



THOMAS J. VILSACK
GOVERNOR

OFFICE OF THE GOVERNOR

SALLY J. PEDERSON
LT. GOVERNOR

April 28, 2003

The Honorable Chester Culver
Secretary of State
State Capitol Building
L O C A L


Dear Mr. Secretary:

I hereby transmit:

Senate File 351, an Act relating to child care requirements involving prohibitions against involvement with child care, record checks and evaluations performed by the Department of Human Services, eligibility for state assistance, and child care fraud program sanctions, and making penalties applicable.

The above Senate File is hereby approved this date.

Sincerely,


Thomas J. Vilsack
Governor

TJV:jmc

cc: Secretary of the Senate
Chief Clerk of the House





SENATE FILE 351

AN ACT

RELATING TO CHILD CARE REQUIREMENTS INVOLVING PROHIBITIONS AGAINST INVOLVEMENT WITH CHILD CARE, RECORD CHECKS AND EVALUATIONS PERFORMED BY THE DEPARTMENT OF HUMAN SERVICES, ELIGIBILITY FOR STATE ASSISTANCE, AND CHILD CARE FRAUD PROGRAM SANCTIONS, AND MAKING PENALTIES APPLICABLE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 237A.1, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 10A. "Involvement with child care" means licensed or registered under this chapter, employed in a child care facility, residing in a child care facility, receiving public funding for providing child care, or providing child care as a child care home provider, or residing in a child care home.

Sec. 2. Section 237A.2, subsection 5, Code 2003, is amended to read as follows:

5. If the department has denied or revoked a license because the applicant or person has continually or repeatedly failed to operate a licensed center in compliance with this chapter and rules adopted pursuant to this chapter, the person shall not own or operate a child care center for a period of twelve months from the date the license is denied or revoked. The department shall not act on an application for a license submitted by the applicant or person during the twelve-month period. The applicant or person shall be prohibited from involvement with child care unless the involvement is specifically permitted by the department.

Sec. 3. Section 237A.3, Code 2003, is amended to read as follows:

237A.3 CHILD CARE HOMES.

1. A person or program providing child care to five children or fewer at any one time is a child care home provider and is not required to register under section 237A.3A as a child development home. However, the person or program may register as a child development home.

2. If a person or program has been prohibited by the department from involvement with child care, the person or program shall not provide child care as a child care home provider and is subject to penalty under section 237A.19 or injunction under section 237A.20 for doing so.

Sec. 4. Section 237A.3A, subsection 2, Code 2003, is amended to read as follows:

2. REVOCATION OR DENIAL OF REGISTRATION. If the department has denied or revoked a certificate of registration because a person has continually or repeatedly failed to operate a registered or licensed child care facility in compliance with this chapter and rules adopted pursuant to this chapter, the person shall not operate or establish a registered child development home for a period of twelve months from the date the registration or license was denied or revoked. The department shall not act on an application for registration submitted by the person during the twelve-month period. The applicant or person shall be prohibited from involvement with child care unless the involvement is specifically permitted by the department.

Sec. 5. Section 237A.5, subsection 2, Code 2003, is amended to read as follows:

2. a. If-a For the purposes of this section, unless the context otherwise requires:

(1) "Person subject to an evaluation" means a person who has committed a transgression and who is described by any of the following:

(a) The person is being considered for licensure or registration or is registered or licensed under this chapter,
or.

(b) The person is being considered by a child care facility for employment involving direct responsibility for a child or with access to a child when the child is alone,
by-a child-care-facility-subject-to-licensure-or-registration-under this-chapter,
or-if-a or is employed with such responsibilities.

(c) The person will reside or resides in a child care facility, and if the person has been convicted of a crime or has a record of founded child abuse, the department shall perform an evaluation to determine whether the crime or founded child abuse warrants prohibition of licensure, registration, employment, or residence in the facility.

(d) The person has applied for or receives public funding for providing child care.

(e) The person will reside or resides in a child care home that is not registered under this chapter but that receives public funding for providing child care.

