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STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

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ENROLLED

Com. Sub. For
HOUSE BILL No. 4170

(By Delegate *Mr. Speaker Mr. Chambers,*
and Delegate Ashley)
[By Request of the Enacture]

Passed *March 8,* 1996

In Effect *Ninety Days From* Passage

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COMMITTEE SUBSTITUTE

FOR

H. B. 4170

(By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed March 8, 1996; in effect ninety days from passage.]

AN ACT to amend and reenact sections one through eleven, inclusive, article two-b, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section fourteen of said article, all relating to duties of the department of human services for the welfare of children; definitions; creating a three-tiered regulatory structure for child care; creating a new classification for family day care facilities serving seven through twelve children and providing for less stringent certification requirements to be established by rule; and changing penalties.

Be it enacted by the Legislature of West Virginia:

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

11 (b) It is also the policy of this state to ensure that those
12 persons and entities offering quality child care services are
13 not over-encumbered by licensure, certification and
14 registration requirements and that the extent of regulation
15 of child care facilities be moderately proportionate to the
16 size of the facility.

17 (c) Through licensure, approval, certification and
18 registration of child care facilities and child welfare
19 agencies, the state exercises its benevolent police power to
20 protect the user of a service from risks against which he or
21 she would have little or no competence for self protection.
22 Licensure, approval, certification and registration
23 processes shall therefore continually balance the child's
24 rights and need for protection with the interests, rights and
25 responsibility of the service providers.

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

30 (e) The purposes of this article are:

31 (1) To protect the health, safety and well-being of
32 children in substitute care by preventing improper and
33 harmful care;

34 (2) To establish statewide rules for regulating
35 programs as defined in this article;

36 (3) To encourage and assist in the improvement of
37 child care programs;

38 (4) To ensure that persons and entities offering child
39 care services are not unduly burdened by licensure,
40 certification and regulation requirements; and

41 (5) To ensure that all child care programs be safe,
42 reliable and geared to the ages and needs of the children
43 they serve, meet basic health and safety standards, and
44 employ people who have the training and experience
45 needed to work with children.

46 (f) In order to carry out these purposes, the powers of
47 the child welfare licensing board created by chapter
48 nineteen, acts of the Legislature, one thousand nine
49 hundred forty-five, are hereby transferred to the
50 commissioner of human services, along with the other
51 powers granted by this article.

§49-2B-2. Definitions.

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

3 (a) "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 pursuant
6 to this article.

7 (b) "Certificate of approval" means a statement of the
8 commissioner that a facility operated by the state has met
9 the requirements set forth in the rules promulgated
10 pursuant to this article.

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

17 (d) "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
20 compliance with the rules promulgated pursuant to the
21 provisions of this article.

22 (e) "Certification" means a statement issued by the
23 commissioner to a family day care facility upon
24 satisfactory inspection, approval and certification that the
25 facility has complied with the applicable rules
26 promulgated by the commissioner.

27 (f) "Child" means any person under eighteen years of
28 age.

29 (g) "Child care" means responsibilities assumed and
30 services performed in relation to a child's physical,
31 emotional, psychological, social and personal needs and
32 the consideration of the child's rights and entitlements.

33 (h) "Child placing agency" means a child welfare
34 agency organized for the purpose of placing children in
35 private family homes for foster care or for adoption. The
36 function of a child placing agency may include the
37 investigation and certification of foster family homes and
38 foster family group homes as provided in this chapter.
39 The function of a child placing agency may also include
40 the supervision of children who are sixteen or seventeen
41 years old and living in unlicensed residences.

42 (i) "Child welfare agency" means any agency or
43 facility maintained by the state or any county or
44 municipality thereof, or any agency or facility maintained
45 by an individual, firm, corporation, association or
46 organization, public or private, to receive children for care
47 and maintenance or for placement in residential care
48 facilities, including without limitation, private homes, or
49 any facility that provides care for unmarried mothers and
50 their children;

51 (j) "Commissioner" means the commissioner of human
52 services.

