background and
1-45 criminal history checks required under this chapter.
1-46 Sec. 312.003. REQUIREMENTS FOR UNREGULATED SELF-ARRANGED
1-47 CHILD CARE. The commission shall ensure that money appropriated to
1-48 the commission that is used by the commission or a local workforce
1-49 development board to pay for child-care services provided by an
1-50 unregulated self-arranged child-care provider is used only to pay
1-51 for care provided by a provider who, after completion of a
1-52 background and criminal history check required by this chapter, is
1-53 not precluded from providing that care.
1-54 Sec. 312.004. REQUIRED BACKGROUND AND CRIMINAL HISTORY
1-55 CHECK. (a) In accordance with department rules, an individual
1-56 seeking to provide unregulated self-arranged child care must,
1-57 before beginning to provide that care, submit for use in conducting
1-58 a background and criminal history check:
1-59 (1) the individual's name to the department; and
1-60 (2) to the Department of Public Safety in accordance
1-61 with that department's rules, a complete set of the individual's
1-62 fingerprints in a form and of a quality acceptable to that
1-63 department and the Federal Bureau of Investigation for conducting a

2-1 criminal history check.

2-2 (b) The department shall conduct background and criminal
2-3 history checks by:

2-4 (1) using the information provided by an individual
2-5 under this section;

2-6 (2) submitting the fingerprints provided by an
2-7 individual under this section or causing the fingerprints to be
2-8 submitted electronically as authorized by Subsection (f) to the
2-9 Department of Public Safety for the purpose of conducting a state
2-10 and federal criminal history check and using the resulting
2-11 information made available by the Department of Public Safety under
2-12 Section 411.114, Government Code, and by the Federal Bureau of
2-13 Investigation and any other criminal justice agency under Section
2-14 411.087, Government Code; and

2-15 (3) using the department's central registry of
2-16 reported cases of child abuse and neglect established under Section
2-17 261.002, Family Code.

2-18 (c) In determining whether to preclude an individual from
2-19 providing unregulated self-arranged child care, the department
2-20 shall use the standards that apply in conducting background and
2-21 criminal history checks under Section 42.056, Human Resources Code,
2-22 for listed or registered family home providers.

2-23 (d) A provider of unregulated self-arranged child care for
2-24 whom a background and criminal history check was conducted under
2-25 this section and who, following that check, has continuously
2-26 received payments for providing that care shall, not later than the
2-27 fifth anniversary of the date the previous check was completed,
2-28 submit the information described by Subsection (a) in the manner
2-29 provided by that subsection. The department shall use that
2-30 information to conduct a background and criminal history check in
2-31 the manner prescribed by Subsections (b) and (c). A provider of
2-32 unregulated self-arranged child care for whom a background and
2-33 criminal history check was conducted who ceased providing that care
2-34 and who seeks to resume providing that care must provide the
2-35 information described by Subsection (a) in the manner provided by
2-36 that subsection and undergo another background and criminal history
2-37 check unless the department determines that the check is
2-38 unnecessary based on the length of elapsed time since the previous
2-39 check was conducted.

2-40 (e) The commission must provide notice of the background and
2-41 criminal history check requirement to the parent or guardian of the
2-42 child who will receive care through an unregulated self-arranged
2-43 child-care provider before the parent or guardian selects the
2-44 provider.

2-45 (f) The executive commissioner of the Health and Human
2-46 Services Commission may adopt rules to implement this section,
2-47 including rules that require fingerprints to be submitted
2-48 electronically through an applicant fingerprinting service center.

2-49 Sec. 312.005. COSTS. (a) In accordance with the
2-50 memorandum of understanding adopted under Section 312.002, the
2-51 commission shall pay to the department the costs incurred by the
2-52 department in conducting background and criminal history checks
2-53 under this chapter using funds available for that purpose under the
2-54 Child Care and Development Block Grant Act of 1990 (42 U.S.C.
2-55 Section 9858 et seq.).

2-56 (b) The commission by rule shall require a local workforce
2-57 development board to reimburse the commission for costs paid by the
2-58 commission under Subsection (a) with respect to an individual who,
2-59 after a background and criminal history check is conducted, is not
2-60 precluded from providing unregulated self-arranged child care and
2-61 begins receiving payments for providing that care. To reimburse
2-62 the commission, the board shall withhold the amount of those costs
2-63 for that individual from the first child-care payment made to the
2-64 individual and shall remit that amount to the commission.

2-65 Sec. 312.006. NOTICE AND OPPORTUNITY TO BE HEARD CONCERNING
2-66 ACCURACY OF INFORMATION. (a) If the department determines that a
2-67 provider or prospective provider of unregulated self-arranged
2-68 child care is precluded from providing that care because of the
2-69 individual's background and criminal history check under Section

3-1 312.004, the department shall notify the individual of that
3-2 determination.

3-3 (b) The department shall include in the notice provided
3-4 under Subsection (a) a description of the process by which an
3-5 individual may dispute the accuracy of the individual's criminal
3-6 history record and listing on the department's central registry of
3-7 reported abuse and neglect and a description of any process for
3-8 disputing the accuracy of the individual's criminal history record
3-9 with the Department of Public Safety.

