

BILL ANALYSIS

Senate Research Center
84R32017 E

C.S.H.B. 2070
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Health & Human Services
5/22/2015
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.H.B. 2070 amends current law relating to the waiver of notification and hearing requirements for certain foster homes that provide shelter to victims of human trafficking.

In 2014, Texas accounted for almost 10 percent of all calls received by the National Human Trafficking Resource Center. It is estimated that up to 200 minors per day are being sexually exploited through the Internet and online escort services. The lack of resources and victim services with respect to human trafficking victims is well-documented; in recent years, general residential operations such as foster group or family homes have opened specifically to address these victims' needs.

Currently, before any general residential operation may be opened in counties having 300,000 residents or less, it must disclose its location through a public notice and in a public hearing. This requirement includes those entities that focus on serving child victims of human trafficking victims, known as "safe houses."

C.S.H.B. 2070 requires the Department of Family and Protective Services (DFPS) to waive the notice and hearing requirement for safe houses which intend to operate, and removes the requirement for local, state, or federal law enforcement determination regarding the facility population and security concerns.

C.S.H.B. 2070 adds provisions relating to DFPS rights and authorities: It removes the cap on child care licensing fees by striking specific amounts in the Code that had existed for thirty years; it mandates that the agency adopt a general enforcement policy against a person who violates Chapter 42, Human Resources Code, or a department rule; it allows the agency to impose an administrative penalty without first imposing a nonmonetary administrative action for entities that violate minimum standards for high-risk requirements (including background check standards, safety hazard standards, and supervision standards); and it allows the agency to issue cease-and-desist orders against persons or entities who are not listed, registered, certified, or otherwise licensed to operate facilities or homes under Chapter 42.

C.S.H.B. 2070 amends current law relating to certain requirements for certain facilities licensed by the Department of Family and Protective Services and the department's enforcement authority.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Section 42.054, Human Resources Code) and SECTION 3 (Section 42.0704, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter C, Chapter 42, Human Resources Code, by adding Section 42.0462, as follows:

Sec. 42.0462. WAIVER OF NOTICE AND HEARING REQUIREMENTS. Requires the Department of Family and Protective Services (DFPS), to protect the safety and well-

being of residents and employees of a general residential operation that provides comprehensive residential services to children who are victims of trafficking, to waive the notice and hearing requirements imposed under Section 42.0461 (Public Notice and Hearing in Certain Counties: Residential Child Care) for an applicant who submits to DFPS an application to provide trafficking victim services at the applicant's general residential operation.

SECTION 2. Amends Section 42.054, Human Resources Code, by amending Subsections (a), (b), (c), (d), and (e) and adding Subsection (h), as follows:

- (a) Deletes a references to an application fee of \$35.
- (b) Requires DFPS to charge each child-care facility a fee for an initial license, rather than a fee of \$35 for an initial license. Requires DFPS to charge each child-placing agency a fee for an initial license, rather than a fee of \$50 for an initial license.
- (c) Requires DFPS to charge each licensed child-care facility an annual fee, rather than requires DFPS to charge each licensed child-care facility an annual license fee in the amount of \$35 plus \$1 for each child the child-care facility is permitted to serve.
- (d) Deletes a reference to an annual license fee of \$100.
- (e) Requires DFPS to charge each family home that is listed or registered with DFPS an annual fee, rather than requires DFPS to charge each family home that is listed or registered with DFPS an annual fee to cover a part of DFPS's cost in regulating family homes.
- (h) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) by rule to set fees under this section.

SECTION 3. Amends Subchapter D, Chapter 42, Human Resources Code, by adding Section 42.0704, as follows:

Sec. 42.0704. ENFORCEMENT POLICY. (a) Requires the executive commissioner by rule to adopt a general enforcement policy that describes DFPS's approach to enforcement of this chapter.

(b) Requires the enforcement policy to:

- (1) summarize DFPS's general expectations in enforcing this chapter;
- (2) include the methodology required by Subsection (c); and
- (3) describe DFPS's plan for strengthening its enforcement efforts and for making objective regulatory decisions.

(c) Requires DFPS, as part of the enforcement policy, to develop and implement a methodology for determining the appropriate disciplinary action to take against a person who violates this chapter or DFPS rule. Requires that the methodology provide guidance on when to use each of the available tools of enforcement, including technical assistance, voluntary plans of action, evaluation, probation, suspension or revocation of a license or registration, denial of a license or registration, administrative penalties, and emergency suspension. Requires the methodology to allow DFPS to consider the circumstances of a particular case, including the nature and seriousness of the violation, history of previous violations, and aggravating and mitigation factors, in determining the appropriate disciplinary action.

(d) Requires DFPS to make the methodology described by Subsection (c) available to the public, including by posting the methodology on DFPS's Internet website.

SECTION 4. Amends Section 42.078 (a-2), Human Resource Code, as follows:

(a-2) Authorizes DFPS to impose an administrative penalty without first imposing a nonmonetary administrative sanction for violating a minimum standard applicable to a facility or family home under this chapter that is determined by DFPS to be a high-risk standard, including background check standards, safety hazard standards, and supervision standards. Deletes existing text authorizing DFPS to impose an administrative penalty without first imposing a nonmonetary administrative sanction for the following violations:

(1) failing to timely submit the information required to conduct a background and criminal history check under Section 42.056 and applicable DFPS rules on two or more occasions;

(2) failing to submit the information required to conduct a background and criminal history check under Section 42.056 and applicable DFPS rules before the 30th day after the date the facility or family home is notified by the department that the information is overdue;

(3) except as provided by Section 42.056(g), knowingly allowing a person to be present in a facility or family home when the person's background and criminal history check has not been received;

(4) knowingly allowing a person to be present in a facility or family home when the person's background and criminal history check has been received and contains criminal history or central registry findings that under DFPS rules preclude the person from being present in the facility or family home; or

(5) violating a condition or restriction DFPS places on a person's presence at a facility or family home as part of a pending or approved risk evaluation of the person's background and criminal history or central registry findings.

SECTION 5. Amends Subchapter D, Chapter 42, Human Resources Code, by adding Section 42.079, as follows:

Sec. 42.079. CEASE AND DESIST ORDER. (a) Authorizes DFPS, after notice and opportunity for a hearing, to issue a cease and desist order prohibiting the person from operating the facility or home if it appears to DFPS that a person who is not licensed, certified, registered, or listed under this chapter is operating a child-care facility or family home.

(b) Provides that a violation of an order under this section constitutes grounds for imposing an administrative penalty under Section 42.078 (Administrative Penalty).

SECTION 6. Effective date: September 1, 2015.