By:  Bonnen of Galveston H.B. No. 4261

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of child-care facilities and family homes; providing administrative penalties.

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

SECTION 1.  Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.04215 to read as follows:

Sec. 42.04215.  SAFETY TRAINING ACCOUNT. (a) The safety training account is a dedicated account in the general revenue fund. The account is composed of:

(1)  money deposited into the account under Section 42.078;

(2)  gifts, grants, and donations contributed to the account; and

(3)  interest earned on the investment of money in the account.

(b)  Section 403.0956, Government Code, does not apply to the account.

(c)  Money in the account may be appropriated only to the commission to provide safety training materials at no cost to a facility licensed under this chapter or a family home registered or listed under this chapter. The commission may contract with a third party to create the training materials.

(d)  The executive commissioner shall adopt rules necessary to implement this section.

SECTION 2.  Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0429 to read as follows:

Sec. 42.0429.  SAFE SLEEPING STANDARDS. (a) The executive commissioner by rule shall establish safe sleeping standards for licensed facilities and registered family homes. Each licensed facility and registered family home shall comply with the safe sleeping standards.

(b)  If the commission determines that a licensed facility or registered family home has violated a safe sleeping standard established as required by Subsection (a), the facility or home shall provide written notice in the form and manner required by the executive commissioner to the parent or legal guardian of each child attending the facility or home.

(c)  The executive commissioner shall prescribe the form for the notice required by Subsection (b) and post the form on the commission's Internet website.

SECTION 3.  Section 42.04425, Human Resources Code, is amended to read as follows:

Sec. 42.04425.  INSPECTION INFORMATION DATABASE. (a) If feasible using available information systems, the commission [~~department~~] shall establish a computerized database containing relevant inspection information on all licensed facilities [~~day-care centers, licensed group day-care homes,~~] and registered family homes obtained from other state agencies and political subdivisions of the state.

(b)  The commission [~~department~~] shall make the data collected by the commission [~~department~~] available to another state agency or political subdivision of the state for the purpose of administering programs or enforcing laws within the jurisdiction of that agency or subdivision. If feasible using available information systems, the commission [~~department~~] shall make the data directly available to [~~the Department of State Health Services, the Department of Aging and Disability Services, and~~] the Texas Workforce Commission through electronic information systems. The commission [~~department, the Department of State Health Services, the Department of Aging and Disability Services,~~] and the Texas Workforce Commission shall jointly plan the development of child-care inspection databases that, to the extent feasible, are similar in their design and architecture to promote the sharing of data.

(c)  The commission shall [~~department may~~] provide at a minimum five years of inspection data for all facilities licensed or family homes registered under this chapter to enhance [~~on licensed day-care centers, licensed group day-care homes, or registered family homes to the public if the department determines that providing inspection data enhances~~] consumer choice with respect to those facilities and homes.

SECTION 4.  Section 42.049, Human Resources Code, is amended to read as follows:

Sec. 42.049.  LIABILITY INSURANCE REQUIRED. (a) A license or registration holder under this chapter shall maintain liability insurance coverage in the amount of $300,000 for each occurrence of negligence. An insurance policy or contract required under this section must cover injury to a child that occurs while the child is on the premises of [~~the license holder~~] or in the care of the [~~license~~] holder.

(b)  A license or registration holder under this chapter shall annually file with the commission [~~department~~] a certificate or other evidence from an insurance company showing that the [~~license~~] holder has an unexpired and uncancelled insurance policy or contract that meets the requirements of this section.

(c)  Should the license or registration holder for financial reasons or for lack of availability of an underwriter willing to issue a policy be unable to secure the insurance required under Subsection (a) or should the policy limits be exhausted, the [~~license~~] holder shall timely notify the parent or guardian of [~~a person standing in parental relationship to~~] each child for whom the [~~license~~] holder provides care a written notice that the liability coverage is not provided and there will not be a ground for an administrative penalty or suspension or revocation of the [~~license~~] holder's license or registration under this chapter. The [~~license~~] holder shall also notify the commission [~~department~~] that the coverage is not provided and provide the reason for same. In no case shall the inability to secure coverage serve to indemnify the [~~license~~] holder for damages due to negligence.

(c-1)  The commission shall prescribe a form that a license or registration holder may use to notify a parent or guardian in accordance with Subsection (c) that liability coverage is not provided. The commission shall post the form on the commission's Internet website.

