
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 784 Session of
1999

INTRODUCED BY SAYLOR, ARMSTRONG, E. Z. TAYLOR, TRUE, FARGO,
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SEYFERT, STABACK, STERN, STRITTMATTER, WILT, WOGAN,
YOUNGBLOOD AND ZIMMERMAN, MARCH 9, 1999

REFERRED TO COMMITTEE ON AGING AND YOUTH, MARCH 9, 1999

AN ACT

1 Regulating religious child-care facilities; providing for the
2 powers and duties of the Department of Public Welfare; and
3 imposing penalties.

4 The General Assembly finds and declares as follows:

5 (1) The General Assembly recognizes that a significant
6 number of parents choose to obtain child care from religious
7 child-care facilities where training, values and guidance
8 that are consistent with the religious views and beliefs of
9 the parents will be imparted to the child. It is the policy
10 of the Commonwealth to preserve the primary right of parents
11 to choose the education, training and care of their children.

12 (2) The General Assembly further recognizes that
13 nonprofit religious child-care facilities believe the
14 provision of child care at a reasonable cost to parents to be
15 part of their religious mission to assist parents in the care
16 and upbringing of their children. Because of the religious

1 nature of such facilities, it is the policy of the
2 Commonwealth to refrain from subjecting them to unnecessary
3 regulation and undue governmental intrusion, particularly in
4 religiously sensitive areas relating to the selection of
5 employees, program content and guidance.

6 (3) At the same time, the Commonwealth recognizes its
7 duty to protect the health and safety of children whose
8 parents choose to utilize religious child-care services by
9 assuring that religious child-care providers comply with
10 minimum health and safety requirements.

11 (4) It is the intent of the General Assembly to balance
12 these interests in protecting parental choice, religious
13 freedom and child safety at religious child-care facilities
14 by enacting the following provisions to govern the operation
15 of religious child-care facilities.

16 The General Assembly of the Commonwealth of Pennsylvania
17 hereby enacts as follows:

18 Section 1. Short title.

19 This act shall be known and may be cited as the Religious
20 Child-Care Facilities Act.

21 Section 2. Definitions.

22 The following words and phrases when used in this act shall
23 have the meanings given to them in this section unless the
24 context clearly indicates otherwise:

25 "Aide." An individual who assists in the provision of care
26 for children at a facility, is at least 18 years of age, has had
27 at least 12 hours of child-care orientation and general first
28 aid and fire safety training and is directly supervised by a
29 primary caregiver or director.

30 "Caregiver." An individual who provides child-care services

1 to children at a facility.

2 "Child care." Care in lieu of parental care given for part
3 of the 24-hour day to children under 13 years of age away from
4 their own homes.

5 "Department." The Department of Public Welfare of the
6 Commonwealth.

7 "Director." The person who is in charge of a facility, is at
8 least 21 years of age and has completed a program of instruction
9 in cardiopulmonary resuscitation, childhood injury prevention
10 and infectious diseases, general first aid training and fire
11 safety training and has had at least 1,040 hours of experience
12 in teaching or working with children.

13 "Filing religious child-care facility." A religious child-
14 care facility which is not a nonfiling religious child-care
15 facility as defined in this act.

16 "Nonfiling religious child-care facility." A religious
17 child-care facility which provides child care:

18 (1) during regular hours of instruction for children who
19 are two years seven months of age and older and who are
20 enrolled in nonpublic nonlicensed schools which have elected
21 to file an affidavit as described in section 1327(b) of the
22 act of March 10, 1949 (P.L.30, No.14), known as the Public
23 School Code of 1949;

24 (2) for children who are two years seven months of age
25 and older who are enrolled in before-or-after school programs
26 or summer school programs offered by nonpublic nonlicensed
27 schools which have elected to file an affidavit as described
28 in section 1327(b) of the Public School Code of 1949;

29 (3) to fewer than four children;

30 (4) to children while their parents are on the premises

1 or during religious education programs or during other youth
2 activities sponsored by religious entities; or

3 (5) free of charge.

4 "Primary caregiver." An individual who is responsible for
5 the daily care of children at a facility, is at least 18 years
6 of age, has had general first aid and fire safety training and
7 has had at least 520 hours of experience in teaching or working
8 with children.

9 "Religious child-care facility." A premises that is operated
10 or controlled or supervised by a bona fide church, association
11 of churches or other religious entity and which is exempt from
12 taxation under § 501(c)(3) of the Internal Revenue Code of 1986
13 (Public Law 99-514, 26 U.S.C. § 1 et seq.) and in which child
14 care is provided.

15 "Staff person." An individual who may be counted for
16 purposes of compliance with the staff-to-child ratios required
17 by this act. The term includes a director, primary caregiver or
18 aide and may also include an individual who meets those
19 qualifications but does not receive pay for that individual's
20 services.

