

BILL ANALYSIS

Senate Research Center

S.B. 1178
By: Nelson
Health & Human Services
8/25/2011
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1178 is intended to increase protections for children in paid care. Key provisions of the bill include directing the Department of Family and Protective Services (DFPS) to suspend or revoke a facility, agency, or family home's license, listing, or registration under certain circumstances; clarifying that employees of a before-school or after-school program or a school-age program must be fingerprinted; prohibiting individuals from serving in a controlling person capacity at a facility, agency, or family home if they are ineligible to receive a license, listing, or certification or registration due to prior revocation or denial of a license, listing, certification, or registration; allowing DFPS to sanction a license holder for a criminal history relevant to the duties of a licensed child-care or child-placing administrator; allowing DFPS to assess an administrative penalty on listed family homes for violating applicable law or rules; allowing licensed temporary shelters to receive a permit instead of being licensed; and removing maternity homes from DFPS's regulation.

S.B. 1178 amends current law relating to regulation of certain shelter day-care facilities, child-care facilities, and individuals providing child-care services, and access to certain criminal history record information, and provides an administrative penalty.

[**Note:** While the statutory reference in this bill is to the Texas Department of Health (TDH), the following amendments affect the Department of State Health Services, as the successor agency to TDH.]

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission (executive commissioner) is modified in SECTION 6 (Section 42.056, Human Resources Code) and SECTION 8 (Section 42.072, Human Resources Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner in SECTION 6 (Section 42.056, Human Resources Code) and SECTION 10 (Section 42.205, Human Resources Code) of this bill.

Rulemaking authority previously granted to the Board of Protective and Regulatory Services is transferred to the executive commissioner in SECTION 13 (Section 411.114, Government Code) of this bill.

Rulemaking authority previously granted to the Board of Protective and Regulatory Services is rescinded in SECTION 16 (Section 249.007, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the executive commissioner is rescinded in SECTION 16 (Section 42.042, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 42.002(18), Human Resources Code, to redefine "controlling person."

SECTION 2. Amends Section 42.041, Human Resources Code, by adding Subsection (f) to authorize a municipality that operates an elementary-age (ages 5-13) recreation program, notwithstanding the requirements of Subsection (b)(14) (relating to standards of care for an elementary-age recreation program), in lieu of an annual public hearing, accept public comment through the municipality's Internet website for at least 30 days before the municipality adopts standards of care by ordinance if the municipality has a population of 300,000 or more, and has held at least two annual public hearings on the standards of care and adopted standards of care by ordinance after those public hearings.

SECTION 3. Amends Section 42.044, Human Resources Code, by amending Subsection (b) and adding Subsections (c-1) and (c-2), as follows:

(b) Deletes existing text requiring the Department of Family and Protective Services (DFPS) to investigate a listed family home when DFPS receives a complaint of abuse or neglect of a child, as defined by Section 261.401 (Agency Investigation), Family Code.

(c-1) Provides that DFPS:

(1) is required to investigate a listed family home if DFPS receives a complaint that:

(A) a child in the home has been abused or neglected, as defined by Section 261.401, Family Code; or

(B) otherwise alleges an immediate risk of danger to the health or safety of a child being cared for in the home; and

(2) is authorized to investigate a listed family home to ensure that the home is providing care for compensation to not more than three children, excluding children who are related to the caretaker.

(c-2) Requires DFPS to notify the operator of a listed family home when a complaint is being investigated under this section and report in writing the results of the investigation to the family home's operator.

SECTION 4. Amends Section 45.052, Human Resources Code, by amending Subsection (j) and adding Subsection (j-1) as follows:

(j) Requires DFPS, if the operator of a listed family home fails to submit the information required by Section 42.056 (Required Background and Criminal History Checks; Criminal Penalties) for a subsequent background and criminal history check, to automatically:

(1) suspend the home's listing until the required information is submitted; and

(2) revoke the home's listing if the required information is not submitted within six months after the date the automatic suspension begins.

(j-1) Provides that a suspension or revocation under Subsection (j) is not a suspension or revocation under Section 42.072 (License, Listing, or Registration Denial, Suspension, or Revocation).

SECTION 5. Amends Section 42.054(f), Human Resources Code, as follows:

(f) Provides that, if a facility, agency, or home fails to pay the annual fee when due, the license, listing, or registration, as appropriate, is automatically suspended until the fee is paid. Requires that the license, listing, or registration be revoked if the fee is not paid within six months after the date the automatic suspension begins. Provides that a suspension or revocation under this subsection is not a suspension or revocation under Section 42.072.

