

By: Senator(s) Burton

To: Public Health and Welfare; Appropriations

SENATE BILL NO. 2128

1 AN ACT TO PROVIDE FOR THE LICENSING AND REGULATION OF ADULT
2 FOSTER CARE FAMILY HOMES AND ADULT FOSTER CARE LARGE GROUP HOMES;
3 TO PROVIDE FOR THE ESTABLISHMENT OF STANDARDS OF CARE FOR SUCH
4 ADULT FOSTER CARE HOMES; TO PROVIDE DEFINITIONS AND EXEMPTIONS; TO
5 PROVIDE THAT THE DIVISION OF FAMILY AND CHILDREN'S SERVICES OF THE
6 DEPARTMENT OF HUMAN SERVICES SHALL BE THE LICENSING AUTHORITY; TO
7 PROVIDE FOR THE APPLICATION OF AND ISSUANCE OF LICENSES; TO
8 PROVIDE FOR THE INSPECTION OF SUCH HOMES; TO PROVIDE FOR
9 DISCIPLINARY PROCEEDINGS; TO PROVIDE FOR INJUNCTIONS AND CRIMINAL
10 PENALTIES FOR VIOLATION OF THIS ACT; TO PROVIDE IMMUNITY; AND FOR
11 RELATED PURPOSES.

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

13 **SECTION 1.** The purpose of this act is to protect the health,
14 safety and well-being of all adults in the state who are cared for
15 by family foster homes by providing for the establishment of
16 licensing requirements for such homes and providing procedures to
17 determine adherence to these requirements.

18 **SECTION 2.** For the purposes of this act, the following words
19 and phrases shall have the meanings ascribed herein:

20 (a) "Adult" means a person eighteen (18) years of age
21 or older who is placed in an adult foster care family home or an
22 adult foster care large group home.

23 (b) "Adult foster care family home" means a private
24 residence with the approved capacity to receive six (6) or fewer
25 adults to be provided with foster care for five (5) or more days a
26 week and for two (2) or more consecutive weeks. The adult foster
27 care family home licensee shall be a member of the household and
28 an occupant of the residence.

29 (c) "Adult foster care large group home" means an adult
30 foster care facility with the approved capacity to receive at



31 least six (6) but not more than twenty (20) adults to be provided
32 with foster care.

33 (d) "Department" means the Mississippi Department of
34 Human Services.

35 (e) "Director" means the Director of the Division of
36 Family and Children's Services of the Mississippi Department of
37 Human Services.

38 (f) "Foster care" means the provision of supervision,
39 personal care and protection in addition to room and board for
40 twenty-four (24) hours a day, five (5) or more days a week, and
41 for two (2) or more consecutive weeks for compensation.

42 (g) "Licensee" means any person, agency or entity
43 licensed under this act.

44 (h) "Personal care" means personal assistance provided
45 by a licensee or an agent or employee of a license to a resident
46 who requires assistance with dressing, personal hygiene, grooming,
47 maintenance of a medication schedule as directed and supervised by
48 the resident's physician, or the development of those personal and
49 social skills required to live in the least restrictive
50 environment.

51 (i) "Protection" means the continual responsibility of
52 the licensee to take reasonable action to insure the health,
53 safety, and well-being of a resident, including protection from
54 physical harm, humiliation, intimidation, and social, moral,
55 financial, and personal exploitation while on the premises, while
56 under the supervision of the licensee or an agent or employee of
57 the licensee, or when the resident's assessment plan states that
58 the resident needs continuous supervision.

59 (j) "Supervision" means guidance or a resident in the
60 activities of daily living, including all of the following: (i)
61 reminding a resident to maintain his or her medication schedule,
62 as directed by the resident's physician; (ii) reminding a resident
63 or important activities to be carried out; (iii) assisting a



64 resident in keeping appointments; and (iv) being aware of a
65 resident's general whereabouts even though the resident may travel
66 independently about the community.

67 **SECTION 3.** (1) The Division of Family and Children's
68 Services shall be the licensing authority for the department, and
69 is vested with all the powers, duties and responsibilities
70 described in this act. The division shall make and establish
71 rules and regulations regarding:

72 (a) Approving, extending, denying, suspending and
73 revoking licenses for adult foster care family homes and adult
74 foster care group homes;

75 (b) Conditional licenses, variances from department
76 rules and exclusions;

77 (c) Basic health and safety standards for licensees;

78 (d) Minimum administration and financial requirements
79 for licensees; and

80 (e) Minimum requirements and standards for adult foster
81 care to be provided by the licensee.

