

BILL ANALYSIS

S.B. 427
By: Nelson
Human Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Child-care facilities are currently required to be inspected by the state annually and have to comply with certain federal fingerprint and background check requirements. Interested parties assert, however, that there are still several loopholes in current law regarding these types of background checks, noting that general residential operations are not necessarily required to undergo as rigorous a background check. S.B. 427 seeks to build on the legislature's past initiatives to increase protections for children in licensed child-care facilities by amending current law relating to the regulation of certain child-care facilities and administrators of those facilities.

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 SECTIONS 1 and 6 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.

S.B. 427 amends the Human Resources Code to authorize the Department of Family and Protective Services (DFPS), in accordance with rules adopted by the executive commissioner of the Health and Human Services Commission, to designate a licensed day-care center or group day-care home for a biennial inspection, rather than an annual inspection, if DFPS determines, based on previous inspections, that the facility has a history of substantial compliance with minimum licensing standards. The bill requires the biennial inspection of a day-care center or group day-care home to be unannounced.

S.B. 427 includes the director, owner, or operator of a residential child-care facility among the persons required to submit a complete set of fingerprints of each person whose name is required to be submitted to DFPS for use in conducting a background and criminal history check. The bill, in a provision requiring the director, owner, or operator of certain facilities to submit a complete set of fingerprints of certain persons, specifies that the requirement applies to the director, owner, or operator of a facility, rather than a child-care facility.

S.B. 427 authorizes DFPS to impose an administrative sanction, as an alternative to an administrative penalty, against a facility or family home licensed, registered, or listed under

statutory provisions regulating certain facilities, homes, and agencies that provide child-care services in violation of such provisions or a rule or order adopted under such provisions. The bill specifies that DFPS is authorized to impose an administrative penalty against a facility or family home, rather than a residential child-care facility, or the controlling person of such a facility. The bill authorizes DFPS to impose nonmonetary administrative sanctions when appropriate before administrative penalties, rather than nonmonetary administrative penalties or remedies before monetary penalties. The bill authorizes DFPS to impose an administrative penalty without first imposing a nonmonetary administrative sanction for specified violations regarding the timely submission of information required to conduct a background and criminal history check and allowing certain persons to be present in a facility or family home without the proper authorization or in violation of a DFPS condition or restriction.

S.B. 427 prohibits a person from serving as a child-care administrator of a general residential operation, rather than a child-care institution, without a license issued by DFPS. The bill includes among the eligibility requirements for a child-care administrator's license or a child-placing agency administrator's license that the person provide to DFPS a complete set of the person's fingerprints for DFPS's use in conducting a criminal history and background check and that the person satisfy the minimum requirements under executive commissioner rules relating to criminal history and background checks. The bill requires the executive commissioner to adopt rules consistent with statutory provisions relating to requiring a criminal history and background check before issuing or renewing a license under statutory provisions regulating certain facilities, homes, and agencies that provide child-care services.

S.B. 427 includes among the eligibility requirements for license renewal as a child-care or child-placing agency administrator that the person provide information for DFPS to use in conducting a criminal history and background check, including a complete set of the person's fingerprints. The bill authorizes DFPS to deny, revoke, suspend, or refuse to renew such a license, or place on probation or reprimand a license holder for engaging in conduct that makes the license holder ineligible for a permit for certain facilities or family homes or employment as a controlling person or service in that capacity in a facility or family home. The bill repeals a provision defining "child-care institution" and a provision relating to a requirement that a director, owner, or operator of a child-placing agency, foster home, or foster group home submit a complete set of fingerprints of certain persons before a child for whom DFPS is the managing conservator is placed with the agency or in the home.

S.B. 427 repeals the following provisions of the Human Resources Code:

- Section 42.056(a-3)
- Section 43.001(1)

EFFECTIVE DATE

September 1, 2013.