21 Section 3. Duties of filing religious child-care facilities.

22 (a) Fire safety requirements.--A filing religious child-care
23 facility shall comply with applicable State and local fire
24 safety requirements, shall adopt a written plan for emergency
25 evacuation and shall conduct a fire drill at least every 60 days
26 and keep a written record thereof.

27 (b) Control of certain diseases.--A filing religious child-
28 care facility shall comply with applicable State and local
29 requirements pertaining to the prevention and control of
30 infectious or contagious diseases, building and physical

1 premises safety and shall maintain an approved first aid kit for
2 emergency treatment which shall be readily available.

3 (c) Parental right of access.--A filing religious child-care
4 facility shall allow a parent or guardian of a child for whom it
5 is providing care to have access, without prior notice, to the
6 facility during normal hours of operation or whenever such child
7 is in the care of a provider unless a court of competent
8 jurisdiction has limited the parental right of access to the
9 child and a copy of the court order is on file at the facility.

10 (d) Child Protective Services Law.--A filing religious
11 child-care facility shall comply with applicable provisions of
12 23 Pa.C.S. Ch. 63 (relating to child protective services),
13 including requirements for obtaining criminal background and
14 child abuse checks for employees and for reporting child abuse.

15 (e) Staff-to-child ratios.--A filing religious child-care
16 facility shall maintain the following staff-to-child ratios. A
17 facility shall provide one staff person per every five children
18 who are from birth to 12 months of age and for children who are
19 up to 18 months of age but who are not yet walking. For children
20 who are 12 months to 18 months of age and who are walking, and
21 those children who are 18 months of age to two years seven
22 months of age, a ratio of one staff person per eight children
23 shall be maintained.

24 (f) Health certificates.--A filing religious child-care
25 facility shall require that all caregivers, when applying for
26 employment, be examined by a physician. The examination shall
27 include a test for tuberculosis. Each caregiver shall present a
28 health certificate from a physician stating that the person has
29 no physical or mental conditions that make it impossible to
30 successfully perform the duties of a caregiver under this act.

1 The health certificate shall be maintained on file at the
2 facility.

3 (g) Immunizations.--A filing religious child-care facility
4 shall require that each child enrolled in the facility obtain
5 age-appropriate immunizations as recommended by the American
6 Academy of Pediatrics. A record of such immunizations shall be
7 maintained on file at the facility no later than 60 days
8 following enrollment unless the child is exempt from
9 immunization pursuant to 28 Pa. Code § 23.84 (relating to
10 exemption from immunization) and the facility has written
11 documentation of that exemption.

12 (h) Renewal of caregiver training.--A filing religious
13 child-care facility shall require that caregivers renew their
14 required training on or before expiration of any certification
15 for such training, if applicable, or every three years.

16 (i) Affidavit from facility.--

17 (1) All filing religious child-care facilities shall
18 file an affidavit with the department which states the
19 following:

20 (i) The name, address and telephone number of the
21 facility.

22 (ii) The name and address of the religious entity or
23 entities that control, operate or supervise the facility.

24 (iii) The name of the director or chief
25 administrator of the facility.

26 (iv) That the facility is in compliance with
27 applicable Federal and State civil rights laws.

28 (2) A facility shall file an amended affidavit with the
29 department within 90 days if any information contained in the
30 affidavit which previously was submitted, changes.

1 (j) Facility plan.--

2 (1) A filing religious child-care facility shall have a
3 written plan outlining its:

4 (i) Procedures for notice in case of emergencies.

5 (ii) Program of daily activities.

6 (iii) Health and safety precautions.

7 (iv) Procedures for food handling.

8 (v) Fee schedules.

9 (vi) Staff qualifications.

10 (2) The plan shall be provided to parents and guardians
11 prior to enrollment of their children in the facility.

12 Section 4. Other facilities required to file.

13 (a) Time for filing.--All religious child-care facilities
14 which are operating on the effective date of this act and which
15 do not qualify as nonfiling facilities shall file with the
16 department the affidavit required by section(3)(i) within 90
17 days. All other religious child-care facilities which are
18 required to file under this act must do so at least 14 days
19 before commencement of operations.

20 (b) Existing personnel.--The existing director and child
21 caregivers of a religious child-care facility which is required
22 by this act to file and which has been in operation prior to the
23 effective date of this act shall be permitted to continue to
24 provide child care at the facility under this act, provided that
25 these individuals satisfy the requirements for their respective
26 duties within six months of the effective date of this act.

