

BILL ANALYSIS

Senate Research Center

S.B. 568
By: Huffman
Health & Human Services
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Approximately one million children attend day-care operations in Texas. The number of past incidents of abuse, neglect, and exploitation of a child at licensed or regulated child-care facilities are unconscionable. S.B. 568 (1) directs administrative penalties collected to be deposited into a "Safety Training Account" and be used to create safety training materials, (2) establishes safe sleeping standards, (3) enhances consumer choice by posting relevant inspection information for a minimum of five years, (4) requires license or registration holders to maintain liability insurance coverage, with certain exceptions, (5) strengthens the child-care license renewal process, (6) notifies parents or guardians of certain incidents, and (7) establishes new administrative penalties. (Original Author's/Sponsor's Statement of Intent)

S.B. 568 amends current law relating to the regulation of child-care facilities and family homes and provides administrative penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 42.04215, Human Resources Code), SECTION 2 (Section 42.0429, Human Resources Code), and SECTION 10 of this bill.

Rulemaking authority previously granted to the Department of Family and Protective Services is transferred to HHSC in SECTION 5 (Section 42.050, Human Resources Code), SECTION 6 (Section 42.052, Human Resources Code), and SECTION 8 (42.072, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter C, Chapter 42, Human Resources Code, by adding Section 42.04215, as follows:

Sec. 42.04215. SAFETY TRAINING ACCOUNT. (a) Provides that the safety training account is a dedicated account in the general revenue fund. Provides that the account is composed of money deposited into the account under Section 42.078 (Administrative Penalty), gifts, grants, and donations contributed to the account, and interest earned on the investment of money in the account.

(b) Provides that Section 403.0956 (Reallocation of Interest Accrued on Certain Dedicated Revenue), Government Code, does not apply to the account.

(c) Authorizes money in the account to be appropriated only to the Health and Human Services Commission (HHSC) to provide safety training materials at no cost to a facility licensed under this chapter (Regulation of Certain Facilities, Homes, and Agencies That Provide Child-Care Services) or a family home registered or listed under this chapter. Authorizes HHSC to contract with a third party to create the training materials.

(d) Requires the executive commissioner of HHSC (executive commissioner) to adopt rules necessary to implement this section.

SECTION 2. Amends Subchapter C, Chapter 42, Human Resources Code, by adding Section 42.0429, as follows:

Sec. 42.0429. **SAFE SLEEPING STANDARDS.** (a) Requires the executive commissioner by rule to establish safe sleeping standards for licensed facilities and registered family homes. Requires each licensed facility and registered family home to comply with the safe sleeping standards.

(b) Requires the licensed facility or registered family home, if HHSC determines that the facility or home has violated a safe sleeping standard established as required by Subsection (a), to provide written notice in the form and manner required by the executive commissioner to the parent or legal guardian of each child attending the facility or home.

(c) Requires the executive commissioner to prescribe the form for the notice required by Subsection (b) and post the form on HHSC's Internet website.

SECTION 3. Amends Section 42.04425, Human Resources Code, as follows:

Sec. 42.04425. **INSPECTION INFORMATION DATABASE.** (a) Requires HHSC, rather than the Department of Family and Protective Services (DFPS), if feasible using available information systems, to establish a computerized database containing relevant inspection information on all licensed facilities and registered family homes obtained from other state agencies and political subdivisions of the state. Removes day-care centers and licensed group day-care homes from the list of entities for which HHSC is required to establish a database.

(b) Requires HHSC, rather than DFPS, to make the data it collects available to another state agency or political subdivision of the state for the purpose of administering programs or enforcing laws within the jurisdiction of that state agency or subdivision. Removes the Department of State Health Services and the Department of Aging and Disability Services from the list of entities to which HHSC is required to make data available relating to relevant information on all child-care facilities and registered family homes obtained from other state agencies and political subdivisions. Makes conforming changes.

(c) Requires HHSC to provide in the database described by Subsection (a) at a minimum five years of inspection data for all facilities licensed or family homes registered under this chapter to enhance consumer choice with respect to those facilities and homes. Deletes existing text authorizing DFPS to provide inspection data on licensed day-care centers, licensed group day-care homes, or registered family homes to the public if DFPS determines that providing inspection data enhances consumer choice with respect to those facilities.

SECTION 4. Amends Section 42.049, Human Resources Code, as follows:

Sec. 42.049. **LIABILITY INSURANCE REQUIRED.** (a) Includes a registration holder under this chapter among the entities that are required to maintain liability insurance coverage in the amount of \$300,000 for each occurrence of negligence. Makes conforming changes.

(b) Requires a license or registration holder under this chapter to annually file with HHSC, rather than requiring a license holder to file with DFPS, a certificate or other evidence from an insurance company showing that the holder, rather than the license holder, has an unexpired and uncanceled insurance policy or contract that meets the requirements of this section.

