

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 627*

Short Title: Day Care Enforcement.

(Public)

Sponsors: Representatives Easterling; Cummings, Jeffus, and Kennedy.

Referred to: Health and Human Services.

March 29, 1993

A BILL TO BE ENTITLED

AN ACT TO IMPROVE ENFORCEMENT OF THE CHILD DAY CARE REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 110-88 reads as rewritten:

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

The Commission shall have the following powers and duties:

- (1) To develop policies and procedures for the issuance of a license to any child ~~day-care~~day care facility which meets all applicable standards established under this Article.
- (2) To require inspections by and satisfactory written reports from representatives of local or State health agencies and fire and building inspection agencies and from representatives of the Department prior to the issuance of a license to any child day care facility.
- (3) To make rules establishing minimum and reasonable standards for the operation of child ~~day-care~~day care homes and the issuance of registration certificates. These rules shall establish minimum standards of health and safety that will be required in child ~~day-care~~day care homes and will recognize the vital role that parents and guardians play in the monitoring of the care provided in child ~~day-care~~day care homes.
- (4) Repealed by Session Laws 1975, c. 879, s. 15.

- 1 (5) To make rules and develop policies for implementation of this Article,
2 including procedures for application, approval, renewal and revocation
3 of licenses.
- 4 (6) To make rules for the issuance of a provisional license to a child ~~day-~~
5 ~~care~~ day care facility and a provisional registration certificate to a child
6 day care home that does not conform in every respect with the
7 standards established in this Article and rules adopted by the
8 Commission pursuant to this Article, provided that the Secretary finds
9 that the operator is making a reasonable effort to conform to the
10 standards, except that a provisional license or provisional registration
11 certificate shall not be issued for more than ~~one year~~ 12 consecutive
12 months and shall not be renewed.
- 13 (6a) To make rules for administrative action against a child day care facility
14 or child day care home when the Secretary's investigations pursuant to
15 G.S. 110-105(a)(3) or G.S. 110-105.1(a)(4) substantiate that child
16 abuse or neglect did occur in the facility or home. The type of
17 sanction shall be determined by the severity of the incident and the
18 probability of reoccurrence. The administrative actions shall include
19 written warnings and special provisional licenses or registration
20 certificates.

21 A written warning may be issued which shall specify ~~the any~~
22 corrective action to be taken by the operator. The Department shall
23 make an unannounced visit within one month after issuance of the
24 written warning to determine whether the corrective action has
25 occurred. If the corrective action has not occurred, a special
26 provisional license or registration certificate may be issued.

27 When a special provisional license or registration certificate is
28 issued, it shall require specific corrective action. It shall be in effect
29 for no more than six months from imposition and ~~may~~ shall not be
30 renewed. The special provisional license or registration certificate and
31 the letter which clearly states the reasons for the special provisional
32 status shall be posted where parents can see them. Under the terms of
33 the special provisional license or registration, the facility or home shall
34 not enroll any new children until notified by the Department that it is
35 satisfied the abusive or neglectful situation no longer exists. The
36 Department shall make ~~three unannounced visits~~ an unannounced visit at
37 least every eight weeks during the period the special provisional
38 license or registration certificate is in effect. Specific corrective action
39 required by a written warning, special provisional license or special
40 provisional registration certificate, or any other administrative penalty
41 authorized by this Article may include the permanent removal from
42 day care of the substantiated abuser or neglecter.

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

- 1 (7) To develop and promulgate standards which reflect higher levels of
 2 day care than required by the standards established by this Article,
 3 which will recognize better physical facilities, more qualified
 4 personnel, and higher quality programs. The Commission may adopt
 5 rules for the issuance of two grades of licenses: an 'A' license for
 6 compliance with the provisions of the Article, and an 'AA' license for
 7 those licensees meeting the voluntary higher standards promulgated by
 8 the Commission.
- 9 (8) To develop a procedure by which the Department shall furnish ~~such~~
 10 those forms as may be required for implementation of this Article.
- 11 (9) Repealed by Session Laws 1985, c. 757, s. 156(66).
- 12 (10) To develop rules for the issuance of a temporary license which shall
 13 expire in 90 days and which may be issued to the operator of a new
 14 facility or to the operator of a previously licensed facility when a
 15 change in ownership or location occurs.
- 16 (11) To develop rules for the care of sick children in facilities and homes."

