

By: Nelson

S.B. No. 68

A BILL TO BE ENTITLED

AN ACT

1
2 relating to licensing and inspection requirements of the Department
3 of Family and Protective Services for certain facilities and homes
4 providing child care; providing penalties.

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

6 SECTION 1. Section 42.002, Human Resources Code, is amended
7 by amending Subdivisions (7), (8), (17), and (19) and adding
8 Subdivision (20) to read as follows:

9 (7) "Day-care center" means a child-care facility that
10 provides care at a location other than the residence of the
11 director, owner, or operator of the child-care facility for seven
12 or more [~~than 12~~] children under 14 years of age for less than 24
13 hours a day, but at least two hours a day, three or more days a week.

14 (8) "Group day-care home" means a child-care facility
15 that provides care at the residence of the director, owner, or
16 operator of the child-care facility for 7 to 12 children under 14
17 years of age for less than 24 hours a day, but at least two hours a
18 day, three or more days a week.

19 (17) "Regular care" means care that is provided at
20 least:

21 (A) four hours a day, three or more days a week,
22 for three or more [~~than nine~~] consecutive weeks; or

23 (B) four hours a day for 40 or more days in a
24 period of 12 months.

1 (19) "Residential child-care facility" means a
2 facility licensed or certified by the department that operates [~~to~~
3 ~~provide assessment, care, training, education, custody, treatment,~~
4 ~~or supervision for a child who is not related by blood, marriage, or~~
5 ~~adoption to the owner or operator of the facility,~~] for all of the
6 24-hour day [~~, whether or not the facility is operated for profit or~~
7 ~~charges for the services it offers]. The term includes child-care~~
8 institutions, child-placing agencies, foster group homes, foster
9 homes, agency foster group homes, and agency foster homes.

10 (20) "Before-school and after-school program" means a
11 child-care facility that provides care before and after the
12 customary school day and during school holidays, for at least two
13 hours a day, three days a week, to children who attend
14 prekindergarten through grade six.

15 SECTION 2. The heading to Section 42.041, Human Resources
16 Code, is amended to read as follows:

17 Sec. 42.041. REQUIRED LICENSE [~~OR ACCREDITATION~~].

18 SECTION 3. Section 42.041(b), Human Resources Code, is
19 amended to read as follows:

20 (b) This section does not apply to:

- 21 (1) a state-operated facility;
- 22 (2) an agency foster home or agency foster group home;
- 23 (3) a facility that is operated in connection with a
24 shopping center, business, religious organization, or
25 establishment where children are cared for during short periods
26 while parents or persons responsible for the children are attending
27 religious services, shopping, or engaging in other activities,

1 including retreats or classes for religious instruction, on or near
2 the premises, that does not advertise as a child-care facility or
3 day-care center, and that informs parents that it is not licensed by
4 the state~~[, including but not limited to retreats or classes for~~
5 ~~religious instruction];~~

6 (4) a school or class for religious instruction that
7 does not last longer than two weeks and is conducted by a religious
8 organization during the summer months;

9 (5) a youth camp licensed by the Department of State
10 Health Services;

11 (6) a facility licensed, operated, certified, or
12 registered by another state agency;

13 (7) ~~[subject to Subsection (b-1),]~~ an educational
14 facility that is accredited by the Texas Education Agency, the
15 Southern Association of Colleges and Schools, or an accreditation
16 body that is a member of the Texas Private School Accreditation
17 Commission and that operates primarily for educational purposes
18 for prekindergarten ~~[in grades kindergarten]~~ and above, a
19 before-school and ~~[an]~~ after-school program operated directly by an
20 accredited educational facility, or a before-school and ~~[an]~~
21 after-school program operated by another entity under contract with
22 the educational facility, if the Texas Education Agency, the
23 Southern Association of Colleges and Schools, or the other
24 accreditation body, as applicable, has approved the curriculum
25 content of the before-school and after-school program operated
26 under the contract;

