

FIRST REGULAR SESSION
[CORRECTED]
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
**SENATE BILLS NOS. 322,
150 & 151**
90TH GENERAL ASSEMBLY

Reported from the Committee on Children, Youth and Families, April 13, 1999, with recommendation that the House Committee Substitute for Senate Bills Nos. 322, 150 & 151 Do Pass.

ANNE C. WALKER, Chief Clerk

L1287.05C

AN ACT

To repeal sections 207.020, 210.211, 210.245, 210.251, 210.252, 210.254, 210.256 and 210.485, RSMo 1994, and section 210.221, RSMo Supp. 1998, relating to the regulation of certain child care providers, and to enact in lieu thereof eleven new sections relating to the same subject, with penalty provisions and an emergency clause.

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

Section A. Sections 207.020, 210.211, 210.245, 210.251, 210.252, 210.254, 210.256 and 210.485, RSMo 1994, and section 210.221, RSMo Supp. 1998, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 207.020, 210.211, 210.221, 210.245, 219,251, 210.252, 210.254, 210.256, 210.485, 1 and 2, to read as follows:

207.020. 1. In addition to the powers, duties and functions vested in the division of family services by other provisions of this chapter or by other laws of this state, the division of family services shall have the power:

- (1) To sue and be sued;
- (2) To make contracts and carry out the duties imposed upon it by this or any other law;
- (3) To administer, disburse, dispose of and account for funds, commodities, equipment, supplies or services, and any kind of property given, granted, loaned, advanced to or appropriated by the state of Missouri for any of the purposes herein;
- (4) To administer oaths, issue subpoenas for witnesses, examine such witnesses under oath, and make and keep a record of same;
- (5) To adopt, amend and repeal rules and regulations necessary or desirable to carry out the provisions of this chapter and which are not inconsistent with the constitution or laws of this state;
- (6) To cooperate with the United States government in matters of mutual concern pertaining to any duties wherein the division of family services is acting as a state agency, including the adoption of such methods of administration as are found by the United States

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

government to be necessary for the efficient operation of state plans hereunder;

(7) To make such reports in such form and containing such information as the United States government may, from time to time, require, and comply with such provisions as the United States government may, from time to time, find necessary to assure the correctness and verification of such reports;

(8) To establish, extend and strengthen child welfare services for the protection and care of homeless, dependent and neglected children and children in danger of becoming delinquent;

(9) To expend child welfare service funds for payment of part of the cost of district, county or other local child welfare services;

(10) To administer state child welfare activities and develop state services for the encouragement and assistance of adequate methods of community child welfare organizations;

(11) To appoint, when and if it may deem necessary, advisory committees to provide professional or technical consultation in respect to welfare problems and welfare administration. The members of such advisory committees shall receive no compensation for their services other than expenses actually incurred in the performance of their official duties. The number of members of each such advisory committee shall be determined by the division of family services, and such advisory committees shall consult with and advise the division of family services in respect to problems and policies incident to the administration of the particular function germane to the respective field of competence;

(12) To initiate or cooperate with other agencies in developing measures for the prevention of dependency and the rehabilitation of needy persons;

(13) To collect statistics, make special fact-finding studies and publish reports in reference to public welfare;

(14) To establish or cooperate in research or demonstration projects relative to the welfare program, such as those relating to the prevention and reduction of dependency and economic distress, or which will aid in effecting coordination of planning between private and public welfare agencies, or which will help improve the administration and effectiveness of programs carried on or assisted under the federal Social Security Act and the programs related thereto;

(15) To provide appropriate public welfare services to promote, safeguard and protect the social well-being and general welfare of children and to help maintain and strengthen family life, and to provide such public welfare services to aid needy persons who can be so helped to become self-supporting or capable of self-care;

(16) Upon request, to cooperate with the juvenile court and furnish social studies and reports to the court with respect to children as to whom adoption or neglect petitions have been filed;

(17) To accept for social services and care, homeless, dependent or neglected children in all counties where legal custody is vested in the division of family services by the juvenile court where the juvenile court has acquired jurisdiction pursuant to subdivision (1) or (2) of subsection 1 of section 211.031, RSMo; provided that prior to legal custody being vested in the division of family services, the division of family services shall conduct an evaluation of the child, examine the child and investigate all pertinent circumstances of his background for the purpose of determining appropriate services and a treatment plan for the child. This evaluation shall involve local division staff and consultation with the juvenile officer or his designee, appropriate state agencies, including but not limited to the department of mental health and the department of

elementary and secondary education, or private practitioners who are knowledgeable of the child or programs or services appropriate to the needs of the child and shall be completed within thirty days. Temporary custody may be placed with the division of family services while the evaluation is being conducted. A report of such proceedings and findings shall be submitted in writing to the appropriate court:

(a) The division may, at any time, if it finds the child placed in its custody is in need of care or treatment other than that which it can provide, apply to the court which placed such child for an order relieving it of custody of such child. The court must make a determination within ten days and the court shall be vested with full power to make such disposition of the child as is authorized by law, including continued custody;

