

By: Senator(s) Nunnelee

To: Public Health and Welfare

SENATE BILL NO. 2367

1 AN ACT TO AMEND SECTIONS 43-20-5, 43-20-8, 43-20-11,
 2 43-20-12, 43-20-14, 43-20-53, 43-20-57 AND 43-20-59, MISSISSIPPI
 3 CODE OF 1972, TO TRANSFER THE POWERS AND DUTIES OF THE STATE
 4 DEPARTMENT OF HEALTH RELATING TO THE LICENSURE OF CHILD CARE
 5 FACILITIES TO THE STATE DEPARTMENT OF HUMAN SERVICES AND TO
 6 PROVIDE THAT THE DEPARTMENT OF HUMAN SERVICES SHALL PERFORM ALL OF
 7 THE DUTIES RELATING TO THE ESTABLISHMENT AND ENFORCEMENT OF
 8 REGULATIONS GOVERNING THE OPERATION OF LICENSED CHILD CARE
 9 FACILITIES THAT WERE FORMERLY PERFORMED BY THE STATE DEPARTMENT OF
 10 HEALTH; TO REPEAL SECTIONS 43-20-7 AND 43-20-55, MISSISSIPPI CODE
 11 OF 1972, WHICH CREATE AN ADVISORY COUNCIL TO ASSIST THE LICENSING
 12 AGENCY IN THE DEVELOPMENT OF CHILD CARE FACILITY STANDARDS AND
 13 REGULATIONS; AND FOR RELATED PURPOSES.

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

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

17 43-20-5. (1) From and after July 1, 2005, the powers and
 18 duties of the State Department of Health relating to the licensure
 19 of child care facilities under this chapter shall be transferred
 20 to the State Department of Human Services. All records, property,
 21 funds, other assets and personnel of the Child Care Licensure Unit
 22 and the Child Care Licensure Program shall be transferred to the
 23 Department of Human Services. The Executive Director of the
 24 Department of Human Services may assign to the appropriate offices
 25 such powers and duties deemed appropriate to carry out the lawful
 26 functions of the department under this chapter.

27 (2) When used in this chapter, the following words shall
 28 have the following meanings:

29 (a) "Child care facility" means a place that provides
 30 shelter and personal care for six (6) or more children who are not
 31 related within the third degree computed according to the civil
 32 law to the operator and who are under thirteen (13) years of age,

33 for any part of the twenty-four-hour day, whether that place is
34 organized or operated for profit or not. The term "child care
35 facility" includes day nurseries, day care centers and any other
36 facility that falls within the scope of the definitions set forth
37 in this paragraph, regardless of auspices. Exemptions from the
38 provisions of this chapter include:

39 (i) Child care facilities that operate for no more
40 than two (2) days a week, whose primary purpose is to provide
41 respite for the caregiver or temporary care during other scheduled
42 or related activities and organized programs that operate for
43 three (3) or fewer weeks per year such as, but not limited to,
44 vacation bible schools and scout day camps.

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

47 (iii) 1. Any elementary, including kindergarten,
48 and/or secondary school system, accredited by the Mississippi
49 State Department of Education, the Southern Association of
50 Colleges and Schools, the Mississippi Private School Education
51 Association, the American Association of Christian Schools, the
52 Association of Christian Schools International, and any Head Start
53 program operating in conjunction with an elementary school system,
54 whether it is public, private or parochial, whose primary purpose
55 is a structured school or school readiness program.

56 2. Accreditation, for the purpose of
57 exemption from the provisions of this chapter, means: a. receipt
58 by any school or school system of full accreditation from an
59 accrediting entity listed in item 1 of this subparagraph (iii), or
60 b. proof of application by the school or school system for
61 accreditation status from the accrediting entity. Proof of
62 application for accreditation status shall include, but not be
63 limited to, a copy of the applicant's completed application for
64 accreditation filed with the licensing agency and a letter or
65 other authenticating documentation from a signatory authority with

