

By: Senator(s) Nunnelee

To: Public Health and
Welfare

SENATE BILL NO. 2159

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 AMEND SECTION 43-17-39, MISSISSIPPI CODE OF 1972, TO
11 DELETE THE AUTOMATIC REPEALER ON THE STATUTE PROVIDING THAT THE
12 DEPARTMENT OF HUMAN SERVICES IS THE LEAD AGENCY FOR THE FEDERAL
13 CHILD CARE AND DEVELOPMENT FUND (CCDF) PROGRAM; TO REPEAL SECTIONS
14 43-20-7 AND 43-20-55, MISSISSIPPI CODE OF 1972, WHICH CREATE AN
15 ADVISORY COUNCIL TO ASSIST THE LICENSING AGENCY IN THE DEVELOPMENT
16 OF CHILD CARE FACILITY STANDARDS AND REGULATIONS; AND FOR RELATED
17 PURPOSES.

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

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

21 43-20-5. (1) From and after July 1, 2006, the powers and
22 duties of the State Department of Health relating to the licensure
23 of child care facilities under this chapter shall be transferred
24 to the State Department of Human Services. All records, property,
25 funds, other assets and personnel of the Child Care Licensure Unit
26 and the Child Care Licensure Program shall be transferred to the
27 Department of Human Services. The Executive Director of the
28 Department of Human Services may assign to the appropriate offices
29 such powers and duties deemed appropriate to carry out the lawful
30 functions of the department under this chapter.

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

33 (a) "Child care facility" means a place that provides
34 shelter and personal care for six (6) or more children who are not

related within the third degree computed according to the civil law to the operator and who are under thirteen (13) years of age, for any part of the twenty-four-hour day, whether that place is organized or operated for profit or not. The term "child care facility" includes day nurseries, day care centers and any other facility that falls within the scope of the definitions set forth in this paragraph, regardless of auspices. Exemptions from the provisions of this chapter include:

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

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

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

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

68 accreditation filed with the licensing agency and a letter or
69 other authenticating documentation from a signatory authority with
70 the accrediting entity that the application for accreditation has
71 been received and that the applicant is currently under
72 consideration or review for full accreditation status by the
73 accrediting entity. An exemption for a nonaccredited applicant
74 under this item 2 shall be for a maximum of one (1) year from the
75 receipt date by the licensing agency of the completed
76 documentation for proof of application for accreditation status.
77 Failure to receive full accreditation by the end of the one-year
78 exemption period for a nonaccredited applicant shall result in the
79 nonaccredited applicant no longer remaining exempt from the
80 provisions of this chapter at the end of the one-year period.
81 However, if full accreditation is not received by the end of the
82 one-year exemption period, the State Department of Human Services,
83 in its discretion, may extend the exemption period for any
84 nonaccredited applicant for periods of six (6) months, with the
85 total extension not to exceed one (1) year. During any such
86 extension periods, the department shall have the authority to
87 enforce child care facility licensure provisions relating to the
88 health and safety of the children in the school or school system.
89 If a nonaccredited applicant fails to receive full accreditation
90 by the end of all extended exemption periods, the applicant shall
91 no longer remain exempt from the provisions of this chapter at the
92 end of the extended exemption periods. This item 2 shall stand
93 repealed on July 1, 2007.

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

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

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

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

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

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

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

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

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

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

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

135 43-20-8. (1) The licensing agency shall have powers and
136 duties as set forth below, in addition to other duties prescribed
137 under this chapter:

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

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

144 (c) Set and collect fees and penalties as provided for
145 in this chapter; and

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

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

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

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

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

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

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

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

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

43-20-11. An application for a license under this chapter shall be made to the licensing agency upon forms provided by it,

198 and shall contain such information as the licensing agency may
199 reasonably require. Each application for a license shall be
200 accompanied by a license fee not to exceed Two Hundred Dollars
201 (\$200.00), which shall be paid to the licensing agency. Licenses
202 shall be granted to applicants upon the filing of properly
203 completed application forms, accompanied by payment of the said
204 license fee, and a certificate of inspection and approval by the
205 fire department of the municipality or other political subdivision
206 in which the facility is located, and by a certificate of
207 inspection and approval by the health department of the county in
208 which the facility is located, and approval by the licensing
209 agency; except that if no fire department exists where the
210 facility is located, the State Fire Marshal shall certify as to
211 the inspection for safety from fire hazards. Said fire, county
212 health department and licensing agency inspections and approvals
213 shall be based upon regulations promulgated by the licensing
214 agency * * *.

