

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 1134 Session of  
2011

INTRODUCED BY CORMAN, SCARNATI, BROWNE, BRUBAKER, ERICKSON,  
FOLMER, ORIE, RAFFERTY, SOLOBAY, TOMLINSON, WAUGH, KASUNIC,  
ROBBINS, PICCOLA, D. WHITE AND MENSCH, JUNE 14, 2011

SENATOR PICCOLA, EDUCATION, AS AMENDED, JUNE 19, 2012

## AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An  
2 act relating to the public school system, including certain  
3 provisions applicable as well to private and parochial  
4 schools; amending, revising, consolidating and changing the  
5 laws relating thereto," in pupils and attendance, ~~further~~ ←  
6 ~~providing for compulsory school attendance;~~ providing for the  
7 regulation of religious child-care facilities and religious  
8 child development facilities; and imposing penalties.

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

11 ~~Section 1. Section 1327(b) of the act of March 10, 1949~~ ←  
12 ~~(P.L.30, No.14), known as the Public School Code of 1949,~~  
13 ~~amended December 15, 1986 (P.L.1602, No.178), is amended to~~  
14 ~~read:~~

15 ~~Section 1327. Compulsory School Attendance. \* \* \*~~

16 ~~(b) A child enrolled in a day school which is operated by a~~  
17 ~~bona fide church or other religious body, and the parent,~~  
18 ~~guardian or other person having control or charge of any such~~  
19 ~~child or children of compulsory school age shall be deemed to~~  
20 ~~have met the requirements of this section if that school~~

~~provides a minimum of one hundred eighty (180) days of instruction or nine hundred (900) hours of instruction per year at the elementary level or nine hundred ninety (990) hours per year of instruction at the secondary level and:~~

~~(1) At the elementary school level, the following courses are taught: English, to include spelling, reading and writing; arithmetic; science; geography; history of the United States and Pennsylvania; civics; safety education, including regular and continuous instruction in the dangers and prevention of fires; health and physiology; physical education; music; and art.~~

~~(2) At the secondary school level, the following courses are offered: English, to include language, literature, speech and composition; science, to include biology and chemistry; geography; social studies, to include civics, economics, world history, history of the United States and Pennsylvania; a foreign language; mathematics, to include general mathematics and statistics, algebra and geometry; art; music; physical education; health and physiology; and safety education, including regular and continuous instruction in the dangers and prevention of fires.~~

~~The requirements contained in sections 1511 and 1605 of this act shall not apply to such schools. The notarized affidavit of the principal of any such school, filed with the Department of Education and setting forth that such subjects are offered in the English language in such school, whether it is a nonprofit organization, and that such school is otherwise in compliance with the provisions of this act, shall be satisfactory and sufficient evidence thereof. It is the policy of the Commonwealth to preserve the primary right and the obligation of the parent or parents, or person or persons in loco parentis to~~

1 ~~a child, to choose the education and training for such child.~~  
2 ~~Nothing contained in this act or any law of this Commonwealth~~  
3 ~~shall empower the Commonwealth, any of its officers, agencies or~~  
4 ~~subdivisions to mandate or approve the course or program~~  
5 ~~content, faculty, staff or disciplinary requirements of any~~  
6 ~~religious school referred to in this section or religious pre~~  
7 ~~kindergarten, pre school, nursery school, before school or~~  
8 ~~after school program or summer school program without the~~  
9 ~~consent of said school or religious entity; Provided, however,~~  
10 ~~that all such religious schools or entities shall be subject to~~  
11 ~~the applicable background check requirements of this act and 23~~  
12 ~~Pa.C.S. Ch. 63 (relating to child protective services).~~

13 \* \* \*

14 SECTION 1. THE ACT OF MARCH 10, 1949 (P.L.30, NO.14), KNOWN  
15 AS THE PUBLIC SCHOOL CODE OF 1949, IS AMENDED BY ADDING A  
16 SECTION TO READ:

17 SECTION 1338.3. RELIGIOUS EDUCATIONAL FACILITIES.--(A) IT  
18 IS THE POLICY OF THE COMMONWEALTH TO PRESERVE THE PRIMARY RIGHT  
19 AND THE OBLIGATION OF THE PARENT OR PARENTS, OR PERSON OR  
20 PERSONS IN LOCO PARENTIS TO A CHILD, TO CHOOSE THE EDUCATION AND  
21 TRAINING FOR SUCH CHILD.