(b) However, no payments for care shall be made:

a. To facilities with which the division of family services has no contract to provide such care, or to facilities in the state of Missouri which are not licensed by the state of Missouri unless exempt from such licensure;

b. To any facility outside the state of Missouri unless the division of family services determines that there is no facility in the state of Missouri which can provide substantially equivalent care, except that this limitation shall not apply to any facility outside the state of Missouri if that facility is the closest available facility to the child's home or the division of family services determines that such placement is in the child's best interest; nor

c. To any facility outside the state of Missouri which is not licensed or exempted from licensure by the state in which it is located, or which cannot document that it meets requirements which would be necessary for licensure in the state of Missouri. The term "care" shall include room, board, clothing, medical care, dental care, social services and incidentals;

(c) The department of social services shall provide a clothing allowance from its general appropriation funds for foster children in the custody of the division of family services, in the following amount:

a. No less than two hundred dollars per year for children of zero to five years of age;

b. No less than three hundred dollars per year for children of six to twelve years of age; and

c. No less than four hundred dollars per year for children of thirteen years or more of age;

(18) To accept gifts and grants of any property, real or personal, and to sell said property and expend such gifts or grants not inconsistent with the administration of this chapter and within the limitations imposed by the donor thereof;

(19) To make periodic surveys of cost-of-living factors in relation to the needs of recipients of public assistance, and establish standards or budgetary guides for determining minimum costs of meeting such requirements, and amend such standards from time to time as circumstances may require.

2. All powers and duties of the division of family services shall, so far as applicable, apply to the administration of any other law or state law wherein duties are imposed upon the division of family services acting as a state agency.

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 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 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) Any residential facility or day program licensed by the department of mental health [under] **pursuant to** 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; **and**

(7) Any nursery school.

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. 1766.** Grants to parents for child care [under this act] **pursuant to sections 210.201 to 210.257** 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, place on probation 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. The department may, after inspection, find the licensure, denial of licensure, suspension or revocation to be in the best interest of the state.

[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,] **chapter 536, 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, place on probation 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 and that such request shall be made to the department of health. If no written request for a hearing is received by the department of health within thirty days of the delivery or mailing by certified mail of the notice to the applicant or licensee, the proposed discipline shall take effect on the thirty-first day after such delivery or mailing of the notice to 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.

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

pursuant to chapter 621, RSMo.

4. The department of health may suspend any license simultaneously with the notice of the proposed action to be taken in subsection 2 of this section, 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 pursuant to this section. The licensee may appeal the decision to suspend the license to the department of health. The appeal shall be filed within ten days from the delivery or mailing by certified mail 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. Any person aggrieved by a final decision of the department made pursuant to this section shall be entitled to judicial review in accordance with chapter 536, RSMo.

[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 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] after 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.

210.251. 1. By January 1, 1994, financial incentives shall be provided by the department of health through the child development block grant and other public moneys for child care facilities wishing to upgrade their standard of care and which meet quality standards.

2. The department of health shall make federal funds available to licensed or inspected child care centers pursuant to federal law as set forth in the Child and Adult Food Program, 42 U.S.C. 1766.

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 (6) 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.

6. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to chapter 536, RSMo.

210.254. 1. Child care facilities operated by religious organizations [under] **pursuant to** the exempt status recognized in subdivision (5) of section 210.211 shall upon enrollment of any child provide the parent or guardian enrolling the child two copies of a notice of parental responsibility, one copy of which shall be retained in the files of the facility after the enrolling parent acknowledges, by signature, having read and accepted the information contained therein.

2. The notice of parental responsibility shall include the following:

(1) Notification that the child care facility is exempt as a religious organization from state licensing and therefore not inspected or supervised by the department of health other than as provided herein and that the facility has been inspected by those designated in section 210.252 and is complying with the fire, health and sanitation requirements of sections 210.252 to 210.257;

(2) The names, addresses and telephone numbers of agencies and authorities which inspect the facility for fire, health and safety and the date of the most recent inspection by each;

(3) The staff/child ratios for enrolled children under two years of age, for children ages two to four and for those five years of age and older as required by the department of health regulations in licensed facilities, the standard ratio of staff to number of children for each age level maintained in the exempt facility, and the total number of children to be enrolled by the facility;

(4) Notification that background checks have been conducted on each individual care giver and all other personnel at the facility. The background check shall be conducted upon employment and every two years thereafter on each individual care giver and all other personnel at the facility. Such background check shall include a screening for child abuse or neglect through the division of family services, and a criminal record review through the Missouri highway patrol pursuant to section 43.540, RSMo. The fee for the criminal record review shall be limited to the actual costs incurred by the Missouri highway patrol in conducting such review not to exceed ten dollars;

(5) The disciplinary philosophy and policies of the child care facility; and

[(5)] (6) The educational philosophy and policies of the child care facility.

