

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.

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

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

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

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

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

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

26 (b) The commission ~~[department]~~ shall make the data
27 collected by the commission ~~[department]~~ available to another state

1 agency or political subdivision of the state for the purpose of
2 administering programs or enforcing laws within the jurisdiction of
3 that agency or subdivision. If feasible using available
4 information systems, the commission [~~department~~] shall make the
5 data directly available to [~~the Department of State Health~~
6 ~~Services, the Department of Aging and Disability Services, and~~] the
7 Texas Workforce Commission through electronic information systems.
8 The commission [~~department, the Department of State Health~~
9 ~~Services, the Department of Aging and Disability Services,~~] and the
10 Texas Workforce Commission shall jointly plan the development of
11 child-care inspection databases that, to the extent feasible, are
12 similar in their design and architecture to promote the sharing of
13 data.

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

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

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

1 on the premises of [~~the license holder~~] or in the care of the
2 [~~license~~] holder.

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

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

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

27 (d) The insurance policy or contract shall be maintained at

1 all times in an amount as required by this section. Failure by a
2 license or registration holder to renew the policy or contract or to
3 maintain the policy or contract in the required amount is a ground
4 for suspension or revocation of the [~~license~~] holder's license or
5 registration under this chapter.

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

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

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

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

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

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

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

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

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

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

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

1 with the commission [~~department~~].

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

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

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

26 (i) The commission [~~department~~] shall provide to a listed
27 family home a copy of the listing. A listing must contain a

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

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

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

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

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

27 SECTION 7. Section 42.063, Human Resources Code, is amended

1 by amending Subsections (b), (d), and (g) and adding Subsections
2 (b-1) and (b-2) to read as follows:

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

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

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

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

27 (g) The commission [~~department~~] shall implement this

1 section using existing appropriations.

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

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

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

26 (c) The commission [~~department~~] may not issue or renew a
27 license, listing, registration, or certification to a person whose

1 license, listing, registration, or certification is revoked or not
2 renewed or whose application for a license, listing, registration,
3 or certification is denied for a substantive reason under this
4 chapter before the fifth anniversary of the date on which the
5 revocation takes effect by commission [~~department~~] or court order
6 or the decision to deny the application is final.

7 (e) A person may continue to operate a facility or family
8 home during an appeal of a [~~license, listing, or registration~~]
9 revocation or refusal to renew a license, certification, or
10 registration unless the operation of the facility or family home
11 poses a risk to the health or safety of children. The executive
12 commissioner shall by rule establish the criteria for determining
13 whether the operation of a facility or family home poses a risk to
14 the health or safety of children. The commission [~~department~~]
15 shall notify the facility or family home of the criteria the
16 commission [~~department~~] used to determine that the operation of the
17 facility or family home poses a risk to health or safety and that
18 the facility or family home may not operate. A person who has been
19 notified by the commission [~~department~~] that the facility or home
20 may not operate under this section may seek injunctive relief from a
21 district court in Travis County or in the county in which the
22 facility or home is located to allow operation during the pendency
23 of an appeal. The court may grant injunctive relief against the
24 commission's [~~department's~~] action only if the court finds that the
25 child-care operation does not pose a health or safety risk to
26 children. A court granting injunctive relief under this subsection
27 shall have no other jurisdiction over an appeal of final commission

1 ~~[department]~~ action unless conferred by Chapter 2001, Government
2 Code.

3 (f) The commission ~~[department]~~ shall deny an application
4 or renewal for listing or registering a family home or shall revoke
5 a family home's listing or registration if the results of a
6 background or criminal history check conducted by the commission
7 ~~[department]~~ under Section 42.056 show that a person has been
8 convicted of an offense under Title 5 or 6, Penal Code, or Chapter
9 43, Penal Code.

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

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

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

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

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

26 (B) the person received notice that the
27 commission ~~[department]~~ intended to take an action under Subsection

1 (a) in relation to the facility, family home, or person; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (2) \$500 for failure to report to a parent or guardian
4 of a child or the commission within the time required by commission
5 standards an injury of a child in the care of the facility or home
6 that requires treatment by a medical professional or
7 hospitalization or an illness of a child that requires
8 hospitalization;

9 (3) \$50 for failure to report to a parent or guardian
10 of each child in the care of the facility or home within the time
11 required by commission standards that the commission cited the
12 facility or home for a violation:

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

15 (B) of a safe sleeping standard; and

16 (4) \$50 for failure to report to a parent or guardian
17 of each child in the care of the facility or home within the time
18 required by commission standards that the facility or home does not
19 maintain liability insurance coverage.

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

24 (f) Within 14 days after the date the recommendation is
25 issued, the commission [~~department~~] shall give written notice of
26 the recommendation to the person owning or operating the facility
27 or family home or to the controlling person, if applicable. The

1 notice may be given by certified mail. The notice must include a
2 brief summary of the alleged violation and a statement of the amount
3 of the recommended penalty and must inform the person that the
4 person has a right to a hearing on the occurrence of the violation,
5 the amount of the penalty, or both the occurrence of the violation
6 and the amount of the penalty.

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

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

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

25 (m) On receipt of a copy of an affidavit under Subsection
26 (l)(2), the commission [~~department~~] may file with the court, within
27 five days after the date the copy is received, a contest to the

1 affidavit. The court shall hold a hearing on the facts alleged in
2 the affidavit as soon as practicable and shall stay the enforcement
3 of the penalty on finding that the alleged facts are true. The
4 person who files an affidavit has the burden of proving that the
5 person is financially unable to pay the amount of the penalty and to
6 give a supersedeas bond.

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

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

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

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