

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 549 Session of
2007

INTRODUCED BY CORMAN, SCARNATI, WONDERLING, TOMLINSON, BRUBAKER,
PICCOLA, D. WHITE, KITCHEN, ARMSTRONG, RAFFERTY, REGOLA,
WAUGH, ERICKSON, FOLMER, FONTANA, BROWNE AND ROBBINS,
MARCH 19, 2007

REFERRED TO AGING AND YOUTH, MARCH 19, 2007

AN ACT

1 Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An
2 act to consolidate, editorially revise, and codify the public
3 welfare laws of the Commonwealth," providing for religious
4 day care.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. The act of June 13, 1967 (P.L.31, No.21), known
8 as the Public Welfare Code, is amended by adding an article to
9 read:

10 ARTICLE VI

11 RELIGIOUS CHILD CARE

12 Section 601. Declaration of policy.

13 The General Assembly finds and declares as follows:

14 (1) A significant number of parents choose to obtain
15 child care from religious child-care facilities where
16 training, values and guidance that are consistent with the
17 religious views and beliefs of the parents will be imparted
18 to the child. It is the policy of the Commonwealth to

1 preserve the primary right of parents to choose the
2 education, training and care of their children.

3 (2) Nonprofit religious child-care facilities believe
4 the provision of child care at a reasonable cost to parents
5 to be part of their religious mission to assist parents in
6 the care and upbringing of their children. Because of the
7 religious nature of such facilities, it is the policy of the
8 Commonwealth to refrain from subjecting them to unnecessary
9 regulation and undue governmental intrusion, particularly in
10 religiously sensitive areas relating to the selection of
11 employees, program content and guidance.

12 (3) At the same time, there is a legislative duty to
13 protect the health and safety of children whose parents
14 choose to utilize religious child-care services by assuring
15 that religious child-care providers comply with minimum
16 health and safety requirements.

17 (4) It is the intent of the General Assembly to balance
18 these interests in protecting parental choice, religious
19 freedom and child safety at religious child-care facilities
20 by enacting this article to govern the operation of religious
21 child-care facilities.

22 Section 602. Definitions.

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

26 "Aide." An individual who assists in the provision of care
27 for children at a facility, is at least 16 years of age, has had
28 at least 12 hours of child-care orientation on facility
29 procedures and has completed general first aid and fire safety
30 training. An aide must be directly supervised by a primary

1 caregiver or director.

2 "Caregiver." An individual who provides child-care services
3 to children at a facility.

4 "Child care." Care in lieu of parental care given for part
5 of the 24-hour day to children under 16 years of age away from
6 their own homes.

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 general first aid training, including instruction in
10 childhood injury prevention and infectious diseases and has had
11 fire safety training and at least 1,250 hours of experience in
12 teaching or working with children.

13 "Direct supervision." Oversight of an individual by a
14 supervisor who is onsite, knows the whereabouts of the
15 supervised individual and is responsible for the proper
16 execution of the supervised individual's duties. Direct
17 supervision does not require that the supervisor be physically
18 present with the supervised individual at all times.

19 "Filing religious child-care facility." A religious child-
20 care facility other than a nonfiling religious child-care
21 facility as defined in this article.

22 "Nonfiling religious child-care facility." A religious
23 child-care facility which provides child care:

24 (1) for children who are two years seven months of age
25 and older and who are enrolled in a school which is a
26 nonpublic nonlicensed school that has elected to file an
27 affidavit as described in section 1327(b) of the act of March
28 10, 1949 (P.L.30, No.14), known as the Public School Code of
29 1949;

30 (2) for children who are two years seven months of age

1 and older who are enrolled in before-school programs, after-
2 school programs or summer school programs offered by
3 nonpublic nonlicensed schools which have elected to file an
4 affidavit as described in section 1327(b) of the Public
5 School Code of 1949;

6 (3) to fewer than four children;

7 (4) to children while their parents are on the premises,
8 during religious instruction, or during other youth
9 activities sponsored by religious entities; or

10 (5) free of charge.