SECTION 6. Amends Section 42.056, Human Resources Code, by amending Subsection (a-2) and adding Subsection (l), as follows:

(a-2) Requires the director, owner, or operator of a day-care center, before-school or after-school program, or school-age program, in accordance with rules adopted by the executive commissioner of the Health and Human Services Commission (executive commissioner), to submit a complete set of fingerprints of each person whose name is required to be submitted by the director, owner, or operator under Subsection (a) (relating to for use in conducting background and criminal history checks the name of certain individuals), unless the person is only required to have the person's name submitted based on criteria specified by Subsection (a)(7) (relating to each person 14 years of age or older, other than a client in care, who will regularly or frequently be staying or working at a facility, family home, or prospective adoptive home, while children are being provided care). Provides that this subsection does not apply to a program that is exempt from the licensing requirements of Section 42.041 (Required License).

(l) Requires a person that contracts to provide one or more substitute employees to a facility or family home, in accordance with rules adopted by the executive commissioner, to submit to DFPS for use in conducting background and criminal history checks the name of each substitute employee. Requires a substitute employee, before the employee may be present at a facility or family home, to meet the same requirements under this section as an employee present at the facility or family home who performs similar duties. Requires the director, owner, or operator of a facility or family home to verify with DFPS a substitute employee is eligible to be present at the facility or family home before allowing the employee to begin work.

SECTION 7. Amends Section 42.062, Human Resources Code, as follows:

Sec. 42.062. New heading: CERTAIN EMPLOYMENT AND SERVICE PROHIBITED. Prohibits a person from being employed as a controlling person or serving in that capacity in a facility or family home if the person is not eligible to receive a license or certification for the operation of a facility or family home under Section 42.072(g) (relating to refusing to issue a license, listing, registration, or certification to certain individuals) or has been denied a license under Section 42.046 (Application for License, Listing, or Registration) for a substantive reason. Deletes existing text prohibiting a residential child care facility from employing in any capacity a person who is not is not eligible to receive a license or certification for the operation of a residential child care facility under Section 42.072(g) or who has been denied a license under Section 42.046.

SECTION 8. Amends Section 42.072, Human Resources Code, by adding Subsection (c-1) and amending Subsections (e) and (g), as follows:

(c-1) Provides that a person described by Subsection (c) may not be a controlling person in any facility or family home during the five-year period in which the person is ineligible to receive a license, listing, registration, or certification.

(e) Authorizes a person to continue to operate a facility or family home during an appeal of a license, listing, or registration revocation, rather than a registration denial or revocation, unless the operation of the facility or family home poses a risk to the health or safety of children.

(g) Authorizes DFPS, notwithstanding Subsection (c), to refuse to issue a license, listing, registration, or certification to:

(1) a person whose license, listing, registration, or certification for a facility or family home, rather than a residential child-care facility, was revoked DFPS or by court order;

(2) a person who was a controlling person of a facility or family home at the time conduct occurred that resulted in the revocation of the license, listing, registration, or certification of the facility or family home;

(3) a person who voluntarily closed a facility or family home or relinquished the person's license, listing, registration, or certification after:

(A) DFPS took an action under Subsection (a) (relating to suspending, denying, revoking, or refusing to renew the license, listing, registration, or certification of approval of a facility or family home that does not comply with certain requirements) in relation to the facility, family home, or person; or

(B) the person received notice that DFPS intended to take an action under Subsection (a) in relation to the facility, family home, or person; or

(4) a person who was a controlling person of a facility or family home at the time conduct occurred that resulted in the closure of the facility or family home or relinquishment of the license, listing, registration, or certification in the manner described by Subdivision (3). Makes conforming changes.

SECTION 9. Amends Section 42.078(a), Human Resources Code, to authorize DFPS to impose an administrative penalty against a facility or family home licensed, registered, or listed under this chapter that violates this chapter or a rule or order adopted under this chapter. Makes nonsubstantive changes.

SECTION 10. Amends Chapter 42, Human Resources Code, by adding Subchapter G, as follows:

SUBCHAPTER G. REGULATION OF TEMPORARY SHELTER DAY-CARE FACILITIES

Sec. 42.201. DEFINITIONS. Defines "shelter," "shelter care," and "shelter day-care facility."

