

## Senate Amendments to House Bill No. 813

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

### AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

15        SECTION 1. (1) The Department of Human Services is  
16 Mississippi's lead agency in the federal Child Care and  
17 Development Fund (CCDF) program. CCDF is comprised of the  
18 following funding streams: discretionary, mandatory, federal  
19 matching, and state matching. In addition, as allowed by federal  
20 regulation, Mississippi currently transfers twenty percent (20%)  
21 of the Temporary Assistance to Needy Families (TANF) grant into  
22 CCDF. The CCDF/TANF program helps eligible working parents pay  
23 for early care and education services for their children.

24        (2) In the operation of the CCDF/TANF program, the  
25 Department of Human Services shall comply with the following  
26 requirements:

27           (a) The department shall maintain records and post  
28 quarterly on a publicly accessible web site for each county the  
29 information required for the federal report known as the Child  
30 Care Aggregate Report, ACF-800, and for the state as a whole, the  
31 information required for the financial report known as ACF-696  
32 related to CCDF (42 USCS, Chapter 105, Subchapter II-B).

33           (b) The department shall establish performance level  
34 standards including the following requirements in CCDF/TANF  
35 certificate subgrants: measurable outcome-based contract  
36 measures, clear statements of expectations, evaluation criteria,  
37 documentation, and the explicit descriptions of reporting  
38 requirements. The State Department of Audit shall annually audit  
39 the expenditures by the department, the cost to be defrayed from  
40 any available public or private funds, or funds from any other

41 source, as determined by the State Auditor. The State Department  
42 of Audit shall immediately audit expenditures by  
43 subrecipients/subgrantees including those currently known as  
44 "Designated Agents" and those to whom Quality Improvement funds  
45 were awarded by the department during the five (5) years next  
46 preceding the effective date of this act. In addition, the State  
47 Department of Audit shall periodically, but not less than once  
48 every three (3) years, conduct performance audits on the  
49 department for the purposes of assessing program impact, the cost  
50 to be defrayed from any available public or private funds, or  
51 funds from any other source, as determined by the State Auditor.  
52 The State Department of Audit shall provide copies of each of the  
53 audits to the Chairmen of the House Public Health and Human  
54 Services Committee and the Senate Public Health and Welfare  
55 Committee.

56 (c) The department shall provide to the custodial  
57 parents a plain-language explanation of all program criteria to  
58 qualify for a CCDF/TANF certificate to obtain early care and  
59 education for a child from birth up to the 13th birthday if not  
60 disabled, but if disabled, then up to eighteen (18) years of age.

61 **SECTION 2.** Section 43-20-5, Mississippi Code of 1972, is  
62 amended as follows:

63 43-20-5. (1) From and after July 1, 2006, the powers and  
64 duties of the State Department of Health relating to the licensure  
65 of child care facilities under this chapter shall be transferred  
66 to the State Department of Human Services. All records, property,  
67 funds, other assets and personnel of the Child Care Licensure Unit  
68 and the Child Care Licensure Program shall be transferred to the  
69 Department of Human Services. The Executive Director of the  
70 Department of Human Services may assign to the appropriate offices  
71 such powers and duties deemed appropriate to carry out the lawful  
72 functions of the department under this chapter.

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

75           (a) "Child care facility" means a place that provides  
76 shelter and personal care for six (6) or more children who are not  
77 related within the third degree computed according to the civil  
78 law to the operator and who are under thirteen (13) years of age,  
79 for any part of the twenty-four-hour day, whether that place is  
80 organized or operated for profit or not. The term "child care  
81 facility" includes day nurseries, day care centers and any other  
82 facility that falls within the scope of the definitions set forth  
83 in this paragraph, regardless of auspices. Exemptions from the  
84 provisions of this chapter include:

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

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

93                   (iii) 1. Any elementary, including kindergarten,  
94 and/or secondary school system, accredited by the Mississippi  
95 State Department of Education, the Southern Association of  
96 Colleges and Schools, the Mississippi Private School Education  
97 Association, the American Association of Christian Schools, the  
98 Association of Christian Schools International, and any Head Start  
99 program operating in conjunction with an elementary school system,  
100 whether it is public, private or parochial, whose primary purpose  
101 is a structured school or school readiness program.

