

SECOND REGULAR SESSION

HOUSE BILL NO. 1137

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LAFAVER.

4648L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 210.201, 210.211, 210.221, 210.254, and 210.258, RSMo, and to enact in lieu thereof three new sections relating to child-care facilities.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 210.201, 210.211, 210.221, 210.254, and 210.258, RSMo, are
2 repealed and three new sections enacted in lieu thereof, to be known as sections 210.201,
3 210.211, and 210.221, to read as follows:

210.201. As used in sections 210.201 to 210.257, the following terms mean:

2 (1) "Child", an individual who is under the age of seventeen;

3 (2) "Child-care facility", a house or other place conducted or maintained by any person
4 who advertises or holds himself out as providing care for more than four children during the
5 daytime, for compensation or otherwise, except [those operated by a school system or in
6 connection with a business establishment which provides child care as a convenience for its
7 customers or its employees for no more than four hours per day, but a child-care facility shall not
8 include any private or religious organization elementary or secondary school, a religious
9 organization academic preschool or kindergarten for four- and five-year-old children,] a home
10 school, as defined in section 167.031, a weekly Sunday or Sabbath school, a vacation Bible
11 school or child care made available while the parents or guardians are attending worship services
12 or other meetings and activities conducted or sponsored by a religious organization. If a facility
13 or program is exempt from licensure based on the school exception established in this
14 subdivision, such facility or program shall submit documentation annually to the department to
15 verify its licensure-exempt status; except that, under no circumstances shall any [public or
16 religious organization elementary or secondary school, a religious organization academic

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 preschool or kindergarten for four- and five-year-old children, a] home school, as defined in
18 section 167.031, a weekly Sunday or Sabbath school, a vacation Bible school or child care made
19 available while the parents or guardians are attending worship services or other meetings and
20 activities conducted or sponsored by a religious organization be required to submit
21 documentation annually to the department to verify its licensure-exempt status;

22 (3) "Person", any person, firm, corporation, association, institution or other incorporated
23 or unincorporated organization;

24 (4) "Religious organization", a church, synagogue or mosque; an entity that has or would
25 qualify for federal tax-exempt status as a nonprofit religious organization under Section 501(c)
26 of the Internal Revenue Code; or an entity whose real estate on which the child-care facility is
27 located is exempt from taxation because it is used for religious purposes.

210.211. 1. It shall be unlawful for any person to establish, maintain or operate a
2 child-care facility for children, or to advertise or hold himself or herself out as being able to
3 perform any of the services as defined in section 210.201, without having in effect a written
4 license granted by the department of health and senior services; except that nothing in sections
5 210.203 to 210.245 shall apply to:

6 (1) [Any person who is caring for four or fewer children. For purposes of this
7 subdivision, children who are related by blood, marriage or adoption to such person within the
8 third degree shall not be considered in the total number of children being cared for;

9 (2)] Any person who has been duly appointed by a court of competent jurisdiction the
10 guardian of the person of the child or children, or the person who has legal custody of the child
11 or children;

12 [(3)] (2) Any person who receives free of charge, and not as a business, for periods not
13 exceeding ninety consecutive days, as bona fide, occasional and personal guests the child or
14 children of personal friends of such person, and who receives custody of no other unrelated child
15 or children;

16 [(4)] (3) Any graded boarding school, summer camp, hospital, sanitarium or home which
17 is conducted in good faith primarily to provide education, recreation, medical treatment, or
18 nursing or convalescent care for children;

19 [(5)] (5) Any child-care facility maintained or operated under the exclusive control of a
20 religious organization. When a nonreligious organization, having as its principal purpose the
21 provision of child-care services, enters into an arrangement with a religious organization for the
22 maintenance or operation of a child-care facility, the facility is not under the exclusive control
23 of the religious organization;

24 [(6)] (4) Any residential facility or day program licensed by the department of mental
25 health pursuant to sections 630.705 to 630.760 which provides care, treatment and habilitation

26 exclusively to children who have a primary diagnosis of mental disorder, mental illness, mental
27 retardation or developmental disability, as defined in section 630.005[; and

28 (7) Any nursery school].

29 2. Notwithstanding the provisions of subsection 1 of this section, no child-care facility
30 shall be exempt from licensure if such facility receives any state or federal funds for providing
31 care for children, except for federal funds for those programs which meet the requirements for
32 participation in the Child and Adult Care Food Program pursuant to 42 U.S.C. 1766. Grants to
33 parents for child care pursuant to sections 210.201 to 210.257 shall not be construed to be funds
34 received by a person or facility listed in subdivisions (1) and (5) of subsection 1 of this section.

35 3. Any child care facility not exempt from licensure shall disclose the licensure status
36 of the facility to the parents or guardians of children for which the facility provides care. No
37 child care facility exempt from licensure shall represent to any parent or guardian of children for
38 which the facility provides care that the facility is licensed when such facility is in fact not
39 licensed.