82 (2) The division shall:

83 (a) Define information that shall be submitted to the
84 division with an application for a license;

85 (b) Establish guidelines for the administration and
86 maintenance of client and service records, including staff
87 qualifications, staff to client ratios;

88 (c) Issue licenses in accordance with this act;

89 (d) Conduct surveys and inspections of licensees and
90 facilities;

91 (e) Establish and collect licensure fees;

92 (f) Investigate complaints regarding any licensee or
93 facility;

94 (g) Have access to all records, correspondence and
95 financial data required to be maintained by a licensee or
96 facility;



97 (h) Have authority to interview any client, family
98 member of a client, employee or officer of a licensee or facility;
99 and

100 (i) Have authority to revoke, suspend or extend any
101 license issued by the division.

102 (3) The division shall provide advice and technical
103 assistance to facilities covered by this act to assist facilities
104 in meeting the requirements of this act and the rules promulgated
105 under this act. The division shall offer consultation, upon
106 request, in developing methods for the improvement of service.
107 The division shall provide education to the public regarding the
108 requirements of this act through the ongoing use of mass media and
109 other methods.

110 (4) Upon receipt of a request from an adult foster care
111 facility for certification of a specialized program for
112 developmentally disabled or mentally ill adults, the Mississippi
113 Department of Mental Health shall inspect the facility to
114 determine whether the proposed specialized program conforms with
115 the requirements of applicable law and rules. The Department of
116 Mental Health shall provide the division with an inspection report
117 and a certification, denial or certification, or certification
118 with limited terms for the proposed specialized program. The
119 Department of Mental Health shall reinspect a certified
120 specialized program not less than once biennially and notify the
121 division in the same manner as for the initial certification, and
122 may contract with a county mental health/mental retardation
123 facility for services.

124 **SECTION 4.** (1) Except as provided in Section 6, no person,
125 agency, firm, corporation, association or other entity, acting
126 individually or jointly with any other person or entity, may
127 establish, conduct or maintain an adult foster care family home or
128 adult foster care group home without a valid and current license



129 issued by and under the authority of the division as provided by
130 this act and the rules of the division.

131 (2) No license issued under this act is assignable or
132 transferable.

133 (3) A current license shall at all times be posted in each
134 licensee's facility, in a place that is visible and readily
135 accessible to the public.

136 (4) (a) Each license issued under this act expires at
137 midnight (Central Standard Time) twelve (12) months from the date
138 of issuance unless it has been:

139 (i) Previously revoked by the division; or

140 (ii) Voluntarily returned to the division by the
141 licensee.

142 (b) A license may be renewed upon application and
143 payment of the applicable fee, provided that the licensee meets
144 the license requirements established by this act and the rules and
145 regulations of the division.

146 (5) Any licensee or facility which is in operation at the
147 time rules are made in accordance with this act shall be given a
148 reasonable time for compliance as determined by the rules of the
149 division.

150 **SECTION 5.** (1) An application for a license under this act
151 shall be made to the division and shall contain information that
152 the division determines is necessary in accordance with
153 established rules.

154 (2) Information received by the division through reports,
155 complaints, investigations and inspections shall be classified as
156 public in accordance with Title 25, Chapter 61, Mississippi Code
157 of 1972, Mississippi Public Records Act.

158 **SECTION 6.** The provisions of this act do not apply to:

159 (a) A facility or program owned or operated by an
160 agency of the State of Mississippi or United States government;



161 (b) A facility or program operated by or under an
162 exclusive contract with the Department of Corrections;

163 (c) A nursing home or institution for the aged or
164 infirm licensed under Section 43-11-1, et seq., Mississippi Code
165 of 1972;

166 (d) A hospital licensed under Section 43-9-1, et seq.,
167 Mississippi Code of 1972;

168 (e) A community mental health/retardation facility
169 receiving funds from the Mississippi Department of Mental Health;
170 and

171 (f) A child care residential facility or child foster
172 care home if the number of residents who become eighteen (18)
173 years of age while residing in the institution or home does not
174 exceed three (3).

175 **SECTION 7.** (1) If a license is revoked, the division may
176 grant a new license after:

177 (a) Satisfactory evidence is submitted to the division,
178 evidencing that the conditions upon which revocation was based
179 have been corrected; and

180 (b) Inspection and compliance with all provisions of
181 this act and applicable rules.

182 (2) The division may only suspend a license for a period of
183 time which does not exceed the current expiration date of that
184 license.

185 (3) When a license has been suspended, the division may
186 completely or partially restore the suspended license upon a
187 determination that the:

188 (a) Conditions upon which the suspension was based have
189 been completely or partially corrected; and

190 (b) Interests of the public will not be jeopardized by
191 restoration of the license.

