

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

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

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

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

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

60 2. Accreditation, for the purpose of
61 exemption from the provisions of this chapter, means: a. receipt
62 by any school or school system of full accreditation from an
63 accrediting entity listed in item 1 of this subparagraph (iii), or
64 b. proof of application by the school or school system for
65 accreditation status from the accrediting entity. Proof of
66 application for accreditation status shall include, but not be
67 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.

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

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

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

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

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

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

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

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

130 (h) "Caregiver" means any person who provides direct
131 care, supervision or guidance to children in a child care
132 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.

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

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

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

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

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

196 43-20-11. An application for a license under this chapter
197 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:

230 43-20-14. (1) The licensing agency may deny a license or
231 refuse to renew a license for any of the reasons set forth in
232 subsection (3) of this section.

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

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

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

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

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

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

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

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

258 (4) Before the licensing agency may suspend, revoke or
259 restrict the license of any facility, any licensee affected by
260 that decision of the licensing agency shall be entitled to a
261 hearing in which the licensee may show cause why the license
262 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;

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

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

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

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

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

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

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

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

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

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

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

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

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

339 43-20-59. (1) Any person maintaining a family child care
340 home may register such home with the State Department of Human
341 Services on forms provided by the department.

342 (2) A certificate of registration shall be issued to the
343 applicant for registration who (a) attests to the safety of the
344 home for the care of children, (b) submits a fee of Five Dollars
345 (\$5.00) payable to the department, and (c) certifies that no
346 person described in paragraph (a), (b), (c), (d) or (e) of Section
347 43-20-57(1) resides, works or volunteers in the family child care
348 home.

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

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

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

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

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

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

369 43-17-39. (1) The Department of Human Services is
370 Mississippi's lead agency in the federal Child Care and
371 Development Fund (CCDF) program. CCDF is comprised of the
372 following funding streams: discretionary, mandatory, federal
373 matching, and state matching. In addition, as allowed by federal
374 regulation, Mississippi currently transfers twenty percent (20%)
375 of the Temporary Assistance to Needy Families (TANF) grant into
376 CCDF. The CCDF/TANF program helps eligible working parents pay
377 for early care and education services for their children.

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

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

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

394 the expenditures by the department, subject to the availability of
395 public or private funds specifically for that purpose. The State
396 Department of Audit shall also annually audit expenditures by
397 subrecipients/subgrantees and providers including those currently
398 known as "Designated Agents" and those to whom Quality Improvement
399 funds were awarded by the department, and may audit such
400 expenditures during the five (5) years next preceding July 1,
401 2005, at the request of the Executive Director of the Department
402 of Human Services and subject to the availability of funds for
403 that purpose. In addition, the State Department of Audit shall
404 periodically, but not less than once every three (3) years,
405 conduct performance audits on the department for the purposes of
406 assessing program impact, subject to the availability of public or
407 private funds for that purpose. The State Department of Audit
408 shall provide copies of each of the audits to the Chairmen of the
409 House Public Health and Human Services Committee and the Senate
410 Public Health and Welfare Committee.

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

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

420 (3) [Deleted]

421 (4) [Deleted]

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

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