

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 68
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Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In July 2008, the Attorney General of Texas issued an advisory opinion (GA-0649) that nullified rules the Department of Family and Protective Services (DFPS) had adopted exempting certain facilities from child-care licensing, including the Boys and Girls Clubs.

C.S.S.B. 68 restores and clarifies long-standing exemptions that covered a variety of non-child-care programs from licensure. C.S.S.B. 68 creates and modifies the definitions of certain entities subject to licensure by DFPS. This legislation authorizes DFPS to conduct certain inspections and obtain court orders, as necessary. C.S.S.B. 68 requires the executive commissioner of the Health and Human Services Commission to adopt rules relating to certain background and criminal history checks and expands DFPS's investigatory authority for abuse, neglect, or exploitation.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 8 (Section 42.072, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 42.002, Human Resources Code, by amending Subdivisions (7), (8), (17), and (19), and adding Subdivisions (20) and (21), as follows:

- (7) Redefines "day-care center."
- (8) Redefines "group day-care home."
- (17) Redefines "regular care."
- (19) Redefines "residential child-care facility."
- (20) Defines "before-school and after-school program."
- (21) Defines "school-age program."

SECTION 2. Amends the heading to Section 42.041, Human Resources Code, to read as follows:

Sec. 42.041. REQUIRED LICENSE.

SECTION 3. Amends Section 42.041(b), Human Resources Code, as follows:

- (b) Provides that this section does not apply to:
 - (1) Makes no changes to this subdivision;
 - (2) Makes no changes to this subdivision;

(3) A facility that is operated in connection with a shopping center, business, religious organization, or establishment where children are cared for during short periods while parents or persons responsible for the children are attending religious services, shopping, or engaging in other activities, including retreats or classes for religious instruction, on or near the premises, that does not advertise as a child-care facility or day-care center, and that informs parents that it is not licensed by the state. Deletes existing text that provides that a facility that is operated in connection with a shopping center, business, religious organization, or establishment where children are cared for during short periods while parents or persons responsible for the children are attending religious services, shopping, or engaging in other activities on or near the premises, including but not limited to retreats or classes for religious instruction.;

(4) Makes no changes to this subdivision;

(5) Makes no changes to this subdivision;

(6) Makes no changes to this subdivision;

(7) Deletes a provision making this subdivision subject to Section (b-1) (regarding specific exemptions that apply only to an educational facility that operates in a county that has a population of less than 25,000). An educational facility that is accredited by the Texas Education Agency (TEA), the Southern Association of Colleges and Schools, or an accreditation body that is a member of the Texas Private School Accreditation Commission and that operates primarily for educational purposes for prekindergarten, rather than in grades kindergarten, and above, a before-school and after-school program operated directly by an accredited educational facility, or a before-school and after-school program operated by another entity under contract with the educational facility, if TEA, the Southern Association of Colleges and Schools, or the other accreditation body, as applicable, has approved the curriculum content of the before-school and after school program operated under the contract.;

(8) Makes a conforming change;

(9) Makes no changes to this subdivision;

(10) A family home, whether registered or listed;

(11) 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 an education program in one or more of the following: prekindergarten through at least grade three, elementary grades, or secondary grades. Makes conforming changes.;

(12) Makes no changes to this subdivision;

(13) Makes no changes to this subdivision;

(14) Makes no changes to this subdivision;

(15) Makes no changes to this subdivision;

(16) Makes no changes to this subdivision;

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

(18) A program in which the child receives instruction in a single talent, ability, expertise, or proficiency for less than 10 hours a week, excluding weekends and

holidays; that does not provide services or offerings that are not directly related to the single talent, ability, expertise, or proficiency; that does not advertise or otherwise represent that the program is a child-care facility, day-care center, or before-school or after-school program, or that the program offers child-care services; that informs the parent or guardian that the program is not licensed by the state, and about the physical risks a child may face while participating in the program; and that conducts background checks for all program employees and volunteers who work with children in the program using information that is obtained from the Texas Department of Public Safety (DPS);

(19) An elementary-age (ages 5-13) recreation program that follows certain guidelines for operation and meets certain criteria;

(20) A living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which the caretaker had a prior relationship with the child or sibling group or other family members of the child or sibling group; does not care for more than one unrelated child or sibling group; does not receive compensation or solicit donations for the care of the child or sibling group; and has a written agreement with the parent to care for the child or sibling group;

(21) A living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which DFPS is the managing conservator of the child or sibling group; DFPS placed the child or sibling group in the caretaker's home; and the caretaker had a long-standing and significant relationship with the child or sibling group before the child or sibling group was placed with the caretaker; or

(22) A living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which the child is in the United States on a time-limited visa under the sponsorship of the caretaker or of a sponsoring organization.

