

By: Representative Whittington

To: Public Health and Human Services; Appropriations

HOUSE BILL NO. 1455

1 AN ACT TO AMEND SECTIONS 43-20-5, 43-20-7, 43-20-8, 43-20-11,
2 43-20-12, 43-20-14, 43-20-53, 43-20-55, 43-20-57, 43-20-59 AND
3 43-1-2, MISSISSIPPI CODE OF 1972, TO TRANSFER THE POWERS AND
4 DUTIES OF THE STATE DEPARTMENT OF HEALTH RELATING TO THE LICENSURE
5 OF CHILD CARE FACILITIES TO THE DEPARTMENT OF HUMAN SERVICES AND
6 TO PROVIDE THAT THE DEPARTMENT OF HUMAN SERVICES SHALL PERFORM ALL
7 OF 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; AND FOR RELATED PURPOSES.

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

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

14 43-20-5. (1) From and after July 1, 2004, the powers and
15 duties of the State Department of Health relating to the licensure
16 of child care facilities under this chapter shall be transferred
17 to the Department of Human Services. All records, property,
18 funds, other assets and personnel of the Child Care Licensure Unit
19 and the Child Care Licensure Program shall be transferred to the
20 Department of Human Services. The Executive Director of the
21 Department of Human Services may assign to the appropriate offices
22 such powers and duties deemed appropriate to carry out the lawful
23 functions of the department under this chapter.

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

26 (a) "Child care facility" means a place which provides
27 shelter and personal care for six (6) or more children who are not
28 related within the third degree computed according to the civil
29 law to the operator and who are under thirteen (13) years of age,
30 for any part of the twenty-four-hour day, whether such place be
31 organized or operated for profit or not. The term "child care

32 facility" includes day nurseries, day care centers and any other
33 facility that falls within the scope of the definitions set forth
34 above, regardless of auspices. Exemptions from the provisions of
35 this chapter include:

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

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

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

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

65 consideration or review for full accreditation status by the
66 accrediting entity. An exemption for a nonaccredited applicant
67 under this item 2 shall be for a maximum of one (1) year from the
68 receipt date by the licensing agency of the completed
69 documentation for proof of application for accreditation status.
70 Failure to receive full accreditation by the end of the one-year
71 exemption period for a nonaccredited applicant shall result in the
72 nonaccredited applicant no longer remaining exempt from the
73 provisions of this chapter at the end of the one-year period.
74 However, if full accreditation is not received by the end of the
75 one-year exemption period, the Department of Human Services, in
76 its discretion, may extend the exemption period for any
77 nonaccredited applicant for periods of six (6) months, with the
78 total extension not to exceed one (1) year. During any such
79 extension periods, the department shall have the authority to
80 enforce child care facility licensure provisions relating to the
81 health and safety of the children in the school or school system.
82 If a nonaccredited applicant fails to receive full accreditation
83 by the end of all extended exemption periods, the applicant shall
84 no longer remain exempt from the provisions of this chapter at the
85 end of the extended exemption periods. This item 2 shall stand
86 repealed on July 1, 2005.

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

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

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

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

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

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

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

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

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

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

126 **SECTION 2.** Section 43-20-7, Mississippi Code of 1972, is
127 amended as follows:

128 43-20-7. (1) There is * * * created an advisory council,
129 which shall be appointed by the Executive Director of the

130 Department of Human Services, who shall serve at the pleasure of
131 the Executive Director.

132 (2) The advisory council shall consist of eleven (11)
133 persons, five (5) of whom shall be licensed child care providers,
134 and six (6) of whom shall represent child care professional
135 organizations, child advocacy groups, and/or state agencies which
136 provide child care funding or services. No more than four (4)
137 members shall be appointed from any one (1) state Supreme Court
138 district.

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

142 (4) Members of the advisory council shall be reimbursed for
143 mileage and expenses as is authorized by law.

144 **SECTION 3.** Section 43-20-8, Mississippi Code of 1972, is
145 amended as follows:

146 43-20-8. (1) The licensing agency shall have powers and
147 duties as set forth below in addition to other duties prescribed
148 under this chapter:

149 (a) Promulgate rules and regulations concerning the
150 licensing and regulation of child care facilities as defined
151 herein;

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

155 (c) Set and collect fees and penalties as provided for
156 in this chapter; and

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

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

161 (3) Child care facilities shall require that, for any
162 current or prospective caregiver, current criminal records

163 background checks and current child abuse registry checks are
164 obtained. In order to determine the applicant's suitability for
165 employment, the applicant shall be fingerprinted. If no
166 disqualifying record is identified at the state level, the
167 fingerprints shall be forwarded by the Department of Public Safety
168 to the FBI for a national criminal history record check.

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

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

186 (6) The licensing agency and its agents, officers,
187 employees, attorneys and representatives shall not be held civilly
188 liable for any findings, recommendations or actions taken pursuant
189 to this section.