27 Section 5. Powers and duties of department.

28 (a) Annual inspections.--

29 (1) The department shall annually visit and inspect each
30 filing religious child-care facility in which care is

1 provided to seven or more children. The inspection shall be
2 conducted during normal operating hours or at other times
3 when children are being cared for at the facility to
4 determine whether the facility is in compliance with the
5 requirements of this act.

6 (2) The department may annually visit and inspect other
7 filing facilities in which care is provided to fewer than
8 seven children as deemed appropriate by the department.

9 (3) Visitations and inspections under this subsection
10 may be announced or unannounced at the discretion of the
11 department.

12 (b) Notice of noncompliance.--

13 (1) Whenever, upon visitation and inspection by the
14 department or upon complaint by a parent whose child is or
15 has been in the care of a filing religious child-care
16 facility, the department finds that the facility is in
17 substantial noncompliance with this act, the department shall
18 give written notice to the facility concerning the nature of
19 the alleged noncompliance and shall direct the director or
20 chief administrator of the facility to comply with this act.

21 (2) If substantial compliance does not occur within 30
22 days of the date of the notice, the department may thereafter
23 notify the prosecuting attorney of the county wherein the
24 facility is located concerning the alleged noncompliance and
25 may request that the prosecuting attorney initiate legal
26 proceedings to enforce compliance. If the prosecuting
27 attorney refuses to act or fails to act within 30 days, the
28 department may notify the Attorney General concerning the
29 alleged noncompliance, and the Attorney General may institute
30 appropriate legal proceedings to enforce substantial

1 compliance.

2 (c) Injunctive relief.--Where necessary to prevent serious
3 physical or mental harm to children in the care of a filing
4 religious child-care facility, the department may file an action
5 in the court of common pleas of the county in which the facility
6 is located for immediate injunctive relief, which relief may
7 include removal of the children from the facility or closure of
8 the facility. In such an action, the department shall have the
9 burden of providing by clear and convincing evidence that
10 allowing children to remain in care at the facility would cause
11 them serious physical or mental harm.

12 (d) Filing fee prohibited.--The department may not charge a
13 filing fee for filing religious child-care facilities.

14 Section 6. Autonomy of religious child-care facilities.

15 (a) Course of instruction.--The department, any other
16 governmental agency, political subdivision or other governmental
17 entity shall not attempt to exercise authority over the program,
18 curriculum, ministry, teaching or instruction offered in a
19 religious child-care facility.

20 (b) Selection of personnel and children for enrollment.--The
21 department, any other governmental agency, political subdivision
22 or other governmental entity shall not attempt to exercise
23 authority over:

24 (1) The selection, qualifications, supervision or terms
25 of employment of the personnel at a religious child-care
26 facility.

27 (2) The selection of children who enroll at the
28 facility.

29 (3) Staff-to-child ratios at the facility.

30 (c) Other laws.--

1 (1) The department shall not have any authority over
2 religious child-care facilities, except as specifically
3 provided for in this act.

4 (2) All ordinances, rules, regulations or other
5 requirements of any political subdivision which purport to
6 regulate a religious child-care facility are hereby preempted
7 and superseded, except as provided under section 3(a) and
8 (b).

9 Section 7. Voluntary compliance.

10 (a) General rule.--Nothing in this act shall be construed to
11 prevent a religious child-care facility from voluntarily
12 obtaining a certificate of compliance or license pursuant to
13 article IX or X of the act of June 13, 1967 (P.L.31, No.21),
14 known as the Public Welfare Code.

15 (b) Public school code affidavits.--Any religious child-care
16 facility which qualifies as a nonpublic nonlicensed school and
17 which files an affidavit as described in section 1327(b) of the
18 act of March 10, 1949 (P.L.30, No.14), known as the Public
19 School Code of 1949, shall be required to comply only with
20 requirements imposed upon nonpublic nonlicensed schools. Nothing
21 in this act shall be construed to prevent such a facility from
22 also voluntarily filing according to the provisions of this act.

23 Section 8. Penalties.

24 A person commits a misdemeanor of the second degree if, with
25 intent to mislead a public servant in performing his official
26 function, he makes a false statement which he does not believe
27 to be true in an affidavit required to be filed by section 3(i).

28 Section 9. Eligibility for governmental assistance.

29 A religious child-care facility which files, pursuant to this
30 act and is in substantial compliance with this act, shall be

1 deemed an eligible provider of child-care services for which
2 Federal, State or local assistance is available to parents. The
3 department shall not submit any State plan to the Federal
4 Government for funding of child-care services which would limit
5 the ability of filing religious child-care facilities to accept
6 certificates, vouchers or other forms of disbursement provided
7 to parents for child-care services unless such limits are
8 expressly required by Federal law.

9 Section 10. Effective date.

10 This act shall take effect in 90 days.