

By: Huggins (By Request)

To: Public Health and
WelfareSENATE BILL NO. 2435
(As Sent to Governor)

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 MARSHAL 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 SUPERSEDEAS; 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; TO
24 REPEAL SECTIONS 45-31-1 THROUGH 45-31-19, MISSISSIPPI CODE OF
25 1972, WHICH ARE THE SEX OFFENSE CRIMINAL HISTORY RECORD
26 INFORMATION ACT; AND FOR RELATED PURPOSES.

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

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

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

33 * * *

34 (2) The advisory council shall consist of eleven (11)
35 persons, five (5) of whom shall be licensed child care providers,
36 and six (6) of whom shall represent child care professional
37 organizations, child advocacy groups, and/or state agencies which
38 provide child care funding or services. No more than four (4)

39 members shall be appointed from any one (1) state Supreme Court
40 district.

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

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

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

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

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

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

57 (c) Set and collect fees and penalties as provided for
58 in this chapter; and

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

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

63 (3) Child care facilities shall require that, for any
64 current or prospective caregiver, current criminal records
65 background checks and current child abuse registry checks are
66 obtained * * *. In order to determine the applicant's suitability
67 for employment, the applicant shall be fingerprinted. If no
68 disqualifying record is identified at the state level, the
69 fingerprints shall be forwarded by the Department of Public Safety
70 to the FBI for a national criminal history record check.

71 (4) The licensing agency shall require to be performed a
72 criminal records background check * * * and a child abuse registry
73 check for any and all operators of a child care facility and any
74 person living in a residence used for child care. In order to
75 determine the applicant's suitability for employment, the

76 applicant shall be fingerprinted. If no disqualifying record is
77 identified at the state level, the fingerprints shall be forwarded
78 by the Department of Public Safety to the FBI for a national
79 criminal history record check.

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

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

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

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

98 43-20-11. An application for a license under this chapter
99 shall be made to the licensing agency upon forms provided by it,
100 and shall contain such information as the licensing agency may
101 reasonably require. Each application for a license shall be
102 accompanied by a license fee not to exceed Two Hundred Dollars
103 (\$200.00), which shall be paid to the licensing agency. Licenses
104 shall be granted to applicants upon the filing of properly
105 completed application forms, accompanied by payment of the said
106 license fee, and a certificate of inspection and approval by the
107 fire department of the municipality or other political subdivision
108 in which the facility is located, and by a certificate of

109 inspection and approval by the health department of the county in
110 which the facility is located, and approval by the licensing
111 agency; except that if no fire department exists where the
112 facility is located, the State Fire Marshal shall * * * certify as
113 to the inspection for safety from fire hazards. Said fire, county
114 health department and licensing agency inspections and approvals
115 shall be based upon * * * regulations promulgated by the licensing
116 agency as approved by the State Board of Health.

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

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

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

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

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

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

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

140 (2) Before the licensing agency may deny or refuse to renew,
141 the applicant or person named on the license * * * shall be

142 entitled to a hearing in order to * * * show cause why the license
143 should not be denied or should be renewed.

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

147 (a) * * * Fraud, misrepresentation or concealment of
148 material facts;

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

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

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

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

165 (f) Information received by the licensing agency as a
166 result of the felony conviction records check, the sex offense
167 criminal records check and the child abuse registry check on any
168 and all operators pursuant to Section 43-20-8, Mississippi Code of
169 1972.

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

175 (5) Any licensee who disagrees with or is aggrieved by a
176 decision of the Mississippi State Department of Health in regard
177 to the denial, refusal to renew, suspension, revocation or
178 restriction of such license, may appeal * * * to the chancery
179 court of the county in which such facility is located. Such
180 appeal shall be filed no later than thirty (30) days after the
181 licensee receives written notice of the final administrative
182 action by the Mississippi State Department of Health as to the
183 suspension, revocation or restriction of the license of such
184 licensee. * * *

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

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

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

197 43-20-53. As used in Sections 43-20-51 through 43-20-65:

198 (a) "Family child care home" means any residential
199 facility occupied by the operator where five (5) or fewer children
200 who are not related within the third degree computed according to
201 the civil law to the provider and who are under the age of
202 thirteen (13) years of age are provided care for any part of the
203 24-hour day.

204 (b) "Registering agency" means the Mississippi State
205 Department of Health.

206 (c) "Provider" means the person responsible for the
207 care of children.

208 SECTION 8. Sections 45-31-1, 45-31-3, 45-31-5, 45-31-7,
209 45-31-9, 45-31-11, 45-31-13, 45-31-15, 45-31-17 and 45-31-19,
210 Mississippi Code of 1972, which are the Sex Offense Criminal
211 History Record Information Act, are hereby repealed.

212 SECTION 9. This act shall take effect and be in force from
213 and after July 1, 2000.