WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989

ENROLLED

SENATE BILL NO. 310

(By Senator Lucht)

PASSED April 8, 1989
In Effect 90 days from Passage
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(BY SENATOR LUCHT)

[Passed April 8, 1989; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, three, four, five, six, eight, nine, ten, eleven and fourteen, article two-b, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section sixteen, all relating to the registration of family day care homes by the commissioner of human services; general requirements for registration; and penalties and injunctions.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, eight, nine, ten, eleven and fourteen, article two-b, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section sixteen, all to read as follows:
ARTICLE 2B. DUTIES OF COMMISSIONER OF HUMAN SERVICES FOR CHILD WELFARE.

§49-2B-1. Policy and purpose; transfer of powers of child welfare licensing board.

It is the policy of the state to assist a child and the child's family as the basic unit of society through efforts to strengthen and preserve the family unit. In the event of a temporary or permanent absence of parents or the separation of a child from the family unit for care or treatment purposes, it is the policy of the state to assure that a child receives care and nurturing as close as possible to society's expectations of a family's care and nurturing of its child. The state has a duty to assure that proper and appropriate care is given and maintained.

Through licensing, approving and registering child care facilities and child welfare agencies, the state exercises its benevolent police power to protect the user of a service from risks against which he or she would have little or no competence for self protection. Licensing, approval and registration processes must therefore continually balance the child's rights and need for protection with the interests, rights and responsibility of the service providers.

In order to carry out the above policy, the Legislature enacts this article to protect and prevent harm to children separated from their families and to enhance their continued growth and well-being while in care.

The purposes of this article are:

(i) To protect the health, safety and well-being of children in substitute care by preventing improper and harmful care; (ii) to establish statewide rules for regulating programs as defined in this article; and (iii) to encourage and assist in the improvement of child care programs. In order to carry out these purposes, the powers of the child welfare licensing board created by chapter nineteen, acts of the Legislature, one thousand nine hundred forty-five, are hereby transferred to the commissioner of human services, along

As used in this article, unless the context otherwise requires:

“Approval” means a finding by the commissioner that a facility operated by the state has met the requirements set forth in the rules promulgated pursuant to this article.

“Certificate of approval” means a statement of the commissioner that a facility operated by the state has met the requirements set forth in the rules promulgated pursuant to this article.

“Certificate of license” means a statement issued by the commissioner authorizing an individual, corporation, partnership, voluntary association, municipality or county, or any agency thereof, to provide specified services for a limited period of time in accordance with the terms of the certificate.

“Certificate of registration” means a statement issued by the commissioner to a family day care home upon receipt of a self-certification statement of compliance with the rules promulgated pursuant to the provisions of this article.

“Child” means any person under eighteen years of age.

“Child care” means responsibilities assumed and services performed in relation to a child’s physical, emotional, psychological, social and personal needs and the consideration of the child’s rights and entitlements.

“Child placing agency” means a child welfare agency organized for the purpose of placing children in private family homes for foster care or for adoption. The function of a child placing agency may include the investigation and certification of foster family homes and foster family group homes as provided in this chapter. The function of a child placing agency may also include the supervision of children who are sixteen or seventeen years old and living in unlicensed
residences.

“Commissioner” means the commissioner of human services.

“Day care center” means a facility operated by a child welfare agency for the care of seven or more children on a nonresidential basis.

“Department” means the state department of human services.

“Facility” means a place or residence, including personnel, structures, grounds and equipment used for the care of a child or children on a residential or other basis for any number of hours a day in any shelter or structure maintained for that purpose.

“Family day care” means nonresidential child care provided for compensation in a home other than the child’s own home. The provider may care for four to six children, including children who are living in the household, who are under six years of age. No more than two of the total number of children may be under twenty-four months of age.

“Foster family group home” means a private residence which is used for the care on a residential basis of six, seven or eight children who are unrelated by blood, marriage, or adoption to any adult member of the household.

“Foster family home” means a private residence which is used for the care on a residential basis of no more than five children who are unrelated by blood, marriage, or adoption to any adult member of the household.

“Group home” means any facility, public or private, which is used to provide residential care for ten or fewer children.

“Group home facility” means any facility, public or private, which is used to provide residential care for eleven or more children.

“License” means the grant of official permission to
a facility to engage in an activity which would otherwise be prohibited.

"Registration" means the process by which a family day care home self-certifies compliance with the rules promulgated pursuant to this article.

"Residential child care" or "child care on a residential basis" means child care which includes the provision of nighttime shelter and the personal discipline and supervision of a child by guardians, custodians or other persons or entities on a continuing or temporary basis.

"Rule" means a statement issued by the commissioner of the standard to be applied in the various areas of child care.

