

By: Moody

To: Public Health and  
Welfare

HOUSE BILL NO. 715

1 AN ACT TO AMEND SECTION 43-20-7, MISSISSIPPI CODE OF 1972, TO  
2 RECONSTITUTE THE CHILD CARE ADVISORY COUNCIL TO THE STATE  
3 DEPARTMENT OF HEALTH; TO AMEND SECTION 43-20-8, MISSISSIPPI CODE  
4 OF 1972, TO CLARIFY, FOR PURPOSES OF CHILD CARE FACILITY  
5 LICENSURE, REQUIREMENTS FOR FELONY CONVICTION RECORDS, TO  
6 AUTHORIZE THE STATE DEPARTMENT OF HEALTH TO EXCLUDE CERTAIN CRIMES  
7 OR FINDINGS AS DISQUALIFYING INDIVIDUALS OR ENTITIES FROM CHILD  
8 CARE FACILITY EMPLOYMENT OR LICENSURE, TO PROVIDE FOR IMMUNITY AND  
9 TO AUTHORIZE THE DEPARTMENT TO CHARGE A FEE TO CHILD CARE  
10 FACILITIES FOR SUCH CRIMINAL HISTORY BACKGROUND CHECKS; TO AMEND  
11 SECTION 43-20-11, MISSISSIPPI CODE OF 1972, TO SUBSTITUTE THE  
12 STATE FIRE MARSHALL IN PLACE OF THE STATE DEPARTMENT OF HEALTH  
13 CONDUCTING FIRE SAFETY INSPECTIONS IN CHILD CARE FACILITIES; TO  
14 AMEND SECTION 43-20-13, MISSISSIPPI CODE OF 1972, TO DELETE  
15 REFERENCES TO CHILD CARE FACILITY LICENSURE FEES BEING CHARGED ON  
16 AN ANNUAL BASIS; TO AMEND SECTION 43-20-14, MISSISSIPPI CODE OF  
17 1972, TO CLARIFY DISCIPLINARY PROCEEDINGS AND BACKGROUND CHECK  
18 PROCEDURES RELATING TO CHILD CARE FACILITY LICENSEES AND TO REMOVE  
19 AGENCY APPELLATE ACTIONS FROM BEING SUPERSEDED; TO AMEND SECTION  
20 43-20-17, MISSISSIPPI CODE OF 1972, TO ALLOW AGGREGATE CHILD CARE  
21 FACILITY INFORMATION TO BE RELEASED THAT DOES NOT INCLUDE  
22 INDIVIDUAL IDENTITIES; TO AMEND SECTION 43-20-53, MISSISSIPPI CODE  
23 OF 1972, TO CLARIFY THE DEFINITION OF A FAMILY CHILD CARE HOME;  
24 AND FOR RELATED PURPOSES.

25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

26 SECTION 1. Section 43-20-7, Mississippi Code of 1972, is  
27 amended as follows:

28 43-20-7. (1) There is hereby created an advisory council  
29 which shall be appointed by the State Health Officer, who shall  
30 serve at the pleasure of the State Health Officer. \* \* \*

31 \* \* \*

32 (2) The advisory council shall consist of eleven (11)

33 persons, five (5) of whom shall be licensed child care providers,  
34 and six (6) of whom shall represent child care professional  
35 organizations, child advocacy groups, and/or state agencies which  
36 provide child care funding or services. No more than four (4)  
37 members shall be appointed from any one (1) state Supreme Court  
38 district.

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

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

44 SECTION 2. Section 43-20-8, Mississippi Code of 1972, is  
45 amended as follows:

46 43-20-8. (1) The licensing agency shall have powers and  
47 duties as set forth below in addition to other duties prescribed  
48 under this chapter:

49 (a) Promulgate rules and regulations concerning the  
50 licensing and regulation of child care facilities as defined  
51 herein;

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

55 (c) Set and collect fees and penalties as provided for  
56 in this chapter; and

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

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

61 (3) Child care facilities shall require that, for any  
62 current or prospective caregiver, current criminal records  
63 background checks and current child abuse registry checks are

64 obtained \* \* \*. In order to determine the applicant's suitability  
65 for employment, the applicant shall be fingerprinted. If no  
66 disqualifying record is identified at the state level, the  
67 fingerprints shall be forwarded by the Department of Public Safety  
68 to the FBI for a national criminal history record check.

69 (4) The licensing agency shall require to be performed a  
70 criminal records background check \* \* \* and a child abuse registry  
71 check for any and all operators of a child care facility and any  
72 person living in a residence used for child care. In order to  
73 determine the applicant's suitability for employment, the  
74 applicant shall be fingerprinted. If no disqualifying record is  
75 identified at the state level, the fingerprints shall be forwarded  
76 by the Department of Public Safety to the FBI for a national  
77 criminal history record check.

78 (5) The licensing agency shall have the authority to exclude  
79 a particular crime or crimes or a substantiated finding of child  
80 abuse and/or neglect as disqualifying individuals or entities for  
81 prospective or current employment or licensure.

82 (6) The licensing agency and its agents, officers,  
83 employees, attorneys and representatives shall not be held civilly  
84 liable for any findings, recommendations or actions taken pursuant  
85 to this section.

86 (7) All fees incurred in compliance with this section shall  
87 be borne by the child care facility. The licensing agency is  
88 hereby authorized to charge a fee which shall include the amount  
89 required by the Federal Bureau of Investigation for the national  
90 criminal history record check in compliance with the Child  
91 Protection Act of 1993, as amended and any necessary costs

92 incurred by the licensing agency for the handling and  
93 administration of the criminal history background checks.