192 **SECTION 8.** (1) The division may, for the purpose of
193 ascertaining compliance with the provisions of this act and its



194 rules and regulations, enter and inspect on a routine basis the
195 facility of a licensee.

196 (2) Before conducting an inspection under subsection (1),
197 the division shall, after identifying the person in charge:

198 (a) Give proper identification;

199 (b) Request to see the applicable license;

200 (c) Describe the nature and purpose of the inspection;

201 and

202 (d) If necessary, explain the authority of the division
203 to conduct the inspection and the penalty for refusing to permit
204 the inspection.

205 (3) In conducting an inspection under subsection (1), the
206 division may, after meeting the requirements of subsection (2):

207 (a) Inspect the physical facilities;

208 (b) Inspect records and documents;

209 (c) Interview directors, employees, clients, family
210 members of clients and others; and

211 (d) Observe the licensee in operation.

212 (4) An inspection conducted under subsection (1) shall be
213 during regular business hours and may be announced or unannounced.

214 (5) The licensee shall make copies of inspection reports
215 available to the public upon request.

216 (6) The provisions of this section apply to on-site
217 inspections and do not restrict the division from contacting
218 family members, neighbors or other individuals, or from seeking
219 information from other sources to determine compliance with the
220 provisions of this act.

221 **SECTION 9.** The division is specifically authorized to
222 promulgate rules pursuant to the Administrative Procedures Act,
223 Title 25, Chapter 43, Mississippi Code of 1972, to regulate fees
224 charged by licensed adult foster care family homes and adult
225 foster large group homes, if it determines that the practices of
226 those licensed homes demonstrates that the fees charged are



227 excessive or that any of the homes' practices are deceptive or
228 misleading; provided, that such rules regarding fees shall take
229 into account the use of any sliding fee by a home which uses a
230 sliding fee procedure to permit prospective families of varying
231 income levels to utilize the services of such facilities.

232 **SECTION 10.** (1) If the division finds that a violation has
233 occurred under this act or the rules and regulations of the
234 division, it may:

235 (a) Deny, suspend or revoke a license or place the
236 licensee on probation, if the division discovers that a licensee
237 is not in compliance with the laws, standards or regulations
238 governing its operation, and/or it finds evidence of aiding,
239 abetting or permitting the commission of any illegal act; or

240 (b) Restrict or prohibit new admissions to the
241 licensee's program or facility, if the division discovers that a
242 licensee is not in compliance with the laws, standards or
243 regulations governing its operation, and/or it finds evidence of
244 aiding, abetting or permitting the commission of any illegal act.

245 (2) If placed on probation, the agency or licensee shall
246 post a copy of the notice in a conspicuous place as directed by
247 the division and with the agency's or individual's license, and
248 the agency shall notify the custodians of each of the adults in
249 its care in writing of the agency's status and the basis for the
250 probation.

251 **SECTION 11.** In addition to, and notwithstanding, any other
252 remedy provided by law the division may, in a manner provided by
253 law and upon the advice of the Attorney General, who shall
254 represent the division in the proceedings, maintain an action in
255 the name of the state for injunction or other process against any
256 person or entity to restrain or prevent the establishment,
257 management or operation of a program or facility or performance of
258 services in violation of this act or rules of the division.



259 **SECTION 12.** Any person, agency, association, corporation,
260 institution, society or other organization violating the
261 provisions of this act shall be guilty of a misdemeanor and shall
262 be punished by a fine not to exceed Five Thousand Dollars
263 (\$5,000.00) or by imprisonment not more than five (5) years, or
264 both such fine and imprisonment.

265 **SECTION 13.** The Department of Human Services and/or its
266 officers, employees, attorneys and representatives shall not be
267 held civilly liable for any findings, recommendations or actions
268 taken pursuant to this act.

269 **SECTION 14.** The Mississippi Department of Human Services
270 shall maintain an Adult Foster Care Resource Exchange Registry,
271 which shall contain a total listing of all licensees under this
272 act who wish to accept adults for foster care services. Said
273 registry shall be distributed to all county human services
274 directors within the state and shall be updated at least
275 quarterly. The families of prospective adult foster care
276 recipients shall be given the option of having their names placed
277 in the registry, such request to be made in writing. The
278 department shall establish regulations for listing descriptive
279 characteristics and names of prospective adult foster care
280 recipients while protecting the privacy of such prospective
281 recipients and their families. Listed names shall be removed when
282 placed in an adult foster care family or large group home, or when
283 the family of the person withdraws the listing.

284 **SECTION 15.** This act shall take effect and be in force from
285 and after July 1, 2002.

