

BILL ANALYSIS

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S.B. 68
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Health & Human Services
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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.

As proposed, S.B. 68 restores and clarifies long-standing exemptions that covered a variety of non-child-care programs from licensure. 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. 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 42.056, Human Resources Code) of this bill.

Rulemaking authority is expressly granted to the Department of Family and Protective Services in SECTION 8 (Section 42.056, Human Resources Code) and SECTION 9 (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 Subdivision (20), 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."

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, including 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 meets certain guidelines for caretaking, the Department of Family and Protective Services (DFPS) is the managing conservator of the child or sibling group and has 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 the child is in the United States on a time-limited visa and under the sponsorship of the caretaker or of the sponsoring organization.;

(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 two hours a day, that is not operated as part of an educational facility, day-care center, or before-school and after-school program.; or

(19) An elementary-age (ages 5-13) recreation program that follows certain guidelines for operation.

SECTION 4. Amends Section 42.042(i), Human Resources Code, to delete 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 Section 42.056, Human Resources Code, by amending Subsections (a), (a-2), (b), (b-1), (c), (f)-(j), and adding Subsections (a-3) and (a-4), as follows:

(a) Requires the director, owner, or operator of a child-care facility, child-placing agency, or family home, in accordance with rules adopted by the executive commissioner of the Health and Human Services Commission (executive commissioner), rather than DFPS, to, when applying to operate a child-care facility or a child-placing agency or when listing or registering a family home and at least once during each 24 months after receiving a license, listing, registration, or certification of approval, submit to DFPS for use in conducting background and criminal history checks the names of certain individuals, including the director, owner, and operator of the facility, agency, or home; each prospective employee of the facility, agency, or home; each current or prospective foster parent providing foster care through a child-placing agency; each prospective adoptive parent seeking to adopt through a child-placing agency; each person at least 14 years of age, other than a client in care, who is counted in child-to-caregiver ratios in accordance with the minimum standards of DFPS, will reside in a prospective adoptive home if the adoption is through a child-placing agency, has unsupervised access to children in care at the facility or family home, or resides in the facility or family home; or each person 14 years of age or older, other than a client in care, who will regularly or frequently be staying or working at a facility, family home, or prospective adoptive home while children are being provided care. Makes nonsubstantive and conforming changes.

(a-2) Requires the director, owner, or operator of a child-care facility, other than a family home, or a child-placing agency, rather than a day-care center, in accordance with rules adopted by the executive commissioner, to submit a complete set of fingerprints of each person whose name is required to be submitted by the director, owner, or operator under Subsection (a), unless the person is a child who resides in the facility or prospective adoptive home, is only required to have the person's name submitted based on criteria specified by Subsection (a)(7), or already has a valid fingerprint-based criminal history record on file with DFPS.

(a-3) Requires the director, owner, or operator of a family home, in accordance with rules adopted by the executive commissioner, to submit a complete set of fingerprints of each person whose name is required to be submitted by the director, owner, or operator under Subsection (a) only if the person resided in another state during the five years preceding the date the person's name was required to be submitted under Subsection (a); or the director, owner, or operator has reason to suspect that the person has a criminal history in another state.

(a-4) Requires that the rules adopted by the executive commissioner under Subsections (a-2) and (a-3) require that the fingerprints be submitted in a form and of a quality acceptable to the Department of Public Safety and the Federal Bureau of Investigation (FBI) for conducting a criminal history check, and may require that the fingerprints be submitted electronically through an applicant fingerprinting service center.

(b) Deletes existing text requiring DFPS to conduct background and criminal history checks using information provided under Subsection (a-1). Makes nonsubstantive changes.

(b-1) Requires DFPS, in addition to any other background or criminal history check conducted under Subsection (b), for each person whose fingerprints are submitted under Subsection (a-2) or (a-3), to conduct a state and FBI criminal history check by submitting the person's fingerprints, or causing the fingerprints to be submitted electronically to DPS for the purpose of conducting a state and federal criminal history check; and using the resulting information made available to DPS under Section 411.114 (Access to Criminal

History Record Information: Department of Protective and Regulatory Services), Government Code, and by FBI and any other criminal justice agency under Section 411.087 (Access to Criminal History Record Information Maintained By Federal Bureau of Investigation or Local Criminal Justice Agency), Government Code. Deletes existing text requiring DFPS to conduct a state and FBI criminal history background check for each person whose name is submitted by the director, owner, or operator of a day-care center under Subsection (a) by submitting the person's fingerprints provided under Subsection (a-2), or causing the fingerprints to be submitted electronically as authorized by that subsection.

(c) Requires DFPS by rule to require a child-care facility, child-placing agency, or registered family home to pay DFPS a fee in an amount not to exceed the administrative costs DFPS incurs in conducting a background and criminal history check under this section.

(f) Requires DFPS, as part of a background check under this section, to provide any relevant information available in DFPS's records regarding a person's previous employment in a facility or family home to the person submitting the request.

(g) Prohibits a person whose name is submitted under Subsection (a), rather than by the director, owner, or operator of a day-care center, except as otherwise provided by this subsection, from providing direct care or having direct access to a child in a facility or family home before the person's background and criminal history checks under Subsections (b) and (b-1) are completed. Authorizes a person to be employed at a facility or family home and authorizes the person to provide direct care or have direct access to a child in the facility or family home before the person's criminal history check under Subsection (b-1) is completed if the facility or family home is experiencing a staff shortage; the state criminal history check and the background check using DFPS's records of reported abuse and neglect have been completed under Subsection (b), and the resulting information does not preclude the person from being present at the facility or family home; and the person's fingerprints are submitted as soon as possible, but not later than the 30th day after the earliest of the date on which the person first provides direct care to a child, has direct access to a child, or is hired. Deletes existing text allowing a day-care center to employ a person prior to the completion of the federal criminal history check if the day-care center is experiencing a staffing shortage and not doing so would result in a staff-to-child ratio that violates DFPS's minimum standards. Makes conforming changes.

(h) Makes conforming changes.

(i) Makes conforming changes.

(j) Makes conforming changes.

SECTION 9. 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 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 10. 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 11. 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 12. 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 13. 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), Human Resources Code.

Repealer: 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.

Repealer: Section 42.056(a-1) (requiring the submission of a prospective employee's name who will provide direct care or have direct access to a child in a residential child-care facility for background and criminal history checks), Human Resources Code.

Repealer: Section 42.056(d) (prohibiting a person described by Subsection (a) or (a-1) from providing direct care or have direct access to a child in a residential child-care facility before completion of the person's background and criminal history check), Human Resources Code.

Repealer: Section 42.056(e) (permitting a residential child-care facility to obtain information regarding a facility's employee, subcontractor, or volunteer's criminal or background history from DPS and allowing the person to have unsupervised client contact as long as the information obtained from DPS indicates that the person does not have a criminal record), Human Resources Code.

SECTION 14. (a) Makes application of the changes in law made by this Act to Sections 42.056(i) and (j), Human Resources Code, prospective.

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

SECTION 15. Effective date: September 1, 2009.