

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 416
Committee Substitute Favorable 5/9/91

Short Title: Child Day Care Law Changes.

(Public)

Sponsors:

Referred to:

April 1, 1991

A BILL TO BE ENTITLED
AN ACT TO MAKE TECHNICAL, CLARIFYING, AND CORRECTIVE CHANGES
TO THE CHILD DAY CARE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 110-86 reads as rewritten:

"§ 110-86. Definitions.

Unless the context or subject matter otherwise requires, the terms or phrases used in this Article shall be defined as follows:

- (1) ~~'Commission' means the~~ Commission. ~~The~~ Child Day-Care Commission created under this Article.
- (2) ~~'Child Day Care' means any~~ Child day care. Any child care arrangement except seasonal recreational programs operated for less than four consecutive months in a year, wherein three or more children less than 13 years old receive care away from their own home by persons other than their parents, grandparents, aunts, uncles, brothers, sisters, first cousins, guardians or full-time custodians, or in the child's own home where other unrelated children are in care.
- (3) ~~'Day care facility' includes~~ Child day care facility. Includes any child day care center or child care arrangement which provides day care for more than five children, not including the operator's own school-aged children, under the age of 13 years, on a regular basis of at least once per week for more than four hours but less than 24 hours per day, regardless of the time of day and regardless of whether the same or

1 different children attend. The following are not included: public
 2 schools; nonpublic schools whether or not accredited by the State
 3 Department of Public Instruction, which regularly and exclusively
 4 provide a course of grade school instruction to children who are of
 5 public school age; summer camps having children in full-time
 6 residence; Bible schools conducted during vacation periods; facilities
 7 licensed under Article 2 of Chapter 122C of the General Statutes; and
 8 cooperative arrangements among parents to provide care for their own
 9 children as a convenience rather than for employment.

10 ~~Day~~ Child day care facilities are separated by capacity into the
 11 following categories which determine applicable requirements and
 12 standards as established by the Commission pursuant to G.S. 110-88:

13 **Facility Type**

14 Large Home

15 Small Center

16 Medium Center

17 Large Center

18 The Commission shall establish the maximum capacity for each of
 19 the four categories of facilities.

- 20 (4) ~~'Child Day Care Home' means any~~ Child day care home. Any day care
 21 program or child care arrangement wherein any person not excluded in
 22 G.S. 110-86(2) provides day care on a regular basis of at least once per
 23 week for more than four hours per day for more than two children
 24 under 13 years of age and fewer than six children age, but not to exceed a
 25 maximum of eight children at any one time, wherever operated, and
 26 whether or not operated for profit. Of the children present at any one
 27 time, no more than five children shall be preschool-aged, as defined in
 28 rules adopted by the Commission. The four hour limit applies
 29 regardless of the time of day and regardless of whether the same or
 30 different children attend. Cooperative arrangements among parents to
 31 provide care for their own children as a convenience rather than for
 32 employment are not included.

33 To determine whether a child care arrangement is a child day care
 34 home, all children shall be counted except the operator's own school-
 35 aged children and school-aged children who reside at the location of
 36 the day care home. ~~Notwithstanding the limitation to five children~~
 37 ~~prescribed above, the day care home operator may care for three additional~~
 38 ~~school-aged children.~~

39 (4.1) Department. Department of Human Resources.

40 (5) Repealed by Session Laws 1975, c. 879, s. 15.

41 (6) ~~'License' means a~~ License. A license issued by the Secretary to any
 42 day-care facility which meets the statutory standards established
 43 under this Article.

1 (7) ~~'Operator' includes~~ Operator. Includes the owner, director or other
 2 person having primary responsibility for operation of a child day
 3 care facility subject to licensing.

4 (8) Secretary. The Secretary of the Department of Human Resources."

5 Sec. 2. G.S. 110-88 reads as rewritten:

6 **"§ 110-88. Powers and duties of the Commission.**

7 The Commission shall have the following powers and duties:

8 (1) To develop policies and procedures for the issuance of a license to
 9 any child day-care facility which meets all applicable standards
 10 established under this Article.

