

SENATE BILL NO. 222

BY SENATOR WALSWORTH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

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AN ACT

To amend and reenact R.S. 46:1403, 1404(A), 1405, 1415, 1419 through 1422, 1425(A) and (B), 1426, 1428(A), and 1429, to enact R.S. 46:1406 and 1407, and to repeal R.S. 46:1408, 1409, 1412, 1413, and 1424, relative to child care facilities; to provide for definitions; to provide for licensure requirements; to provide for transitional provisions; to provide for licensure procedures; to provide for rules; to provide for disclosure; to provide for agencies and facilities subject to regulation; to provide for revocation or refusal to renew licenses; to provide for violations; to provide for appeals; to provide for penalties; to provide for injunctive relief; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 46:1403, 1404(A), 1405, 1415, 1419 through 1422, 1425(A) and (B), 1426, 1428(A), and 1429 are hereby amended and reenacted and R.S. 46:1406 and 1407 are hereby enacted to read as follows:

§1403. Definitions

A. As used in this Chapter, the following definitions shall apply unless the context clearly states otherwise:

1 (1) "Camp" means any place or facility operated by any institution,
 2 society, agency, corporation, person or persons, or any other group which serves
 3 only children five years of age or older and operates only when school is not in
 4 session during the summer months or school holidays, or both.

5 (2) "Child" means a person who has not reached age eighteen or otherwise
 6 been legally emancipated. The words "child" and "children" are used
 7 interchangeably in this Chapter.

8 ~~(2)~~(3) "Child-placing agency" means any institution, society, agency,
 9 corporation, facility, person or persons, or any other group engaged in placing
 10 children in foster care or with substitute parents for temporary care or for adoption,
 11 or engaged in assisting or facilitating the adoption of children, or engaged in placing
 12 youth in transitional placing programs, but shall not mean a person who may
 13 occasionally refer children for temporary care.

14 ~~(3) "Community home" means any place, facility, or home operated by any~~
 15 ~~institution, society, agency, corporation, person or persons, or any other group which~~
 16 ~~receives therein at least four but not more than six individuals, who are not related~~
 17 ~~to the operator and whose parents or guardians are not residents of the same facility,~~
 18 ~~for supervision, care, lodging, and maintenance, with or without transfer of custody.~~

19 (4) "Day **Child day** care center" means any place or facility operated by any
 20 institution, society, agency, corporation, person or persons, or any other group for
 21 the purpose of providing care, supervision, and guidance of seven or more children,
 22 not including those related to the caregiver, unaccompanied by parent or guardian,
 23 on a regular basis for at least twelve and one-half hours in a continuous seven-day
 24 week. If a child day care center provides transportation or arranges for
 25 transportation to and from the center, either directly or by contract with third
 26 parties, all hours during which a child is being transported shall be included in
 27 calculating the hours of operation. A **child** day care center that remains open for
 28 more than twelve and one-half hours in a continuous seven-day week, and in which
 29 no individual child remains for more than twenty-four hours in one continuous stay
 30 shall be known as a full-time **child** day care center. A **child** day care center that

1 remains open after 9:00 p.m. shall meet the appropriate regulations established for
 2 nighttime care.

3 (5) "Department" means ~~the Department of Health and Hospitals, with~~
 4 ~~respect to facilities and agencies funded under Title XIX of the Social Security Act,~~
 5 ~~and the Department of Children and Family Services for all other facilities and~~
 6 ~~agencies.~~

7 **(6) "Early childhood learning center" means any child day care center,**
 8 **Early Head Start grantee, Head Start grantee, or stand-alone prekindergarten**
 9 **or kindergarten program that is not attached to a school and that is licensed by**
 10 **the state.**

11 ~~(6)(7) "Group home" means any place, facility, or home operated by any~~
 12 ~~institution, society, agency, corporation, person or persons, or any other group which~~
 13 ~~receives therein at least seven but not more than fifteen children who are not related~~
 14 ~~to the operators and whose parents or guardians are not residents of the same facility~~
 15 ~~for supervision, care, lodging, and maintenance, with or without transfer of custody.~~