94 SECTION 3. Section 43-20-11, Mississippi Code of 1972, is  
95 amended as follows:

96 43-20-11. An application for a license under this chapter  
97 shall be made to the licensing agency upon forms provided by it,  
98 and shall contain such information as the licensing agency may  
99 reasonably require. Each application for a license shall be  
100 accompanied by a license fee not to exceed Two Hundred Dollars  
101 (\$200.00), which shall be paid to the licensing agency. Licenses  
102 shall be granted to applicants upon the filing of properly  
103 completed application forms, accompanied by payment of the said  
104 license fee, and a certificate of inspection and approval by the  
105 fire department of the municipality or other political subdivision  
106 in which the facility is located, and by a certificate of  
107 inspection and approval by the health department of the county in  
108 which the facility is located, and approval by the licensing  
109 agency; except that if no fire department exists where the  
110 facility is located, the State Fire Marshal shall \* \* \* certify as  
111 to the inspection for safety from fire hazards. Said fire, county  
112 health department and licensing agency inspections and approvals  
113 shall be based upon \* \* \* regulations promulgated by the licensing  
114 agency as approved by the State Board of Health.

115 Each license shall be issued only for the premises and person  
116 or persons named in the application and shall not be transferable  
117 or assignable except with the written approval of the licensing  
118 agency. Licenses shall be posted in a conspicuous place on the  
119 licensed premises.

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

122 SECTION 4. Section 43-20-13, Mississippi Code of 1972, is  
123 amended as follows:

124 43-20-13. A license issued under the provisions of this  
125 chapter shall be renewed \* \* \* upon payment of a renewal fee not  
126 to exceed Two Hundred Dollars (\$200.00) per year and upon filing  
127 by the licensee of a \* \* \* report upon such uniform dates and upon  
128 forms provided by the licensing agency, accompanied by a current  
129 certificate of inspection and approval by the fire department and  
130 the county health department specified in Section 43-20-11.

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

133 SECTION 5. Section 43-20-14, Mississippi Code of 1972, is  
134 amended as follows:

135 43-20-14. (1) The licensing agency may deny a license or  
136 refuse to renew a license for any of the reasons set forth in  
137 subsection (3) of this section.

138 (2) Before the licensing agency may deny or refuse to renew,  
139 the applicant or person named on the license \* \* \* shall be  
140 entitled to a hearing in order to \* \* \* show cause why the license  
141 should not be denied or should be renewed.

142 (3) The licensing agency may suspend, revoke or restrict the  
143 license of any child care facility upon one or more of the  
144 following grounds \* \* \*:

145 (a) \* \* \* Fraud, misrepresentation or concealment of  
146 material facts;

147 (b) Conviction of an operator for any crime if the

148 licensing agency finds that the act or acts for which the operator  
149 was convicted could have a detrimental effect on children cared  
150 for by any child care facility;

151 (c) Violation of any of the provisions of this act or  
152 of the regulations governing the licensing and regulation of child  
153 care facilities promulgated by the licensing agency; \* \* \*

154 (d) Any conduct, or failure to act, which is found or  
155 determined by the licensing agency to threaten the health or  
156 safety \* \* \* of children at the facility;

157 (e) Failure by the child care facility to comply with  
158 the provisions of Section 43-20-8(3), Mississippi Code of 1972,  
159 regarding background checks of caregivers or with Section  
160 45-31-12, Mississippi Code of 1972, concerning employment of  
161 persons who have been convicted of certain offenses or have had  
162 certain actions taken against them in court; and

163 (f) Information received by the licensing agency as a  
164 result of the felony conviction records check, the sex offense  
165 criminal records check and the child abuse registry check on any  
166 and all operators pursuant to Section 43-20-8, Mississippi Code of  
167 1972.

168 (4) Before the licensing agency may suspend, revoke or  
169 restrict the license of any facility, any licensee affected by  
170 such decision of the licensing agency shall be entitled to a  
171 hearing in which the licensee may show cause why the license  
172 should not be suspended, revoked or restricted.

173 (5) Any licensee who disagrees with or is aggrieved by a  
174 decision of the Mississippi State Department of Health in regard  
175 to the denial, refusal to renew, suspension, revocation or

176 restriction of such license, may appeal \* \* \* to the chancery  
177 court of the county in which such facility is located. Such  
178 appeal shall be filed no later than thirty (30) days after the  
179 licensee receives written notice of the final administrative  
180 action by the Mississippi State Department of Health as to the  
181 suspension, revocation or restriction of the license of such  
182 licensee. \* \* \*

183 SECTION 6. Section 43-20-17, Mississippi Code of 1972, is  
184 amended as follows:

185 43-20-17. Information in the possession of the licensing  
186 agency concerning the license of individual child care facilities  
187 may be disclosed to the public, except such information shall not  
188 be disclosed \* \* \* in such manner as to identify children or  
189 families of children cared for at a child care \* \* \* facility.  
190 Nothing in this section shall affect the agency's authority to  
191 release findings of investigations into allegations of abuse  
192 pursuant to either Sections 43-21-353(8) and Section 43-21-257.

193 SECTION 7. Section 43-20-53, Mississippi Code of 1972, is  
194 amended as follows:

195 43-20-53. As used in Sections 43-20-51 through 43-20-65:

196 (a) "Family child care home" means any residential  
197 facility occupied by the operator where five (5) or fewer children  
198 who are not related within the third degree computed according to  
199 the civil law to the provider and who are under the age of  
200 thirteen (13) years of age are provided care for any part of the  
201 24-hour day.

202 (b) "Registering agency" means the Mississippi State  
203 Department of Health.

204                   (c) "Provider" means the person responsible for the  
205 care of children.

206           SECTION 8. This act shall take effect and be in force from  
207 and after July 1, 2000.