102                               2. Accreditation, for the purpose of  
103 exemption from the provisions of this chapter, means: a. receipt  
104 by any school or school system of full accreditation from an  
105 accrediting entity listed in item 1 of this subparagraph (iii), or  
106 b. proof of application by the school or school system for  
107 accreditation status from the accrediting entity. Proof of  
108 application for accreditation status shall include, but not be  
109 limited to, a copy of the applicant's completed application for

110 accreditation filed with the licensing agency and a letter or  
111 other authenticating documentation from a signatory authority with  
112 the accrediting entity that the application for accreditation has  
113 been received and that the applicant is currently under  
114 consideration or review for full accreditation status by the  
115 accrediting entity. An exemption for a nonaccredited applicant  
116 under this item 2 shall be for a maximum of one (1) year from the  
117 receipt date by the licensing agency of the completed  
118 documentation for proof of application for accreditation status.  
119 Failure to receive full accreditation by the end of the one-year  
120 exemption period for a nonaccredited applicant shall result in the  
121 nonaccredited applicant no longer remaining exempt from the  
122 provisions of this chapter at the end of the one-year period.  
123 However, if full accreditation is not received by the end of the  
124 one-year exemption period, the State Department of Human Services,  
125 in its discretion, may extend the exemption period for any  
126 nonaccredited applicant for periods of six (6) months, with the  
127 total extension not to exceed one (1) year. During any such  
128 extension periods, the department shall have the authority to  
129 enforce child care facility licensure provisions relating to the  
130 health and safety of the children in the school or school system.  
131 If a nonaccredited applicant fails to receive full accreditation  
132 by the end of all extended exemption periods, the applicant shall  
133 no longer remain exempt from the provisions of this chapter at the  
134 end of the extended exemption periods. This item 2 shall stand  
135 repealed on July 1, 2006.

136 (iv) Any membership organization affiliated with a  
137 national organization that charges only a nominal annual  
138 membership fee, does not receive monthly, weekly or daily payments  
139 for services, and is certified by its national association as  
140 being in compliance with the association's minimum standards and  
141 procedures including, but not limited to, the Boys and Girls Club  
142 of America, and the YMCA.

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

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

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

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

152 (d) "Person" means any person, firm, partnership,  
153 corporation or association.

154 (e) "Operator" means any person, acting individually or  
155 jointly with another person or persons, who establishes, owns,  
156 operates, conducts or maintains a child care facility. The child  
157 care facility license shall be issued in the name of the operator,  
158 or, if there is more than one (1) operator, in the name of one (1)  
159 of the operators. If there is more than one (1) operator, all  
160 statutory and regulatory provisions concerning the background  
161 checks of operators shall be equally applied to all operators of a  
162 facility including, but not limited to, a spouse who jointly owns,  
163 operates or maintains the child care facility regardless of which  
164 particular person is named on the license.

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

170 (g) "Licensing agency" means the Mississippi Department  
171 of Human Services.

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

175 **SECTION 3.** Section 43-20-7, Mississippi Code of 1972, is  
176 amended as follows:

177 43-20-7. (1) There is hereby created an advisory council  
178 which shall be appointed by the executive director of the

179 licensing agency, who shall serve at the pleasure of the executive  
180 director.

181 (2) The advisory council shall consist of eleven (11)  
182 persons, six (6) of whom shall be \* \* \* child care providers, and  
183 five (5) of whom shall represent child care professional  
184 organizations, child advocacy groups, and/or state agencies which  
185 provide child care funding or services. No more than four (4)  
186 members shall be appointed from any one (1) state Supreme Court  
187 district.

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

191 (4) Members of the advisory council who are not public  
192 employees shall be reimbursed for mileage and expenses as is  
193 authorized by law.

194 **SECTION 4.** Section 43-20-8, Mississippi Code of 1972, is  
195 amended as follows:

196 43-20-8. (1) The licensing agency shall have powers and  
197 duties as set forth below, in addition to other duties prescribed  
198 under this chapter:

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

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

205 (c) Set and collect fees and penalties as provided for  
206 in this chapter; and

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

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

211 (3) Each child care facility shall develop and maintain a  
212 current list of contact persons for each child provided care by  
213 that facility. An agreement may be made between the child care

214 facility and the child's parent, guardian or contact person at the  
215 time of registration to inform the parent, guardian or contact  
216 person if the child does not arrive at the facility within a  
217 reasonable time.

218 (4) Child care facilities shall require that, for any  
219 current or prospective caregiver, current criminal records,  
220 background checks and current child abuse registry checks are  
221 obtained. In order to determine the applicant's suitability for  
222 employment, the applicant shall be fingerprinted. If no  
223 disqualifying record is identified at the state level, the  
224 fingerprints shall be forwarded by the Department of Public Safety  
225 to the FBI for a national criminal history record check.