66 the accrediting entity that the application for accreditation has
67 been received and that the applicant is currently under
68 consideration or review for full accreditation status by the
69 accrediting entity. An exemption for a nonaccredited applicant
70 under this item 2 shall be for a maximum of one (1) year from the
71 receipt date by the licensing agency of the completed
72 documentation for proof of application for accreditation status.
73 Failure to receive full accreditation by the end of the one-year
74 exemption period for a nonaccredited applicant shall result in the
75 nonaccredited applicant no longer remaining exempt from the
76 provisions of this chapter at the end of the one-year period.
77 However, if full accreditation is not received by the end of the
78 one-year exemption period, the State Department of Human Services,
79 in its discretion, may extend the exemption period for any
80 nonaccredited applicant for periods of six (6) months, with the
81 total extension not to exceed one (1) year. During any such
82 extension periods, the department shall have the authority to
83 enforce child care facility licensure provisions relating to the
84 health and safety of the children in the school or school system.
85 If a nonaccredited applicant fails to receive full accreditation
86 by the end of all extended exemption periods, the applicant shall
87 no longer remain exempt from the provisions of this chapter at the
88 end of the extended exemption periods. This item 2 shall stand
89 repealed on July 1, 2006.

90 (iv) Any membership organization affiliated with a
91 national organization that charges only a nominal annual
92 membership fee, does not receive monthly, weekly or daily payments
93 for services, and is certified by its national association as
94 being in compliance with the association's minimum standards and
95 procedures including, but not limited to, the Boys and Girls Club
96 of America, and the YMCA.

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

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

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

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

106 (d) "Person" means any person, firm, partnership,
107 corporation or association.

108 (e) "Operator" means any person, acting individually or
109 jointly with another person or persons, who establishes, owns,
110 operates, conducts or maintains a child care facility. The child
111 care facility license shall be issued in the name of the operator,
112 or, if there is more than one (1) operator, in the name of one (1)
113 of the operators. If there is more than one (1) operator, all
114 statutory and regulatory provisions concerning the background
115 checks of operators shall be equally applied to all operators of a
116 facility including, but not limited to, a spouse who jointly owns,
117 operates or maintains the child care facility regardless of which
118 particular person is named on the license.

119 (f) "Personal care" means assistance rendered by
120 personnel of the child care facility in performing one or more of
121 the activities of daily living which includes, but is not limited
122 to, the feeding, personal grooming, supervising and dressing of
123 children placed in the child care facility.

124 (g) "Licensing agency" means the Mississippi Department
125 of Human Services.

126 (h) "Caregiver" means any person who provides direct
127 care, supervision or guidance to children in a child care
128 facility, regardless of title or occupation.

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

131 43-20-8. (1) The licensing agency shall have powers and
132 duties as set forth below, in addition to other duties prescribed
133 under this chapter:

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

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

140 (c) Set and collect fees and penalties as provided for
141 in this chapter; and

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

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

146 (3) Each child care facility shall develop and maintain a
147 current list of contact persons for each child provided care by
148 that facility. An agreement may be made between the child care
149 facility and the child's parent, guardian or contact person at the
150 time of registration to inform the parent, guardian or contact
151 person if the child does not arrive at the facility within a
152 reasonable time.

153 (4) Child care facilities shall require that, for any
154 current or prospective caregiver, current criminal records,
155 background checks and current child abuse registry checks are
156 obtained. In order to determine the applicant's suitability for
157 employment, the applicant shall be fingerprinted. If no
158 disqualifying record is identified at the state level, the
159 fingerprints shall be forwarded by the Department of Public Safety
160 to the FBI for a national criminal history record check.

161 (5) The licensing agency shall require to be performed a
162 criminal records background check and a child abuse registry check
163 for all operators of a child care facility and any person living

164 in a residence used for child care. The Department of Human
165 Services shall have the authority to disclose * * * any potential
166 applicant whose name is listed on the Child Abuse Central Registry
167 or has a pending administrative review. That information shall
168 remain confidential by all parties. In order to determine the
169 applicant's suitability for employment, the applicant shall be
170 fingerprinted. If no disqualifying record is identified at the
171 state level, the fingerprints shall be forwarded by the Department
172 of Public Safety to the FBI for a national criminal history record
173 check.

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

178 (7) The licensing agency and its agents, officers,
179 employees, attorneys and representatives shall not be held civilly
180 liable for any findings, recommendations or actions taken under
181 this section.

