

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 237 Session of 2001

INTRODUCED BY GODSHALL, BIRMELIN, C. WILLIAMS, BARD, BISHOP, CAPPABIANCA, CORNELL, FICHTER, HERMAN, MANDERINO, S. MILLER, RUBLEY, SAMUELSON, SATHER, STERN, E. Z. TAYLOR, TIGUE, WILT, M. WRIGHT, SAINATO, YUDICHAK AND ROONEY, JANUARY 29, 2001

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES, APRIL 9, 2002

AN ACT

1 Providing for unannounced inspections of certain facilities and
2 persons that provide child day care; REQUIRING CRIMINAL <—
3 HISTORY RECORD AND CHILD ABUSE RECORD INFORMATION FOR CERTAIN
4 PERSONS WHO RESIDE IN FAMILY DAY-CARE HOMES; PROVIDING FOR
5 INFORMATION ON PROSPECTIVE CHILD-CARE PERSONNEL AND FOR
6 DANGEROUS CHILD DAY-CARE FACILITIES; and conferring powers
7 and duties on the Department of Public Welfare AND LAW <—
8 ENFORCEMENT AGENCIES.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Short title.

12 This act shall be known and may be cited as the Unannounced
13 Inspection of Child Day-Care Facilities AND THE DANGEROUS CHILD <—
14 DAY-CARE FACILITIES Act.

15 Section 2. Definitions.

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

19 "Child day care." Care in lieu of parental care given for

1 part of a 24-hour day to a child under 16 years of age away from
2 the child's home. The term does not include care in lieu of
3 parental care given to a child under 16 years of age in a place
4 of worship during religious services.

5 "Child day-care center." Any premises in which child day
6 care is provided simultaneously for seven or more children who
7 are not relatives of the provider, regardless of which article
8 of the act of June 13, 1967 (P.L.31, No.21), known as the Public
9 Welfare Code, applies to it.

10 "Department." The Department of Public Welfare of the
11 Commonwealth.

12 "Facility." Any of the following:

13 (1) Child day-care center.

14 (2) Family day-care home.

15 "Family day-care home." A home in which child day care is
16 provided at any one time to four, five or six children who are
17 not relatives of the provider of the child day care and which is
18 required to be registered under the act of June 13, 1967
19 (P.L.31, No.21), known as the Public Welfare Code.

20 "FOUNDED REPORT." AS DEFINED 23 PA.C.S § 6303(A) (RELATING
21 TO DEFINITIONS).

22 "INDICATED REPORT." AS DEFINED IN 23 PA.C.S. § 6303(A)
23 (RELATING TO DEFINITIONS).

24 "INDICATED REPORT FOR SCHOOL EMPLOYEE." AS DEFINED IN 23
25 PA.C.S. § 6303(A) (RELATING TO DEFINITIONS).

26 Section 3. Inspections.

27 (a) Authority.--The department may enter and inspect a
28 facility with or without prior notice.

29 (b) Access.--The department shall have free and full access
30 to the facility and the facility grounds, the children in the

1 facility, the records of the facility and the facility staff.
2 The department shall be given the opportunity to privately
3 interview children and staff.

4 (c) Frequency of Inspections.--

5 (1) For a child day-care center, in accordance with
6 current requirements for an annual inspection under the act
7 of June 13, 1967 (P.L.31, No.21), known as the Public Welfare
8 Code, the department shall annually conduct at least one
9 onsite, unannounced inspection of each facility. This
10 unannounced inspection shall be sufficient to meet any
11 existing regulatory requirement for an annual announced or
12 unannounced inspection. The department shall conduct
13 additional inspections as required to verify corrections of
14 regulatory violations.

15 (2) For a family day-care home, unannounced inspections
16 shall be conducted at such times as the department deems
17 appropriate. The department shall annually inspect at least
18 ~~15%~~ 25% of all registered family day-care homes. The <—
19 department shall submit on an annual basis a report to the
20 Aging and Youth Committee of the Senate, and the Children and <—
21 Youth Committee of the House of Representatives AND THE <—
22 AUDITOR GENERAL regarding the findings of the inspections
23 required under this section. THE DEPARTMENT SHALL ALSO POST <—
24 ITS FINDINGS ON THE DEPARTMENT'S WORLD WIDE WEB SITE.

25 (d) Inspections in response to complaints.--

26 (1) Within 24 hours, excluding days that the department
27 has determined the facility is not in operation, of the
28 receipt of a complaint from any person alleging an immediate
29 and serious risk to the health or safety of a child receiving
30 child day care at a facility, the department shall conduct an

1 onsite unannounced inspection of the facility. Complaints
2 prompting an inspection pursuant to this subsection shall
3 include severe injury or death of a child receiving care at
4 the facility, allegations of child abuse or conditions or
5 practices that create an immediate and serious risk to a
6 child.