16 **"License category" means the category of license applied for or held, which**
 17 **shall include early childhood learning centers, maternity homes, residential**
 18 **homes, and child-placing agencies.**

19 ~~(7)(8) "License type" means the type of license applied for or held,~~
 20 **which shall include Type I, Type II, Type III, and Type IV licenses.**

21 **(9) "Maternity home" means any place or facility in which any institution,**
 22 **society, agency, corporation, person or persons, or any other group regularly receives**
 23 **and provides necessary services for children before, during, and immediately**
 24 **following birth. This definition shall not include any place or facility which receives**
 25 **and provides services for women who receive maternity care in the home of a**
 26 **relative within the sixth degree of kindred, computed according to civil law, or**
 27 **general or special hospitals in which maternity treatment and care is part of the**
 28 **medical services performed and the care of children only brief and incidental.**

29 ~~(8)(10) "Related" or "relative" means a natural or adopted child or~~
 30 ~~grandchild of the caregiver or a child in the legal custody of the caregiver.~~

1 ~~(9)~~**(11)** "Residential home" means any place, facility, or home operated by
 2 any institution, society, agency, corporation, person or persons, or any other group
 3 to provide full-time care, **twenty-four hours per day**, for ~~more than fifteen~~ **more**
 4 **than four** children who are not related to the operators and whose parents or
 5 guardians are not residents of the same facility, with or without transfer of custody.
 6 ~~A residential home as defined in this Paragraph includes facilities known as~~
 7 ~~children's homes, halfway houses, residential treatment centers, training schools, and~~
 8 ~~facilities for the mentally retarded, emotionally disturbed, socially maladjusted, or~~
 9 ~~otherwise mentally or physically handicapped.~~

10 ~~(10)~~**(12)** "School", as referred to in R.S. 46:1415, means any institution or
 11 facility which provides for education of children in grades one or above. Any
 12 kindergarten or prekindergarten attached thereto shall be considered part of that
 13 school.

14 **(13) "Specialized provider" means a child-placing agency, maternity**
 15 **home, or residential home.**

16 **(14) "Type I license" means a license held by a child day care center or**
 17 **residential home that is owned or operated by a church or religious**
 18 **organization that does not wish to be licensed as a Type II, Type III, or Type IV**
 19 **center. Nothing herein shall be construed to require a children's religious**
 20 **ministry program operated by a church or other religious organization in**
 21 **accordance with R.S. 46:1429 to be licensed pursuant to this Chapter. "Type**
 22 **I license" also means a license held by a child day care center or residential**
 23 **home holding a Class B license prior to the effective date of this Section.**

24 **(15) "Type II license" means the license held by a privately owned child**
 25 **day care center that either receives no state or federal funds from any source,**
 26 **whether directly or indirectly, or whose only source of state or federal funds is**
 27 **the federal food and nutrition program.**

28 **(16) "Type III license" means the license held by any publicly or**
 29 **privately owned early childhood learning center which receives state or federal**
 30 **funds, directly or indirectly, from any source other than the federal food and**

1 nutrition program. Type III early childhood learning centers shall meet the
2 performance and academic standards of the Early Childhood Care and
3 Education Network regarding kindergarten readiness, as determined by the
4 State Board of Elementary and Secondary Education.

5 (17) "Type IV license" means the license held by any publicly or
6 privately owned specialized provider.

7 ~~(11)~~(18) "Youth" means a person not less than sixteen years of age nor older
8 than twenty-one years of age.

9 B. For purposes of this Chapter "child care facility" shall include ~~community~~
10 ~~homes, maternity homes, group homes, day care~~ early childhood learning centers,
11 and residential homes as defined in this Section.

12 * * *

13 §1404. Requirement of licensure

14 A. All ~~child care facilities~~ early childhood learning centers and ~~child-~~
15 ~~placing agencies~~ specialized providers, including facilities owned or operated by
16 any governmental, profit, nonprofit, private, or church agency, shall be licensed.
17 Child care facility licenses shall be of ~~two~~ four types: ~~Class A and Class B. All~~
18 ~~child-placing agency licenses shall be Class A only.~~ Type I, Type II, Type III, and
19 Type IV.