210.221. 1. The department of health and senior services shall have the following
2 powers and duties:

3 (1) After inspection, to grant licenses to persons to operate child-care facilities if
4 satisfied as to the good character and intent of the applicant and that such applicant is qualified
5 and equipped to render care or service conducive to the welfare of children, and to renew the
6 same when expired. No license shall be granted for a term exceeding two years. Each license
7 shall specify the kind of child-care services the licensee is authorized to perform, the number of
8 children that can be received or maintained, and their ages and sex;

9 (2) To inspect the conditions of the homes and other places in which the applicant
10 operates a child-care facility, inspect their books and records, premises and children being
11 served, examine their officers and agents, deny, suspend, place on probation or revoke the license
12 of such persons as fail to obey the provisions of sections 210.201 to 210.245 or the rules and
13 regulations made by the department of health and senior services. The director also may revoke
14 or suspend a license when the licensee fails to renew or surrenders the license;

15 (3) To promulgate and issue rules and regulations the department deems necessary or
16 proper in order to establish standards of service and care to be rendered by such licensees to
17 children. No rule or regulation promulgated by the division shall in any manner restrict or
18 interfere with any religious instruction, philosophies or ministries provided by the facility and
19 shall not apply to facilities operated by religious organizations [which are not required to be
20 licensed]; and

21 (4) To determine what records shall be kept by such persons and the form thereof, and
22 the methods to be used in keeping such records, and to require reports to be made to the
23 department at regular intervals.

24 2. Any child-care facility may request a variance from a rule or regulation promulgated
25 pursuant to this section. The request for a variance shall be made in writing to the department
26 of health and senior services and shall include the reasons the facility is requesting the variance.
27 The department shall approve any variance request that does not endanger the health or safety
28 of the children served by the facility. The burden of proof at any appeal of a disapproval of a
29 variance application shall be with the department of health and senior services. Local inspectors
30 may grant a variance, subject to approval by the department of health and senior services.

31 3. The department shall deny, suspend, place on probation or revoke a license if it
32 receives official written notice that the local governing body has found that license is prohibited
33 by any local law related to the health and safety of children. The department may, after
34 inspection, find the licensure, denial of licensure, suspension or revocation to be in the best
35 interest of the state.

36 4. Any rule or portion of a rule, as that term is defined in section 536.010, that is created
37 under the authority delegated in sections 210.201 to 210.245 shall become effective only if it
38 complies with and is subject to all of the provisions of chapter 536, and, if applicable, section
39 536.028. All rulemaking authority delegated prior to August 28, 1999, is of no force and effect
40 and repealed. Nothing in this section shall be interpreted to repeal or affect the validity of any
41 rule filed or adopted prior to August 28, 1999, if it fully complied with all applicable provisions
42 of law. This section and chapter 536 are nonseverable and if any of the powers vested with the
43 general assembly pursuant to chapter 536 to review, to delay the effective date or to disapprove
44 and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority
45 and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

2 [210.254. 1. Child-care facilities operated by religious organizations
3 pursuant to the exempt status recognized in subdivision (5) of section 210.211
4 shall upon enrollment of any child provide the parent or guardian enrolling the
5 child two copies of a notice of parental responsibility, one copy of which shall be
6 retained in the files of the facility after the enrolling parent acknowledges, by
7 signature, having read and accepted the information contained therein.

8 2. The notice of parental responsibility shall include the following:

9 (1) Notification that the child-care facility is exempt as a religious
10 organization from state licensing and therefore not inspected or supervised by the
11 department of health and senior services other than as provided herein and that
12 the facility has been inspected by those designated in section 210.252 and is
13 complying with the fire, health and sanitation requirements of sections 210.252
to 210.257;

(2) The names, addresses and telephone numbers of agencies and authorities which inspect the facility for fire, health and safety and the date of the most recent inspection by each;

(3) The staff/child ratios for enrolled children under two years of age, for children ages two to four and for those five years of age and older as required by the department of health and senior services regulations in licensed facilities, the standard ratio of staff to number of children for each age level maintained in the exempt facility, and the total number of children to be enrolled by the facility;

(4) Notification that background checks have been conducted on each individual caregiver and all other personnel at the facility. The background check shall be conducted upon employment and every two years thereafter on each individual caregiver and all other personnel at the facility. Such background check shall include a screening for child abuse or neglect through the division of family services, and a criminal record review through the Missouri highway patrol pursuant to section 43.540. The fee for the criminal record review shall be limited to the actual costs incurred by the Missouri highway patrol in conducting such review not to exceed ten dollars;

(5) The disciplinary philosophy and policies of the child-care facility; and

(6) The educational philosophy and policies of the child-care facility.

3. A copy of notice of parental responsibility, signed by the principal operating officer of the exempt child-care facility and the individual primarily responsible for the religious organization conducting the child-care facility and copies of the annual fire and safety inspections shall be filed annually during the month of August with the director of the department of health and senior services. Exempt child-care facilities which begin operation after August 28, 1993, shall file such notice at least five days prior to starting to operate.]

[210.258. The provisions of this section and section 210.259 apply to a child care facility maintained or operated under the exclusive control of a religious organization. Nothing in sections 210.252 to 210.257 shall be construed to authorize the department of health and senior services or any other governmental entity:

(1) To interfere with the program, curriculum, ministry, teaching or instruction offered in a child care facility;

(2) To interfere with the selection, certification, minimal formal educational degree requirements, supervision or terms of employment of a facility's personnel;

(3) To interfere with the selection of individuals sitting on any governing board of a child care facility;

(4) To interfere with the selection of children enrolled in a child care facility; or

(5) To prohibit the use of corporal punishment. However, the department of health and senior services may require the child care facility to provide the

17 parent or guardian enrolling a child in the facility a written explanation of the
18 disciplinary philosophy and policies of the child care facility.]

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