7 (2) Except for those complaints under paragraph (1), THE <—
8 DEPARTMENT SHALL HAVE ONE WEEK TO INVESTIGATE COMPLAINTS
9 ALLEGING A PHYSICAL INJURY REQUIRING MEDICAL ATTENTION. FOR
10 ALL OTHER COMPLAINTS, the department shall determine the
11 acceptable time frame in which complaints shall be
12 investigated based upon the seriousness of the complaint.

13 (3) This subsection applies to all facilities, including
14 those that are required to be licensed, supervised or
15 registered under the act of June 13, 1967 (P.L.31, No.21),
16 known as the Public Welfare Code, but which are not so
17 licensed, supervised or registered.

18 (e) Report to General Assembly.--The department shall submit
19 on an annual basis a report to the Aging and Youth Committee of
20 the Senate and, the Children and Youth Committee of the House of <—
21 Representatives AND THE AUDITOR GENERAL regarding the findings <—
22 of the inspections required by this section. THE DEPARTMENT <—
23 SHALL ALSO POST ITS FINDINGS ON THE DEPARTMENT'S WORLD WIDE WEB
24 SITE.

25 SECTION 4. CRIMINAL AND CHILD ABUSE HISTORY INFORMATION.

26 (A) APPLICANTS FOR REGISTRATION CERTIFICATES.--IN ADDITION
27 TO THE REQUIREMENTS OF 23 PA.C.S. § 6344 (RELATING TO
28 INFORMATION RELATING TO PROSPECTIVE CHILD-CARE PERSONNEL), AN
29 INDIVIDUAL WHO APPLIES TO THE DEPARTMENT FOR A REGISTRATION
30 CERTIFICATE TO OPERATE A FAMILY DAY-CARE HOME SHALL INCLUDE

1 CRIMINAL HISTORY RECORD AND CHILD ABUSE RECORD INFORMATION
2 REQUIRED UNDER SECTION 6344(B) FOR EVERY INDIVIDUAL 18 YEARS OF
3 AGE OR OLDER WHO RESIDES IN THE HOME FOR AT LEAST 30 DAYS IN A
4 CALENDAR YEAR.

5 (B) OTHER INDIVIDUALS.--

6 (1) AN INDIVIDUAL WHO DIRECTLY PROVIDES CHILD-CARE
7 SERVICES WHICH ARE SUBSIDIZED BY FEDERAL OR STATE FUNDS BUT
8 WHO IS NOT OTHERWISE SUBJECT TO APPROVAL OR LICENSURE UNDER
9 ARTICLE IX OR X OF THE ACT OF JUNE 13, 1967 (P.L.31, NO.21),
10 KNOWN AS THE PUBLIC WELFARE CODE, AND EVERY INDIVIDUAL 18
11 YEARS OF AGE OR OLDER WHO RESIDES IN THE HOME OF SUCH AN
12 INDIVIDUAL FOR AT LEAST 30 DAYS IN A CALENDAR YEAR WHEN THE
13 CHILD CARE IS PROVIDED IN SUCH INDIVIDUAL'S HOME SHALL SUBMIT
14 TO THE DEPARTMENT CRIMINAL AND CHILD ABUSE HISTORY
15 INFORMATION UNDER 23 PA.C.S. § 6344(B). THE DEPARTMENT SHALL
16 REFUSE TO AUTHORIZE THE USE OF FEDERAL OR STATE FUNDS FOR
17 CHILD CARE IF THE DEPARTMENT VERIFIES THAT ANY OF THE
18 FOLLOWING APPLY TO AN INDIVIDUAL PROVIDING THE CHILD CARE OR
19 ANY INDIVIDUAL 18 YEARS OF AGE OR OLDER WHO RESIDES IN THE
20 HOME OF SUCH AN INDIVIDUAL FOR AT LEAST 30 DAYS IN A CALENDAR
21 YEAR WHEN THE CHILD CARE IS PROVIDED IN SUCH INDIVIDUAL'S
22 HOME:

23 (I) THE INDIVIDUAL IS NAMED IN THE STATEWIDE CENTRAL
24 REGISTER OF CHILD ABUSE AS THE PERPETRATOR OF A FOUNDED
25 REPORT, A FOUNDED REPORT FOR SCHOOL EMPLOYEE, AN
26 INDICATED REPORT OR AN INDICATED REPORT FOR SCHOOL
27 EMPLOYEE.

28 (II) THE INDIVIDUAL HAS BEEN CONVICTED OF AN OFFENSE
29 UNDER 23 PA.C.S. § 6344.

