
The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alan Miller.

DIGEST

Walsworth (SB 524)

Proposed law (R.S.17:407.26) authorizes the state Department of Education (DOE) to accept and direct the disbursement of funds appropriated by any act of Congress and apportioned to the state for use in connection with any Child Care and Development Fund programs. Requires DOE to deposit all such funds received from the federal government with the state treasurer who shall make disbursements upon the direction of DOE.

Proposed law requires BESE to promulgate rules and regulations to implement the Child Care and Development Fund State Plan, and requires DOE to develop and implement the state plan in accordance with such rules and regulations.

Proposed law requires all early learning centers to be licensed as a Type I, II or III by DOE.

Proposed law (R.S. 17:407.35) exempts public and non-public day schools serving children in grades one and above, including any kindergartens or prekindergarten programs attached thereto, as well as camps, and care given without charge, from the provisions of proposed law . Further exempts recognized religious organizations that are qualified as a tax-exempt organization under Section 501(c) of the IRS Code, if it remains open for not more than 24 hours in a continuous seven-day week, and in which no individual child remains for more than 24 hours in one continuous stay. Also, proposed law shall not apply to children in programs licensed or operated by the Department of Health and Hospitals(DHH) or the Department of Children and Family Services (DCFS).

Proposed law (R.S. 17:407.36) provides for certain types of licences, including:

- (1) A "Type I license" is the type of license issued to an early learning center that is owned or operated by a church or religious organization and that receives no state or federal funds from any source, whether directly or indirectly.
 - (a) No early learning center holding a Type I license shall receive any state or federal funds, from any source, whether directly or indirectly.
 - (b) If an early learning center holding a Type I license receives any state or federal funds, its license shall be automatically revoked.
- (2) A "Type II license" is the type of license issued to an early learning center that either receives no state or federal funds from any source, whether directly or indirectly, or whose only source of state or federal funds is from the United States Department of Agriculture's food and nutrition programs, hereinafter referred to in this Part as "federal

food and nutrition programs".

- (a) No early learning center holding a Type II license shall receive any state or federal funds, from any source, whether directly or indirectly, other than those funds received solely for federal food and nutrition programs.
 - (b) If an early learning center holding a Type II license receives any state or federal funds, whether directly or indirectly, other than those received solely for federal food and nutrition programs, its license shall be automatically revoked.
- (3) A "Type III license" is the type of license issued to any early learning center which receives state or federal funds, directly or indirectly, from any source other than the federal food and nutrition programs. Type III early learning centers shall meet the performance and academic standards of the Early Childhood Care and Education Network regarding kindergarten readiness as determined by the State Board of Elementary and Secondary Education.

Proposed law (R.S. 17:407.37) provides for penalties for whoever operates any early learning center without a valid license issued by DOE in the amount of not less than \$1,000 for each day of such offense. Further, if any early learning center operates without a valid license issued by DOE, DOE is authorized to file suit in the district court in the parish in which the center is located for injunctive relief, including a temporary restraining order, to restrain the institution, agency, corporation, person or persons, or any other group operating the center from continuing the violation.

Proposed law (R.S. 17:407.38) provides that until such time as rules are promulgated by BESE to implement the types of licenses required by proposed law, early learning centers shall follow the rules, regulations, and standards in effect for Class A and Class B licensure of child care facilities found in La. Admin. Code, Title 67, Part III, Subpart 21, Child Care Licensing. Further provides that upon promulgation by BESE of rules to implement the three types of licenses:

- (1) All existing early learning centers possessing a Class B license shall be issued a Type I license as provided by rule, unless the center meets the definition of a Type II license, in which case it shall be issued a Type II license as provided by rule.
- (2) All existing early learning centers possessing a Class A license that meet the definition of a Type II license shall be issued a Type II license as provided by rule.
- (3) All existing early learning centers possessing a Class A license that meets the definition of a Type III license shall be issued a Type III license as provided by rule.

Proposed law requires that any early learning center that intends to change its license type at any time during the following calendar year to apply for a new license no later than December first of the preceding year. Such requirements shall not apply to early learning centers changing location or ownership that are required to apply for a new license.

