

By: Senator(s) Nunnelee

To: Public Health and
Welfare

SENATE BILL NO. 2639

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, 2007, 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, a school
57 affiliated with Accelerated Christian Education, Inc., and any
58 Head Start program operating in conjunction with an elementary
59 school system, whether it is public, private or parochial, whose
60 primary purpose is a structured school or school readiness
61 program.

62 2. Accreditation, for the purpose of
63 exemption from the provisions of this chapter, means: a. receipt
64 by any school or school system of full accreditation from an
65 accrediting entity listed in item 1 of this subparagraph (iii), or
66 b. proof of application by the school or school system for
67 accreditation status from the accrediting entity. Proof of

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

95 (iv) Any membership organization affiliated with a
96 national organization that charges only a nominal annual
97 membership fee, does not receive monthly, weekly or daily payments
98 for services, and is certified by its national association as
99 being in compliance with the association's minimum standards and

100 procedures including, but not limited to, the Boys and Girls Club
101 of America, and the YMCA.

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

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

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

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

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

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

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

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

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

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

136 43-20-8. (1) The licensing agency shall have powers and
137 duties as set forth below, in addition to other duties prescribed
138 under this chapter:

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

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

145 (c) Set and collect fees and penalties as provided for
146 in this chapter; and

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

149 (2) Child care facilities shall assure that parents have
150 welcome access to the child care facility at all times and shall
151 comply with the provisions of Senate Bill No. 2419, 2006 Regular
152 Session.

153 (3) Each child care facility shall develop and maintain a
154 current list of contact persons for each child provided care by
155 that facility. An agreement may be made between the child care
156 facility and the child's parent, guardian or contact person at the
157 time of registration to inform the parent, guardian or contact
158 person if the child does not arrive at the facility within a
159 reasonable time.

160 (4) Child care facilities shall require that, for any
161 current or prospective caregiver, all criminal records, background
162 and sex offender registry checks and current child abuse registry
163 checks are obtained. In order to determine the applicant's

164 suitability for employment, the applicant shall be fingerprinted.
165 If no disqualifying record is identified at the state level, the
166 fingerprints shall be forwarded by the Department of Public Safety
167 to the FBI for a national criminal history record check.

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

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

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

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

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

199 43-20-11. An application for a license under this chapter
200 shall be made to the licensing agency upon forms provided by it,
201 and shall contain such information as the licensing agency may
202 reasonably require. Each application for a license shall be
203 accompanied by a license fee not to exceed Two Hundred Dollars
204 (\$200.00), which shall be paid to the licensing agency. Licenses
205 shall be granted to applicants upon the filing of properly
206 completed application forms, accompanied by payment of the said
207 license fee, and a certificate of inspection and approval by the
208 fire department of the municipality or other political subdivision
209 in which the facility is located, and by a certificate of
210 inspection and approval by the health department of the county in
211 which the facility is located, and approval by the licensing
212 agency; except that if no fire department exists where the
213 facility is located, the State Fire Marshal shall certify as to
214 the inspection for safety from fire hazards. Said fire, county
215 health department and licensing agency inspections and approvals
216 shall be based upon regulations promulgated by the licensing
217 agency * * *.

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

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

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

227 43-20-12. All fees collected by the Mississippi Department
228 of Human Services under this chapter and any penalties collected

229 by the board for violations of this chapter shall be deposited in
230 the State General Fund * * *.

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

233 43-20-14. (1) The licensing agency may deny a license or
234 refuse to renew a license for any of the reasons set forth in
235 subsection (3) of this section.

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

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

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

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

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

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

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

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

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

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

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

278 43-20-53. As used in Sections 43-20-51 through 43-20-65:

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

285 (b) "Registering agency" means the Mississippi State
286 Department of Human Services.

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

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

291 43-20-57. (1) No person shall knowingly maintain a family
292 child care home if, in such family child care home, there resides,
293 works or regularly volunteers any person who:

294 (a) (i) Has a felony conviction for a crime against
295 persons;
296 (ii) Has a felony conviction under the Uniform
297 Controlled Substances Act;
298 (iii) Has a conviction for a crime of child abuse
299 or neglect;
300 (iv) Has a conviction for any sex offense as
301 defined in Section 45-33-23, Mississippi Code of 1972; or
302 (v) Any other offense committed in another
303 jurisdiction or any federal offense which, if committed in this
304 state, would be deemed to be such a crime without regard to its
305 designation elsewhere;
306 (b) Has been adjudicated a juvenile offender because of
307 having committed an act which if done by an adult would constitute
308 the commission of a felony and which is a crime against persons;
309 (c) Has had a child declared in a court order in this
310 or any other state to be deprived or a child in need of care based
311 on an allegation of physical, mental or emotional abuse or neglect
312 or sexual abuse;
313 (d) Has had parental rights terminated pursuant to
314 Section 93-15-101 et seq., Mississippi Code of 1972; or
315 (e) Has an infectious or contagious disease, as defined
316 by the State Department of Health pursuant to Section 41-23-1,
317 Mississippi Code of 1972.
318 (2) No person shall maintain a family child care home if
319 such person has been found to be a disabled person in need of a
320 guardian or conservator, or both.
321 (3) Any person who resides in the home and who has been
322 found to be a disabled person in need of a guardian or
323 conservator, or both, shall be included in the total number of
324 children allowed in care.
325 (4) In accordance with the provision of this subsection (4),
326 the State Department of Human Services shall have access to any

327 court orders or adjudications of any court of record, any records
328 of such orders or adjudications, criminal history record
329 information in the possession of the Mississippi Highway Safety
330 Patrol or court of this state concerning persons working,
331 regularly volunteering or residing in a family child care home.
332 The department shall have access to these records for the purpose
333 of determining whether or not the home meets the requirements of
334 Sections 43-20-51 through 43-20-65.

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

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

342 43-20-59. (1) Any person maintaining a family child care
343 home may register such home with the State Department of Human
344 Services on forms provided by the department.

345 (2) A certificate of registration shall be issued to the
346 applicant for registration who (a) attests to the safety of the
347 home for the care of children, (b) submits a fee of Five Dollars
348 (\$5.00) payable to the department, and (c) certifies that no
349 person described in paragraph (a), (b), (c), (d) or (e) of Section
350 43-20-57(1) resides, works or volunteers in the family child care
351 home.

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

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

358 (5) A certificate of registration shall be in force for one
359 (1) year after the date of issuance unless revoked pursuant to

360 Sections 43-20-51 through 43-20-65. The certificate shall specify
361 that the registrant may operate a family child care home for five
362 (5) or fewer children. This section shall not be construed to
363 limit the right of the department to enter a registered family
364 child care home for the purpose of assessing compliance with
365 Sections 43-20-51 through 43-20-65 after receiving a complaint
366 against the registrant of such home or in conducting a periodic
367 routine inspection.

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

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

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

381 (2) In the operation of the CCDF/TANF program, the
382 Department of Human Services shall comply with the following
383 requirements:

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

391 (b) The department shall establish performance level
392 standards including the following requirements in CCDF/TANF

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

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

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

423 (3) [Deleted]

424 (4) [Deleted]

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

429 **SECTION 11.** This act shall take effect and be in force from
430 and after July 1, 2007.