

BILL ANALYSIS

Senate Research Center

H.B. 155
By: Greenberg (Madla)
Health & Human Services
5-15-97
Engrossed

DIGEST

Family homes represent an important alternative for parents seeking child care; however, currently, they are not fully regulated. State law requires operators of family homes caring for four or more children to register with the Texas Department of Protective and Regulatory Services (department); however, homes providing care for fewer than four children do not have to register. Similarly, although criminal history and child abuse background checks are conducted upon application for persons operating registered family homes, those caring for fewer than four children never undergo such review. Presently, the department and other law enforcement officials do not have the legal authority to charge family home operators who violate laws governing registered homes with criminal penalties; to assess civil penalties against family home providers; or to enjoin family home providers from operating.

H.B. 155 would create a new category of family homes called "listed homes," which provide care for compensation to fewer than four children not related to the caretaker. The bill would eliminate potentially dangerous child care placements by requiring operators of all family homes caring for fewer than four children to list the home with the department. The department would then be authorized to conduct criminal history and child abuse background checks on persons operating, working, or residing in the family home at the time of the application for listing and every two years thereafter. This legislation would also enhance the ability of the department and law enforcement to enforce the laws and rules governing registered and listed homes. This bill clarifies the department's authority to take civil action against listed and registered family homes, including assessing penalties and enjoining homes from operating; and adds the ability to charge operators of family homes with a Class B misdemeanor for operating without a listing or registration. An operator could also be charged with a Class C misdemeanor for publicly advertising an unlisted or unregistered family home.

PURPOSE

As proposed, H.B. 155 provides for the listing and registration of family homes, and establishes penalties.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Department of Protective and Regulatory Services in SECTION 3 (Sections 42.042(e)-(g) and (l), Human Resources Code) and SECTION 14 (Section 42.0725(b), Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 42.002, Human Resources Code, by adding Subdivision (9), and adding Subdivision (16), to redefine "family home," and define "children who are related to the caretaker."

SECTION 2. Amends Section 42.041(b), Human Resources Code, to provide that this section does not apply to a family home, whether registered or listed; or an emergency shelter facility providing shelter to certain minor mothers under Section 32.201, rather than Section 35.05, Family Code. Makes conforming changes.

SECTION 3. Amends Sections 42.042(e)-(g), and (l), Human Resources Code, to require the Department of Protective and Regulatory Services (department) to promulgate minimum standards that apply to licensed child-care facilities and to registered family homes covered by this chapter which accomplish certain goals. Requires the department, in promulgating minimum standards for the provision of child-care services, to recognize the various categories of services. Deletes provisions regarding child-care facilities. Authorizes the department, in promulgating minimum standards, to recognize and treat differently certain institutions, including child-care institutions, rather than child-caring institutions, and foster group homes. Makes conforming changes.

SECTION 4. Amends Section 42.044(b), Human Resources Code, to require the department to investigate a listed family home when the department receives a complaint of abuse or neglect of a child, as defined by Section 261.001, Family Code. Makes a conforming change.

SECTION 5. Amends Section 42.046, Human Resources Code, as follows:

Sec. 42.046. New heading: APPLICATION FOR LICENSE, REGISTRATION, OR LISTING. Requires the division designated by the department to carry out the provisions of this chapter (division) to supply the applicant the application form and a copy of the appropriate minimum standards, if applicable. Makes conforming changes.

SECTION 6. Amends Section 42.047(a), Human Resources Code, to make conforming changes.

SECTION 7. Amends Section 42.0491(e), Human Resources Code, to make conforming changes.

SECTION 8. Amends Section 42.052, Human Resources Code, as follows:

Sec. 42.052. CERTIFICATION, LISTING, AND REGISTRATION. Requires a family home that provides care for compensation for three or fewer children, excluding children who are related to the caretaker, to list with the division if the home provides child care at least four hours a day, three or more days a week, for more than nine consecutive weeks in the caretaker's own residence. Deletes the provision regarding a family home that provides care for children, excluding the caretaker's own children. Provides that a family home that provides care exclusively for any number of children who are related to the caretaker is not required to be listed or registered with the division. Deletes existing Subsection (f), regarding public advertisements for family homes. Requires the division to provide to a listed family home a copy of the listing. Sets forth the required language of a listing. Requires the operator of a listed family home to undergo initial and subsequent background and criminal history checks. Sets forth the terms under which the department is required to issue a listing or registration to a family home.

SECTION 9. Amends Chapter 42C, Human Resources Code, by adding Section 42.0522, as follows:

Sec. 42.0522. PUBLIC ADVERTISING OF FAMILY HOMES. Establishes the conditions under which a family home is prohibited from placing a public advertisement that uses the title "registered family home" or "listed family home," or any variation of the phrase, unless the home is registered or listed as provided by this chapter. Requires any public advertisement for a registered or listed family home that uses a certain title to contain specific provisions.

SECTION 10. Amends Section 42.054(e), Human Resources Code, as added by Chapter 239, Acts of the 69th Legislature, Regular Session, 1995, to require the division to charge each listed or registered family home an annual fee to cover a part of the department's cost in regulating family homes. Provides that the annual fee is \$20 for a listed home or \$35 for a registered home. Makes a conforming change.

SECTION 11. Amends Section 42.054(f), Human Resources Code, to make conforming changes.

SECTION 12. Amends Chapter 42C, Human Resources Code, by adding Section 42.057, as follows:

Sec. 42.057. **REQUIRED BACKGROUND AND CRIMINAL HISTORY CHECKS.** Requires the operator of a family home, in accordance with rules adopted by the department, when listing or registering a family home and at least once during each 24 months after receiving a listing or registration, to submit certain information to the department for use in conducting background and criminal history checks. Requires the department to conduct background and criminal history checks using certain information.

SECTION 13. Amends Section 42.072, Human Resources Code, to make conforming changes.

SECTION 14. Amends Chapter 42D, Human Resources Code, by adding Section 42.0725, as follows:

Sec. 42.0725. **DENIAL OR REVOCATION OF LISTING OR REGISTRATION OF FAMILY HOME BASED ON BACKGROUND OR CRIMINAL HISTORY CHECK.** Requires the department to deny an application or renewal for listing or registering a family home or to revoke a family home's listing or registration if the results of a background or criminal history check conducted by the department show that the person has been convicted of an offense under Title 5 or 6, Penal Code, or Chapter 43, Penal Code. Authorizes the department, by rule, to provide for denial of an application or renewal for listing or registering a family home based on the results of a background or criminal history check.

SECTION 15. Amends Section 42.073, Human Resources Code, to make conforming changes.

SECTION 16. Amends Sections 42.074(a) and (c), Human Resources Code, to make conforming changes.

SECTION 17. Amends Section 42.075(a), Human Resources Code, to make conforming changes.

SECTION 18. Amends Section 42.076, Human Resources Code, to provide that a person who operates a family home without a required listing or registration commits a Class B misdemeanor. Deletes existing Subsection (c), regarding a person who places an advertisement for a registered home in violation of Section 42.052(f) of this code. Makes conforming changes.

SECTION 19. Amends Section 42.077, Human Resources Code, to set forth the terms by which the department is required to publish the notice under Subsection (a) in both English and Spanish. Makes conforming changes.

SECTION 20. Effective date: September 1, 1997.

SECTION 21. Emergency clause.