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Summary: Childcare facility licensure

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

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**VERSIONS OF THIS BILL**

[4/13/2010](file:///p:\pprever\2009-10\4799_20100413.docx)

**A** **BILL**

TO AMEND ARTICLE 1, CHAPTER 13, TITLE 63, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO VARIOUS CHILDCARE FACILITY LICENSURE, REGISTRATION, AND APPROVAL REQUIREMENTS, SO AS TO REVISE THE DEFINITION OF “CHILDCARE CENTER” TO MEAN A FACILITY THAT REGULARLY RECEIVES MULTIPLE, RATHER THAN THIRTEEN OR MORE, CHILDREN FOR CHILDCARE, TO REVISE THE DEFINITION OF “CHILDCARE” TO MEAN CARING FOR A CHILD OUTSIDE THE CHILD’S HOME FOR MORE THAN TWO, RATHER THAN FOUR, HOURS, TO REVISE THE DEFINITION OF “CHILDCARE FACILITIES” TO REMOVE GROUP CHILDCARE HOMES AND FAMILY CHILDCARE HOMES, TO REMOVE FIVE YEAR OLD KINDERGARTEN PROGRAMS FROM THE LIST OF FACILITIES THAT ARE NOT CHILDCARE FACILITIES, TO PROVIDE THAT SCHOOL HOLIDAY DAY CAMPS, WHICH ARE NOT CHILDCARE FACILITIES, ARE CAMPS RUNNING LESS THAN ONE, RATHER THAN THREE, WEEKS, TO DELETE THE DEFINITIONS OF “FAMILY CHILDCARE HOME”, “GROUP CHILDCARE HOME”, “PROVISIONAL APPROVAL”, AND “REGULAR APPROVAL” AND TO DELETE REFERENCES TO THESE TERMS THROUGHOUT THIS ARTICLE; TO AMEND SECTION 63‑13‑810, RELATING TO REGISTRATION REQUIRED FOR FAMILY CHILDCARE HOMES, SO AS TO REQUIRE THESE HOMES TO BE LICENSED RATHER THAN REGISTERED; TO REPEAL ARTICLE 5, CHAPTER 13, TITLE 63 RELATING TO PUBLIC CHILDCARE CENTERS AND GROUP CHILDCARE HOMES; AND TO REPEAL SECTIONS 63‑13‑820 THROUGH 63‑13‑860 RELATING TO REGISTRATION REQUIREMENTS FOR FAMILY CHILDCARE HOMES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 1, Chapter 13, Title 63 of the 1976 Code, as added by Act 361 of 2008, is amended to read:

“Article 1

General Provisions

Section 63‑13‑10. (A) The intent of this chapter is to define the regulatory duties of government necessary to safeguard children in care in places other than their own homes, ensuring for them minimum levels of protection and supervision. Toward that end, it is the purpose of this chapter to establish statewide minimum regulations for the care and protection of children in ~~childcare facilities~~ all facilities providing care for multiple children less than twelve years of age, to ensure maintenance of these regulations and to approve administration and enforcement to regulate conditions in such facilities. It is the policy of the State to ensure protection of children under care in all childcare facilities, and to encourage the improvement of childcare programs.

(B) It is the further intent of this chapter that the freedom of religion of all citizens is inviolate. Nothing in this chapter shall give any governmental agency jurisdiction or authority to regulate, supervise, or in any way be involved in any Sunday school, Sabbath school, religious services or any nursery service or other program conducted during religious or church services primarily for the convenience of those attending the services.

(C) Nothing in this chapter shall create authority for the Department of Social Services to influence or regulate the curriculum of childcare facilities.

Section 63‑13‑20. For the purpose of this chapter:

(1) ‘Caregiver’ means any person whose duties include direct care, supervision, and guidance of children in a childcare facility.

(2) ‘Childcare’ means the care, supervision, or guidance of a child or children, unaccompanied by the parent, guardian, or custodian, on a regular basis, for periods of less than twenty‑four hours per day, but more than ~~four~~ two hours, in a place other than the child’s or the children’s own home or homes.

(3) ‘Childcare center’ means any facility which regularly receives ~~thirteen or more~~ multiple children for childcare.