20 * * *

21 §1405. Transitional provisions

22 ~~All child care facilities which were licensed on September 1, 1985, shall~~
23 ~~automatically be issued Class A licenses. All child care facilities which were~~
24 ~~registered on September 1, 1985, shall automatically be issued Class B licenses~~
25 ~~without the necessity of making an application for licensure~~ A.(1) Until such time
26 as rules are promulgated by the department to implement the types of licenses
27 required by R.S. 46:1404, child care facilities and child-placing agencies shall
28 follow the rules, regulations, and standards in effect for Class A and Class B
29 licensure.

30 (2) The department shall create an early childhood learning working

1 group to include one representative from Louisiana’s Early Childhood Advisory
2 Council, the Child Care Association of Louisiana, the Nonpublic School
3 Council, the Louisiana Head Start Association, the Department of Children and
4 Family Services, the Department of Education, the Children’s Cabinet, and the
5 office of the governor. Such working group shall include participants having
6 expertise in care of infants and toddlers, pediatric health, pediatric mental
7 health, cognitive development, and social emotional development. The
8 department shall seek input from the working group in the development of the
9 rules and regulations establishing Type I, Type II, and Type III licenses and
10 shall submit the proposed rules and regulations pursuant to this Section to the
11 working group for approval. Such working group shall forward the proposed
12 rules and regulations to the Children’s Defense Fund, the Louisiana Association
13 for the Education of Young Children, and Louisiana Partnership for Children
14 and Families no later than November 1, 2013, for review and comment. The
15 working group shall be dissolved on the effective date of any provision of law
16 which transfers statutory authority for licensing of child day care centers from
17 the Department of Children and Family Services to the Department of
18 Education.

19 B. All existing child day care centers or residential homes possessing a
20 Class B license shall be issued a Type I license as provided by rule.

21 C.(1) All child day care centers that meet the definition for a Type II
22 license pursuant to this Chapter shall be issued a Type II license as provided by
23 rule.

24 (2) Any child day care center possessing a Class A license upon the
25 effective date of this Section that meets the definition of a Type II license
26 pursuant to this Chapter shall be issued a Type II license as provided by rule.

27 D. All existing early childhood learning centers that meet the definition
28 for a Type III license pursuant to this Chapter shall be issued a Type III license
29 as provided by rule.

30 E.(1) All existing child placing agencies, maternity homes, and

1 residential homes that meet the definition for a Type IV license pursuant to this
2 Chapter shall be issued a Type IV license as provided by rule.

3 (2) Any maternity home, residential home, or child-placing agency
4 possessing a Class A license upon the effective date of this Section that meets the
5 definition of a Type IV license pursuant to this Chapter shall be issued a Type
6 IV license.

7 F. Any early childhood learning center that requests to change its license
8 type for the following year shall apply to the department no later than
9 December first of the preceding year. This Subsection shall not apply to early
10 childhood learning centers changing location or ownership that are required to
11 apply for a new license pursuant to R.S. 46:1406(C).

12 §1406. Licenses; application; temporary or provisional; fees

13 A. Application for licensure of a new child care facility or specialized
14 provider shall be made by the child care facility or specialized provider to the
15 department upon forms furnished by the department. Upon receipt of the
16 application for a license and verification that minimum requirements for such
17 license as established by rule are satisfied, and that the facility or agency is in
18 compliance with all other state and local laws and regulations, the department
19 shall issue a Type I, Type II, Type III, or Type IV license for the appropriate
20 license category for such period as may be provided for by rule.

21 B. The department may provide through the promulgation of rules for
22 the issuance of temporary, provisional, or extended licenses for each license
23 category and type if a disapproval has not been received from any other state
24 or local agency authorized by any other laws or rules to inspect such facilities
25 or agencies.

26 C. A license of any type or category shall apply only to the location
27 stated on the application, and such license, once issued, shall not be transferable
28 from one person to another or from one location to another. If the location or
29 ownership of the facility is changed, then the license shall be automatically
30 revoked. A new application form shall be completed prior to all license

1 renewals.

