

By: Representative Watson

To: Public Health and Human
ServicesHOUSE BILL NO. 402
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 43-20-5, MISSISSIPPI CODE OF 1972,
2 WHICH PROVIDES THE DEFINITIONS FOR THE MISSISSIPPI CHILD CARE
3 LICENSING LAW, TO EXTEND THE REPEAL DATE ON THE EXEMPTION OF
4 CERTAIN ACCREDITED SCHOOLS FROM THE LICENSING LAW; TO AMEND
5 SECTION 43-20-8, MISSISSIPPI CODE OF 1972, TO REQUIRE EACH
6 CHILD-CARE FACILITY TO MAINTAIN A LIST OF CONTACT PERSONS FOR EACH
7 CHILD PROVIDED CARE BY THE FACILITY; TO AUTHORIZE CHILD CARE
8 FACILITIES TO ENTER AGREEMENTS WITH THE PARENTS, GUARDIANS OR
9 CONTACT PERSONS OF THE CHILDREN AT THE TIME OF REGISTRATION TO
10 INFORM THEM IF THE CHILD DOES NOT ARRIVE AT THE FACILITY WITHIN A
11 REASONABLE TIME; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** Section 43-20-5, Mississippi Code of 1972, is
14 amended as follows:

15 43-20-5. When used in this chapter, the following words
16 shall have the following meanings:

17 (a) "Child-care facility" means a place that provides
18 shelter and personal care for six (6) or more children who are not
19 related within the third degree computed according to the civil
20 law to the operator and who are under thirteen (13) years of age,
21 for any part of the twenty-four-hour day, whether that place is
22 organized or operated for profit or not. The term "child-care
23 facility" includes day nurseries, day care centers and any other
24 facility that falls within the scope of the definitions set forth
25 in this paragraph, regardless of auspices. Exemptions from the
26 provisions of this chapter include:

27 (i) Child-care facilities that operate for no more
28 than two (2) days a week, whose primary purpose is to provide
29 respite for the caregiver or temporary care during other scheduled
30 or related activities and organized programs that operate for

31 three (3) or fewer weeks per year such as, but not limited to,
32 vacation bible schools and scout day camps.

33 (ii) Any child residential home as defined in, and
34 in compliance with the provisions of, Section 43-16-3(b) et seq.

35 (iii) 1. Any elementary, including kindergarten,
36 and/or secondary school system, accredited by the Mississippi
37 State Department of Education, the Southern Association of
38 Colleges and Schools, the Mississippi Private School Education
39 Association, the American Association of Christian Schools, the
40 Association of Christian Schools International, and any Head Start
41 program operating in conjunction with an elementary school system,
42 whether it is public, private or parochial, whose primary purpose
43 is a structured school or school readiness program.

44 2. Accreditation, for the purpose of
45 exemption from the provisions of this chapter, means: a. receipt
46 by any school or school system of full accreditation from an
47 accrediting entity listed in item 1 of this subparagraph (iii), or
48 b. proof of application by the school or school system for
49 accreditation status from the accrediting entity. Proof of
50 application for accreditation status shall include, but not be
51 limited to, a copy of the applicant's completed application for
52 accreditation filed with the licensing agency and a letter or
53 other authenticating documentation from a signatory authority with
54 the accrediting entity that the application for accreditation has
55 been received and that the applicant is currently under
56 consideration or review for full accreditation status by the
57 accrediting entity. An exemption for a nonaccredited applicant
58 under this item 2 shall be for a maximum of one (1) year from the
59 receipt date by the licensing agency of the completed
60 documentation for proof of application for accreditation status.
61 Failure to receive full accreditation by the end of the one-year
62 exemption period for a nonaccredited applicant shall result in the
63 nonaccredited applicant no longer remaining exempt from the

64 provisions of this chapter at the end of the one-year period.
65 However, if full accreditation is not received by the end of the
66 one-year exemption period, the State Board of Health, in its
67 discretion, may extend the exemption period for any nonaccredited
68 applicant for periods of six (6) months, with the total extension
69 not to exceed one (1) year. During any such extension periods,
70 the board shall have the authority to enforce child-care facility
71 licensure provisions relating to the health and safety of the
72 children in the school or school system. If a nonaccredited
73 applicant fails to receive full accreditation by the end of all
74 extended exemption periods, the applicant shall no longer remain
75 exempt from the provisions of this chapter at the end of the
76 extended exemption periods. This item 2 shall stand repealed on
77 July 1, 2006.

