

CHAPTER 977

H.B. No. 2394

AN ACT

relating to the denial, revocation, or suspension of a license to operate a child-care facility and to licensing the facility after revocation.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 42.072, Human Resources Code, is amended by amending Subsections (d)–(j) and adding Subsection (h) to read as follows:

(d) *The denial or revocation of a license or certification and the appeal from that action are governed by the procedure for a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes).*

~~(e) [Within 14 days after the date the appeal notification was mailed, the director shall appoint an advisory review board to hear the appeal or notify the person requesting the appeal that the request is denied.~~

~~[(e) Within 14 days after notifying a person that an advisory review board will hear the case, the director shall appoint five of the person's peers to the board and set a date for the hearing. The date for the hearing must be within 28 days after the date the board members are appointed.~~

~~[(f) The advisory review board shall hear the appeal and render its opinion to the director within seven days after the last day of the hearing. The board members shall receive actual travel expenses and the state per diem for each day of the hearing.~~

~~[(g) A committee composed of the director, the division representative responsible for establishing standards, and the division representative administering this chapter in the region where the facility in question is located shall review the opinion. The committee shall make a decision within 14 days after receiving the opinion and shall notify, by certified mail, the person who appealed.~~

~~(h)~~ A person whose license has been denied or revoked may challenge the ~~[committee's]~~ decision by filing a suit in a district court of Travis County or the county in which the person's facility is located within 30 days after receiving the ~~[committee's]~~ decision. The trial shall be de novo.

~~(f)~~ ~~(4)~~ Records of the ~~[department's]~~ hearing shall be kept for *two years* ~~[one year]~~ after a ~~[committee]~~ decision is rendered. On request, and at the person's own expense, the division shall supply a copy of the verbatim transcript of the ~~[advisory board]~~ hearing to a person appealing a license denial or revocation in district court.

~~(g)~~ ~~(j)~~ A person may continue to operate a facility during an appeal of a license denial or revocation unless the division has *obtained* ~~[sought]~~ injunctive relief under Section 42.074 or civil penalties under Section 42.075 *or the facility has been closed under Section 42.073* ~~[of this code]~~.

~~(h)~~ A person whose license or certification is revoked may not apply for any license or certification under this chapter before the second anniversary of the date on which the revocation takes effect by department or court order.

SECTION 2. Section 42.073, Human Resources Code, is amended to read as follows:

Sec. 42.073. *EMERGENCY SUSPENSION AND CLOSURE OF* ~~[CLOSING]~~ A FACILITY. (a) *The division shall suspend a facility's license, order the immediate closing of the facility, and place the children attending or residing in the facility elsewhere if:*

(1) the division finds the facility is operating in violation of the standards prescribed by this chapter; and

(2) the violation creates an immediate threat to the health and safety of the children attending or residing in the facility.

(b) An order suspending a license and closing a facility under this section is immediately effective on the date on which the license holder receives written notice or on a later date specified in the order.

(c) An order is valid for 10 days after the effective date of the order.

~~(d) The suspension of a license and the closure of the facility and the appeal from that action are governed by the procedures for a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) [The division may close the facility and place the children attending the facility in another facility if the division finds violations of this chapter or violations of the department's rules and standards that create an immediate danger for children.~~

~~[(b) A division representative who finds conditions described in Subsection (a) of this section shall immediately notify the director and request an immediate inspection of the facility by the director or the director's designee.~~

~~[(c) The division shall report to the governor and the commissioner of the department when a state-operated facility is found in violation of this chapter or the department's rules and standards and the violation threatens serious harm to the children in the facility.~~

~~[(d) Closing a facility under this section is an emergency measure. The division shall seek an injunction against continued operation of the facility after closing a facility under this section].~~

SECTION 3. (a) This Act takes effect September 1, 1993.

(b) Section 42.072(h), Human Resources Code, as added by this Act, applies only to a license or certification revocation that takes effect on or after the effective date of this Act. A license or certification revocation that takes effect before the effective date of this Act is governed by the law in effect when the revocation took effect, and that law is continued in effect for that purpose.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 7, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 2394 on May 28, 1993, by a non-record vote; passed by the Senate, with amendments, on May 25, 1993, by a viva-voce vote.

Approved June 19, 1993.

Effective Sept. 1, 1993.