2 D. Each licensed facility shall display its license in a prominent place at
3 the facility, except that a facility operated by a church or religious organization
4 may be exempt from such requirement, provided the license is available upon
5 request.

6 E. There shall be an annual license fee for each type of early childhood
7 learning center and specialized provider in an amount equal to the annual
8 license fee in effect for all Class A and Class B child care facilities and child-
9 placing agencies possessing such license upon the effective date of this Section,
10 without an increase in the amount of such fees.

11 F. There shall be an annual license fee of twenty-five dollars for any
12 license issued to an early childhood learning center providing care for fifteen or
13 fewer children; one hundred dollars for any license issued to an early childhood
14 learning center providing care for at least sixteen but no more than fifty
15 children; one hundred seventy-five dollars for any license issued to an early
16 childhood learning center providing care for at least fifty-one but no more than
17 one hundred children; and two hundred fifty dollars for any license issued to an
18 early childhood learning center providing care for more than one hundred
19 children.

20 G. There shall be an annual license fee of one hundred dollars for any
21 license issued to a residential home providing care for six or less children; two
22 hundred dollars for any license issued to a residential facility providing care for
23 at least seven but no more than fifteen children; and three hundred dollars for
24 any license issued to a residential facility providing care for sixteen or more
25 children.

26 H. There shall be an annual license fee of fifty dollars for any license
27 issued to a child-placing agency or maternity home.

28 I. The fees provided for in this Section shall not apply to any Type I
29 child day care center owned or operated by a church or religious organization.

30 J. Annual fees for any type or category of license shall not be increased

1 unless expressly authorized by statute as provided in Article VII, §2.1 of the
2 Constitution of Louisiana.

3 §1407. Rules, regulations and standards for licenses

4 A. The department shall promulgate regulations for each category and
5 type of license to carry out the provisions of this Chapter in accordance with the
6 provisions of the Administrative Procedure Act. The department shall seek
7 input and guidance from the Louisiana Advisory Council on Child Care and
8 Early Education concerning the proposed rules and regulations for approval of
9 Type I, Type II, and Type III facilities for licensure in accordance with the
10 Administrative Procedure Act.

11 B.(1) The regulations developed by the department, at a minimum, shall
12 accomplish all of the following:

13 (a) Promote the health, safety, and welfare of children attending any
14 facility.

15 (b) Promote safe, comfortable, and proper physical facilities.

16 (c) Ensure adequate supervision of those attending facilities by capable,
17 qualified, and healthy personnel.

18 (d) Ensure adequate and healthy food service in facilities where food is
19 offered.

20 (e) Prohibit discrimination by early childhood learning centers and
21 specialized providers on the basis of race, color, creed, sex, national origin,
22 handicap, ancestry, or whether the child is being breastfed. However, nothing
23 in this Subparagraph shall be construed to affect, limit, or otherwise restrict
24 any of the following:

25 (i) The hiring or admission policies of a licensed child day care center
26 owned by a church or religious organization, which may give preference in
27 hiring or admission to members of the church or denomination.

28 (ii) The rights of religious sectarian child-placing agencies to consider
29 creed in any decision or action relating to foster care or adoption.

30 (f) Require providers to have a written description of admission policies

1 and criteria which expresses the needs, problems, situations, or patterns best
2 addressed by its program. These policies shall be available to the person legally
3 responsible for any child referred for placement.

4 (g) Include procedures by which parents and guardians are given an
5 opportunity for consultation and information about the educational and
6 therapeutic programs for the child in attendance.

7 (h) Include regulations and standards for nighttime care.

8 (i) Include procedures for the receipt, recordation, and disposition of
9 complaints.

10 (j) Include procedures for the return of a child to his parent.
11 Arrangements for the child's return to his parent shall not include third parties
12 or other child care agencies unless written agreement between the child care
13 agency and the parent is on file with the child care agency.

14 (k) Include procedures that allow an early childhood learning center to
15 remedy certain deficiencies immediately upon identification by the department
16 in an onsite inspection, provided that any deficiency that may be remedied in
17 such manner does not constitute a critical violation of licensing standards as
18 determined by the department.

