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HOUSE OF REPRESENTATIVES

FLOOR AMENDMENT NO. _____

BY: Hernandez

1 Amend C.S.H.B. No. 5 (House Committee Report) as follows:

2 (1) On page 12, strike lines 17-20 and substitute the
3 following:

4 (D) investigations of alleged abuse, neglect, or
5 exploitation occurring at a child-care facility, as that term is
6 defined in Section 40.042, Human Resources Code; and

7 (2) Add the following appropriately numbered SECTIONS to
8 the bill and renumber subsequent SECTIONS of the bill accordingly:

9 SECTION _____. Section 261.001, Family Code, is amended by
10 adding Subdivision (3) and amending Subdivision (5) to read as
11 follows:

12 (3) "Exploitation" means the illegal or improper use
13 of a child or of the resources of a child for monetary or personal
14 benefit, profit, or gain by an employee, volunteer, or other
15 individual working under the auspices of a facility or program as
16 further described by rule or policy.

17 (5) "Person responsible for a child's care, custody,
18 or welfare" means a person who traditionally is responsible for a
19 child's care, custody, or welfare, including:

20 (A) a parent, guardian, managing or possessory
21 conservator, or foster parent of the child;

22 (B) a member of the child's family or household
23 as defined by Chapter 71;

24 (C) a person with whom the child's parent
25 cohabits;

26 (D) school personnel or a volunteer at the
27 child's school; ~~or~~

28 (E) personnel or a volunteer at a public or
29 private child-care facility that provides services for the child or

1 at a public or private residential institution or facility where
2 the child resides; or

3 (F) an employee, volunteer, or other person
4 working under the supervision of a licensed or unlicensed
5 child-care facility, including a family home, residential
6 child-care facility, employer-based day-care facility, or shelter
7 day-care facility, as those terms are defined in Chapter 42, Human
8 Resources Code.

9 SECTION _____. Section 261.101(b), Family Code, is amended
10 to read as follows:

11 (b) If a professional has cause to believe that a child has
12 been abused or neglected or may be abused or neglected, or that a
13 child is a victim of an offense under Section 21.11, Penal Code, and
14 the professional has cause to believe that the child has been abused
15 as defined by Section 261.001 [~~or 261.401~~], the professional shall
16 make a report not later than the 48th hour after the hour the
17 professional first suspects that the child has been or may be abused
18 or neglected or is a victim of an offense under Section 21.11, Penal
19 Code. A professional may not delegate to or rely on another person
20 to make the report. In this subsection, "professional" means an
21 individual who is licensed or certified by the state or who is an
22 employee of a facility licensed, certified, or operated by the
23 state and who, in the normal course of official duties or duties for
24 which a license or certification is required, has direct contact
25 with children. The term includes teachers, nurses, doctors,
26 day-care employees, employees of a clinic or health care facility
27 that provides reproductive services, juvenile probation officers,
28 and juvenile detention or correctional officers.

29 SECTION _____. Sections 261.301(b), (c), (f), and (h),
30 Family Code, are amended to read as follows:

31 (b) The department [~~A state agency~~] shall investigate a

1 report that alleges abuse, ~~[or]~~ neglect, or exploitation occurred
2 in a facility operated, licensed, certified, or registered by a
3 state ~~[that]~~ agency, ~~[as provided by Subchapter E. In conducting an~~
4 ~~investigation for]~~ including a facility operated, licensed,
5 certified, registered, or listed by the department, ~~[the department~~
6 ~~shall perform the investigation]~~ as provided by:

- 7 (1) Subchapter E; and
- 8 (2) the Human Resources Code.

9 (c) The department is not required to investigate a report
10 that alleges child abuse, ~~[or]~~ neglect, or exploitation by a person
11 except as provided by Subsections (a) and (b) ~~[other than a person~~
12 ~~responsible for a child's care, custody, or welfare]~~. The
13 appropriate state or local law enforcement agency shall investigate
14 other reports of child abuse, neglect, or exploitation ~~[that~~
15 ~~report]~~ if the agency determines an investigation should be
16 conducted.

17 (f) An investigation of a report to the department that
18 alleges that a child has been or may be the victim of conduct that
19 constitutes a criminal offense that poses an immediate risk of
20 physical or sexual abuse of a child that could result in the death
21 of or serious harm to the child shall be conducted jointly by a
22 peace officer, as defined by Article 2.12, Code of Criminal
23 Procedure, from the appropriate local law enforcement agency and
24 the department ~~[or the agency responsible for conducting an~~
25 ~~investigation under Subchapter E]~~.

