

## LEGISLATIVE BILL 130

Approved by the Governor April 6, 1984

Introduced by V. Johnson, 8

AN ACT relating to children; to amend sections 71-901 and 71-1901, Reissue Revised Statutes of Nebraska, 1943, section 71-1902, Revised Statutes Supplement, 1982, and section 81-502, Revised Statutes Supplement, 1983; to provide licensing for early childhood programs and facilities as prescribed; to provide intent; to define and redefine terms; to provide powers and duties; to provide for enforcement of orders; to provide for civil penalties; to require a report; to provide for inspections; to harmonize provisions; and to repeal the original sections. Be it enacted by the people of the State of Nebraska,

Section 1. The Legislature finds that there is a present and growing need for quality day care and other early childhood programs and facilities. There is a need to establish and maintain licensure of providers of all such services and early childhood programs to ensure that providers are competent and are using safe and adequate facilities. The Legislature further finds and declares that the development and supervision of day care and other early childhood programs are a matter of statewide concern and should be dealt with uniformly on the state and local levels. There is a need for cooperation among the various state and local agencies which impose standards on providers of day care and other early childhood programs and there should be one agency which coordinates the enforcement of such standards and informs the Legislature about cooperation among the various agencies.

Sec. 2. The purpose of sections 1 to 11 of this act is to provide:

(1) Statewide licensing of providers of early childhood programs; and

(2) The Department of Social Services with authority to coordinate the imposition of standards on providers of early childhood programs.

Sec. 3. As used in sections 1 to 11 of this act, unless the context otherwise requires:

(1) Department shall mean the Department of Social Services;

(2) Director shall mean the Director of Social Services; and

(3) Early childhood program or program shall mean the provision of services in lieu of parental

supervision for children under twelve years of age for compensation, either directly or indirectly, on the average of less than twelve hours per day, but more than two hours per week, and shall include any employer-sponsored day care, day care home, day care center, before and after school day care program, or preschool or nursery school, but shall not include casual care at irregular intervals, a recreation camp, classes or services provided by a religious organization other than day care or preschool or nursery schools, a preschool program conducted in a school approved pursuant to section 79-328, or child care as defined in section 71-1901.

Sec. 4. No person shall furnish, or offer to furnish, a program for four or more children from different families without having in full force and effect a written license issued by the department, upon such terms as may be prescribed by the rules and regulations adopted and promulgated by the department. A city, village, or county which has rules, regulations, or ordinances in effect on the effective date of this act which apply to programs furnished for two or three children from different families may continue to license providers of such programs. Any provider not covered by sections 1 to 11 of this act may voluntarily subject himself, herself, or itself to coverage. All licenses issued under sections 1 to 11 of this act shall expire two years from the date of issuance and shall be subject to renewal under such terms as may be prescribed by the rules and regulations of the department in effect at the time of the renewal. There shall be a twenty-five dollar fee charged for the issuance or renewal of each license for providers with a daily average of less than thirty children and a fifty dollar fee charged for the issuance or renewal of each license for providers with a daily average of thirty or more children.

The license fee shall be paid to the department which shall retain the fee, except that when a city, village, or county has adopted any rule, regulation, or ordinance which establishes standards for licensed providers pursuant to subsection (2) of section 7 of this act and conducts all necessary inspections of any licensed provider pursuant to such subsection, the department shall transmit the license fee paid by such provider to the city, village, or county conducting the inspections.

A license may be denied for cause, after notice and hearing, in accordance with such rules and regulations as may be prescribed by the department.

Sec. 5. The department shall adopt and promulgate rules and regulations establishing standards for the physical well-being, safety, and protection of children pursuant to the licensing of providers. Such standards shall insure that the provider of a program is providing proper care for, and treatment of, the children served and that such care and treatment is consistent with

the children's physical well-being, safety, and protection. Such standards shall not require the use of any specific instructional materials or affect the contents of any course of instruction which may be offered by a program. Before issuance or renewal of a license, the department shall investigate or cause an investigation to be made, when it deems necessary, to determine if the applicant or person in charge of the program meets or is capable of meeting the physical well-being, safety, and protection standards and the other rules and regulations of the department. The department may at any time inspect or cause an inspection to be made, of any place where a program is operating, to determine if such program is being properly conducted.

Sec. 6. The department may request the State Fire Marshal to inspect any early childhood program for fire safety pursuant to section 81-502 and may request the Department of Health to inspect any program to determine if it meets sanitation and physical well-being standards of the Department of Health for the care and protection of the children pursuant to section 71-901. The authority to make such inspections may be delegated, when appropriate, to qualified local fire prevention personnel by the State Fire Marshal and to qualified local environmental health personnel by the Department of Health. The State Fire Marshal and the Director of Health shall immediately notify the department whenever they delegate their authority for such inspections.