(4) ‘Childcare facilities’ means a facility which provides care, supervision, or guidance for a minor child who is not related by blood, marriage, or adoption to the owner or operator of the facility whether or not the facility is operated for profit and whether or not the facility makes a charge for services offered by it. This definition includes, but is not limited to, day nurseries, nursery schools, childcare centers~~, group childcare homes, and family childcare homes~~. The term does not include:

(a) an educational facility, whether private or public, which operates solely for educational purposes in grade one or above;

(b) ~~five‑year‑old kindergarten programs;~~

~~(c)~~ kindergartens or nursery schools or other daytime programs, with or without stated educational purposes, operating no more than ~~four~~ two hours a day and receiving children younger than lawful school age;

~~(d)~~(c) facilities operated for more than ~~four~~ two hours a day in connection with a shopping center or service or other similar facility, where the same children are cared for less than ~~four~~ two hours a day and not on a regular basis as defined in this chapter while parents or custodians of the children are occupied on the premises or are in the immediate vicinity and immediately available; however, these facilities must meet local fire and sanitation requirements and maintain documentation on these requirements on file at the facility available for public inspection;

~~(e)~~(d) school vacation or school holiday day camps for children operating in distinct sessions running less than ~~three weeks~~ one week per session unless the day camp permits children to enroll in successive sessions so that their total attendance may exceed ~~three weeks~~ one week;

~~(f)~~(e) summer resident camps for children;

~~(g)~~(f) bible schools normally conducted during vacation periods;

~~(h)~~(g) facilities for the mentally retarded provided for in Chapter 21, Title 44;

~~(i)~~(h) facilities for the mentally ill as provided for in Chapter 17, Title 44;

~~(j)~~ (i) childcare centers ~~and group childcare homes~~ owned and operated by a local church congregation or an established religious denomination or a religious college or university which does not receive state or federal financial assistance for childcare services; however, these facilities must comply with the provisions of Article 9, and Sections 63‑13‑60 and 63‑13‑110 and that these facilities voluntarily may elect to become licensed according to the process as set forth in Article 3 and Sections 63‑13‑30, 63‑13‑40, 63‑13‑70, 63‑13‑80, 63‑13‑90, 63‑13‑100, 63‑13‑160, and 63‑13‑170.

(5) ‘Childcare operator’ means the person, corporation, partnership, voluntary association, or other public or private organization ultimately responsible for the overall operation of a childcare facility.

(6) ‘Committee’ means the State Advisory Committee on the Regulation of Childcare Facilities, named under this chapter to advise the department on regulatory matters related to childcare facilities.

(7) ‘Complaint’ means a written statement reporting unsatisfactory conditions in a childcare facility.

(8) ‘Curriculum’ means and includes design of courses, teaching philosophy, methods, and activities.

(9) ‘Declaratory order’ means a written statement on the part of the department approving plans for construction or renovation ensuring against the imposition of more stringent regulations at a later date.

(10) ‘Deficiency correction notice’ means a written statement on the part of the department notifying a childcare facility which is not complying with any applicable regulations to correct the deficiencies stated in the notice within a reasonable time limit.

(11) ‘Department’ means the State Department of Social Services, the agency designated to administer the regulation of childcare facilities under this chapter, with the advice of the State Advisory Committee on the Regulation of Childcare Facilities.

(12) ‘Director’ means the administrative head of the department.

(13) ~~‘Family childcare home’ means a facility within a residence occupied by the operator in which childcare is regularly provided for no more than six children, unattended by a parent or legal guardian, including those children living in the home and children received for childcare who are related to the resident caregiver. However, an occupied residence in which childcare is provided only for a child or children related to the resident caregiver or only for the child or children of one unrelated family or only for a combination of these children is not a family childcare home.~~

~~(14)~~ ~~‘Group childcare home’ means a facility within a residence occupied by the operator which regularly provides childcare for at least seven but not more than twelve children, unattended by a parent or a legal guardian including those children living in the home and children received for childcare who are related to the resident caregiver. However, an occupied residence in which childcare is provided only for a child or children related to the resident caregiver or only for the child or children of one unrelated family or only for a combination of these children is not a group childcare home.~~

~~(15)~~ ‘Infant’ means a child age twelve months or younger for the purposes of this chapter.

