

2015 Regular Session

HOUSE BILL NO. 734

BY REPRESENTATIVE SEABAUGH

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

CHILD DAY CARE: Provides with respect to registration and regulation of certain child day care providers

1 AN ACT

2 To amend and reenact R.S. 15:587.1(A)(1)(a) and (D)(2), the heading of Part X-C of  
3 Chapter 1 of Title 17, R.S. 17:407.61, 407.62(4) through (6), and 407.63 through  
4 407.72 and to enact R.S. 17:407.62(7), relative to regulation of certain child care  
5 providers; to provide relative to definitions; to provide relative to registration,  
6 criminal background checks, education, inspection, and regulation of such providers;  
7 to provide relative to the powers and duties of the State Board of Elementary and  
8 Secondary Education with respect to such providers; to provide relative to the  
9 powers and duties of the state Department of Education with respect to such  
10 providers; to provide with respect to the powers and duties of the State Fire Marshal  
11 with respect to such providers; to provide relative to revocation and reinstatement  
12 of registration for such providers; to provide relative to penalties, fees, and fines  
13 assessed against such providers; to provide for an effective date; and to provide for  
14 related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 15:587.1(A)(1)(a) and (D)(2) are hereby amended and reenacted to  
17 read as follows:

18 §587.1. Provision of information to protect children

19 A.(1)(a) As provided in R.S. 15:825.3, R.S. 17:15, ~~and 407.42,~~ and 407.71,

20 Children's Code Article 424.1, and R.S. 46:51.2 and 1441.13, any employer or others

1 responsible for the actions of one or more persons who have been given or have  
 2 applied to be considered for a position of supervisory or disciplinary authority over  
 3 children, and as provided in R.S. 46:51.2(A), the Department of Children and Family  
 4 Services as employer of one or more persons who have been given or have applied  
 5 to be considered for a position whose duties include the investigation of child abuse  
 6 or neglect, supervisory or disciplinary authority over children, direct care of a child,  
 7 or performance of licensing surveys, shall request in writing that the bureau supply  
 8 information to ascertain whether that person or persons have been arrested for or  
 9 convicted of, or pled nolo contendere to, any criminal offense. The request must be  
 10 on a form prepared by the bureau and signed by a responsible officer or official of  
 11 the organization or department making the request. It must include a statement  
 12 signed by the person about whom the request is made which gives his permission for  
 13 such information to be released.

\* \* \*

D.

\* \* \*

17 (2) The prohibition in Paragraph (1) of this Subsection against an individual  
 18 applicant bearing any of the costs of providing information shall not apply to  
 19 requests made pursuant to the provisions of R.S. 17:15 or 407.71 or R.S. 46:51.2.

\* \* \*

21 Section 2. The heading of Part X-C of Chapter 1 of Title 17, R.S. 17:407.61,  
 22 407.62(4) through (6), and 407.63 through 407.72 are hereby amended and reenacted and  
 23 R.S. 17:407.62(7) is hereby enacted to read as follows:

PART X-C. Family Child ~~Day~~ Care Provider and In-Home Provider Registration Law

§407.61. Short title

26 This Part may be cited as the "Family Child ~~Day~~ Care ~~Home~~ Provider and In-  
 27 Home Child Care Provider Registration Law".

1 §407.62. Definitions

2 As used in this Part, the following definitions shall apply unless the context  
3 clearly states otherwise.

4 \* \* \*

5 (4) "Department" means the ~~Department of Health and Hospitals or the state~~  
6 ~~Department of Education, as indicated by the context.~~

7 (5) "Family child ~~day care home provider~~" means ~~any place, facility, or~~  
8 ~~home operated by any institution, society, agency, corporation, person or persons,~~  
9 ~~or any other group for the primary purpose of providing care, supervision, and~~  
10 ~~guidance of an individual who provides child care services for fewer than twenty-~~  
11 ~~four hours per day per child, as the sole caregiver, for six or fewer children, in a~~  
12 ~~private residence.~~

13 (6) "In-home provider" means an individual who provides child care services  
14 in the child or children's own home.