11 "Primary caregiver." An individual who is responsible for
12 the daily care of children at a facility, is at least 18 years
13 of age, has had general first aid and fire safety training and
14 has had at least 625 hours of experience in teaching or working
15 with children.

16 "Religious child-care facility." A premises that is operated
17 or controlled or supervised by a bona fide church, association
18 of churches or other religious body that is exempt from taxation
19 under § 501(c)(3) of the Internal Revenue Code of 1986 (Public
20 Law 99-514, 26 U.S.C. § 501(c)(3)) and in which child care is
21 provided as part of the religious mission of that church,
22 association of churches or other religious body.

23 "Staff person." An individual who may be counted for
24 purposes of compliance with the staff-to-child ratios required
25 by this article. The term includes a director, primary caregiver
26 or aide and may also include an individual who meets those
27 qualifications but does not receive pay for that individual's
28 services.

29 Section 603. Duties of filing religious child-care facilities.

30 (a) Fire safety.--Fire safety requirements are as follows:

1 (1) A filing religious child-care facility shall comply
2 with applicable State and local fire safety requirements,
3 shall adopt a written plan for emergency evacuation and shall
4 conduct a fire drill at least every 60 days and keep a
5 written record thereof on file at the facility. Fire drills
6 shall be held during various program activity times, and
7 staff and children in attendance shall participate.
8 Evacuation plans shall provide for removal of all persons
9 from the facility in a single trip.

10 (2) The filing religious child-care facility shall
11 insure that children are able to evacuate the entire building
12 into a public thoroughfare or to a fire-safe area within two
13 and one-half minutes unless a fire safety expert has
14 specified in writing that a longer evacuation time is safe.

15 (b) Health and safety.--A filing religious child-care
16 facility shall do all of the following:

17 (1) Comply with applicable State laws relating to health
18 and safety administered by the Department of Agriculture, the
19 Department of Environmental Protection, the Department of
20 Health, the Department of Labor and Industry and the
21 Department of Transportation.

22 (2) Maintain an approved first aid kit for emergency
23 treatment, which shall be readily available to staff, both at
24 the facility and on facility-sponsored trips away from the
25 facility.

26 (3) Maintain ventilation, temperature, lighting, heat
27 sources and a sufficient number of flushing toilets so as not
28 to endanger the health or safety of children in care.

29 (c) Parental visitation.--A filing religious child-care
30 facility shall allow a parent or guardian of a child for whom it

1 is providing care to have access, without prior notice, to the
2 facility during normal hours of operation or whenever such child
3 is in the care of a provider unless a court of competent
4 jurisdiction has limited the parental right of access to the
5 child and a copy of the court order is on file at the facility.

6 (d) Child protective services.--A filing religious child-
7 care facility shall comply with applicable provisions of 23
8 Pa.C.S. Ch. 63 (relating to child protective services),
9 including requirements for obtaining criminal background and
10 child abuse checks for employees and for reporting child abuse.
11 An individual shall obtain criminal history and child abuse
12 background checks prior to becoming a staff person. No adult or
13 volunteer may be permitted to be alone with children unrelated
14 to that adult or volunteer unless criminal history and child
15 abuse background checks have been obtained.

16 (e) Staffing.--Staffing requirements are as follows:

17 (1) A filing religious child-care facility shall have:

18 (i) One or more persons who hold a current
19 certificate of completion of pediatric first aid training
20 at the facility when children are in care. Such pediatric
21 first aid training shall include choke-saving and rescue-
22 breathing techniques.

23 (ii) At least one person at the facility who holds a
24 current certificate of completion of training in infant
25 and child cardiopulmonary resuscitation (CPR) when a
26 child whose physician has determined that he is at
27 increased risk for needing heart resuscitation is in care
28 at the facility.