78 (iv) Any membership organization affiliated with a
79 national organization that charges only a nominal annual
80 membership fee, does not receive monthly, weekly or daily payments
81 for services, and is certified by its national association as
82 being in compliance with the association's minimum standards and
83 procedures, including, but not limited to, the Boys and Girls Club
84 of America, and the YMCA.

85 (v) Any family child-care home as defined in
86 Section 43-20-53(a) et seq.

87 All other preschool child-care programs and/or extended day
88 school programs must meet requirements set forth in this chapter.

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

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

94 (d) "Person" means any person, firm, partnership,
95 corporation or association.

96 (e) "Operator" means any person, acting individually or
97 jointly with another person or persons, who * * * establishes,
98 owns, operates, conducts or maintains a child-care facility. The
99 child-care facility license shall be issued in the name of the
100 operator, or, if there is more than one (1) operator, in the name
101 of one (1) of the operators. If there is more than one (1)
102 operator, all statutory and regulatory provisions concerning the
103 background checks of operators shall be equally applied to all
104 operators of a facility, including, but not limited to, a spouse
105 who jointly owns, operates or maintains the child-care facility
106 regardless of which particular person is named on the license.

107 (f) "Personal care" means assistance rendered by
108 personnel of the child-care facility in performing one or more of
109 the activities of daily living, which includes, but is not limited
110 to, the feeding, personal grooming, supervising and dressing of
111 children placed in the child-care facility.

112 (g) "Licensing agency" means the Mississippi State
113 Department of Health.

114 (h) "Caregiver" means any person who provides direct
115 care, supervision or guidance to children in a child-care
116 facility, regardless of title or occupation.

117 **SECTION 2.** Section 43-20-8, Mississippi Code of 1972, is
118 amended as follows:

119 43-20-8. (1) The licensing agency shall have powers and
120 duties as set forth below, in addition to other duties prescribed
121 under this chapter:

122 (a) Promulgate rules and regulations concerning the
123 licensing and regulation of child-care facilities as defined in
124 Section 43-20-5;

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

128 (c) Set and collect fees and penalties as provided for
129 in this chapter; and

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

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

134 (3) Each child care facility shall develop and maintain a
135 current list of contact persons for each child provided care by
136 that facility. An agreement may be made between the child care
137 facility and the child's parent, guardian or contact person at the
138 time of registration to inform the parent, guardian or contact
139 person if the child does not arrive at the facility within a
140 reasonable time.

141 (4) Child-care facilities shall require that, for any
142 current or prospective caregiver, current criminal records
143 background checks and current child abuse registry checks are
144 obtained. In order to determine the applicant's suitability for
145 employment, the applicant shall be fingerprinted. If no
146 disqualifying record is identified at the state level, the
147 fingerprints shall be forwarded by the Department of Public Safety
148 to the FBI for a national criminal history record check.

149 (5) The licensing agency shall require to be performed a
150 criminal records background check and a child abuse registry check
151 for all operators of a child-care facility and any person living
152 in a residence used for child care. The Department of Human
153 Services shall have the authority to disclose to the State
154 Department of Health any potential applicant whose name is listed
155 on the Child Abuse Central Registry or has a pending
156 administrative review. That information shall remain confidential
157 by all parties. In order to determine the applicant's suitability
158 for employment, the applicant shall be fingerprinted. If no
159 disqualifying record is identified at the state level, the

160 fingerprints shall be forwarded by the Department of Public Safety
161 to the FBI for a national criminal history record check.

162 (6) The licensing agency shall have the authority to exclude
163 a particular crime or crimes or a substantiated finding of child
164 abuse and/or neglect as disqualifying individuals or entities for
165 prospective or current employment or licensure.

166 (7) The licensing agency and its agents, officers,
167 employees, attorneys and representatives shall not be held civilly
168 liable for any findings, recommendations or actions taken under
169 this section.

170 (8) All fees incurred in compliance with this section shall
171 be borne by the child-care facility. The licensing agency is
172 authorized to charge a fee that * * * includes the amount required
173 by the Federal Bureau of Investigation for the national criminal
174 history record check in compliance with the Child Protection Act
175 of 1993, as amended, and any necessary costs incurred by the
176 licensing agency for the handling and administration of the
177 criminal history background checks.

178 **SECTION 3.** This act shall take effect and be in force from
179 and after July 1, 2004.