

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

SENATE BILL NO. 664

By: Cain

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Section 405, as amended by Section 5, Chapter 122, O.S.L. 1993, 406, as last amended by Section 2, Chapter 222, O.S.L. 1995, 407 and 408, as amended by Sections 7 and 8, Chapter 122, O.S.L. 1993 (10 O.S. Supp. 1998, Sections 405, 406, 407 and 408), which relate to the Oklahoma Child Care Facilities Licensing Act; providing for temporary authorization of applicants; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 10 O.S. 1991, Section 405, as amended by Section 5, Chapter 122, O.S.L. 1993 (10 O.S. Supp. 1998, Section 405), is amended to read as follows:

Section 405. A. No child care facility may be operated or maintained in this state, unless licensed or temporarily authorized by the Department of Human Services; provided, that the Department shall not be required to be licensed, but shall be bound by the standards it prescribes. No new child care facility may be established without the prior approval of the Department, which shall be granted only after the Department is satisfied that such facility will meet minimum standards for a license to operate. The incorporation or domestication of a corporation organized for the purpose of operating a child care facility shall not exempt such corporation from compliance with the provisions of this act.

B. An application for a license shall be made on forms provided by the Department and in the manner prescribed. ~~Before issuing such license,~~ Temporary authorization may be granted to allow the Department ~~shall~~ to investigate the activities and standards of care

of the applicant ~~and if~~. If satisfied that the applicant meets the requirements as provided in this act, a license shall be issued. A provisional license may be issued to any applicant whose services are needed but which is temporarily unable to conform to all the rules ~~and regulations~~ of the Department, as provided in Section 404 of this title. All licenses shall be in force for two (2) years from the month of issuance unless revoked as authorized by Section 408 of this title, and may be reissued biennially on application, except that a provisional license may be in force for not more than one (1) year from the date of issuance, unless such emergency exists as, in the discretion of the Department, necessitates an extension thereof.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 406, as last amended by Section 2, Chapter 222, O.S.L. 1995 (10 O.S. Supp. 1998, Section 406), is amended to read as follows:

Section 406. A. The Department of Human Services shall have authority at any reasonable time to investigate and examine the conditions of any child care facility in which a licensee or applicant hereunder receives and maintains children, and shall have authority at any time to require the facility to provide information pertaining to children in its care.

B. 1. The State Department of Health may visit any licensee or applicant at the request of the Department to advise on matters affecting the health of children and to inspect the sanitation of the buildings used for their care.

2. The State Fire Marshal may visit any licensee or applicant at the request of the Department to advise on matters affecting the safety of children and to inspect the condition of the buildings used for their care.

C. 1. Upon receipt of a complaint against any child care facility alleging a violation of the provisions of the Oklahoma Child Care Facilities Licensing Act, ~~Section 401 et seq. of this~~

~~title~~, or any licensing standard promulgated by the Department, the Department shall conduct a full investigation. If upon investigation, it is determined that there are reasonable grounds to believe that a facility is in violation of the Oklahoma Child Care Facilities Licensing Act or of any standard or rule promulgated pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act, the Department shall:

- a. document the complaint,
- b. provide a written copy of the complaint to the facility involved, and
- c. document the facility's plan for correcting the alleged violations.

2. When the Department determines that there has been a violation and that the violation has a direct impact on the health, safety or well-being of one or more of the children cared for by the facility, the Department shall require immediate correction of the violation.

3. The notice shall include notice that failure to correct the violation can result in the revocation of the license ~~of the facility~~, refusal to issue or renew a license, or the filing of an injunction pursuant to the provisions of Section 409 of this title, ~~or both~~.

4. If the facility refuses to correct the violation or fails to complete the plan of correction, the Department may initiate proceedings to revoke the license ~~of the facility~~, refuse to issue or renew a license, and request an injunction, ~~or both~~.

D. Upon the completion of the investigation of a complaint against any child care facility alleging a violation of the provisions of the Oklahoma Child Care Facilities Licensing Act or any licensing standard promulgated by the Department, the Department shall clearly designate its findings on the first page of the report

of the investigation. The findings shall state whether the complaint was substantiated or unsubstantiated.

