

By: Senator(s) Bean

To: Public Health and Welfare

SENATE BILL NO. 2257
(As Passed the Senate)

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 24-hour day, whether such place be organized
36 or operated for profit or not. The term "child care facility"
37 includes day nurseries, day care centers and any other facility
38 that falls within the scope of the definitions set forth above,

39 regardless of auspices. Child care facilities which operate for
40 no more than two (2) days a week, whose primary purpose is to
41 provide respite for the caregiver or temporary care during other
42 scheduled or related activities and organized programs which
43 operate for three (3) or less weeks per year such as, but not
44 limited to, vacation bible schools and scout day camps, are
45 exempt. Also exempted from this chapter is any child residential
46 home as defined in, and in compliance with the provisions of,
47 Section 43-16-3(b) et seq., Mississippi Code of 1972. Also
48 exempted from this chapter is any elementary, including
49 kindergarten, and/or secondary school system, accredited by the
50 Mississippi State Department of Education, the Southern
51 Association of Colleges and Schools or the Mississippi Private
52 School Education Association and any Headstart program operating
53 in conjunction with an elementary school system, whether it be
54 public, private or parochial, whose primary purpose is a
55 structured school or school readiness program. Also exempted is
56 any membership organization affiliated with a national
57 organization which charges only a nominal annual membership fee,
58 does not receive monthly, weekly or daily payments for services,
59 and is certified by its national association as being in
60 compliance with the association's minimum standards and
61 procedures, including, but not limited to, the Boys and Girls Club
62 of America, and the YMCA. Also exempted is any family child care
63 home as defined in Section 43-20-53(a) et seq., Mississippi Code
64 of 1972. All other preschool child care programs and/or extended
65 day school programs must meet requirements set forth in this
66 chapter.

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

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

72 (d) "Person" means any person, firm, partnership,
73 corporation or association.

74 (e) "Operator" means any person, acting individually or
75 jointly with another person or persons, who shall establish, own,

76 operate, conduct or maintain a child care facility. The child
77 care facility license shall be issued in the name of the operator,
78 or, if there is more than one (1) operator, in the name of one (1)
79 of the operators. In the event that there is more than one (1)
80 operator, all statutory and regulatory provisions concerning the
81 background checks of operators shall be equally applied to all
82 operators of a facility, including, but not limited to, a spouse
83 who jointly owns, operates or maintains the child care facility
84 regardless of which particular person is named on the license.

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

90 (g) "Licensing agency" means the Mississippi State
91 Department of Health.

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

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

97 43-20-7. (1) There is hereby created an advisory council
98 which shall be appointed by the State Health Officer, who shall
99 serve at the pleasure of the State Health Officer. * * *

100 * * *

101 (2) The advisory council shall consist of eleven (11)
102 persons, five (5) of whom shall be licensed child care providers,
103 and six (6) of whom shall represent child care professional
104 organizations, child advocacy groups, and/or state agencies which
105 provide child care funding or services. No more than four (4)
106 members shall be appointed from any one state Supreme Court
107 district.

108 (3) It shall be the duty of the advisory council to assist

109 and advise the licensing agency in the development of regulations
110 governing the licensure and regulation of child care facilities.

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

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

115 43-20-8. (1) The licensing agency shall have powers and
116 duties as set forth below in addition to other duties prescribed
117 under this chapter:

118 (a) Promulgate rules and regulations concerning the
119 licensing and regulation of child care facilities as defined
120 herein;

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

124 (c) Set and collect fees and penalties as provided for
125 in this chapter; and

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

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

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

137 (4) The licensing agency shall require to be performed a
138 felony conviction records check, a sex offense criminal records
139 check and a child abuse registry check for any and all operators
140 of a child care facility and any person living in a residence used
141 for child care. * * *

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

144 43-20-11. An application for a license under this chapter
145 shall be made to the licensing agency upon forms provided by it,
146 and shall contain such information as the licensing agency may
147 reasonably require. Each application for a license shall be
148 accompanied by a license fee not to exceed Two Hundred Dollars
149 (\$200.00), which shall be paid to the licensing agency. Licenses
150 shall be granted to applicants upon the filing of properly
151 completed application forms, accompanied by payment of the said
152 license fee, and a certificate of inspection and approval by the
153 fire department of the municipality or other political subdivision
154 in which the facility is located, and by a certificate of
155 inspection and approval by the health department of the county in
156 which the facility is located, and approval by the licensing
157 agency; except that if no fire department exists where the
158 facility is located, the State Fire Marshal shall * * * certify as
159 to the inspection for safety from fire hazards. The State Fire
160 Marshal shall establish standards for safety from fire hazards at
161 child care facilities. Said * * * county health department and
162 licensing agency inspections and approvals shall be based
163 upon * * * regulations promulgated by the licensing agency as
164 approved by the State Board of Health.

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

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

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

174 43-20-13. A license issued under the provisions of this

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

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

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

185 43-20-14. (1) The licensing agency may deny a license or
186 refuse to renew a license for any of the reasons set forth in
187 subsection (3) of this section.

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

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

195 (a) * * * Fraud, misrepresentation or concealment of
196 material facts;

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

201 (c) Violation of any of the provisions of this act or
202 of the regulations governing the licensing and regulation of child
203 care facilities promulgated by the licensing agency; * * *

204 (d) Any conduct, or failure to act, which is found or
205 determined by the licensing agency to threaten the health or
206 safety * * * of children at the facility;

207 (e) Failure by the child care facility to comply with

208 the provisions of Section 43-20-8(3), Mississippi Code of 1972,
209 regarding background checks of caregivers or with Section
210 45-31-12, Mississippi Code of 1972, concerning employment of
211 persons who have been convicted of certain offenses or have had
212 certain actions taken against them in court; and

213 (f) Information received by the licensing agency as a
214 result of the felony conviction records check, the sex offense
215 criminal records check and the child abuse registry check on any
216 and all operators pursuant to Section 43-20-8, Mississippi Code of
217 1972.

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

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

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

235 43-20-17. Information received by the licensing agency shall
236 not be disclosed publicly in such manner as to identify children
237 or families of children cared for at a child care facility, except
238 in a proceeding involving the question of licensure.

239 SECTION 8. Section 43-20-53, Mississippi Code of 1972, is
240 amended as follows:

241 43-20-53. As used in Sections 43-20-51 through 43-20-65:

242 (a) "Family child care home" means any residential
243 facility occupied by the operator where five (5) or fewer children
244 who are not related within the third degree computed according to
245 the civil law to the provider and who are under the age of
246 thirteen (13) years of age are provided care for any part of the
247 24-hour day.

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

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

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