

AN ACT

relating to the regulation of certain child-care facilities and administrators of those facilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (b), Section 42.041, Human Resources Code, is amended to read as follows:

(b) This section does not apply to:

- (1) a state-operated facility;
- (2) an agency foster home or agency foster group home;
- (3) a facility that is operated in connection with a shopping center, business, religious organization, or establishment where children are cared for during short periods while parents or persons responsible for the children are attending religious services, shopping, or engaging in other activities, including retreats or classes for religious instruction, on or near the premises, that does not advertise as a child-care facility or day-care center, and that informs parents that it is not licensed by the state;
- (4) a school or class for religious instruction that does not last longer than two weeks and is conducted by a religious organization during the summer months;
- (5) a youth camp licensed by the Department of State Health Services;
- (6) a facility licensed, operated, certified, or

1 registered by another state agency;

2 (7) an educational facility that is accredited by the
3 Texas Education Agency, the Southern Association of Colleges and
4 Schools, or an accreditation body that is a member of the Texas
5 Private School Accreditation Commission and that operates
6 primarily for educational purposes for prekindergarten and above, a
7 before-school or after-school program operated directly by an
8 accredited educational facility, or a before-school or
9 after-school program operated by another entity under contract with
10 the educational facility, if the Texas Education Agency, the
11 Southern Association of Colleges and Schools, or the other
12 accreditation body, as applicable, has approved the curriculum
13 content of the before-school or after-school program operated under
14 the contract;

15 (8) an educational facility that operates solely for
16 educational purposes for prekindergarten through at least grade
17 two, that does not provide custodial care for more than one hour
18 during the hours before or after the customary school day, and that
19 is a member of an organization that promulgates, publishes, and
20 requires compliance with health, safety, fire, and sanitation
21 standards equal to standards required by state, municipal, and
22 county codes;

23 (9) a kindergarten or preschool educational program
24 that is operated as part of a public school or a private school
25 accredited by the Texas Education Agency, that offers educational
26 programs through grade six, and that does not provide custodial
27 care during the hours before or after the customary school day;

- 1 (10) a family home, whether registered or listed;
- 2 (11) an educational facility that is integral to and
3 inseparable from its sponsoring religious organization or an
4 educational facility both of which do not provide custodial care
5 for more than two hours maximum per day, and that offers an
6 educational program in one or more of the
7 following: prekindergarten through at least grade three,
8 elementary grades, or secondary grades;
- 9 (12) an emergency shelter facility providing shelter
10 to minor mothers who are the sole support of their natural children
11 under Section 32.201, Family Code, unless the facility would
12 otherwise require a license as a child-care facility under this
13 section;
- 14 (13) a juvenile detention facility certified under
15 Section 51.12, Family Code, a juvenile correctional facility
16 certified under Section 51.125, Family Code, a juvenile facility
17 providing services solely for the Texas Juvenile Justice Department
18 [~~Youth Commission~~], or any other correctional facility for children
19 operated or regulated by another state agency or by a political
20 subdivision of the state;
- 21 (14) an elementary-age (ages 5-13) recreation program
22 operated by a municipality provided the governing body of the
23 municipality annually adopts standards of care by ordinance after a
24 public hearing for such programs, that such standards are provided
25 to the parents of each program participant, and that the ordinances
26 shall include, at a minimum, staffing ratios, minimum staff
27 qualifications, minimum facility, health, and safety standards,

1 and mechanisms for monitoring and enforcing the adopted local
2 standards; and further provided that parents be informed that the
3 program is not licensed by the state and the program may not be
4 advertised as a child-care facility;

5 (15) an annual youth camp held in a municipality with a
6 population of more than 1.5 million that operates for not more than
7 three months and that has been operated for at least 10 years by a
8 nonprofit organization that provides care for the homeless;

9 (16) a food distribution program that:

10 (A) serves an evening meal to children two years
11 of age or older; and

12 (B) is operated by a nonprofit food bank in a
13 nonprofit, religious, or educational facility for not more than two
14 hours a day on regular business days;

