

By: Huggins

To: Public Health and
Welfare

SENATE BILL NO. 2604
(As Passed the Senate)

1 AN ACT TO CODIFY SECTIONS 43-15-101 THROUGH 43-15-125,
2 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE LICENSURE OF FAMILY
3 FOSTER HOMES, RESIDENTIAL CHILD-CARING AGENCIES AND CHILD-PLACING
4 AGENCIES BY THE MISSISSIPPI DEPARTMENT OF HUMAN SERVICES; TO
5 PRESCRIBE LICENSURE REQUIREMENTS; TO PROVIDE FOR EXEMPTIONS FROM
6 LICENSURE REQUIREMENTS; TO PRESCRIBE DISCIPLINARY PROCEEDINGS FOR
7 LICENSEES; TO PRESCRIBE CRIMINAL PENALTIES FOR VIOLATIONS; AND FOR
8 RELATED PURPOSES.

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

10 SECTION 1. The following provision shall be codified as
11 Section 43-15-101, Mississippi Code of 1972:

12 43-15-101. The purpose of this chapter is to protect the
13 health, safety and well-being of all children in the state who are
14 cared for by family foster homes, residential child-caring
15 agencies and child-placing agencies by providing for the
16 establishment of licensing requirements for such homes and
17 agencies and providing procedures to determine adherence to these
18 requirements.

19 SECTION 2. The following provision shall be codified as
20 Section 43-15-103, Mississippi Code of 1972:

21 43-15-103. As used in this chapter:

22 (a) "Agency" means a residential child-caring agency or
23 a child-placing agency.

24 (b) "Child" or "children" mean(s) any unmarried person
25 or persons under the age of eighteen (18) years.

26 (c) "Child placing" means receiving, accepting or
27 providing custody or care for any child under eighteen (18) years
28 of age, temporarily or permanently, for the purpose of:

29 (i) Finding a person to adopt the child;

30 (ii) Placing the child temporarily or permanently
31 in a home for adoption; or

32 (iii) Placing a child in a foster home or
33 residential child-caring agency.

34 (d) "Child-placing agency" means any entity or person
35 which places children in foster boarding homes or foster homes for
36 temporary care or for adoption or any other entity or person or
37 group of persons who are engaged in providing adoption studies or
38 foster care studies or placement services as defined by the rules
39 of the department.

40 (e) "Department" means the Mississippi Department of
41 Human Services.

42 (f) "Director" means the Director of the Division of
43 Family and Children's Services.

44 (g) "Division" means the Division of Family and
45 Children's Services within the Mississippi Department of Human
46 Services.

47 (h) "Family boarding home" or "foster home" means a
48 home (occupied residence) operated by any entity or person which
49 provides residential child care to at least one (1) child but not
50 more than six (6) children who are not related to the primary
51 caregivers.

52 (i) "Group care home" means any place or facility
53 operated by any entity or person which provides residential child
54 care for at least seven (7) children but not more than twelve (12)
55 children who are not related to the primary caregivers.

56 (j) "Licensee" means any person, agency or entity
57 licensed under this chapter.

58 (k) "Maternity home" means any place or facility
59 operated by any entity or person which receives, treats or cares
60 for more than one (1) child or adult who is pregnant out of
61 wedlock, either before, during or within two (2) weeks after
62 childbirth; provided, that the licensed child-placing agencies and

63 licensed maternity homes may use a family boarding home approved
64 and supervised by the agency or home, as a part of their work, for
65 as many as three (3) children or adults who are pregnant out of
66 wedlock, and provided further, that the provisions of this
67 definition shall not include children or women who receive
68 maternity care in the home of a person to whom they are kin within
69 the sixth degree of kindred computed according to civil law, nor
70 does it apply to any maternity care provided by general or special
71 hospitals licensed according to law and in which maternity
72 treatment and care are part of the medical services performed and
73 the care of children is brief and incidental.

74 (l) "Office" means the Office of Licensing within the
75 Division of Family and Children's Services of the Mississippi
76 Department of Human Services.

77 (m) "Person associated with a licensee" means an owner,
78 director, member of the governing body, employee, provider of care
79 and volunteer of a human services licensee.

80 (n) "Related" means children, step-children,
81 grandchildren, step-grandchildren, siblings of the whole or
82 half-blood, step-siblings, nieces or nephews of the primary care
83 provider.

