

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 899

AN ACT

To repeal sections 210.201, 210.211, 210.252, and 210.275, RSMo, and to enact in lieu thereof four new sections relating to child care providers.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 210.201, 210.211, 210.252, and 210.275, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 210.201, 210.211, 210.252, and 210.275, to read as follows:

210.201. As used in sections 210.201 to 210.257, the following terms mean:

- (1) "Child", an individual who is under the age of seventeen;
- (2) "Child care", care of a child away from his or her home for any part of the twenty-four-hour day for compensation or otherwise. Child care is a voluntary supplement to parental responsibility for the child's protection, development, and supervision;
- (3) "Child-care facility" or "child care facility", a house or other place conducted or maintained by any person who advertises or holds himself or herself out as providing child care for any part of the twenty-four-hour day for compensation or otherwise if providing child care to more than:
 - (a) Six children; or
 - (b) Three children under two years of age;
- (4) "Child care provider" or "provider", the person or persons licensed or required to be licensed under section

210.221 to establish, conduct, or maintain a child care facility;

(5) "Day camp", a program operated by a person or organization between the hours of 6:00 a.m. and 7:00 p.m., when a local school system is not in session requiring actual pupil attendance, and with the primary function of providing a recreational program for children five years of age or older who are enrolled in kindergarten or any grade above kindergarten, but providing no child care for children under five years of age who are not yet enrolled in kindergarten in the same space or in the same outdoor play area simultaneously;

(6) "Montessori school", a child care program that is either accredited by, actively seeking accreditation by, or maintains an active school membership with the American Montessori Society, the Association Montessori Internationale, the International Montessori Counsel, or the Montessori Educational Programs International;

(7) "Neighborhood youth development program", as described in section 210.278;

(8) "Nursery school", a program operated by a person or an organization with the primary function of providing an educational program for preschool-age children for no more than four hours per day per child;

(9) "Person", any individual, firm, corporation, partnership, association, agency, or an incorporated or unincorporated organization regardless of the name used;

(10) "Religious organization", a church, synagogue or mosque; an entity that has or would qualify for federal tax-exempt status as a nonprofit religious organization under Section 501(c) of the Internal Revenue Code; or an entity whose real estate on which the child-care facility is

located is exempt from taxation because it is used for religious purposes;

(11) "School-age child", any child five years of age or older who is in kindergarten or above;

(12) "School system", a program established primarily for education and that meets the following criteria:

(a) Provides education in at least the first to the sixth grade; and

(b) Provides evidence that the school system's records will be accepted by a public or private school for the transfer of any student;

~~[(12)]~~ (13) "Summer camp", a program operated from May to September by a person or organization with the primary function of providing a summer recreational program for children five years of age or older and providing no child care for children under five years of age in the same space or in the same outdoor play area simultaneously.

210.211. 1. It shall be unlawful for any person to establish, maintain or operate a child-care facility for children, or to advertise or hold himself or herself out as being able to perform any of the services as defined in section 210.201, without having in effect a written license granted by the department of elementary and secondary education; except that nothing in sections 210.203 to 210.245 shall apply to:

(1) Any person who is caring for six or fewer children, including a maximum of three children under the age of two, at the same physical address. For purposes of this subdivision, children who live in the caregiver's home and who are eligible for enrollment in a public kindergarten, elementary, or high school shall not be considered in the total number of children being cared for;

(2) Any person who receives free of charge, and not as a business, for periods not exceeding ninety consecutive days, as bona fide, occasional and personal guests the child or children of personal friends of such person, and who receives custody of no other unrelated child or children;

(3) Any graded boarding school that is conducted in good faith primarily to provide education;

(4) Any summer or day camp that is conducted in good faith primarily to provide recreation;

(5) Any hospital, sanitarium, or home that is conducted in good faith primarily to provide medical treatment or nursing or convalescent care for children;

(6) Any residential facility or day program licensed by the department of mental health under sections 630.705 to 630.760 that provides care, treatment, and habilitation exclusively to children who have a primary diagnosis of mental disorder, mental illness, intellectual disability, or developmental disability, as those terms are defined in section 630.005;

(7) Any school system as defined in section 210.201;

(8) Any Montessori school as defined in section 210.201;

(9) Any business that operates a child care program for the convenience of its customers or its employees if the following conditions are met:

(a) The business provides child care for customers' or employees' children for no more than four hours per day; and

(b) Customers or employees remain on site while their children are being cared for by the business establishment;

(10) Any home school as defined in section 167.031;

(11) Any religious organization academic preschool or kindergarten for four- and five-year-old children;

(12) Any weekly Sunday or Sabbath school, a vacation bible school, or child care made available while the parents or guardians are attending worship services or other meetings and activities conducted or sponsored by a religious organization;

(13) Any neighborhood youth development program under section 210.278;

(14) Any program serving only children enrolled in grade six or above;

(15) Any religious organization elementary or secondary school;

[(15)] (16) Any private organization elementary or secondary school system providing child care to children younger than school age. If a facility or program is exempt from licensure based upon this exception, such facility or program shall submit documentation annually to the department to verify its licensure-exempt status;

[(16)] (17) Any nursery school as defined in section 210.201; and

[(17)] (18) Any child care facility maintained or operated under the exclusive control of a religious organization. If a nonreligious organization having as its principal purpose the provision of child care services enters into an arrangement with a religious organization for the maintenance or operation of a child care facility, the facility is not under the exclusive control of the religious organization.