Sec. 7. (1) The department shall be the state's coordinating agency for regulating early childhood programs in this state in order to (a) provide efficient services pursuant to sections 1 to 11 of this act, (b) avoid duplication of services, and (c) prevent an unnecessary number of inspections of any program. The department may request cooperation and assistance from local and state agencies and such agencies shall promptly respond. The extent of an agency's cooperation may be included in the department's report to the Legislature pursuant to section 10 of this act.

(2) A city, village, or county may adopt rules, regulations, or ordinances establishing physical well-being and safety standards for providers of programs whether or not such providers are subject to licensure under section 4 of this act. If a city, village, or county adopts any rules, regulations, or ordinances establishing physical well-being and safety standards for providers subject to licensure under section 4 of this act, (a) such rules, regulations, or ordinances shall be identical to the department's rules and regulations for licensed providers pursuant to sections 1 to 11 of this act, except that a city, village, or county which has rules, regulations, or ordinances in effect on the effective date of this act which apply to programs furnished for two or

three children from different families may continue to license providers of such programs, and (b) the city, village, or county and the department shall coordinate the inspection and supervision of licensed providers to avoid duplication of inspections. A city, village, or county shall report any violation of its rules, regulations, or ordinances regulating providers subject to licensure to the director who may cause a written charge to be brought pursuant to section 8 of this act. The city, village, or county may administer and enforce its rules, regulations, and ordinances establishing physical well-being and safety standards for providers of programs, except that the exclusive remedy for the violation of any rules, regulations, and ordinances regulating providers subject to licensure pursuant to section 4 of this act shall be by the director pursuant to section 8 of this act.

Sec. 8. (1) Whenever the director has reason to believe that a violation of any provision of sections 1 to 7 of this act or of any rule, regulation, or order of the department has occurred, he or she may cause a written charge to be served upon each alleged violator. The charge shall specify the provision of sections 1 to 7 of this act or the rule, regulation, or order alleged to be violated and the facts alleged to constitute a violation of such section, rule, regulation, or order. The director shall provide for notice and a full and fair hearing at a time and place specified in such notice at which each alleged violator shall answer the charges. The notice shall be delivered to each alleged violator not less than ten days before the time set for the hearing by personal service, by certified or registered mail to his or her last-known address, or by publication. Notice by publication shall only be made if personal service or service by mail cannot be effectuated. Following the hearing the director shall determine whether the charges are true or not and if true, the director may (a) issue a declaratory order finding the charges to be true, (b) revoke or suspend a license, or (c) impose a civil penalty of five dollars for each child in the program for each day in violation after the department issues its order finding a violation.

(2) Any civil penalty assessed and unpaid under the provisions of subsection (1) of this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property.

(3) Whenever the director finds that an emergency exists requiring immediate action to protect the physical well-being and safety of a child in an early childhood program, the director may, without notice or hearing, issue an order declaring the existence of such an emergency and requiring that such action be taken as the



director deems necessary to meet the emergency. Notwithstanding the provisions of subsection (1) of this section, such order shall be effective immediately. Any person to whom the order is directed shall comply immediately, except that upon application to the director, the person shall be afforded a hearing as soon as possible and not later than ten days after his or her application for the hearing. On the basis of such hearing the director shall continue to enforce his or her order or revoke or modify it.

(4) In addition to the powers provided to the director in this section, he or she may petition the appropriate district court for an injunction whenever he or she believes that any person is violating any provision of sections 1 to 11 of this act, or any rule, regulation, or order adopted and promulgated pursuant to such sections. It shall be the duty of each county attorney or the Attorney General to whom the director reports a violation to cause appropriate proceedings to be instituted without delay to ensure compliance with such sections, rules, regulations, and orders.

Sec. 9. The department shall adopt and promulgate such rules and regulations, consistent with sections 1 to 8 of this act, as it shall deem necessary for (1) the proper care and protection of children by providers under such sections, (2) the issuance, suspension, and revocation of licenses for early childhood program providers, and (3) the proper administration of such sections. The procedure for contested cases and their appeal in Chapter 84, article 9, shall apply to hearings conducted by the department pursuant to section 8 of this act and for any other contested cases of the department.