~~(16)~~(14) ‘Minor child’ means a person who has not reached the eighteenth birthday.

~~(17)~~(15) ‘Private childcare facility’ means a facility as defined under ~~item b. of this section~~ subitem (b) which is not a public childcare facility, and which is able to be further classified as follows:

(a) ‘Entrepreneurial childcare facility’ means a facility whose childcare operator may receive public assistance funds directly or indirectly but which is managed as a profit‑making business enterprise and whose corporation or private ownership is liable for payment of federal and state income taxes on profits earned by the facility.

(b) ‘Nonprofit childcare facility’ means a facility whose childcare operator may receive public assistance funds directly or indirectly but which is operated under the tutelage and control of a nonprofit or eleemosynary corporation, foundation, association, or other organization whose ownership may or may not be liable for payment of federal and state income taxes on profits earned by the facility.

~~(18)~~ ~~‘Provisional approval’ means a written notice issued by the department to a department, agency, or institution of the State, or a county, city, or other political subdivision approving the commencement of the operations of a public childcare center or group childcare home although the operator is temporarily unable to comply with all of the requirements for approval.~~

~~(19)~~(16) ‘Provisional license’ means a license issued by the department to an operator of a ~~private~~ childcare center or group childcare home or a family childcare home which elects to be licensed authorizing the licensee to begin operations although the licensee temporarily is unable to comply with all of the requirements for a license.

~~(20)~~(17) ‘Public childcare facility’ means a facility as defined under item b of this section which was created and exists by act of the State, or a county, city or other political subdivision, whose operation remains under the tutelage and control of a governmental agency.

~~(21)~~(18) ‘Registration’ means the process whereby childcare centers ~~and group childcare homes~~ owned and operated by a church or a publicly recognized religious educational or religious charitable institution are regulated under this chapter ~~and the process whereby all family childcare homes are regulated under this chapter~~.

~~(22)~~ ~~‘Regular approval’ means a written notice issued by the department for a two‑year period to a department, agency, or institution of the State, or a county, city, or other political subdivision, approving the operation of a public childcare center or group childcare home in accordance with the provisions of the notice, this chapter, and the regulations of the department.~~

~~(23)~~(19) ‘Regular license’ means a license issued by the department for two years to an operator of a ~~private~~ childcare center ~~or group childcare home or a family childcare home which elects to be licensed~~ showing that the licensee is in compliance with the provisions of this chapter and the regulations of the department at the time of issuance and authorizing the licensee to operate in accordance with the license, this chapter, and the regulations of the department.

~~(24)~~(20) ‘Regularly, or on a regular basis’: these terms refer to the frequency with which childcare services are available and provided at a facility in any one week; these terms mean the availability and provision of periods of daycare on more than two days in such week.

~~(25)~~(21) ‘Related’ means any of the following relationships by marriage, blood, or adoption: parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, aunt, cousin of the first degree.

~~(26)~~(22) ‘Renewal’ means in regard to childcare centers ~~and group childcare homes~~, to grant an extension of a regular license ~~or regular approval~~ for another two‑year period provided an investigation of such facilities verifies that they are in compliance with the applicable regulations~~, in regard to family childcare homes, to place the name of the operator on the registration list for another year provided procedures indicated in this chapter have been completed~~.

~~(27)~~(23) ‘Revocation’ means to void the regular license of a childcare center ~~or group childcare home~~.

~~(28)~~(24) ‘Summer day camp for children’ means a program offered during the summer that provides recreational activities primarily during daytime hours throughout the period of the program and may include an occasional overnight activity under the supervision of the operator.

~~(29)~~(25) ‘Summer resident camp for children’ means a twenty‑four‑hour residential program offered during the summer that provides recreational activities for children.

Section 63‑13‑30. (A) A caregiver who begins employment in a ~~licensed or approved~~ childcare center in South Carolina after June 30, 1994, must have at least a high school diploma or General Educational Development (GED) and at least six months’ experience as a caregiver in a ~~licensed or approved~~ childcare facility. If a caregiver does not meet the experience requirements, the caregiver must be directly supervised for six months by a staff person with at least one year experience as a caregiver in a ~~licensed or approved~~ childcare facility. Within six months of being employed, a caregiver must have six clock hours of training in child growth and development and early childhood education or shall continue to be under the direct supervision of a caregiver who has at least one year of experience as a caregiver in a l~~icensed or approved~~ childcare facility.