190 (7) All fees incurred in compliance with this section shall
191 be borne by the child care facility. The licensing agency is
192 authorized to charge a fee that shall include the amount required
193 by the Federal Bureau of Investigation for the national criminal
194 history record check in compliance with the Child Protection Act
195 of 1993, as amended and any necessary costs incurred by the

196 licensing agency for the handling and administration of the
197 criminal history background checks.

198 **SECTION 4.** Section 43-20-11, Mississippi Code of 1972, is
199 amended as follows:

200 43-20-11. An application for a license under this chapter
201 shall be made to the licensing agency upon forms provided by it,
202 and shall contain such information as the licensing agency may
203 reasonably require. Each application for a license shall be
204 accompanied by a license fee not to exceed Two Hundred Dollars
205 (\$200.00), which shall be paid to the licensing agency. Licenses
206 shall be granted to applicants upon the filing of properly
207 completed application forms, accompanied by payment of the said
208 license fee, and a certificate of inspection and approval by the
209 fire department of the municipality or other political subdivision
210 in which the facility is located, and by a certificate of
211 inspection and approval by the health department of the county in
212 which the facility is located, and approval by the licensing
213 agency; except that if no fire department exists where the
214 facility is located, the State Fire Marshal shall certify as to
215 the inspection for safety from fire hazards. Said fire, county
216 health department and licensing agency inspections and approvals
217 shall be based upon regulations promulgated by the licensing
218 agency * * *.

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

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

226 **SECTION 5.** Section 43-20-12, Mississippi Code of 1972, is
227 amended as follows:

228 43-20-12. All fees collected by the Department of Human
229 Services under this chapter and any penalties collected by the
230 board for violations of this chapter shall be deposited in the
231 State General Fund.

232 **SECTION 6.** Section 43-20-14, Mississippi Code of 1972, is
233 amended as follows:

234 43-20-14. (1) The licensing agency may deny a license or
235 refuse to renew a license for any of the reasons set forth in
236 subsection (3) of this section.

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

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

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

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

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

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

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

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

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

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

277 **SECTION 7.** Section 43-20-53, Mississippi Code of 1972, is
278 amended as follows:

279 43-20-53. As used in Sections 43-20-51 through 43-20-65:

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

286 (b) "Registering agency" means the * * * Department of
287 Human Services.

288 (c) "Provider" means the person responsible for the
289 care of children.

290 **SECTION 8.** Section 43-20-55, Mississippi Code of 1972, is
291 amended as follows:

292 43-20-55. The advisory council appointed by the Executive
293 Director of the Department of Human Services under the provisions
294 of Section 43-20-7 shall assist and advise in the development of
295 regulations and standards governing the registration and
296 regulation of family child care homes. Members of the council who
297 are not public employees shall receive per diem compensation as
298 provided under Section 25-3-69, and shall be reimbursed for
299 mileage and expenses.

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

302 43-20-57. (1) No person shall knowingly maintain a family
303 child care home if, in such family child care home, there resides,
304 works or regularly volunteers any person who:

305 (a) (i) Has a felony conviction for a crime against
306 persons;

307 (ii) Has a felony conviction under the Uniform
308 Controlled Substances Act;

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

311 (iv) Has a conviction for any sex offense as
312 defined in Section 45-33-23; or

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

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

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

324 (d) Has had parental rights terminated pursuant to
325 Section 93-15-101 et seq.; or

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

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

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

335 (4) In accordance with the provision of this subsection (4),
336 the * * * Department of Human Services shall have access to any
337 court orders or adjudications of any court of record, any records
338 of such orders or adjudications, criminal history record
339 information in the possession of the Mississippi Highway Safety
340 Patrol or court of this state concerning persons working,
341 regularly volunteering or residing in a family child care home.
342 The department shall have access to these records for the purpose
343 of determining whether or not the home meets the requirements of
344 Sections 43-20-51 through 43-20-65.

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

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

352 43-20-59. (1) Any person maintaining a family child care
353 home may register such home with the * * * Department of Human
354 Services on forms provided by the department.

355 (2) A certificate of registration shall be issued to the
356 applicant for registration who (a) attests to the safety of the

357 home for the care of children, (b) submits a fee of Five Dollars
358 (\$5.00) payable to the department, and (c) certifies that no
359 person described in paragraph (a), (b), (c), (d) or (e) of Section
360 43-20-57(1) resides, works or volunteers in the family child care
361 home.

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

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

368 (5) A certificate of registration shall be in force for one
369 (1) year after the date of issuance unless revoked pursuant to
370 Sections 43-20-51 through 43-20-65. The certificate shall specify
371 that the registrant may operate a family child care home for five
372 (5) or fewer children. This section shall not be construed to
373 limit the right of the department to enter a registered family
374 child care home for the purpose of assessing compliance with
375 Sections 43-20-51 through 43-20-65 after receiving a complaint
376 against the registrant of such home or in conducting a periodic
377 routine inspection.