3. A copy of notice of parental responsibility, signed by the principal operating officer of the exempt child care facility and the individual primarily responsible for the religious organization conducting the child care facility and copies of the annual fire and safety inspections shall be filed annually during the month of August with the director of the department of health. Exempt child care facilities which begin operation after August 28, 1993, shall file such notice at least five days prior to starting to operate.

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. The injunction shall remain in force until such [a] time as the court determines that the child care facility is in substantial compliance. **If a prosecutor refuses to act after receipt of the notice from the department, 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.**

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.

210.485. 1. Any owner or operator of a child placing agency or residential care facility licensed pursuant to sections 210.481 to 210.536, may be held civilly liable for any injury to another person or damage to property which occurs outside such facility and is caused by a child who is in the care and custody of such facility. Such civil liability shall be determined in the same manner and amounts as provided for parents in section 211.185, RSMo.

2. The state of Missouri and any political subdivision thereof shall not be subject to civil liability pursuant to subsection 1 of this section.

Section 1. 1. To qualify for receipt of state or federal funds for providing child care services in the home either by direct payment or through reimbursement to a child care beneficiary, an applicant and any person over the age of fourteen who is living in the applicant's home shall be required to submit to a check of the central registry for child abuse established in section 210.145, RSMo. In addition, an applicant and any person over the age of eighteen who is living in the applicant's home shall be required to submit to a criminal background check pursuant to section 43.540, RSMo. Any costs associated with such checks shall be paid by the applicant.

2. Upon receipt of an application for state or federal funds for providing child care services in the home, the division of family services shall:

(1) Determine if a probable cause finding of child abuse or neglect involving the applicant or any person over the age of fourteen who is living in the applicant's home has been recorded pursuant to section 210.221, RSMo, or section 210.145, RSMo;

(2) Determine if the applicant or any person over the age of fourteen who is living in the applicant's home has been refused licensure or has experienced licensure suspension or revocation pursuant to section 210.221 or 210.496, RSMo; and

(3) Request a criminal background check of the applicant and any person over the

age of eighteen who is living in the applicant's home pursuant to section 43.540, RSMo.

3. Except as otherwise provided in subsection 4 of this section, upon completion of the background checks in subsection 2 of this section, an applicant shall be denied state or federal funds for providing child care if:

(1) Such applicant or any person over the age of fourteen who is living in the applicant's home has had a probable cause finding of child abuse or neglect pursuant to section 210.145, RSMo;

(2) Such applicant or any person over the age of fourteen who is living in the applicant's home has been refused licensure or has experienced licensure suspension or revocation pursuant to section 210.496, RSMo;

(3) Such applicant or any person over the age of eighteen who is living in the applicant's home has pled guilty or nolo contendere to or been found guilty of any felony for an offense against the person as defined by chapter 565, RSMo, or any other offense against the person involving the endangerment of a child as prescribed by law; of any misdemeanor or felony for a sexual offense as defined by chapter 566, RSMo; of any misdemeanor or felony for an offense against the family as defined in chapter 568, RSMo, except for an offense relating solely to the sale of fireworks to a person under the age of eighteen; of any misdemeanor or felony for pornography or related offense as defined by chapter 573, RSMo; or of any similar crime in any federal, state, municipal or other court of similar jurisdiction of which the director has knowledge.

The division of family services shall, by rule, determine any additional types of offenses or reports, including but not limited to domestic violence, elder abuse or drug offenses, which will disqualify an applicant from receiving such state or federal funds.

4. An applicant shall be given an opportunity by the division to offer any extenuating or mitigating circumstances regarding the findings, refusals or violations against such applicant or any person over the age of fourteen who is living in the applicant's home listed in subsection 3 of this section. Such extenuating and mitigating circumstances may be considered by the division in its determination of whether to permit such applicant to receive state or federal funds for providing child care in the home.

5. An applicant who has been denied state or federal funds for providing child care in the home may appeal such denial decision in accordance with the provisions of section 208.080, RSMo.

6. If an applicant is denied state or federal funds for providing child care in the home based on the child abuse and neglect background check results for any person over the age of fourteen or the criminal background check for any person over the age of eighteen who is living in the applicant's home, the applicant shall not apply for such funds until a guarantee is given that such person will not be present during the time the children are present.

7. No rule or portion of a rule promulgated pursuant to the provisions of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

Section 2. 1. For child care providers who receive state or federal funds for providing child care services in the home either by direct payment or through reimbursement to a child care beneficiary, the department of social services shall:

- (1) Be authorized to revoke the registration of a registered provider for due cause;
- (2) Require providers to be at least eighteen years of age;
- (3) Where there are no local ordinances or regulations regarding smoke detectors, require providers, by rule, to install and maintain an adequate number of smoke detectors in the residence where child care is provided;
- (4) Require providers to be tested for tuberculosis;
- (5) Requires providers to have access to a telephone;
- (6) Make providers aware of local opportunities for training in first aid and child care.

2. The department of social services shall promulgate rules and regulations to implement the provisions of this section. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

Section B. Because immediate action is necessary to ensure the safety of children, section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect upon its passage and approval.

Bill

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