

SECOND REGULAR SESSION

SENATE BILL NO. 565

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODE.

Pre-filed December 1, 1997, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S2249.011

AN ACT

To repeal sections 210.211, 210.245, 210.252 and 210.256, RSMo 1994, and section 210.221, RSMo Supp. 1997, relating to the regulation of certain child care providers, and to enact in lieu thereof five new sections relating to the same subject, with penalty provisions.

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

Section A. Sections 210.211, 210.245, 210.252 and 210.256, RSMo 1994, and section 210.221, RSMo Supp. 1997, are repealed and five new sections enacted in lieu thereof, to be known as sections 210.211, 210.221, 210.245, 210.252 and 210.256, to read as follows:

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 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 health except that nothing in sections 210.203 to 210.245 shall apply to:

(1) Any person who is caring for four or fewer children. For purposes of this subdivision, children who are related by blood, marriage or adoption to such person within the third degree shall not be considered in the total number of children being cared for;

(2) Any person who has been duly appointed by a court of competent jurisdiction the guardian of the person of the child or children, or the person who has legal custody of the child or children;

(3) 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;

(4) Any graded boarding school, [nursery school,] summer camp, hospital, sanitarium or home which is conducted in good faith primarily to provide education, recreation, medical treatment, or nursing or convalescent care for children;

(5) Any nursery school;

[(5)] **(6)** Any child care facility maintained or operated under the exclusive control of a religious organization. When 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; and

[(6)] **(7)** Any residential facility or day program licensed by the department of mental health under sections 630.705 to 630.760, RSMo, which provides care, treatment and habilitation exclusively to children who have a primary diagnosis of mental disorder, mental illness, mental retardation or developmental disability, as defined in section 630.005, RSMo.

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. Grants to parents for child care under this act shall not be construed to be funds received by the facility.

210.221. 1. The department of health shall have the following powers and duties:

(1) After inspection, to grant licenses to persons to operate child care facilities if satisfied as to the good character and intent of the applicant and that such applicant is qualified and equipped to render care or service conducive to the welfare of children, and to renew the same when expired. No license shall be granted for a term exceeding two years. Each license shall specify the kind of child care services the licensee is authorized to perform, the number of children that can be received or maintained, and their ages and sex;

(2) To inspect the conditions of the homes and other places in which the applicant operates a child care facility, inspect their books and records, premises and children being served, examine their officers and agents, [and] **deny, suspend, place on probation** or revoke the license of such persons as fail to obey the provisions of sections 210.201 to 210.245 or the rules and regulations made by the department of health. **The director also may revoke or suspend a license when the licensee fails to renew or surrenders the license;**

(3) To promulgate and issue rules and regulations the department deems necessary or proper in order to establish standards of service and care to be rendered by such licensees to children. No rule or regulation promulgated by the division shall in any manner restrict or interfere with any religious instruction, philosophies or ministries provided by the facility and shall not apply to facilities operated by religious organizations which are not required to be licensed; and

(4) To determine what records shall be kept by such persons and the form thereof, and the methods to be used in keeping such records, and to require reports to be made to the department at regular intervals.

2. 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 health 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 health. Local inspectors may grant a variance, subject to approval by the department of health.

3. The department shall deny, suspend or revoke a license if it receives official written notice that the local governing body has found that license is prohibited by any local law related to the health and safety of children.

[3.] **4.** No rule or portion of a rule promulgated under the authority of sections 210.201 to 210.245 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

210.245. 1. Any person who violates any provision of sections 210.201 to 210.245, or who for [himself] **such person** or for any other person makes materially false statements in order to obtain a license or the renewal thereof [under] **pursuant to** sections 210.201 to 210.245, shall be guilty of an infraction for the first offense and shall be assessed a fine not to exceed two hundred dollars and shall be guilty of a class A misdemeanor for subsequent offenses. In case such guilty person is a corporation, association, institution or society, the officers thereof who participate in such misdemeanor shall be subject to the penalties provided by law.