"Variance" means a declaration that a rule may be accomplished in a manner different from the manner set forth in the rule.

"Waiver" means a declaration that a certain rule is inapplicable in a particular circumstance.

§ 49-2B-3. License, approval and registration requirements.

1 (a) Any person, corporation, or child welfare agency other than a state agency, which operates a residential child care facility, a child placing agency or a day care center shall have a license.

5 (b) Any residential child care facility, day care center or any child placing agency operated by the state shall obtain approval of its operations from the commissioner. Such facilities and placing agencies shall maintain the same standards of care applicable to licensed facilities, centers or placing agencies of the same category.

12 (c) Every family day care home shall have a certificate of registration. Family day care homes approved by the department of human services for receipt of funding shall automatically receive a certificate of registration.

17 (d) This section does not apply to:
(1) A kindergarten, preschool or school education program which is operated by a public school or which is accredited by the state department of education, or any other kindergarten, preschool or school programs which operate with sessions not exceeding four hours per day for any child;

(2) An individual or facility which offers occasional care of children for brief periods while parents are shopping, engaging in recreational activities, attending religious services or engaging in other business or personal affairs;

(3) Summer recreation camps operated for children attending sessions for periods not exceeding thirty days;

(4) Hospitals or other medical facilities which are primarily used for temporary residential care of children for treatment, convalescence or testing; or

(5) Persons providing family day care solely for children related to them.


The commissioner shall promulgate rules for the purpose of carrying out the provisions of this article, to include the family day care registration program, within one hundred eighty days of the effective date hereof pursuant to the provisions of chapter twenty-nine-a of this code: Provided, That any rule promulgated as a result of the enactment of this section in the year one thousand nine hundred eighty-one, need not be repromulgated.

The commissioner shall review the rules promulgated pursuant to the provisions of this article at least once every five years, making revisions when necessary or convenient.

§49-2B-5. Penalties; injunctions.

(a) Any individual or corporation which operates a child welfare agency, residential child care facility or day care center without a license when a license is required is guilty of a misdemeanor, and, upon convic-
tion thereof, shall be punished by imprisonment in jail not exceeding one year, or a fine of not more than five hundred dollars, or both fined and imprisoned.

(b) Where a violation of this article or a rule or regulation promulgated by the commissioner may result in serious harm to children under care, the commissioner may seek injunctive relief against any person, corporation, child welfare agency, child placing agency, day care center, family day care home or governmental official through proceedings instituted by the attorney general, or the appropriate county prosecuting attorney, in the circuit court of Kanawha County or in the circuit court of any county where the children are residing or may be found.

§49-2B-6. Conditions of licensure, approval and registration.

(a) A license or approval is effective for a period of two years from the date of issuance, unless revoked or modified to provisional status based on evidence of a failure to comply with the provisions of this article or any rules and regulations promulgated pursuant to this article. The license or approval shall be reinstated upon application to the commissioner and a determination of compliance.

A certificate of registration is effective for a period of two years from the date of issuance, unless revoked based on evidence of a failure to comply with the provisions of this article or any rules and regulations promulgated pursuant to this article. The certificate of registration shall be reinstated upon application to the commissioner, including a statement of assurance of continued compliance with the rules and regulations promulgated pursuant to this article.

The license, approval or registration issued under this article is not transferable and applies only to the facility and its location stated in the application. The license or approval shall be publicly displayed, except family day care homes, foster family homes, foster family group homes and group homes shall be required to display licenses or registration certificates upon request rather than by posting.
(b) A provisional license or approval may be issued as:

(i) An initial license or approval to a new facility which has been unable to demonstrate full compliance because the facility is not fully operational; or

(ii) A temporary license or approval to an established licensed facility which is temporarily unable to conform to the provisions of this article or the rules and regulations promulgated hereunder.

A provisional license or approval shall expire six months from the date of issuance and may be reinstated no more than two times. The issuance of a provisional license or approval shall be contingent upon the submission to the commissioner of an acceptable plan to overcome identified deficiencies within the period of the provisional license or approval. Provisional certificates of registration shall be issued to family day care homes.

(c) The commissioner, as a condition of issuing a license, registration or approval, may:

(i) Limit the age, sex or type of problems of children allowed admission to a particular facility;

(ii) Prohibit intake of any children; or

(iii) Reduce the number of children which the agency or facility operated by the agency is licensed, approved or registered to receive.

§49-2B-8. Application for license or approval.

Any person or corporation, or any governmental agency intending to act as a child welfare agency shall apply for a license, approval or registration certificate to operate child care facilities regulated by this article. Applications for license, approval or registration shall be made separately for each child care facility to be licensed, approved or registered.