SECTION 4. Amends Section 42.042, Human Resources Code, by amending Subsections (g) and (i), and adding Subsection (g-1), as follows:

(g) Authorizes DFPS, in promulgating minimum standards, to recognize and treat differently the types of services provided by certain entities, including before-school or after-school programs and school-age programs.

(g-1) Requires DFPS, in determining and enforcing minimum standards for a school-age program, to consider commonly accepted training methods for the development of a skill, talent, ability, expertise, or proficiency that are implemented with the consent of the parent or guardian of the participant and that are fundamental to the core purpose of the program.

(i) Deletes existing text requiring DFPS before adopting minimum standards, to present the proposed standards to the State Advisory Committee on Child-Care Facilities for review and comment, and send a copy of the proposed standards to each licensee covered by the proposed standards at least 60 days before the standards take effect to provide the licensee an opportunity to review and to send written suggestions to the State Advisory Committee and DFPS.

SECTION 5. Amends Section 42.044(b), Human Resources Code, to require DFPS to investigate a listed family home when DFPS receives a complaint of abuse or neglect of a child, as defined by Section 261.401 (Agency Investigation), Family Code, rather than Section 261.001 (Definitions), Family Code.

SECTION 6. Amends Subchapter C, Chapter 42, Human Resources Code, by adding Section 42.04412, as follows:

Sec. 42.04412. INTERFERENCE WITH INSPECTION; COURT ORDER. (a) Prohibits a person from interfering with an investigation or inspection of a facility or family home conducted by DFPS under this chapter.

(b) Requires the facility or family home, during an investigation or inspection of a facility or family home under this chapter, to cooperate with DFPS and to allow DFPS to access the records of the facility or family home, access any part of the premises of the facility or family home, and interview any child, employee, or other person who is present at the facility or family home and who may have information relevant to the investigation or inspection.

(c) Requires a district court in Travis County or in the county in which the facility or family home is located, if access to the records or premises of the facility or family home cannot be obtained, for good cause shown and without prior notice or a hearing, to issue an order granting DFPS access to the records or premises of the facility or family home in order to conduct the inspection, investigation, or interview.

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

SECTION 7. Amends Section 42.0461(a), Human Resources Code, as follows:

(a) Requires the applicant for the license, certificate, or expansion, before DFPS is authorized to issue a license or certification for the operation or the expansion of the capacity of a foster group home or foster family home that is located in a county with a population of less than 300,000 and that provides child care for 24 hours a day at a location other than the actual residence of a child's primary caretaker or of a child care institution, to conduct a public hearing and publish notice of the application at the applicant's expense. Deletes existing text authorizing DFPS to issue a license for an applicant to operate under Subchapter E.

SECTION 8. Amends Sections 42.072(c) and (e), Human Resources Code, as follows:

(c) Deletes existing text that prohibits DFPS from issuing a license, listing, registration, or certification to a person whose license, listing, registration, or certification is revoked or whose application for a license, listing, registration, or certification is denied for a substantive reason under this chapter before the fifth anniversary of the date on which the revocation takes effect by DFPS or court order or the decision to deny the application is final if facility to be a residential child-care facility, or before the second anniversary of the date on which the revocation takes effect by DFPS or court order or the decision to deny the application is final, if the facility is not a residential child-care facility.

(e) Authorizes a person to continue to operate a facility or family home during an appeal of a license, listing, or registration denial or revocation unless the operation of the facility or family home poses a risk to the health or safety of children. Requires the executive commissioner of the health and human services commission, rather than DFPS, by rule to establish the criteria for determining whether the operation of a facility or family home poses a risk to the health or safety of children. Requires DFPS to notify the facility or family home of the criteria DFPS used to determine that the operation of the facility or family home poses a risk to health or safety and that the facility or family home is prohibited from operating. Deletes existing text authorizing a person to continue to operate a facility or family home during an appeal of a license, listing, or registration denial or revocation unless revocation or denial is based on a violation which poses a risk to the health or safety of children, deletes the requirement that DFPS by rule establish the violations which pose a risk to the health or safety of children, and deletes the

requirement that DFPS to notify the facility or family home of the violation which poses a risk to health or safety and that the facility or family home is prohibited from operating.