(B) A caregiver who has two years’ experience as a caregiver in a ~~licensed or approved~~ facility and is employed as of July 1, 1994, in a licensed or approved childcare center in South Carolina is exempt from the high school diploma and General Educational Development (GED) requirements of subsection (A).

Section 63‑13‑40. (A) No childcare center~~, group childcare home, family childcare home,~~ or church or religious childcare center may employ a person or engage the services of a caregiver who is required to register under the sex offender registry act pursuant to Section 23‑3‑430 or who has been convicted of:

(1) a crime listed in Chapter 3 ~~of~~, Title 16, Offenses Against the Person;

(2) a crime listed in Chapter 15 ~~of~~, Title 16, Offenses Against Morality and Decency;

(3) the crime of contributing to the delinquency of a minor, contained in Section 16‑17‑490;

(4) the felonies classified in Section 16‑1‑10(A), except that this prohibition does not apply to Section 56‑5‑2930, the Class F felony of driving under the influence pursuant to Section 56‑5‑2940(4) if the conviction occurred at least ten years prior to the application for employment and the following conditions are met:

(a) the person has not been convicted in this State or any other state of an alcohol or drug violation during the previous ten‑year period;

(b) the person has not been convicted of and has no charges pending in this State or any other state for a violation of driving while his license is canceled, suspended, or revoked during the previous ten‑year period; and

(c) the person has completed successfully an alcohol or drug assessment and treatment program provided by the South Carolina Department of Alcohol and Other Drug Abuse Services or an equivalent program designated by that agency.

A person who has been convicted of a first‑offense violation of Section 56‑5‑2930 must not drive a motor vehicle or provide transportation while in the official course of his duties as an employee of a childcare center~~, group childcare home, family childcare home,~~ or church or religious childcare center.

If the person subsequently is convicted of, receives a sentence upon a plea of guilty or of nolo contendere, or forfeits bail posted for a violation of Section 56‑5‑2930 or for a violation of another law or ordinance of this State or any other state or of a municipality of this State or any other state that prohibits a person from operating a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics, the person’s employment must be terminated;

(5) the offenses enumerated in Section 16‑1‑10(D); or

(6) a criminal offense similar in nature to the crimes listed in this subsection committed in other jurisdictions or under federal law.

This section does not prohibit employment or provision of caregiver services when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this subsection has been pardoned. However, notwithstanding the entry of a pardon, an operator or the department may consider all information available, including the person’s pardoned convictions or pleas and the circumstances surrounding them, to determine whether the applicant is unfit or otherwise unsuited for employment or to provide caregiver services.

(B) A person who has been convicted of a crime enumerated in subsection (A) who applies for employment with, is employed by, or is a caregiver at a childcare center~~, group childcare home, family childcare home,~~ or church or religious childcare center is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(C) Application forms for employment at childcare centers~~, group childcare homes, family childcare homes,~~ or church or religious childcare centers must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in subsection (A) who applies for employment with, is employed by, or seeks to provide caregiver services or is a caregiver at a facility is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(D)(1) To be employed by or to provide caregiver services at a childcare facility licensed~~,~~ or registered~~, or approved~~ under this ~~subarticle~~ article, a person first shall undergo a state fingerprint‑based background check to be conducted by the State Law Enforcement Division (SLED) to determine any state criminal history, a fingerprint‑based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history, and a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child.

(2) However, a person may be provisionally employed or may provisionally provide caregiver services after the favorable completion of the State Law Enforcement Division name and date of birth‑based background check until such time as the SLED and Federal Bureau of Investigation fingerprint‑based background checks, and the Central Registry check are completed if the person executes a sworn statement on a form provided by the department that he or she has not been convicted of any crime enumerated in this section and that he or she is not on the Central Registry for having perpetrated abuse or neglect upon a child. A person provisionally employed must be directly supervised by a nonprovisionally employed person at all times when providing direct care to children.