15 (17) a child-care facility that operates for less than
16 three consecutive weeks and less than 40 days in a period of 12
17 months;

18 (18) a program:

19 (A) in which a child receives direct instruction
20 in a single skill, talent, ability, expertise, or proficiency;

21 (B) that does not provide services or offerings
22 that are not directly related to the single talent, ability,
23 expertise, or proficiency;

24 (C) that does not advertise or otherwise
25 represent that the program is a child-care facility, day-care
26 center, or licensed before-school or after-school program or that
27 the program offers child-care services;

- 1 (D) that informs the parent or guardian:
- 2 (i) that the program is not licensed by the
- 3 state; and
- 4 (ii) about the physical risks a child may
- 5 face while participating in the program; and
- 6 (E) that conducts background checks for all
- 7 program employees and volunteers who work with children in the
- 8 program using information that is obtained from the Department of
- 9 Public Safety;
- 10 (19) an elementary-age (ages 5-13) recreation program
- 11 that:
- 12 (A) adopts standards of care, including
- 13 standards relating to staff ratios, staff training, health, and
- 14 safety;
- 15 (B) provides a mechanism for monitoring and
- 16 enforcing the standards and receiving complaints from parents of
- 17 enrolled children;
- 18 (C) does not advertise as or otherwise represent
- 19 the program as a child-care facility, day-care center, or licensed
- 20 before-school or after-school program or that the program offers
- 21 child-care services;
- 22 (D) informs parents that the program is not
- 23 licensed by the state;
- 24 (E) is organized as a nonprofit organization or
- 25 is located on the premises of a participant's residence;
- 26 (F) does not accept any remuneration other than a
- 27 nominal annual membership fee;

1 (G) does not solicit donations as compensation or
2 payment for any good or service provided as part of the program; and

3 (H) conducts background checks for all program
4 employees and volunteers who work with children in the program
5 using information that is obtained from the Department of Public
6 Safety;

7 (20) a living arrangement in a caretaker's home
8 involving one or more children or a sibling group, excluding
9 children who are related to the caretaker, in which the caretaker:

10 (A) had a prior relationship with the child or
11 sibling group or other family members of the child or sibling group;

12 (B) does not care for more than one unrelated
13 child or sibling group;

14 (C) does not receive compensation or solicit
15 donations for the care of the child or sibling group; and

16 (D) has a written agreement with the parent to
17 care for the child or sibling group;

18 (21) a living arrangement in a caretaker's home
19 involving one or more children or a sibling group, excluding
20 children who are related to the caretaker, in which:

21 (A) the department is the managing conservator of
22 the child or sibling group;

23 (B) the department placed the child or sibling
24 group in the caretaker's home; and

25 (C) the caretaker had a long-standing and
26 significant relationship with the child or sibling group before the
27 child or sibling group was placed with the caretaker; [~~or~~]

1 (22) a living arrangement in a caretaker's home
2 involving one or more children or a sibling group, excluding
3 children who are related to the caretaker, in which the child is in
4 the United States on a time-limited visa under the sponsorship of
5 the caretaker or of a sponsoring organization; or

6 (23) a facility operated by a nonprofit organization
7 that:

8 (A) does not otherwise operate as a child-care
9 facility that is required to be licensed under this section;

10 (B) provides emergency shelter and care for not
11 more than 15 days to children 13 years of age or older but younger
12 than 18 years of age who are victims of human trafficking alleged
13 under Section 20A.02, Penal Code;

14 (C) is located in a municipality with a
15 population of at least 600,000 that is in a county on an
16 international border; and

17 (D) meets one of the following criteria:

18 (i) is licensed by, or operates under an
19 agreement with, a state or federal agency to provide shelter and
20 care to children; or

21 (ii) meets the eligibility requirements for
22 a contract under Section 51.005(b)(3).