182 (8) All fees incurred in compliance with this section shall
183 be borne by the child care facility. The licensing agency is
184 authorized to charge a fee that includes the amount required by
185 the Federal Bureau of Investigation for the national criminal
186 history record check in compliance with the Child Protection Act
187 of 1993, as amended, and any necessary costs incurred by the
188 licensing agency for the handling and administration of the
189 criminal history background checks.

190 **SECTION 3.** Section 43-20-11, Mississippi Code of 1972, is
191 amended as follows:

192 43-20-11. An application for a license under this chapter
193 shall be made to the licensing agency upon forms provided by it,
194 and shall contain such information as the licensing agency may
195 reasonably require. Each application for a license shall be
196 accompanied by a license fee not to exceed Two Hundred Dollars

197 (\$200.00), which shall be paid to the licensing agency. Licenses
198 shall be granted to applicants upon the filing of properly
199 completed application forms, accompanied by payment of the said
200 license fee, and a certificate of inspection and approval by the
201 fire department of the municipality or other political subdivision
202 in which the facility is located, and by a certificate of
203 inspection and approval by the health department of the county in
204 which the facility is located, and approval by the licensing
205 agency; except that if no fire department exists where the
206 facility is located, the State Fire Marshal shall certify as to
207 the inspection for safety from fire hazards. Said fire, county
208 health department and licensing agency inspections and approvals
209 shall be based upon regulations promulgated by the licensing
210 agency * * *.

211 Each license shall be issued only for the premises and person
212 or persons named in the application and shall not be transferable
213 or assignable except with the written approval of the licensing
214 agency. Licenses shall be posted in a conspicuous place on the
215 licensed premises.

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

218 **SECTION 4.** Section 43-20-12, Mississippi Code of 1972, is
219 amended as follows:

220 43-20-12. All fees collected by the Mississippi Department
221 of Human Services under this chapter and any penalties collected
222 by the board for violations of this chapter shall be deposited in
223 the State General Fund * * *.

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

226 43-20-14. (1) The licensing agency may deny a license or
227 refuse to renew a license for any of the reasons set forth in
228 subsection (3) of this section.

229 (2) Before the licensing agency may deny or refuse to renew,
230 the applicant or person named on the license shall be entitled to
231 a hearing in order to show cause why the license should not be
232 denied or should be renewed.

233 (3) The licensing agency may suspend, revoke or restrict the
234 license of any child care facility upon one or more of the
235 following grounds:

236 (a) Fraud, misrepresentation or concealment of material
237 facts;

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

242 (c) Violation of any of the provisions of this act or
243 of the regulations governing the licensing and regulation of child
244 care facilities promulgated by the licensing agency;

245 (d) Any conduct, or failure to act, that is found or
246 determined by the licensing agency to threaten the health or
247 safety of children at the facility;

248 (e) Failure by the child care facility to comply with
249 the provisions of Section 43-20-8(3) regarding background checks
250 of caregivers; and

251 (f) Information received by the licensing agency as a
252 result of the criminal records background check and the child
253 abuse registry check on all operators under Section 43-20-8.

254 (4) Before the licensing agency may suspend, revoke or
255 restrict the license of any facility, any licensee affected by
256 that decision of the licensing agency shall be entitled to a
257 hearing in which the licensee may show cause why the license
258 should not be suspended, revoked or restricted.

259 (5) Any licensee who disagrees with or is aggrieved by a
260 decision of the Mississippi State Department of Human Services in
261 regard to the denial, refusal to renew, suspension, revocation or

262 restriction of the license of the licensee, may appeal to the
263 chancery court of the county in which the facility is located.
264 The appeal shall be filed no later than thirty (30) days after the
265 licensee receives written notice of the final administrative
266 action by the Mississippi State Department of Human Services as to
267 the suspension, revocation or restriction of the license of the
268 licensee.

269 **SECTION 6.** Section 43-20-53, Mississippi Code of 1972, is
270 amended as follows:

271 43-20-53. As used in Sections 43-20-51 through 43-20-65:

272 (a) "Family child care home" means any residential
273 facility occupied by the operator where five (5) or fewer children
274 who are not related within the third degree computed according to
275 the civil law to the provider and who are under the age of
276 thirteen (13) years of age are provided care for any part of the
277 twenty-four-hour day.

278 (b) "Registering agency" means the Mississippi State
279 Department of Human Services.