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

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

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

224 43-20-12. All fees collected by the Mississippi Department
225 of Human Services under this chapter and any penalties collected
226 by the board for violations of this chapter shall be deposited in
227 the State General Fund * * *.

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

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

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

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

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

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

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

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

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

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

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

263 (5) Any licensee who disagrees with or is aggrieved by a
264 decision of the Mississippi State Department of Human Services in
265 regard to the denial, refusal to renew, suspension, revocation or
266 restriction of the license of the licensee, may appeal to the
267 chancery court of the county in which the facility is located.
268 The appeal shall be filed no later than thirty (30) days after the
269 licensee receives written notice of the final administrative
270 action by the Mississippi State Department of Human Services as to
271 the suspension, revocation or restriction of the license of the
272 licensee.

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

275 43-20-53. As used in Sections 43-20-51 through 43-20-65:

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

282 (b) "Registering agency" means the Mississippi State
283 Department of Human Services.

284 (c) "Provider" means the person responsible for the
285 care of children.

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

288 43-20-57. (1) No person shall knowingly maintain a family
289 child care home if, in such family child care home, there resides,
290 works or regularly volunteers any person who:

291 (a) (i) Has a felony conviction for a crime against
292 persons;

293 (ii) Has a felony conviction under the Uniform
294 Controlled Substances Act;

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

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

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

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

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

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

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

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

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

(4) In accordance with the provision of this subsection (4), the State Department of Human Services shall have access to any court orders or adjudications of any court of record, any records of such orders or adjudications, criminal history record information in the possession of the Mississippi Highway Safety Patrol or court of this state concerning persons working,

regularly volunteering or residing in a family child care home.
The department shall have access to these records for the purpose
of determining whether or not the home meets the requirements of
Sections 43-20-51 through 43-20-65.

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

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

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

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

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

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

(5) A certificate of registration shall be in force for one
(1) year after the date of issuance unless revoked pursuant to
Sections 43-20-51 through 43-20-65. The certificate shall specify
that the registrant may operate a family child care home for five
(5) or fewer children. This section shall not be construed to
limit the right of the department to enter a registered family

child care home for the purpose of assessing compliance with Sections 43-20-51 through 43-20-65 after receiving a complaint against the registrant of such home or in conducting a periodic routine inspection.

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

SECTION 9. Section 43-17-39, Mississippi Code of 1972, is amended as follows:

43-17-39. (1) The Department of Human Services is Mississippi's lead agency in the federal Child Care and Development Fund (CCDF) program. CCDF is comprised of the following funding streams: discretionary, mandatory, federal matching, and state matching. In addition, as allowed by federal regulation, Mississippi currently transfers twenty percent (20%) of the Temporary Assistance to Needy Families (TANF) grant into CCDF. The CCDF/TANF program helps eligible working parents pay for early care and education services for their children.

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

(a) The department shall maintain records and post on a monthly basis, as information is available, on a publicly accessible website for each county, the information required for the federal report known as the Child Care Aggregate Report, ACF-800, federal report ACF-801 and for the state as a whole, the information required for the financial report known as ACF-696 related to CCDF (42 USCS, Chapter 105, Subchapter II-B).

(b) The department shall establish performance level standards including the following requirements in CCDF/TANF certificate subgrants: measurable outcome-based contract measures, clear statements of expectations, evaluation criteria, documentation, and the explicit descriptions of reporting requirements. The State Department of Audit shall annually audit

the expenditures by the department, subject to the availability of public or private funds specifically for that purpose. The State Department of Audit shall also annually audit expenditures by subrecipients/subgrantees and providers including those currently known as "Designated Agents" and those to whom Quality Improvement funds were awarded by the department, and may audit such expenditures during the five (5) years next preceding July 1, 2005, at the request of the Executive Director of the Department of Human Services and subject to the availability of funds for that purpose. In addition, the State Department of Audit shall periodically, but not less than once every three (3) years, conduct performance audits on the department for the purposes of assessing program impact, subject to the availability of public or private funds for that purpose. The State Department of Audit shall provide copies of each of the audits to the Chairmen of the House Public Health and Human Services Committee and the Senate Public Health and Welfare Committee.

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

(d) The department shall require licensed child care providers participating in the CCDF/TANF certificate program to provide developmentally appropriate early childhood educational activities, including reading and writing.

(3) [Deleted]

(4) [Deleted]

SECTION 10. Sections 43-20-7 and 43-20-55, Mississippi Code of 1972, which create an Advisory Council to assist the licensing agency in the development of child care facility standards and regulations, are hereby repealed.

426 **SECTION 11.** This act shall take effect and be in force from
427 and after July 1, 2006.