

- SUBJECT:** Penalizing false complaints against child care facilities
- COMMITTEE:** Human Services — favorable, without amendment
- VOTE:** 8 ayes — Hupp, Eissler, A. Allen, J. Davis, Gonzalez Toureilles,
Goodman, Naishtat, Paxton
- 0 nays
- 1 absent — Reyna
- WITNESSES:** For — Linda Coggins, Texas Licensed Child Care Association and Linda's
Little Angels Learning Center; Bill Pewitt, Texas Licensed Child Care
Association
- Against — None
- On — Diana Spiser, Department of Family and Protective Services
- BACKGROUND:** The Department of Family and Protective Services (DFPS) regulates the
child care industry in Texas, including complaint resolution and
investigation.
- DIGEST:** HB 877 would require DFPS to adopt rules to handle anonymous
complaints about child care facilities and to limit the number of
anonymous complaints investigated by the agency. It also would require
DFPS to remove from its records information about a complaint alleging a
facility had failed to comply with minimum standards if the complaint
were found to have no merit.
- Knowingly making a false complaint about a child care facility would be a
class A misdemeanor (up to one year in jail and/or a maximum fine of
\$4,000) and if the person were a repeat offender, it would be a state-jail
felony (180 days to two years in a state jail and an optional fine of up to
\$10,000).
- The bill would take effect September 1, 2005, and would apply to
complaints made on or after that date.

SUPPORTERS
SAY:

Parents are sensitive to investigations of complaints about child care and the industry is competitive. Filing a meritless, anonymous complaint is an easy way to bring down a competing child care facility. The state should limit such effects by establishing procedures for handling anonymous complaints and ensuring that false reports do not become the majority of complaints investigated.

When problems arise at a child care facility, parents usually are not concerned about remaining anonymous. The first thing parents might do in such a situation would be to remove their child from the facility, then call DFPS. An anonymous complaint is less likely to indicate a legitimate problem.

Meritless complaints take up DFPS' time and can use resources that would be better spent on random inspections and investigating serious allegations. This bill would not undermine the health and safety of children in child care. It would not change DFPS' authority to investigate any complaint as it saw fit or to ensure that minimum standards were met.

It is appropriate that knowingly filing a meritless complaint be a misdemeanor. Investigating takes up department resources and hurts the operator of the child care facility against whom the meritless charge was made. This offense would be similar to the offense in the Penal Code for making a false complaint in the course of an investigation by law enforcement. Without a penalty, there would be no incentive to stop this practice. State jail felony offenses are low-level, non-violent offenses, so it would be an appropriate penalty for a repeat offense, and the criminal justice impact statement does not indicate that there would be any significant increase in the prison system's workload.

OPPONENTS
SAY:

Texas should not limit in any way DFPS authority to investigate claims against child care facilities. Some parents do want to remain anonymous, particularly because child care is difficult to find. They may not have the luxury of moving their child to another facility. DFPS should take anonymous complaints as seriously as other complaints and should not limit the number it investigates.

Removing complaint information from the agency's website would be a disservice to consumers. The basis for a complaint could have been fixed or cleaned up by the time DFPS investigated the allegation, but it would

be important for consumers to see if a pattern of complaints existed for a certain facility.

Making this a criminal offense would be out of proportion to the act and could strain the state's correctional capacity. Other examples of state jail felonies include criminal actions that harm property or people, not acts that could cost a business customers. The state's correctional capacity already is at a level where Texas may need to lease beds. Adding a person who may have filed meritless complaints to the prison population would not be the best use of state resources.

NOTES:

The author intends to offer two amendments to the bill. One would permit judicial review of cases involving the revocation of a license or removal of information from a facility's record. The other would clarify that DFPS would remove meritless complaints from its website, not from the facility's permanent record with the agency.