

FIRST REGULAR SESSION

SENATE BILL NO. 322

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS SIMS AND GOODE.

Read 1st time January 21, 1999, and 1,000 copies ordered printed.

SI287.011

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 210.211, 210.245, 210.251, 210.252, 210.254 and 210.256, RSMo 1994, and section 210.221, RSMo Supp. 1998, relating to the regulation of certain child care providers, and to enact in lieu thereof seven 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Sections 210.211, 210.245, 210.251, 210.252, 210.254 and 210.256, RSMo 1994, and section 210.221, RSMo Supp. 1998, are repealed and seven new sections enacted in lieu thereof, to be known as sections 210.211, 210.221, 210.245, 210.251, 210.252, 210.254 and 210.256, to read as follows: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 **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

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

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] **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.

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, and may place a licensee on probation through the administrative hearing procedures outlined in 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 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 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 made pursuant to this section shall be entitled to judicial review in accordance with chapter 621, 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] **after** 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.

210.251. 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 (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.

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) The background check information conducted annually 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;

(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.

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