22 (B) NOTHING CONTAINED IN THIS ACT OR ANY LAW OF THIS  
23 COMMONWEALTH SHALL EMPOWER THE COMMONWEALTH OR ANY OF ITS  
24 OFFICERS, AGENCIES OR SUBDIVISIONS TO MANDATE OR APPROVE THE  
25 COURSE OR PROGRAM CONTENT, CURRICULUM, FACULTY, STAFF, TRAINING  
26 OR PRINCIPLES OF RELIGIOUS DEVELOPMENT OR SPIRITUAL FORMATION OF  
27 ANY RELIGIOUS PRE-KINDERGARTEN, PRE-SCHOOL, NURSERY SCHOOL,  
28 BEFORE-SCHOOL OR AFTER-SCHOOL PROGRAM OR SUMMER SCHOOL PROGRAM  
29 OPERATED BY ANY CHURCH, ASSOCIATION OF CHURCHES OR OTHER  
30 RELIGIOUS ORDER, BODY OR INSTITUTION WHICH QUALIFIES FOR

1 EXEMPTION FROM TAXATION UNDER SECTION 501(C)(3) OR (D) OF THE  
2 INTERNAL REVENUE CODE OF 1986 (PUBLIC LAW 99-514, 26 U.S.C. §  
3 501) WITHOUT THE CONSENT OF THE RELIGIOUS ENTITY.

4 (C) THE RELIGIOUS ENTITIES REFERRED TO IN SUBSECTION (B)  
5 SHALL BE SUBJECT TO THE APPLICABLE BACKGROUND CHECK AND CHILD  
6 ABUSE REPORTING REQUIREMENTS OF THIS ACT AND 23 PA.C.S. CH. 63  
7 (RELATING TO CHILD PROTECTIVE SERVICES).

8 (D) NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO  
9 PREVENT THE COMMONWEALTH FROM:

10 (1) ADOPTING OR ENFORCING ANY RULES WHICH PREVENT PHYSICAL  
11 THREATS TO THE HEALTH OR SAFETY OF INDIVIDUALS OR UNSANITARY OR  
12 DANGEROUS CONDITIONS IN FACILITIES WHICH, PRIOR TO THE EFFECTIVE  
13 DATE OF THIS SECTION, ARE LICENSED OR SUPERVISED UNDER THE ACT  
14 OF JUNE 13, 1967 (P.L.31, NO.21), KNOWN AS THE "PUBLIC WELFARE  
15 CODE."

16 (2) IMPOSING ANY STAFF-CHILD RATIO REQUIREMENTS OR STAFF  
17 TRAINING REQUIREMENTS THAT ARE REQUIRED TO PREVENT PHYSICAL  
18 THREATS TO THE HEALTH OR SAFETY OF INDIVIDUALS OR UNSANITARY OR  
19 DANGEROUS CONDITIONS IN FACILITIES WHICH, PRIOR TO THE EFFECTIVE  
20 DATE OF THIS SECTION, ARE LICENSED OR SUPERVISED UNDER THE  
21 "PUBLIC WELFARE CODE."

22 Section 2. The act is amended by adding an article to read:

23 ARTICLE XIII-B

24 RELIGIOUS CHILD-CARE FACILITIES AND

25 RELIGIOUS CHILD DEVELOPMENT FACILITIES

26 Section 1301-B. Declaration of policy.

27 The General Assembly finds and declares as follows:

28 (1) A significant number of parents choose to enroll  
29 their children in religious child-care facilities and  
30 religious child development facilities where education,

1 training, values and guidance that are consistent with the  
2 religious views and beliefs of the parents will be imparted  
3 to their children.

4 (2) It is the policy of the Commonwealth to preserve the  
5 primary right of parents to choose the education, training  
6 and care of their children.