27 (8) an educational facility that operates solely for

1 educational purposes for prekindergarten [~~in grades kindergarten~~]
2 through at least grade two, that does not provide custodial care for
3 more than one hour during the hours before or after the customary
4 school day, and that is a member of an organization that
5 promulgates, publishes, and requires compliance with health,
6 safety, fire, and sanitation standards equal to standards required
7 by state, municipal, and county codes;

8 (9) a kindergarten or preschool educational program
9 that is operated as part of a public school or a private school
10 accredited by the Texas Education Agency, that offers educational
11 programs through grade six, and that does not provide custodial
12 care during the hours before or after the customary school day;

13 (10) a family home, whether registered or listed,
14 including a living arrangement in a caretaker's home involving one
15 or more children or a sibling group, excluding children who are
16 related to the caretaker, in which:

17 (A) the caretaker:

18 (i) had a prior relationship with the child
19 or sibling group or with other family members of the child or
20 sibling group;

21 (ii) does not care for more than one
22 unrelated child or sibling group;

23 (iii) does not receive compensation or
24 solicit donations for the care of the child or sibling group; and

25 (iv) has a written agreement with the
26 parent to care for the child or sibling group;

27 (B) the department is the managing conservator of

1 the child or sibling group and has placed the child or sibling group
2 in the caretaker's home and the caretaker had a long-standing and
3 significant relationship with the child or sibling group before the
4 child or sibling group was placed with the caretaker; or

5 (C) the child is in the United States on a
6 time-limited visa and under the sponsorship of the caretaker or of a
7 sponsoring organization;

8 (11) [~~subject to Subsection (b-1),~~] an educational
9 facility that is integral to and inseparable from its sponsoring
10 religious organization or an educational facility both of which do
11 not provide custodial care for more than two hours maximum per day,
12 and that offers an educational program [~~programs for children age~~
13 ~~four and above~~] in one or more of the following: prekindergarten
14 [~~preschool, kindergarten~~] through at least grade three, elementary
15 grades, or secondary grades;

16 (12) an emergency shelter facility providing shelter
17 to minor mothers who are the sole support of their natural children
18 under Section 32.201, Family Code, unless the facility would
19 otherwise require a license as a child-care facility under this
20 section;

21 (13) a juvenile detention facility certified under
22 Section 51.12, Family Code, a juvenile correctional facility
23 certified under Section 51.125, Family Code, a juvenile facility
24 providing services solely for the Texas Youth Commission, or any
25 other correctional facility for children operated or regulated by
26 another state agency or by a political subdivision of the state;

27 (14) an elementary-age (ages 5-13) recreation program

1 operated by a municipality provided the governing body of the
2 municipality annually adopts standards of care by ordinance after a
3 public hearing for such programs, that such standards are provided
4 to the parents of each program participant, and that the ordinances
5 shall include, at a minimum, staffing ratios, minimum staff
6 qualifications, minimum facility, health, and safety standards,
7 and mechanisms for monitoring and enforcing the adopted local
8 standards; and further provided that parents be informed that the
9 program is not licensed by the state and the program may not be
10 advertised as a child-care facility;

11 (15) an annual youth camp held in a municipality with a
12 population of more than 1.5 million that operates for not more than
13 three months and that has been operated for at least 10 years by a
14 nonprofit organization that provides care for the homeless; [~~or~~]

15 (16) a food distribution program that:

16 (A) serves an evening meal to children two years
17 of age or older; and

18 (B) is operated by a nonprofit food bank in a
19 nonprofit, religious, or educational facility for not more than two
20 hours a day on regular business days;

21 (17) a child-care facility that operates for less than
22 three consecutive weeks and less than 40 days in a period of 12
23 months;

24 (18) a program in which a child receives instruction
25 in a single talent, ability, expertise, or proficiency, for less
26 than two hours a day, that is not operated as part of an educational
27 facility, day-care center, or before-school and after-school

1 program; or

2 (19) an elementary-age (ages 5-13) recreation program
3 that:

4 (A) adopts standards of care, including
5 standards relating to staff ratios, staff training, health, and
6 safety;

7 (B) provides a mechanism for monitoring and
8 enforcing the standards and receiving complaints from parents of
9 enrolled children;