(d)  The insurance policy or contract shall be maintained at all times in an amount as required by this section. Failure by a license or registration holder to renew the policy or contract or to maintain the policy or contract in the required amount is a ground for suspension or revocation of the [~~license~~] holder's license or registration under this chapter.

[~~(e)  This section does not apply to a group day-care home or a listed or registered family home.~~]

SECTION 5.  Section 42.050, Human Resources Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (c-1) to read as follows:

(a)  A license holder may apply for renewal of a license in compliance with the requirements of this chapter and commission [~~department~~] rules.

(b)  The application for renewal of a license must be completed and decided on by the commission [~~department~~] before the expiration of the license under which a facility is operating.

(c)  The commission [~~department~~] shall evaluate the application for renewal of a license to determine if all licensing requirements are met and whether the facility has been cited for repeated violations or has established a pattern of violations during the preceding two years. The evaluation may include a specified number of visits to the facility and must include a review of all required forms and records. If the commission determines the facility has repeated violations or an established pattern of violations, before the commission renews the license the commission may place restrictions, conditions, or additional requirements on the license to ensure the violations cease.

(c-1)  The commission may not renew the license of a facility cited for a violation that is not corrected by the required compliance date unless the violation is pending an administrative review under commission rules or pending review as a contested case under Chapter 2001, Government Code.

SECTION 6.  Section 42.052, Human Resources Code, is amended by amending Subsections (a), (b), (c), (d), (f), (i), (j), and (k) and adding Subsections (f-2) and (f-3) to read as follows:

(a)  A state-operated child-care facility or child-placing agency must receive certification of approval from the commission [~~department~~]. The certification of approval remains valid until the certification expires, is revoked, or is surrendered.

(b)  To be certified, a facility must comply with the commission's [~~department's~~] rules and standards and any provisions of this chapter that apply to a licensed facility of the same category. The operator of a certified facility must display the certification in a prominent place at the facility.

(c)  A family home that provides care for compensation for three or fewer children, excluding children who are related to the caretaker, shall list with the commission [~~department~~] if the home provides regular care in the caretaker's own residence. The home may register with the commission [~~department~~].

(d)  A family home that provides care for four or more children, excluding children who are related to the caretaker, shall register with the commission [~~department~~]. A family home that provides care exclusively for any number of children who are related to the caretaker is not required to be listed or registered with the commission [~~department~~].

(f)  To remain listed or registered with the commission [~~department~~], a family home must comply with the commission's [~~department's~~] rules and standards, if applicable, and any provision of this chapter that applies to a listed or registered family home.

(f-2)  The commission shall evaluate an application for renewal of a facility certification or family home registration to determine if all requirements are met and whether the applicant has been cited for repeated violations or has established a pattern of violations during the preceding two years. The evaluation may include a specified number of visits to the facility or family home subject to this section and must include a review of all required forms and records. If the commission determines the facility or family home has repeated violations or an established pattern of violations, before the commission renews the certification or registration the commission may place restrictions, conditions, or additional requirements on the certification or registration to ensure the violations cease.

(f-3)  The commission may not renew the certification or registration of a facility or family home cited for a violation that is not corrected by the required compliance date unless the violation is pending an administrative review under commission rules or pending review as a contested case under Chapter 2001, Government Code.

(i)  The commission [~~department~~] shall provide to a listed family home a copy of the listing.  A listing must contain a provision that states: "THIS HOME IS A LISTED FAMILY HOME. IT IS NOT LICENSED OR REGISTERED WITH THE HEALTH AND HUMAN SERVICES COMMISSION [~~DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES~~].  IT HAS NOT BEEN INSPECTED AND WILL NOT BE INSPECTED."  The operator of a listed home is not required to display the listing in a prominent place at the home but shall make the listing available for examination.  The executive commissioner by rule shall provide for a sufficient period to allow operators of family homes to comply with the listing requirement of this section.

(j)  The operator of a listed family home shall undergo initial and subsequent background and criminal history checks required under Section 42.056.  If the operator of a listed family home fails to submit the information required by Section 42.056 for a subsequent background and criminal history check, the commission [~~department~~] shall automatically:

(1)  suspend the home's listing until the required information is submitted; and

(2)  revoke the home's listing if the required information is not submitted within six months after the date the automatic suspension begins.