11 (2) To require inspections by and satisfactory written reports from
 12 representatives of local or State health agencies and fire and
 13 building inspection agencies and from representatives of the
 14 Department prior to the issuance of a license to any child day care
 15 facility.

16 (3) To make rules establishing minimum and reasonable standards for
 17 the operation of child day-care homes and the issuance of
 18 registration certificates. These rules shall establish minimum
 19 standards of health and safety that will be required in child day-
 20 care ~~plans-homes~~ and will recognize the vital role that parents and
 21 guardians play in the monitoring of the care provided in child day-
 22 care ~~plans-homes~~.

23 (4) Repealed by Session Laws 1975, c. 879, s. 15.

24 (5) To make rules and develop policies for implementation of this
 25 Article, including procedures for application, approval, renewal
 26 and revocation of licenses.

27 (6) To make rules for the issuance of a provisional license to a child
 28 day-care facility ~~which-that~~ does not conform in every respect with
 29 the standards established in this Article provided that the Secretary
 30 of Human Resources finds that the operator is making a reasonable
 31 effort to conform to ~~such-the~~ standards, except that a provisional
 32 license shall not be issued for more than one year and shall not be
 33 renewed.

34 (6a) To make rules for administrative action against a child day care
 35 facility or home when the Secretary's investigations pursuant to
 36 G.S. 110-105(a)(3) or ~~G.S. 110-105.1(4) [110-105.1(a)(4)]~~ G.S. 110-
 37 105.1(a)(4) substantiate that child abuse or neglect did occur in the
 38 facility or home. The type of sanction shall be determined by the
 39 severity of the incident and the probability of reoccurrence. The
 40 administrative actions shall include written warnings and special
 41 provisional licenses or registration certificates.

42 A written warning may be issued which shall specify the corrective
 43 action to be taken by the operator. The Department shall make an
 44 unannounced visit within one month after issuance of the written

1 warning to determine whether the corrective action has occurred. If
 2 the corrective action has not occurred, a special provisional license or
 3 registration certificate may be issued.

4 When a special provisional license or registration certificate is
 5 issued, it shall require specific corrective action. It shall be in effect
 6 for six months from imposition and may not be renewed. The special
 7 provisional license or registration certificate and the letter which
 8 clearly states the reasons for the special provisional status shall be
 9 posted where parents can see them. Under the terms of the special
 10 provisional license or registration, the facility or home shall not enroll
 11 any new children until notified by the Department that it is satisfied
 12 the abusive or neglectful situation no longer exists. The Department
 13 shall make three unannounced visits during the period the special
 14 provisional license is in effect. Specific corrective action required by a
 15 written warning, special provisional license or special provisional
 16 registration may include the permanent removal from day care of the
 17 substantiated abuser or neglecter.

18 Nothing in this subdivision shall restrict the Secretary from using
 19 any other statutory or administrative remedies available.

- 20 (7) To develop and promulgate standards which reflect higher levels of
 21 day care than required by the standards established by this Article,
 22 which will recognize better physical facilities, more qualified
 23 personnel, and higher quality programs. The Commission ~~shall be~~
 24 ~~empowered to issue~~ may adopt rules for the issuance of two grades
 25 of licenses: an 'A' license for compliance with the provisions of the
 26 Article, and an 'AA' license for those licensees meeting the
 27 voluntary higher standards promulgated by the Commission.
- 28 (8) To develop a procedure by which the Department ~~{of Human~~
 29 ~~Resources}~~ shall furnish such forms as may be required for
 30 implementation of this Article.
- 31 (9) Repealed by Session Laws 1985, c. 757, s. 156(66), effective
 32 October 1, 1985.
- 33 (10) To develop rules for the issuance of a temporary license which
 34 shall expire in 90 days and which may be issued to the operator of
 35 a new facility or to the operator of a previously licensed facility
 36 when a change in ownership or location occurs, provided the operator
 37 applied for a license prior to the change in status.
- 38 (11) To develop rules for the care of sick children in facilities and
 39 homes."