10 (C) does not advertise as a child-care facility
11 or day-care center and informs parents that it is not licensed by
12 the state;

13 (D) does not collect compensation for its
14 services;

15 (E) allows a participating child to come and go
16 at will;

17 (F) requires the parents of a participating child
18 to sign a statement allowing the child to come and go from the
19 program at will;

20 (G) if the program provides transportation to the
21 program from a school, allows a participating child to choose
22 whether to use the transportation or to leave the program and walk
23 home without adult supervision; and

24 (H) conducts background checks for all program
25 employees and volunteers who work with children using information
26 from the Department of Public Safety.

27 SECTION 4. Section 42.042(i), Human Resources Code, is

1 amended to read as follows:

2 (i) Before adopting minimum standards, the department shall
3 ~~[present the proposed standards to the State Advisory Committee on~~
4 ~~Child-Care Facilities for review and comment, and shall]~~ send a
5 copy of the proposed standards to each licensee covered by the
6 proposed standards at least 60 days before the standards take
7 effect to provide the licensee an opportunity to review and to send
8 written suggestions to ~~[the committee and]~~ the department.

9 SECTION 5. Section 42.044(b), Human Resources Code, is
10 amended to read as follows:

11 (b) The department shall inspect all licensed or certified
12 facilities at least once a year and may inspect other facilities or
13 registered family homes as necessary. The department shall
14 investigate a listed family home when the department receives a
15 complaint of abuse or neglect of a child, as defined by Section
16 261.401 ~~[261.001]~~, Family Code. At least one of the annual visits
17 must be unannounced and all may be unannounced.

18 SECTION 6. Subchapter C, Chapter 42, Human Resources Code,
19 is amended by adding Section 42.04412 to read as follows:

20 Sec. 42.04412. INTERFERENCE WITH INSPECTION; COURT ORDER.

21 (a) A person may not interfere with an investigation or inspection
22 of a facility or family home conducted by the department under this
23 chapter.

24 (b) During an investigation or inspection of a facility or
25 family home under this chapter, the facility or family home shall
26 cooperate with the department and allow the department to:

27 (1) access the records of the facility or family home;

1 (2) access any part of the premises of the facility or
2 family home; and

3 (3) interview any child, employee, or other person who
4 is present at the facility or family home and who may have
5 information relevant to the investigation or inspection.

6 (c) If access to the records or premises of the facility or
7 family home cannot be obtained, a district court in Travis County or
8 in the county in which the facility or family home is located, for
9 good cause shown and without prior notice or a hearing, shall issue
10 an order granting the department access to the records or premises
11 in order to conduct the inspection, investigation, or interview.

12 (d) To assist the department in investigating whether a
13 person is operating a facility or family home without a required
14 license, certification, registration, or listing, a district court
15 in Travis County or in the county in which the suspected facility or
16 family home is located may, for good cause shown and without prior
17 notice or a hearing, issue an order allowing the department to enter
18 the suspected facility or family home at a time when the
19 department's evidence shows that the suspected facility or family
20 home may be providing child care subject to regulation under this
21 chapter.

22 SECTION 7. Section 42.0461(a), Human Resources Code, is
23 amended to read as follows:

24 (a) Before the department may issue a license or certificate
25 [~~to operate under Subchapter E~~] for the operation or the expansion
26 of the capacity of a foster group home or foster family home that is
27 located in a county with a population of less than 300,000 and that

1 provides child care for 24 hours a day at a location other than the
2 actual residence of a child's primary caretaker or of a child care
3 institution, the applicant for the license, certificate, or
4 expansion shall, at the applicant's expense:

5 (1) conduct a public hearing on the application in
6 accordance with department rules after notifying the department of
7 the date, time, and location of the hearing; and

8 (2) publish notice of the application in a newspaper
9 of general circulation in the community in which the child-care
10 services are proposed to be provided.