(k)  The commission [~~department~~] shall issue a listing or registration to a family home, as appropriate, in both English and Spanish when the most recent federal census shows that more than one-half of the population in a municipality or in a commissioners precinct in a county in which the family home is located is of Hispanic origin or Spanish-speaking.

SECTION 7.  Section 42.063, Human Resources Code, is amended by amending Subsections (b), (d), and (g) and adding Subsections (b-1) and (b-2) to read as follows:

(b)  A person licensed under this chapter shall report to the commission [~~department~~] each serious incident involving a child who receives services from the person, regardless of whether the department is the managing conservator of the child.

(b-1)  A person licensed or registered under this chapter shall notify in accordance with commission rule a parent or guardian of a child in the care of the person of an incident of abuse, neglect, or exploitation of the child, injury of the child that requires treatment by a medical professional or hospitalization, or illness of the child that requires hospitalization.

(b-2)  A person licensed or registered under this chapter shall notify in accordance with commission rule a parent or guardian of each child in the care of the person of a violation that constitutes abuse, neglect, or exploitation of a child. The commission shall prescribe the form for the notice required under this subsection and post the form on the commission's Internet website.

(d)  An employee or volunteer of a general residential operation, child-placing agency, continuum-of-care residential operation, cottage home operation, or specialized child-care home shall report any serious incident directly to the commission [~~department~~] if the incident involves a child under the care of the operation, agency, or home.

(g)  The commission [~~department~~] shall implement this section using existing appropriations.

SECTION 8.  Sections 42.072(a), (b), (c), (e), (f), and (g), Human Resources Code, are amended to read as follows:

(a)  The commission [~~department~~] may suspend, deny, revoke, or refuse to renew the license, listing, registration, or certification of approval of a facility or family home that does not comply with the requirements of this chapter, commission [~~department~~] standards and rules, or the specific terms of the license, listing, registration, or certification. The commission [~~department~~] may revoke the probation of a person whose license, listing, or registration is suspended if the person violates a term of the conditions of probation.

(b)  If the commission [~~department~~] proposes to take an action under Subsection (a), the person is entitled to a hearing conducted by the State Office of Administrative Hearings. Proceedings for a disciplinary action are governed by the administrative procedure law, Chapter 2001, Government Code. An action under this section, including a revocation of a person's license, is a contested case as defined by Chapter 2001, Government Code, and is subject to judicial review under the substantial evidence rule in accordance with that chapter. Rules of practice adopted by the executive commissioner under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

(c)  The commission [~~department~~] may not issue or renew a license, listing, registration, or certification to a person whose license, listing, registration, or certification is revoked or not renewed or whose application for a license, listing, registration, or certification is denied for a substantive reason under this chapter before the fifth anniversary of the date on which the revocation takes effect by commission [~~department~~] or court order or the decision to deny the application is final.

(e)  A person may continue to operate a facility or family home during an appeal of a [~~license, listing, or registration~~] revocation or refusal to renew a license, certification, or registration unless the operation of the facility or family home poses a risk to the health or safety of children. The executive commissioner shall by rule establish the criteria for determining whether the operation of a facility or family home poses a risk to the health or safety of children. The commission [~~department~~] shall notify the facility or family home of the criteria the commission [~~department~~] used to determine that the operation of the facility or family home poses a risk to health or safety and that the facility or family home may not operate. A person who has been notified by the commission [~~department~~] that the facility or home may not operate under this section may seek injunctive relief from a district court in Travis County or in the county in which the facility or home is located to allow operation during the pendency of an appeal. The court may grant injunctive relief against the commission's [~~department's~~] action only if the court finds that the child-care operation does not pose a health or safety risk to children. A court granting injunctive relief under this subsection shall have no other jurisdiction over an appeal of final commission [~~department~~] action unless conferred by Chapter 2001, Government Code.

(f)  The commission [~~department~~] shall deny an application or renewal for listing or registering a family home or shall revoke a family home's listing or registration if the results of a background or criminal history check conducted by the commission [~~department~~] under Section 42.056 show that a person has been convicted of an offense under Title 5 or 6, Penal Code, or Chapter 43, Penal Code.

