

By: Huffman

S.B. No. 568

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 [~~en~~  
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 commission  
26 may place restrictions, conditions, or additional requirements on  
27 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.

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

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

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

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

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

23           (c) The commission [~~department~~] may not issue a license,  
24 listing, registration, or certification to a person whose license,  
25 listing, registration, or certification is revoked or not renewed  
26 or whose application for a license, listing, registration, or  
27 certification is denied for a substantive reason under this chapter

1 before the fifth anniversary of the date on which the revocation or  
2 nonrenewal takes effect by commission [~~department~~] or court order  
3 or the decision to deny the application is final.

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

27 (f) The commission [~~department~~] shall deny an application

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

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

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

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

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

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

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

26 (4) a person who was a controlling person of a facility  
27 or family home at the time conduct occurred that resulted in the

1 closure of the facility or family home or relinquishment of the  
2 license, listing, registration, or certification in the manner  
3 described by Subdivision (3).

4 SECTION 9. Section 42.078, Human Resources Code, is amended  
5 by amending Subsections (a), (a-2), (e), (f), (g), (h), (i), (m),  
6 (n), and (r) and adding Subsections (e-1), (e-2), and (e-3) to read  
7 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

21           (e-1) Notwithstanding the amounts required by Subsections  
22 (b) and (c) and except as provided by Subsection (e-3), the  
23 commission shall recommend the penalty for the following violations  
24 by a facility or family home to be assessed in the following  
25 amounts:

26           (1) \$1,000 for a violation that constitutes abuse,  
27 neglect, or exploitation of a child;

1           (2) \$500 for failure to report to a parent or guardian  
2 of a child or the commission within the time required by commission  
3 standards an injury of a child in the care of the facility or home  
4 that requires treatment by a medical professional or  
5 hospitalization or an illness of a child that requires  
6 hospitalization;

7           (3) \$50 for failure to report to a parent or guardian  
8 of each child in the care of the facility or home within the time  
9 required by commission standards that the commission cited the  
10 facility or home for a violation:

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

13                   (B) of a safe sleeping standard; and

14           (4) \$50 for failure to report to a parent or guardian  
15 of each child in the care of the facility or home within the time  
16 required by commission standards that the facility or home does not  
17 maintain liability insurance coverage.

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

22           (e-3) Subsection (e-1)(1) does not apply to a residential  
23 child-care facility.

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. The Health and Human Services Commission is  
19 required to implement a provision of this Act only if the  
20 legislature appropriates money specifically for that purpose. If  
21 the legislature does not appropriate money specifically for that  
22 purpose, the commission may, but is not required to, implement a  
23 provision of this Act using other appropriations available for that  
24 purpose.

25 SECTION 12. This Act takes effect September 1, 2019.