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

380 **SECTION 11.** Section 43-1-2, Mississippi Code of 1972, is
381 amended as follows:

382 43-1-2. (1) There is created the Mississippi Department of
383 Human Services, whose offices shall be located in Jackson,
384 Mississippi, and which shall be under the policy direction of the
385 Governor.

386 (2) The chief administrative officer of the department shall
387 be the Executive Director of Human Services. The Governor shall
388 appoint the Executive Director of Human Services with the advice
389 and consent of the Senate, and he shall serve at the will and

390 pleasure of the Governor, and until his successor is appointed and
391 qualified. The Executive Director of Human Services shall possess
392 the following qualifications:

393 (a) A bachelor's degree from an accredited institution
394 of higher learning and ten (10) years' experience in management,
395 public administration, finance or accounting; or

396 (b) A master's or doctoral degree from an accredited
397 institution of higher learning and five (5) years' experience in
398 management, public administration, finance or accounting.

399 Those qualifications shall be certified by the State
400 Personnel Board.

401 (3) There shall be a Joint Oversight Committee of the
402 Department of Human Services composed of the respective chairmen
403 of the Senate Public Health and Welfare Committee, the Senate
404 Appropriations Committee, the House Public Health and Welfare
405 Committee and the House Appropriations Committee, two (2) members
406 of the Senate appointed by the Lieutenant Governor to serve at the
407 will and pleasure of the Lieutenant Governor, and two (2) members
408 of the House of Representatives appointed by the Speaker of the
409 House to serve at the will and pleasure of the Speaker. The
410 chairmanship of the committee shall alternate for twelve-month
411 periods between the Senate members and the House members, with the
412 Chairman of the Senate Public Health and Welfare Committee serving
413 as the first chairman. The committee shall meet once each month,
414 or upon the call of the chairman at such times as he deems
415 necessary or advisable, and may make recommendations to the
416 Legislature pertaining to any matter within the jurisdiction of
417 the Mississippi Department of Human Services. The appointing
418 authorities may designate an alternate member from their
419 respective houses to serve when the regular designee is unable to
420 attend such meetings of the oversight committee. For attending
421 meetings of the oversight committee, such legislators shall
422 receive per diem and expenses which shall be paid from the

423 contingent expense funds of their respective houses in the same
424 amounts as provided for committee meetings when the Legislature is
425 not in session; however, no per diem and expenses for attending
426 meetings of the committee will be paid while the Legislature is in
427 session. No per diem and expenses will be paid except for
428 attending meetings of the oversight committee without prior
429 approval of the proper committee in their respective houses.

430 (4) The State Department of Human Services shall provide the
431 services authorized by law to every individual determined to be
432 eligible therefor, and in carrying out the purposes of the
433 department, the executive director is authorized:

434 (a) To formulate the policy of the department regarding
435 human services within the jurisdiction of the department;

436 (b) To adopt, modify, repeal and promulgate, after due
437 notice and hearing, and where not otherwise prohibited by federal
438 or state law, to make exceptions to and grant exemptions and
439 variances from, and to enforce rules and regulations implementing
440 or effectuating the powers and duties of the department under any
441 and all statutes within the department's jurisdiction, all of
442 which shall be binding upon the county departments of human
443 services;

444 (c) To apply for, receive and expend any federal or
445 state funds or contributions, gifts, devises, bequests or funds
446 from any other source;

447 (d) Except as limited by Section 43-1-3, to enter into
448 and execute contracts, grants and cooperative agreements with any
449 federal or state agency or subdivision thereof, or any public or
450 private institution located inside or outside the State of
451 Mississippi, or any person, corporation or association in
452 connection with carrying out the programs of the department; and

453 (e) To discharge such other duties, responsibilities
454 and powers as are necessary to implement the programs of the
455 department.

456 (5) The executive director shall establish the
457 organizational structure of the Mississippi Department of Human
458 Services which shall include the creation of any units necessary
459 to implement the duties assigned to the department and consistent
460 with specific requirements of law, including, but not limited to:

461 (a) Office of Family and Children's Services;

462 (b) Office of Youth Services;

463 (c) Office of Economic Assistance;

464 (d) Office of Child Support;

465 (e) Office of Child Care Licensure.

466 (6) The Executive Director of Human Services shall appoint
467 heads of offices, bureaus and divisions, as defined in Section
468 7-17-11, who shall serve at the pleasure of the executive
469 director. The salary and compensation of such office, bureau and
470 division heads shall be subject to the rules and regulations
471 adopted and promulgated by the State Personnel Board as created
472 under Section 25-9-101 et seq. The executive director shall have
473 the authority to organize offices as deemed appropriate to carry
474 out the responsibilities of the department. The organization
475 charts of the department shall be presented annually with the
476 budget request of the Governor for review by the Legislature.

477 (7) This section shall stand repealed on July 1, 2005.

478 **SECTION 12.** This act shall take effect and be in force from
479 and after July 1, 2004.