

## **BILL ANALYSIS**

Senate Research Center  
81R1399 UM-D

S.B. 81  
By: Nelson  
Health & Human Services  
2/27/2009  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Cases of criminal offenders receiving money to care for their relatives and, in some cases, for care they do not actually provide have been reported. This legislation will help ensure the safety of children and combat waste and abuse by requiring background and criminal background checks and precluding certain persons from providing unregulated self-arranged child care.

As proposed, S.B. 81 requires that Federal Bureau of Investigation and Texas Department of Public Safety criminal history and fingerprint-based background checks be conducted on relative child-care providers who receive subsidies for that care under the federal Child Care and Development Block Grant Act of 1990. The bill requires the Texas Workforce Commission to ensure that money appropriated to it or to a workforce development board to pay for child-care services provided by an unregulated self-arranged child-care provider is used only to pay for care provided by a person who, after completion of the background and criminal history check, is not precluded from providing that care.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 312.004, Labor Code) and to the Texas Workforce Commission in SECTION 1 (Section 312.005, Labor Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle B, Title 4, Labor Code, by adding Chapter 312, as follows:

#### **CHAPTER 312. REQUIREMENTS FOR PROVIDERS OF UNREGULATED SELF-ARRANGED CHILD CARE**

Sec. 312.001. DEFINITIONS. Defines "department" and "unregulated self-arranged child care."

Sec. 312.002. MEMORANDUM OF UNDERSTANDING. Requires the Texas Workforce Commission (TWC) and the Department of Family and Protective Services (DFPS) to adopt a memorandum of understanding regarding the administration and payment of costs of background and criminal history checks required under this chapter.

Sec. 312.003. REQUIREMENTS FOR UNREGULATED SELF-ARRANGED CHILD CARE. Requires TWC to ensure that money appropriated to TWC that is used by TWC or a workforce development board to pay for child-care services provided by an unregulated self-arranged child-care provider is used only to pay for care provided by a provider who, after completion of a background and criminal history check required by this chapter, is not precluded from providing that care.

Sec. 312.004. REQUIRED BACKGROUND AND CRIMINAL HISTORY CHECK. (a) Requires an individual seeking to provide unregulated self-arranged child care, in accordance with DFPS rules, to submit for use in conducting a background and criminal history check the individual's name to DFPS and to the Department of Public Safety (DPS) in accordance with DPS's rules, a complete set of the individual's fingerprints in a form and of a quality acceptable to DPS and the Federal Bureau of Investigation (FBI) for conducting a criminal history check before beginning to provide that care.

(b) Requires DFPS to conduct background and criminal history checks using the information provided by an individual under this section, the information made available by DPS under Section 411.114 (Access to Criminal History Record Information: Department of Protective and Regulatory Services), Government Code, and by the 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, after the fingerprints provided by an individual under this section are received by DPS for the purpose of conducting a state and federal criminal history check, and DFPS's registry of reported cases of child abuse and neglect established under Section 261.002 (Central Registry), Family Code.

(c) Requires DFPS to use the standards that apply in conducting background and criminal history checks under Section 42.056 (Required Background and Criminal History Checks; Criminal Penalties), Human Resources Code, for listed or registered family home providers in determining whether to preclude an individual from providing unregulated self-arranged child care.

(d) Requires a provider of unregulated self-arranged child care for whom a background and criminal history check was conducted under this section and who, following that check, has continuously received payments for providing that care to submit, not later than the fifth anniversary of the date the previous check was completed, the information described by Subsection (a) in the manner provided by that subsection. Requires DFPS to use that information to conduct a background and criminal history check in the manner prescribed by Subsections (b) and (c). Requires a provider of unregulated self-arranged child care for whom a background and criminal history check was conducted who ceased providing that care and who seeks to resume providing that care to provide the information described by Subsection (a) in the manner provided by that subsection and undergo another background and criminal history check unless DFPS determines that the check is unnecessary based on the length of elapsed time since the previous check was conducted.

(e) Requires TWC to provide notice of the background and criminal history check requirement to the parent or guardian of the child who will receive care through an unregulated self-arranged child-care provider before the parent or guardian selects the provider.

(f) Authorizes the executive commissioner of the Health and Human Services Commission to adopt rules to implement this section.

Sec. 312.005. COSTS. (a) Requires TWC, in accordance with the memorandum of understanding adopted under Section 312.002, to pay to DFPS the costs incurred by DFPS in conducting background and criminal history checks under this chapter using funds available for that purpose under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. Section 9858 et seq.).

(b) Requires TWC by rule to require a local workforce development board (board) to reimburse TWC for costs paid by TWC under Subsection (a) with respect to an individual who, after a background and criminal history check is conducted, is not precluded from providing unregulated self-arranged child care and begins receiving payments for providing that care. Requires the local workforce development board to withhold the amount of those costs for that individual from the first child-care payment made to the individual and to remit that amount to TWC to reimburse TWC.

Sec. 312.006. NOTICE AND OPPORTUNITY TO BE HEARD CONCERNING ACCURACY OF INFORMATION. (a) Requires DFPS, if DFPS determines that a provider or prospective provider of unregulated self-arranged child care is precluded

from providing that care because of the individual's background and criminal history check under Section 312.004, to notify the individual of that determination.

(b) Requires DFPS to include in the notice provided under Subsection (a) a description of the process by which an individual can dispute the accuracy of the individual's criminal history record and listing on DFPS's registry of reported abuse and neglect and a description of any process for disputing the accuracy of the individual's criminal history record with DPS.

Sec. 312.007. AFFIDAVITS. (a) Requires an unregulated self-arranged child care provider and the parent or guardian of the child who receives care through the provider to each submit an affidavit to TWC not later than the 15th day of the month following the end of each calendar quarter during which the provider provided care. Requires the affidavit to include certain information.

(b) Authorizes the affidavit in Subsection (a) to be on a form provided by TWC.

(c) Requires TWC to provide notice to each individual required to submit an affidavit under this section that knowingly making, presenting, or using a false government record is a criminal offense under Section 37.10 (Tampering With Governmental Record), Penal Code.

Sec. 312.008. AUDITS. Requires TWC to audit on a regular basis a random sample of unregulated self-arranged child-care providers to determine whether affidavits submitted under Section 312.007 are accurate and ensure that TWC and local workforce development boards are paying unregulated self-arranged child-care providers only for care that is actually provided.

SECTION 2. Amends Section 411.114(a)(2), Government Code, to require DFPS to obtain from DPS criminal history record information maintained by DPS that relates to a person who is a provider or prospective provider of unregulated self-arranged child care, as defined by Section 312.001, Labor Code.

SECTION 3. Requires an agency affected by provisions of this Act to request any necessary waiver or authorization from a federal agency and authorizes delay of implementation until such federal waivers or authorizations are obtained.

SECTION 4. Requires TWC and DFPS to adopt the memorandum of understanding required by Section 312.002, Labor Code, not later than October 1, 2009.

SECTION 5. Requires TWC, notwithstanding Chapter 312, Labor Code, as added by this Act, to ensure that payments made on or after November 1, 2009, to providers of unregulated self-arranged child care, as defined by Section 312.001, Labor Code, are made only to providers with respect to whom a background and criminal history check has been conducted as required by that chapter.

SECTION 6. Effective date: September 1, 2009.