

By: Representative Wells-Smith

To: Public Health and Human Services; Appropriations

HOUSE BILL NO. 973

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 DEPARTMENT OF HUMAN SERVICES; TO PROVIDE THAT  
 6 THE DEPARTMENT OF HUMAN SERVICES SHALL PERFORM ALL OF THE DUTIES  
 7 RELATING TO THE ESTABLISHMENT AND ENFORCEMENT OF REGULATIONS  
 8 GOVERNING THE OPERATION OF LICENSED CHILD CARE FACILITIES THAT  
 9 WERE FORMERLY PERFORMED BY THE STATE DEPARTMENT OF HEALTH; TO  
 10 REPEAL SECTIONS 43-20-7 AND 43-20-55, MISSISSIPPI CODE OF 1972,  
 11 WHICH CREATE AN ADVISORY COUNCIL TO ASSIST THE LICENSING AGENCY IN  
 12 THE DEVELOPMENT OF CHILD CARE FACILITY STANDARDS AND REGULATIONS;  
 13 AND FOR RELATED PURPOSES.

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

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

17 43-20-5. (1) From and after July 1, 2005, the powers and  
 18 duties of the State Department of Health relating to the licensure  
 19 of child care facilities under this chapter shall be transferred  
 20 to the Department of Human Services. All records, property,  
 21 funds, other assets and personnel of the Child Care Licensure Unit  
 22 and the Child Care Licensure Program shall be transferred to the  
 23 Department of Human Services. The Executive Director of the  
 24 Department of Human Services may assign to the appropriate offices  
 25 such powers and duties deemed appropriate to carry out the lawful  
 26 functions of the department under this chapter.

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

29 (a) "Child care facility" means a place that provides  
 30 shelter and personal care for six (6) or more children who are not  
 31 related within the third degree computed according to the civil  
 32 law to the operator and who are under thirteen (13) years of age,

33 for any part of the twenty-four-hour day, whether that place is  
34 organized or operated for profit or not. The term "child care  
35 facility" includes day nurseries, day care centers and any other  
36 facility that falls within the scope of the definitions set forth  
37 in this paragraph, regardless of auspices. Exemptions from the  
38 provisions of this chapter include:

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

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

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

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

66 the accrediting entity that the application for accreditation has  
67 been received and that the applicant is currently under  
68 consideration or review for full accreditation status by the  
69 accrediting entity. An exemption for a nonaccredited applicant  
70 under this item 2 shall be for a maximum of one (1) year from the  
71 receipt date by the licensing agency of the completed  
72 documentation for proof of application for accreditation status.  
73 Failure to receive full accreditation by the end of the one-year  
74 exemption period for a nonaccredited applicant shall result in the  
75 nonaccredited applicant no longer remaining exempt from the  
76 provisions of this chapter at the end of the one-year period.  
77 However, if full accreditation is not received by the end of the  
78 one-year exemption period, the Department of Human Services, in  
79 its discretion, may extend the exemption period for any  
80 nonaccredited applicant for periods of six (6) months, with the  
81 total extension not to exceed one (1) year. During any such  
82 extension periods, the department shall have the authority to  
83 enforce child care facility licensure provisions relating to the  
84 health and safety of the children in the school or school system.  
85 If a nonaccredited applicant fails to receive full accreditation  
86 by the end of all extended exemption periods, the applicant shall  
87 no longer remain exempt from the provisions of this chapter at the  
88 end of the extended exemption periods. This item 2 shall stand  
89 repealed on July 1, 2006.

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

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

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

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

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

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

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

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

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

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

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

131           43-20-8. (1) The licensing agency shall have powers and  
132 duties as set forth below, in addition to other duties prescribed  
133 under this chapter:

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

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

140           (c) Set and collect fees and penalties as provided for  
141 in this chapter; and

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

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

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

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

161           (5) The licensing agency shall require to be performed a  
162 criminal records background check and a child abuse registry check  
163 for all operators of a child care facility and any person living

164 in a residence used for child care. The Department of Human  
165 Services shall have the authority to disclose \* \* \* any potential  
166 applicant whose name is listed on the Child Abuse Central Registry  
167 or has a pending administrative review. That information shall  
168 remain confidential by all parties. In order to determine the  
169 applicant's suitability for employment, the applicant shall be  
170 fingerprinted. If no disqualifying record is identified at the  
171 state level, the fingerprints shall be forwarded by the Department  
172 of Public Safety to the FBI for a national criminal history record  
173 check.

