

## **BILL ANALYSIS**

Senate Research Center

S.B. 1539  
By: West  
Health & Human Services  
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As Filed

### **DIGEST**

Currently, the Department of Protective and Regulatory Service (department) licenses, certifies or registers various kinds of child care services from registered family homes, and child care facilities to residential facilities and institutions for 24-hour living arrangements. This bill updates the regulatory provisions of Chapter 42 by changing many references to the agency structure prior to regulatory functions moving to the department. There are several phrases that are not the precise wording used in the definitions section of the law. This bill "cleans up" statutory language to reflect precise wording used in the definitions section of the law and clarifies other sections to clarify the types of regulatory categories covered.

### **PURPOSE**

As proposed, S.B. 1539 regulates certain facilities, homes, and agencies that provide child care services; regulates child care administrators; and provides penalties

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Department of Protective and Regulatory Services in SECTION 4 (Sections 42.052(h) and 42.057, Article 42C, Human Resources Code)

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 42, Human Resources Code, as follows:

CHAPTER 42. New heading: REGULATION OF CERTAIN FACILITIES, HOMES, AND AGENCIES THAT PROVIDE CHILD CARE SERVICES

SECTION 2. Amends Chapter 42A, Human Resources Code, as follows:

Sec. 42.001. PURPOSE. Provides that this chapter protects children of the state who receive care outside their homes, rather than children who reside in child care facilities, and regulates certain child care services, rather than through a licensing program. Provides that this chapter ensures protection of children in regulated child care services, rather than facilities.

Sec. 42.002. DEFINITIONS. Redefines "child care facility," "child care institution," "foster group home," "foster home," "day-care center," "group day-care home," "family home," "agency foster group home," "agency foster home," and "child-placing agency." Defines "child care services," "children related to the caretaker," "department," "board," and "executive director."

SECTION 3. Amends Section 42.021(b), Human Resources Code, to require the executive director of the Department of Protective and Regulatory Services (director) to appoint as the director of the division designated by the department to carry out provisions of this chapter a person who meets certain qualifications. Deletes provisions relating to qualifications.

SECTION 4. Amends Chapter 42C, Human Resources Code, as follows:

SUBCHAPTER C. New heading: REGULATION OF CERTAIN CHILD-CARE FACILITIES

## AGENCIES

Sec. 42.041. **REQUIRED LICENSE.** Prohibits a person from operating a child-care facility or child-placing service without a license issued by the Department of Protective and Regulatory Services (department), rather than the division. Provides that this section does not apply to an agency foster home; agency foster group home; facility licensed, operated, or registered by another agency, rather than a hospital licensed by certain agencies; a family home, whether or not registered as required by Section 42.052 or not; an emergency shelter under Section 32.201, rather than Section 35.05, Family Code; certain other correctional facilities for children; and certain recreational facilities for children. Deletes Subsection (12). Deletes a provision related to applying for a division license. Makes conforming changes.

Sec. 42.042. **RULES AND STANDARDS.** Sets forth the beginning of the six year period for review of rules. Deletes a provision related to a standard form of recording complaints. Requires the department to promulgate standards that apply to registered child-care facilities regulated under this chapter that will prevent breakdown of foster care and adoptive replacement and prescribe qualifications for a person who operates a regulated facility. Requires the department to recognize differences in the organizations and operation of child-care facilities and institutions. Authorizes the department to recognize types of services provided by certain facilities. Deletes a provision related to types of services. Deletes existing Subsections (h), (l), and (m). Makes conforming changes.

Sec. 42.043. **RULES FOR IMMUNIZATIONS.** Require the department to make rules for the immunization of children in facilities regulated under this chapter. Requires the department to require children to be tested against other communicable diseases as recommended by the Texas Department of Health.

Sec. 42.044. **INSPECTIONS.** Require the department to notify the operator of the registered family home when complaints are registered. Makes conforming changes.