29 (2) All children shall be directly supervised by a staff
30 person. With respect to children under five years of age,

1 such direct supervision requires that staff be in the same
2 room or child-care area with the children and be able to see,
3 hear and assess the supervised children without use of a
4 monitoring device. However, while such children are using the
5 toilet, direct supervision shall be satisfied if staff is
6 able to hear the child.

7 (3) A filing religious child-care facility shall
8 maintain the following staff-to-child ratios:

9 (i) A facility shall provide one staff person for
10 every four children who are from birth to one year of
11 age; one staff person for every five children who are
12 between one and two years of age; and one staff person
13 for every six children between two and three years of
14 age. When children of mixed ages are in care, a staff
15 person may not provide care for more children than
16 allowed by the ratio applicable to the youngest child
17 assigned to that staff person.

18 (ii) When children are swimming or wading, a
19 facility shall provide one staff person for every child
20 from birth to one year of age; one staff person for every
21 two children who are between one and three years of age;
22 one staff person for every five children between three
23 and six years of age; and one staff person for every
24 eight school-age children. If children are of mixed ages
25 with no child younger than three years of age in care,
26 the staff ratio applicable for the majority of children
27 in care shall apply. Parents and adult volunteers may be
28 counted for purposes of determining water-safety ratios.
29 At least one person certified in lifeguard training must
30 be present when children are swimming.

1 (iii) When children above the age of 12 months are
2 napping, a staff person may provide care for twice the
3 number of such children which would otherwise be allowed
4 by the ratio applicable to them.

5 (f) Medical examinations for staff.--Staff medical
6 examination requirements are as follows:

7 (1) A filing religious child-care facility shall require
8 that each prospective staff person, within 12 months prior to
9 employment, obtain a medical examination and health statement
10 from a licensed physician, certified registered nurse
11 practitioner or licensed physician's assistant. The
12 examination shall include tests to determine whether the
13 individual is free of serious communicable disease that may
14 be spread through casual contact, and the health statement
15 shall indicate whether the individual has any such disease.

16 (2) A staff person who is not free of such disease may
17 not be employed or utilized by a facility unless the health
18 statement indicates that the individual will not pose a
19 serious threat to the health of children in care.

20 (3) The health statement shall be maintained on file at
21 the facility.

22 (g) Medical examinations for children.--A filing religious
23 child-care facility shall require that each child who enrolls in
24 the facility has obtained a medical examination from a licensed
25 physician, certified registered nurse practitioner or licensed
26 physician's assistant within the 12 months preceding enrollment
27 and has obtained age-appropriate immunizations. A record of the
28 medical examination and immunization shall be maintained on file
29 at the facility no later than 60 days following enrollment
30 unless the child is exempt from immunization pursuant to 28 Pa.

Code § 23.84 (relating to exemption from immunization) and the facility has written documentation of that exemption. A filing facility shall exclude from attendance any child whom it knows has been diagnosed by a physician to have, or the facility reasonably believes to have symptoms of, a communicable disease or condition for which such exclusion would be required under 28 Pa. Code Ch. 27 (relating to communicable and noncommunicable diseases).

(h) Training.--A filing religious child-care facility shall require that a caregiver renew required training on or before expiration of any certification for such training, if applicable, or every three years.

(i) Affidavits.--Affidavits are required as follows:

(1) A filing religious child-care facility shall file an affidavit with the department which states the following:

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

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

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

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

(2) A filing religious child-care facility shall file an amended affidavit with the department within 30 days if any information contained in the affidavit which previously was submitted changes.

(j) Plan.--Facility plan requirements are as follows:

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

1 (i) Procedures for handling medical emergencies,
2 including maintenance of emergency contact information
3 for each child in care.

4 (ii) Program of typical daily activities.

