

BILL ANALYSIS

Senate Research Center

H.B. 1786
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Kids Café is a national program that was launched by America's Second Harvest in 1993 to serve nutritious meals to children at risk for hunger. There are currently more than 1,600 Kids Cafés throughout the United States. Kids Café alleviates childhood hunger by serving weekday dinners to children.

Texas currently exempts a variety of youth after-school and summer programs from child-care licensing requirements in order to facilitate charitable community programs. Also, currently a significant number of businesses that are operating unregistered child care facilities for their employees with no state oversight.

H.B. 1786 creates a new category of child care providers for small employers providing care to twelve or fewer children and defines standards for these providers. The bill includes meal programs that serve weekday evening meals in the list of community programs that are exempt from child-care licensing requirements. H.B. 1786 amends the Human Resources Code by adding a subchapter relating to the regulation of employer-based day-care facilities. The bill requires the Department of Family and Protective Services to develop a procedure for the issuance of permits to employer-based day-care facilities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

[While the statutory reference in this bill is to the Department of Human Services (DHS), the following amendments affect the Department of Family and Protective Services as the successor agency to DHS.]

SECTION 1. Amends Section 42.041(b), Human Resources Code, to include a youth camp licensed by the Department of State Health Services, rather than Texas Department of Health, a food distribution program that meets certain conditions, and an elementary-age (ages 5-13) recreational program operated by a nonprofit corporation that meets certain conditions, in the list of entities to which this section (Required License or Accreditation) does not apply.

SECTION 2. Amends Chapter 42, Human Resources Code, by adding Subchapter F, as follows:

SUBCHAPTER F. REGULATION OF EMPLOYER-BASED DAY-CARE FACILITIES

Sec. 42.151. DEFINITIONS. Defines "employer-based day-care facility" and "small employer."

Sec. 42.152. PERMIT REQUIRED. (a) Prohibits a small employer from operating an employer-based day-care facility unless the employer holds a permit issued by the Texas Department of Human Services (DHS) under this subchapter, except as provided by Subsection (b).

(b) Provides that a small employer is not required to obtain a permit to operate an employer-based day-care facility under this subchapter if the employer holds a

license to operate a child-care facility that is issued by DHS under Subchapter C (Regulation of Certain Facilities, Homes, and Agencies), Chapter 42 (Regulation of Certain Facilities, Homes, and Agencies that Provide Child-Care Services, Human Resources Code. Provides that an employer that holds that license must comply with the applicable provisions of Subchapter C (Regulation of Certain Facilities, Homes, and Agencies), Chapter 42, the applicable rules of DHS, and any specific terms of the license.

(c) Provides that a small employer that holds a license under this subchapter is not required to hold a license under Subchapter C (Regulation of Certain Facilities, Homes, and Agencies), Chapter 42 (Regulation of Certain Facilities, Homes, and Agencies that Provide Child-Care Services), Human Resources Code, to operate an employer-based day-care facility, notwithstanding any other law.

Sec. 42.153. APPLICATION; INITIAL INSPECTION AND BACKGROUND AND CRIMINAL HISTORY CHECKS. (a) Requires DHS to develop and implement a streamlined procedure by which a small employer is authorized to apply for and be issued a permit to operate an employer-based day-care facility. Requires the employer to submit an application for the permit to DHS on a form prescribed by DHS.

(b) Requires DHS to conduct an initial inspection of the employer-based day-care facility to ensure that the employer is able to comply with certain standards and conduct a background and criminal history check on each prospective caregiver whose name is submitted as required by Section 42.159(a).

(c) Authorizes DHS to charge an applicant an administrative fee in a reasonable amount that is sufficient to cover the costs of DHS in processing the application.

(d) Requires DHS to process an application not later than the 30th day after the date DHS receives all of the required information.

Sec. 42.154. CONVERSION OF LICENSE. Requires DHS to develop and implement a procedure by which a small employer that holds a license to operate a child-care facility that is issued under Subchapter C (Regulation of Certain Facilities, Homes, and Agencies), Chapter 42 (Regulation of Certain Facilities, Homes, and Agencies that Provide Child-Care Services), Human Resources Code, before September 1, 2007 is authorized to convert the license to a permit under this subchapter. Requires the procedure to include an abbreviated application form for use by the employer in applying for the permit.

(b) Authorizes DHS to waive the requirements under Section 42.153(b) for an initial inspection or background and criminal history checks with respect to a facility operated by a small employer seeking to convert a license to a permit under this section if DHS determines that previously conducted inspections or background and criminal history checks, as applicable, are sufficient to ensure the safety of children receiving care at the facility.

Sec. 42.155. PARENT OR GUARDIAN WITHIN IMMEDIATE VICINITY. Authorizes an employer-based day-care facility operating under this subchapter to provide care only for a child whose parent or guardian meets certain conditions regarding their place of employment.