84 (o) "Residential child care" means the provision of
85 supervision, and/or protection, and meeting the basic needs of a
86 child for twenty-four (24) hours per day, which may include
87 services to children in a residential setting where care, lodging,
88 maintenance and counseling or therapy for alcohol or controlled
89 substance abuse or for any other emotional disorder or mental
90 illness is provided for children, whether for compensation or not.

91 (p) "Residential child-caring agency" means any place
92 or facility operated by any entity or person, public or private,
93 providing residential child care, regardless of whether operated
94 for profit or whether a fee is charged. Such residential
95 child-caring agencies include, but are not limited to, maternity

96 homes, runaway shelters, group homes that are administered by an
97 agency, and emergency shelters that are not in private residence.

98 SECTION 3. The following provision shall be codified as
99 Section 43-15-105, Mississippi Code of 1972:

100 43-15-105. (1) The Division of Family and Children's
101 Services shall be the licensing authority for the department, and
102 is vested with all the powers, duties and responsibilities
103 described in this chapter. The division shall make and establish
104 rules and regulations regarding:

105 (a) Approving, extending, denying, suspending and
106 revoking licenses for foster homes, residential child-caring
107 agencies and child-placing agencies;

108 (b) Conditional licenses, variances from department
109 rules and exclusions;

110 (c) Basic health and safety standards for licensees;
111 and

112 (d) Minimum administration and financial requirements
113 for licensees.

114 (2) The division shall:

115 (a) Define information that shall be submitted to the
116 division with an application for a license;

117 (b) Establish guidelines for the administration and
118 maintenance of client and service records, including staff
119 qualifications, staff to client ratios;

120 (c) Issue licenses in accordance with this chapter;

121 (d) Conduct surveys and inspections of licensees and
122 facilities;

123 (e) Establish and collect licensure fees;

124 (f) Investigate complaints regarding any licensee or
125 facility;

126 (g) Have access to all records, correspondence and
127 financial data required to be maintained by a licensee or
128 facility;

129 (h) Have authority to interview any client, family
130 member of a client, employee or officer of a licensee or facility;
131 and

132 (i) Have authority to revoke, suspend or extend any
133 license issued by the division.

134 SECTION 4. The following provision shall be codified as
135 Section 43-15-107, Mississippi Code of 1972:

136 43-15-107. (1) Except as provided in Section 43-15-111, no
137 person, agency, firm, corporation, association or other entity,
138 acting individually or jointly with any other person or entity,
139 may establish, conduct or maintain foster homes, residential
140 child-caring agencies and child-placing agencies or facility
141 and/or engage in child placing in this state without a valid and
142 current license issued by and under the authority of the division
143 as provided by this chapter and the rules of the division.

144 (2) No license issued under this chapter is assignable or
145 transferable.

146 (3) A current license shall at all times be posted in each
147 licensee's facility, in a place that is visible and readily
148 accessible to the public.

149 (4) (a) Each license issued under this chapter expires at
150 midnight (Central Standard Time) twelve (12) months from the date
151 of issuance unless it has been:

152 (i) Previously revoked by the office; or

153 (ii) Voluntarily returned to the office by the
154 licensee.

155 (b) A license may be renewed upon application and
156 payment of the applicable fee, provided that the licensee meets
157 the license requirements established by this chapter and the rules
158 and regulations of the division.

159 (5) Any licensee or facility which is in operation at the
160 time rules are made in accordance with this chapter shall be given
161 a reasonable time for compliance as determined by the rules of the

162 division.

163 SECTION 5. The following provision shall be codified as
164 Section 43-15-109, Mississippi Code of 1972:

165 43-15-109. (1) An application for a license under this
166 chapter shall be made to the division and shall contain
167 information that the division determines is necessary in
168 accordance with established rules.

169 (2) Information received by the office through reports,
170 complaints, investigations and inspections shall be classified as
171 public in accordance with Title 25, Chapter 61, Mississippi Code
172 of 1972, Mississippi Public Records Act.

173 SECTION 6. The following provision shall be codified as
174 Section 43-15-111, Mississippi Code of 1972:

175 43-15-111. The provisions of this chapter do not apply to:

176 (1) A facility or program owned or operated by an agency of
177 the State of Mississippi or United States government;

178 (2) A facility or program operated by or under an exclusive
179 contract with the Department of Corrections;

180 (3) Schools and educational programs and facilities the
181 primary purpose of which is to provide a regular course of study
182 necessary for advancement to a higher educational level or
183 completion of a prescribed course of study, and which may,
184 incident to such educational purposes, provide boarding facilities
185 to the students of such programs.