Proposed law (R.S. 17:407.39) requires that an application for licensure of a new early learning center be made by the center to the DOE using forms furnished by DOE. Upon receipt of an application for a license and verification that minimum requirements for such license as established by rule are satisfied, and upon verifying that the center is in compliance with all applicable state and local laws and regulations, DOE shall issue a Type I, Type II, or Type III license for such period as may be provided for by rule. Further authorizes BESE to provide by rule for the issuance of temporary, provisional, or extended licenses for each license type if a disapproval has not been received from any state or local agency authorized by any laws or rules to inspect or approve such centers.

Proposed law requires that a license of any type shall apply only to the location stated on the application, and such license shall not be transferable. If the location or ownership of the center is changed, then the license shall be automatically revoked. Further requires that the license be displayed in a prominent place at the center.

Proposed law sets an annual license fee for each type of early learning center in an amount equal to the annual license fee in effect for all Class A and Class B child care facilities possessing such license upon the effective date of proposed law, without an increase in the amount of such fees.

Proposed law provides for an annual license fee of:

- (1) \$25 for any license issued to an early learning center providing care for 15 or fewer children;
- (2) \$100 for any license issued to an early learning center providing care for at least 16 but no more than 50 children;
- (3) \$175 for any license issued to an early learning center providing care for at least 51 but no more than 100 children; and
- (4) \$250 for any license issued to an early learning center providing care for more than 100 children.

Further provides that the annual licensure fees provided in this proposed law shall not apply to Type I early learning centers. Further provides that the annual fees for any type or category of license shall not be increased unless expressly authorized by statute.

Proposed law (R.S. 17:407.40) requires BESE to promulgate regulations for each type of license which, at a minimum, shall accomplish all of the following:

- (1) Promote the health, safety, and welfare of children attending any early learning center.
- (2) Promote safe and proper physical facilities at all early learning centers.
- (3) Promote adequate supervision of those attending early learning centers.

- (4) Promote adequate and healthy food service in early learning centers where food is offered.
- (5) Prohibit discrimination on the basis of race, color, creed, sex, national origin, handicap, ancestry, or whether the child is being breastfed, provided that this shall not be construed to affect, limit, or otherwise restrict the hiring or admission policies of an early learning center owned by a church or religious organization, or prohibit such a center from giving preference in hiring or admission to members of the church or denomination.
- (6) Include procedures for the receipt, recordation, and disposition of complaints.

Proposed law requires that every early learning center approved for licensure by DOE be required to have approval from the Office of State Fire Marshal (OSFM) and DHH.

Proposed law requires that each Type III early learning center obtain approval from DOE of adherence to the performance and academic standards of the Early Childhood Care and Education Network regarding kindergarten readiness as determined by BESE. DOE shall base its approval upon the uniform accountability system as promulgated by BESE. Further requires that BESE conduct a comprehensive review of all standards, rules, and regulations for all licenses every three years. Provides that BESE, upon request by DOE, may waive compliance with a licensing minimum standard upon determination that the economic impact is sufficiently great to make compliance impractical, as long as the health and well-being of the staff or children is not imperiled. If it is determined that the early learning center is meeting or exceeding the intent of a standard or regulation, the standard or regulation may be deemed to be met.

Proposed law (R.S. 17:407.41) prohibits any individual whose name is recorded on the state central registry within DCFS, as a perpetrator for a justified finding of abuse or neglect of a child from owning or operating a licensed early learning center or be hired by a licensed early learning center as an employee or volunteer of any kind, including any therapeutic professionals, extracurricular personnel, and other independent contractors, unless there is a finding by DCFS that the individual does not pose a risk to children.

Proposed law further requires that the owner, operator, current or prospective employee, or volunteer of a licensed early learning center report annually, and at any time upon the request of DOE, on the state central registry disclosure form promulgated by DCFS, whether or not his name is currently recorded on the state central registry for a justified finding of abuse or neglect and he is the named perpetrator. Further requires any such current or prospective employee or volunteer of a licensed early learning center to submit the state central registry disclosure form to the owner or operator of the facility, who maintains the documents in accordance with current licensing requirements. Any state central registry disclosure form that is maintained in an early learning center licensing file shall be confidential and subject to the confidentiality provisions of present law pertaining to the investigations of abuse and neglect.