40 Sec. 3. G.S. 110-90(5) reads as rewritten:

- 41 "(5) To revoke the license of any day care facility which ceases to meet
 42 the standards established by this ~~Article.~~ Article and rules on these
 43 standards adopted by the Commission, or to deny a license to any
 44 applicant that fails to meet the standards or the rules. ~~Such~~ These

1 revocations and denials shall be done in accordance with the
2 procedures set out in G.S. 150B and this Article and rules adopted
3 by the Commission."

4 Sec. 4. G.S. 110-90.1 reads as rewritten:

5 **"§ 110-90.1. Qualification for staff in a child day-care home.**

6 No child day-care home shall be registered if that home is operated by or employs
7 any person who has been convicted of a crime involving child abuse, child neglect, or
8 moral turpitude, or who is an habitually excessive user of alcohol or who illegally uses
9 narcotics or other impairing drugs, or who is mentally or emotionally impaired to an
10 extent that may be injurious to children. The person registered to provide care in a child
11 day-care home shall be at least 18 years of age and literate. A person who is less than
12 18 years of age, but at least 16 years of age, may work ~~on~~in a child day-care home if
13 under the direct supervision of the person registered to provide the care."

14 Sec. 5. G.S. 110-91 reads as rewritten:

15 **"§ 110-91. Mandatory standards for a license.**

16 The following standards shall be complied with by all day-care facilities, except as
17 otherwise provided in this Article. These shall be the only required standards for the
18 issuance of a license by the Secretary of Human Resources under the policies and
19 procedures of the Commission except that the Commission may, in its discretion, adopt
20 less stringent standards for facilities subject to licensing but which provide care on a
21 temporary, part-time, drop-in, seasonal, after-school or other than a full-time basis.

- 22 (1) Medical Care and Sanitation. – The Commission for Health
23 Services shall adopt rules which establish minimum sanitation
24 standards for day-care facilities and their personnel. The sanitation
25 rules adopted by the Commission for Health Services shall cover
26 such matters as the cleanliness of floors, walls, ceilings, storage
27 spaces, utensils, and other facilities; adequacy of ventilation;
28 sanitation of water supply, lavatory facilities, toilet facilities,
29 sewage disposal, food protection facilities, bactericidal treatment of
30 eating and drinking utensils, and solid-waste storage and disposal;
31 methods of food preparation and serving; ~~health of staff members;~~
32 infectious disease control; sleeping facilities; and such other items
33 and facilities as are necessary in the interest of the public health.
34 These rules shall be developed in consultation with the Department
35 of Human Resources.

36 The Child Day Care Commission shall adopt rules to establish
37 minimum requirements for child and staff health assessments and
38 medical care procedures. These rules shall be developed in
39 consultation with the Department of Environment, Health, and Natural
40 Resources. Each child shall have a ~~medical examination by~~ health
41 assessment before being admitted or within 30 days following
42 admission to a day-care facility. The assessment shall be done by: (i)
43 a licensed ~~physician~~ physician, or his (ii) the physician's authorized
44 agent who is currently approved by the North Carolina Board of

1 Medical Examiners, or comparable certifying board in any state
2 contiguous to North Carolina, (iii) a certified nurse practitioner, or (iv)
3 a public health nurse meeting the Department of Environment, Health,
4 and Natural Resources' Standards for Early Periodic Screening,
5 Diagnosis, and Treatment Program. ~~prior to being admitted or within 30~~
6 days following admission to a day-care facility; a record of such
7 examination—A record of each child's assessment shall be on file in the
8 records of the facility, provided, however, that facility. However, no
9 medical certificate health assessment shall be required of any child who
10 is and has been in normal health and whose parent, guardian, or full-
11 time custodian objects in writing to a ~~medical examination—health~~
12 assessment on religious grounds which conform to the teachings and
13 practice of any recognized church or religious denomination.

14 Each child shall be immunized in such a manner as to meet that meets
15 the requirements of ~~Articles 9 and 9A of Chapter 130—Article 6 of~~
16 Chapter 130A of the General Statutes—Statutes and the pertinent rules
17 adopted by the Commission for Health Services.