15 (7) "Relative" or "related" means the child, grandchild, niece, or nephew of  
16 the primary child care provider ~~in~~ of a family child day care home provider or in-  
17 home provider.

18 §407.63. Requirement for registration; exemptions

19 A. All family child ~~day care homes that~~ providers and in-home providers  
20 who either directly or indirectly receive state or federal funds, directly or indirectly,  
21 related to the care provided shall be registered.

22 B. Family child ~~day care homes that~~ providers and in-home providers who  
23 do not directly or indirectly receive state or federal funds, directly or indirectly,  
24 related to the care provided and individuals who provide care for only related family  
25 members, shall not be required to be registered.

26 C. All family child ~~day care homes~~ providers and in-home providers shall  
27 be registered prior to directly or indirectly receiving any state or federal funds;  
28 ~~directly or indirectly~~ related to the care provided.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 §407.64. Rules and regulations; inspection requirements

2 A. ~~The Department of Health and Hospitals shall promulgate rules and~~  
3 ~~regulations in accordance with the Administrative Procedure Act to carry out the~~  
4 ~~provisions of this Part for all family child day care homes which receive state or~~  
5 ~~federal funds except those family child day care homes which participate in the~~  
6 ~~United States Child and Adult Care Food Program or the Child Care and~~  
7 ~~Development Fund.~~

8 B. ~~The Department of Education~~ State Board of Elementary and Secondary  
9 Education shall promulgate rules and regulations in accordance with the  
10 Administrative Procedure Act to carry out the provisions of this Part for those  
11 registered family child day care homes that providers and in-home providers who  
12 participate in the United States Child and Adult Care Food Program or the Child  
13 Care and Development Fund.

14 C. B. ~~A~~ Each registered family child day care home provider and in-home  
15 provider shall be inspected and approved by the office of state fire marshal in  
16 accordance with the rules and regulations as established ~~under Subsections A and B~~  
17 pursuant to Subsection A of this Section, developed in consultation with the office  
18 of state fire marshal.

19 §407.65. Inspections

20 ~~The Department of Education~~ department, through its duly authorized agents,  
21 shall reserve the right to visit and inspect each registered family child day care  
22 homes provider and in-home provider as deemed necessary by the department. ~~All~~  
23 Any residence or home in which care is provided by a registered family child day  
24 care homes provider or in-home provider shall be open to inspection by the  
25 department, parents of children in care, and by other authorized inspection personnel  
26 during normal working hours or when children are in care.

27 §407.66. Fees

28 A.(1) The office of state fire marshal shall have the authority to charge each  
29 family child ~~day care home~~ provider and in-home provider applying for registration

1 or renewal of registration an annual fee for services. This fee shall be adopted in  
2 accordance with the Administrative Procedure Act.

3 (2) A fee shall be charged to cover the cost of inspection for family child ~~day~~  
4 care ~~homes~~ providers and in-home providers regulated by the ~~Department of State~~  
5 Board of Elementary and Secondary Education in accordance ~~to~~ with R.S.  
6 17:407.64~~(B)~~(A). The fee shall be set at thirty dollars per inspection and used for the  
7 sole purpose of employing personnel to perform such inspections.

8 B. The office of state fire marshal shall transfer sufficient funds to the  
9 ~~Department of Health and Hospitals or the Department of Education~~ department for  
10 those family child ~~day~~ care ~~homes~~ which providers and in-home providers who  
11 receive state or federal funds but do not participate in the United States Child and  
12 Adult Care Food Program to carry out the registration process in accordance with  
13 this Part.

14 §407.67. Revocation or refusal to renew registration; written notice

15 The ~~authorized~~ department shall have the authority to deny, revoke, or refuse  
16 to renew a registration of a registered family child ~~day~~ care ~~home~~ provider or in-  
17 home provider if an applicant has failed to comply with the provisions of this Part,  
18 any applicable published rule or regulation relating to registered family child ~~day~~  
19 care ~~homes~~ providers or in-home providers, or any other state, federal, or local rule  
20 or regulation. If a registration is denied, revoked, or withdrawn, the action shall be  
21 effective when made and the family child ~~day~~ care ~~home~~ provider or in-home  
22 provider shall be notified in writing. This notice shall give the reason for denial,  
23 revocation, or withdrawal of the registration.

