

BILL ANALYSIS

C.S.S.B. 1178
By: Nelson
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The health, welfare, and well-being of Texas children can be more adequately protected. C.S.S.B. 1178 intends to increase protections for children in certain child-care facilities by amending 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.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 10 of this bill.

ANALYSIS

Section 531.0055, Government Code, as amended by Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, expressly grants to the executive commissioner of the Health and Human Services Commission all rulemaking authority for the operation of and provision of services by the health and human services agencies. Similarly, Sections 1.16-1.29, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, provide for the transfer of a power, duty, function, program, or activity from a health and human services agency abolished by that act to the corresponding legacy agency. To the extent practical, this bill analysis is written to reflect any transfer of rulemaking authority and to update references as necessary to an agency's authority with respect to a particular health and human services program.

C.S.S.B. 1178 amends the Human Resources Code to authorize a municipality that operates an elementary-age (ages 5-13) recreation program, for purposes of provisions of law exempting certain elementary-age recreation programs from child-care facility licensing requirements and in lieu of an annual public hearing, to 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.

C.S.S.B. 1178 requires the Department of Family and Protective Services (DFPS) to investigate a listed family home if DFPS receives a complaint that alleges an immediate risk of danger to the health or safety of a child being cared for in the home. The bill authorizes DFPS to investigate a 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. The bill requires DFPS to notify the operator of a listed family home when a complaint is being investigated and report in writing the results of the investigation to the family home's operator.

C.S.S.B. 1178 requires DFPS, if the operator of a listed family home fails to submit the information required for a subsequent background and criminal history check, to automatically suspend the home's listing until the required information is submitted and revoke the home's

listing if the required information is not submitted within six months after the date the automatic suspension begins. The bill clarifies that such a suspension or revocation is not a suspension or revocation under provisions of law relating to remedies against certain facilities, homes, and agencies that provide child-care services.

C.S.S.B. 1178, in a provision of law providing for the suspension of a license, listing, or registration of a child-care facility, agency, or home that fails to pay the annual fee until the fee is paid, specifies that the license, listing, or registration is automatically suspended under such circumstances. The bill requires the license, listing, or registration to be revoked if the fee is not paid within six months after the date the automatic suspension begins. The bill clarifies that such a suspension or revocation is not a suspension or revocation under provisions of law relating to remedies against certain facilities, homes, and agencies that provide child-care services.

C.S.S.B. 1178 requires the director, owner, or operator of a before-school or after-school program or school-age program, in addition to the director, owner, or operator of a day-care center and in accordance with rules adopted by the executive commissioner of the Health and Human Services Commission, to submit a complete set of fingerprints of each person whose name is required to be submitted to the director, owner, or operator, except under certain circumstances. The bill specifies that the requirement is not applicable to a program that is exempt from the licensing requirements of a child-care facility or child-placing agency.

C.S.S.B. 1178 requires a person that contracts to provide one or more substitute employees to a child-care facility or family home, in accordance with rules adopted by the executive commissioner, to submit the name of each substitute employee to DFPS for use in conducting background and criminal history checks. The bill requires a substitute employee, before the employee is authorized to be present at a child-care facility or family home, to meet the same background and criminal history check requirements as an employee present at the facility or family home who performs similar duties. The bill requires the director, owner, or operator of a child-care facility or family home to verify with DFPS that a substitute employee is eligible to be present at the facility or family home before allowing the employee to begin work.

C.S.S.B. 1178 prohibits a person from being employed as a controlling person or serving in that capacity in a child-care 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 or has been denied a license for a substantive reason. The bill removes language specifying that a residential child-care facility is prohibited from employing in any capacity a person who is not eligible to receive a license or certification for the operation of a residential child-care facility or who has been denied a license. The bill prohibits a person whose license, listing, registration, or certification is revoked or whose application for a license, listing, registration, or certification is denied for a substantive reason from being a controlling person in any child-care facility or family home during the five-year period in which the person is ineligible to receive a license, listing, registration, or certification. The bill removes the authorization for a person to continue to operate a child-care facility or family home during an appeal of a license, listing, or registration denial.

