

By: Senator(s) Burton

To: Public Health and Welfare

SENATE BILL NO. 2477

1 AN ACT TO AMEND SECTIONS 43-20-9, 43-20-11, 43-20-14 AND  
 2 43-20-15, MISSISSIPPI CODE OF 1972, TO IMPOSE CERTAIN STANDARDS  
 3 AND RESTRICTIONS ON THE STATE DEPARTMENT OF HEALTH RELATIVE TO THE  
 4 LICENSURE OF CHILD CARE FACILITIES, TO PRESCRIBE MAXIMUM CAPACITY,  
 5 TO PROVIDE CERTAIN COMPLAINT PROCEDURES FOR OPERATING A CHILD CARE  
 6 FACILITY WITHOUT A LICENSE, TO PROVIDE CERTAIN NOTICE REQUIREMENTS  
 7 PRIOR TO LICENSE DISCIPLINARY ACTION, TO REQUIRE HEALTH INSPECTORS  
 8 TO ASSIST IF AN EMERGENCY OCCURS DURING AN INSPECTION; AND FOR  
 9 RELATED PURPOSES.

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

11 **SECTION 1.** Section 43-20-9, Mississippi Code of 1972, is  
 12 amended as follows:

13 43-20-9. From and after August 1, 1972, no person acting  
 14 individually or jointly with another person or persons shall  
 15 establish, own, operate, conduct or maintain a child care facility  
 16 in this state without a license issued under this chapter.

17 Any person having reasonable cause to suspect an individual  
 18 is operating a child care facility without a license may cause an  
 19 oral report to be made immediately by telephone to the intake  
 20 official at the Child Care Complaint Hot Line who shall assign the  
 21 chronological number of the complaint to the reporting party as an



22 identification number. The identity of the reporting party shall  
23 not be disclosed to Child Care Licensing Bureau staff or anyone  
24 other than the intake official.

25 **SECTION 2.** Section 43-20-11, Mississippi Code of 1972, is  
26 amended as follows:

27 43-20-11. An application for a license under this chapter  
28 shall be made to the licensing agency upon forms provided by it,  
29 and shall contain such information as the licensing agency may  
30 reasonably require. Each application for a license shall be  
31 accompanied by a license fee not to exceed Four Hundred Dollars  
32 (\$400.00), which shall be paid to the licensing agency. Licenses  
33 shall be granted to applicants upon the filing of properly  
34 completed application forms, accompanied by payment of the said  
35 license fee, and a certificate of inspection and approval by the  
36 fire department of the municipality or other political subdivision  
37 in which the facility is located, and by a certificate of  
38 inspection and approval by the health department of the county in  
39 which the facility is located, and approval by the licensing  
40 agency; except that if no fire department exists where the  
41 facility is located, the State Fire Marshal shall certify as to  
42 the inspection for safety from fire hazards. Said fire, county  
43 health department and licensing agency inspections and approvals  
44 shall be based upon regulations promulgated by the licensing  
45 agency as approved by the State Board of Health.



46 Each license shall be issued only for the premises and person  
47 or persons named in the application and shall not be transferable  
48 or assignable except with the written approval of the licensing  
49 agency. Licenses shall be posted in a conspicuous place on the  
50 licensed premises.

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

53 Whenever the Mississippi Board of Health adopts rules or  
54 regulations that would otherwise affect indoor measurements and  
55 square footage requirements of existing child care facilities,  
56 which, when enforced against existing child care facilities, would  
57 cause a reduction in the number of children to be served in said  
58 facilities or which would affect classroom occupancy not exceeding  
59 adult/child ratios and established group sizes, said facilities  
60 shall be exempt from the new requirements and shall be allowed to  
61 continue under the law and measurements in effect at the time they  
62 were initially licensed. This exemption shall be transferred with  
63 and follow the ownership of said facilities, including a change of  
64 ownership at such facility, until such time said facilities are no  
65 longer operated as licensed child care facilities, and even though  
66 there exist a period of nonuse between ownership of the licensed  
67 facility and the new owner of the facility.