30 (2) THE DEPARTMENT MAY AUTHORIZE THE USE OF FEDERAL OR

1 STATE FUNDS FOR CHILD CARE UNDER THIS SUBSECTION ON A
2 PROVISIONAL BASIS FOR A SINGLE PERIOD NOT TO EXCEED 30 DAYS
3 IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

4 (I) THE INDIVIDUAL WHO IS SUBJECT TO THE
5 REQUIREMENTS OF THIS SECTION HAS APPLIED FOR THE
6 INFORMATION REQUIRED UNDER THIS SECTION AND PROVIDES A
7 COPY OF THE APPROPRIATE REQUEST FORMS TO THE DEPARTMENT
8 OR ITS DESIGNATED AGENT.

9 (II) THE INDIVIDUAL WHO IS SUBJECT TO THE
10 REQUIREMENTS OF THIS SECTION SWEARS OR AFFIRMS IN WRITING
11 THAT THE INDIVIDUAL:

12 (A) IS NOT NAMED IN THE STATEWIDE CENTRAL
13 REGISTER OF CHILD ABUSE AS THE PERPETRATOR OF A
14 FOUNDED REPORT, A FOUNDED REPORT FOR SCHOOL EMPLOYEE,
15 AN INDICATED REPORT OR AN INDICATED REPORT FOR SCHOOL
16 EMPLOYEE; AND

17 (B) HAS NOT BEEN CONVICTED OF AN OFFENSE UNDER
18 23 PA.C.S § 6344(C).

19 SECTION 5. REQUIRED INFORMATION.

20 CHILD ABUSE RECORD INFORMATION REQUIRED UNDER SECTION 4(A)
21 SHALL INCLUDE CERTIFICATION BY THE DEPARTMENT AS TO WHETHER THE
22 APPLICANT IS NAMED IN THE CENTRAL REGISTER AS THE PERPETRATOR OF
23 A FOUNDED REPORT OF CHILD ABUSE, INDICATED REPORT OF CHILD
24 ABUSE, FOUNDED REPORT FOR SCHOOL EMPLOYEE OR INDICATED REPORT
25 FOR SCHOOL EMPLOYEE AS DEFINED IN 23 PA.C.S. § 6303 (RELATING TO
26 DEFINITIONS).

27 SECTION 6. EFFECT ON REGISTRATION.

28 THE DEPARTMENT SHALL REFUSE TO ISSUE OR RENEW A REGISTRATION
29 CERTIFICATE OR SHALL REVOKE A REGISTRATION CERTIFICATE IF THE
30 FAMILY DAY-CARE HOME PROVIDER OR INDIVIDUAL 18 YEARS OF AGE OR

1 OLDER WHO HAS RESIDED IN THE HOME FOR AT LEAST 30 DAYS IN A
2 CALENDAR YEAR:

3 (1) IS NAMED IN THE CENTRAL REGISTER ON CHILD ABUSE
4 ESTABLISHED UNDER 23 PA.C.S. CH. 63 (RELATING TO CHILD
5 PROTECTIVE SERVICES) AS THE PERPETRATOR OF A FOUNDED REPORT
6 OF CHILD ABUSE, INDICATED REPORT OF CHILD ABUSE, FOUNDED
7 REPORT FOR SCHOOL EMPLOYEE OR INDICATED REPORT FOR SCHOOL
8 EMPLOYEE AS DEFINED IN 23 PA.C.S. § 6303 (RELATING TO
9 DEFINITIONS); OR

10 (2) HAS BEEN CONVICTED OF AN OFFENSE ENUMERATED IN 23
11 PA.C.S. § 6344(C) (RELATING TO INFORMATION RELATING TO
12 PROSPECTIVE CHILD-CARE PERSONNEL).

13 SECTION 7. DANGEROUS FACILITIES.

14 (A) DEPARTMENT RESPONSIBILITY.--IF THE DEPARTMENT FINDS THAT
15 CONDITIONS EXIST WHICH POSE AN IMMEDIATE AND SERIOUS THREAT TO
16 HEALTH, SAFETY OR WELL-BEING OF CHILDREN BEING CARED FOR IN A
17 FACILITY, THE DEPARTMENT SHALL IMMEDIATELY ISSUE A TEMPORARY
18 ORDER TO THE FACILITY PENDING THE OUTCOME OF A HEARING UNDER
19 SUBSECTION (D) AND, IF NECESSARY, ENSURE THE REMOVAL OF THE
20 CHILDREN FROM THE FACILITY.