53 (k) "Day care center" means a facility operated by a
54 child welfare agency for the care of thirteen or more
55 children on a nonresidential basis.

56 (l) "Department" means the state department of human
57 services.

58 (m) "Facility" means a place or residence, including
59 personnel, structures, grounds and equipment used for the
60 care of a child or children on a residential or other basis
61 for any number of hours a day in any shelter or structure
62 maintained for that purpose.

63 (n) "Family day care home" means a facility which is
64 used to provide nonresidential child care for
65 compensation in other than the child's own home. The
66 provider may care for four to six children, including
67 children who are living in the household, who are under
68 six years of age. No more than two of the total number of
69 children may be under twenty-four months of age.

70 (o) "Family day care facility" means any facility which
71 is used to provide nonresidential child care for
72 compensation for seven to twelve children, including
73 children who are living in the household, who are under
74 six years of age. No more than four of the total number
75 of children may be under twenty-four months of age.

76 (p) "Foster family group home" means a private
77 residence which is used for the care on a residential basis
78 of six, seven or eight children who are unrelated by blood,
79 marriage, or adoption to any adult member of the
80 household.

81 (q) "Foster family home" means a private residence
82 which is used for the care on a residential basis of no more
83 than five children who are unrelated by blood, marriage,
84 or adoption to any adult member of the household.

85 (r) "Group home" means any facility, public or private,
86 which is used to provide residential care for ten or fewer
87 children.

88 (s) "Group home facility" means any facility, public or

89 private, which is used to provide residential care for eleven
90 or more children.

91 (t) "License" means the grant of official permission to
92 a facility to engage in an activity which would otherwise
93 be prohibited.

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

97 (v) "Residential child care" or "child care on a
98 residential basis" means child care which includes the
99 provision of nighttime shelter and the personal discipline
100 and supervision of a child by guardians, custodians or
101 other persons or entities on a continuing or temporary
102 basis.

103 (w) "Rule" means a statement issued by the
104 commissioner of the standard to be applied in the various
105 areas of child care.

106 (x) "Variance" means a declaration that a rule may be
107 accomplished in a manner different from the manner set
108 forth in the rule.

109 (y) "Waiver" means a declaration that a certain rule is
110 inapplicable in a particular circumstance.

§49-2B-3. Licensure, certification, 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 obtain a license from the department.

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

11 (c) Any family day care facility which operates in this

12 state, including family day care facilities approved by the
13 department for receipt of funding, shall obtain a statement
14 of certification from the department.

15 (d) Every family day care home which operates in this
16 state, including family day care homes approved by the
17 department for receipt of funding, shall obtain a certificate
18 of registration from the department.

19 (e) This section does not apply to:

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

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

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

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

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

§49-2B-4. Rules.

1 (a) The commissioner shall promulgate rules in
2 accordance with the provisions of chapter twenty-nine-a of
3 this code regarding the licensure, approval, certification
4 and registration of child care facilities and the
5 implementation of the provisions of this article.

6 (b) The commissioner shall review the rules
7 promulgated pursuant to the provisions of this article at
8 least once every five years, making revisions when
9 necessary 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 day
3 care center without a license when a license is required is
4 guilty of a misdemeanor, and, upon conviction thereof,
5 shall be punished by imprisonment in jail not exceeding
6 one year, or a fine of not more than five hundred dollars,
7 or both fined and imprisoned.

8 (b) Any family day care facility which operates
9 without certification when certification is required is guilty
10 of a misdemeanor, and, upon conviction thereof, shall be
11 punished by a fine of not more than five hundred dollars.

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

§49-2B-6. Conditions of licensure, certification 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 any
5 rules promulgated pursuant to this article. The license or
6 approval shall be reinstated upon application to the
7 commissioner and a determination of compliance.

8 (b) A statement of certification is effective for a period
9 of two years from the date of issuance, unless revoked or
10 modified to provisional status based on evidence of a
11 failure to comply with the provisions of this article or any
12 rules promulgated pursuant to this article. The statement

13 of certification shall be reinstated upon application to the
14 commissioner and a determination of compliance.