18 Each day-care facility shall have a plan of emergency medical care
19 which shall include provisions for communication with and
20 transportation to a specified medical resource, unless otherwise
21 previously instructed. No child receiving day care shall be
22 administered any drug or other medication without specific written
23 instructions from a physician or the child's parent, guardian or full-
24 time custodian. Medical—Emergency information on each child in care,
25 including the names, addresses, and telephone numbers of the child's
26 physician and parents, legal guardian or full-time custodian shall be
27 readily available to the staff of the day-care facility in the records of the
28 facility in accordance with a form approved by the Commission for this
29 purpose—while children are in care.

30 Nonprofit, tax-exempt organizations that provide prepared meals to
31 day care centers only are considered day care centers for purposes of
32 compliance with appropriate sanitation standards.

33 —There shall be a separate bed, cot or mat, equipped with individual
34 linen, for each child to use during rest periods, except for school aged
35 children; if a mat is used, it shall be of a waterproof, washable material
36 at least two inches thick and shall be stored so that the floor side does
37 not touch the sleeping side. Beds and linens used by members of the
38 household of the operator shall not be used for children receiving care
39 in the day-care facility.

- 40 (2) Health-Related Activities. – Each child in a day-care facility shall
41 receive nutritious food and refreshments under rules to be adopted
42 by the Commission. After consultation with the Division of Health
43 Services of the Department of Environment, Health, and Natural
44 Resources, nutrition standards shall provide for specific

1 requirements for infants. Nutrition standards shall provide for
2 specific requirements for children older than infants, including a
3 daily food plan for meals and snacks served that shall be adequate
4 for good nutrition. The number and size of servings and snacks
5 shall be appropriate for the ages of the children and shall be
6 planned according to the number of hours the child is in care.
7 Menus for meals and snacks shall be planned at least one week in
8 advance, dated, and posted where they can be seen by parents.

9 Each day-care facility shall arrange for each child in care to be out-
10 of-doors each day if weather conditions permit.

11 Each day-care facility shall have a rest period for each child in care
12 after lunch or at some other appropriate time.

13 No day-care facility shall care for more than 25 children in one
14 group. Facilities providing care for 26 or more children shall provide
15 for two or more groups according to the ages of children and shall
16 provide separate supervisory personnel for each group.

17 (3) Location. – Each day-care facility shall be located in an area which
18 is free from conditions which are deemed hazardous to the physical
19 and moral welfare of the children in care in the opinion of the
20 Commission.

21 (4) Building. – Each day-care facility shall be located in a building
22 which meets the requirements of the North Carolina Building Code
23 under standards which shall be developed by the Building Code
24 Council, subject to adoption by the Commission specifically for
25 day-care facilities, including facilities operated in a private
26 residence. Such standards shall be consistent with the provisions of
27 this Article.

28 (5) Fire Prevention. – All day-care facilities shall be inspected
29 annually by a local fire department or a volunteer fire department,
30 using fire-prevention standards which shall be developed by the
31 State Insurance Department after consultation with local fire
32 departments and volunteer fire departments, subject to adoption by
33 the Commission.

34 (6) Space and Equipment Requirements. – There shall be no less than
35 25 square feet of indoor space for each child for which a day-care
36 facility is licensed, exclusive of closets, passageways, kitchens, and
37 bathrooms, and such floor space shall provide during rest periods
38 200 cubic feet of airspace per child for which the facility is
39 licensed. There shall be adequate outdoor play area for each child
40 under rules adopted by the Commission which shall be related to
41 the size and type of facility, availability and location of outside
42 land area, except in no event shall the minimum required exceed 75
43 square feet per child, which area shall be protected to assure the
44 safety of the children receiving day care by an adequate fence or

1 other protection; provided, however, that a facility operated in a
2 public school shall be deemed to have adequate fencing protection;
3 provided, also, that a facility operating exclusively during the
4 evening and early morning hours, between 6:00 P.M. and 6:00
5 A.M., need not meet the outdoor play area requirements mandated
6 by this subdivision.

7 Each day-care facility shall provide equipment and furnishings that
8 are child size, sturdy, safe, and in good repair. The Commission shall
9 adopt standards to establish minimum requirements for equipment
10 appropriate for the size facility being operated pursuant to G.S. 110-
11 86(3). Space shall be available for proper storage of beds, cribs, mats,
12 cots, sleeping garments, and linens as well as designated space for
13 each child's personal belongings.