11 SECTION 8. Section 42.056, Human Resources Code, is amended
12 by amending Subsections (a), (a-2), (b), (b-1), (c), (f), (g), (h),
13 (i), and (j) and adding Subsections (a-3) and (a-4) to read as
14 follows:

15 (a) In accordance with rules adopted by the executive
16 commissioner [~~department~~], the director, owner, or operator of a
17 child-care facility, child-placing agency, or family home shall,
18 when applying to operate a child-care facility or child-placing
19 agency or when listing or registering a family home and at least
20 once during each 24 months after receiving a license, listing,
21 registration, or certification of approval, submit to the
22 department for use in conducting background and criminal history
23 checks the name of:

24 (1) [~~the name of~~] the director, owner, and operator of
25 the facility, agency, or home;

26 (2) [~~and the name of~~] each person employed at the
27 facility, agency, or home;

1 (3) each prospective employee of the facility, agency,
2 or home;

3 (4) each current or prospective foster parent
4 providing foster care through a child-placing agency;

5 (5) each prospective adoptive parent seeking to adopt
6 through a child-placing agency;

7 (6) each person at least 14 years of age, other than a
8 client in care, who:

9 (A) is counted in child-to-caregiver ratios in
10 accordance with the minimum standards of the department;

11 (B) will reside in a prospective adoptive home if
12 the adoption is through a child-placing agency;

13 (C) has unsupervised access to children in care
14 at the facility or family home; or

15 (D) resides in the facility or family home; or
16 [and]

17 (7) [~~(2) the name of~~] each person 14 years of age or
18 older, other than a client in care, who will regularly or frequently
19 be staying or working at a [~~the~~] facility, family [~~or~~] home, or
20 prospective adoptive home, while children are being provided care.

21 (a-2) In accordance with rules adopted by the executive
22 commissioner, the director, owner, or operator of a child-care
23 facility, other than a family home, or a child-placing agency
24 [~~day-care center~~] shall submit a complete set of fingerprints of
25 each person whose name is required to be submitted by the director,
26 owner, or operator under Subsection (a), unless the person:

27 (1) is a child who resides in the facility or

1 prospective adoptive home;

2 (2) is only required to have the person's name
3 submitted based on criteria specified by Subsection (a)(7); or

4 (3) already has a valid fingerprint-based criminal
5 history record on file with the department.

6 (a-3) In accordance with rules adopted by the executive
7 commissioner, the director, owner, or operator of a family home
8 shall submit a complete set of fingerprints of each person whose
9 name is required to be submitted by the director, owner, or operator
10 under Subsection (a) only if:

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

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

16 (a-4) The rules adopted by the executive commissioner under
17 Subsections (a-2) and (a-3):

18 (1) must require that the fingerprints be submitted in
19 a form and of a quality acceptable to the Department of Public
20 Safety and the Federal Bureau of Investigation for conducting a
21 criminal history check; and

22 (2) may require that the fingerprints be submitted
23 electronically through an applicant fingerprinting service center.

24 (b) The department shall conduct background and criminal
25 history checks using:

26 (1) the information provided under Subsection
27 [Subsections] (a) [and (a-1)];

1 (2) the information made available by the Department
2 of Public Safety under Section 411.114, Government Code, or by the
3 Federal Bureau of Investigation or other criminal justice agency
4 under Section 411.087, Government Code; and

5 (3) the department's records of reported abuse and
6 neglect.

7 (b-1) In addition to any other background or criminal
8 history check conducted under Subsection (b), for each person whose
9 fingerprints are [name is] submitted [~~by the director, owner, or~~
10 ~~operator of a day-care center]~~ under Subsection (a-2) or (a-3)
11 [~~Subsection (a)]~~, the department shall conduct a state and Federal
12 Bureau of Investigation criminal history check by:

13 (1) submitting the person's fingerprints [~~provided~~
14 ~~under Subsection (a-2)]~~, or causing the fingerprints to be
15 submitted electronically [~~as authorized by that subsection]~~, to the
16 Department of Public Safety for the purpose of conducting a state
17 and federal criminal history check; and

18 (2) using the resulting information made available by
19 that department under Section 411.114, Government Code, and by the
20 Federal Bureau of Investigation and any other criminal justice
21 agency under Section 411.087, Government Code.

