WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED

Com. Sub. For

HOUSE BILL No. 4170

(By Delegate
Mr. Speaker, Mr. Chambers,
and Delegate Ashley)

(By Request of the Executive)

Passed March 8, 1996

In Effect Ninety Days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4170
(By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
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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.

(a) 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.

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

(c) Through licensure, approval, certification and registration of 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. Licensure, approval, certification and registration processes shall therefore continually balance the child's rights and need for protection with the interests, rights and responsibility of the service providers.

(d) 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.

(e) The purposes of this article are:

(1) To protect the health, safety and well-being of children in substitute care by preventing improper and harmful care;
(2) To establish statewide rules for regulating programs as defined in this article;

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

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

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

(f) 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 with the other powers granted by this article.


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

(a) "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.

(b) "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.

(c) "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.
(d) "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.

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

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

(g) "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.

(h) "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.

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

(j) "Commissioner" means the commissioner of human services.
(k) "Day care center" means a facility operated by a child welfare agency for the care of thirteen or more children on a nonresidential basis.

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

(m) "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.

(n) "Family day care home" means a facility which is used to provide nonresidential child care for compensation in 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.

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

(p) "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.

(q) "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.

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

(s) "Group home facility" means any facility, public or
private, which is used to provide residential care for eleven
or more children.

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

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

(v) "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.

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

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

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

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

(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 obtain a license from the department.

(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.

(c) Any family day care facility which operates in this
state, including family day care facilities approved by the department for receipt of funding, shall obtain a statement of certification from the department.

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

(e) 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.


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

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

(c) Where a violation of this article or a rule 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 facility, 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, certification 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 promulgated pursuant to this article. The license or approval shall be reinstated upon application to the commissioner and a determination of compliance.

(b) A statement of certification 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 promulgated pursuant to this article. The statement
of certification shall be reinstated upon application to the commissioner and a determination of compliance.

(c) 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 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 promulgated pursuant to this article.

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

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

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

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

(f) A provisional license, certification 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, certification 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.
(g) Provisional certificates of registration shall be issued to family day care homes.

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

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

(2) Prohibit intake of any children; or

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

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

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

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

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

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

(c) Before issuing a license, certification or approval, the commissioner 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.

(d) 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:

(1) Physical and mental health of persons present in the home while children are in care;
(2) Criminal and child abuse or neglect history of persons present in the home while children are in care;
(3) Discipline;
(4) Fire and environmental safety;
(5) Equipment and program for the children in care;
(6) Health, sanitation and nutrition.

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

(f) 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.


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

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

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

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

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

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

(f) When a complaint is received by the commissioner alleging violations of licensure, approval, certification 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.
(g) The commissioner may enter any unlicensed, uncertified, unregistered 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 residence only after two attempts by the commissioner to bring this facility into compliance.

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

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

(b) The commissioner may revoke the certificate of registration of any family day care home if a facility materially violates any provision of this article, or 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.

(a) 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 facilities, 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, certifications, approvals and registrations granted, denied, made provisional or revoked and any injunctions obtained or facility closures ordered.
(b) The commissioner also shall compile annually a directory of licensed, certified 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.

(c) Licensing reports and recommendations for licensure and certification 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.
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