Sec. 10. The department shall file an annual report with the Clerk of the Legislature, which shall be available to any member of the Legislature upon request. The report shall include:

- (1) The number of license applications received;
- (2) The number of licenses issued;
- (3) The number of license applications denied;
- (4) The number of complaints investigated;
- (5) The number of licenses revoked;
- (6) The number and dollar amount of civil penalties levied pursuant to section 8 of this act; and
- (7) Information which may assist the Legislature in determining the extent of cooperation provided to the department by other state and local agencies pursuant to section 7 of this act.

Sec. 11. The rules and regulations of the department in effect on the effective date of this act which apply to early childhood programs shall remain in effect after the effective date of this act until the rules and regulations pursuant to sections 1 to 9 of this act have been adopted and promulgated.

Sec. 12. That section 71-901, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-901. (1) The Department of Health shall inquire into the whole system of public charities and methods and practices in the public and correctional institutions of the state, counties, and cities, to ascertain the condition thereof from time to time by inspection or otherwise, especially of prisons, jails, infirmaries, public hospitals, including hospitals for the mentally ill and mentally retarded, and all correctional institutions, including the Youth Development Center-Kearney and the Youth Development Center-Geneva, and industrial schools.

(2) The Department of Health shall make at least one inspection every year of each state public and correctional institution, which inspection may be unannounced, and such inspections shall not require the permission of any director of the department or of the institution to be inspected. The inspection of state public and correctional institutions shall include an inspection of the dietary facilities at the institution.

(3) The Department of Health shall enforce the provisions of this section and all other statutes pertaining to public health and sanitation with respect to the public and correctional institutions of the state, counties, and cities. The Department of Health shall promulgate and enforce necessary rules and regulations for carrying out the provisions of this section. It may also adopt rules and regulations supplementing any of the provisions herein contained but not inconsistent therewith.

(4) The Department of Health shall make an investigation and report to the Department of Social Services, within a reasonable time thirty days after receipt of the request by the Department of Social Services, of all facilities and programs of licensed child-care facilities with a population of seven or more children providers of early childhood programs, as defined in section 3 of this act, or applicants for licenses for child-care facilities with a population of seven or more children to provide such programs to determine if the place or places to be covered by such licenses meet standards of health and sanitation set by the Department of Health for the care and protection of the child or children who may be placed therein. The Department of Health may delegate this authority to qualified local environmental health personnel. The standards for health and sanitation for such early childhood programs shall be developed and implemented with the advice and approval of the Department of Social Services.

Sec. 13. That section 71-1901, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-1901. As used in sections 71-1901 to

71-1905:

(1) Person shall include a partnership, firm, agency, association, or corporation;

(2) Child care shall mean engaged in the business of exercising ~~the~~ twenty-four hour daily care, supervision, custody, or control over children under sixteen years of age, for compensation or hire, in lieu of the care or supervision normally exercised by parents in their own home but shall not include casual care at irregular intervals or early childhood programs, as defined in section 3 of this act; and

(3) Department shall mean the Department of Social Services of the State of Nebraska.

Sec. 14. That section 71-1902, Revised Statutes Supplement, 1982, be amended to read as follows:

71-1902. No person shall furnish, or offer to furnish, child care for two or more children from different families without having in full force and effect a written license issued by the department, upon such terms and conditions as may be prescribed by general rules and regulations promulgated by the department. All licenses issued under sections 71-1901 to 71-1905 shall expire one year from the date of issuance, and shall be subject to renewal under the same terms and conditions as the original license. For the issuance or renewal of each license the department shall charge a fee of five dollars for ~~day care homes or~~ foster family homes, twenty-five dollars for group homes or child care centers with less than fifty children, fifty dollars for child care centers with fifty or more children, twenty-five dollars for child-caring agencies, and twenty-five dollars for child-placing agencies. A license may be revoked for cause, after notice and hearing, in accordance with such rules and regulations as may be prescribed by the department.

For purposes of this section:

~~(1) Day care home shall mean any private home providing care for compensation for children from more than one family for not to exceed twelve consecutive hours per day for any one child.~~

~~(2) (1) Foster family home shall mean any home which provides twenty-four hour care to children, under sixteen years of age, who are not related to the foster parent, but not including the foster family's own children or relatives' children regularly in the home who are under thirteen years of age;~~

~~(3) (2) Group home shall mean a home which is operated under the auspices of an organization which is responsible for providing social services, administration, direction, and control for the home and which is designed to provide twenty-four hour care for individuals in a residential setting;~~

~~(4) (3) Child care center shall mean a facility that provides child care for more than seven children over~~

six weeks of age and under thirteen years of age;

~~(5)~~ (4) Child-caring agency shall mean an organization which is incorporated for the purpose of providing care for children in buildings maintained by the organization for that purpose; and

~~(6)~~ (5) Child-placing agency shall mean an organization which is authorized by its articles of incorporation and by its license to place children in foster family homes.