(g)  Notwithstanding Subsection (c), the commission [~~department~~] may refuse to issue a license, listing, registration, or certification to:

(1)  a person whose license, listing, registration, or certification for a facility or family home was revoked by the commission [~~department~~] or by court order;

(2)  a person who was a controlling person of a facility or family home at the time conduct occurred that resulted in the revocation of the license, listing, registration, or certification of the facility or family home;

(3)  a person who voluntarily closed a facility or family home or relinquished the person's license, listing, registration, or certification after:

(A)  the commission [~~department~~] took an action under Subsection (a) in relation to the facility, family home, or person; or

(B)  the person received notice that the commission [~~department~~] intended to take an action under Subsection (a) in relation to the facility, family home, or person; or

(4)  a person who was a controlling person of a facility or family home at the time conduct occurred that resulted in the closure of the facility or family home or relinquishment of the license, listing, registration, or certification in the manner described by Subdivision (3).

SECTION 9.  Section 42.078, Human Resources Code, is amended by amending Subsections (a), (a-2), (e), (f), (g), (h), (i), (m), (n), and (r) and adding Subsections (e-1) and (e-2) to read as follows:

(a)  The commission [~~department~~] may impose an administrative sanction or an administrative penalty against a facility or family home licensed, registered, or listed under this chapter that violates this chapter or a rule or order adopted under this chapter. In addition, the commission [~~department~~] may impose an administrative penalty against a facility or family home or a controlling person of a facility or family home if the facility, family home, or controlling person:

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

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

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

(B)  in response to a matter under investigation;

(3)  refuses to allow a representative of the commission [~~department~~] to inspect:

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

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

(4)  purposefully interferes with the work of a representative of the commission [~~department~~] or the enforcement of this chapter; or

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

(a-2)  The commission [~~department~~] may impose an administrative penalty without first imposing a nonmonetary administrative sanction for violating a minimum standard applicable to a facility or family home under this chapter that is determined by the commission [~~department~~] to be a high-risk standard, including standards for a violation constituting abuse, neglect, or exploitation of a child, background check standards, safety hazard standards, standards establishing times for reporting information to a parent or guardian or the commission, and supervision standards.

(e)  If the commission [~~department~~] determines that a violation has occurred, the commission [~~department~~] may issue a recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e-1)  Notwithstanding the amounts required by Subsections (b) and (c), the commission shall recommend the penalty for the following violations by a facility or family home to be assessed in the following amounts:

(1)  $1,000 for a violation that constitutes abuse, neglect, or exploitation of a child;

(2)  $500 for failure to report to a parent or guardian of a child or the commission within the time required by commission standards an injury of a child in the care of the facility or home that requires treatment by a medical professional or hospitalization or an illness of a child that requires hospitalization;

(3)  $50 for failure to report to a parent or guardian of each child in the care of the facility or home within the time required by commission standards that the commission cited the facility or home for a violation:

(A)  that constitutes abuse, neglect, or exploitation of a child; or

(B)  of a safe sleeping standard; and

(4)  $50 for failure to report to a parent or guardian of each child in the care of the facility or home within the time required by commission standards that the facility or home does not maintain liability insurance coverage.

(e-2)  For purposes of Subsections (e-1)(3) and (4), the commission shall recommend a penalty of $50 for the initial violation and an additional penalty of $50 for each day the violation continues or occurs.

(f)  Within 14 days after the date the recommendation is issued, the commission [~~department~~] shall give written notice of the recommendation to the person owning or operating the facility or family home or to the controlling person, if applicable.  The notice may be given by certified mail.  The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g)  Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the commission [~~department~~] or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(h)  If the person accepts the determination and recommended penalty of the commission [~~department~~] or fails to respond to the notice in a timely manner, the commission [~~department~~] shall issue an order and impose the recommended penalty.

(i)  If the person requests a hearing, the commission [~~department~~] shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and issue a final decision finding that a violation has occurred and imposing a penalty or finding that no violation occurred.

(m)  On receipt of a copy of an affidavit under Subsection (l)(2), the commission [~~department~~] may file with the court, within five days after the date the copy is received, a contest to the affidavit.  The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true.  The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(n)  If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commission [~~department~~] may refer the matter to the attorney general for collection of the amount of the penalty.

(r)  A penalty collected under this section shall be sent to the comptroller for deposit in the safety training account established under Section 42.04215 [~~general revenue fund~~].

SECTION 10.  As soon as practicable after the effective date of this Act, the executive commissioner of the Health and Human Services Commission shall adopt the rules necessary to implement the changes in law made by this Act.

SECTION 11.  This Act takes effect September 1, 2019.