

BILL ANALYSIS

Senate Research Center

H.B. 1385
By: Villarreal et al. (Uresti)
Health & Human Services
5/17/2007
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Anecdotal evidence suggests there are currently a significant number of businesses that are operating unregistered child care facilities for their employees with no state oversight.

H.B. 1385 seeks to ensure the safety of children under the care of these providers by bringing them into compliance with a state regulatory system. The bill also recognizes the economic and social benefits of increased productivity to both employer and employee associated with on-site child care and seeks to create a system that will allow employers to maintain their ability to provide on-site child care for their employees while complying with state law. Additionally, H.B. 1385 minimizes any burden to the Department of Family Protective Services, Child Care Licensing division, by laying out an efficient and streamlined framework under which these currently unregistered business entities will be brought into compliance.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 42.041, Human Resources Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b)(5) Updates a reference made to the Texas Department of Health to the Department of State Health Services (DSHS).

(b)(7) Provides that this section does not apply, subject to Subsection (b-1), to an educational facility that is accredited by the Texas Education Agency (TEA), the Southern Association of Colleges and Schools (SACS), or an accreditation body that is a member of the Texas Private School Accreditation Commission and that operates primarily for educational purposes in grades kindergarten and above, an after-school program operated directly by an accredited educational facility, or an after-school program operated by another entity under contract with the educational facility, if TEA, SACS, or the other accreditation body, as applicable, has approved the curriculum content of the after-school program operated under the contract. Makes conforming changes.

(b)(11) Provides that this section does not apply, subject to Subsection (b-1), to an educational facility that is integral to and inseparable from its sponsoring religious organization or an educational facility both of which do not provide custodial care for more than two hours maximum per day, and that offers educational programs for children age four, rather than five, and above in one or more of certain grades, including preschool.

(b-1) Provides that certain exemptions apply only to an educational facility that operates in a county that has a population of less than 25,000.

SECTION 2. Amends Chapter 42, Human Resources Code, by adding Subchapter F, as follows:

SUBCHAPTER F. REGULATION OF EMPLOYER-BASED DAY-CARE FACILITIES

Sec. 42.151. DEFINITIONS. Defines "employer-based day-care facility" and "small employer."

Sec. 42.152. PERMIT REQUIRED. (a) Prohibits a small employer, except as provided by Subsection (b), from operating an employer-based day-care facility unless the employer holds a permit issued by the Department of Family and Protective Services (DFPS) under this subchapter.

(b) Provides that a small employer is not required to obtain a permit to operate an employer-based day-care facility under this subchapter if the employer holds a license to operate a child-care facility that is issued by DFPS under Subchapter C (Regulation of Certain Facilities, Homes, and Agencies), Human Resources Code. Requires an employer that holds that license to comply with the applicable provisions of Subchapter C, Human Resources Code, the applicable rules of DFPS, and any specific terms of the license.

(c) Provides that, notwithstanding any other law, including Section 42.041 (Required License or Accreditation), Human Resources Code, a small employer that holds a permit issued under this subchapter is not required to hold a license under Subchapter C, Human Resources Code, to operate an employer-based day-care facility.

Sec. 42.153. APPLICATION; INITIAL INSPECTION AND BACKGROUND AND CRIMINAL HISTORY CHECKS. (a) Requires DFPS to develop and implement a streamlined procedure by which a small employer is authorized to apply for and be issued a permit to operate an employer-based day-care facility. Requires the employer to submit an application for the permit to DFPS on a form prescribed by DFPS.

(b) Requires DFPS to take certain actions on receipt of a small employer's application for a permit except as provided by Section 42.154, Human Resources Code.

(c) Authorizes DFPS to charge an applicant an administrative fee in a reasonable amount that is sufficient to cover the costs of DFPS in processing the application.

(d) Requires DFPS to process an application not later than the 30th day after the date DFPS receives all of the required information.

Sec. 42.154. CONVERSION OF LICENSE. (a) Requires DFPS to develop and implement a procedure by which a small employer that holds a license to operate a child-care facility that is issued under Subchapter C, Human Resources Code, before September 1, 2007, may convert the license to a permit under this subchapter. Requires the procedure to include an abbreviated application form for use by the employer in applying for the permit.

(b) Authorizes DFPS to waive the requirements under Section 42.153(b) for an initial inspection or background and criminal history checks with respect to a facility operated by a small employer seeking to convert a license to a permit under this section if DFPS determines that previously conducted inspections or background and criminal history checks, as applicable, are sufficient to ensure the safety of children receiving care at the facility.