68 The Mississippi Department of Health is thereby prohibited  
69 from the "re-measurement" of existing child care facilities for  
70 the purpose of reducing maximum capacity. This prohibition shall



71 cease only upon the occurrence of any of the conditions set out as  
72 follows: (a) major renovations; and (b) significant changes in  
73 layout/use of space. Upon such occurrence, re-measurement shall  
74 be applied only to the affected and specific area or space ceasing  
75 the prohibition but major renovations shall be measured according  
76 to the rules and measurements in effect at the time the  
77 re-measurement is conducted.

78 For purposes of this section, "existing facilities" are those  
79 facilities and/or structures (i) licensed and operating at the  
80 time of the amendment to this section; and (ii) which were in  
81 compliance with the existing requirements of this section.

82 For purposes of this section, "maximum capacity" is the  
83 maximum number of children who may be cared for in a child care  
84 facility at any one time.

85 The maximum capacity of a child care facility shall be  
86 determined by the indoor square footage, kitchen square footage,  
87 outdoor playground area, and the number of toilets, urinals and  
88 hand-washing lavatories, with the highest capacity determination  
89 being controlling and as follows:

90 Child care facilities in operation on or prior to April 12,  
91 1990, shall require a minimum of thirty-five (35) square feet of  
92 indoor floor space per child exclusive of hallways, bathrooms and  
93 kitchens. Child care facilities beginning business operation on  
94 or after April 12, 1990, shall require a minimum of thirty-five  
95 (35) square feet of indoor space per child exclusive of hallways,



96 bathrooms and kitchens. When infants play and sleep in the same  
97 room, there shall be a minimum of fifteen (15) square feet of  
98 space per child for play plus a minimum of twenty-five (25) square  
99 feet per child for sleeping area with at least two (2) feet  
100 between each crib or cot. When toddlers sleep and play in the  
101 same room using stackable cots, there shall be thirty-five (35)  
102 square feet of space per child. When toddlers play and sleep in  
103 the same room, there shall be a minimum of forty-five (45) square  
104 feet of space per child. At least three (3) square feet of  
105 kitchen space per licensed number of children is required with a  
106 minimum square footage of ninety (90) and a maximum of three  
107 hundred (300). Additionally, facilities serving fifty (50) or  
108 more children shall have a dry food storage area not included in  
109 the kitchen requirement that contains an additional forty-five  
110 (45) square feet as well as a separate freezer for storage of  
111 frozen foods.

112 The usable space for children's activities in child care  
113 facilities beginning business operation on or after July 15, 1997,  
114 shall contain a minimum of thirty-five (35) square feet per child,  
115 fifty (50) square feet measured on the inside, wall-to-wall  
116 dimensions. These spaces are exclusive of food preparation areas,  
117 bathrooms, toilets, areas for the care of ill children, offices,  
118 staff rooms, corridors, hallways, stairways, closets, lockers,  
119 laundries, furnace rooms, cabinets, and storage shelving spaces  
120 and areas not inhabited and used by children.



121 For purposes of this section, "fifty (50) square feet" per  
122 child is the total square footage requirement of the National  
123 Health and Safety Standard, FA138, First Edition, adopted in 1997.

124 For purposes of this section, "usable space" is the  
125 designated area of thirty-five (35) square feet per child for  
126 children's activities but does not include the additional fifteen  
127 (15) square feet per child required for space occupied by  
128 cabinets, storage shelving and a normal load of furnishings.

129 Usable space in child care facilities beginning business  
130 operation on or after July 11, 2001, shall be areas dedicated to  
131 children's activities (play, learning, rest and eating) and shall  
132 be utilized for those purposes on a regular basis. Furnishings  
133 shall be equipment which is both size and age appropriate for  
134 children receiving care. The space occupied by inappropriate or  
135 adult size equipment shall be deducted from the children's usable  
136 space.

137 Child care areas should not be used for any business or  
138 purpose unrelated to providing child care when children are  
139 present in these areas.

140 Plans for new construction and/or the renovation of a  
141 proposed new child care facility shall be submitted to the  
142 Mississippi Department of Health prior to the physical site work.

143 The Mississippi Department of Health shall develop a Maximum  
144 Capacity Estimate Worksheet for guiding new construction or  
145 renovation design in meeting all current space. The Maximum



146 Capacity Estimate Worksheet shall be provided to all who request  
147 information on opening a new child care facility or renovation of  
148 an existing facility, and posted on the Mississippi Department of  
149 Health website.