(3) Provisional status will be repealed if the requests for the Central Registry check and SLED and FBI fingerprint‑based background checks are not sent by facsimile, mail, or another manner approved by the department by the end of the next business day after the person was employed.

(4) If the director of a childcare facility violates the terms of provisional employment, for a first offense, the facility may not employ a person provisionally for twelve months. For a second or subsequent offense, the facility may not employ a person provisionally for twenty‑four months. The penalty shall apply to any facility that may employ the director of the facility during the period of suspension. A childcare facility owner with five or more facilities that sustains violations in twenty‑five percent or more of facilities owned in the State during a period of two years may not employ a person provisionally in any facility for twenty‑four months. The department shall have authority to determine that a violation has occurred and shall notify the owner and the director in writing of the violation and the penalty. The owner or director under penalty may appeal this determination through the process provided in this subarticle for appeal of the revocation or denial of a childcare license. Authority to employ persons in provisional status must remain suspended while the appeal is pending. Upon disposition of the appeal in favor of the appellant, authority to use provisional status must be restored.

(5) The results of the fingerprint‑based background checks are valid and reviews are not required to be repeated as long as the person remains employed by or continues providing caregiver services in a childcare center~~, group childcare home, family childcare home,~~ or church or religious childcare center; however, if a person is not employed or does not provide caregiver services for one year or longer, the fingerprint reviews must be repeated.

(6) For provisional employment under this section, the department must complete the Central Registry check within two business days of receipt of the request. For other employment under this section, the department must complete the Central Registry check within five business days of receipt of the request. If the department notifies the provider that research into other records is required, these deadlines may be extended for up to ten additional business days.

(E) Unless otherwise required by law, this section does not apply to volunteers in a childcare center~~, group childcare home, family childcare home,~~ or church or religious childcare center. For purposes of this section, ‘volunteer’ means a person who:

(1) provides services without compensation relating to the operation of a childcare center~~, group childcare home, family childcare home,~~ or church or religious childcare center; and

(2) is in the presence of an operator, employee, or caregiver when providing direct care to children.

‘Volunteer’ includes, but is not limited to, parents, grandparents, students, and student teachers.

(F) Unless otherwise required by law, this section applies to:

(1) an employee who provides care to the child or children without the direct personal supervision of a person licensed, registered, or approved under this chapter; and

(2) any other employee at a facility licensed, registered, or approved under this chapter who has direct access to a child outside the immediate presence of a person who has undergone the fingerprint review required under this chapter.

Section 63‑13‑45. (A) An owner or operator of a childcare center, ~~group childcare home, or family childcare home,~~ as defined by Section 63‑13‑20, must notify and obtain signed statements from the custodial parent or parents or guardian or guardians of each child currently enrolled in the childcare center~~, group childcare home, or family childcare home~~ indicating that the parent or parents or guardian or guardians have received notice that the childcare center~~, group childcare home, or family childcare home~~ may provisionally employ a person in order to comply with Section 63‑7‑1980 and Section 63‑13‑40(D) when an unexpected staff vacancy occurs. Provisional employment may only occur pursuant to the provisions of Section 63‑13‑40(D).

(B) Within sixty days of this act’s effective date, an owner or operator of a childcare center, ~~group childcare home, or family childcare home,~~ as defined by Section 63‑13‑20 ~~of the 1976 Code~~, must notify and obtain signed statements pursuant to the provisions of this section from the custodial parent or parents or guardian or guardians of each child enrolled on this act’s effective date in the childcare center~~, group childcare home, or family childcare home~~.

Section 63‑13‑50. The fingerprint reviews required by this chapter are not required of a certified education personnel who has undergone a fingerprint review pursuant to Section 59‑26‑40 or of a person licensed as a foster parent who has undergone a state and federal fingerprint review pursuant to Section 63‑7‑2340, and the results of these reviews have been submitted to the department and the person has remained employed since the review in certified education or licensed as a foster parent or the reviews have been conducted within the preceding year.

Section 63‑13‑60. For conducting a state criminal history review as required by this chapter State Law Enforcement Division may not impose a fee greater than the fee imposed by the Federal Bureau of Investigation for conducting such a review.