226 (5) The licensing agency shall require to be performed a  
227 criminal records background check and a child abuse registry check  
228 for all operators of a child care facility and any person living  
229 in a residence used for child care. The Department of Human  
230 Services shall have the authority to disclose \* \* \* any potential  
231 applicant whose name is listed on the Child Abuse Central Registry  
232 or has a pending administrative review. That information shall  
233 remain confidential by all parties. In order to determine the  
234 applicant's suitability for employment, the applicant shall be  
235 fingerprinted. If no disqualifying record is identified at the  
236 state level, the fingerprints shall be forwarded by the Department  
237 of Public Safety to the FBI for a national criminal history record  
238 check.

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

243 (7) The licensing agency and its agents, officers,  
244 employees, attorneys and representatives shall not be held civilly  
245 liable for any findings, recommendations or actions taken under  
246 this section.

247 (8) All fees incurred in compliance with this section shall  
248 be borne by the child care facility. The licensing agency is

249 authorized to charge a fee that includes the amount required by  
250 the Federal Bureau of Investigation for the national criminal  
251 history record check in compliance with the Child Protection Act  
252 of 1993, as amended, and any necessary costs incurred by the  
253 licensing agency for the handling and administration of the  
254 criminal history background checks.

255       **SECTION 5.** Section 43-20-11, Mississippi Code of 1972, is  
256 amended as follows:

257       43-20-11. An application for a license under this chapter  
258 shall be made to the licensing agency upon forms provided by it,  
259 and shall contain such information as the licensing agency may  
260 reasonably require. Each application for a license shall be  
261 accompanied by a license fee not to exceed Two Hundred Dollars  
262 (\$200.00), which shall be paid to the licensing agency. Licenses  
263 shall be granted to applicants upon the filing of properly  
264 completed application forms, accompanied by payment of the said  
265 license fee, and a certificate of inspection and approval by the  
266 fire department of the municipality or other political subdivision  
267 in which the facility is located, and by a certificate of  
268 inspection and approval by the health department of the county in  
269 which the facility is located, and approval by the licensing  
270 agency; except that if no fire department exists where the  
271 facility is located, the State Fire Marshal shall certify as to  
272 the inspection for safety from fire hazards. Said fire, county  
273 health department and licensing agency inspections and approvals  
274 shall be based upon regulations promulgated by the licensing  
275 agency \* \* \*.

276       Each license shall be issued only for the premises and person  
277 or persons named in the application and shall not be transferable  
278 or assignable except with the written approval of the licensing  
279 agency. Licenses shall be posted in a conspicuous place on the  
280 licensed premises.

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

283           **SECTION 6.** Section 43-20-12, Mississippi Code of 1972, is  
284 amended as follows:

285           43-20-12. All fees collected by the Mississippi Department  
286 of Human Services under this chapter and any penalties collected  
287 by the board for violations of this chapter shall be deposited in  
288 the State General Fund \* \* \* and shall be appropriated to the  
289 department in addition to all other funds appropriated from the  
290 State General Fund to the department. Said fees and penalties  
291 shall be expended to implement and administer this chapter.

292           **SECTION 7.** Section 43-20-14, Mississippi Code of 1972, is  
293 amended as follows:

294           43-20-14. (1) The licensing agency may deny a license or  
295 refuse to renew a license for any of the reasons set forth in  
296 subsection (3) of this section.

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

301           (3) The licensing agency may suspend, revoke or restrict the  
302 license of any child care facility upon a finding of a material  
303 violation of one or more of the following grounds:

304                   (a) Fraud, misrepresentation or concealment of material  
305 facts;

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

310                   (c) Violation of any of the provisions of this act or  
311 of the regulations governing the licensing and regulation of child  
312 care facilities promulgated by the licensing agency;

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

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

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

322 (4) Before the licensing agency may suspend, revoke or  
323 restrict the license of any facility, any licensee affected by  
324 that decision of the licensing agency shall be entitled to a  
325 hearing in which the licensee may show cause why the license  
326 should not be suspended, revoked or restricted.

327 (5) Any licensee who disagrees with or is aggrieved by a  
328 decision of the Mississippi State Department of Human Services in  
329 regard to the denial, refusal to renew, suspension, revocation or  
330 restriction of the license of the licensee, may appeal to the  
331 chancery court of the county in which the facility is located.  
332 The appeal shall be filed no later than thirty (30) days after the  
333 licensee receives written notice of the final administrative  
334 action by the Mississippi State Department of Human Services as to  
335 the suspension, revocation or restriction of the license of the  
336 licensee.

337 **SECTION 8.** Section 43-20-53, Mississippi Code of 1972, is  
338 amended as follows:

339 43-20-53. As used in Sections 43-20-51 through 43-20-65:

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

346 (b) "Registering agency" means the Mississippi State  
347 Department of Human Services.