Sec. 42.156. CAREGIVER-TO-CHILD RATIO. Requires an employer-based day-care facility operating under this subchapter to maintain a caregiver-to-child ratio of at least one caregiver to every four children receiving care.

Sec. 42.157. MINIMUM STANDARDS. Requires DHS to encourage an employer-based day-care facility operating under this subchapter to comply with the minimum standards applicable to a child-care facility licensed under Subchapter C (Regulation of Certain Facilities, Homes, and Agencies), Chapter 42 (Regulation of Certain Facilities, Homes, and Agencies that Provide Child-Care Services), Human Resources Code.

Sec. 42.158. CAREGIVER QUALIFICATIONS. Requires a caregiver employed by an employer-based day-care facility operating under this subchapter to meet certain requirements pertaining to age, qualifications, and a background and criminal history check.

Sec. 42.159. BACKGROUND AND CRIMINAL HISTORY CHECKS REQUIRED.

(a) Requires a small employer to submit the names of certain persons employed at an employer-based day-care facility to DHS for use in conducting background and criminal history checks, when applying for a permit under this subchapter and at least once during each 24 months after receiving that permit and in accordance with rules adopted by the executive commissioner of the Health and Human Services Commission (executive commissioner).

(b) Requires a small employer to submit to DHS for use in conducting background and criminal history checks the name of each prospective caregiver who will provide care to children at the facility or other prospective employee who will have direct access to those children.

(c) Requires DHS to conduct background and criminal history checks using certain information and records.

(d) Provides that for purposes of Sections 411.114 (Access to Criminal History Record Information: Department of Protective and Regulatory Services), and 411.087 (Access to Criminal History Record Information Maintained by Federal Bureau of Investigation or Local Criminal Justice Agency), Government Code, a small employer and an employer-based day-care facility operating under a permit issued under this subchapter is considered an applicant for a license under this chapter.

(e) Requires DHS to require the small employer to pay to DHS a fee in an amount not to exceed the administrative costs DHS incurs in conducting a background and criminal history check under this section.

Sec. 42.160. APPLICABILITY OF OTHER LAW. Provides that an employer-based day-care facility operating under this subchapter is not a child-care facility as defined by Section 42.002 (Definitions), Human Resources Code, and the provisions of this chapter and DHS's rules that apply to a child-care facility licensed under Subchapter C (Regulation of Certain Facilities, Homes, and Agencies), Chapter 42 (Regulation of Certain Facilities, Homes, and Agencies that Provide Child-Care Services), Human Resources Code, do not apply to an employer-based day-care facility, except as otherwise provided by this subchapter.

Sec. 42.161. REPORTING OF INCIDENTS AND VIOLATIONS. Provides that an employer-based day-care facility operating under this subchapter and each employee of that facility are subject to the reporting requirements of Section 42.063 (Reporting of Incidents and Violations), Human Resources Code, to the same extent that a licensed child-care facility and employees of licensed child-care facilities are subject to that section.

Sec. 42.162. AUTHORITY TO CONDUCT LIMITED INSPECTIONS. (a) Authorizes DHS to inspect an employer-based day-care facility operating under this subchapter if DHS receives a complaint or report of child abuse or neglect alleged to have occurred at the facility.

(b) Authorizes DHS to require the small employer operating the facility to take appropriate corrective action DHS determines necessary to comply with the requirements of this subchapter and to ensure the health and safety of children receiving care at the facility if DHS inspects an employer-based day-care facility. Authorizes DHS to continue to inspect the facility until corrective action is taken

and for a reasonable time after that action is taken to ensure continued compliance.

(c) Authorizes DHS to charge a small employer issued a permit under this subchapter a reasonable fee for the cost of services provided by DHS in formulating, monitoring, and implementing a corrective action plan under this section.

Sec. 42.163. SUSPENSION, DENIAL, OR REVOCATION. (a) Authorizes DHS to suspend, deny, or revoke a permit issued to a small employer under this subchapter if the employer does not comply with the provisions of this subchapter or any applicable DHS rules.

(b) Authorizes DHS to refuse to issue a permit under this subchapter to a small employer that had its authorization to operate a child-care facility issued under another subchapter revoked, suspended, or not renewed for a reason relating to child health or safety as determined by DHS.

(c) Provides that an employer-based day-care facility is subject to the emergency suspension of its permit to operate and to closure under Section 42.073 (Emergency Suspension and Closure of a Facility or Family Home), Human Resources Code, to the same extent and in the same manner as a licensed child-care facility is subject to that section.

Sec. 42.164. EXPIRATION. (a) Provides that this subchapter expires September 1, 2009.

(b) Prohibits a small employer operating an employer-based day-care facility under this subchapter from continuing to operate the facility after the date this subchapter expires as provided by Subsection (a) unless the small employer applies for and is issued a license to operate a child-care facility under this chapter.

SECTION 3. Effective date: September 1, 2007.