7 (3) Nonprofit religious child-care facilities and  
8 religious child development facilities believe the provision  
9 of child care and development services at a reasonable cost  
10 to parents to be part of their religious mission to assist  
11 parents in the care and upbringing of their children.

12 (4) Because of the religious nature of such facilities,  
13 it is the policy of the Commonwealth to refrain from  
14 subjecting them to unnecessary regulation and undue  
15 governmental intrusion, particularly in religiously sensitive  
16 areas relating to the selection of employees, program content  
17 and guidance.

18 (5) At the same time, the Commonwealth has a duty to  
19 protect the health and safety of children whose parents  
20 choose to utilize religious child care and child development  
21 services by assuring that religious child care and child  
22 development providers comply with minimum health and safety  
23 requirements.

24 (6) It is the intent of the General Assembly to balance  
25 these interests in protecting parental choice, religious  
26 freedom and child safety at religious child-care facilities  
27 and religious child development facilities by enacting the  
28 provisions of this article to govern the operation of  
29 religious child-care facilities and religious child  
30 development facilities.

1 Section 1302-B. Definitions.

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

5 "Aide." An individual who:

6 (1) Assists in the provision of care for children at a  
7 facility.

8 (2) Is at least 16 years of age.

9 (3) Has had at least 12 hours of orientation on facility  
10 procedures.

11 (4) Has completed general first aid and fire safety  
12 training.

13 (5) Is directly supervised by a primary caregiver or  
14 director.

15 "Caregiver." An individual who provides child-care services  
16 to children at a religious child-care facility.

17 "Child care." Care in lieu of parental care given for part  
18 of the 24-hour day to children under 16 years of age away from  
19 their own homes other than at religious child development  
20 facilities.

21 "Department." The Department of Education of the  
22 Commonwealth.

23 "Direct supervision." Oversight of a caregiver by a  
24 supervisor who:

25 (1) is onsite;

26 (2) knows the whereabouts of the supervised caregiver;  
27 and

28 (3) is responsible for the proper execution of the  
29 supervised caregiver's duties, regardless of whether the  
30 supervisor is physically present with the supervised

1 caregiver at all times.

2 "Director." An individual who:

3 (1) Is in charge of a religious child-care facility.

4 (2) Is at least 21 years of age.

5 (3) Has completed a program of instruction in general  
6 first aid training, including instruction in childhood injury  
7 prevention and infectious diseases.

8 (4) Has had fire safety training and at least 1,000  
9 hours of experience in teaching or working with children.

10 "Primary caregiver." An individual who:

11 (1) Is responsible for the care of children at a  
12 facility.

13 (2) Is at least 18 years of age.

14 (3) Has had general first aid and fire safety training.

15 (4) Has had at least 200 hours of experience in teaching  
16 or working with children.

17 "Religious child-care facility." A premises, other than a  
18 religious child development facility, in which care in lieu of  
19 parental care is given for part of the 24-hour day to children  
20 under 16 years of age away from their own homes:

21 (1) That is operated or controlled or supervised by, or  
22 is affiliated with, a bona fide church, association of  
23 churches or other religious body that is exempt from Federal  
24 taxation under section 501(c)(3) of the Internal Revenue Code  
25 of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

26 (2) In which child care is provided as part of the  
27 religious mission of the church, association of churches or  
28 other religious body.

29 "Religious child development facility." A prekindergarten,  
30 preschool, nursery school, before-school program, after-school

program or summer school program that is operated, supervised or controlled by, or is affiliated with a bona fide church, association of churches or other religious body that is exempt from Federal taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.), and which enrolls children who are two years four months of age and older.

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

Section 1303-B. Duties of religious child development facilities.

(a) Child protective services law.--A religious child development facility shall comply with applicable provisions of this act and of 23 Pa.C.S. Ch. 63 (relating to child protective services) relating to obtaining criminal background and child abuse checks for employees and for reporting child abuse.