5 (iii) Health and safety procedures, including drop-
6 off and pick-up procedures and, when facilities elect to
7 enroll children with medical conditions that may require
8 special treatment, procedures for handling such
9 conditions and procedures for dispensing medications.

10 (iv) Procedures for food handling, and, when
11 facilities elect to enroll children with special dietary
12 requirements, procedures for dealing with such
13 requirements.

14 (v) Procedures for maintaining sanitary conditions,
15 including procedures for hand-washing and diapering, if
16 applicable.

17 (vi) Fee schedules.

18 (vii) Staff qualifications.

19 (viii) Policies relating to discipline of children.

20 (ix) Policies relating to staff-child ratios for
21 children three years of age or older.

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

24 (k) Smoking and hazards.--

25 (1) Smoking shall not be permitted inside a filing
26 religious child-care facility, and a staff member may not
27 smoke outside a filing religious child-care facility while
28 providing care for children pursuant to this article.

29 (2) No child may be exposed to hazardous materials and
30 conditions which could cause serious injury, such as toxins;

poisons; firearms; and, if the child is five years of age or younger, unprotected electrical outlets.

(1) Liability insurance .--All filing religious child-care facilities shall have comprehensive general liability insurance to cover persons who are on the premises. A current copy of the insurance policy shall be on file at the facility.

Section 604. Time for filing and compliance with qualifications.

(a) General rule.--All religious child-care facilities which are operating on the effective date of this article and which do not qualify as nonfiling facilities shall file with the department the affidavits required by section 603(i) within 90 days. All other religious child-care facilities which are required to file under this article shall do so at least 14 days before commencement of operations.

(b) Continuation.--The existing director and child caregivers of a religious child-care facility which is required by this article to file and which has been in operation prior to the effective date of this article shall be permitted to continue to provide child care at the facility under this article, provided that these individuals satisfy the requirements for their respective duties and obtain required medical examinations and health statements within one year of the effective date of this article.

Section 605. Powers and duties of department.

(a) Inspections.--Inspections shall be as follows:

(1) The department shall conduct at least one annual unannounced inspection of each filing religious child-care facility in which care is provided to seven or more children.

The inspection shall be conducted during normal operating

1 hours or at other times when children are being cared for at
2 the filing religious child-care facility to determine whether
3 the facility is in compliance with the requirements of this
4 article.

5 (2) The department shall inspect other filing religious
6 child-care facilities in which care is provided to fewer than
7 seven children as deemed appropriate by the department.

8 (3) The department shall conduct additional inspections
9 of a filing religious child-care facility if it has
10 reasonable cause to believe that the inspections are
11 necessary to protect the health and safety of children in
12 care at the filing religious child-care facility.

13 (4) The department shall conduct an onsite unannounced
14 inspection, within 24 hours, excluding days that the
15 department has determined the filing religious child-care
16 facility is not in operation, upon receipt of a complaint
17 alleging an immediate and serious risk to the health or
18 safety of a child in care at a filing religious child-care
19 facility. Complaints prompting an inspection pursuant to this
20 paragraph shall include severe injury or death of a child in
21 care, allegations of child abuse or conditions or practices
22 which create an immediate and serious risk to a child.

23 (5) At its first inspection of a filing religious child-
24 care facility pursuant to this article, the department shall
25 provide the facility with a copy of this article.

26 (b) Enforcement.--Enforcement for substantial noncompliance
27 shall be as follows:

28 (1) Whenever, upon inspection, the department finds that
29 a filing religious child-care facility is in substantial
30 noncompliance with this article, the department shall give

1 written notice to the filing religious child-care facility
2 concerning the nature of the alleged noncompliance and shall
3 direct the director or chief administrator of the filing
4 religious child-care facility to comply with this article.

5 (2) If substantial compliance does not occur within 30
6 days of the date of the notice, the department may thereafter
7 institute appropriate legal proceedings in the court of
8 common pleas of the county in which the facility is located
9 to enforce substantial compliance. In such a case, the
10 department shall bear the burden of proving that the facility
11 is in substantial noncompliance with this article.