(c) Specifies that, should the license or registration holder for financial reasons or lack of availability of an underwriter willing to issue a policy be unable to secure

the insurance required under Subsection (a) or should the policy limits be exhausted, the holder of a license or registration is required to timely notify the parent or guardian of, rather than the parent or a person standing in parental relationship to, each child for whom the holder, rather than the license holder, provides care a written notice that the liability coverage is not provided and there will not be a ground for an administrative penalty or suspension or revocation of the holder's license or registration, rather than suspension or revocation of the license holder's license, under this chapter. Replaces a reference to DFPS with a reference to HHSC. Makes conforming changes.

(c-1) Requires HHSC to prescribe a form that a license or registration holder may use to notify a parent or guardian in accordance with Subsection (c) that liability coverage is not provided. Requires HHSC to post the form on HHSC's Internet website.

(d) Makes conforming changes to this subsection.

(e) Deletes this subsection, relating to inapplicability of this section to a group day-care home or a listed or registered family home.

SECTION 5. Amends Section 42.050, Human Resources Code, by amending Subsections (a), (b), and (c) and adding Subsection (c-1), as follows:

(a) Authorizes a license holder to apply for renewal of a license in compliance with the requirements of this chapter and HHSC rules, rather than DFPS rules.

(b) Makes a conforming change to this subsection.

(c) Requires HHSC, rather than DFPS, to evaluate the application for renewal of a license to determine if all licensing requirements are met and whether the facility has been cited for repeated violations or has established a pattern of violations during the preceding two years. Authorizes HHSC, if HHSC determines the facility has repeated violations or an established pattern of violations, before HHSC renews the license, to place restrictions, conditions, or additional requirements on the license to ensure the violations cease.

(c-1) Prohibits HHSC from renewing the license of a facility cited for a violation that is not corrected by the required compliance date unless the violation is pending an administrative review under HHSC rules or pending review as a contested case under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 6. Amends Section 42.052, Human Resources Code, by amending Subsections (a), (b), (c), (d), (f), (i), (j), and (k) and adding Subsections (f-2) and (f-3), as follows:

(a) Requires a state-operated child-care facility or child-placing agency to receive certification of approval from HHSC, rather than DFPS.

(b) Requires a facility, in order to be certified, to comply with HHSC, rather than DFPS, rules and standards and any provisions of this chapter that apply to a licensed facility of the same category.

(c) and (d) Makes conforming changes to these subsections.

(f) Requires a family home, in order to remain listed or registered with HHSC, rather than with DFPS, to comply with HHSC rules and standards, rather than with DFPS rules and standards, if applicable, and any provision of this chapter that applies to a listed or registered family home.

(f-2) Requires HHSC to evaluate an application for renewal of a facility certification or family home registration to determine if all requirements are met and whether the applicant has been cited for repeated violations or has established a pattern of violations

during the preceding two years. Authorizes the evaluation to include a specified number of visits to the facility or family home subject to this section and requires the evaluation to include a review of all required forms and records. Authorizes HHSC, if HHSC determines the facility has repeated violations or an established pattern of violations, before HHSC renews the certification or registration, to place restrictions, conditions, or additional requirements on the certification or registration to ensure the violations cease.

(f-3) Prohibits HHSC from renewing the certification or registration of a facility or family home cited for a violation that is not corrected by the required compliance date unless the violation is pending an administrative review under HHSC rules or pending review as a contested case under Chapter 2001, Government Code.

(i) Requires HHSC, rather than DFPS, to provide to a listed family home a copy of the listing. Makes a conforming change.

(j) Requires HHSC, rather than DFPS, if the operator of a listed family home fails to submit the information required by Section 42.056 (Required Background and Criminal History Checks; Criminal Penalties) for a subsequent background and criminal history check, to automatically suspend the home's listing until the required information is submitted and to automatically revoke the home's listing if the required information is not submitted within six months after the date the automatic suspension begins.

(k) Requires HHSC, rather than DFPS, to issue a listing or registration to a family home, as appropriate, in both English and Spanish when certain requirements are met.

SECTION 7. Amends Section 42.063, Human Resources Code, by amending Subsections (b), (d), and (g) and adding Subsections (b-1) and (b-2), as follows:

(b) Requires a person licensed under this chapter to report to HHSC, rather than DFPS, each serious incident involving a child who receives services from the person, regardless of whether DFPS is the managing conservator of the child.

(b-1) Requires a person licensed or registered under this chapter to notify in accordance with HHSC rule a parent or guardian of a child in the care of the person of an incident of abuse, neglect, or exploitation of the child, injury of the child that requires treatment by a medical professional or hospitalization, or illness of the child that requires hospitalization.

(b-2) Requires a person licensed or registered under this chapter to notify in accordance with HHSC rule a parent or guardian of each child in the care of the person of a violation that constitutes abuse, neglect, or exploitation of a child.

(d) Makes a conforming change to this subsection.

(g) Requires HHSC, rather than DFPS, to implement this section using existing appropriations.

SECTION 8. Amends Sections 42.072(a), (b), (c), (e), (f), and (g), Human Resources Code, as follows:

(a) Authorizes HHSC, rather than DFPS, to suspend, deny, revoke, or refuse to renew the license, listing, registration, or certification of approval of a facility or family home that does not comply with the requirements of this chapter, HHSC standards and rules, rather than DFPS standards and rules, or the specific terms of the license, listing, registration, or certification. Authorizes HHSC, rather than DFPS, to revoke the probation of a person whose license, listing, or registration is suspended if the person violates a term of the conditions of probation.

