

BILL ANALYSIS

Senate Research Center
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S.B. 76
By: Nelson
Health & Human Services
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This bill is intended to prevent serious criminal offenders from receiving government funds to care for children.

This bill requires persons seeking to obtain subsidies for providing unregulated self-arranged child care to submit to a name and fingerprint-based background and criminal history check.

As proposed, S.B. 76 amends current law relating to certain providers of subsidized child care.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 313.003, Labor Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 4, Labor Code, by adding Chapter 313, as follows:

CHAPTER 313. REQUIREMENTS FOR PROVIDERS OF UNREGULATED SELF-ARRANGED CHILD CARE

Sec. 313.001. DEFINITIONS. Defines "department" and "unregulated self-arranged child care" in this chapter.

Sec. 313.002. REQUIREMENTS FOR UNREGULATED SELF-ARRANGED CHILD CARE. Requires the Texas Workforce Commission (TWC) to ensure that money appropriated to TWC that is used by TWC or a local 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. 313.003. REQUIRED BACKGROUND AND CRIMINAL HISTORY CHECK. (a) Requires an individual, in accordance with Department of Family and Protective Services (DFPS) rules, seeking to provide unregulated self-arranged child care, before beginning to provide that care, to submit for use in conducting a background and criminal history check:

(1) the individual's name to DFPS; and

(2) to the Department of Public Safety of the State of Texas (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.

(b) Requires DFPS to conduct background and criminal history checks by:

(1) using the information provided by an individual under this section;

(2) submitting the fingerprints provided by an individual under this section or causing the fingerprints to be submitted electronically as authorized by Subsection (f) to DPS for the purpose of conducting a state and federal criminal history check and using the resulting information made available by DPS under Section 411.114 (Access to Criminal History Record Information Maintained by Federal Bureau of Investigation or Local Criminal Justice Agency) Government Code, and by the FBI and any other criminal justice agency under Section 411.087, Government Code; and

(3) using DFPS's central 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 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 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 (executive commissioner) to adopt rules to implement this section, including rules that require fingerprints to be submitted electronically through an applicant fingerprinting service center.

(g) Requires an individual seeking to provide unregulated self-arranged child care to pay certain costs.

Sec. 313.004. 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 313.003, 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 may dispute the accuracy of the individual's criminal history record and listing on DFPS's central 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. 313.005. REQUIRED STATEMENT. (a) Requires an unregulated self-arranged child-care provider and the parent or guardian of the child who receives care through the provider, except as provided by Section 313.006, to each submit a statement to TWC not later than the 15th day of the month following the end of each calendar quarter during which the provider provided the care. Sets forth language required to be on the statement and requires that the statement be signed by the provider or the parent or guardian, as applicable.

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

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

Sec. 313.006. ELECTRONIC VALIDATION OF CHILD-CARE SERVICES AND ATTENDANCE. (a) Requires TWC, if feasible, to use an electronic validation system to verify that a provider of unregulated self-arranged child care is providing care and that the child for whom the care is provided is in attendance during the period the provider states that child-care services are being provided.

(b) Provides that an unregulated self-arranged child-care provider and a parent or guardian of a child who receives care through the provider is not required to submit a statement under Section 313.005 if TWC verifies the provision of care and the attendance of the child using an electronic validation system.

Sec. 313.007. AUDITS. Requires TWC to audit on a regular basis a random sample of unregulated self-arranged child-care providers to:

(1) determine the accuracy, as applicable, of statements submitted under Section 313.005 or the electronic validation system used to verify child-care services and attendance under Section 313.006; and

(2) 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 313.001, Labor Code.

SECTION 3. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes delay of implementation until such a waiver or authorization is granted.

SECTION 4. Requires TWC, notwithstanding Chapter 313, Labor Code, as added by this Act, to ensure that payments made on or after November 1, 2011, to providers of unregulated self-arranged child care, as defined by Section 313.001, Labor Code, as added by this Act, are made only to providers with respect to whom a background and criminal history check has been conducted as required by that chapter.

SECTION 5. Effective date: September 1, 2011.