

By: Representative Moody

To: Public Health and
Welfare

HOUSE BILL NO. 850
(As Passed the House)

1 AN ACT TO AMEND SECTION 43-20-5, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY, FOR PURPOSES OF CHILD CARE FACILITY LICENSURE, THE
3 EXEMPTIONS OF FAMILY CHILD CARE HOMES, TO EXPAND THE DEFINITION OF
4 A CHILD CARE FACILITY OPERATOR AND TO ADD THE DEFINITION OF A
5 CAREGIVER; TO AMEND SECTION 43-20-7, MISSISSIPPI CODE OF 1972, TO
6 RECONSTITUTE THE CHILD CARE ADVISORY COUNCIL; TO AMEND SECTION
7 43-20-8, MISSISSIPPI CODE OF 1972, TO CLARIFY, FOR PURPOSES OF
8 CHILD CARE FACILITY LICENSURE, REQUIREMENTS FOR FELONY CONVICTION
9 RECORDS AND TO DELETE FINGERPRINTING REQUIREMENTS; TO AMEND
10 SECTION 43-20-11, MISSISSIPPI CODE OF 1972, TO SUBSTITUTE LOCAL
11 FIRE AUTHORITIES IN PLACE OF THE STATE DEPARTMENT OF HEALTH
12 CONDUCTING FIRE SAFETY INSPECTIONS IN CHILD CARE FACILITIES AND TO
13 CONFORM FIRE SAFETY STANDARDS FOR CHILD CARE FACILITIES TO FEDERAL
14 REQUIREMENTS; TO AMEND SECTION 43-20-13, MISSISSIPPI CODE OF 1972,
15 TO DELETE REFERENCES TO CHILD CARE FACILITY LICENSURE FEES BEING
16 CHARGED ON AN ANNUAL BASIS; TO AMEND SECTION 43-20-14, MISSISSIPPI
17 CODE OF 1972, TO CLARIFY DISCIPLINARY PROCEEDINGS AND BACKGROUND
18 CHECK PROCEDURES RELATING TO CHILD CARE FACILITY LICENSEES AND TO
19 REMOVE AGENCY APPELLATE ACTIONS FROM BEING SUPERSEDEAS; TO AMEND
20 SECTION 43-20-17, MISSISSIPPI CODE OF 1972, TO ALLOW AGGREGATE
21 CHILD CARE FACILITY INFORMATION TO BE RELEASED THAT DOES NOT
22 INCLUDE INDIVIDUAL IDENTITIES; TO AMEND SECTION 43-20-53,
23 MISSISSIPPI CODE OF 1972, TO CLARIFY DEFINITION OF A FAMILY CHILD
24 CARE HOME; AND FOR RELATED PURPOSES. BE IT ENACTED BY THE
25 LEGISLATURE OF THE STATE OF MISSISSIPPI:
26

27 SECTION 1. Section 43-20-5, Mississippi Code of 1972, is
28 amended as follows:

29 43-20-5. When used in this chapter, the following words
30 shall have the following meanings:

31 (a) "Child care facility" means a place which provides
32 shelter and personal care for six (6) or more children who are not
33 related within the third degree computed according to the civil
34 law to the operator and who are under thirteen (13) years of age,
35 for any part of the twenty-four-hour day, whether such place be
36 organized or operated for profit or not. The term "child care
37 facility" includes day nurseries, day care centers and any other
38 facility that falls within the scope of the definitions set forth

39 above, regardless of auspices. The following shall be exempt from
40 this chapter:

41 (i) Child care facilities which operate for no
42 more than two (2) days a week, whose primary purpose is to provide
43 respite for the caregiver or temporary care during other scheduled
44 or related activities and organized programs which operate for
45 three (3) or less weeks per year such as, but not limited to,
46 vacation bible schools and scout day camps * * *.

47 (ii) Any child residential home as defined in, and
48 in compliance with the provisions of, Section 43-16-3(b) et
49 seq. * * *

50 (iii) Any elementary, including kindergarten,
51 and/or secondary school system, accredited by the Mississippi
52 State Department of Education, the Southern Association of
53 Colleges and Schools or the Mississippi Private School Education
54 Association.

55 (iv) Any Headstart program operating in
56 conjunction with an elementary school system, whether it be
57 public, private or parochial, whose primary purpose is a
58 structured school or school readiness program. * * *

59 (v) Any membership organization affiliated with a
60 national organization which charges only a nominal annual
61 membership fee, does not receive monthly, weekly or daily payments
62 for services, and is certified by its national association as
63 being in compliance with the association's minimum standards and
64 procedures, including, but not limited to, the Boys and Girls Club
65 of America, and the YMCA.