21 (1) THE TEMPORARY ORDER SHALL SPECIFY THAT THE FACILITY
22 SHALL BE CLOSED OR THAT SPECIFIC CONDITIONS MUST BE REMEDIED
23 AS A CONDITION OF CONTINUED OPERATION.

24 (2) THE TEMPORARY ORDER SHALL SPECIFY ALL CONDITIONS
25 THAT SHALL BE IMMEDIATELY REMEDIED BY THE FACILITY.

26 (3) THE TEMPORARY ORDER SHALL SPECIFY THE DATE AND TIME
27 OF ANY REQUIRED ACTION OR CLOSURE OF THE FACILITY.

28 (4) THE TEMPORARY ORDER SHALL SPECIFY THE APPEAL RIGHTS
29 OF THE FACILITY.

30 (B) CORRECTIVE ACTION.--IMMEDIATELY FOLLOWING THE ISSUANCE

1 OF A TEMPORARY ORDER UNDER SUBSECTION (A) AND UNTIL THE HEARING
2 UNDER SUBSECTION (D), THE DEPARTMENT SHALL MONITOR THE
3 FACILITY'S COMPLIANCE WITH THE TEMPORARY ORDER.

4 (C) LAW ENFORCEMENT ASSISTANCE.--THE DEPARTMENT MAY REQUEST
5 AND SHALL RECEIVE ASSISTANCE FROM LAW ENFORCEMENT OFFICIALS
6 WHENEVER NECESSARY TO IMPLEMENT AN ORDER ISSUED UNDER THIS
7 SECTION.

8 (D) HEARINGS.--WITHIN SEVEN BUSINESS DAYS OF THE ISSUANCE OF
9 A TEMPORARY ORDER UNDER SUBSECTION (A), THE DEPARTMENT SHALL
10 SCHEDULE AN ADMINISTRATIVE HEARING. IF THE HEARING EXAMINER
11 RULES THAT THERE WAS A VIOLATION OF A STATUTE OR REGULATION
12 WHICH POSED AN IMMEDIATE AND SERIOUS THREAT TO HEALTH, SAFETY OR
13 WELL-BEING OF THE CHILDREN BEING CARED FOR IN THE FACILITY, THE
14 HEARING EXAMINER SHALL ORDER CONTINUED COMPLIANCE WITH THE
15 TEMPORARY ORDER, ISSUE A NEW ORDER OR ORDER THE FACILITY CLOSED
16 UNTIL THE CONCLUSION OF A CERTIFICATE REVOCATION PROCEDURE. THE
17 DECISION OF THE HEARING EXAMINER SHALL BE RENDERED WITHIN TWO
18 HOURS OF THE CONCLUSION OF THE HEARING.

19 (E) CERTIFICATE REVOCATION.--WITHIN THREE BUSINESS DAYS OF
20 AN ORDER OF CLOSURE UNDER SUBSECTION (D), THE DEPARTMENT MAY
21 INITIATE CERTIFICATE REVOCATION PROCEEDINGS UNDER THE ACT OF
22 JUNE 13, 1967 (P.L.31, NO.21), KNOWN AS THE PUBLIC WELFARE CODE,
23 AGAINST THE LICENSEE OR HOLDER OF A CERTIFICATE OF THE FACILITY.

24 (F) SUPERSEDEAS.--THE APPEAL OF AN EMERGENCY ORDER ISSUED
25 UNDER THIS SECTION SHALL BE DEEMED AN APPLICATION FOR A
26 SUPERSEDEAS WHICH SHALL BE GRANTED ONLY IF ALL OF THE FOLLOWING
27 APPLY:

28 (1) THERE IS SUBSTANTIAL LIKELIHOOD OF SUCCESS ON
29 APPEAL.

30 (2) CONTINUED OPERATION OF THE FACILITY PENDING APPEAL

1 WILL NOT JEOPARDIZE THE LIFE, HEALTH OR SAFETY OF CHILDREN
2 BEING CARED FOR IN A FACILITY.

3 (G) OTHER ENTITIES.--NOTHING IN THIS SECTION SHALL PRECLUDE
4 THE DEPARTMENT FROM CLOSING OR TAKING OTHER EMERGENCY ACTION
5 WITH REGARD TO AN ENTITY SUPERVISED OR LICENSED BY THE
6 DEPARTMENT.

7 SECTION 8. REGULATIONS.

8 THE DEPARTMENT OF PUBLIC WELFARE SHALL PROMULGATE REGULATIONS
9 TO ADMINISTER THIS ACT.

10 Section 4 9. Effective date. <—

11 This act shall take effect ~~in one year~~. AS FOLLOWS: <—

12 (1) SECTION 3 SHALL TAKE EFFECT IN ONE YEAR.

13 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60
14 DAYS. 6ED81