23 SECTION 2. Section 42.044, Human Resources Code, is amended
24 by amending Subsections (b) and (b-2) and adding Subsection (b-3)
25 to read as follows:

26 (b) Except as provided by Subsection (b-3), the [~~The~~]
27 department shall inspect all licensed or certified facilities at

1 least once a year and may inspect other facilities or registered
2 family homes as necessary. At least one of the annual visits must
3 be unannounced and all may be unannounced.

4 (b-2) Except as otherwise provided by this subsection,
5 during an unannounced annual or biennial inspection of a day-care
6 center, the department shall meet with the director designated by
7 the day-care center as having daily, on-site responsibility for the
8 operation of the day-care center to assess whether the director
9 meets the qualifications of a director specified by this chapter
10 and department rules. If the director is not present during the
11 unannounced annual or biennial inspection, the department shall
12 schedule a subsequent meeting with the director for that purpose
13 and shall conduct that meeting at the day-care center.

14 (b-3) The department may, in accordance with rules adopted
15 by the executive commissioner, designate a licensed day-care center
16 or group day-care home for a biennial inspection if the department
17 determines, based on previous inspections, that the facility has a
18 history of substantial compliance with minimum licensing
19 standards. The biennial inspection of a day-care center or group
20 day-care home must be unannounced.

21 SECTION 3. Subsections (a-2), (a-4), (a-5), and (b-1),
22 Section 42.056, Human Resources Code, are amended to read as
23 follows:

24 (a-2) In accordance with rules adopted by the executive
25 commissioner, the director, owner, or operator of a residential
26 child-care facility, day-care center, before-school or
27 after-school program, or school-age program shall submit a complete

1 set of fingerprints of each person whose name is required to be
2 submitted by the director, owner, or operator under Subsection (a),
3 unless the person is only required to have the person's name
4 submitted based on criteria specified by Subsection (a)(7). This
5 subsection does not apply to a program that is exempt from the
6 licensing requirements of Section 42.041.

7 (a-4) In accordance with rules adopted by the executive
8 commissioner, the director, owner, or operator of a [~~child-care~~]
9 facility or family home shall submit a complete set of fingerprints
10 of each person whose name is required to be submitted by the
11 director, owner, or operator under Subsection (a) if:

12 (1) the person resided in another state during the
13 five years preceding the date the person's name was required to be
14 submitted under Subsection (a); or

15 (2) the director, owner, or operator has reason to
16 suspect that the person has a criminal history in another state.

17 (a-5) The rules adopted by the executive commissioner under
18 Subsections (a-2) [~~(a-3)~~] and (a-4):

19 (1) must require that the fingerprints be submitted in
20 a form and of a quality acceptable to the Department of Public
21 Safety and the Federal Bureau of Investigation for conducting a
22 criminal history check;

23 (2) may require that the fingerprints be submitted
24 electronically through an applicant fingerprinting service center;
25 and

26 (3) may allow the department to waive the submission
27 of fingerprints required by this section if:

1 (A) the person for whom the submission is
2 required has:

3 (i) a fingerprint-based criminal history
4 record check on file with the department; or

5 (ii) a fingerprint-based criminal history
6 clearinghouse record, as provided by Section 411.0845, Government
7 Code, that is accessible to the department through the Department
8 of Public Safety; and

9 (B) the date on which the current submission of
10 fingerprints is required occurs before the second anniversary of a
11 previous name-based criminal history check of the person.

12 (b-1) In addition to any other background or criminal
13 history check conducted under Subsection (b), for each person whose
14 fingerprints are submitted under Subsection (a-2) [~~-(a-3)-~~] or
15 (a-4), the department shall conduct a state and Federal Bureau of
16 Investigation criminal history check by:

17 (1) submitting the person's fingerprints, or causing
18 the fingerprints to be submitted electronically, to the Department
19 of Public Safety for the purpose of conducting a state and federal
20 criminal history check; and

21 (2) using the resulting information made available by
22 that department under Section 411.114, Government Code, and by the
23 Federal Bureau of Investigation and any other criminal justice
24 agency under Section 411.087, Government Code.

