

SUBJECT: Regulating childcare facilities and family homes

COMMITTEE: Human Services — favorable, without amendment

VOTE: 8 ayes — Frank, Hinojosa, Clardy, Deshotel, Klick, Meza, Miller, Noble

0 nays

1 absent — Rose

SENATE VOTE: On final passage, April 4 — 30-1 (Hughes)

WITNESSES: *On House companion bill, HB 4261:*

For — (*Registered, but did not testify:* Jennifer Allmon, The Texas Catholic Conference of Bishops; Sarah Crockett, Texas CASA; David Feigen, Texans Care for Children; Will Francis, National Association of Social Workers-Texas Chapter; Yuchen Ji, Children's Defense Fund-Texas; Knox Kimberly, Upbring; Kimberly Kofron, Texas Association for the Education of Young Children; Jennifer Lucy, TexProtects; Melanie Rubin, Dallas Early Education Alliance; Jason Sabo, Children at Risk)

Against — None

On — (*Registered, but did not testify:* Jean Shaw, Health and Human Services Commission)

BACKGROUND: Human Resources Code ch. 42 governs the regulation of certain facilities, homes, and agencies that provide childcare services.

Sec. 42.002(3) defines childcare facilities as facilities that are licensed, certified, or registered by the Department of Family and Protective Services (DFPS) to provide assessment, care, training, education, custody, treatment, or supervision for children who are not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of a 24-hour day, whether or not the facility is operated for profit or charges for the services it offers. This term includes daycare centers and

group daycare homes.

Sec. 42.002(9) defines family homes as homes that provide regular care in caretakers' own residences for six or fewer children who are younger than 14, excluding children who are related to the caretakers, and that provide care after school hours for not more than six additional elementary school children. The total number of children, including children who are related to the caretaker, cannot exceed 12 at any given time.

Some have noted that there have been a significant number of cases of abuse, neglect, and exploitation of children at childcare facilities and family homes and have suggested there be more protections in place for children in these facilities.

DIGEST:

SB 568 would transfer certain regulatory authority over childcare facilities and family homes from the Department of Family and Protective Services (DFPS) to the Health and Human Services Commission (HHSC) and modify certain requirements and penalties that applied to these facilities and homes.

Safety training account. SB 568 would create the safety training account, a dedicated account within the general revenue fund, from which money could be appropriated to HHSC to provide safety training materials at no cost to licensed childcare facilities and registered or listed family homes.

The account would consist of money collected from certain administrative penalties; gifts, grants, and donations; and interest earned on the money in the account. The interest could not be reallocated for general governmental purposes.

HHSC could contract with third parties to create the training materials, and its executive commissioner would have to adopt any necessary rules to implement the bill's requirements.

Safe sleeping standards. SB 568 would require HHSC's executive commissioner to establish by rule safe sleeping standards with which

licensed facilities and registered family homes would have to comply.

If HHSC determined that a licensed facility or registered family home violated these standards, the facility or home would be required to provide written notice, in a manner required by the executive commissioner, to the parent or legal guardian of each child attending the facility or home. The executive commissioner would have to prescribe the form to notify parents and post it on HHSC's website.

Inspection information database. SB 568 would transfer from DFPS to HHSC the requirement to establish a computerized database with relevant inspection information on facilities and family homes. If feasible using available information systems, HHSC would be required to make the data directly available to the Texas Workforce Commission. HHSC also would be required to provide at least five years of inspection data on all licensed facilities and registered family homes for the purpose of enhancing consumer choice. All other requirements for this database would be transferred from DFPS to HHSC.

Liability insurance. SB 568 would specify that current liability insurance requirements applied to all license and registration holders and would require these holders annually to file evidence of insurance with HHSC.

The bill also would specify that license and registration holders would have to notify the parents or guardians of children in their care and HHSC in a timely manner if they were unable to secure this insurance because of financial reasons, the lack of an available underwriter, or because policy limits were exhausted. Holders also would have to state in the notification to parents and guardians that there would not be grounds for administrative penalties or suspensions or revocations of their licenses. HHSC would have to prescribe the form used by holders to notify parents and post it on its website.

Certifications, listings, and registrations. SB 568 would transfer authority over various requirements surrounding certifications of approval for state-operated childcare facilities and child-placing agencies and

listings and registrations of family homes from DFPS to HHSC.

License renewals. SB 568 would transfer the evaluation of the renewal process for licenses, facility certifications, and family home registrations from DFPS to HHSC. In evaluating these renewal applications, HHSC would have to determine if all applicable requirements were met and whether applicants had been cited for repeated violations or had established a pattern of violations during the preceding two years. The evaluation could include a specified number of visits to the facilities or family homes.

If HHSC determined that facilities or family homes had repeated violations or established patterns of violations, HHSC could place restrictions, conditions, or additional requirements on the licenses, certifications, or registrations before they were renewed to ensure violations ceased.

HHSC could not renew the licenses, certifications, or registrations of facilities or family homes cited for violations that were not corrected by the required compliance dates unless the violations were pending administrative review under HHSC rules or as contested cases.

The bill also would transfer from DFPS to HHSC the authority to suspend, deny, revoke, or refuse to renew licenses, listings, registrations, and certifications of approval and all related requirements. It would specify that individuals could continue to operate a facility or family home during an appeal of a refusal to renew a license, certification, or registration unless the operation of the facility or family home posed a risk to the health or safety of children.

Reporting incidents and violations. SB 568 would require licensees and registrants to report serious incidents involving children to HHSC, instead of DFPS.

Licensees and registrants also would have to notify affected children's parents and guardians of incidents of abuse, neglect, or exploitation of

children, or violations that constituted them; injuries that required treatment by medical professionals or hospitalization; and illnesses that required hospitalization.

HHSC would have to implement this provision using existing appropriations.

Administrative penalties. SB 568 would transfer from DFPS to HHSC the ability to impose administrative sanctions or penalties against licensed, registered, or listed facilities or family homes.

The bill would specify that HHSC could impose administrative penalties without first imposing nonmonetary administrative sanctions for violations of certain high-risk standards, including violations constituting abuse, neglect, or exploitation of children and violations involving the failure to report information to parents, guardians, or HHSC.

HHSC would be required to recommend certain penalties for violations by facilities or family homes, including:

- \$1,000 for violations that constituted abuse, neglect, or exploitation of a child, unless the violations occurred at residential childcare facilities;
- \$500 for the failure to report to the parents or guardians of an affected child, or to HHSC, certain injuries or illnesses within the time frame required by HHSC;
- \$50 for the failure to report to all parents or guardians of the children in a facility or a home violations cited by HHSC that constituted abuse, neglect, or exploitation or violations of safe sleeping standards within the time frame required by HHSC; and
- \$50 for the failure to report to all parents or guardians of the children in a facility or home within the time frame required by HHSC that the facility or home did not maintain liability insurance coverage.

The bill would require HHSC, for violations with penalties of \$50, to

recommend additional penalties of \$50 for each day the violation continued or occurred.

These penalties would be sent to the comptroller for deposit in the safety training account.

Applicability. SB 568 would require HHSC to implement the provisions of this bill only if the Legislature appropriated money specifically for that purpose. If the Legislature did not appropriate money specifically for that purpose, HHSC could, but would not be required to, implement provisions using other appropriations available for that purpose.

The bill would take effect September 1, 2019, and would require the executive commissioner of HHSC to adopt the rules necessary to implement this bill as soon as practicable after that date.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of about \$614,000 to general revenue related funds through fiscal 2020-21.