24 §407.68. Revocation or refusal of registration; appeal procedure

25 Upon the refusal of the department to grant or renew a registration or upon  
26 the revocation of a registration, the family child ~~day~~ care ~~home~~ provider or in-home  
27 provider having been refused a registration or renewal or having had a registration  
28 revoked shall have the right to appeal such action to the division of administrative  
29 law by submitting a written request for an appeal to the department within thirty

1 calendar days after receipt of the notification of the refusal or revocation. The  
2 department shall notify the division of administrative law within ten calendar days  
3 of receipt of a request for an appeal and the appeal hearing shall be held no later than  
4 thirty calendar days after such notice, with an administrative ruling no later than  
5 thirty calendar days from the date of the hearing. This provision shall in no way  
6 preclude the right of the party to seek relief through mandamus suit against the  
7 department, as provided by law.

8 §407.69. Operating without or in violation of registration; penalty; injunctive relief

9 A. ~~Whoever operates a~~ Any family child day care home provider or in-home  
10 provider who is required to be registered under this Part and who provides child care  
11 services without a valid registration issued by the department shall be fined not less  
12 than twenty-five dollars nor more than one hundred dollars. Each day ~~of operation~~  
13 child care services are provided in violation of the requirements of this Part shall  
14 constitute a separate offense.

15 B. The department may also file suit in the district court in the parish in  
16 which the family child ~~day care home is located~~ provider or in-home provider is  
17 providing care, for injunctive relief, including a temporary restraining order, to  
18 restrain the family child ~~day care home~~ provider or in-home provider from  
19 continuing the violation.

20 §407.70. Notification of health and safety violations

21 The department shall notify the appropriate agencies if it ~~is determined~~  
22 determines that one or more violations exist ~~within~~ at the residence where care is  
23 being provided by a family child day care home which provider or in-home provider  
24 that place the health and well-being of a child or children in imminent danger.

25 §407.71. Grounds for revocation or refusal to renew registration; criminal activities;

26 lack of CPR or first aid training

27 A.(1) ~~No family child day care home may have in its employ, or living in the~~  
28 ~~home, any~~ person who has been convicted of or pled nolo contendere to a crime  
29 listed in R.S. 15:587.1(C) may be a registered family child care provider, be

1 employed in the residence or on the property of the residence where the care is  
2 provided by the registered family child care provider, or live in the residence where  
3 care is provided by the registered family child care provider. The cost of any  
4 criminal background check which may be required by the department as proof of  
5 compliance with this Subsection shall be the responsibility of the family child ~~day~~  
6 care ~~home~~ provider.

7 (2) No person who has been convicted of or pled nolo contendere to a crime  
8 listed in R.S. 15:587.1(C) may be a registered in-home child care provider, be an  
9 adult employed in the home or on the property of the home where care is provided  
10 by the registered in-home child care provider, or be any adult living in the home  
11 where care is provided by the registered in-home child care provider who is not a  
12 caregiver. For the purposes of this Paragraph, the term "caregiver" shall mean any  
13 person legally obligated to provide or secure care for a child, including a parent,  
14 legal custodian, foster home parent, or other person providing a residence for the  
15 child. The cost of any criminal background check which may be required by the  
16 department as proof of compliance with this Subsection shall be the responsibility  
17 of the in-home provider.

18 (3) The State Board of Elementary and Secondary Education shall establish  
19 by regulation requirements and procedures consistent with the provisions of R.S.  
20 15:587.1 that require the submission of a person's fingerprints in a form acceptable  
21 to the Louisiana Bureau of Criminal Identification and Information and through  
22 which:

23 (a) The department may request information concerning whether or not a  
24 registered family child care provider, any adult employed in the residence or on the  
25 property of the residence where care is provided, or any adult living in the residence  
26 where care is provided has been arrested for, convicted of, or pled nolo contendere  
27 to any criminal offense.