Proposed law further requires any owner, operator, current or prospective employee, or volunteer of a licensed early learning center who knowingly falsifies the information on the state central

registry disclosure form shall be guilty of a misdemeanor offense and be fined not more than \$500, or imprisoned for not more than six months, or both. Further, if any owner, operator, current or prospective employee, or volunteer of a licensed early learning center who discloses that he is currently recorded on the state central registry for a justified finding of abuse or neglect shall be entitled to a risk assessment evaluation provided by DCFS to determine whether the individual poses a risk to children. Any such individual who is determined to pose a risk to children shall have the right to file an appeal in accordance with the APA. Any such determination shall be kept on file at all times by DCFS.

Proposed law (R.S. 17:407.42) prohibits any person who has been convicted of or has pled nolo contendere to certain crimes including sex crimes and crimes against children from directly or indirectly owning, operating, or participating in the governance of an early learning center, or being hired by any early learning center as a volunteer or employee of any kind, including any therapeutic professionals, extracurricular personnel, and other independent contractors, or being hired by DOE in a position whose duties include the performance of licensing inspections in early learning centers.

Proposed law requires BESE to establish by regulation, requirements and procedures consistent with the provisions of present law under which:

- (1) The owner or operator of an early learning center may request information concerning whether or not any owner or volunteer, applicant, or employee of any kind including contractors, of an early learning center has been arrested for or convicted of or pled nolo contendere to any criminal offense.
- (2) DOE may request information concerning whether or not an applicant or employee of the department in a position whose duties include the performance of licensing inspections has been arrested for or convicted of or pled nolo contendere to any criminal offense.

Proposed law further requires that the regulation include the requirement and the procedure for the submission of a person's fingerprints in a form acceptable to the Louisiana Bureau of Criminal Identification and Information (LBCII) prior to employment. A person who has submitted his fingerprints to LBCII may be temporarily hired pending the report from LBCII as to any convictions of or pleas of nolo contendere by the person to certain crimes including sex crimes and crimes against children.

Proposed law (R.S. 17:407.43) requires DOE, through its duly authorized agents, to inspect at regular intervals not to exceed one year, and as deemed necessary by DOE, and without previous notice, all early learning centers subject to the provisions of proposed law. Further requires DOE to develop and facilitate coordination with and among other authorized agencies making inspections at regular intervals. Requires the early learning centers to be open to inspection by authorized inspection personnel and by parents or legal custodians of children in care only during working hours.

Proposed law (R.S. 17:407.44) authorizes DOE to deny, revoke, or refuse to renew a license for

an early learning center if an applicant has failed to comply with the provisions of proposed law or any applicable published rule or regulation of BESE relating to early learning centers. If a license is denied or revoked, or renewal is refused, the action shall be effective when made, and DOE shall notify the applicant or licensee of such action in writing immediately, and of the reason for the denial or revocation, or refusal to renew the license.

Proposed law (R.S. 17:407.45) provides for the right to appeal such action to the division of administrative law. However, this provision shall in no way preclude the right of the party to seek relief through mandamus suit against the department, as provided by law.

Proposed law further provides that DOE shall be entitled to seek judicial review from any final decision or order rendered by the division of administrative law in any appeal hearing arising under proposed law. The venue of judicial review shall be the district court of the parish in which the licensee is located.

Proposed law (R.S. 17:407.46) provides that for violations related to supervision, criminal history record checks, the state central registry disclosure form, staff-to-child ratios, motor vehicle checks, or failure to report critical incidents, DOE may issue a written warning that includes a corrective action plan, in lieu of revocation, upon any person or entity violating these requirements if such condition or occurrence does not pose an imminent threat to the health, safety, rights, or welfare of a child. Failure to implement a corrective action plan issued pursuant to proposed law may result in either the assessment of a civil fine or license revocation, or both. Such civil fine shall not exceed \$250 per day for each assessment; however, the aggregate fines assessed for violations determined in any consecutive 12 month period shall not exceed \$2,000. Proposed law requires BESE to adopt rules in accordance with the APA, which articulate factors in determining the type of sanction imposed including the severity of risk, the actual harm and mitigating circumstances, the failure to implement a written corrective action plan, the history of noncompliance, an explanation of the treatment of continuing and repeat deficiencies, evidence of a good faith effort to comply, and any other relevant factors.

Further, BESE is required to adopt rules and regulations in accordance with the APA to provide for notice to the early learning center of any violation, for a departmental reconsideration process for sanctions issued, and for an appeal procedure including judicial review. Such appeal shall be suspensive. Requires all appeals to be heard by the division of administrative law. During the pendency of an appeal, an early learning center may continue to receive funding for services provided to those eligible children as determined by DOE.

