

LEGISLATIVE BILL 510

Approved by the Governor May 25, 1993

Introduced by Wesely, 26; Rasmussen, 20

AN ACT relating to children; to amend section 71-1915, Revised Statutes of Nebraska, 1943, and section 71-1911, Revised Statutes Supplement, 1992; to change license requirements for early childhood programs; to provide additional types of licenses; to change provisions relating to the suspension or revocation of licenses; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 71-1911, Revised Statutes Supplement, 1992, be amended to read as follows:

71-1911. (1) A person may furnish a program for three or less children without having a license issued by the department, except that if such person has had a license issued pursuant to subsection (2) of this section and such license has been suspended or revoked pursuant to section 71-1915, such person shall not furnish a program for three or less children until the person is licensed pursuant to this section.

(2) No person shall furnish or offer to furnish a program for four or more children under his or her direct supervision, care, and control at any one time from families other than that of the provider 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. The license may be a provisional license, a probationary license, or an operating license. A city, village, or county which has rules, regulations, or ordinances in effect on July 10, 1984, which apply to programs furnished for two or three children from different families may continue to license providers of such programs. If the license of a person is suspended or revoked pursuant to section 71-1915, such person shall not be licensed by any city, village, or county rules, regulations, or ordinances until the person is licensed pursuant to this section. Any provider not covered by sections 71-1908 to 71-1918 may voluntarily subject himself, herself, or itself to coverage.

(3) A provisional license shall be issued to all applicants for the first year of operation. At the end of one year of operation the department shall either issue an operating license or renew or refuse to renew the provisional license. The provisional license may be renewed once if the department determines that:

(a) A licensee is unable to comply with all licensure requirements and standards, is making a good faith effort to comply, and is capable of compliance within the next six months;

(b) The effect of the current inability to comply with a rule or regulation does not present an unreasonable risk to the health, safety,

or well-being of children or staff; and

(c) The licensee has a written plan of correction that has been approved by the department which is to be completed within the renewal period.

(4) The department may issue a probationary license to a licensee holding an operating license for up to six months. The probationary license may be issued if the department determines that:

(a) A licensee is unable to comply with all licensure requirements and standards or has had a history of noncompliance;

(b) The effect of noncompliance with any rule or regulation does not present an unreasonable risk to the health, safety, or well-being of children or staff; and

(c) The licensee has a written plan of correction that has been approved by the department.

(5) Operating licenses All licenses issued under sections 71-1908 to 71-1918 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.

(6) There shall be a twenty-five-dollar fee charged for the issuance or renewal of each license for providers with a ~~daily average~~ licensing capacity 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~~ licensing capacity 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 71-1914 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.

(7) A license may be denied for cause, after notice and hearing, in accordance with such rules and regulations as may be adopted and promulgated by the department. A person who has had a license suspended or revoked pursuant to section 71-1915 shall not be eligible to reapply for a license for a period of two years.

(8) A license shall be denied or revoked if an applicant or licensee has been found guilty of a crime involving the neglect, physical abuse, or sexual abuse of a child or an adult.

(9) In order to assist the department in the performance of the duties prescribed in this section, the Legislature shall appropriate such funds as are necessary to the department to enable the department to employ four additional licensing specialists.

Sec. 2. The provisional, probationary, or operating license issued pursuant to section 71-1911 shall be displayed by the licensee in a prominent place so that it is clearly visible to parents and others.

Sec. 3. That section 71-1915, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-1915. (1) Whenever the director has reason to believe

that a violation of any provision of sections 71-1908 to 71-1914 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 71-1908 to 71-1914 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 provisional or probationary license of a person may be suspended or revoked if periodic review or inspection by the department indicates that insufficient progress has been made toward compliance. The director shall provide for notice and, if requested by the alleged violator, a full and fair hearing at which each alleged violator shall answer the charges. The notice shall be delivered to each alleged violator 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. The alleged violator may request a hearing within ten days of delivery of the notice. Following the hearing if held or within fifteen days of delivery of the notice if no hearing is held, 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~~ the provisional, probationary, or operating license, ~~or~~ (c) issue a probationary license if the determinations of subsection (4) of section 71-1911 are applicable, or (d) 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. If the department has initiated a license suspension or revocation action, (i) such action may continue to finality even if the license of the licensee has been surrendered and (ii) household members of the licensee or current staff members of such licensee shall not become the licensee of the program while such action is pending.

(2) Any civil penalty assessed and unpaid under 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 71-1908 to 71-1918 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. 4. That original section 71-1915, Reissue Revised Statutes of Nebraska, 1943, and section 71-1911, Revised Statutes Supplement, 1992, are repealed.