

- SUBJECT:** Regulation of child-care facilities, including licensing and enforcement
- COMMITTEE:** Human Services — favorable, with amendments
- VOTE:** 7 ayes — Rose, Darby, Elkins, Hernandez, Hughes, Naishtat, Walle
0 nays
2 absent — Herrero, Legler
- SENATE VOTE:** On final passage, April 2 — 31-0
- WITNESSES:** For — Diane Callison, Texas USA Gymnastics; Nancy Chick, Texas Licensed Child Care Association; Charles Dudley, National Association of Professional Martial Artists; Sheri Hemby, Camp Fire USA Lone Star Council; Margaret McGettrick, Texas Catholic Conference, Roman Catholic Bishops of Texas; Janet Mockovciak, Dallas Afterschool Network; (*Registered, but did not testify:* Jay Arnold, Texas Alliance of Boys & Girls Clubs; Shannon Black; Charles Chick, Bluebonnet School of Cedar Park L.P.; James Corbin; Tere Holmes, The Sunshine House, Texas Licensed Child Care Association; Brenda Schultz; Tamara Vannoy, Texas Afterschool Association; Elwin West)
- Against — (*Registered, but did not testify:* Ken Whalen, Texas Daily Newspaper Association, Texas Press Association)
- BACKGROUND:** The Department of Family and Protective Services (DFPS) licenses, certifies, or registers child-care facilities that provide assessment, care, training, education, custody, treatment, or supervision for children for all or part of a day. Some types of facilities are exempted from child-care facility licensing standards. DFPS is authorized to take enforcement actions against facilities that do not comply with licensing, certification, or registration standards.
- Family homes provide regular care in the caretaker's residence for not more than 12 children under 14 years of age at any given time. Regular care includes care provided at least four hours a day, three or more days a week, for more than nine consecutive weeks.

DIGEST:

SB 68, as amended, would revise the definition of various types of child-care facilities and establish before-school, after-school, and school-age programs as types of child-care facilities. The bill would establish exemptions for additional types of facilities from child-care facility licensing requirements.

Types of child-care facilities. A day-care center or group day-care home would be a child-care facility that provided care to no more than seven children under 14 years of age for less than 24 hours a day, but at least two hours a day, three or more days a week. Day-care centers would provide care at a location other than the director or operator's home while group day-care homes would provide care in the director or operator's home.

Before-school or after-school programs would be child-care facilities that provided care before, after, or before and after the school day for at least two hours per day, three days a week, to children in prekindergarten through sixth grade.

School-age programs would include child-care facilities that provided supervision, along with recreation or skills instruction or training, before or after school for at least two hours per day, three days per week. School-age programs would be for children attending prekindergarten to sixth grade and could operate at times, such as during the summer, when school was not in session.

Regular care would mean care provided at least four hours a day, three or more days a week, for three or more consecutive weeks; or four hours a day for 40 or more days in a period of 12 months.

Residential child-care facilities would be limited to facilities licensed or certified by DFPS that operated 24 hours per day, including child-care institutions, child-placing agencies, foster group homes, foster homes, agency foster group homes, and agency foster homes.

Exemptions from licensure. SB 68 would add to the list of child-care facilities and child-placing agencies that could operate without a license issued by DFPS:

- certain accredited education facilities that operated primarily for education purposes for prekindergarten and above;

- a before-school or after-school program operated by certain accredited educational facilities or an entity under contract with these educational facilities;
- a child-care facility that operated for less than three consecutive weeks and less than 40 days in a period of 12 months;
- a program that provided direct instruction to a child in a single skill, talent, or ability, if the program did not advertise that it provided certain child-care services, made certain disclosures to parents, and conducted required background checks for all program employees or volunteers who would work with children;
- a recreation program for children ages 5 to 13 that adopted and enforced certain standards of care, did not advertise that the program provided certain child-care services, disclosed the program was not licensed by the state, was organized as a nonprofit or operated at a participant's residence, did not accept payment other than a nominal annual membership fee, and conducted required background checks for all program employees or volunteers who would work with children; or
- certain living arrangements in which a caretaker cared for an unrelated child or sibling group, if the child or sibling group was in the United States on a time-limited visa under certain sponsorship arrangements, was placed in the caretaker's home by DFPS while DFPS was the managing conservator, or was receiving care according to a written agreement with the parent for which the caregiver was not compensated.

The bill would apply to all otherwise eligible education facilities exemptions from child-care facility licensure that previously had been applied only to education facilities in counties with populations of 25,000 or fewer people.