66 (vi) Any family child care home as defined in
67 Section 43-20-53(a) et seq.

68 All other preschool child care programs and/or extended day
69 school programs must meet requirements set forth in this chapter.

70 (b) "Health" means that condition of being sound in
71 mind and body and encompasses an individual's physical, mental and
72 emotional welfare.

73 (c) "Safety" means that condition of being protected
74 from hurt, injury or loss.

75 (d) "Person" means any person, firm, partnership,

76 corporation or association.

77 (e) "Operator" means any person, acting individually or
78 jointly with another person or persons, who shall establish, own,
79 operate, conduct or maintain a child care facility. The child
80 care facility license shall be issued in the name of the operator
81 or, if there is more than one (1) operator, in the name of one (1)
82 of the operators. If there is more than one (1) operator, all
83 statutory and regulatory provisions concerning the background
84 checks of operators shall be equally applied to all operators of a
85 facility, including, but not limited to, a spouse who jointly
86 owns, operates or maintains the child care facility regardless of
87 which particular person is named on the license.

88 (f) "Personal care" means assistance rendered by
89 personnel of the child care facility in performing one or more of
90 the activities of daily living, which includes, but is not limited
91 to, the feeding, personal grooming, supervising and dressing of
92 children placed in the child care facility.

93 (g) "Licensing agency" means the Mississippi State
94 Department of Health.

95 (h) "Caregiver" means any person who provides direct
96 care, supervision or guidance to children in a child care
97 facility, regardless of title or occupation.

98 SECTION 2. Section 43-20-7, Mississippi Code of 1972, is
99 amended as follows:

100 43-20-7. (1) There is * * * created an advisory council
101 which shall be appointed by the State Health Officer and shall
102 serve at the pleasure of the State Health Officer. * * *

103 * * *

104 (2) The advisory council shall consist of eleven (11)
105 persons, five (5) of whom shall be licensed child care providers,
106 and six (6) of whom shall represent child care professional
107 organizations, child advocacy groups, and/or state agencies that
108 provide child care funding or services. No more than four (4)

109 members shall be appointed from any one (1) state Supreme Court
110 district.

111 (3) It shall be the duty of the advisory council to assist
112 and advise the licensing agency in the development of regulations
113 governing the licensure and regulation of child care facilities.

114 (4) Members of the advisory council * * * shall be
115 reimbursed for mileage and expenses as is authorized by law.

116 SECTION 3. Section 43-20-8, Mississippi Code of 1972, is
117 amended as follows:

118 43-20-8. (1) The licensing agency shall have powers and
119 duties as set forth below in addition to other duties prescribed
120 under this chapter:

121 (a) Promulgate rules and regulations concerning the
122 licensing and regulation of child care facilities as defined
123 herein;

124 (b) Have the authority to issue, deny, suspend, revoke,
125 restrict or otherwise take disciplinary action against licensees
126 as provided for in this chapter;

127 (c) Set and collect fees and penalties as provided for
128 in this chapter; and

129 (d) Have such other powers as may be required to carry
130 out the provisions of this chapter.

131 (2) Child care facilities shall assure that parents have
132 welcome access to the child care facility at all times.

133 (3) Child care facilities shall require that, for any
134 prospective caregiver, current felony conviction record
135 information is obtained and that current sex offense criminal
136 history record information and child abuse registry checks are
137 obtained, as provided in Section 45-31-1 et seq., and that such
138 criminal record information and registry checks are on file for
139 any caregiver at such child care facility. * * *

140 (4) The licensing agency shall require to be performed a
141 felony conviction records check, a sex offense criminal records

142 check and a child abuse registry check for any and all operators
143 of a child care facility and any person living in a residence used
144 for child care. * * *

145 SECTION 4. Section 43-20-11, Mississippi Code of 1972, is
146 amended as follows:

147 43-20-11. An application for a license under this chapter
148 shall be made to the licensing agency upon forms provided by it,
149 and shall contain such information as the licensing agency may
150 reasonably require. Each application for a license shall be
151 accompanied by a license fee not to exceed Two Hundred Dollars
152 (\$200.00), which shall be paid to the licensing agency. Licenses
153 shall be granted to applicants upon the filing of properly
154 completed application forms, accompanied by payment of the * * *
155 license fee, and a certificate of inspection and approval by the
156 fire department of the municipality or other political subdivision
157 in which the facility is located, and by a certificate of
158 inspection and approval by the health department of the county in
159 which the facility is located, and approval by the licensing
160 agency; except that if no fire department exists where the
161 facility is located, the State Fire Marshal shall * * * certify as
162 to the inspection for safety from fire hazards. The State Fire
163 Marshal shall establish standards for safety from fire hazards at
164 child care facilities. The county health department and licensing
165 agency inspections and approvals shall be based upon * * *
166 regulations promulgated by the licensing agency as approved by the
167 State Board of Health.