C.S.S.B. 1178 authorizes DFPS to refuse to issue a listing or registration, in addition to a license or certification, to certain persons applicable to those persons in relation to a child-care facility or family home, rather than a residential-care facility, and makes conforming changes. The bill redefines "controlling person."

C.S.S.B. 1178 authorizes DFPS to impose an administrative penalty against a listed facility or family home that violates a provision of law relating to the regulation of certain facilities, homes, and agencies that provide child-care services or a rule or order adopted under those provisions.

C.S.S.B. 1178 sets out provisions relating to the regulation of temporary shelter day-care facilities and prohibits a shelter from providing shelter care unless the shelter holds a permit

issued by DFPS under such provisions. The bill specifies that a shelter is not required to obtain such a permit if the shelter holds a license to operate a child-care facility that is issued by DFPS under provisions of law relating to the regulation of certain facilities, homes, and agencies that provide child-care services. The bill requires a shelter that holds that license to comply with the applicable provisions of law, the applicable rules of DFPS, and any specific terms of the license. The bill specifies that a shelter that holds a temporary shelter day-care facilities permit is not required to hold such a license to operate a shelter day-care facility. The bill prohibits DFPS from issuing such a permit to a shelter that provides child care to a child who is not a resident of the shelter and requires such a shelter to hold a license to operate a child-care facility. The bill specifies that a shelter is not required to obtain such a permit or license if the shelter provides shelter care for less than four hours a day or for less than three days a week or for six or fewer children.

C.S.S.B. 1178 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. The bill requires the shelter to submit an application for the permit to DFPS on a form prescribed by DFPS. The bill requires DFPS, on receipt of a shelter's application for a permit, to conduct an initial inspection of the shelter day-care facility to ensure that the shelter is able to comply with provisions relating to the regulation of temporary shelter day-care facilities and that the facility complies with the fire safety and sanitation standards of the political subdivision in which the facility is located and to conduct a background and criminal history check on each prospective caregiver whose name is submitted as required by law. The bill authorizes DFPS to charge an applicant an administrative fee in a reasonable amount that is sufficient to cover application processing costs. The bill requires DFPS to process the application for a permit not later than the 30th day after the date DFPS receives all of the required information.

C.S.S.B. 1178 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 before September 1, 2012, may convert the license to a permit to operate a shelter day-care facility. The bill requires the procedure to include an abbreviated application form for use by the shelter in applying for the permit. The bill authorizes DFPS to waive the requirements 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 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.

C.S.S.B. 1178 requires the executive commissioner to adopt rules that specify the minimum qualifications and training required for a person providing child care in a shelter day-care facility and child-to-caregiver ratios in a shelter day-care facility. The bill requires the executive commissioner, in adopting such rules, to consider the special circumstances and needs of families that seek temporary shelter and the role of a shelter in assisting and supporting families in crisis.

C.S.S.B. 1178 requires a shelter, when applying for a permit and at least once during each 24-month period after receiving that permit, to, in accordance with rules adopted by the executive commissioner, submit the following information to DFPS for use in conducting background and criminal history checks: 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, the name of each person counted in child-to-caregiver ratios at the shelter day-care facility, and 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. The bill requires a shelter to additionally submit a complete set of fingerprints of each person required to undergo a criminal history check if the person lived outside Texas at any time during the previous five years or the shelter has reason to suspect that the person has a criminal history in another state.

C.S.S.B. 1178 requires DFPS to conduct background and criminal history checks using certain information provided by the shelter, as applicable; the information made available by the Department of Public Safety (DPS), FBI, or another criminal justice agency under state law; and DFPS records of reported abuse and neglect. The bill specifies, for purposes of Government Code provisions relating to the DFPS access to certain criminal history information, that a shelter that applies for a permit is considered to be an applicant for a license under provisions of law relating to the regulation of certain facilities, homes, and agencies that provide child-care services and that a shelter day-care facility operating under a permit is considered to be a licensed child-care facility. The bill 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.

