

By: Nelson

S.B. No. 76

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 313 to read as follows:

CHAPTER 313. REQUIREMENTS FOR PROVIDERS OF UNREGULATED
SELF-ARRANGED CHILD CARE

Sec. 313.001. 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. 313.002. REQUIREMENTS FOR UNREGULATED SELF-ARRANGED
11 CHILD CARE. The commission shall ensure that money appropriated to
12 the commission that is used by the commission or a local workforce
13 development board to pay for child-care services provided by an
14 unregulated self-arranged child-care provider is used only to pay
15 for care provided by a provider who, after completion of a
16 background and criminal history check required by this chapter, is
17 not precluded from providing that care.

18 Sec. 313.003. REQUIRED BACKGROUND AND CRIMINAL HISTORY
19 CHECK. (a) In accordance with department rules, an individual
20 seeking to provide unregulated self-arranged child care must,
21 before beginning to provide that care, submit for use in conducting
22 a background and criminal history check:

23 (1) the individual's name to the department; and

24 (2) to the Department of Public Safety in accordance
25 with that department's rules, a complete set of the individual's
26 fingerprints in a form and of a quality acceptable to that
27 department and the Federal Bureau of Investigation for conducting a

1 criminal history check.

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

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

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

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

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

23 (d) A provider of unregulated self-arranged child care for
24 whom a background and criminal history check was conducted who
25 ceased providing that care and who seeks to resume providing that
26 care must provide the information described by Subsection (a) in
27 the manner provided by that subsection and undergo another

1 background and criminal history check unless the department
2 determines that the check is unnecessary based on the length of
3 elapsed time since the previous check was conducted.

4 (e) The commission must provide notice of the background and
5 criminal history check requirement to the parent or guardian of the
6 child who will receive care through an unregulated self-arranged
7 child-care provider before the parent or guardian selects the
8 provider.

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

13 (g) An individual seeking to provide unregulated
14 self-arranged child care shall pay:

15 (1) the cost of submitting the individual's
16 fingerprints under this section; and

17 (2) the costs incurred by the department in conducting
18 background and criminal history checks under this chapter.

19 Sec. 313.004. NOTICE AND OPPORTUNITY TO BE HEARD CONCERNING
20 ACCURACY OF INFORMATION. (a) If the department determines that a
21 provider or prospective provider of unregulated self-arranged
22 child care is precluded from providing that care because of the
23 individual's background and criminal history check under Section
24 313.003, the department shall notify the individual of that
25 determination.

26 (b) The department shall include in the notice provided
27 under Subsection (a) a description of the process by which an

1 individual may dispute the accuracy of the individual's criminal
2 history record and listing on the department's central registry of
3 reported abuse and neglect and a description of any process for
4 disputing the accuracy of the individual's criminal history record
5 with the Department of Public Safety.

6 Sec. 313.005. REQUIRED STATEMENT. (a) Except as provided
7 by Section 313.006, an unregulated self-arranged child-care
8 provider and the parent or guardian of the child who receives care
9 through the provider shall each submit a statement to the
10 commission not later than the 15th day of the month following the
11 end of each calendar quarter during which the provider provided the
12 care. The statement must:

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

15 (2) include the sworn statement of the provider or the
16 parent or guardian, as applicable, that the record of the hours is
17 accurate; and

18 (3) be signed by the provider or the parent or
19 guardian, as applicable.

20 (b) The statement in Subsection (a) may be on a form
21 provided by the commission.

22 (c) The commission shall provide notice to each individual
23 required to submit a statement under this section that knowingly
24 making, presenting, or using a false governmental record is a
25 criminal offense under Section 37.10, Penal Code.

26 Sec. 313.006. ELECTRONIC VALIDATION OF CHILD-CARE SERVICES
27 AND ATTENDANCE. (a) If feasible, the commission shall use an

1 electronic validation system to verify that a provider of
2 unregulated self-arranged child care is providing care and that the
3 child for whom the care is provided is in attendance during the
4 period the provider states that child-care services are being
5 provided.

6 (b) An unregulated self-arranged child-care provider and a
7 parent or guardian of a child who receives care through the provider
8 is not required to submit a statement under Section 313.005 if the
9 commission verifies the provision of care and the attendance of the
10 child using an electronic validation system.

11 Sec. 313.007. AUDITS. The commission shall audit on a
12 regular basis a random sample of unregulated self-arranged
13 child-care providers to:

14 (1) determine the accuracy, as applicable, of
15 statements submitted under Section 313.005 or the electronic
16 validation system used to verify child-care services and attendance
17 under Section 313.006; and

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

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

23 (2) The Department of Family and Protective Services
24 shall obtain from the department criminal history record
25 information maintained by the department that relates to a person
26 who is:

27 (A) an applicant for a license, registration,

1 certification, or listing under Chapter 42, Human Resources Code,
2 or Chapter 249, Health and Safety Code;

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

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

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

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

25 (F) a registered volunteer with the Department of
26 Family and Protective Services;

27 (G) a person providing or applying to provide

1 in-home, adoptive, or foster care for children in the care of the
2 Department of Family and Protective Services and other persons
3 living in the residence in which the child will reside;

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

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

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

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

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

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

27 (L) an applicant for a child-care administrator

1 or child-placing agency administrator license under Chapter 43,
2 Human Resources Code; or

3 (M) a provider or prospective provider of
4 unregulated self-arranged child care, as defined by Section
5 313.001, Labor Code.

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

12 SECTION 4. Notwithstanding Chapter 313, Labor Code, as
13 added by this Act, the Texas Workforce Commission shall ensure that
14 payments made on or after November 1, 2011, to providers of
15 unregulated self-arranged child care, as defined by Section
16 313.001, Labor Code, as added by this Act, are made only to
17 providers with respect to whom a background and criminal history
18 check has been conducted as required by that chapter.

19 SECTION 5. This Act takes effect September 1, 2011.