Sec. 42.155. PARENT OR GUARDIAN WITHIN IMMEDIATE VICINITY. Authorizes an employer-based day-care facility operating under this subchapter to provide care only for a child whose parent or guardian meets certain criteria.

Sec. 42.156. CAREGIVER-TO-CHILD RATIO. Requires an employer-based day-care facility operating under this subchapter to maintain a caregiver-to-child ratio of at least one caregiver to every four children receiving care.

Sec. 42.157. **MINIMUM STANDARDS.** Requires DFPS to encourage an employer-based day-care facility operating under this subchapter to comply with the minimum standards applicable to a child-care facility licensed under Subchapter C, (Regulation of Certain Facilities, Homes, and Agencies), Human Resources Code.

Sec. 42.158. **CAREGIVER QUALIFICATIONS.** Requires a caregiver employed by an employer-based day-care facility operating under this subchapter to satisfy certain conditions.

Sec. 42.159. **BACKGROUND AND CRIMINAL HISTORY CHECKS REQUIRED.**

(a) Requires a small employer, in accordance with rules adopted by the executive commissioner of DFPS, when applying for a permit under this subchapter and at least once during each 24 months after receiving that permit, to submit certain information to DFPS for use in conducting background and criminal history checks.

(b) Requires the small employer to also submit to DFPS for use in conducting background and criminal history checks the name of each prospective caregiver who will provide care to children at the facility or other prospective employee who will have direct access to those children.

(c) Requires DFPS to conduct background and criminal history checks using certain information.

(d) Provides that a small employer that applies for a permit is considered an applicant for a license under this chapter and an employer-based day-care facility operating under a permit issued under this subchapter is considered a child-care facility licensed under this chapter for purposes of Sections 411.114 (Access to Criminal History Record Information: Department of Protective and Regulatory Services) and 411.087 (Access to Criminal History Record Information Maintained by Federal Bureau of Investigation or Local Criminal Justice Agency), Government Code.

(e) Requires DFPS to require the small employer to pay to DFPS a fee in an amount not to exceed the administrative costs DFPS incurs in conducting a background and criminal history check under this section.

Sec. 42.160. **APPLICABILITY OF OTHER LAW.** Provides that, except as otherwise provided by this subchapter, an employer-based day-care facility operating under this subchapter is not a child-care facility, as defined by Section 42.002 (Definitions), and the provisions of this chapter and DFPS's rules that apply to a child-care facility licensed under Subchapter C (Regulation of Certain Facilities, Homes, and Agencies), Human Resources Code, do not apply to an employer-based day-care facility.

Sec. 42.161. **REPORTING OF INCIDENTS AND VIOLATIONS.** Provides that an employer-based day-care facility operating under this subchapter and each employee of that facility are subject to the reporting requirements of Section 42.063 (Reporting of Incidents and Violations), Human Resources Code, to the same extent a licensed child-care facility and employees of licensed child-care facilities are subject to that section.

Sec. 42.162. **AUTHORITY TO CONDUCT LIMITED INSPECTIONS.** (a) Authorizes DFPS to inspect an employer-based day-care facility operating under this subchapter if DFPS receives a complaint or report of child abuse or neglect alleged to have occurred at the facility.

(b) Authorizes DFPS, if DFPS inspects an employer-based day-care facility as authorized by this section, to require the small employer operating the facility to take appropriate corrective action DFPS determines necessary to comply with the requirements of this subchapter and to ensure the health and safety of children receiving care at the facility. Authorizes DFPS to continue to inspect the facility until corrective action is taken and for a reasonable time after that action is taken to ensure continued compliance.

(c) Authorizes DFPS to charge a small employer issued a permit under this subchapter a reasonable fee for the cost of services provided by DFPS in formulating, monitoring, and implementing a corrective action plan under this section.

Sec. 42.163. SUSPENSION, DENIAL, OR REVOCATION. (a) Authorizes DFPS to suspend, deny, or revoke a permit issued to a small employer under this subchapter if the employer does not comply with the provisions of this subchapter or any applicable DFPS rules.

(b) Authorizes DFPS to refuse to issue a permit under this subchapter to a small employer that had its authorization to operate a child-care facility issued under another subchapter revoked, suspended, or not renewed for a reason relating to child health or safety as determined by DFPS.

(c) Provides that an employer-based day-care facility is subject to the emergency suspension of its permit to operate and to closure under Section 42.073 (Emergency Suspension and Closure of a Facility or Family Home), Human Resources Code, to the same extent and in the same manner as a licensed child-care facility is subject to that section.

SECTION 3. Effective date: September 1, 2007.