Section 63‑13‑70. Every childcare center ~~or group childcare home~~ shall maintain a register setting forth essential facts concerning each child enrolled under the age of ~~eighteen~~ twelve years.

Section 63‑13‑80. (A) In exercising the powers of licensing, ~~approving,~~ renewing, revoking, or making provisional licenses ~~and approvals~~, the department shall investigate and inspect licensees ~~and approved operators~~ and applicants for a license ~~or an approval~~. The authorized representative of the department may visit a childcare center ~~or group childcare home~~ anytime during the hours of operation for purposes of investigations and inspections. In conducting investigations and inspections, the department may call on political subdivisions and governmental agencies for appropriate assistance within their authorized fields. The inspection of the health and fire safety of childcare centers and group childcare homes must be completed upon the request of the department by the appropriate agencies (i.e., Department of Health and Environmental Control, the Office of the State Fire Marshal, or local authorities). Inspection reports completed by state agencies and local authorities must be furnished to the department and become a part of its determination of conformity for licensing ~~and approval~~. After careful consideration of the reports and consultation where necessary, the department shall assume responsibility for the final determination of licensing, ~~approving,~~ renewing, revoking, or ~~making~~ issuing provisional licenses ~~and approvals~~.

(B) Before issuing a license ~~or approval~~ the department shall conduct an investigation of the applicant and the proposed plan of care for children and for operating a childcare center ~~or a group childcare home~~. If the results of the investigation satisfy the department that the provisions of this chapter and the applicable regulations promulgated by the department are satisfied, a license ~~or approval~~ must be issued.

Section 63‑13‑90. At the time of initial licensing~~, approval,~~ or registration a childcare facility must provide proof of conformity or authorized nonconformity with county or municipal zoning ordinances or resolutions. The department may impose conditions on the license~~, approval,~~ or registration consistent with restrictions imposed by zoning authorities.

Section 63‑13‑100. (A) The department has power to issue a provisional registration~~,~~ or provisional license~~, or provisional approval~~ only when the department is satisfied that:

(1) the regulations can and will be met within a reasonable time; and

(2) the deviations do not seriously threaten the health or safety of the children. A provisional registration~~,~~ or provisional license~~, or provisional approval,~~ may be extended for a period as may be determined by the department.

(B) Except as noted in subsection (C) of this section, no provisional license ~~or provisional approval~~ may be issued effective for any longer than one year.

(C) Any facility granted a license or exempt from obtaining a license under the act previously in effect in this State and which does not qualify for a regular license under this chapter must be granted a provisional license in accord with ~~subsection a.~~ subsection (A) of this section. The provisional license may be issued without regard to the time limit of subsection (B) of this section. No provisional license issued under subsection (C) is effective, either by its initial issue or by renewal, for a period greater than three years.

Section 63‑13‑110. During the hours of operation all childcare facilities, except registered family childcare homes, must have on the premises at least one caregiver with a current certificate for the provision of basic first aid and child‑infant cardiopulmonary resuscitation.

Section 63‑13‑120. The Department of Social Services in conjunction with existing training regulations shall make available to childcare owners and operators staff training on domestic violence including, but not limited to:

(1) the nature, extent, and causes of domestic and family violence;

(2) issues of domestic and family violence concerning children;

(3) prevention of the use of violence by children;

(4) sensitivity to gender bias and cultural, racial, and sexual issues;

(5) the lethality of domestic and family violence;

(6) legal issues relating to domestic violence and child custody.

Section 63‑13‑130. The department shall offer consultation through employed staff or other qualified person to assist applicants and operators in meeting and maintaining regulations.

Section 63‑13‑140. Upon request of an applicant or operator, the department shall offer consultation to address any aspect of compliance with this chapter or the regulations promulgated under this chapter. Consultation includes, but is not limited to, review and comment on drawings and specifications related to construction and renovations proposed by a facility.

Section 63‑13‑150. At any time the department cites a childcare center~~, group childcare home, or family childcare home~~ for a violation of this chapter or regulations promulgated pursuant to this chapter, the department shall provide the owner and operator of the center with a brochure stating, in language easily understood, the rights and procedures available to the owner or operator for a hearing in accordance with the department’s fair hearing regulations and the rights and procedures available to appeal a decision rendered under the department’s fair hearing process.