186 (4) Any residential child-caring agency and/or child-placing
187 agency operated or conducted under the auspices of a religious
188 institution and meeting the requirements or conditions of this
189 section shall be exempt from the licensure requirements of this
190 chapter under the following conditions: (a) such religious
191 institution must have a tax exempt status as a nonprofit religious
192 institution in accordance with Section 501(c) of the Internal
193 Revenue Code of 1954, as amended, or the real property owned and
194 exclusively occupied by the religious institution must be exempt

195 from location taxation, and (b) the agency or institution must be
196 in compliance with the requirements of the Child Residential Home
197 Notification Act, Section 43-16-1 et seq., Mississippi Code of
198 1972, and must not be in violation of Section 43-16-21(c)
199 regarding the abuse and/or neglect of any child served by such
200 home who has been adjudicated by the youth court as an abused
201 and/or neglected child. Nothing in this subsection shall prohibit
202 a residential child-caring agency or child-placing agency operated
203 by or conducted under the auspices of a religious institution from
204 obtaining a license pursuant to this chapter.

205 SECTION 7. The following provision shall be codified as
206 Section 43-15-113, Mississippi Code of 1972:

207 43-15-113. (1) If a license is revoked, the division may
208 grant a new license after:

209 (a) Satisfactory evidence is submitted to the division,
210 evidencing that the conditions upon which revocation was based
211 have been corrected; and

212 (b) Inspection and compliance with all provisions of
213 this chapter and applicable rules.

214 (2) The division may only suspend a license for a period of
215 time which does not exceed the current expiration date of that
216 license.

217 (3) When a license has been suspended, the division may
218 completely or partially restore the suspended license upon a
219 determination that the:

220 (a) Conditions upon which the suspension was based have
221 been completely or partially corrected; and

222 (b) Interests of the public will not be jeopardized by
223 restoration of the license.

224 SECTION 8. The following provision shall be codified as
225 Section 43-15-115, Mississippi Code of 1972:

226 43-15-115. (1) The division may, for the purpose of
227 ascertaining compliance with the provisions of this chapter and

228 its rules and regulations, enter and inspect on a routine basis
229 the facility of a licensee.

230 (2) Before conducting an inspection under subsection (1),
231 the division shall, after identifying the person in charge:

232 (a) Give proper identification;

233 (b) Request to see the applicable license;

234 (c) Describe the nature and purpose of the inspection;

235 and

236 (d) If necessary, explain the authority of the division
237 to conduct the inspection and the penalty for refusing to permit
238 the inspection.

239 (3) In conducting an inspection under subsection (1), the
240 division may, after meeting the requirements of subsection (2):

241 (a) Inspect the physical facilities;

242 (b) Inspect records and documents;

243 (c) Interview directors, employees, clients, family
244 members of clients and others; and

245 (d) Observe the licensee in operation.

246 (4) An inspection conducted under subsection (1) shall be
247 during regular business hours and may be announced or unannounced.

248 (5) The licensee shall make copies of inspection reports
249 available to the public upon request.

250 (6) The provisions of this section apply to on-site
251 inspections and do not restrict the division from contacting
252 family members, neighbors or other individuals, or from seeking
253 information from other sources to determine compliance with the
254 provisions of this chapter.

255 SECTION 9. The following provision shall be codified as
256 Section 43-15-117, Mississippi Code of 1972:

257 43-15-117. (1) Except as provided in this chapter, no
258 person, agency, firm, corporation, association or group children's
259 home may engage in child placing, or solicit money or other
260 assistance for child placing, without a valid license issued by

261 the division.

262 (2) (a) An attorney, physician or other person may assist a
263 parent in identifying or locating a person interested in adopting
264 the parent's child, or in identifying or locating a child to be
265 adopted. However, no payment, charge, fee, reimbursement of
266 expense, or exchange of value of any kind, or promise or agreement
267 to make the same, may be made for that assistance.

268 (b) An attorney, physician or other person may not:

269 (i) Issue or cause to be issued to any person a
270 card, sign or device indicating that he or she is available to
271 provide that assistance;

272 (ii) Cause, permit or allow any sign or marking
273 indicating that he or she is available to provide that assistance,
274 on or in any building or structure;

275 (iii) Announce or cause, permit or allow an
276 announcement indicating that he or she is available to provide
277 that assistance, to appear in any newspaper, magazine, directory
278 or on radio or television; or

279 (iv) Advertise by any other means that he or she
280 is available to provide that assistance.