Sec. 42.045. **RECORDS.** Requires a person who provides adoption services pursuant to a child-placing agency license to furnish certain information. Deletes a provision regarding annual audits.

Sec. 42.046. **New heading: APPLICATION.** Requires an applicant for registration to submit certain information. Deletes a provision regarding Section 42.054 of this code. Makes conforming changes.

Sec. 42.047. **CONSULTATIONS.** Requires the department to offer to potential applicants consultation on registration and to users of child care facilities. Makes a conforming change.

Sec. 42.048. **ADVISORY OPINIONS.** Makes conforming and nonsubstantive changes.

Sec. 42.049. **LICENSING.** Makes conforming changes.

Sec. 42.0491. **LIABILITY INSURANCE REQUIRED.** Makes conforming changes.

Sec. 42.051. **PROVISIONAL LICENSE.** Provides that a provisional license may be renewed for an additional six months, rather than being nonrenewable. Makes a conforming change.

Sec. 42.052. **CERTIFICATION AND REGISTRATION.** Authorizes a family home that provides care for three or fewer children excluding children related to the caretaker, rather than the caretaker's own children, to register with the department, rather than the division. Sets forth who is not required to register. Provides that registration is not required of the Texas Youth Commission, rather than Council, or the Texas Juvenile Probation Commission. Amends a provision required in public advertisements. Requires the department, by rule, to provide for the denial of an application or renewal for registering a family home or is authorized to revoke a family home's registration based on certain background checks. Makes conforming changes.

Sec. 42.0523. New heading: AGENCY FOSTER HOMES AND AGENCY FOSTER GROUP HOMES. Provides that an agency foster home or agency foster group home is considered part of the child-placing agency that operates the agency foster home or agency foster group home for purposes of licensing. Makes conforming changes.

Sec. 42.054. FEES. Deletes text regarding license or registration. Makes conforming changes.

Sec. 42.055. USE OF FEES. Makes conforming changes.

Sec. 42.056. SIGN POSTING. Deletes text regarding Chapter 34.

Sec. 42.057. REQUIRED BACKGROUND AND CRIMINAL HISTORY CHECKS. Sets forth requirements regarding background and criminal history checks. Requires the department, by rule, to require a facility to pay certain fees.

SECTION 5. Amends Chapter 42D, Human Resources Code, as follows:

Sec. 42.071. New heading: LICENSE, CERTIFICATE OR REGISTRATION SUSPENSION, EVALUATION, OR PROBATION. Makes conforming changes.

Sec. 42.072. New heading: LICENSE, CERTIFICATE OR REGISTRATION DENIAL OR REVOCATION. Authorizes a person whose certificate of registration has been denied to challenge the decision by filing suit as prescribed in Chapter 2001, Government Code, rather than in a district court of Travis County or the county in which the person's facility is located. Deletes a provision regarding a trial de novo. Deletes existing Subsection (g). Makes conforming changes.

Sec. 42.073. New heading: EMERGENCY SUSPENSION AND CLOSURE OF A FACILITY OR HOME. Deletes a provision regarding placing children. Deletes existing Subsection (d). Makes conforming changes.

Sec. 42.074. INJUNCTIVE RELIEF. Sets forth remedies and requirements for appeal. Makes conforming changes.

Sec. 42.075. CIVIL PENALTY. Sets forth a penalty for placing an advertisement for an unregistered family home.

Sec. 42.076. CRIMINAL PENALTIES. Makes conforming changes. Deletes existing Subsections (c) and (d).

Sec. 42.077. NOTICE OF ACTION AGAINST FACILITY. Makes conforming changes.

SECTION 6. Amends Section 43.001, Human Resource Code, by adding Subsection (3), to define "department."

SECTION 7. Amends Section 43.012, Human Resources Code, to delete text regarding the amount of a fine.

SECTION 8. Effective date: September 1, 1997.  
Makes application of this Act prospective.

SECTION 9. Emergency clause.