Standards for different types of facilities. DFPS could establish minimum standards for the child-care services provided by before-school, after-school, and school-age programs that were different from standards for other child-care facilities. The standards for school-age programs would consider commonly accepted training methods for a skill that were implemented with the consent of the parent. Specific rules and minimum standards would be adopted for child-care facilities located in temporary shelters, including family violence or homeless shelters, at which a child who was visiting an adult guardian who resided at the shelter received care for less than 24 hours per day.

The bill would establish the composition of a temporary work group that would be formed to advise DFPS regarding proposed minimum standards for different types of facilities before minimum facility standards were adopted.

Unless exempted, before-school, after-school, and school-age programs and child-care facilities located in temporary shelters that provide care only for children temporarily residing in a shelter would be licensed by DFPS. The licensing requirement would take effect on the later of the date on which minimum standards were adopted for these child-care facilities or September 1, 2010.

Enforcement and penalties. A person could not interfere with an investigation or inspection of a facility or family home. Facilities and group homes would have to cooperate in investigations or inspections, including providing access to records and the premises. DFPS could interview any person, including a child or employee, who was present at the facility.

The bill would establish the circumstances under which a district court could grant an order for DFPS to access the records or premises of a facility to conduct an investigation, including while an unlicensed facility was suspected to be providing child care that was subject to DFPS regulation.

The bill would apply a five-year waiting period to all child-care facilities that had a license, registration, or certification revoked before the child-care facility could be issued a new license, registration, or certification. The bill would extend all orders for immediate closure of a child-care facility or family home to 30 days, rather than 10 days.

DFPS could publish notice of revocation or suspension of a facility's license on DFPS's website instead of in a newspaper in the county in which the facility was located.

DFPS could file suit for both a civil penalty and injunctive relief when a person knowingly failed to meet or maintain an exemption from DFPS licensing requirements and engaged in activities that would require a license.

The bill would take effect September 1, 2009.

SUPPORTERS
SAY:

SB 68 would establish a statutory basis for exemptions from child-care facility licensing requirements for several types of child-care facilities that DFPS has exempted from licensing by department rule. The bill also would establish investigative and enforcement provisions that would assist DFPS in maintaining the safety of children in child-care facilities.

Atty. Gen. Opinion, No. GA-0649, issued July 28, 2008, determined that DFPS did not have the authority to exempt by rule certain types of programs from licensure because explicit exemptions for these types of facilities were not made in statute. SB 68 would establish the statutory basis for exempting from unnecessary licensure a variety of programs that never have been subject to child-care licensing. The types of programs that the bill would address would include summer camps, church retreats, pre-kindergarten programs, after-school programs, neighborhood programs, sports programs, and living arrangements such as hosting foreign exchange students.

If this bill is not approved, many programs, such as Boys and Girls clubs or a local gymnastics training program, would be subject to child-care facility licensing when the activities of these programs never were intended to be subject to this type of licensure. The standard child-care licensing standards could be burdensome for beneficial community programs to the point that their ongoing operations would be threatened and many likely would cease operation. DFPS also would require substantial additional funding to carry out licensing duties for thousands of programs that previously had been exempted because they met other standards or underwent other accreditation processes. The bill would establish definitions specifically for before-school, after-school, and school-age programs and would authorize DFPS to recognize and treat differently these types of programs when establishing minimum regulatory standards.

The investigative and enforcement provisions in the bill would follow the regulatory standards adopted for many other types of regulated entities by authorizing DFPS to seek similar remedies to address persons operating without a license to those for persons acting in violation of their licensing standards. DFPS could investigate facilities suspected of carrying out regulated activities without a license and could seek both a civil penalty and injunctive relief when an unlicensed person knowingly engaged in activities that would require a license. Such safeguards would be

appropriate because child-care licensing standards were imposed to protect the well-being of children.

SB 68 would provide an alternative for DFPS to publish notice of revocation or suspension of a facility's license on DFPS's website instead of in a newspaper in the county in which the facility was located. More and more people receive their news through the Internet rather than by newspaper and a notice in the back of a local newspaper is less likely to be read.

**OPPONENTS
SAY:**

SB 68 should not allow DFPS to publish notice of revocation or suspension of a child-care facility's license on DFPS's website instead of in a newspaper in the county in which the facility was located. Many interested individuals would not know to look on DFPS's website for information regarding license revocations. This information should continue, without exception, to be published in a newspaper in the county in which the revocation affected local child-care services.

NOTES:

The House Human Services Committee adopted two amendments to the version of SB 68 passed by the Senate. The first would require that specific standards be established for child-care facilities located in temporary shelters. The second would establish the composition of a temporary workgroup that would advise DFPS regarding proposed minimum standards for different types of child-care facilities.