28 (b) The department may request information concerning whether or not the  
29 registered in-home provider, any adult employed in the home or on the property of

1 the home where care is provided, or any adult living in the home where care is  
2 provided has been arrested for, convicted of, or pled nolo contendere to any criminal  
3 offense.

4 B. ~~The primary child care provider of any~~ Each family child ~~day care home~~  
5 provider and in-home provider shall have documented current certification in either  
6 Infant/Child CPR or Infant/Child/Adult CPR in order to be registered.

7 C. The department may deny, revoke, or refuse to renew any registration of  
8 a family child ~~day care home which~~ provider or in-home provider who violates the  
9 provisions of this Section.

10 D. The provisions of this Section shall not apply to a family child ~~day care~~  
11 ~~home in which the primary child care~~ provider or in-home provider when such  
12 provider at such home is related to all the children receiving child care ~~at such home.~~

13 E. The provisions of this Section shall not apply to a family child ~~day care~~  
14 ~~home~~ provider or in-home provider who is registered with the ~~Department of~~  
15 ~~Education~~ department solely for participation in the United States Child and Adult  
16 Care Food Program.

17 §407.72. Orientation

18 A. ~~All~~ Each family child ~~day care home providers~~ provider and in-home  
19 provider who is receiving payments from the ~~Department of Education~~ department  
20 shall be required to participate in a four-hour orientation. The orientation curriculum  
21 shall include but not be limited to the following subjects: recordkeeping;  
22 immunization schedules and requirements; recognizing signs of child abuse; child  
23 abuse prevention; communicating with parents; age appropriate activities for young  
24 children; child development; child safety; and nutritional needs of children. The  
25 orientation ~~will~~ shall count toward the required hours of professional development  
26 training mandated by the ~~Department of Education~~ State Board of Elementary and  
27 Secondary Education.

28 B. New family child ~~day care home providers~~ and in-home providers are  
29 required to provide proof of orientation participation within ~~twelve~~ six months ~~after~~

1 ~~beginning operation~~ of initial registration. ~~New~~ Newly registered providers, at the  
 2 time of initial application, are required to sign an agreement committing to attend the  
 3 required orientation within ~~twelve~~ six months.

4 Section 3. This Act shall become effective on July 1, 2015.

#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 734 Reengrossed

2015 Regular Session

Seabaugh

**Abstract:** Provides relative to the registration and regulation of certain unlicensed child care providers that receive state or federal funds.

Present law provides for the licensing of early learning centers, defined as any child day care center (seven or more children), Early Head Start Center, Head Start Center, or stand-alone prekindergarten program not attached to a school. Proposed law retains present law.

Present law provides for the registration of certain places providing child care that do not meet the definition of early learning center and are thus not subject to present law licensing requirements. Authorizes the state Dept. of Education (DOE) to oversee the registration of such unlicensed providers. Proposed law generally retains present law but adds new provider types to the registration law and requires criminal background checks for such providers, as explained more fully below.

#### Definitions and Registration

Present law requires operators of "family child day care homes" to register with DOE. Defines "family child day care home" as any place, facility, or home operated by any institution, society, agency, corporation, person or persons, or any other group for the primary purpose of providing care, supervision, and guidance of six or fewer children. Proposed law deletes present law and instead requires the following providers to register with DOE, defining them as follows:

- (1) "Family child care provider", defined as an individual who provides child care services for fewer than 24 hours per day per child, as the sole caregiver, for six or fewer children, in a private residence.
- (2) "In-home provider", defined as an individual who provides child care services in the child or children's own home.

Present law requires registration by an unlicensed day care facility if it receives state or federal funds, directly or indirectly. Proposed law instead requires a facility to register if funds are related to the care provided. Present law requires the provider to be registered before the receipt of funds. Proposed law retains present law but specifies that this applies to funds related to the care provided.