281 (3) Nothing in this section precludes payment of usual and
282 customary fees for medical, legal or other lawful services
283 rendered in connection with the care of a mother, delivery and
284 care of a child, or counseling for the parents and/or the child,
285 and for the legal proceedings related to lawful adoption
286 proceedings; and no provision of this section abrogates the right
287 of procedures for independent adoption as provided by law.

288 (4) The division is specifically authorized to promulgate
289 rules pursuant to the Administrative Procedures Act, Title 25,
290 Chapter 43, Mississippi Code of 1972, to regulate fees charged by
291 licensed child-placing agencies, if it determines that the
292 practices of those licensed child-placing agencies demonstrates
293 that the fees charged are excessive or that any of the agency's

294 practices are deceptive or misleading; provided, that such rules
295 regarding fees shall take into account the use of any sliding fee
296 by an agency which uses a sliding fee procedure to permit
297 prospective adoptive parents of varying income levels to utilize
298 the services of such agencies or persons.

299 (5) The division shall promulgate rules pursuant to the
300 Administrative Procedures Act, Title 25, Chapter 43, Mississippi
301 Code of 1972, to require that all licensed child-placing agencies
302 provide written disclosures to all prospective adoptive parents of
303 any fees or other charges for each service performed by the agency
304 or person, and file an annual report with the division which
305 states the fees and charges for those services, and to require
306 them to inform the division in writing thirty (30) days in advance
307 of any proposed changes to the fees or charges for those services.

308 (6) The division is specifically authorized to disclose to
309 prospective adoptive parents or other interested persons any fees
310 charged by any licensed child-placing agency, attorney or
311 counseling service or counselor for all legal and counseling
312 services provided by that licensed child-placing agency, attorney
313 or counseling service or counselor.

314 SECTION 10. The following provision shall be codified as
315 Section 43-15-119, Mississippi Code of 1972:

316 43-15-119. (1) If the division finds that a violation has
317 occurred under this chapter or the rules and regulations of the
318 division, it may:

319 (a) Deny, suspend or revoke a license or place the
320 licensee on probation, if the division discovers that a licensee
321 is not in compliance with the laws, standards or regulations
322 governing its operation, and/or it finds evidence of aiding,
323 abetting or permitting the commission of any illegal act; or

324 (b) Restrict or prohibit new admissions to the
325 licensee's program or facility, if the division discovers that a
326 licensee is not in compliance with the laws, standards or

327 regulations governing its operation, and/or it finds evidence of
328 aiding, abetting or permitting the commission of any illegal act.

329 (2) If placed on probation, the agency or licensee shall
330 post a copy of the notice in a conspicuous place as directed by
331 the division and with the agency's or individual's license, and
332 the agency shall notify the custodians of each of the children in
333 its care in writing of the agency's status and the basis for the
334 probation.

335 SECTION 11. The following provision shall be codified as
336 Section 43-15-121, Mississippi Code of 1972:

337 43-15-121. In addition to, and notwithstanding, any other
338 remedy provided by law the division may, in a manner provided by
339 law and upon the advice of the Attorney General, who shall
340 represent the division in the proceedings, maintain an action in
341 the name of the state for injunction or other process against any
342 person or entity to restrain or prevent the establishment,
343 management or operation of a program or facility or performance of
344 services in violation of this chapter or rules of the division.

345 SECTION 12. The following provision shall be codified as
346 Section 43-15-123, Mississippi Code of 1972:

347 43-15-123. Any person, agency, association, corporation,
348 institution, society or other organization violating the
349 provisions of this chapter shall be guilty of illegal placement of
350 children and shall be punished by a fine not to exceed Five
351 Thousand Dollars (\$5,000.00) or by imprisonment not more than five
352 (5) years, or both such fine and imprisonment.

353 SECTION 13. The following provision shall be codified as
354 Section 43-15-125, Mississippi Code of 1972:

355 43-15-125. The Department of Human Services and/or its
356 officers, employees, attorneys and representatives shall not be
357 held civilly liable for any findings, recommendations or actions
358 taken pursuant to this chapter.

359 SECTION 14. This act shall take effect and be in force from

360 and after July 1, 2000.