Sec. 42.202. PERMIT REQUIRED. (a) Prohibits a shelter, except as provided by Subsections (b) and (e), from providing shelter care unless the shelter holds a permit issued by DFPS under this subchapter.

(b) Provides that a shelter is not required to obtain a permit to provide shelter care under this subchapter if the shelter holds a license to operate a child-care facility that is issued by DFPS under Subchapter C (Regulation of Certain Facilities, Homes, and Agencies). Requires a shelter that holds that license to comply with the applicable provisions of Subchapter C, the applicable rules of DFPS, and any specific terms of the license.

(c) Provides that, notwithstanding any other law, including Section 42.041, a shelter that holds a permit issued under this subchapter is not required to hold a license under Subchapter C to operate a shelter day-care facility.

(d) Prohibits DFPS from issuing a permit under this subchapter to a shelter that provides child care to a child who is not a resident of the shelter. Requires a shelter that provides child care described by this subsection to hold a license to operate a child-care facility issued under Subchapter C.

(e) Provides that a shelter is not required to obtain a permit under this subchapter or a license under Subchapter C if the shelter provides shelter care for:

(1) less than four hours a day or for less than three days a week; or

(2) six or fewer children.

Sec. 42.203. APPLICATION; INITIAL INSPECTION AND BACKGROUND AND CRIMINAL HISTORY CHECKS. (a) Requires DFPS to develop and implement a streamlined procedure by which a shelter may apply for and be issued a permit to operate a shelter day-care facility. Requires the shelter to submit an application for the permit to DFPS on a form prescribed by DFPS.

(b) Requires DFPS, except as provided by Section 42.204, on receipt of a shelter's application for a permit, to:

(1) conduct an initial inspection of the shelter day-care facility to ensure that the shelter is able to comply with the provisions of this subchapter and that the facility complies with the fire safety and sanitation standards of the political subdivision in which the facility is located; and

(2) conduct a background and criminal history check on each prospective caregiver whose name is submitted as required by Section 42.206(a).

(c) Authorizes DFPS to charge an applicant an administrative fee in a reasonable amount that is sufficient to cover the costs of DFPS in processing the application.

(d) Requires DFPS to process an application not later than the 30th day after the date DFPS receives all of the required information.

Sec. 42.204. CONVERSION OF LICENSE. (a) Requires DFPS to develop and implement a procedure by which a shelter that holds a license to operate a child-care facility that is issued under Subchapter C before September 1, 2012, may convert the license to a permit under this subchapter. Requires that the procedure include an abbreviated application form for use by the shelter in applying for the permit.

(b) Authorizes DFPS to waive the requirements under Section 42.203(b) for an initial inspection or background and criminal history checks with respect to a licensed child-care facility seeking to convert a license to a permit under this section if DFPS determines that previously conducted inspections or background and criminal history checks, as applicable, are sufficient to ensure the safety of children receiving care at the facility.

Sec. 42.205. CAREGIVER QUALIFICATIONS AND TRAINING; CHILD-TO-CAREGIVER RATIOS. (a) Requires the executive commissioner to adopt rules that specify the minimum:

(1) qualifications and training required for a person providing child care in a shelter day-care facility; and

(2) child-to-caregiver ratios in a shelter day-care facility.

(b) Requires the executive commissioner, in adopting rules under this section, to consider:

(1) the special circumstances and needs of families that seek temporary shelter; and

(2) the role of a shelter in assisting and supporting families in crisis.

Sec. 42.206. BACKGROUND AND CRIMINAL HISTORY CHECKS REQUIRED. (a) Requires a shelter, in accordance with rules adopted by the executive commissioner, when applying for a permit under this subchapter and at least once during each 24-month period after receiving that permit, to submit to DFPS for use in conducting background and criminal history checks:

(1) the name of any director or prospective director of the shelter day-care facility and the name of each caregiver or prospective caregiver employed at the facility to provide care to children;

(2) the name of each person counted in child-to-caregiver ratios at the shelter day-care facility; and

(3) the name of each person 14 years of age or older who will have unsupervised access to one or more children while in the care of the shelter day-care facility.

(b) Requires a shelter, in addition to the requirements of Subsection (a), to submit a complete set of fingerprints of each person required to undergo a criminal history check under Subsection (a) if:

(1) the person has lived outside the state at any time during the previous five years; or

(2) the shelter has reason to suspect that the person has a criminal history in another state.