SECTION 9. Amends Section 42.073(c), Human Resources Code, to provide that an order is valid for 30 days, rather than 10 days, after the effective date of the order. Deletes existing text providing an exception that an order relating to a residential child-care facility is valid for 30 days after the effective date of the order.

SECTION 10. Amends Section 42.074(a), Human Resources Code, to authorize DFPS to file suit in a district court in Travis County or in the county in which a facility or family home is located for assessment and recovery of a civil penalty under Section 42.075 (Civil Penalty), for injunctive relief, including a temporary restraining order, or for both a civil penalty and injunctive relief when it appears that a person has violated, is violating, or is threatening to violate the licensing, certification, listing, or registration requirements of this chapter or DFPS's licensing, certification, listing, or registration rules and standards, or knowingly fails to meet or maintain an exemption authorized under Section 42.041 and engages in activities that require a license or registration. Deletes existing text authorizing DFPS to file suit in a district court in Travis County or in the county where the facility or family home is located for assessment and recovery of civil penalties under Section 42.075, for injunctive relief, including a temporary restraining order, or for both injunctive relief and civil penalties. Makes nonsubstantive changes.

SECTION 11. Amends Section 42.075(a), Human Resources Code, to provide that a person is subject to a civil penalty of not less than \$50 nor more than \$100 for each day of violation and for each act of violation if the person knowingly fails to meet or maintain any criterion of an exemption authorized under Section 42.041 (Required License or Accreditation) and engages in activities that require a license or registration, or fails to inform DFPS of a change in status and the person knows the change in status requires the person to be licensed or registered under this chapter.

SECTION 12. Amends Section 42.077, Human Resources Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires DFPS to publish notice of a revocation or suspension of a facility's license or family home's listing or registration on DFPS's Internet website along with other information regarding child-care services. Makes nonsubstantive changes.

(a-1) Requires a newspaper, if notice is published in the newspaper under Subsection (a), to place the notice in the section in which advertisements for day-care services are normally published. Makes a nonsubstantive change.

SECTION 13. Amends Section 261.401(b), Family Code, to require a state agency that operates, licenses, certifies, registers, or lists a facility in which children are located or provides oversight of a program that serves children to make a prompt, thorough investigation of a report that a child has been or may be abused, neglected, or exploited in the facility or program. Requires that the primary purpose of the investigation be the protection of the child.

SECTION 14. Repealer: Section 42.041(b-1) (regarding specific exemptions that apply only to an educational facility that operates in a county that has a population of less than 25,000); and Section 42.0431(c) (providing that the enforcement of screening requirements relating to vision, hearing, and other special senses and communication disorders does not apply to a day-care center or group day-care home operating under a certificate issued by DFPS under Subchapter E), Human Resources Code.

SECTION 15. (a) Makes application of the change in law made by this Act to Section 42.072(c), Human Resources Code, prospective.

(b) Makes application of Sections 42.074 and 42.075, Human Resources Code, as amended by this Act, prospective.

SECTION 16. (a) Makes application of the change in law made by this Act by which a school-age program is required to be licensed under Chapter 42, Human Resources Code, prospective to

the date on which DFPS adopts minimum standards for school-age programs in accordance with Section 42.042 (Rules and Standards), Human Resources Code, as amended by this Act, or September 1, 2010.

(b) Provides that the change in law made by this Act by which a before-school or after-school program is required to be licensed under Chapter 42, Human Resources Code, as amended by this Act, takes effect on the later of the date on which DFPS adopts minimum standards for before-school or after-school programs in accordance with Section 42.042, Human Resources Code, as amended by this Act, or September 1, 2010.

(c) Requires DFPS to adopt minimum standards as provided by Section 42.042, Human Resources Code, as amended by this Act, as soon as practicable after the effective date of this Act, but not later than September 1, 2010.

SECTION 17. Effective date: September 1, 2009, except as otherwise provided by this Act.