Section 63‑13‑160. The department is empowered to seek an injunction against the continuing operation of a childcare facility in the family court having jurisdiction over the county in which the facility is located:

(1) when a facility is operating without a license or ~~statement of~~ registration;

(2) when there is any violation of this chapter or of the regulations promulgated by the department which threatens serious harm to children in the childcare facility;

(3) when an operator has repeatedly violated this chapter or the regulations of the department.

Section 63‑13‑170. A person violating the provisions of this chapter is guilty of a misdemeanor and, upon conviction, must be punished by a fine not exceeding one thousand five hundred dollars or imprisonment not exceeding six months, or both.

Section 63‑13‑180. (A) The department shall with the advice and consent of the Advisory Committee develop and promulgate regulations depending upon the nature of services to be provided for the operation and maintenance of childcare centers ~~and group childcare homes. The department with the advice of the Advisory Committee shall develop suggested standards which shall serve as guidelines for the operators of family childcare homes and the parents of children who use the service~~. In developing these regulations and suggested standards, the department shall consult with:

(1) other state agencies, including the State Department of Health and Environmental Control, the Office of the State Fire Marshal, and the Office of the Attorney General~~.~~;

(2) parents, guardians, or custodians of children using the service~~.~~;

(3) child advocacy groups~~.~~;

(4) the State Advisory Committee on the Regulation of Childcare Facilities established by this chapter~~.~~ ;

(5) operators of childcare facilities from all sectors~~.~~;

(6) professionals in fields relevant to childcare and development~~.~~;

(7) employers of parents, guardians, or custodians of children using the service.

Draft formulations must be widely circulated for criticism and comment.

(B) The regulations for operating and maintaining childcare centers ~~and group childcare homes and the suggested standards for family childcare homes~~ must be designed to promote the health, safety, and welfare of the children who are to be served by assuring safe and adequate physical surroundings and healthful food; by assuring supervision and care of the children by capable, qualified personnel of sufficient number. The regulations with respect to licensing ~~and approval, and the suggested standards with respect to registration of family childcare homes~~ must be designed to promote the proper and efficient processing of matters within the cognizance of the department and to assure applicants, licensees, ~~approved operators,~~ and registrants fair and expeditious treatment under the law.

(C) The department shall conduct a comprehensive review of its licensing ~~and approval~~ regulations ~~and family childcare home suggested standards~~ at least once ~~each~~ every three years.

(D) No regulations for childcare facilities may exceed policies or minimum standards set for public childcare facilities regulated under this chapter.

(E) The department shall submit final drafts of its regulations to the Legislative Council as proposed regulations, and the Administrative Procedures Act Sections 1‑23‑10 et seq., governs their promulgation.

(F) The department shall establish a procedure for its representatives to follow in receiving and recording complaints. Standard forms may be produced and made available to parents and users of facilities upon request to the department. A copy of any complaint must be made available to the involved operator immediately upon his request.

Section 63‑13‑190. (A)(1) Before the Department of Social Services employs a person in its childcare licensing or child protective services divisions, the person shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history. No person may be employed in these divisions if the person has been convicted of or pled guilty or nolo contendere to any crime listed in Section 63‑13‑40(A).

(2) This section does not prohibit employment when a conviction or plea of guilty or nolo contendere for one of the crimes listed has been pardoned. However, notwithstanding the entry of a pardon, the department may consider all information available, including the person’s pardoned convictions or pleas and the circumstances surrounding them, to determine whether the applicant is unfit or otherwise unsuited for employment.

(B) Notwithstanding subsection (A) or any other provision of law, a person may be provisionally employed in the childcare licensing or child protective services divisions upon receipt and review of the results of the State Law Enforcement Division fingerprint review if the results show no convictions of the crimes referenced in subsection (A). Pending receipt of the results of the Federal Bureau of Investigation fingerprint review, the department must obtain from the prospective employee a written affirmation on a form provided by the department that the employee has not been convicted of any crime referenced in subsection (A).