17 Sec. 2. G.S. 110-90 reads as rewritten:

18 **"§ 110-90. Powers and duties of Secretary of Human Resources.**

19 The Secretary of Human Resources shall have the following powers and duties
 20 under the policies and rules of the Commission:

- 21 (1) To administer the licensing program for ~~day care~~child day care
 22 facilities and the registration system for ~~day care~~child day care homes.
- 23 (2) To obtain and coordinate the necessary services from other State
 24 departments and units of local government which are necessary to
 25 implement the provisions of this Article.
- 26 (3) To employ ~~such~~the administrative personnel and staff as may be
 27 necessary to implement this Article where required services,
 28 inspections or reports are not available from existing State agencies
 29 and units of local government.
- 30 (4) To issue a license effective for one year to any ~~day care~~child day care
 31 facility which meets the standards established by this Article.
- 32 (5) To revoke the license of any child day care facility or the registration
 33 certificate of any child day care home which ceases to meet the
 34 standards established by this Article and rules on these standards
 35 adopted by the Commission, or which demonstrates a pattern of
 36 noncompliance with this Article or the rules, or to deny a license or
 37 registration certificate to any applicant that fails to meet the standards
 38 or the rules. These revocations and denials shall be done in
 39 accordance with the procedures set out in G.S. 150B and this Article
 40 and rules adopted by the Commission.
- 41 (6) To prosecute or defend on behalf of the State, through the office of the
 42 Attorney General, any legal actions arising out of the administration or
 43 enforcement of this Article.

- 1 (7) To promote and coordinate educational programs and materials for
2 operators of ~~day-care-child day care~~ day care facilities and ~~day-care-child day~~
3 care homes which are designed to improve the quality of day care
4 available in the State, using the resources of other State and local
5 agencies and educational institutions where appropriate.
- 6 (8) To issue a rated license when any operator of a ~~day-care-child day care~~
7 facility required to be licensed hereunder or requiring licensure
8 pursuant to subdivision (11) of this section has satisfied the
9 ~~Commission~~ Secretary that it has met the voluntary standards developed
10 and adopted by the Commission.
- 11 (9) To levy a civil penalty pursuant to G.S. 110-103.1, or an
12 administrative penalty pursuant to G.S. 110-102.2, or to order
13 summary suspension of a license or registration. ~~Such~~ These actions
14 shall be done in accordance with the procedures set out in G.S. 150B
15 and this Article and rules adopted by the Commission.
- 16 (10) To issue final agency decisions in all G.S. 150B contested cases
17 proceedings filed as a result of actions taken under this Article
18 including, but not limited to the denial, revocation or suspension of a
19 license or the levying of a civil or administrative penalty.
- 20 (11) To issue a license or registration certificate to any child care
21 arrangement that does not meet the definition of child day care facility
22 or child day care home in G.S. 110-86 whenever the operator of the
23 arrangement chooses to comply with the requirements of this Article
24 and the rules adopted by the Commission, and voluntarily applies for a
25 child day care facility license or child day care home registration
26 certificate. The Commission shall adopt rules for the issuance or
27 removal of the licenses or registration certificates."

28 Sec. 3. G.S. 110-91 reads as rewritten:

29 **"§ 110-91. Mandatory standards for a license.**

30 The following standards shall be complied with by all ~~day-care-child day care~~
31 facilities, except as otherwise provided in this Article. These shall be the only required
32 standards for the issuance of a license by the Secretary under the policies and
33 procedures of the Commission except that the Commission may, in its discretion, adopt
34 less stringent standards for facilities subject to licensing but which provide care on a
35 temporary, part-time, drop-in, seasonal, after-school or other than a full-time basis.

- 36 (1) Medical Care and Sanitation. – The Commission for Health Services
37 shall adopt rules which establish minimum sanitation standards for
38 ~~day-care-child day care~~ facilities and their personnel. The sanitation
39 rules adopted by the Commission for Health Services shall cover such
40 matters as the cleanliness of floors, walls, ceilings, storage spaces,
41 utensils, and other facilities; adequacy of ventilation; sanitation of
42 water supply, lavatory facilities, toilet facilities, sewage disposal, food
43 protection facilities, bactericidal treatment of eating and drinking
44 utensils, and solid-waste storage and disposal; methods of food

1 preparation and serving; infectious disease control; sleeping facilities;
2 and ~~such~~ other items and facilities as are necessary in the interest of the
3 public health. These rules shall be developed in consultation with the
4 Department.