2. Notwithstanding the provisions of subsection 1 of this section, no child-care facility shall be exempt from licensure if such facility receives any state or federal funds for providing care for children, except for federal funds for those programs which meet the requirements for participation in the Child and Adult Care Food Program

pursuant to 42 U.S.C. Section 1766. Grants to parents for child care pursuant to sections 210.201 to 210.257 shall not be construed to be funds received by a person or facility listed in subdivisions (1) and ~~[(17)]~~ (18) of subsection 1 of this section.

3. Every child care facility shall disclose the licensure status of the facility to the parents or guardians of children for which the facility provides care. No child care facility exempt from licensure shall represent to any parent or guardian of children for which the facility provides care that the facility is licensed when such facility is in fact not licensed. A parent or guardian utilizing an unlicensed child care facility shall sign a written notice indicating he or she is aware of the unlicensed status of the facility. The facility shall keep a copy of this signed written notice on file. All child care facilities shall provide the parent or guardian enrolling a child in the facility with a written explanation of the disciplinary philosophy and policies of the child care facility.

4. Up to two children who are five years of age or older and who are related within the third degree of consanguinity or affinity to, adopted by, or under court appointed guardianship or legal custody of a child care provider who is responsible for the daily operation of a licensed family child care home that is organized as a corporation, association, firm, partnership, limited liability company, sole proprietorship, or any other type of business entity in this state shall not be included in the number of children counted toward the maximum number of children for which the family child care home is licensed under section 210.221. If more than one member of the corporation, association, firm, partnership, limited

liability company, or other business entity is responsible for the daily operation of the licensed family child care home, then the related children of only one such member shall be excluded. A family child care home caring for children not counted in the maximum number of children, as permitted under this subsection, shall disclose this to parents or guardians on the written notice required under subsection 3 of this section. If a family child care home begins caring for children not counted in the maximum number of children after a parent or guardian has signed the written notice required under subsection 3 of this section, the family child care home shall provide a separate notice to the parent or guardian that the family child care home is caring for children not counted in the maximum number of children for which the family child care home is licensed and shall keep a copy of the signed notice on file.

5. Nothing in this section shall prevent the department from enforcing licensing regulations promulgated under this chapter, including, but not limited to, supervision requirements and capacity limitations based on the amount of child care space available.

210.252. 1. All buildings and premises used by a child-care facility to care for more than six children except those exempted from the licensing provisions of the department of elementary and secondary education pursuant to subdivisions (1) to ~~[(15)]~~ (16) of subsection 1 of section 210.211, shall be inspected annually for fire and safety by the state fire marshal, the marshal's designee or officials of a local fire district and for health and sanitation by the department of elementary and secondary education or the department's designee, including officials of the department of health and senior services, or officials of the local health department. Evidence of compliance with the

inspections required by this section shall be kept on file and available to parents of children enrolling in the child-care facility.

2. Local inspection of child-care facilities may be accomplished if the standards employed by local personnel are substantially equivalent to state standards and local personnel are available for enforcement of such standards.

3. Any child-care facility may request a variance from a rule or regulation promulgated pursuant to this section. The request for a variance shall be made in writing to the department of elementary and secondary education and shall include the reasons the facility is requesting the variance. The department shall approve any variance request that does not endanger the health or safety of the children served by the facility. The burden of proof at any appeal of a disapproval of a variance application shall be with the department of elementary and secondary education. Local inspectors may grant a variance, subject to approval by the department of elementary and secondary education.

4. The department of elementary and secondary education shall administer the provisions of sections 210.252 to 210.256, with the cooperation of the state fire marshal, the department of health and senior services, local fire departments and local health agencies.

5. The department of elementary and secondary education shall promulgate rules and regulations to implement and administer the provisions of sections 210.252 to 210.256. Such rules and regulations shall provide for the protection of children in all child-care facilities whether or not such facility is subject to the licensing provisions of sections 210.201 to 210.245.

6. The department of health and senior services, after consultation with the department of elementary and secondary

education, may promulgate rules and regulations to implement and administer the provisions of this section related to sanitation requirements. Such rules and regulations shall provide for the protection of children in all child-care facilities whether or not such facility is subject to the licensing provisions of sections 210.201 to 210.245.

7. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in sections 210.252 to 210.256 shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. All rulemaking authority delegated prior to August 28, 1999, is of no force and effect and repealed. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 1999, if it fully complied with all applicable provisions of law. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

210.275. Any program licensed by the department of elementary and secondary education pursuant to this chapter providing child care to only school-age children [that is located and operated on elementary or secondary school property] shall comply with the child-care licensure provisions in this chapter; except that, for safety, health and fire purposes, all buildings and premises for any such programs shall be deemed to be in compliance with the child-care licensure provisions in this chapter.