(C) A person who has been convicted of a crime referenced in subsection (A) who applies for employment with the childcare licensing or child protective services divisions is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

Section 63‑13‑200. It is a separate criminal offense, and a felony, for a person to unlawfully commit any of the offenses listed in Chapter 3 ~~of~~, Title 16, Offenses Against the Person, a crime listed in Chapter 15 ~~of~~, Title 16, Offenses Against Morality and Decency, or the crime of contributing to the delinquency of a minor contained in Section 16‑17‑490 while within a radius of one hundred yards of the grounds of a public or private childcare facility. A person who commits this offense must, upon conviction, be punished by a fine not to exceed ten thousand dollars or imprisonment not to exceed ten years or both, in addition to any other penalty imposed by law and not in lieu of any other penalty.

Section 63‑13‑210. (A) An owner or operator of a childcare center, ~~group childcare home, or family childcare home,~~ as defined by Section 63‑13‑20, who does not carry liability insurance for the operation of his childcare business, shall, by no later than January 1, 2009, obtain signed statements from the custodial parent or parents or guardian or guardians of each child currently enrolled in the childcare center, ~~group childcare home, or family childcare home~~ indicating that the parent or parents or guardian or guardians have received notice that the childcare center~~, group childcare home, or family childcare home~~ does not carry liability insurance for the operation of its childcare business. The owner or operator of a childcare center~~, group childcare home, or family childcare home~~ must maintain a file of these signed statements at the home during the period of time a child is enrolled. For new enrollees to a childcare center, ~~group childcare home, or family childcare home,~~ the owner or operator must provide the parent or parents or guardian or guardians of a new enrollee with this information at the time of enrollment, obtain a signed statement from each parent or guardian at the time of enrollment, and maintain these signed statements at the home during the period of time a child is enrolled.

(B) If an owner or operator of a childcare center~~, group childcare home, or family childcare home~~, as defined by Section 63‑13‑20, has liability insurance for the operation of his childcare business that lapses or is canceled and not reinstated or replaced, the owner or operator shall obtain and maintain statements in accordance with subsection (A) from the custodial parent or parents or guardian or guardians of each child enrolled in the childcare center~~, group childcare home, or family childcare home~~ no later than thirty days after the liability insurance lapses or is canceled.

(C) The department shall send a letter to each childcare center~~, group childcare home, and family childcare home~~ licensed or registered as of June 30, 2008, with the department informing each home of the requirements of subsections (A) and (B), that each home must comply with these requirements by no later than January 1, 2009, and that compliance is a requirement for initial licensure and a continuing annual requirement for relicensure. For childcare centers~~, group childcare homes, and family childcare homes~~ licensed or registered after June 30, 2008, the department shall provide the information contained in subsections (A) and (B) at the time the childcare center~~, group childcare home, or family childcare home~~ applies for a license or registration.”

SECTION 2. Section 63‑13‑810 of the 1976 Code, as added by Act 361 of 2008, is amended to read:

“Section 63‑13‑810. (A) As used in this chapter, ‘family childcare home’ means a facility within a residence occupied by the operator in which childcare regularly is provided for no more than six children, unattended by a parent or legal guardian, including those children living in the home and the children received for childcare who are related to the resident caregiver. However, an occupied residence in which childcare is provided only for a child or children related to the resident caregiver or only for the child or children of one unrelated family, or only for a combination of these children, is not a family childcare home.

(B) An operator of a family childcare home shall ~~register with the department within six months of June 13, 1977~~ be licensed within six months of the effective date of the new regulations related to family childcare homes.

(C) ~~A family childcare home which elects to participate in a federal program which requires licensing as a prerequisite to participation may elect to be licensed under the procedures in Section 63‑13‑820. A family childcare home electing licensing shall demonstrate compliance with the suggested standards developed by the department under Section 63‑13‑180 and shall comply with provisions of Sections 63‑13‑420 and 63‑13‑430 relating to criminal history conviction records checks upon original licensing and upon renewal.~~ Operators and caregivers of licensed family childcare homes are held to the standards in Sections 63‑13‑420 and 63‑13‑430 regarding criminal convictions.”

SECTION 3. Article 5, Chapter 13, Title 63 and Sections 63‑13‑820 through 63‑13‑860 of the 1976 Code are repealed.

SECTION 4. This act takes effect July 1, 2010.

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