5 The Commission shall adopt rules to establish minimum
6 requirements for child and staff health assessments and medical care
7 procedures. These rules shall be developed in consultation with the
8 Department of Environment, Health, and Natural Resources. Each
9 child shall have a health assessment before being admitted or within 30
10 days following admission to a ~~day-care~~ child day care facility. The
11 assessment shall be done by: (i) a licensed physician, (ii) the
12 physician's authorized agent who is currently approved by the North
13 Carolina Board of Medical Examiners, or comparable certifying board
14 in any state contiguous to North Carolina, (iii) a certified nurse
15 practitioner, or (iv) a public health nurse meeting the Department of
16 Environment, Health, and Natural Resources' Standards for Early
17 Periodic Screening, Diagnosis, and Treatment Program. A record of
18 each child's assessment shall be on file in the records of the facility.
19 However, no health assessment shall be required of any child who is
20 and has been in normal health and whose parent, guardian, or full-time
21 custodian objects in writing to a health assessment on religious
22 grounds which conform to the teachings and practice of any
23 recognized church or religious denomination.

24 Each child shall be immunized in a manner that meets the
25 requirements of Article 6 of Chapter 130A of the General Statutes and
26 the pertinent rules adopted by the Commission for Health Services.

27 Each ~~day-care~~ child day care facility shall have a plan of emergency
28 medical care which shall include provisions for communication with
29 and transportation to a specified medical resource, unless otherwise
30 previously instructed. No child receiving day care shall be
31 administered any drug or other medication without specific written
32 instructions from a physician or the child's parent, guardian or full-
33 time custodian. Emergency information on each child in care,
34 including the names, addresses, and telephone numbers of the child's
35 physician and parents, legal guardian or full-time custodian shall be
36 readily available to the staff of the ~~day-care~~ child day care facility
37 while children are in care.

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

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

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

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

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

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

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

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

29 (5) Fire Prevention. – ~~All day-care facilities shall be inspected annually by~~
30 ~~a local fire department or a volunteer fire department, using fire-~~
31 ~~prevention standards which shall be developed by the State Insurance~~
32 ~~Department after consultation with local fire departments and~~
33 ~~volunteer fire departments, subject to adoption by the Commission.~~
34 Each child day care facility shall be located in a building that meets the
35 requirements for fire prevention and safe evacuation that apply to child
36 day care facilities as established by the Department of Insurance,
37 subject to adoption by the Commission. Each child day care facility
38 shall be inspected at least annually by a local fire department or
39 volunteer fire department for compliance with these requirements,
40 except that child day care facilities located on State property shall be
41 inspected by an official designated by the Department of Insurance.

42 (6) Space and Equipment Requirements. – There shall be no less than 25
43 square feet of indoor space for each child for which a ~~day-care~~ child
44 day care facility is licensed, exclusive of closets, passageways,

1 kitchens, and bathrooms, and ~~such~~this floor space shall provide during
2 rest periods 200 cubic feet of airspace per child for which the facility is
3 licensed. There shall be adequate outdoor play area for each child
4 under rules adopted by the Commission which shall be related to the
5 size and type of facility, availability and location of outside land area,
6 except in no event shall the minimum required exceed 75 square feet
7 per child, which area shall be protected to assure the safety of the
8 children receiving day care by an adequate fence or other protection;
9 provided, however, that a facility operated in a public school shall be
10 deemed to have adequate fencing protection; provided, also, that a
11 facility operating exclusively during the evening and early morning
12 hours, between 6:00 P.M. and 6:00 A.M., need not meet the outdoor
13 play area requirements mandated by this subdivision.

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

21 (7) Staff-Child Ratio. – In determining the staff-child ratio, all children
22 younger than 13 years shall be counted. The Commission shall adopt
23 rules regarding staff-child ratios, group sizes and multi-age groupings
24 for each category of facility provided that ~~such~~these rules ~~and~~
25 ~~regulations~~ shall be no less stringent than those currently required for
26 staff-child ratios as enacted in Section 156(e) of Chapter 757 of the
27 1985 Session Laws.