(2) "Transgression" means the existence of any of the following in a person's record:

(a) Conviction of a crime.

(b) A record of having committed founded child or dependent adult abuse.

(c) Listing in the sex offender registry under chapter 692A.

(d) A record of having committed a public or civil offense.

(e) The department has revoked a child care facility registration or license due to the person's continued or repeated failure to operate the child care facility in compliance with this chapter and rules adopted pursuant to this chapter.

b. The department shall conduct criminal and child abuse record checks in this state and may conduct these checks in other states. In addition, the department may conduct dependent adult abuse, sex offender registry, and other public or civil offense record checks in this state or in other states. If the department identifies an individual as a person subject to an evaluation, an evaluation shall be performed to determine whether prohibition of the person's involvement with child care is warranted. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department.

b.--If the department determines that a person has committed a crime or has a record of founded child abuse and is licensed, employed by a licensee or registrant or registered under this chapter, or resides in a licensed or registered facility Prior to performing an evaluation, the department shall notify the affected person, licensee, or

registrant, or child care home applying for or receiving public funding for providing child care, that an evaluation will be conducted to determine whether prohibition of the person's licensure, registration, employment, or residence involvement with child care is warranted.

c. In an evaluation, the department shall consider the nature and seriousness of the crime-or-founded-child-abuse transgression in relation to the position sought or held, the time elapsed since the commission of the crime-or-founded child-abuse transgression, the circumstances under which the crime-or-founded-child-abuse transgression was committed, the degree of rehabilitation, the likelihood that the person will commit the crime-or-founded-child-abuse transgression again, and the number of crimes-or-founded-child-abuses transgressions committed by the person involved. In addition to record check information, the department may utilize information from the department's case records in performing the evaluation. The department may permit a person who is evaluated to be-licensed, registered, employed, or to reside, or to continue to be licensed, registered, employed, or to reside in a licensed facility maintain involvement with child care, if the person complies with the department's conditions and corrective action plan relating to the person's licensure, registration, employment, or residence, which may include completion of additional training involvement with child care. The department has final authority in determining whether prohibition of the person's licensure, registration, employment, or residence involvement with child care is warranted and in developing any conditional requirements and corrective action plan under this paragraph.

~~d.--If the department determines that the person has committed a crime or has a record of founded child abuse which warrants prohibition of licensure, registration, employment, or residence, the person shall not be licensed or registered under this chapter to operate a child care facility and shall not be employed by a licensee or registrant or reside in a facility licensed or registered under this chapter.~~

d. (1) A person subject to an evaluation shall be prohibited from involvement with child care if the person has a record of founded child or dependent adult abuse that was determined to be sexual abuse, the person is listed on the sex offender registry under chapter 692A, or the person has committed any of the following felony-level offenses:

(a) Child endangerment or neglect or abandonment of a dependent person.

(b) Domestic abuse.

(c) A crime against a child including but not limited to sexual exploitation of a minor.

(d) A forcible felony.

(2) If, within five years prior to the date of application for registration or licensure under this chapter, for employment or residence in a child care facility or child care home, or for receipt of public funding for providing child care, a person subject to an evaluation has been convicted of a controlled substance offense under chapter 124 or has been found to have committed physical abuse, the person shall be prohibited from involvement with child care for a period of five years from the date of conviction or founded abuse. After the five-year prohibition period, the person may submit an application for registration or licensure under this chapter, or to receive public funding for providing child care or may request an evaluation, and the department shall perform an evaluation and, based upon the criteria in paragraph "c", shall determine whether prohibition of the person's involvement with child care continues to be warranted.

e. If the department determines, through an evaluation of a person's transgression, that the person's prohibition of involvement with child care is warranted, the person shall be prohibited from involvement with child care. The department may identify a period of time after which the person may request that another record check and evaluation be performed. A person who continues involvement with child care in violation of this subsection is subject to penalty under section 237A.19 or injunction under section 237A.20.

e. f. If it has been determined that a child receiving child care from a child care facility or a child care home which receives public funding for providing child care is the victim of founded child abuse committed by an employee, license or registration holder, child care home provider, or resident of the child care facility or child care home for which a report is placed in the central registry pursuant to section 232.71D, the administrator shall provide notification at the time of the determination to the parents, guardians, and custodians of children receiving care from the facility or child care home. A notification made under this paragraph

shall identify the type of abuse but shall not identify the victim or perpetrator or circumstances of the founded abuse.