168 Each license shall be issued only for the premises and person
169 or persons named in the application and shall not be transferable
170 or assignable except with the written approval of the licensing
171 agency. Licenses shall be posted in a conspicuous place on the
172 licensed premises.

173 No governmental entity or agency shall be required to pay the
174 fee or fees set forth in this section.

175 SECTION 5. Section 43-20-13, Mississippi Code of 1972, is
176 amended as follows:

177 43-20-13. A license issued under the provisions of this
178 chapter shall be renewed * * * upon payment of a renewal fee not
179 to exceed Two Hundred Dollars (\$200.00) per year and upon filing
180 by the licensee of a * * * report upon such uniform dates and upon
181 forms provided by the licensing agency, accompanied by a current
182 certificate of inspection and approval by the fire department and
183 the county health department specified in Section 43-20-11.

184 No governmental entity or agency shall be required to pay the
185 fee or fees set forth in this section.

186 SECTION 6. Section 43-20-14, Mississippi Code of 1972, is
187 amended as follows:

188 43-20-14. (1) The licensing agency may deny a license or
189 refuse to renew a license for any of the reasons set forth in
190 subsection (3) of this section.

191 (2) Before the licensing agency may deny or refuse to renew,
192 the applicant or person named on the license shall be entitled to
193 a hearing in order to show cause why the license should not be
194 denied or should be renewed.

195 (3) The licensing agency may suspend, revoke or restrict the
196 license of any child care facility upon one or more of the
197 following grounds * * *:

198 (a) * * * Fraud, misrepresentation or concealment of
199 material facts;

200 (b) Conviction of an operator for any crime if the
201 licensing agency finds that the act or acts for which the operator
202 was convicted could have a detrimental effect on children cared
203 for by any child care facility;

204 (c) Violation of any of the provisions of this chapter
205 or of the regulations governing the licensing and regulation of
206 child care facilities promulgated by the licensing agency; * * *

207 (d) Any conduct, or failure to act, which is found or

208 determined by the licensing agency to threaten the health or
209 safety * * * of children at the facility;

210 (e) Failure by the child care facility to comply with
211 the provisions of Section 43-20-8(3), regarding background checks
212 of caregivers, or with Section 45-31-12, concerning employment of
213 persons who have been convicted of certain offenses or have had
214 certain actions taken against them in court; and

215 (f) Information received by the licensing agency as a
216 result of the felony conviction records check, the sex offense
217 criminal records check and the child abuse registry check on any
218 and all operators pursuant to Section 43-20-8.

219 (4) Before the licensing agency may suspend, revoke or
220 restrict the license of any facility, any licensee affected by
221 such decision of the licensing agency shall be entitled to a
222 hearing in which the licensee may show cause why the license
223 should not be suspended, revoked or restricted.

224 (5) Any licensee who disagrees with or is aggrieved by a
225 decision of the Mississippi State Department of Health in regard
226 to the denial, refusal to renew, suspension, revocation or
227 restriction of such license, may appeal * * * to the chancery
228 court of the county in which such facility is located. Such
229 appeal shall be filed no later than thirty (30) days after the
230 licensee receives written notice of the final administrative
231 action by the Mississippi State Department of Health as to the
232 suspension, revocation or restriction of the license of such
233 licensee. * * *

234 SECTION 7. Section 43-20-17, Mississippi Code of 1972, is
235 amended as follows:

236 43-20-17. Information received by the licensing agency shall
237 not be disclosed publicly in such manner as to identify children
238 or families of children cared for at a child care facility, except
239 in a proceeding involving the question of licensure.

240 SECTION 8. Section 43-20-53, Mississippi Code of 1972, is

241 amended as follows:

242 43-20-53. As used in Sections 43-20-51 through 43-20-65:

243 (a) "Family child care home" means any residential
244 facility occupied by the operator where five (5) or fewer children
245 who are not related within the third degree computed according to
246 the civil law to the provider and who are under the age of
247 thirteen (13) years of age are provided care for any part of the
248 twenty-four-hour day.

249 (b) "Registering agency" means the Mississippi State
250 Department of Health.

251 (c) "Provider" means the person responsible for the
252 care of children.

253 SECTION 9. This act shall take effect and be in force from
254 and after July 1, 1999.