14 (7) Staff-Child Ratio. – In determining the staff-child ratio, all children
15 younger than 13 years shall be counted. The Commission shall
16 adopt rules regarding staff-child ratios, group sizes and multi-age
17 groupings for each category of facility provided that such rules and
18 regulations shall be no less stringent than those currently required
19 for staff-child ratios as enacted in Section 156(e) of Chapter 757 of
20 the 1985 Session Laws.

21 (8) Qualifications for Staff. – Each day-care facility shall be under the
22 direction or supervision of a literate person at least 21 years of age.
23 All staff counted in determining the required staff-child ratio shall
24 be at least 16 years of age, provided that persons younger than 18
25 years of age work under the direct supervision of a literate staff
26 person who is at least 21 years of age. No person shall be an
27 operator of nor be employed in a day-care facility who has been
28 convicted of a crime involving child neglect, child abuse, or moral
29 turpitude, or who is an habitually excessive user of alcohol or who
30 illegally uses narcotic or other impairing drugs, or who is mentally
31 or emotionally impaired to an extent that may be injurious to
32 children.

33 The Commission shall adopt standards to establish minimum
34 qualifications for operators, supervisors, caregivers and other staff who
35 have direct contact with the children. These standards shall reflect
36 training, experience, education or credentialing and shall be
37 appropriate for the size facility being operated according to the
38 categories defined in G.S. 110-86(3). It is the intent of this provision to
39 guarantee that all children in day care are cared for by qualified people
40 but also to recognize that qualifications for good child care may not be
41 limited to formal education or training standards. To this end, the
42 standards adopted by the Commission pertaining to training and
43 educational requirements shall include provision that these
44 requirements may be met by informal as well as formal training and

1 educational experience. No requirements may interfere with the
2 teachings or doctrine of any established religious organization.

- 3 (9) Records. – Each day-care facility shall keep accurate records on
4 each child receiving care in the day-care facility in accordance with
5 a form furnished or approved by the Commission, and shall submit
6 attendance reports as required by the Department.

7 Each day-care facility shall keep accurate records on each staff
8 member or other person delegated responsibility for the care of
9 children in accordance with a form approved by the Commission.

10 All records of any day-care facility, except financial records, shall be
11 subject to review by the Secretary of Human Resources or by duly
12 authorized representatives of the Department or a cooperating agency
13 who shall be designated by the Secretary.

14 Any effort to falsify information provided to the Department shall be
15 deemed by the Secretary to be evidence of violation of this Article on
16 the part of the operator or sponsor of the day-care facility and shall
17 constitute a cause for revoking or denying a license to such day-care
18 facility.

- 19 (10) Each operator or staff member shall truly and honestly show each
20 child in his care true love, devotion and tender care.

21 Each day-care facility shall have a written policy on discipline,
22 which policy describes the methods and practices used to discipline
23 children enrolled in that facility. This written policy shall be discussed
24 with, and a copy given to, each child's parent prior to the first time the
25 child attends the facility. Subsequently, any change in discipline
26 methods or practices shall be communicated in writing to the parents
27 prior to the effective date of the change.

- 28 (11) Staff Development. – The Commission shall adopt minimum
29 standards for ongoing staff development for facilities. These
30 standards shall include ~~a requirement that each day-care facility shall~~
31 ~~have a written staff development plan that shall include training activities~~
32 ~~for each staff member.~~ requirements for ongoing inservice training
33 for all staff."

34 Sec. 6. G.S. 110-93(c) reads as rewritten:

35 "(c) Each licensed operator of ~~fa]~~ a child day-care facility must annually apply in
36 order to renew ~~his~~ the license and must accompany such renewal application with such
37 supporting data and reports as are required to show conformity with the standards
38 established under this Article."

