

No. 310

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SECRETARY OF STATE

**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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**Senate Bill No. 310**  
(BY SENATOR LUCHT)

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

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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.**

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

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

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

25 The purposes of this article are:

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

36 with the other powers granted by this article.

**§49-2B-2. Definitions.**

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

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

7 “Certificate of approval” means a statement of the  
8 commissioner that a facility operated by the state has  
9 met the requirements set forth in the rules promul-  
10 gated pursuant to this article.

11 “Certificate of license” means a statement issued by  
12 the commissioner authorizing an individual, corpora-  
13 tion, partnership, voluntary association, municipality  
14 or county, or any agency thereof, to provide specified  
15 services for a limited period of time in accordance  
16 with the terms of the certificate.

17 “Certificate of registration” means a statement  
18 issued by the commissioner to a family day care home  
19 upon receipt of a self-certification statement of com-  
20 pliance with the rules promulgated pursuant to the  
21 provisions of this article.

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

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

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

37 residences.

38 "Commissioner" means the commissioner of human  
39 services.

40 "Day care center" means a facility operated by a  
41 child welfare agency for the care of seven or more  
42 children on a nonresidential basis.

43 "Department" means the state department of  
44 human services.

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

50 "Family day care" means nonresidential child care  
51 provided for compensation in a home other than the  
52 child's own home. The provider may care for four to  
53 six children, including children who are living in the  
54 household, who are under six years of age. No more  
55 than two of the total number of children may be  
56 under twenty-four months of age.

57 "Foster family group home" means a private resi-  
58 dence which is used for the care on a residential basis  
59 of six, seven or eight children who are unrelated by  
60 blood, marriage, or adoption to any adult member of  
61 the household.

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

67 "Group home" means any facility, public or private,  
68 which is used to provide residential care for ten or  
69 fewer children.

70 "Group home facility" means any facility, public or  
71 private, which is used to provide residential care for  
72 eleven or more children.

73 "License" means the grant of official permission to

74 a facility to engage in an activity which would other-  
75 wise be prohibited.

76 “Registration” means the process by which a family  
77 day care home self-certifies compliance with the rules  
78 promulgated pursuant to this article.

79 “Residential child care” or “child care on a residen-  
80 tial basis” means child care which includes the  
81 provision of nighttime shelter and the personal disci-  
82 pline and supervision of a child by guardians, custodi-  
83 ans or other persons or entities on a continuing or  
84 temporary basis.

85 “Rule” means a statement issued by the commis-  
86 sioner of the standard to be applied in the various  
87 areas of child care.

88 “Variance” means a declaration that a rule may be  
89 accomplished in a manner different from the manner  
90 set forth in the rule.

91 “Waiver” means a declaration that a certain rule is  
92 inapplicable in a particular circumstance.

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

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

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

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

17 (d) This section does not apply to:

18 (1) A kindergarten, preschool or school education  
19 program which is operated by a public school or which  
20 is accredited by the state department of education, or  
21 any other kindergarten, preschool or school programs  
22 which operate with sessions not exceeding four hours  
23 per day for any child;

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

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

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

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

**§49-2B-4. Rules.**

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

10 The commissioner shall review the rules promul-  
11 gated pursuant to the provisions of this article at least  
12 once every five years, making revisions when neces-  
13 sary or convenient.

**§49-2B-5. Penalties; injunctions.**

1 (a) Any individual or corporation which operates a  
2 child welfare agency, residential child care facility or  
3 day care center without a license when a license is  
4 required is guilty of a misdemeanor, and, upon convic-

5 tion thereof, shall be punished by imprisonment in jail  
6 not exceeding one year, or a fine of not more than five  
7 hundred dollars, or both fined and imprisoned.

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

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

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

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

18 The license, approval or registration issued under  
19 this article is not transferable and applies only to the  
20 facility and its location stated in the application. The  
21 license or approval shall be publicly displayed, except  
22 family day care homes, foster family homes, foster  
23 family group homes and group homes shall be  
24 required to display licenses or registration certificates  
25 upon request rather than by posting.



26 (b) A provisional license or approval may be issued  
27 as:

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

31 (ii) A temporary license or approval to an estab-  
32 lished licensed facility which is temporarily unable to  
33 conform to the provisions of this article or the rules  
34 and regulations promulgated hereunder.