25 SECTION 4. Section 42.078, Human Resources Code, is amended
26 by amending Subsections (a) and (a-1) and adding Subsection (a-2)
27 to read as follows:

1 (a) The department may impose an administrative sanction or
2 an administrative penalty against a facility or family home
3 licensed, registered, or listed under this chapter that violates
4 this chapter or a rule or order adopted under this chapter. In
5 addition, the department may impose an administrative penalty
6 against a [~~residential child-care~~] facility or family home or a
7 controlling person of a [~~residential child-care~~] facility or family
8 home if the facility, family home, or controlling person:

9 (1) violates a term of a license or registration
10 issued under this chapter;

11 (2) makes a statement about a material fact that the
12 facility or person knows or should know is false:

13 (A) on an application for the issuance of a
14 license or registration or an attachment to the application; or

15 (B) in response to a matter under investigation;

16 (3) refuses to allow a representative of the
17 department to inspect:

18 (A) a book, record, or file required to be
19 maintained by the facility; or

20 (B) any part of the premises of the facility;

21 (4) purposefully interferes with the work of a
22 representative of the department or the enforcement of this
23 chapter; or

24 (5) fails to pay a penalty assessed under this chapter
25 on or before the date the penalty is due, as determined under this
26 section.

27 (a-1) Except as provided by Subsection (a-2), nonmonetary

1 ~~[Nonmonetary,]~~ administrative sanctions ~~[penalties or remedies]~~,
2 including ~~[but not limited to]~~ corrective action plans, probation,
3 and evaluation periods, shall be imposed when appropriate before
4 administrative ~~[monetary]~~ penalties.

5 (a-2) The department may impose an administrative penalty
6 without first imposing a nonmonetary administrative sanction for
7 the following violations:

8 (1) failing to timely submit the information required
9 to conduct a background and criminal history check under Section
10 42.056 and applicable department rules on two or more occasions;

11 (2) failing to submit the information required to
12 conduct a background and criminal history check under Section
13 42.056 and applicable department rules before the 30th day after
14 the date the facility or family home is notified by the department
15 that the information is overdue;

16 (3) except as provided by Section 42.056(g), knowingly
17 allowing a person to be present in a facility or family home when
18 the person's background and criminal history check has not been
19 received;

20 (4) knowingly allowing a person to be present in a
21 facility or family home when the person's background and criminal
22 history check has been received and contains criminal history or
23 central registry findings that under department rules preclude the
24 person from being present in the facility or family home; or

25 (5) violating a condition or restriction the
26 department places on a person's presence at a facility or family
27 home as part of a pending or approved risk evaluation of the

1 person's background and criminal history or central registry
2 findings.

3 SECTION 5. Section 43.001, Human Resources Code, is amended
4 by adding Subdivisions (5), (6), and (7) to read as follows:

5 (5) "Controlling person" has the meaning assigned by
6 Section 42.002.

7 (6) "General residential operation" has the meaning
8 assigned by Section 42.002.

9 (7) "Permit" means a license, listing, registration,
10 or certification issued to a facility or family home under Chapter
11 42.

12 SECTION 6. Subsection (a), Section 43.003, Human Resources
13 Code, is amended to read as follows:

14 (a) Except as provided by Subsection (b) of this section, a
15 person may not serve as a child-care administrator of a general
16 residential operation [~~child-care institution~~] without a license
17 issued by the department under this chapter.

18 SECTION 7. Section 43.004, Human Resources Code, is amended
19 by amending Subsections (a) and (b) and adding Subsection (d) to
20 read as follows:

21 (a) To be eligible for a child-care administrator's license
22 a person must:

23 (1) provide information for the department's use in
24 conducting a criminal history and background check under Subsection
25 (c), including a complete set of the person's fingerprints;

26 (2) satisfy the minimum requirements under department
27 rules relating to criminal history and background checks;

1 (3) pass an examination developed and administered by
2 the department that demonstrates competence in the field of
3 child-care administration;

4 (4) [~~(3)~~] have one year of full-time experience in
5 management or supervision of child-care personnel and programs; and

6 (5) [~~(4)~~] have one of the following educational and
7 experience qualifications:

8 (A) a master's or doctoral degree in social work
9 or other area of study; or

10 (B) a bachelor's degree and two years' full-time
11 experience in child care or a closely related field.