12 (c) Closure.--Emergency closure of dangerous filing
13 religious child-care facilities shall be as follows:

14 (1) If the department finds that conditions exist that
15 pose an immediate and serious risk to the health or safety of
16 children in care at a filing religious child-care facility,
17 the department shall take immediate action necessary to
18 protect such children.

19 (2) The department may also apply to the court of common
20 pleas of the county in which the filing religious child-care
21 facility is located for immediate injunctive relief,
22 including removal of children from or closure of the filing
23 religious child-care facility. In such case, the department
24 shall bear the burden of proving that conditions exist that
25 pose an immediate and serious risk to the health or safety of
26 children in care that necessitate the relief requested.

27 (d) Filing fee.--The department may not charge a filing fee
28 for filing religious child-care facilities.

29 Section 606. Religious liberty of religious child-care
30 facilities.

1 (a) Department.--Except as set forth in this article, the
2 department has no authority over, nor shall it attempt to
3 exercise authority over, a religious child-care facility.

4 (b) Commonwealth and political subdivisions.--Neither the
5 Commonwealth nor any political subdivision have authority over,
6 nor shall they attempt to exercise authority over, the program,
7 curriculum, ministry, teaching or instruction offered in a
8 religious child-care facility.

9 (c) Employment and admissions.--Neither the Commonwealth nor
10 any political subdivision may interfere with the liberty of a
11 religious child-care facility to establish or apply religious
12 criteria in the employment or selection of individuals who serve
13 as staff or administrators in the facility or to establish and
14 apply religious criteria in the admission to, or the retention
15 of, children in the facility's program.

16 (d) Preemption.--

17 (1) Except as set forth in paragraph (2), all
18 ordinances, rules, regulations or other requirements of any
19 political subdivision which purport to regulate a child-care
20 facility are preempted and superseded by this article insofar
21 as they apply to a religious child-care facility.

22 (2) There shall be no preemption on fire safety as
23 provided under section 603(a) or on building and zoning as
24 provided by any generally applicable building code or zoning
25 ordinance.

26 Section 607. Other provisions.

27 (a) Conversion.--Any nonfiling religious child-care facility
28 may voluntarily become a filing religious child-care facility by
29 filing an affidavit with the department pursuant to section
30 603(i) and complying with the provisions of this article.

1 Nothing in this article shall be construed to prevent a
2 religious child-care facility from voluntarily obtaining a
3 certificate of compliance or license from the department in lieu
4 of filing pursuant to this article and of complying with this
5 article.

6 (b) School code exemption.--Any nonfiling religious child-
7 care facility that provides care for children who are two years
8 seven months and older and are enrolled in a school that is
9 registered as, or is part of, a nonpublic nonlicensed school
10 that files an affidavit as described in section 1327(b) of the
11 act of March 10, 1949 (P.L.30, No.14), known as the Public
12 School Code of 1949, shall only be required to comply with
13 health and safety requirements imposed upon nonpublic
14 nonlicensed schools and to meet the requirements of section
15 603(f) and (g).

16 (c) Child protective services.--Nothing in this article
17 shall be construed to limit the applicability of 23 Pa.C.S. Ch.
18 63 (relating to child protective services) or any criminal
19 statute with respect to a religious child-care facility.

20 Section 608. Penalties.

21 A person commits a misdemeanor of the second degree if, with
22 intent to mislead a public servant in performing an official
23 function, the person makes a false statement which the person
24 does not believe to be true in an affidavit required to be filed
25 by section 603(i).

26 Section 609. Eligibility for governmental assistance.

27 A religious child-care facility which files pursuant to this
28 article and is in substantial compliance with this article shall
29 be deemed an eligible provider of child-care services for which
30 Federal, State or local assistance is available to parents. The

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

7 Section 2. This act shall take effect in 90 days.