Sec. 6. Section 237A.5, subsections 3 and 6, Code 2003, are amended by striking the subsections.

Sec. 7. Section 237A.13, subsection 1, paragraph d, Code 2003, is amended to read as follows:

d. The child's parent, guardian, or custodian is absent for a limited period of time due to hospitalization, physical illness, or mental illness, or is present but is unable to care for the child for a limited period as verified by a physician.

Sec. 8. Section 237A.13, subsection 4, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. d. A child in a family that is eligible for state child care assistance and that receives a state adoption subsidy for the child.

Sec. 9. Section 237A.19, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 3. A person who establishes, conducts, manages, or operates a child care home in violation of section 237A.3, subsection 2, or a person or program that has been prohibited by the department from involvement with child care but continues that involvement commits a simple misdemeanor. Each day of continuing violation after conviction, or notice from the department by certified mail of the violation, is a separate offense. A single charge alleging continuing violation may be made in lieu of filing charges for each day of violation.

Sec. 10. Section 237A.20, Code 2003, is amended to read as follows:

237A.20 INJUNCTION.

A person who establishes, conducts, manages, or operates a center without a license or a child development home without a certificate of registration, if registration is required under section 237A.3A, may be restrained by temporary or permanent injunction. A person who has been convicted of a crime against a person, ~~or~~ a person with a record of founded child abuse, or a person who has been prohibited by the department from involvement with child care may be restrained by temporary or permanent injunction from providing unregistered, registered, or licensed child care or from other involvement with child care. The action may be instituted by the state,

the county attorney, a political subdivision of the state, or an interested person.

Sec. 11. Section 237A.29, subsection 2, paragraph b, Code 2003, is amended to read as follows:

b. A child care provider that has been found by the department of inspections and appeals in an administrative proceeding or in a judicial proceeding to have obtained, or has agreed to entry of a civil judgment or judgment by confession that includes a conclusion of law that the child care provider has obtained, by fraudulent means, public funding for provision of child care in an amount equal to or in excess of the minimum amount for a fraudulent practice in the second degree under section 714.10, subsection 1, shall be subject to sanction in accordance with this subsection. Such child care provider shall be subject to a period during which receipt of public funding for provision of child care is conditioned upon no further violations and to one or more of the following sanctions as determined by the department ~~and imposed-in-an-administrative-proceeding~~ of human services:

Sec. 12. Section 237A.29, subsection 3, paragraphs a and b, Code 2003, are amended to read as follows:

a. If a child care provider is subject to sanctions under subsection 2, within five business days of the date the sanctions were imposed, the provider shall submit to the department the names and addresses of children receiving child care from the provider. The department shall send information to the parents of the children regarding the provider's actions leading to the imposition of the sanctions and the nature of the sanctions imposed. ~~If-the-provider-fails-to-submit-the-names-and-addresses-within-five-business-days-of-the-department-notifying-the-provider,-the-department-shall-suspend-the-provider's-registration-or-license-under-this-chapter-until-the-names-and-addresses-are-provided-~~

b. ~~In-addition-to-applying-the-suspension~~ If the child care provider fails to submit the names and addresses within the time period required by paragraph "a", the department may shall request that the attorney general file a petition with the district court of the county in which the provider is located for issuance of a temporary injunction enjoining the provider from providing child care until the names and addresses are submitted to the department. The attorney general may file the petition upon receiving the request from

the department. Any temporary injunction may be granted without a bond being required from the department.



MARY E. KRAMER

President of the Senate



CHRISTOPHER C. RANTS

Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 351, Eightieth General Assembly.



MICHAEL E. MARSHALL

Secretary of the Senate

Approved April 23, 2003



THOMAS J. VILSACK

Governor