12 (b) To be eligible for a child-placing agency
13 administrator's license a person must:

14 (1) provide information for the department's use in
15 conducting a criminal history and background check under Subsection
16 (c), including a complete set of the person's fingerprints;

17 (2) satisfy the minimum requirements under department
18 rules relating to criminal history and background checks;

19 (3) pass an examination developed and administered by
20 the department that demonstrates competence in the field of placing
21 children in residential settings or adoptive homes;

22 (4) [~~(3)~~] have one year of full-time experience in
23 management or supervision of child-placing personnel and programs;
24 and

25 (5) [~~(4)~~] have one of the following educational and
26 experience qualifications:

27 (A) a master's or doctoral degree in social work

1 or other area of study; or

2 (B) a bachelor's degree and two years' full-time
3 experience in the field of placing children in residential settings
4 or adoptive homes or a closely related field.

5 (d) The executive commissioner shall adopt rules consistent
6 with Section 42.056 relating to requiring a criminal history and
7 background check before issuing or renewing a license under this
8 chapter.

9 SECTION 8. Subsection (a), Section 43.009, Human Resources
10 Code, is amended to read as follows:

11 (a) To be eligible for license renewal, a license holder
12 shall:

13 (1) present evidence to the department of
14 participation in a program of continuing education for 15 hours of
15 formal study each year during the two-year period before the
16 renewal; and

17 (2) provide information for the department's use in
18 conducting a criminal history and background check under Section
19 43.004(c) and applicable department rules, including a complete set
20 of the person's fingerprints.

21 SECTION 9. Subsection (a), Section 43.010, Human Resources
22 Code, is amended to read as follows:

23 (a) The department may deny, revoke, suspend, or refuse to
24 renew a license, or place on probation or reprimand a license holder
25 for:

26 (1) violating this chapter or a rule adopted under
27 this chapter;

1 (2) circumventing or attempting to circumvent the
2 requirements of this chapter or a rule adopted under this chapter;

3 (3) engaging in fraud or deceit related to the
4 requirements of this chapter or a rule adopted under this chapter;

5 (4) providing false or misleading information to the
6 department during the license application or renewal process for
7 any person's license;

8 (5) making a statement about a material fact during
9 the license application or renewal process that the person knows or
10 should know is false;

11 (6) having:

12 (A) a criminal history or central registry record
13 that would prohibit a person from working in a child-care facility,
14 as defined by Section 42.002, under rules applicable to that type of
15 facility; or

16 (B) a criminal history relevant to the duties of
17 a licensed child-care or child-placing administrator, as those
18 duties are specified in rules adopted by the executive
19 commissioner;

20 (7) using drugs or alcohol in a manner that
21 jeopardizes the person's ability to function as an administrator;
22 ~~[or]~~

23 (8) performing duties as a child-care administrator in
24 a negligent manner; or

25 (9) engaging in conduct that makes the license holder
26 ineligible for:

27 (A) a permit under Section 42.072; or

1 (B) employment as a controlling person or service
2 in that capacity in a facility or family home under Section 42.062.

3 SECTION 10. Subsection (a-3), Section 42.056 and
4 Subdivision (1), Section 43.001, Human Resources Code, are
5 repealed.

6 SECTION 11. The changes in law made by this Act to Section
7 42.078, Human Resources Code, apply only to a violation committed
8 on or after the effective date of this Act. A violation committed
9 before the effective date of this Act is governed by the law in
10 effect when the violation was committed, and the former law is
11 continued in effect for that purpose.

12 SECTION 12. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 427 passed the Senate on April 9, 2013, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 20, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 427 passed the House, with amendment, on May 17, 2013, by the following vote: Yeas 135, Nays 5, three present not voting.

Chief Clerk of the House

Approved:

Date

Governor