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

39 The Commission shall adopt standards to establish minimum
40 qualifications for operators, supervisors, caregivers and other staff who
41 have direct contact with the children. These standards shall reflect
42 training, experience, education or credentialing and shall be
43 appropriate for the size facility being operated according to the
44 categories defined in G.S. 110-86(3). It is the intent of this provision to

1 guarantee that all children in day care are cared for by qualified people
2 but also to recognize that qualifications for good child care may not be
3 limited to formal education or training standards. To this end, the
4 standards adopted by the Commission pertaining to training and
5 educational requirements shall include provision that these
6 requirements may be met by informal as well as formal training and
7 educational experience. No requirements may interfere with the
8 teachings or doctrine of any established religious organization.

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

14 Each ~~day-care-child day care~~ child day care facility shall keep accurate records on
15 each staff member or other person delegated responsibility for the care
16 of children in accordance with a form approved by the Commission.

17 All records of any ~~day-care-child day care~~ child day care facility, except financial
18 records, shall be subject to review by the Secretary or by duly
19 authorized representatives of the Department or a cooperating agency
20 who shall be designated by the Secretary.

21 Any effort to falsify information provided to the Department shall be
22 deemed by the Secretary to be evidence of violation of this Article on
23 the part of the operator or sponsor of the ~~day-care-child day care~~ child day care
24 facility and shall constitute a cause for revoking or denying a license to
25 ~~such this~~ day-care-child day care facility.

- 26 (10) Each operator or staff member shall truly and honestly show each child
27 in that person's care true love, devotion and tender care.

28 Each ~~day-care-child day care~~ child day care facility shall have a written
29 policy on discipline, describing the methods and practices used
30 to discipline children enrolled in that facility. This written
31 policy shall be discussed with, and a copy given to, each child's
32 parent prior to the first time the child attends the facility.
33 Subsequently, any change in discipline methods or practices
34 shall be communicated in writing to the parents prior to the
35 effective date of the change.

36 The use of corporal punishment as a form of discipline is
37 prohibited in ~~day-care-child day care~~ child day care facilities and may not be
38 used by any operator or staff member of any ~~day-care-child day~~ child day
39 care facility, except that corporal punishment may be used in
40 ~~church-day-care-religious sponsored child day care~~ religious sponsored child day care facilities as
41 defined in G.S. 110-106, only if (i) the ~~church-day-care-religious~~ religious
42 sponsored child day care facility files with the Department a
43 notice stating that corporal punishment is part of the religious
44 training of its program, and (ii) the ~~church-day-care-religious~~ religious

1 sponsored child day care facility clearly states in its written
2 policy of discipline that corporal punishment is part of the
3 religious training of its program. The written policy on
4 discipline of ~~nonchurch day-care~~ nonreligious sponsored child
5 day care facilities shall clearly state the prohibition on corporal
6 punishment.

7 (11) Staff Development. – The Commission shall adopt minimum standards
8 for ongoing staff development for facilities. These standards shall
9 include requirements for ongoing inservice training for all staff.

10 (12) Planned Age Appropriate Activities. – Each ~~day-care~~ child day care
11 facility shall have a planned schedule of activities posted in a
12 prominent place to enable parents to review it, and a written plan of
13 age appropriate activities available to parents. Each facility shall have
14 age appropriate activities and play materials to implement the written
15 plan. The Commission shall establish minimum standards for age-
16 appropriate activities appropriate for each category of facility as
17 defined in G.S. 110-86(3).

18 (13) Transportation. – All ~~day-care~~ child day care facilities shall abide by
19 North Carolina law regulating the use of seat belts and child passenger
20 restraint devices. All vehicles operated by any facility staff person or
21 volunteer to transport children shall be properly equipped with
22 appropriate seat belts or child restraint devices as approved by the
23 Commissioner of Motor Vehicles. Each adult and child shall be
24 restrained by an appropriate seat safety belt or restraint device when
25 the vehicle is in motion. These restraint regulations do not apply to
26 vehicles not required by federal law to be equipped with seat restraints.
27 All vehicles used to transport children shall meet and maintain the
28 safety inspection standards of the Division of Motor Vehicles of the
29 Department of Transportation and the facility shall comply with all
30 other applicable State and federal laws and regulations concerning the
31 operation of a motor vehicle. Children may never be left unattended in
32 a vehicle.

33 The ratio of adults to children in ~~day-care~~ child day care vehicles
34 may not be less than the staff/child ratios prescribed by G.S. 110-
35 91(7). The Commission shall adopt standards for transporting children
36 under the age of two, including standards addressing this particular
37 age's staff/child ratio during transportation."

38 Sec. 4. This act becomes effective October 1, 1993, and applies to
39 requirements imposed on or after that date.