Present law provides that unlicensed day care facilities that do not receive state or federal funds and individuals providing care exclusively for related family members are not required to register with DOE. Proposed law retains present law.

## Oversight

Present law authorizes the state Dept. of Health and Hospitals to promulgate rules and regulations for unlicensed child care providers that receive state or federal funds except those participating in the U.S. Child and Adult Care Food Program or the Child Care Development Fund. Proposed law deletes present law.

Present law requires DOE to promulgate rules and regulations for unlicensed child care providers participating in such program or fund. Proposed law instead requires the State Board of Elementary and Secondary Education (BESE) to promulgate such rules and regulations and limits their applicability to only participating providers that are registered.

## Inspections

Present law requires that unlicensed child care facilities be inspected and approved by the office of the state fire marshal. Proposed law applies this requirement only to registered facilities.

Present law authorizes inspections of registered unlicensed child care facilities by DOE as it deems necessary. Proposed law retains present law. Present law authorizes the state fire marshal, parents, and other authorized inspection personnel to inspect unlicensed facilities during normal working hours or when children are in care. Proposed law retains present law but limits its applicability to registered facilities and only grants this authority to parents of children in care of the facility.

## Revocation of Registration; Appeal; Violations

Present law authorizes DOE to deny, revoke, or refuse to renew a registration if an application fails to comply with present law. Establishes an appeal process and provides for fines for providers operating without valid registration. Proposed law retains present law.

## Grounds for Revocation and Criminal Background Checks

Present law prohibits any unlicensed child care provider from employing or allowing a person who had been convicted of or plead *nolo contendere* to any of a group of certain enumerated present law crimes, such as first degree murder and cruelty to juveniles, to live in the place where care is provided.

Proposed law prohibits any individual who has been convicted of or plead *nolo contendere* to any such enumerated present law crimes from being a registered family child care provider, from being employed in the residence or on the property of the residence where the care is provided by the registered provider, or living in the residence where such care is provided by the registered provider.

For "in-home providers", proposed law is the same as proposed law relative to family child care providers, except that "caregivers" cannot be expelled for convictions or pleading *nolo contendere* to any of the enumerated present law crimes. Defines "caregiver" as "any person legally obligated to provide or secure care for a child, including a parent, legal custodian, foster home parent, or other person providing a residence for the child."

Present law exempts providers who are related to all children receiving care from the criminal background check requirements. Proposed law retains present law.

Present law (R.S. 15:587.1) authorizes certain agencies and employers to obtain criminal background information on specific classes of people. Proposed law authorizes DOE to obtain criminal background information on registered unlicensed child care providers and any adults living in the home or employed on the premises.

Present law (R.S. 15:587.1(D)), with certain exceptions, prohibits the individual whose criminal history is being reviewed from being charged for such background checks. Proposed law requires the unlicensed child care provider to pay the cost of any criminal background check necessary to prove compliance with proposed law.

#### Required Training

Present law requires unlicensed child care providers to have certification in either Infant/Child CPR or Infant/Child/Adult CPR. Proposed law specifies that this is a condition of registration.

Present law requires each unlicensed child care provider to participate in a four-hour orientation and provides that such orientation counts toward required professional development training mandated by DOE. Proposed law provides that the orientation counts toward required training mandated by BESE.

Present law requires new unlicensed child care providers to provide proof of orientation within 12 months of initial registration. Proposed law reduces the length of this time period from 12 months to six months.

Effective July 1, 2015.

(Amends R.S. 15:587.1(A)(1)(a) and (D)(2), the heading of Part X-C of Ch. 1 of Title 17, R.S. 17:407.61, 407.62(4)-(6), and 407.63-407.72; Adds R.S. 17:407.62(7))

#### Summary of Amendments Adopted by House

##### The House Floor Amendments to the engrossed bill:

1. Provide for proposed law effectiveness on July 1, 2015, instead of upon governor's signature or lapse of time for gubernatorial action.
2. Specify that various requirements pertaining to unlicensed day care facilities apply only to those that are registered with the state Dept. of Education.