39 Sec. 7. G.S. 110-94 reads as rewritten:

40 **"§ 110-94. Administrative Procedure Act.**

41 The provisions of General Statutes Chapter 150B known as the Administrative
42 Procedure Act shall be applicable to the Child Day-Care Commission and to the rules it
43 adopts. The Administrative Procedure Act shall also apply to child day care contested
44 cases. However, a child day care operator shall have 30 days to file a petition for a

1 contested case pursuant to G.S. 150B-23. The case hearing shall be scheduled to be held
2 within 120 days of the date the petition for a hearing is received, pursuant to G.S. 150B-
3 23(a), in any contested case resulting from administrative action taken by the
4 Department to revoke a license, registration certificate, or Letter of Compliance or from
5 administrative action taken in a situation in which child abuse or neglect in a child day
6 care facility or home has been substantiated. A request for continuance of a hearing
7 shall be granted upon a showing of good cause by either party."

8 Sec. 8. G.S. 110-103.1(a) reads as rewritten:

9 "(a) A civil penalty ~~of not more than one thousand dollars (\$1,000)~~ may be levied
10 against any ~~licensee-operator of any child day care facility or home~~ who violates any
11 provision of this Article. The penalty shall not exceed one thousand dollars (\$1,000) for
12 each violation documented on any given date. Every ~~licensee-operator~~ shall be provided
13 a schedule of the civil penalties established by the Commission pursuant to this Article."

14 Sec. 9. G.S. 110-105(a) reads as rewritten:

15 **"§ 110-105. Authority to inspect facilities.**

16 (a) The Commission shall adopt standards and rules under this subsection which
17 provide for the following types of inspections:

- 18 (1) An initial licensing or certification inspection, which shall not
19 occur until the administrator of the facility receives prior notice of
20 the initial inspection or certification visit;
- 21 (2) A plan for routine inspections of all facilities, which shall be
22 confidential unless a court orders its disclosure, and which shall be
23 conducted without prior notice to the facility;
- 24 (3) An inspection that may be conducted without notice, if there is
25 probable cause to believe that an emergency situation exists or
26 there is a complaint alleging a violation of licensure law. When the
27 Department is notified by the county director of social services that
28 the director has received a report of child abuse or neglect in a
29 child day-care facility, or when the Department is notified by any
30 other person that alleged abuse or neglect has occurred in a facility,
31 the Commission's rules shall provide for an inspection conducted
32 without notice to the child day-care facility to determine whether
33 the alleged abuse or neglect has occurred. This inspection shall be
34 conducted within seven calendar days of receipt of the report, and
35 when circumstances warrant additional visits, the second inspection
36 shall be conducted within one month of the first visit.

37 The Secretary or ~~his~~ the Secretary's designee, upon presenting appropriate credentials to
38 the operator of the child day-care facility, is authorized to perform inspections in
39 accordance with the standards and rules promulgated under this subsection. The
40 Secretary or the Secretary's designee may inspect any area of a building in which there
41 is reasonable evidence that children are in care."

42 Sec. 10. G.S. 7A-517(5) reads as rewritten:

- 43 (5) Caretaker. – Any person other than a parent who has the care of a
44 juvenile. Caretaker includes any blood relative, stepparent, foster

1 parent, house parent, cottage parent, or other person supervising a
2 juvenile in a child-care facility. 'Caretaker' also means any person
3 who has the responsibility for the care of a juvenile in a ~~day-care~~
4 ~~plan~~ child day care home or facility as defined in G.S. 110-86 and
5 includes any person who has the approval of the care provider to
6 assume responsibility for the juveniles under the care of the care
7 provider."

8 Sec. 11. G.S. 143B-168.5 reads as rewritten:

9 **"§ 143B-168.5. Child Day Care Unit.**

10 There is established within the ~~North Carolina Child Day Care Commission~~ Department
11 of Human Resources a special unit to deal primarily with ~~day-care licensing and~~
12 ~~registration~~ violations involving child abuse and neglect. ~~neglect in child day care~~
13 arrangements. The Child Day Care Commission shall make rules sufficient to define the
14 duties of the special unit and to describe how it is to function as a special unit within the
15 Commission as a whole for the investigation of reports of child abuse or neglect and for
16 administrative action when child abuse or neglect is substantiated, pursuant to G.S. 110-
17 88(6a), 110-105, and 110-105.1."

18 Sec. 12. This act becomes effective October 1, 1991.