Proposed law authorizes DOE to institute any necessary civil court action to collect fines imposed and not timely appealed. All costs of any successful action to collect such fines shall be awarded to DOE in addition to the fines.

Civil fines collected pursuant to proposed law are required to be deposited immediately into the treasury. After compliance with constitutional requirements relative to the Bond Security and Redemption Fund, and prior to the monies being placed in the state general fund, an amount equal to the amount deposited as provided by proposed law shall be credited to a special fund

hereby created in the state treasury to be known as the "Early Learning Center Licensing Trust Fund". The monies in the fund shall be subject to annual appropriation and shall be available exclusively for use by the department for the education and training of employees, staff, or other personnel of child care facilities and child-placing agencies.

Proposed law (R.S. 17:407.47) requires DOE to report all complaints, including but not limited to complaints alleging child abuse or the prevention or spread of communicable diseases against any early learning center to the appropriate agencies for investigation and disposition.

Proposed law (R.S. 17:407.48) requires DOE make available, upon written request of a parent or legal custodian of any child who has applied for placement in an early learning center licensed by the department, the following information relative to such early learning center:

- (1) Any violations of standards, rules, or regulations in the prior twelve months.
- (2) Any waivers of minimum standards authorized for such early learning center.

Proposed law (R.S. 17:407.49) prohibits BESE and DOE from interfering with the parent-child relationship regarding the religious training of a child, where all of the following conditions are met:

- (1) The parent or legal custodian has enrolled their child in a child care facility, including but not limited to a child residential facility, operated by a religious, nonprofit organization that is exempt from federal income taxes pursuant to 26 U.S.C. 501(c)(3).
- (2) Where, as a condition of enrollment, the child is required to attend religious services or classes and the parent or legal custodian of the child agrees to such condition.

Proposed law (R.S. 17:407.50) requires each licensed early learning center, before November first of each year, to make available to each child's parent or legal custodian information relative to the risks associated with influenza and the availability, effectiveness, known contraindications and possible side effects of the influenza immunization. Proposed law shall not be construed to require any licensed early learning center, DOE, or the DHH to provide or pay for immunizations against influenza.

Proposed law requires BESE to promulgate rules and regulations in accordance with the provisions of the Administrative Procedure Act to carry out the provisions of proposed law.

Present law (R.S. 15:587(A)(1)(a)) provides that any employer or others responsible for the actions of one or more persons who have been given or have applied to be considered for a position of supervisory or disciplinary authority over children, DCFS, as employer of one or more persons who have been given or have applied to be considered for a position whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys, shall request in writing that the bureau supply information to ascertain whether that person or persons have been arrested for

or convicted of, or pled nolo contendere to, any criminal offense. The request must be on a form prepared by the bureau and signed by a responsible officer or official of the organization or department making the request. It must include a statement signed by the person about whom the request is made which gives his permission for such information to be released.

Present law (R.S. 15:587(A)(1)(a)) is applicable to proposed law (R.S. 17:407.31-407.51).

Present law in "Child Care Facilities and Child Placing Agencies" in Chapter 14 of Title 46 provides for licensing and regulation of child care facilities, child placing agency, maternity home, and residential homes by the Dept. of Children and Family Services (DCFS).

Proposed law removes the provisions relating to the licensing and regulation of child care facilities that shall be provided by the Dept. of Education as provided in Part X-B of Chapter 1 of Title 17 in proposed law.

Proposed law renames Chapter 14 as the "Specialized Provider Licensing Act" and generally retains provisions of present law relating to licensing and regulation of "specialized providers" by DCFS. Defines "specialized provider" as a child-placing agency, maternity home, or residential home.

Proposed law repeals the La. Advisory Council on Child Care and Early Education.

Effective July 1, 2014.

(Amends R.S. 15:587.1(A)(1)(a), 36:474(A)(11), and 477(B)(1), 46:1401, 1402, 1402.1, 1403, 1404(A), 1405, 1406, 1407, 1414.1, 1415, 1417, 1418(A), 1419, 1420(A), 1421, 1422, 1423, 1427, 1428, and 1430; adds R.S. 17:407.26 and 407.31-407.51; and repeals R.S. 46:1414, 1426 and 1429)