(c) Requires DFPS to conduct background and criminal history checks using:

(1) the information provided under Subsection (a) or (b), as applicable;

(2) the information made available by the Department of Public Safety of the State of Texas (DPS) under Section 411.114 (Access to Criminal History Record Information: Department of Protective and Regulatory Services), Government Code, or by the Federal Bureau of Investigation or another criminal justice agency under Section 411.087 (Access to Criminal History Record Information Maintained by Federal Bureau of Investigation or Local Criminal Justice Agency), Government Code; and

(3) DFPS's records of reported abuse and neglect.

(d) Provides that, for purposes of Sections 411.114 and 411.087, Government Code:

(1) a shelter that applies for a permit is considered to be an applicant for a license under this chapter; and

(2) a shelter day-care facility operating under a permit issued under this subchapter is considered to be a child-care facility licensed under this chapter.

(e) Requires DFPS to require the shelter to pay to DFPS a fee in an amount not to exceed the administrative costs DFPS incurs in conducting a background and criminal history check under this section.

Sec. 42.207. APPLICABILITY OF OTHER LAW. Provides that, except as otherwise provided by this subchapter, a shelter day-care facility operating under this subchapter is not a child-care facility, as defined by Section 42.002 (Definitions), and the provisions of this chapter and DFPS's rules that apply to a child-care facility licensed under Subchapter C do not apply to a shelter day-care facility.

Sec. 42.208. REPORTING OF INCIDENTS AND VIOLATIONS. Provides that a shelter day-care facility operating under this subchapter and each employee of that facility are subject to the reporting requirements of Section 42.063 to the same extent a licensed child-care facility and employees of licensed child-care facilities are subject to that section.

Sec. 42.209. AUTHORITY TO CONDUCT LIMITED INSPECTIONS. (a) Authorizes DFPS to inspect a shelter day-care facility operating under this subchapter if DFPS receives a complaint or report of child abuse or neglect alleged to have occurred at the shelter day-care facility.

(b) Authorizes DFPS, if DFPS inspects a shelter day-care facility as authorized by this section, to require the facility to take appropriate corrective action DFPS determines necessary to comply with the requirements of this subchapter and to ensure the health and safety of children receiving care at the facility. Authorizes DFPS to continue to inspect the facility until corrective action is taken and for a reasonable time after that action is taken to ensure continued compliance.

(c) Authorizes DFPS to charge a shelter issued a permit under this subchapter a reasonable fee for the cost of services provided by DFPS in formulating, monitoring, and implementing a corrective action plan under this section.

Sec. 42.210. SUSPENSION, DENIAL, OR REVOCATION. (a) Authorizes DFPS to suspend, deny, or revoke a permit issued to a shelter under this subchapter if the shelter does not comply with the provisions of this subchapter or any applicable DFPS rules.

(b) Authorizes DFPS to refuse to issue a permit under this subchapter to a shelter that had its authorization to operate a child-care facility issued under another subchapter revoked, suspended, or not renewed for a reason relating to child health or safety as determined by DFPS.

(c) Provides that a shelter day-care facility is subject to the emergency suspension of its permit to operate and to closure under Section 42.073 (Emergency Suspension and Closure of a Facility or Family Home) to the same extent and in the same manner as a licensed child-care facility is subject to that section.

SECTION 11. Amends Section 43.010(a), Human Resources Code, to authorize DFPS to deny, revoke, suspend, or refuse to renew a license, or place on probation or reprimand a license holder for certain actions, including having a criminal history relevant to the duties of a licensed child-care or child-placing administrator, as those duties are specified in rules adopted by the executive commissioner.

SECTION 12. Amends Section 411.087, Government Code, by amending Subsections (a) and (e) and adding Subsection (f), as follows:

(a) Provides that, unless otherwise authorized by Subsection (e), a person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the Department of Public Safety of the State of Texas (DPS) criminal history record information maintained by DPS that relates to another person is authorized to:

(1) obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to that person; or

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

(e) Authorizes DPS to provide access to state and national criminal history record information to qualified entities, rather than nongovernmental entities, entitled to that information under 42 U.S.C. Section 5119a. Require DPS to follow federal law and regulation, federal executive orders, and federal policy in releasing information under this subsection.