19 (2)(a) Any entity approved by the department shall be required to have
20 all of the following:

21 (i) Approval from the office of the state fire marshal, code enforcement
22 and building safety, Department of Public Safety and Corrections.

23 (ii) Approval from the Department of Health and Hospitals, office of
24 public health.

25 (b) Type III early childhood learning centers shall adhere to the
26 performance and academic standards of the Early Childhood Care and
27 Education Network regarding kindergarten readiness as determined by the
28 State Board of Elementary and Secondary Education. The Department of
29 Education shall base its approval upon the uniform accountability system.

30 (3) No facility holding a Type I license shall receive any state or federal

1 funds, from any source, whether directly or indirectly. If a facility holding a
2 Type I license receives any state or federal funds, its license shall be
3 automatically revoked.

4 (4) No facility holding a Type II license shall receive any state or federal
5 funds, from any source, whether directly or indirectly, other than those received
6 solely for food and nutrition. If a facility holding a Type II license receives any
7 state or federal funds, whether directly or indirectly, other than those received
8 solely for food and nutrition, its license shall be automatically revoked.

9 C. The department shall prepare standard forms for applications and
10 for inspection reports.

11 D. A comprehensive review of all standards, rules, and regulations for
12 all licenses shall be made at least every three years by the department.

13 E. The secretary of the department, in specific instances, may waive
14 compliance with a minimum standard upon determination that the economic
15 impact is sufficiently great to make compliance impractical, as long as the
16 health and well-being of the staff or children is not imperiled. If it is
17 determined that the facility or agency is meeting or exceeding the intent of a
18 standard or regulation, the standard or regulation may be deemed to be met.

19 F. Discrimination by child care facilities and child-placing agencies on
20 the basis of race, color, creed, sex, national origin, disability as defined by R.S.
21 51:2232(11), ancestry, or whether the child is being breastfed is prohibited.
22 However, this shall not restrict the hiring or admission policies of a church or
23 religious organization, which may give preference in hiring or admission to
24 members of the church or denomination.

25 G. The department shall not regulate or attempt to regulate or control
26 the religious or spiritual content of the curriculum of a school or facility
27 sponsored by a church or religious organization.

28 H. Nothing in the rules, regulations, and standards adopted pursuant to
29 this Section shall authorize or require medical examination, immunization, or
30 treatment of any child whose parents object to such examination, immunization,

1 or treatment on religious grounds.

2 I. Each facility shall have a written discipline policy, which shall be
3 made available to parents and to authorized inspection personnel upon request.

4 * * *

5 §1415. Facilities and agencies subject to regulation; exemptions

6 A. All ~~child care facilities~~ early childhood learning centers and ~~child-~~
7 ~~placing agencies~~ specialized providers shall be subject to the provisions of this
8 Chapter. However, private or public day schools serving children in grades one and
9 above ~~or operating,~~ including any kindergartens or prekindergarten programs
10 attached thereto, as well as ~~Montessori schools~~, camps, and all care given without
11 charge, shall be exempt from such provisions.

12 B. Nothing in this Chapter shall apply to facilities licensed by the
13 Department of Health and Hospitals.

14 * * *

15 §1419. Revocation or refusal to renew license; written notice

16 The department shall have the power to deny, revoke, or refuse to renew a
17 license for a child care facility or ~~child-placing agency~~ specialized provider if an
18 applicant has failed to comply with the provisions of this Chapter or any applicable,
19 published rule or regulation of the department relating to child care facilities and
20 ~~child-placing agencies~~ specialized providers. If a license is denied, revoked, or
21 withdrawn, the action shall be effective when made and the department shall notify
22 the applicant, ~~or licensee,~~ or specialized provider of such action in writing
23 immediately and of the reason for the denial, revocation, or withdrawal of the
24 license.