35 A provisional license or approval shall expire six  
36 months from the date of issuance and may be rein-  
37 stated no more than two times. The issuance of a  
38 provisional license or approval shall be contingent  
39 upon the submission to the commissioner of an accept-  
40 able plan to overcome identified deficiencies within  
41 the period of the provisional license or approval.  
42 Provisional certificates of registration shall be issued  
43 to family day care homes.

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

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

48 (ii) Prohibit intake of any children; or

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

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

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

8 The commissioner may prescribe forms and reason-  
9 able application procedures.

10 (a) Before issuing a license or approval, the commis-

11 sioner shall investigate the facility, program and  
12 persons responsible for the care of children. The  
13 investigation shall include, but not be limited to,  
14 review of resource need, reputation, character and  
15 purposes of applicants, a check of personnel criminal  
16 records, if any, and personnel medical records, the  
17 financial records of applicants, and consideration of  
18 the proposed plan for child care from intake to  
19 discharge.

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

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

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

32 (iii) Discipline;

33 (iv) Fire and environmental safety;

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

35 (vi) Health, sanitation and nutrition.

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

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

#### **§49-2B-9. Supervision and consultation required.**

1 The commissioner shall provide supervision to  
2 ascertain compliance with the rules and regulations  
3 promulgated pursuant to this article through regular  
4 monitoring, visits to facilities, documentation, evalua-  
5 tion and reporting. The commissioner shall be respon-

6 sible for training and education, within fiscal limita-  
7 tions, specifically for the improvement of care in  
8 family day care homes. The commissioner shall con-  
9 sult with applicants, the personnel of child welfare  
10 agencies, and children under care to assure the highest  
11 quality child care possible. The director of the depart-  
12 ment of health and the state fire marshal shall  
13 cooperate with the commissioner in the administration  
14 of the provisions of this article by providing such  
15 reports and assistance as may be requested by the  
16 commissioner.

**§49-2B-10. Investigating authority.**

1 The commissioner shall enforce the provisions of  
2 this article. An on-site evaluation of every facility  
3 regulated pursuant to this article, except registered  
4 family day care homes, shall be conducted no less than  
5 once per year by announced or unannounced visits. A  
6 random sample of not less than five percent of regis-  
7 tered family day care homes shall be monitored  
8 annually through on-site evaluations. The commis-  
9 sioner shall have access to the premises, personnel,  
10 children in care and records of the facility, including,  
11 but not limited to, case records, corporate and finan-  
12 cial records and board minutes. Applicants for licenses,  
13 approvals and certificates of registration shall consent  
14 to reasonable on-site administrative inspections, made  
15 with or without prior notice, as a condition of licens-  
16 ing, approval or registration. When a complaint is  
17 received by the commissioner alleging violations of  
18 licensure, approval or registration requirements, the  
19 commissioner shall investigate the allegations. The  
20 commissioner may notify the facility's director before  
21 or after a complaint is investigated and shall cause a  
22 written report of the results of the investigation to be  
23 made.

24 The commissioner may enter any unlicensed, or  
25 unapproved child care facility or personal residence  
26 for which there is probable cause to believe that the  
27 facility or residence is operating in violation of this  
28 article. Such entries shall be made with a law-  
29 enforcement officer present. The commissioner may

30 enter upon the premises of any unregistered family  
31 day care facility after two attempts by the commis-  
32 sioner to bring this facility into compliance.

**§49-2B-11. Revocation; provisional licenses and approvals.**

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

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

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

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

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

19 Licensing reports and recommendations for licen-  
20 sure which are a part of the yearly review of each

21 licensed facility shall be sent to the facility director.  
22 Copies shall be available to the public upon written  
23 request to the commissioner.

**§49-2B-16. Education of the public.**

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. Parson*  
.....  
Chairman Senate Committee

*L. L. Satter*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Judd C. Stellas*  
.....  
Clerk of the Senate

*Donald S. Kapp*  
.....  
Clerk of the House of Delegates

*Sam W. Tucker*  
.....  
President of the Senate

*Bob Clark*  
.....  
Speaker House of Delegates

The within *is approved* this the *27<sup>th</sup>*  
day of *April* 198*9*

*Gaston Caperton*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/24/89

Time 2:35