22 (c) The department by rule shall require a child-care
23 facility, child-placing agency, or registered family home to pay to
24 the department a fee in an amount not to exceed the administrative
25 costs the department incurs in conducting a background and criminal
26 history check under this section.

27 (f) As part of a background check under this section, the

1 department shall provide any relevant information available in the
2 department's records regarding a person's previous employment in a
3 [~~residential child-care~~] facility or family home to the person
4 submitting the request.

5 (g) Except as otherwise provided by this subsection, a
6 person whose name is submitted [~~by the director, owner, or operator~~
7 ~~of a day-care center~~] under Subsection (a) may not provide direct
8 care or have direct access to a child in a facility or family home
9 [~~day-care center~~] before the person's background and criminal
10 history checks under Subsections (b) and (b-1) are completed. A
11 person may be employed at a facility or family home [~~day-care~~
12 ~~center~~] and may provide direct care or have direct access to a child
13 in the facility or family home [~~day-care center~~] before the
14 person's criminal history check under Subsection (b-1) is completed
15 if:

16 (1) the facility or family home is experiencing a
17 staff shortage;

18 (2) the state criminal history check and the
19 background check using the department's records of reported abuse
20 and neglect have been completed under Subsection (b), and the
21 resulting information does not preclude the person from being
22 present at the facility or family home [~~day-care center~~]; and

23 (3) [~~(2)~~] the person's fingerprints are submitted as
24 soon as possible, but not later than the 30th day after the earliest
25 of the date on which the person first:

26 (A) provides direct care to a child;

27 (B) has direct access to a child; or

1 (C) is hired [~~day-care center is experiencing a~~
2 ~~staffing shortage that, if the day-care center were not allowed to~~
3 ~~employ the person until completion of the federal criminal history~~
4 ~~check, would result in a staff-to-child ratio that violates the~~
5 ~~department's minimum standards~~].

6 (h) If the results of a criminal history check under
7 Subsection (b-1) for a person employed by a facility or family home
8 [~~day-care center~~] during a staffing shortage as authorized by
9 Subsection (g) preclude the person from being present at the
10 facility or family home [~~day-care center~~], the director, owner, or
11 operator of the facility or family home [~~day-care center~~] shall
12 immediately terminate the person's employment.

13 (i) A director, owner, or operator of a facility or family
14 home [~~day-care center~~] commits an offense if the director, owner,
15 or operator knowingly:

16 (1) fails to submit to the department information
17 about a person as required by this section and department rules for
18 use in conducting background and criminal history checks with
19 respect to the person; and

20 (2) employs the person at the facility or family home
21 [~~day-care center~~] or otherwise allows the person to regularly or
22 frequently stay or work at the facility or family home [~~day-care~~
23 ~~center~~] while children are being provided care.

24 (j) A director, owner, or operator of a facility or family
25 home [~~day-care center~~] commits an offense if, after the date the
26 director, owner, or operator receives notice from the department
27 that, based on the results of a person's background or criminal

1 history check, the person is precluded from being present at the
2 facility or family home [~~day-care center~~], the director, owner, or
3 operator knowingly:

4 (1) employs the person at the facility or family home
5 [~~day-care center~~]; or

6 (2) otherwise allows the person to regularly or
7 frequently stay or work at the facility or family home [~~day-care~~
8 ~~center~~] while children are being provided care.

9 SECTION 9. Sections 42.072(c) and (e), Human Resources
10 Code, are amended to read as follows:

11 (c) The department may not issue a license, listing,
12 registration, or certification to a person whose license, listing,
13 registration, or certification is revoked or whose application for
14 a license, listing, registration, or certification is denied for a
15 substantive reason under this chapter before[+]

16 [~~(1)~~] the fifth anniversary of the date on which the
17 revocation takes effect by department or court order or the
18 decision to deny the application is final [~~, if the facility is a~~
19 ~~residential child-care facility, or~~

20 [~~(2)~~ ~~the second anniversary of the date on which the~~
21 ~~revocation takes effect by department or court order or the~~
22 ~~decision to deny the application is final, if the facility is not a~~
23 ~~residential child-care facility]~~.