(b) Health and safety requirements.--A religious child development facility shall comply with all laws relating to the health and safety of the children enrolled therein that are applicable to those nonpublic, nonlicensed religious schools that are described in section 1327(b).

(c) Affidavit.--The administrator or chief executive officer of a religious child development facility shall file an initial affidavit with the department attesting to the facility's compliance with the requirements of this section and shall file a supplemental affidavit for any change or amendment to the

1 initial filing.

2 Section 1304-B. Duties of religious child-care facilities.

3 (a) Child protective services law.--A religious child-care  
4 facility shall comply with applicable provisions of 23 Pa.C.S.  
5 Ch. 63 (relating to child protective services), including  
6 requirements for obtaining criminal background and child abuse  
7 checks for employees and for reporting child abuse.

8 (b) Staffing.--

9 (1) A religious child-care facility shall be supervised  
10 by a director and shall have:

11 (i) One or more persons who hold a current  
12 certificate of completion of pediatric first aid training  
13 at the facility when children are in care.

14 (ii) At least one person at the facility who holds a  
15 current certificate of completion of training in infant  
16 and child cardiopulmonary resuscitation (CPR) when a  
17 child, whose physician has determined that the child is  
18 at increased risk for needing heart resuscitation, is in  
19 care at the facility.

20 (2) All children shall be directly supervised by a staff  
21 person. With respect to children under five years of age,  
22 direct supervision requires that staff be in the same room or  
23 child-care area with the children and be able to see, hear  
24 and assess the supervised children without use of a  
25 monitoring device. While such children are using the toilet,  
26 direct supervision shall be satisfied if staff is able to  
27 hear the children.

28 (3) A religious child-care facility shall provide one  
29 staff person for every four children who are from birth to  
30 one year of age; one staff person for every five children who

1 are between one and two years of age; and one staff person  
2 for every six children between two and three years of age.  
3 All children shall be directly supervised by a staff person.

4 (4) (i) When children are swimming or wading, the  
5 religious child-care facility shall provide one staff  
6 person for every child from birth to one year of age; one  
7 staff person for every two children who are between one  
8 and three years of age; one staff person for every five  
9 children between three and six years of age; and one  
10 staff person for every eight school-age children.

11 (ii) If children are in mixed age groups with no  
12 children younger than three years of age in care, the  
13 staff ratio applicable for the majority of children at  
14 the same age in care shall apply.

15 (iii) Parents and adult volunteers who are present  
16 where the swimming or wading occurs may be counted for  
17 purposes of determining water safety ratios.

18 (iv) At least one person certified in lifeguard  
19 training must be present when children are swimming.

20 (5) When children above the age of 12 months are napping,  
21 a staff person may provide care for twice the number of such  
22 children which would otherwise be allowed by the ratio  
23 applicable to them.

24 (c) Affidavit from facility.--

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

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

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

1 or with which the facility is affiliated.

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

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

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

10 (3) The department may not charge religious child-care  
11 facilities a fee for filing the affidavit required under this  
12 section.

13 Section 1305-B. Autonomy of religious child-care and child  
14 development facilities.

15 (a) Department.--Except as set forth in this article, the  
16 department has no authority over, nor shall it attempt to  
17 exercise authority over, a religious child-care facility or  
18 religious child development facility.

19 (b) Commonwealth and political subdivisions.--Except as set  
20 forth in this article, neither the Commonwealth nor any  
21 political subdivision has authority over, nor shall either  
22 attempt to exercise authority over, the program, curriculum,  
23 ministry, staff qualifications, staffing requirements,  
24 ~~disciplinary requirements~~ PRINCIPLES OF RELIGIOUS DEVELOPMENT OR ←  
25 RELIGIOUS FORMATION, teaching or instruction offered in a  
26 religious child-care facility or religious child development  
27 facility.

28 (c) Employment and admissions.--Neither the Commonwealth nor  
29 any political subdivision may interfere with the liberty of a  
30 religious child-care facility or religious child development

1 facility to apply religious criteria in the employment or  
2 selection of individuals who serve as staff or administrators in  
3 the facility or with the liberty of a religious child-care  
4 facility or religious child development facility to establish  
5 and apply religious criteria in the admission to, or the  
6 retention of, children in the facility's program.