15 (c) A certificate of registration is effective for a period
16 of two years from the date of issuance, unless revoked
17 based on evidence of a failure to comply with the
18 provisions of this article or any rules promulgated
19 pursuant to this article. The certificate of registration shall
20 be reinstated upon application to the commissioner,
21 including a statement of assurance of continued
22 compliance with the rules promulgated pursuant to this
23 article.

24 (d) The license, approval, certification or registration
25 issued under this article is not transferable and applies
26 only to the facility and its location stated in the
27 application. The license, approval or certification shall be
28 publicly displayed: *Provided*, That family day care homes,
29 foster family homes, foster family group homes and
30 group homes shall be required to display licenses,
31 statements of certification or registration certificates upon
32 request rather than by posting.

33 (e) A provisional license, certification or approval may
34 be issued as:

35 (1) An initial license, certification or approval to a new
36 facility which has been unable to demonstrate full
37 compliance because the facility is not fully operational; or

38 (2) A temporary license, certification or approval to an
39 established licensed or certified facility which is
40 temporarily unable to conform to the provisions of this
41 article or the rules promulgated hereunder.

42 (f) A provisional license, certification or approval shall
43 expire six months from the date of issuance and may be
44 reinstated no more than two times. The issuance of a
45 provisional license, certification or approval shall be
46 contingent upon the submission to the commissioner of an
47 acceptable plan to overcome identified deficiencies within
48 the period of the provisional license or approval.

49 (g) Provisional certificates of registration shall be
50 issued to family day care homes.

51 (h) The commissioner, as a condition of issuing a
52 license, certification, registration or approval, may:

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

55 (2) Prohibit intake of any children; or

56 (3) Reduce the number of children which the agency,
57 facility or home operated by the agency is licensed,
58 approved, certified or registered to receive.

§49-2B-7. Waivers and variances to rules.

1 Waivers or variances of rules may be granted by the
2 commissioner if the health, safety or well-being of a child
3 would not be endangered thereby. The commissioner shall
4 promulgate by rule criteria and procedures for the
5 granting of waivers or variances so that uniform practices
6 may be maintained throughout the state.

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

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

9 (b) The commissioner may prescribe forms and
10 reasonable application procedures.

11 (c) Before issuing a license, certification or approval,
12 the commissioner shall investigate the facility, program
13 and persons responsible for the care of children. The
14 investigation shall include, but not be limited to, review of
15 resource need, reputation, character and purposes of
16 applicants, a check of personnel criminal records, if any,
17 and personnel medical records, the financial records of

18 applicants, and consideration of the proposed plan for
19 child care from intake to discharge.

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

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

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

30 (3) Discipline;

31 (4) Fire and environmental safety;

32 (5) Equipment and program for the children in care;

33 (6) Health, sanitation and nutrition.

34 (e) Further inquiry and investigation may be made as
35 the commissioner may direct.

36 (f) The commissioner shall make a decision on each
37 application within sixty days of its receipt and shall
38 provide to unsuccessful applicants written reasons for the
39 decision.

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

1 (a) The commissioner shall provide supervision to
2 ascertain compliance with the rules promulgated pursuant
3 to this article through regular monitoring, visits to
4 facilities, documentation, evaluation and reporting. The
5 commissioner shall be responsible for training and
6 education, within fiscal limitations, specifically for the
7 improvement of care in family day care homes and
8 facilities. The commissioner shall consult with applicants,
9 the personnel of child welfare agencies, and children
10 under care to assure the highest quality child care
11 possible.

12 (b) The director of the department of health and the
13 state fire marshal shall cooperate with the commissioner in
14 the administration of the provisions of this article by
15 providing such reports and assistance as may be requested
16 by the commissioner.

§49-2B-10. Investigative authority.

1 (a) The commissioner shall enforce the provisions of
2 this article.