(f) Provides that, notwithstanding any other law, a person, agency, department, political subdivision, or other entity entitled to access the criminal history record information of a person under Subsection (e) is not required to collect or submit the person's fingerprints if:

- (1) a complete set of the person's fingerprints was previously submitted under Subsection (d)(1);
- (2) DPS retained the fingerprints;
- (3) the fingerprints are acceptable to the Federal Bureau of Investigation for access to criminal history record information; and
- (4) the only purpose for which the person's fingerprints are collected is to access criminal history record information under Subsection (e).

SECTION 13. Amends Section 411.114(a), Government Code, as follows:

(a)(1) Deletes, in this subsection, the existing definition of "maternity home."

(2) Requires DFPS to obtain from DPS criminal history record information maintained by DPS that relates to certain persons, including an applicant for a license, registration, certification, or listing under Chapter 42 (Regulation of Certain Facilities, Homes, and Agencies that Provide Child-Care Services), Human Resources Code, rather than a listing under Chapter 42 Human Resources Code or Chapter 249 (Maternity Homes), Health and Safety Code; an owner, operator, or employee of or an applicant for employment by a child-care facility, child-placing agency, or family home, rather than by a child-care facility, child-placing agency, family home, or maternity home, licensed, registered, certified, or listed under Chapter 42, Human Resources Code, rather than under Chapter 42, Human Resources Code or Chapter 249, Health and Safety Code; or a person 14 years of age or older who will be regularly or frequently working or staying in a child-care facility or family home while children are being provided care, other than a child in the care of the home or facility. Makes conforming changes.

(3) Entitles DFPS, rather than the Department of Protective and Regulatory Services, to obtain from the DPS criminal history record information maintained by DPS that relates to a person who is a child who is related to the caretaker, as determined under Section 42.002, Human Resources Code, and who resides in or is present in a child-care facility or family home, rather than in a child-care facility, family home, or maternity home, other than a child described by Subdivision (2)(C), or any other person who has unsupervised access to a child in the care of a child-care facility or family home; an applicant for a position with DFPS, other than a position described by Subdivision (2)(D), regardless of the duties of the position; or a volunteer or applicant volunteer with DFPS, other than a registered volunteer, regardless of the duties to be performed. Makes conforming changes.

(4) Makes conforming changes.

(5) Prohibits DFPS from using the authority granted under this section to harass an employee or volunteer. Requires the executive commissioner, rather than the Board of Protective and Regulatory Services, to adopt rules to prevent the harassment of an employee or volunteer through the request and use of criminal records.

(6) Makes conforming changes.

(7) Provides that DFPS is not prohibited from releasing criminal history record information obtained under this subsection to certain individuals and entities,

including a child-care facility, child-placing agency, or family home, rather than a child-care facility, child-placing agency, family home, or maternity home, listed in Subdivision (2) that employs or is considering employing the person who is the subject of the criminal history record information. Makes conforming changes.

SECTION 14. Amends Section 81.042(e), Health and Safety Code, to require certain persons to report to the local health authority or Texas Department of Health a suspected case of a reportable disease and all information known concerning the person who has or is suspected of having the disease if a report is not made as required by Subsections (a)-(d), including an administrator or director of a nursing home, personal care home, adult respite care center, or adult day-care center, rather than an administrator or director of a nursing home, personal care home, maternity home, adult respite care center, or adult day-care center.

SECTION 15. (a) Requires DFPS to develop and implement a procedure by which a maternity home that provides residential child care to a minor mother and that holds a license issued under Chapter 249, Health and Safety Code, before September 1, 2012, may convert the license to a residential child-care facility license issued under Chapter 42, Human Resources Code.

(b) Authorizes DFPS to waive requirements for an initial inspection or initial background and criminal history checks with respect to a maternity home seeking to convert a license under Subsection (a) of this section if DFPS determines that previously conducted inspections or background and criminal history checks, as applicable, are sufficient to ensure the safety of children receiving care at the facility.

SECTION 16. Repealer: Chapter 249 (Maternity Homes), Health and Safety Code.

Repealer: Section 42.042(g-2) (relating to adopting specific rules and minimum standards for a child-care facility that is located in a temporary shelter), Human Resources Code.

SECTION 17. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2011.

(b) Effective date, Section 411.114(a), Government Code; Section 81.042(e), Health and Safety Code; Subchapter G, Chapter 42, Human Resources Code; and the repeal of Chapter 249 Health and Safety Code, and Section 42.042(g-2), Human Resources Code: September 1, 2012.