25 §1420. Refusal or revocation of license; appeal procedure

26 A. Upon the refusal of the department to grant a license or upon the
27 revocation of a license, the agency, institution, society, corporation, person or
28 persons, or other group having been refused a license or having had a license
29 revoked shall have the right to appeal such action by submitting a written request to
30 the secretary of the department within thirty days after receipt of the notification of

1 the refusal of the license or, in the case of revocation, within fifteen calendar days
 2 after receipt of the notification of the revocation. The appeal hearings shall be held
 3 no later than thirty days after the request therefor, except as provided in the
 4 Administrative Procedure Act, and shall be conducted in accordance with applicable
 5 regulations of the department and the provisions of R.S. 46:107. This provision shall
 6 in no way preclude the right of the party to seek relief through mandamus suit
 7 against the department, as provided by law.

8 **B. Notwithstanding any law, rule, regulation, or provision to the**
 9 **contrary, including but not limited to R.S. 49:964(A)(2), the department shall**
 10 **be entitled to seek judicial review from any final decision or order rendered by**
 11 **the division of administrative law in any appeal hearing arising under this**
 12 **Chapter. The venue of judicial review shall be the district court of the parish**
 13 **in which the licensee is located.**

14 §1421. Operating without or in violation of license; penalty

15 Whoever operates any child care facility or ~~child-placing agency~~ **specialized**
 16 **provider**, as defined in R.S. 46:1403, without a valid license issued by the
 17 department shall be fined not less than one thousand dollars for each day of such
 18 offense.

19 §1422. Operating without or in violation of license; injunctive relief

20 If any child care facility or ~~child-placing agency~~ **specialized provider**
 21 operates without a valid license issued by the department, the department may file
 22 suit in the district court in the parish in which the facility is located for injunctive
 23 relief, including a temporary restraining order, to restrain the institution, society,
 24 agency, corporation, person or persons, or any other group operating the facility or
 25 agency from continuing the violation. The state health officer shall have exclusive
 26 authority over all matters involving the prevention or spread of communicable
 27 diseases within a child care facility or ~~child-placing agency~~ **specialized provider**.

28 * * *

29 §1425. Adoption services; requirements for advertising; injunctive relief;
 30 exceptions; penalties

1 surveys from the department. Day **Child day** care centers shall post information
 2 which explains that the licensing surveys are available online and list the ~~web~~
 3 **Internet website** address where such information may be obtained and information
 4 which explains that licensing surveys may be obtained by sending a request in
 5 writing to the department. The department shall develop a form suitable for display
 6 which shall be posted at each licensed **child** day care center in compliance with this
 7 Subsection.

8 D. The department shall adopt procedures and guidelines for the
 9 implementation of this Section by rule in accordance with the Administrative
 10 Procedure Act. Such procedures and guidelines may include a procedure for
 11 verification that an application for placement in a licensed **child** day care center has
 12 actually been made.

13 * * *

14 §1428. Immunization information; influenza

15 A. Each licensed child care facility, ~~whether licensed as a Class A or Class~~
 16 ~~B facility~~, before November first of each year, shall make available to each child's
 17 parent or legal guardian information relative to the risks associated with influenza
 18 and the availability, effectiveness, known contraindications and possible side effects
 19 of the influenza immunization. Such information shall include the causes and
 20 symptoms of influenza, the means by which influenza is spread, and the places
 21 where a parent or legal guardian may obtain additional information and where a child
 22 may be immunized against influenza. Such information shall be updated annually
 23 if new information on such disease is available.

24 * * *

25 §1429. Exceptions; religious organizations; **children's religious ministries**

26 A recognized religious organization which is qualified as a tax-exempt
 27 organization under Section 501(c) of the Internal Revenue Code, which remains open
 28 for not more than twenty-four hours in a continuous seven-day week, and in which
 29 no individual child remains for more than twenty-four hours in one continuous stay
 30 shall not be considered a "**child** day care center" for the purposes of this Chapter.

1 Section 2. R.S. 46:1408, 1409, 1412, 1413, and 1424 are hereby repealed in their
2 entirety.

3 Section 3. The Louisiana State Law Institute is hereby directed to make technical
4 changes to statutory laws as necessary to reflect changes to defined terms in R.S. 46:1403,
5 including but not limited to "day care center", as provided in this Act.

6 Section 4. Sections 1, 2, and 3 of this Act shall become effective on January 1, 2014.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

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22 APPROVED: _____