The commissioner may prescribe forms and reasonable application procedures.

(a) Before issuing a license or approval, the commis-
sioner shall investigate the facility, program and persons responsible for the care of children. The investigation shall include, but not be limited to, review of resource need, reputation, character and purposes of applicants, a check of personnel criminal records, if any, and personnel medical records, the financial records of applicants, and consideration of the proposed plan for child care from intake to discharge.

(b) Before a family day care home registration is granted, the commissioner shall make inquiry as to the facility, program and persons responsible for the care of children. The inquiry shall include self-certification by the prospective family day care home of compliance with standards including, but not limited to:

(i) Physical and mental health of persons present in the home while children are in care;

(ii) Criminal and child abuse or neglect history of persons present in the home while children are in care;

(iii) Discipline;

(iv) Fire and environmental safety;

(v) Equipment and program for the children in care;

(vi) Health, sanitation and nutrition.

Further inquiry and investigation may be made as the commissioner may direct.

The commissioner shall make a decision on each application within sixty days of its receipt and shall provide to unsuccessful applicants written reasons for the decision.


The commissioner shall provide supervision to ascertain compliance with the rules and regulations promulgated pursuant to this article through regular monitoring, visits to facilities, documentation, evaluation and reporting. The commissioner shall be respon-
sible for training and education, within fiscal limitations, specifically for the improvement of care in family day care homes. The commissioner shall consult with applicants, the personnel of child welfare agencies, and children under care to assure the highest quality child care possible. The director of the department of health and the state fire marshal shall cooperate with the commissioner in the administration of the provisions of this article by providing such reports and assistance as may be requested by the commissioner.

§49-2B-10. Investigating authority.

The commissioner shall enforce the provisions of this article. An on-site evaluation of every facility regulated pursuant to this article, except registered family day care homes, shall be conducted no less than once per year by announced or unannounced visits. A random sample of not less than five percent of registered family day care homes shall be monitored annually through on-site evaluations. The commissioner shall have access to the premises, personnel, children in care and records of the facility, including, but not limited to, case records, corporate and financial records and board minutes. Applicants for licenses, approvals and certificates of registration shall consent to reasonable on-site administrative inspections, made with or without prior notice, as a condition of licensing, approval or registration. When a complaint is received by the commissioner alleging violations of licensure, approval or registration requirements, the commissioner shall investigate the allegations. The commissioner may notify the facility’s director before or after a complaint is investigated and shall cause a written report of the results of the investigation to be made.

The commissioner may enter any unlicensed, or unapproved child care facility or personal residence for which there is probable cause to believe that the facility or residence is operating in violation of this article. Such entries shall be made with a law-enforcement officer present. The commissioner may
enter upon the premises of any unregistered family
day care facility after two attempts by the commis-
sioner to bring this facility into compliance.


(a) The commissioner may revoke or make provi-
sional the license of any facility or child welfare
agency regulated pursuant to this article, except
family day care homes, if a certificate holder materi-
ally violates any provision of this article, any terms
or conditions of the license or approval issued, or fails
to maintain established requirements of child care.

(b) The commissioner may revoke the certificate of
registration of any family day care home if a certifi-
cate holder materially violates any provision of this
article, any terms or conditions of the registration
certificate issued, or fails to maintain established
requirements of child care.

§49-2B-14. Annual reports; directory; licensing reports and
recommendations.

The commissioner shall submit on or before the first
day of January of each year a report to the governor,
and upon request to members of the Legislature,
concerning the regulation of child welfare agencies,
child placing agencies, day care centers, family day
care homes and child care facilities during the year.
The report shall include, but not be limited to, data on
the number of children and staff at each facility
(except family day care homes), applications received,
types of licenses, approvals and registrations granted,
denied, made provisional or revoked and any injunc-
tions obtained or facility closures ordered.

The commissioner also shall compile annually a
directory of licensed and approved child care providers
including a brief description of their program and
facilities, the program’s capacity and a general profile
of children served. A listing of family day care homes
shall also be compiled annually.

Licensing reports and recommendations for licen-
sure which are a part of the yearly review of each
licensed facility shall be sent to the facility director.
Copies shall be available to the public upon written
request to the commissioner.


1 The commissioner shall provide ongoing education
2 of the public in regard to the requirements of this
3 article through the use of mass media and other
4 methods as are deemed appropriate.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick L. Ppper
Chairman Senate Committee

L. Z. Satterly
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Saul C. Wells
Clerk of the Senate

Donald L. Vipp
Clerk of the House of Delegates

Larry A. Townsend
President of the Senate

Bob C. Cole
Speaker House of Delegates

The within is approved this the 27th day of April 1989.

Governor