E. Information obtained by the Department or the Office of Child Care from any licensee regarding children or their parents or other relatives shall be deemed confidential and privileged communications and shall be properly safeguarded and shall not be accessible to anyone except as herein provided, unless upon order of a court of competent jurisdiction.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 407, as amended by Section 7, Chapter 122, O.S.L. 1993 (10 O.S. Supp. 1998, Section 407), is amended to read as follows:

Section 407. A. The Department of Human Services may revoke the license or refuse to issue or renew the license of any child care facility found to be in violation of any provision of this act or the rules of the Department, as provided in Section 404 of this title.

B. 1. No license shall be revoked or issuance or renewal refused unless and until such time as the ~~holder of such license~~ licensee or applicant shall have been given at least thirty (30) days' notice in writing of the grounds of such proposed revocation or refusal.

2. At the time the facility is given notice in writing of the revocation of license or refusal to issue or renew, the Department shall also advise parents of children attending the facility of such action by written notification and the posting of an announcement in the facility.

3. If such revocation or refusal is protested within thirty (30) days of receipt of ~~said~~ such notice, by writing addressed to the Commission for Human Services, the Commission, or its authorized agency, shall conduct a hearing at which an opportunity shall be given to ~~said~~ such licensee or applicant to present testimony and confront witnesses.

4. Notice of such hearing shall be given to ~~said~~ such licensee or applicant by personal service or by delivery to the proper address by registered mail, at least two (2) weeks prior to the date thereof.

5. If notice of the proposed revocation or refusal is not so protested, the license may thereupon be revoked or renewal thereof refused.

C. 1. Nothing in this section or Section 406 of this title shall be construed as preventing the Department from taking emergency action as provided by this subsection.

2. Whenever the Department finds, after an investigation, that an emergency exists requiring immediate action to protect the health, safety, or welfare of any child cared for by a facility licensed or authorized pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act, ~~Section 401 et seq. of this title,~~ the Department may without notice or hearing issue an order stating the existence of such an emergency and requiring that such action be taken as it deems necessary to meet the emergency including, when necessary, removing children from the facility and prohibiting the facility from providing services to children pending a hearing on the matter.

a. Such order shall be effective immediately. Any person to whom such an order is directed shall comply with ~~said~~ such order immediately, but on application to the Department, shall be afforded a hearing within ten (10) days of receipt of ~~said~~ such notice.

b. On the basis of such hearing, the Department shall continue such order in effect, revoke it, or modify it.

c. Any person aggrieved by such order continued after the hearing provided for in this subsection may appeal to the district court of the area affected within thirty

(30) days. Such appeal when docketed shall have priority over all cases pending on said docket, except criminal cases. For the purposes of this subsection, the term "emergency" shall mean a situation that poses a direct and serious hazard to the health, safety or welfare of any child cared for by the facility.

SECTION 4. AMENDATORY 10 O.S. 1991, Section 408, as amended by Section 8, Chapter 122, O.S.L. 1993 (10 O.S. Supp. 1998, Section 408), is amended to read as follows:

Section 408. A. Any licensee or applicant aggrieved by the decision of the Department of Human Services under Sections 405 or 407 of this title may, within ten (10) days after the revocation or refusal to issue or renew the license, appeal to the district court of the county in which the child care facility is maintained and operated by filing with the clerk of the court a verified petition. Notice of such appeal shall be served on the Director of the Department within five (5) days of the date of its filing.

B. The Department shall, within ten (10) days of the service of such notice, file with the clerk of ~~said~~ such court a transcript of the proceedings had before it. The district court shall thereupon be vested with jurisdiction to review the proceedings of the Department; provided that, if the Department prevails, the judgment of the district court shall be that the decision of the Department be affirmed, and if the licensee or applicant prevails, the judgment of the court shall be that the revocation be set aside or the license issued or renewed, as the case may be. Pending the hearing of the appeal, the action of the Department revoking or refusing issuance or renewal of the license or the granting thereof shall be stayed; provided, after the filing of an appeal, the district court, upon application by the Department and after an appropriate hearing, may grant a restraining order to enforce the decision of the Department.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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CJ

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