280 (c) "Provider" means the person responsible for the
281 care of children.

282 **SECTION 7.** Section 43-20-57, Mississippi Code of 1972, is
283 amended as follows:

284 43-20-57. (1) No person shall knowingly maintain a family
285 child care home if, in such family child care home, there resides,
286 works or regularly volunteers any person who:

287 (a) (i) Has a felony conviction for a crime against
288 persons;

289 (ii) Has a felony conviction under the Uniform
290 Controlled Substances Act;

291 (iii) Has a conviction for a crime of child abuse
292 or neglect;

293 (iv) Has a conviction for any sex offense as
294 defined in Section 45-33-23, Mississippi Code of 1972; or

295 (v) Any other offense committed in another
296 jurisdiction or any federal offense which, if committed in this
297 state, would be deemed to be such a crime without regard to its
298 designation elsewhere;

299 (b) Has been adjudicated a juvenile offender because of
300 having committed an act which if done by an adult would constitute
301 the commission of a felony and which is a crime against persons;

302 (c) Has had a child declared in a court order in this
303 or any other state to be deprived or a child in need of care based
304 on an allegation of physical, mental or emotional abuse or neglect
305 or sexual abuse;

306 (d) Has had parental rights terminated pursuant to
307 Section 93-15-101 et seq., Mississippi Code of 1972; or

308 (e) Has an infectious or contagious disease, as defined
309 by the State Department of Health pursuant to Section 41-23-1,
310 Mississippi Code of 1972.

311 (2) No person shall maintain a family child care home if
312 such person has been found to be a disabled person in need of a
313 guardian or conservator, or both.

314 (3) Any person who resides in the home and who has been
315 found to be a disabled person in need of a guardian or
316 conservator, or both, shall be included in the total number of
317 children allowed in care.

318 (4) In accordance with the provision of this subsection (4),
319 the State Department of Human Services shall have access to any
320 court orders or adjudications of any court of record, any records
321 of such orders or adjudications, criminal history record
322 information in the possession of the Mississippi Highway Safety
323 Patrol or court of this state concerning persons working,
324 regularly volunteering or residing in a family child care home.
325 The department shall have access to these records for the purpose
326 of determining whether or not the home meets the requirements of
327 Sections 43-20-51 through 43-20-65.

328 (5) No family child care home or its employees shall be
329 liable for civil damages to any person refused employment or
330 discharged from employment by reason of such home's compliance
331 with the provisions of this section if such home acts in good
332 faith to comply with this section.

333 **SECTION 8.** Section 43-20-59, Mississippi Code of 1972, is
334 amended as follows:

335 43-20-59. (1) Any person maintaining a family child care
336 home may register such home with the State Department of Human
337 Services on forms provided by the department.

338 (2) A certificate of registration shall be issued to the
339 applicant for registration who (a) attests to the safety of the
340 home for the care of children, (b) submits a fee of Five Dollars
341 (\$5.00) payable to the department, and (c) certifies that no
342 person described in paragraph (a), (b), (c), (d) or (e) of Section
343 43-20-57(1) resides, works or volunteers in the family child care
344 home.

345 (3) The department shall furnish each applicant for
346 registration a family child care home safety evaluation form to be
347 completed by the applicant and submitted with the registration
348 application.

349 (4) The certificate of registration shall be renewed
350 annually in the same manner provided for in this section.

351 (5) A certificate of registration shall be in force for one
352 (1) year after the date of issuance unless revoked pursuant to
353 Sections 43-20-51 through 43-20-65. The certificate shall specify
354 that the registrant may operate a family child care home for five
355 (5) or fewer children. This section shall not be construed to
356 limit the right of the department to enter a registered family
357 child care home for the purpose of assessing compliance with
358 Sections 43-20-51 through 43-20-65 after receiving a complaint
359 against the registrant of such home or in conducting a periodic
360 routine inspection.

361 (6) The department shall adopt rules and regulations to
362 implement the registration provisions.

363 **SECTION 9.** Sections 43-20-7 and 43-20-55, Mississippi Code
364 of 1972, which create an Advisory Council to assist the licensing
365 agency in the development of child care facility standards and
366 regulations, are hereby repealed.

367 **SECTION 10.** This act shall take effect and be in force from
368 and after July 1, 2005.