7 (d) Preemption.--

8 (1) A religious child-care facility or religious child  
9 development facility shall not be subject to any requirements  
10 of, or regulations issued under, the act of June 13, 1967  
11 (P.L.31, No.21), known as the Public Welfare Code, relating  
12 to child care facilities. Nor shall a religious child-care  
13 facility or religious child development facility that is  
14 subject to this article be subject to any ordinances or  
15 regulations adopted by any political subdivision relating to  
16 the operation of child-care facilities.

17 (2) A religious child-care facility or religious child  
18 development facility shall comply with generally applicable  
19 State statutes and regulations relating to health and safety  
20 promulgated by the Department of Agriculture, the Department  
21 of Environmental Protection, the Department of Health, the  
22 Department of Labor and Industry, the Department of  
23 Transportation or by any political subdivision, and with  
24 generally applicable health and safety requirements or  
25 generally applicable building and zoning requirements adopted  
26 by a political subdivision.

27 (3) (i) A religious child-care facility or religious  
28 child development facility shall comply with applicable  
29 regulations promulgated by the department relating to  
30 inspection and compliance with the provisions of this

1 article.

2 (ii) Nothing in this article shall be construed to  
3 grant the department the authority to require a religious  
4 child-care facility or religious child development  
5 facility to obtain a license or other form of  
6 certification as a precondition to its operation or its  
7 continued operation.

8 (4) Nothing in this article shall be construed to  
9 prevent a religious child-care facility or religious child  
10 development facility from voluntarily obtaining a certificate  
11 of compliance or license from the Department of Public  
12 Welfare under the Public Welfare Code in lieu of filing  
13 pursuant to this article and of complying with this article.

14 Section 1306-B. Penalties.

15 A person commits a misdemeanor of the second degree if, with  
16 intent to mislead a public servant in performing his official  
17 function, the person makes a knowingly false statement in an  
18 affidavit required to be filed by this article.

19 Section 1307-B. Eligibility for governmental assistance.

20 (a) General rule.--A religious child care facility or  
21 religious child development facility that files an affidavit  
22 under this article and is in substantial compliance with this  
23 act shall be deemed an eligible provider of child-care services  
24 for which Federal, State or local assistance is available to  
25 parents; Provided, however, that no such assistance shall be  
26 deemed to be assistance to the facility itself.

27 (b) Limitation.--No agency of the Commonwealth may submit  
28 any State plan to the Federal Government for funding of child-  
29 care services which would limit the ability of religious child-  
30 care facility or religious child development facilities to

accept certificates, vouchers or other forms of disbursement  
provided to parents for child-care services unless such limits  
are expressly required by Federal law.

SECTION 1308-B. REGULATIONS.

(A) GENERAL RULE.--UPON THE EFFECTIVE DATE OF THIS SECTION,  
THE STATE BOARD OF EDUCATION, IN CONSULTATION WITH THE  
DEPARTMENT, DEPARTMENT OF PUBLIC WELFARE, DEPARTMENT OF LABOR  
AND INDUSTRY AND OTHER INTERESTED PARTIES SHALL PROMULGATE  
REGULATIONS PURSUANT TO THE ACT OF JUNE 25, 1982 (P.L.633,  
NO.181), KNOWN AS THE REGULATORY REVIEW ACT, TO FURTHER PROVIDE  
FOR THE IMPLEMENTATION OF ADDITIONAL HEALTH AND SAFETY MEASURES  
THAT ARE NECESSARY FOR RELIGIOUS CHILD DEVELOPMENT FACILITIES  
AND RELIGIOUS CHILD-CARE FACILITIES.

(B) INSPECTIONS.--THE DEPARTMENT IS AUTHORIZED TO USE THE  
INSPECTION SERVICES OF THE DEPARTMENT OF PUBLIC WELFARE IN  
CARRYING OUT ANY INSPECTIONS REQUIRED UNDER THIS ARTICLE.

Section 3. This act shall take effect in 60 days.