2. If the department of health proposes to deny, suspend or revoke a license, the department of health shall serve upon the applicant or licensee written notice of the proposed action to be taken. The notice shall contain a statement of the type of action proposed, the basis for it, the date the action will become effective, and a statement that the applicant or licensee shall have thirty days to request in writing a hearing before the administrative hearing commission. If no written request for a hearing is received by the department of health within thirty days of the applicant or licensee's receipt of the notice, the proposed discipline shall take effect thirty-one days from the date the original notice was received by the applicant or licensee. If the applicant or licensee makes a written request for a hearing, the department of health shall file a complaint with the administrative hearing commission within ninety days of receipt of the request for a hearing. The complaint shall comply with the laws and regulations for actions brought before the administrative hearing commission.

3. The department of health may issue letters of censure or warning and may place a licensee on probation without formal notice or hearing.

4. The department of health may suspend any license simultaneously with the notice of the proposed action to be taken in subsection 2 of section 210.245, if the department of health finds that there is a threat of imminent bodily harm to the

children in care. The notice of suspension shall include the basis of the suspension and the appeal rights of the licensee. The licensee may appeal the decision to suspend the license to the department of health. The appeal must be filed within ten days from the receipt of the notice of appeal. A hearing shall be conducted by the department of health within ten days from the date the appeal is filed. The suspension shall continue in effect until the conclusion of the proceedings, including review thereof, unless sooner withdrawn by the department of health, dissolved by a court of competent jurisdiction or stayed by the administrative hearing commission.

[2.] **5.** In addition to initiating proceedings [under] **pursuant to** subsection 1 of this section, or in lieu thereof, the prosecuting attorney of the county where the child care facility is located may file suit for a preliminary and permanent order overseeing or preventing the operation of a child care facility **or the department may request that the attorney general seek an injunction to prevent the operation of the facility** for violating any provision of sections 210.201 to 210.245. The order shall remain in force until such a time as the court determines that the child care facility is in substantial compliance. [If the prosecuting attorney refuses to act or fails to act within thirty days of receipt of notice from the department of health, the department of health may request that the attorney general seek an injunction of the operation of such child care facility.]

[3.] **6.** In cases of imminent bodily harm to children in the care of a child care facility, the department may file suit in the circuit court of the county in which the child care facility is located for injunctive relief, which may include removing the children from the facility, overseeing the operation of the facility or closing the facility.

210.252. 1. All buildings and premises used by a child care facility to care for more than four children except those exempted from the licensing provisions of the department of health pursuant to subdivisions (1) [to], **(2)**, (3), **(4) and (7)** of section 210.211, shall be inspected annually for fire and safety by the state fire marshal, [his] **the marshal's** designee or officials of a local fire district and for health and sanitation by the department of health 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 health 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 health. Local inspectors may grant a variance, subject to approval by the department.

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

5. The department of health 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.

210.256. 1. Any person who violates any provision of sections 210.252 to 210.255, or who for [himself] **such person** or for any other person makes a materially false statement in the notice of parental responsibility required by sections 210.254 and 210.255, shall be guilty of an infraction for the first offense and shall be assessed a fine not to exceed two hundred dollars and shall be guilty of a class A misdemeanor for subsequent offenses. In case such guilty person is a corporation, association, institution, or society, the officers thereof who participate in such violation shall be subject to the same penalties.

2. In addition to initiating proceedings [under] **pursuant to** subsection 1 of this section, or in lieu thereof, the prosecuting attorney of the county where the child care facility is located may file suit for a preliminary and permanent order overseeing or preventing the operation of a child care facility [for violating any provision of section 210.252] **or the department may request that the attorney general seek an injunction to prevent the operation of the child care facility for violating any provision of sections 210.252 to 210.259 or the rules promulgated by the department.** The injunction shall remain in force until such a time as the court determines that the child care facility is in substantial compliance.

3. In cases of imminent bodily harm to children in the care of a child care facility, the department of health may apply to the circuit court of the county in which the child care facility is located for injunctive relief, which may include removing the children from the facility, overseeing the operation of the facility or closing the facility.

✓