348 (c) "Provider" means the person responsible for the  
349 care of children.

350           **SECTION 9.** Section 43-20-57, Mississippi Code of 1972, is  
351 amended as follows:

352           43-20-57. (1) No person shall knowingly maintain a family  
353 child care home if, in such family child care home, there resides,  
354 works or regularly volunteers any person who:

355                   (a) (i) Has a felony conviction for a crime against  
356 persons;

357                           (ii) Has a felony conviction under the Uniform  
358 Controlled Substances Act;

359                           (iii) Has a conviction for a crime of child abuse  
360 or neglect;

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

363                           (v) Any other offense committed in another  
364 jurisdiction or any federal offense which, if committed in this  
365 state, would be deemed to be such a crime without regard to its  
366 designation elsewhere;

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

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

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

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

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

382           (3) Any person who resides in the home and who has been  
383 found to be a disabled person in need of a guardian or

384 conservator, or both, shall be included in the total number of  
385 children allowed in care.

386 (4) In accordance with the provision of this subsection (4),  
387 the State Department of Human Services shall have access to any  
388 court orders or adjudications of any court of record, any records  
389 of such orders or adjudications, criminal history record  
390 information in the possession of the Mississippi Highway Safety  
391 Patrol or court of this state concerning persons working,  
392 regularly volunteering or residing in a family child care home.  
393 The department shall have access to these records for the purpose  
394 of determining whether or not the home meets the requirements of  
395 Sections 43-20-51 through 43-20-65.

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

401 **SECTION 10.** Section 43-20-59, Mississippi Code of 1972, is  
402 amended as follows:

403 43-20-59. (1) Any person maintaining a family child care  
404 home may register such home with the State Department of Human  
405 Services on forms provided by the department.

406 (2) A certificate of registration shall be issued to the  
407 applicant for registration who (a) attests to the safety of the  
408 home for the care of children, (b) submits a fee of Five Dollars  
409 (\$5.00) payable to the department, and (c) certifies that no  
410 person described in paragraph (a), (b), (c), (d) or (e) of Section  
411 43-20-57(1) resides, works or volunteers in the family child care  
412 home.

413 (3) The department shall furnish each applicant for  
414 registration a family child care home safety evaluation form to be  
415 completed by the applicant and submitted with the registration  
416 application.

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

419 (5) A certificate of registration shall be in force for one  
420 (1) year after the date of issuance unless revoked pursuant to  
421 Sections 43-20-51 through 43-20-65. The certificate shall specify  
422 that the registrant may operate a family child care home for five  
423 (5) or fewer children. This section shall not be construed to  
424 limit the right of the department to enter a registered family  
425 child care home for the purpose of assessing compliance with  
426 Sections 43-20-51 through 43-20-65 after receiving a complaint  
427 against the registrant of such home or in conducting a periodic  
428 routine inspection.

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

431 **SECTION 11.** This act shall take effect and be in force from  
432 and after July 1, 2005.

**Further, amend by striking the title in its entirety and  
inserting in lieu thereof the following:**

1 AN ACT TO PRESCRIBE CERTAIN REQUIREMENTS FOR THE DEPARTMENT  
2 OF HUMAN SERVICES IN THE OPERATION OF THE CHILD CARE AND  
3 DEVELOPMENT FUND/TEMPORARY ASSISTANCE TO NEEDY FAMILIES PROGRAM;  
4 TO AMEND SECTIONS 43-20-5, 43-20-7, 43-20-8, 43-20-11, 43-20-12,  
5 43-20-14, 43-20-53, 43-20-57 AND 43-20-59, MISSISSIPPI CODE OF  
6 1972, TO TRANSFER THE POWERS AND DUTIES OF THE STATE DEPARTMENT OF  
7 HEALTH RELATING TO THE LICENSURE OF CHILD CARE FACILITIES TO THE  
8 STATE DEPARTMENT OF HUMAN SERVICES EFFECTIVE JULY 1, 2006, AND TO  
9 PROVIDE THAT THE DEPARTMENT OF HUMAN SERVICES SHALL PERFORM ALL OF  
10 THE DUTIES RELATING TO THE ESTABLISHMENT AND ENFORCEMENT OF  
11 REGULATIONS GOVERNING THE OPERATION OF LICENSED CHILD CARE  
12 FACILITIES THAT WERE FORMERLY PERFORMED BY THE STATE DEPARTMENT OF  
13 HEALTH; AND FOR RELATED PURPOSES.

SS02\HB813A.6J

John O. Gilbert  
Secretary of the Senate