C.S.S.B. 1178 specifies that a shelter day-care facility operating under the bill's provisions relating to the regulation of temporary shelter day-care facilities, except as otherwise provided by such provisions, is not a child-care facility and the provisions regulating certain facilities, homes, and agencies that provide child-care services and the department's rules that apply to a licensed child-care facility do not apply to a shelter day-care facility. The bill subjects a shelter day-care facility and each employee of that facility to the reporting requirements for certain incidents involving the health, well-being, and safety of a child and suspected abuse and neglect to the same extent a licensed child-care facility and employees of licensed child-care facilities are subject to such requirements.

C.S.S.B. 1178 authorizes DFPS to inspect a shelter day-care facility if DFPS receives a complaint or report of child abuse or neglect alleged to have occurred at the shelter day-care facility. The bill authorizes DFPS, if it inspects a shelter day-care facility, to require the facility to take appropriate corrective action DFPS determines necessary to comply with the requirements of the bill's provisions relating to the regulation of temporary shelter day-care facilities and to ensure the health and safety of children receiving care at the facility. The bill authorizes DFPS to continue to inspect the facility until the corrective action is taken and for a reasonable time after that action is taken to ensure continued compliance. The bill authorizes DFPS to charge a shelter issued a permit to operate a shelter day-care facility a reasonable fee for the cost of services provided by DFPS in formulating, monitoring, and implementing a corrective action plan.

C.S.S.B. 1178 authorizes DFPS to suspend, deny, or revoke a permit issued to a shelter if the shelter does not comply with provisions of the bill relating to the regulation of temporary shelter day-care facilities or any applicable DFPS rules. The bill authorizes DFPS to refuse to issue a permit to a shelter that had its authorization to operate a child-care facility issued under other provisions of law revoked, suspended, or not renewed for a reason relating to child health or safety as determined by DFPS. The bill specifies that a shelter day-care facility is subject to the emergency suspension of its permit to operate a shelter day-care facility and to closure to the same extent and in the same manner as a licensed child-care facility. The bill defines "shelter," "shelter care," and "shelter day-care facility" for purposes of the bill's provisions relating to the regulation of temporary shelter day-care facilities. The bill makes its provisions relating to the regulation of temporary shelter day-care facilities effective September 1, 2012.

C.S.S.B. 1178 authorizes DFPS to deny, revoke, suspend, or refuse to renew a child-care or child-placing agency administrator license, or place on probation or reprimand a license holder for 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.

C.S.S.B. 1178 amends the Government Code to specify that DPS is authorized to provide access to state and national criminal history record information to qualified entities, rather than nongovernmental entities, entitled to the information under federal law. The bill specifies that a person, agency, department, political subdivision, or other entity entitled to access the state and national criminal history record information of a person is not required to collect or submit the

person's fingerprints if a complete set of the person's fingerprints was previously submitted by an entity for access to criminal history record information from the FBI, DPS retained the fingerprints, the fingerprints are acceptable to the FBI for access to the criminal history record information, and the only purpose for which the person's fingerprints are collected is to access state and national criminal history record information.

C.S.S.B. 1178 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 maternity home license, before September 1, 2012, may convert the license to a residential child-care facility license. The bill 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 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.

C.S.S.B. 1178 repeals Chapter 249, Health and Safety Code, relating to the licensing and regulation of maternity homes and makes related conforming changes in the Government Code and Health and Safety Code. The bill repeals Section 42.042(g-2), Human Resources Code, requiring the executive commissioner to adopt specific rules and minimum standards for a child-care facility that is located in a temporary shelter. The bill makes its provisions repealing those provisions of law and making related conforming changes effective September 1, 2012.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 1178 contains a provision not included in the original authorizing a municipality that operates an elementary-age (ages 5-13) recreation program, for purposes of provisions of law exempting certain elementary-age recreation programs from child-care facility licensing requirements and in lieu of an annual public hearing, to 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.