3 (b) An on-site evaluation of every facility regulated
4 pursuant to this article, except certified family day care
5 facilities and registered family day care homes, shall be
6 conducted no less than once per year by announced or
7 unannounced visits.

8 (c) Every certified family day care facility shall be
9 satisfactorily inspected by the department prior to issuance
10 of certification. Future inspections shall occur at not
11 longer than two year intervals or upon receipt by the
12 department of a complaint about the facility.

13 (d) A random sample of not less than five percent of
14 registered family day care homes shall be monitored
15 annually through on-site evaluations.

16 (e) The commissioner shall have access to the
17 premises, personnel, children in care and records of each
18 facility subject to inspection, including, but not limited to,
19 case records, corporate and financial records and board
20 minutes. Applicants for licenses, approvals, certifications
21 and certificates of registration shall consent to reasonable
22 on-site administrative inspections, made with or without
23 prior notice, as a condition of licensing, approval,
24 certification or registration.

25 (f) When a complaint is received by the commissioner
26 alleging violations of licensure, approval, certification or
27 registration requirements, the commissioner shall
28 investigate the allegations. The commissioner may notify
29 the facility's director before or after a complaint is
30 investigated and shall cause a written report of the results
31 of the investigation to be made.

32 (g) The commissioner may enter any unlicensed,
 33 uncertified, unregistered or unapproved child care facility
 34 or personal residence for which there is probable cause to
 35 believe that the facility or residence is operating in
 36 violation of this article. Such entries shall be made with a
 37 law-enforcement officer present. The commissioner may
 38 enter upon the premises of any unregistered residence
 39 only after two attempts by the commissioner to bring this
 40 facility into compliance.

§49-2B-11. Revocation; provisional licensure, certification and approval.

1 (a) The commissioner may revoke or make
 2 provisional the licensure or certification of any facility or
 3 child welfare agency regulated pursuant to this article if a
 4 facility materially violates any provision of this article, or
 5 any terms or conditions of the license, certification or
 6 approval issued, or fails to maintain established
 7 requirements of child care: *Provided*, That the provisions
 8 of this section shall not apply to family day care homes.

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

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

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

13 (b) The commissioner also shall compile annually a
14 directory of licensed, certified and approved child care
15 providers including a brief description of their program
16 and 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 (c) Licensing reports and recommendations for
20 licensure and certification which are a part of the yearly
21 review of each licensed facility shall be sent to the facility
22 director. Copies shall be available to the public upon
23 written request to the commissioner.

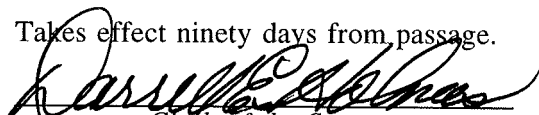
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

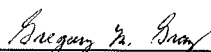
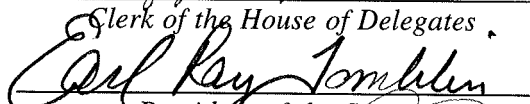

Chairman Senate Committee


Chairman House Committee

Originating in the House.

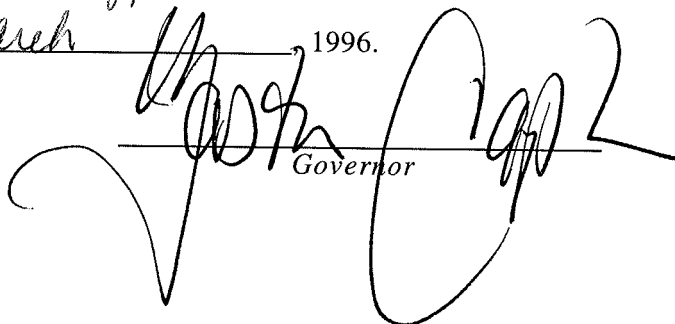
Takes effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates

President of the Senate


Speaker of the House of Delegates

The within is approved this the 20th
day of March, 1996.


Governor

PRESENTED TO THE

GOVERNOR

Date

3/19/96

Time

3:54 pm