

By: Nelson

S.B. No. 427

A BILL TO BE ENTITLED

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

(b) Except as provided by Subsection (b-3), the ~~[The]~~ department shall inspect all licensed or certified facilities at least once a year and may inspect other facilities or registered family homes as necessary. At least one of the annual visits must be unannounced and all may be unannounced.

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

(b-3) The department may, in accordance with rules adopted by the executive commissioner, designate a licensed day-care center

1 or group day-care home for a biennial inspection if the department
2 determines, based on previous inspections, that the facility has a
3 history of substantial compliance with minimum licensing
4 standards. The biennial inspection of a day-care center or group
5 day-care home must be unannounced.

6 SECTION 2. Sections 42.056(a-2), (a-4), (a-5), and (b-1),
7 Human Resources Code, are amended to read as follows:

8 (a-2) In accordance with rules adopted by the executive
9 commissioner, the director, owner, or operator of a residential
10 child-care facility, day-care center, before-school or
11 after-school program, or school-age program shall submit a complete
12 set of fingerprints of each person whose name is required to be
13 submitted by the director, owner, or operator under Subsection (a),
14 unless the person is only required to have the person's name
15 submitted based on criteria specified by Subsection (a)(7). This
16 subsection does not apply to a program that is exempt from the
17 licensing requirements of Section 42.041.

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

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

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

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

3 (1) must require that the fingerprints be submitted in
4 a form and of a quality acceptable to the Department of Public
5 Safety and the Federal Bureau of Investigation for conducting a
6 criminal history check;

7 (2) may require that the fingerprints be submitted
8 electronically through an applicant fingerprinting service center;
9 and

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

12 (A) the person for whom the submission is
13 required has:

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

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

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

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

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

5 (2) using the resulting information made available by
6 that department under Section 411.114, Government Code, and by the
7 Federal Bureau of Investigation and any other criminal justice
8 agency under Section 411.087, Government Code.

9 SECTION 3. Section 42.078, Human Resources Code, is amended
10 by amending Subsections (a) and (a-1) and adding Subsection (a-2)
11 to read as follows:

12 (a) The department may impose an administrative sanction or
13 an administrative penalty against a facility or family home
14 licensed, registered, or listed under this chapter that violates
15 this chapter or a rule or order adopted under this chapter. In
16 addition, the department may impose an administrative penalty
17 against a [~~residential child-care~~] facility or family home or a
18 controlling person of a [~~residential child-care~~] facility or family
19 home if the facility, family home, or controlling person:

20 (1) violates a term of a license or registration
21 issued under this chapter;

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

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

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

27 (3) refuses to allow a representative of the

1 department to inspect:

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

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

5 (4) purposefully interferes with the work of a
6 representative of the department or the enforcement of this
7 chapter; or

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

11 (a-1) Except as provided by Subsection (a-2), nonmonetary
12 ~~[Nonmonetary,]~~ administrative sanctions ~~[penalties or remedies]~~,
13 including ~~[but not limited to]~~ corrective action plans, probation,
14 and evaluation periods, shall be imposed when appropriate before
15 administrative ~~[monetary]~~ penalties.

16 (a-2) The department may impose an administrative penalty
17 without first imposing a nonmonetary administrative sanction for
18 the following violations:

19 (1) failing to timely submit the information required
20 to conduct a background and criminal history check under Section
21 42.056 and applicable department rules on two or more occasions;

22 (2) failing to submit the information required to
23 conduct a background and criminal history check under Section
24 42.056 and applicable department rules before the 30th day after
25 the date the facility or family home is notified by the department
26 that the information is overdue;

27 (3) except as provided by Section 42.056(g), knowingly

1 allowing a person to be present in a facility or family home when
2 the person's background and criminal history check has not been
3 received;

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

9 (5) violating a condition or restriction the
10 department places on a person's presence at a facility or family
11 home as part of a pending or approved risk evaluation of the
12 person's background and criminal history or central registry
13 findings.

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

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

18 (6) "General residential operation" has the meaning
19 assigned by Section 42.002.

20 (7) "Permit" means a license, listing, registration,
21 or certification issued to a facility or family home under Chapter
22 42.

23 SECTION 5. Section 43.003(a), Human Resources Code, is
24 amended to read as follows:

25 (a) Except as provided by Subsection (b) of this section, a
26 person may not serve as a child-care administrator of a general
27 residential operation [~~child-care institution~~] without a license

1 issued by the department under this chapter.

2 SECTION 6. Section 43.004, Human Resources Code, is amended
3 by amending Subsections (a) and (b) and adding Subsection (d) to
4 read as follows:

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

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

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

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

15 (4) [~~3~~] have one year of full-time experience in
16 management or supervision of child-care personnel and programs; and

17 (5) [~~4~~] have one of the following educational and
18 experience qualifications:

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

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

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

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

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

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

6 (4) [~~(3)~~] have one year of full-time experience in
7 management or supervision of child-placing personnel and programs;
8 and

9 (5) [~~(4)~~] have one of the following educational and
10 experience qualifications:

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

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

16 (d) The executive commissioner shall adopt rules consistent
17 with Section 42.056 relating to requiring a criminal history and
18 background check before issuing or renewing a license under this
19 chapter.

20 SECTION 7. Section 43.009(a), Human Resources Code, is
21 amended to read as follows:

22 (a) To be eligible for license renewal, a license holder
23 shall:

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

1 (2) provide information for the department's use in
2 conducting a criminal history and background check under Section
3 43.004(c) and applicable department rules, including a complete set
4 of the person's fingerprints.

5 SECTION 8. Section 43.010(a), Human Resources Code, is
6 amended to read as follows:

7 (a) The department may deny, revoke, suspend, or refuse to
8 renew a license, or place on probation or reprimand a license holder
9 for:

10 (1) violating this chapter or a rule adopted under
11 this chapter;

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

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

16 (4) providing false or misleading information to the
17 department during the license application or renewal process for
18 any person's license;

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

22 (6) having:

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

27 (B) a criminal history relevant to the duties of

1 a licensed child-care or child-placing administrator, as those
2 duties are specified in rules adopted by the executive
3 commissioner;

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

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

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

11 (A) a permit under Section 42.072; or

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

14 SECTION 9. Sections 42.056(a-3) and 43.001(1), Human
15 Resources Code, are repealed.

16 SECTION 10. The changes in law made by this Act to Section
17 42.078, Human Resources Code, apply only to a violation committed
18 on or after the effective date of this Act. A violation committed
19 before the effective date of this Act is governed by the law in
20 effect when the violation was committed, and the former law is
21 continued in effect for that purpose.

22 SECTION 11. This Act takes effect September 1, 2013.