150 The department shall review plans for proposed new child care  
151 facilities and utilizing all physical space requirements and  
152 specifications provided on the Maximum Capacity Estimate  
153 Worksheet, provide written recommendations in meeting all  
154 licensing space requirements as well as a written maximum capacity  
155 estimate based on the plan submitted to the department. It shall  
156 return the plan and all recommendations within thirty (30) days  
157 from the date the submission was received to the child care  
158 applicant with an official Mississippi Department of Health date  
159 stamp and signature of the reviewing official.

160 The returned plan should include notice that any slight  
161 variance from the plan as submitted may cause a reduction in the  
162 actual maximum capacity assigned to the initial license.

163 A new child care facility will be measured to determine the  
164 initial maximum capacity following the completion of new  
165 construction and/or renovation.

166 For purposes of this section, a "new child care facility" is  
167 a child care facility or any structure and/or business beginning  
168 licensed child care operations on or after the effective date of  
169 this act.



170 The Mississippi Board of Health shall not adopt Rules or  
171 Regulations exceeding the requirements in effect as set forth in  
172 the Mississippi Early Learning Guidelines, such as, but not  
173 limited to:

174 **Early Learning Guidelines 4.0 Physical Settings for Existing**  
175 **Structures.** The classroom will consist of a minimum of six  
176 hundred (600) square feet (in space shared with the normal load of  
177 furnishings, accommodating twenty (20) children, fifteen (15)  
178 square feet of "usable space for the children's activities" per  
179 child and fifteen (15) square feet per child for space occupied by  
180 a normal load of furnishings).

181 **Early Learning Guidelines 5.0 Physical Settings for New**  
182 **Structures.** The classroom should be a minimum of one thousand  
183 (1,000) square feet (consistent with the standard already imposed  
184 by the Mississippi Department of Health on "existing facilities"  
185 which, accommodating twenty (20) children, provides thirty-five  
186 (35) square feet of "usable space for the children's activities"  
187 per child plus an additional fifteen (15) square feet per child  
188 for space occupied by a normal load of furnishings).

189 **SECTION 3.** Section 43-20-14, Mississippi Code of 1972, is  
190 amended as follows:

191 43-20-14. (1) The licensing agency may deny a license or  
192 refuse to renew a license for any of the reasons set forth in  
193 subsection (3) of this section.





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

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

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

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

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

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

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

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



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

224 Prior to the denial, refusal to renew, suspension, revocation  
225 or restriction of a license, and/or the imposition of any monetary  
226 penalty, written notice of the contemplated action shall be given  
227 to the applicant or person named on the license of the child care  
228 facility, at the address on record with the licensing agency.  
229 Such notice shall specify the reasons for the proposed action and  
230 shall notify the operator of the right to a district level hearing  
231 on the matter in the county office where the facility is located.  
232 Said notice shall also notify the operator of the right to be  
233 represented by an attorney and include a Request for Hearing form  
234 with instructions and time limits for submitting the request. If  
235 requested by a licensee, the department shall set a date for a  
236 hearing to be held within a reasonable period of time from the  
237 receipt of such notice, and with notice of such hearing date  
238 delivered to such licensee a minimum of ten (10) days prior to  
239 such hearing date.

240 (5) Any licensee who disagrees with or is aggrieved by a  
241 decision of the Mississippi State Department of Health in regard  
242 to the denial, refusal to renew, suspension, revocation or  
243 restriction of the license of the licensee, may appeal to the



244 chancery court of the county in which the facility is located.  
245 The appeal shall be filed no later than thirty (30) days after the  
246 licensee receives written notice of the final administrative  
247 action by the Mississippi State Department of Health as to the  
248 suspension, revocation or restriction of the license of the  
249 licensee.

250         **SECTION 4.** Section 43-20-15, Mississippi Code of 1972, is  
251 amended as follows:

252             43-20-15. The licensing agency shall make or cause to be  
253 made inspections relative to compliance with the laws and  
254 regulations governing the licensure of child care facilities.

255             In the event an emergency arises during such inspections, the  
256 inspector shall assist and not cite the facility for an  
257 infraction.

258             Such inspections shall be made at least once a year but  
259 additional inspections may be made as often as deemed necessary by  
260 the licensing agency.

261         **SECTION 5.** This act shall take effect and be in force from  
262 and after July 1, 2014.