26 (h) The department and the appropriate local law
27 enforcement agency shall conduct an investigation~~[, other than an~~
28 ~~investigation under Subchapter E,]~~ as provided by this section and
29 Article 2.27, Code of Criminal Procedure, if the investigation is
30 of a report that alleges that a child has been or may be the victim
31 of conduct that constitutes a criminal offense that poses an

1 immediate risk of physical or sexual abuse of a child that could
2 result in the death of or serious harm to the child. Immediately on
3 receipt of a report described by this subsection, the department
4 shall notify the appropriate local law enforcement agency of the
5 report.

6 SECTION _____. Subchapter B, Chapter 40, Human Resources
7 Code, is amended by adding Section 40.042 to read as follows:

8 Sec. 40.042. INVESTIGATIONS OF CHILD ABUSE, NEGLECT, AND
9 EXPLOITATION. (a) In this section, "child-care facility" includes
10 a facility, licensed or unlicensed child-care facility, family
11 home, residential child-care facility, employer-based day-care
12 facility, or shelter day-care facility, as those terms are defined
13 in Chapter 42.

14 (b) For all investigations of child abuse, neglect, or
15 exploitation conducted by the child protective services division of
16 the department, the department shall adopt the definitions of
17 abuse, neglect, and exploitation provided in Section 261.001,
18 Family Code.

19 (c) The department shall establish standardized policies to
20 be used during investigations.

21 (d) The commissioner may establish units within the child
22 protective services division of the department to specialize in
23 investigating allegations of child abuse, neglect, or exploitation
24 occurring at a child-care facility.

25 (e) The department may require that investigators who
26 specialize in allegations of child abuse, neglect, and exploitation
27 occurring at child-care facilities receive ongoing training on the
28 minimum licensing standards for any facilities that are applicable
29 to the investigator's specialization.

30 (f) After an investigation of abuse, neglect, or
31 exploitation occurring at a child-care facility, the department

1 shall provide the state agency responsible for regulating the
2 facility with access to any information relating to the
3 department's investigation. Providing access to confidential
4 information under this subsection does not constitute a waiver of
5 confidentiality.

6 (g) The executive commissioner may adopt rules to implement
7 this section.

8 SECTION _____. Section 42.002(23), Human Resources Code, is
9 amended to read as follows:

10 (23) "Other maltreatment" means:

11 (A) abuse, as defined by Section 261.001 [~~ex~~
12 ~~261.401~~], Family Code; or

13 (B) neglect, as defined by Section 261.001 [~~ex~~
14 ~~261.401~~], Family Code.

15 SECTION _____. Section 42.044(c-1), Human Resources Code, is
16 amended to read as follows:

17 (c-1) The department:

18 (1) shall investigate a listed family home if the
19 department receives a complaint that:

20 (A) a child in the home has been abused or
21 neglected, as defined by Section 261.001 [~~261.401~~], Family Code; or

22 (B) otherwise alleges an immediate risk of danger
23 to the health or safety of a child being cared for in the home; and

24 (2) may investigate a listed family home to ensure
25 that the home is providing care for compensation to not more than
26 three children, excluding children who are related to the
27 caretaker.

28 SECTION _____. Sections 261.401(a) and (b), Family Code, are
29 repealed.

30 SECTION _____. (a) The changes in law made by this Act apply
31 only to a report of suspected abuse, neglect, or exploitation of a

1 child that is made on or after the effective date of this Act. A
2 report of suspected abuse, neglect, or exploitation that is made
3 before that date is governed by the law in effect on the date the
4 report was made, and that law is continued in effect for that
5 purpose.

6 (b) Notwithstanding any provision of Subchapter A-1,
7 Chapter 531, Government Code, or any other law, the responsibility
8 for conducting investigations of reports of abuse, neglect, or
9 exploitation occurring at a child-care facility, as that term is
10 defined in Section 40.042, Human Resources Code, as added by this
11 Act, may not be transferred to the Health and Human Services
12 Commission and remains the responsibility of the Department of
13 Family and Protective Services.

14 (c) As soon as possible after the effective date of this
15 section, the commissioner of the Department of Family and
16 Protective Services shall transfer the responsibility for
17 conducting investigations of reports of abuse, neglect, or
18 exploitation occurring at a child-care facility, as that term is
19 defined in Section 40.042, Human Resources Code, as added by this
20 Act, to the child protective services division of the department.
21 The commissioner shall transfer appropriate investigators and
22 staff as necessary to implement this subsection.

23 (d) The Department of Family and Protective Services shall
24 implement the standardized definitions and policies required under
25 Sections 40.042(b) and (c), Human Resources Code, as added by this
26 Act, not later than December 1, 2017.