Sec. 15. That section 81-502, Revised Statutes Supplement, 1983, be amended to read as follows:

81-502. (1) It shall be the duty of the State Fire Marshal, under authority of the Governor:

(a) To enforce all laws of the state relating to the suppression of arson and investigation of the cause, origin, and circumstances of fires;

(b) To promote safety and reduce loss by fire;

(c) To make an investigation for fire safety of the premises and facilities of:

(i) Liquor establishments for which a license or renewal of a license is sought, upon request of the Nebraska Liquor Control Commission, pursuant to section 53-119.01;

(ii) Licensed child care facilities or applicants for licenses for child care facilities, upon request by the Department of Social Services, pursuant to section 71-1903;

(iii) Licensed providers of early childhood programs or applicants for licenses to provide such programs, upon request of the Department of Social Services, pursuant to section 6 of this act. The State Fire Marshal shall report the results of the investigation to the department within thirty days after receipt of the request from the department;

(iv) Licensed hospitals, skilled nursing facilities, intermediate care facilities one, intermediate care facilities two, or other facilities or institutions which are mentioned in subdivision (1) of section 71-2017, or applicants for licenses for such facilities or institutions, upon request by the Department of Health, pursuant to section 71-2022; and

~~(iv)~~ (v) Mobile home parks for which a license or renewal of a license is sought, upon request of the Department of Health, pursuant to section 71-4635; and

(d) After a careful study and investigation of relevant data bearing thereon, to promulgate, alter, and enforce rules and regulations covering:

(i) The prevention of fires;

(ii) The storage, sale, and use of flammable liquids, combustibles, and explosives;

(iii) Electric wiring and heating, protection equipment devices, materials, furnishings, and other safeguards within the structure necessary to promote



safety and reduce loss by fire, and the means and adequacy of exits, in case of fire, in assembly, educational, institutional, residential, mercantile, office, storage, and industrial-type occupancies as such structures are defined in the National Fire Protection Association, Pamphlet Number 101 and associated pamphlets, and all other buildings, structures, and enclosures in which numbers of persons congregate from time to time for any purpose whether privately or publicly owned;

(iv) Design, construction, location, installation, and operation of equipment for storing, handling, and utilization of liquefied petroleum gases, specifying the odorization of such ~~said~~ gases and the degree thereof; and

(v) Chemicals, prozylin plastics, X-ray nitrocellulose films, or any other hazardous material that may now or hereafter exist.

(2) The State Fire Marshal may enter into contracts with private individuals, or other agencies, boards, commissions, or governmental bodies for the purpose of carrying out his or her duties and responsibilities pursuant to sections 81-502 to 81-552 and 81-5,115 to 81-5,146.

(3) The State Fire Marshal may delegate the authority set forth in this section to qualified local fire prevention personnel. The State Fire Marshal may overrule a decision, act, or policy of the local fire prevention personnel. When the State Fire Marshal overrules the local personnel, such local personnel may follow the appeals procedure established by sections 81-502.01 to 81-502.03. Such delegation of authority may be revoked by the State Fire Marshal for cause upon thirty days' notice after hearing.

(4) The State Fire Marshal, first assistant fire marshal, and deputies shall have such other powers and perform such other duties as are set forth in sections 81-501.01 to 81-531 ~~and this act~~, and as may be conferred and imposed by law.

(5) The rules and regulations adopted pursuant to subdivision (1)(d) of this section may conform generally to the standards recommended by the National Fire Protection Association, Pamphlet Number 101, known as the Life Safety Code, and associated pamphlets, but not when doing so would impose an unduly severe or costly burden without substantially contributing to safety of persons or property. This section and the rules and regulations adopted pursuant to subdivision (1)(d) of this section shall apply to existing as well as new buildings, structures, and enclosures. Such rules and regulations shall also apply to sites or structures in public ownership listed on the National Register of Historic Places but without destroying the historic quality thereof.

(6) Plans for compliance with the rules and

regulations adopted pursuant to subdivision (1)(d) of this section shall be reviewed by the State Fire Marshal.

Sec. 16. That original sections 71-901 and 71-1901, Reissue Revised Statutes of Nebraska, 1943, section 71-1902, Revised Statutes Supplement, 1982, and section 81-502, Revised Statutes Supplement, 1983, are repealed.