3-10 Sec. 312.007. AFFIDAVITS. (a) An unregulated
3-11 self-arranged child-care provider and the parent or guardian of the
3-12 child who receives care through the provider shall each submit an
3-13 affidavit to the commission not later than the 15th day of the month
3-14 following the end of each calendar quarter during which the
3-15 provider provided the care. The affidavit must:

3-16 (1) specify the number of hours the provider cared for
3-17 the child during each month of the previous calendar quarter;

3-18 (2) include the sworn statement of the provider or the
3-19 parent or guardian, as applicable, that the record of the hours is
3-20 accurate; and

3-21 (3) be signed by the provider or the parent or
3-22 guardian, as applicable.

3-23 (b) The affidavit in Subsection (a) may be on a form
3-24 provided by the commission.

3-25 (c) The commission shall provide notice to each individual
3-26 required to submit an affidavit under this section that knowingly
3-27 making, presenting, or using a false governmental record is a
3-28 criminal offense under Section 37.10, Penal Code.

3-29 Sec. 312.008. AUDITS. The commission shall audit on a
3-30 regular basis a random sample of unregulated self-arranged
3-31 child-care providers to:

3-32 (1) determine whether affidavits submitted under
3-33 Section 312.007 are accurate; and

3-34 (2) ensure that the commission and local workforce
3-35 development boards are paying unregulated self-arranged child-care
3-36 providers only for care that is actually provided.

3-37 SECTION 2. Subdivision (2), Subsection (a), Section
3-38 411.114, Government Code, is amended to read as follows:

3-39 (2) The Department of Family and Protective Services
3-40 shall obtain from the department criminal history record
3-41 information maintained by the department that relates to a person
3-42 who is:

3-43 (A) an applicant for a license, registration,
3-44 certification, or listing under Chapter 42, Human Resources Code,
3-45 or Chapter 249, Health and Safety Code;

3-46 (B) an owner, operator, or employee of or an
3-47 applicant for employment by a child-care facility, child-placing
3-48 agency, family home, or maternity home licensed, registered,
3-49 certified, or listed under Chapter 42, Human Resources Code, or
3-50 Chapter 249, Health and Safety Code;

3-51 (C) a person 14 years of age or older who will be
3-52 regularly or frequently working or staying in a child-care
3-53 facility, family home, or maternity home while children are being
3-54 provided care, other than a child in the care of the home or
3-55 facility;

3-56 (D) an applicant selected for a position with the
3-57 Department of Family and Protective Services, the duties of which
3-58 include direct delivery of protective services to children, elderly
3-59 persons, or persons with a disability;

3-60 (E) an employee of, an applicant for employment
3-61 with, or a volunteer or an applicant volunteer with a business
3-62 entity or person that contracts with the Department of Family and
3-63 Protective Services to provide direct delivery of protective
3-64 services to children, elderly persons, or persons with a
3-65 disability, if the person's duties or responsibilities include
3-66 direct contact with children, elderly persons, or persons with a
3-67 disability;

3-68 (F) a registered volunteer with the Department of
3-69 Family and Protective Services;

4-1 (G) a person providing or applying to provide
4-2 in-home, adoptive, or foster care for children in the care of the
4-3 Department of Family and Protective Services and other persons
4-4 living in the residence in which the child will reside;

4-5 (H) a Department of Family and Protective
4-6 Services employee who is engaged in the direct delivery of
4-7 protective services to children, elderly persons, or persons with a
4-8 disability;

4-9 (I) a person who is the subject of a report the
4-10 Department of Family and Protective Services receives alleging that
4-11 the person has abused, neglected, or exploited a child, an elderly
4-12 person, or a person with a disability, provided that:

4-13 (i) the report alleges the person has
4-14 engaged in conduct that meets the statutory definition of abuse,
4-15 neglect, or exploitation under Chapter 261, Family Code, or Chapter
4-16 48, Human Resources Code; and

4-17 (ii) the person who is the subject of the
4-18 report is not also the victim of the alleged conduct;

4-19 (J) a person providing child care for a child who
4-20 is in the care of the Department of Family and Protective Services
4-21 and who is or will be receiving adoptive, foster, or in-home care;

4-22 (K) through a contract with a nonprofit
4-23 management center, an employee of, an applicant for employment
4-24 with, or a volunteer or an applicant volunteer with a nonprofit,
4-25 tax-exempt organization that provides any service that involves the
4-26 care of or access to children, elderly persons, or persons with a
4-27 disability; [~~or~~]

4-28 (L) an applicant for a child-care administrator
4-29 or child-placing agency administrator license under Chapter 43,
4-30 Human Resources Code; or

4-31 (M) a provider or prospective provider of
4-32 unregulated self-arranged child care, as defined by Section
4-33 312.001, Labor Code.

4-34 SECTION 3. If before implementing any provision of this Act
4-35 a state agency determines that a waiver or authorization from a
4-36 federal agency is necessary for implementation of that provision,
4-37 the agency affected by the provision shall request the waiver or
4-38 authorization and may delay implementing that provision until the
4-39 waiver or authorization is granted.

4-40 SECTION 4. The Texas Workforce Commission and the
4-41 Department of Family and Protective Services shall adopt the
4-42 memorandum of understanding required by Section 312.002, Labor
4-43 Code, as added by this Act, not later than October 1, 2009.

4-44 SECTION 5. Notwithstanding Chapter 312, Labor Code, as
4-45 added by this Act, the Texas Workforce Commission shall ensure that
4-46 payments made on or after November 1, 2009, to providers of
4-47 unregulated self-arranged child care, as defined by Section
4-48 312.001, Labor Code, as added by this Act, are made only to
4-49 providers with respect to whom a background and criminal history
4-50 check has been conducted as required by that chapter.

4-51 SECTION 6. This Act takes effect September 1, 2009.

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