24 (e) A person may continue to operate a facility or family
25 home during an appeal of a license, listing, or registration denial
26 or revocation unless the operation of the facility or family home
27 [~~revocation or denial is based on a violation which~~] poses a risk to

1 the health or safety of children. The department shall by rule
2 establish the criteria for determining whether the operation of a
3 facility or family home poses [~~violations which pose~~] a risk to the
4 health or safety of children. The department shall notify the
5 facility or family home of the criteria the department used to
6 determine that the operation of the facility or family home
7 [~~violation which~~] poses a risk to health or safety and that the
8 facility or family home may not operate. A person who has been
9 notified by the department that the facility or home may not operate
10 under this section may seek injunctive relief from a district court
11 in Travis County or in the county in which the facility or home is
12 located to allow operation during the pendency of an appeal. The
13 court may grant injunctive relief against the agency's action only
14 if the court finds that the child-care operation does not pose a
15 health or safety risk to children. A court granting injunctive
16 relief under this subsection shall have no other jurisdiction over
17 an appeal of final agency action unless conferred by Chapter 2001,
18 Government Code.

19 SECTION 10. Section 42.073(c), Human Resources Code, is
20 amended to read as follows:

21 (c) An order is valid for 30 [~~10~~] days after the effective
22 date of the order [~~, except that an order relating to a residential~~
23 ~~child-care facility is valid for 30 days after the effective date of~~
24 ~~the order~~].

25 SECTION 11. Section 42.077, Human Resources Code, is
26 amended by amending Subsection (a) and adding Subsection (a-1) to
27 read as follows:

1 (a) If the department revokes or suspends a facility's
2 license or a family home's listing or registration, the department
3 shall publish notice of this action:

4 (1) in a newspaper of general circulation in the
5 county in which the facility or family home is located; or

6 (2) on the department's Internet website along with
7 other information regarding child-care services.

8 (a-1) If notice is published in a newspaper under Subsection
9 (a), the [The] newspaper shall place the notice in the section in
10 which advertisements for day-care services are normally published.

11 SECTION 12. Section 261.401(b), Family Code, is amended to
12 read as follows:

13 (b) A state agency that operates, licenses, certifies, [~~or~~]
14 registers, or lists a facility in which children are located or
15 provides oversight of a program that serves children shall make a
16 prompt, thorough investigation of a report that a child has been or
17 may be abused, neglected, or exploited in the facility or program.
18 The primary purpose of the investigation shall be the protection of
19 the child.

20 SECTION 13. The following provisions of the Human Resources
21 Code are repealed:

22 (1) Section 42.041(b-1);

23 (2) Section 42.0431(c); and

24 (3) Sections 42.056(a-1), (d), and (e).

25 SECTION 14. (a) The changes in law made by this Act to
26 Sections 42.056(i) and (j), Human Resources Code, apply only to an
27 offense committed on or after the effective date of this Act. An

1 offense committed before the effective date of this Act is governed
2 by the law in effect when the offense was committed, and the former
3 law is continued in effect for that purpose. For the purposes of
4 this section, an offense was committed before the effective date of
5 this Act if any element of the offense occurred before that date.

6 (b) The change in law made by this Act to Section 42.072(c),
7 Human Resources Code, applies only to the issuance of a license,
8 listing, registration, or certification to a person whose license,
9 listing, registration, or certification is revoked or whose
10 application for a license, listing, registration, or certification
11 is denied for a substantive reason on or after the effective date of
12 this Act. The issuance of a license, listing, registration, or
13 certification to a person whose license, listing, registration, or
14 certification was revoked or whose application for a license,
15 listing, registration, or certification was denied for a
16 substantive reason before the effective date of this Act is
17 governed by the law in effect when the license, listing,
18 registration, or certification was revoked or the application was
19 denied for a substantive reason, and the former law is continued in
20 effect for that purpose.

21 SECTION 15. This Act takes effect September 1, 2009.