(b) Entitles a person, if HHSC, rather than DFPS, proposes to take an action under Subsection (a), to a hearing conducted by the State Office of Administrative Hearings.

(c) Prohibits HHSC, rather than DFPS, from issuing a license, listing, registration, or certification to a person whose license, listing, registration, or certification is revoked or not renewed 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 or nonrenewal takes effect by HHSC, rather than DFPS, or court order or the decision to deny the application is final.

(e) Includes appeal of a refusal to renew a license, certification, or registration among the circumstances during which a person may continue to operate a facility or family home unless the operation of the facility or family home poses a risk to the health or safety of children. Requires HHSC, rather than DFPS, to notify the facility or family home of the criteria HHSC, rather than 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. Makes conforming changes.

(f) and (g) Makes conforming changes to these subsections.

SECTION 9. Amends Section 42.078, Human Resources Code, by amending Subsections (a), (a-2), (e), (f), (g), (h), (i), (m), (n), and (r) and adding Subsections (e-1), (e-2), and (e-3), as follows:

(a) Authorizes HHSC, rather than DFPS, to impose an administrative sanction or administrative penalty against a facility or family home licensed, registered, or listed under this chapter that violates this chapter or a rule or order adopted under this chapter. Authorizes HHSC, rather than DFPS, to impose an administrative penalty against a facility or family home or a controlling person of a facility or family home if the facility, family home, or controlling person:

(1)–(2) makes no changes to these subdivisions;

(3) refuses to allow a representative of HHSC, rather than DFPS, to inspect certain things;

(4) purposefully interferes with the work of a representative of HHSC, rather than DFPS, or the enforcement of this chapter; or

(5) makes no changes to this subdivision.

(a-2) Authorizes HHSC, rather than 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 HHSC, rather than DFPS, to be a high-risk standard, including standards for a violation constituting abuse, neglect, or exploitation of a child, background check standards, safety hazard standards, standards establishing times for reporting information to a parent or guardian or HHSC, and supervision standards.

(e) Authorizes HHSC, rather than DFPS, to issue a recommendation on the imposition of a penalty, including on the amount of the penalty, if HHSC, rather than DFPS, determines that a violation occurred.

(e-1) Requires HHSC, notwithstanding the amounts required by Subsections (b) and (c) and except as provided by Subsection (e-3), to recommend the penalty for the following violations by a facility or family home to be assessed in the following amounts:

(1) \$1,000 for a violation that constitutes abuse, neglect, or exploitation of a child;

(2) \$500 for failure to report to a parent or guardian of a child or HHSC within the time required by HHSC standards an injury of a child in the care of the facility or

home that requires treatment by a medical professional or hospitalization or an illness of a child that requires hospitalization;

(3) \$50 for failure to report to a parent or guardian of each child in the care of the facility or home within the time required by HHSC standards that HHSC cited the facility or home for a violation that constitutes abuse, neglect, or exploitation of a child or for a violation of a safe sleeping standard; and

(4) \$50 for failure to report to a parent or guardian of each child in the care of the facility or home within the time required by HHSC standards that the facility or home does not maintain liability insurance coverage.

(e-2) Requires HHSC, for purposes of Subsections (e-1)(3) and (4), to recommend a penalty of \$50 for the initial violation and an additional penalty of \$50 for each day the violation continues or occurs.

(e-3) Provides that Subsection (e-1)(1) does not apply to a residential child-care facility.

(f) Requires HHSC, rather than DFPS, within 14 days after the date the recommendation is issued, to give written notice of the recommendation to the person owning or operating the facility or family home or the controlling person, if applicable.

(g) Authorizes the person, within 20 days after the date the person receives the notice, to accept in writing the determination and recommended penalty of HHSC, rather than DFPS, or to make a written request for a hearing on the occurrence of the violation, amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(h) Makes conforming changes to this subsection.

(i) Requires HHSC, rather than DFPS, if the person requests a hearing, to set a hearing and give notice of the hearing to the person.

(m) Authorizes HHSC, rather than DFPS, on receipt of a copy of an affidavit under Subsection (1)(2) (relating to authorizing a certain person to file an affidavit to request stay of enforcement of a certain penalty), to file with the court a contest to the affidavit within five days after the date the copy is received.

(n) Authorizes HHSC, rather than DFPS, if the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, to refer the matter to the Texas attorney general for collection of the amount of the penalty.

(r) Requires a penalty collected under this section to be sent to the comptroller of public accounts of the State of Texas for deposit in the safety training account established under Section 42.04215, rather than for deposit in the general revenue fund.

SECTION 10. Requires the executive commissioner, as soon as practicable after the effective date of this Act, to adopt the rules necessary to implement the changes in law made by this Act.

SECTION 11. Provides that HHSC is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. Authorizes, but does not require, HHSC, if the legislature does not appropriate money specifically for that purpose, to implement a provision of this Act using other appropriations available for that purpose.

SECTION 12. Effective date: September 1, 2019.