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

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

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

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

192 43-20-11. An application for a license under this chapter  
193 shall be made to the licensing agency upon forms provided by it,  
194 and shall contain such information as the licensing agency may  
195 reasonably require. Each application for a license shall be  
196 accompanied by a license fee not to exceed Two Hundred Dollars

197 (\$200.00), which shall be paid to the licensing agency. Licenses  
198 shall be granted to applicants upon the filing of properly  
199 completed application forms, accompanied by payment of the said  
200 license fee, and a certificate of inspection and approval by the  
201 fire department of the municipality or other political subdivision  
202 in which the facility is located, and by a certificate of  
203 inspection and approval by the health department of the county in  
204 which the facility is located, and approval by the licensing  
205 agency; except that if no fire department exists where the  
206 facility is located, the State Fire Marshal shall certify as to  
207 the inspection for safety from fire hazards. Said fire, county  
208 health department and licensing agency inspections and approvals  
209 shall be based upon regulations promulgated by the licensing  
210 agency \* \* \*.

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

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

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

220 43-20-12. All fees collected by the Department of Human  
221 Services under this chapter and any penalties collected by the  
222 board for violations of this chapter shall be deposited in the  
223 State General Fund.

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

226 43-20-14. (1) The licensing agency may deny a license or  
227 refuse to renew a license for any of the reasons set forth in  
228 subsection (3) of this section.

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

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

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

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

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

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

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

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

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

259 (5) Any licensee who disagrees with or is aggrieved by a  
260 decision of the Department of Human Services in regard to the  
261 denial, refusal to renew, suspension, revocation or restriction of



262 the license of the licensee, may appeal to the chancery court of  
263 the county in which the facility is located. The appeal shall be  
264 filed no later than thirty (30) days after the licensee receives  
265 written notice of the final administrative action by the  
266 Department of Human Services as to the suspension, revocation or  
267 restriction of the license of the licensee.

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

270 43-20-53. As used in Sections 43-20-51 through 43-20-65:

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

277 (b) "Registering agency" means the Department of Human  
278 Services.

279 (c) "Provider" means the person responsible for the  
280 care of children.

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

283 43-20-57. (1) No person shall knowingly maintain a family  
284 child care home if, in such family child care home, there resides,  
285 works or regularly volunteers any person who:

286 (a) (i) Has a felony conviction for a crime against  
287 persons;

288 (ii) Has a felony conviction under the Uniform  
289 Controlled Substances Act;

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

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

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

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

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

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

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

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

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

317 (4) In accordance with the provision of this subsection (4),  
318 the Department of Human Services shall have access to any court  
319 orders or adjudications of any court of record, any records of  
320 such orders or adjudications, criminal history record information  
321 in the possession of the Mississippi Highway Safety Patrol or  
322 court of this state concerning persons working, regularly  
323 volunteering or residing in a family child care home. The  
324 department shall have access to these records for the purpose of  
325 determining whether or not the home meets the requirements of  
326 Sections 43-20-51 through 43-20-65.

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

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

334 43-20-59. (1) Any person maintaining a family child care  
335 home may register such home with the Department of Human Services  
336 on forms provided by the department.

337 (2) A certificate of registration shall be issued to the  
338 applicant for registration who (a) attests to the safety of the  
339 home for the care of children, (b) submits a fee of Five Dollars  
340 (\$5.00) payable to the department, and (c) certifies that no  
341 person described in paragraph (a), (b), (c), (d) or (e) of Section  
342 43-20-57(1) resides, works or volunteers in the family child care  
343 home.

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

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

350 (5) A certificate of registration shall be in force for one  
351 (1) year after the date of issuance unless revoked pursuant to  
352 Sections 43-20-51 through 43-20-65. The certificate shall specify  
353 that the registrant may operate a family child care home for five  
354 (5) or fewer children. This section shall not be construed to  
355 limit the right of the department to enter a registered family  
356 child care home for the purpose of assessing compliance with  
357 Sections 43-20-51 through 43-20-65 after receiving a complaint  
358 against the registrant of such home or in conducting a periodic  
359 routine inspection.

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

362           **SECTION 9.** Sections 43-20-7 and 43-20-55, Mississippi Code  
363 of 1972, which create an Advisory Council to assist the licensing  
364 agency in the development of child care facility standards and  
365 regulations, are hereby repealed.

366           **SECTION 10.** This act shall take effect and be in force from  
367 and after July 1, 2005.