

By: Huggins

To: Public Health and  
Welfare

SENATE BILL NO. 2604  
(As Sent to Governor)

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.