

2015 Regular Session

HOUSE BILL NO. 734

BY REPRESENTATIVE SEABAUGH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CHILD DAY CARE: Provides with respect to registration and regulation of certain child day care centers

1 AN ACT

2 To amend and reenact R.S. 15:587.1(A)(1)(a) and (D)(2), the heading of Part X-C of

3 Chapter 1 of Title 17, R.S. 17:407.61, 407.62(4) through (6), and 407.63 through

4 407.72 and to enact R.S. 17:407.62(7), relative to regulation of certain child care

5 providers; to provide relative to definitions; to provide relative to registration,

6 criminal background checks, education, inspection, and regulation of such providers;

7 to provide relative to the powers and duties of the State Board of Elementary and

8 Secondary Education with respect to such providers; to provide relative to the

9 powers and duties of the state Department of Education with respect to such

10 providers; to provide with respect to the powers and duties of the State Fire Marshal

11 with respect to such providers; to provide relative to revocation and reinstatement

12 of registration for such providers; to provide relative to penalties, fees, and fines

13 assessed against such providers; to provide for an effective date; and to provide for

14 related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 15:587.1(A)(1)(a) and (D)(2) are hereby amended and reenacted to

17 read as follows:

1 §587.1. Provision of information to protect children

2 A.(1)(a) As provided in R.S. 15:825.3, R.S. 17:15, ~~and 407.42, and 407.71,~~
3 Children's Code Article 424.1, and R.S. 46:51.2 and 1441.13, any employer or others
4 responsible for the actions of one or more persons who have been given or have
5 applied to be considered for a position of supervisory or disciplinary authority over
6 children, and as provided in R.S. 46:51.2(A), the Department of Children and Family
7 Services as employer of one or more persons who have been given or have applied
8 to be considered for a position whose duties include the investigation of child abuse
9 or neglect, supervisory or disciplinary authority over children, direct care of a child,
10 or performance of licensing surveys, shall request in writing that the bureau supply
11 information to ascertain whether that person or persons have been arrested for or
12 convicted of, or pled nolo contendere to, any criminal offense. The request must be
13 on a form prepared by the bureau and signed by a responsible officer or official of
14 the organization or department making the request. It must include a statement
15 signed by the person about whom the request is made which gives his permission for
16 such information to be released.

17 * * *

18 D.

19 * * *

20 (2) The prohibition in Paragraph (1) of this Subsection against an individual
21 applicant bearing any of the costs of providing information shall not apply to
22 requests made pursuant to the provisions of R.S. 17:15 or 407.71 or R.S. 46:51.2.

23 * * *

24 Section 2. The heading of Part X-C of Chapter 1 of Title 17, R.S. 17:407.61,
25 407.62(4) through (6), and 407.63 through 407.72 are hereby amended and reenacted and
26 R.S. 17:407.62(7) is hereby enacted to read as follows:

1 PART X-C. Family Child ~~Day~~ Care Provider and In-Home Provider Registration Law

2 §407.61. Short title

3 This Part may be cited as the "Family Child ~~Day~~ Care Home Provider and In-
4 Home Child Care Provider Registration Law".

5 §407.62. Definitions

6 As used in this Part, the following definitions shall apply unless the context
7 clearly states otherwise.

8 * * *

9 (4) "Department" means the ~~Department of Health and Hospitals or the state~~
10 ~~Department of Education, as indicated by the context.~~

11 (5) "Family child ~~day~~ care home provider" means ~~any place, facility, or~~
12 ~~home operated by any institution, society, agency, corporation, person or persons,~~
13 ~~or any other group for the primary purpose of providing care, supervision, and~~
14 ~~guidance of an individual who provides child care services for fewer than twenty-~~
15 ~~four hours per day per child, as the sole caregiver, for six or fewer children, in a~~
16 private residence.

17 (6) "In-home provider" means an individual who provides child care services
18 in the child or children's own home.

19 (7) "Relative" or "related" means the child, grandchild, niece, or nephew of
20 the primary child care provider ~~in~~ of a family child ~~day~~ care home provider or in-
21 home provider.

22 §407.63. Requirement for registration; exemptions

23 A. All family child ~~day~~ care ~~homes that~~ providers and in-home providers
24 who either directly or indirectly receive state or federal funds, directly or indirectly,
25 related to the care provided shall be registered.

26 B. Family child ~~day~~ care ~~homes that~~ providers and in-home providers who
27 do not directly or indirectly receive state or federal funds, ~~directly or indirectly,~~
28 related to the care provided and individuals who provide care for only related family
29 members, shall not be required to be registered.

1 C. All family child ~~day care homes~~ providers and in-home providers shall
2 be registered prior to directly or indirectly receiving any state or federal funds;
3 ~~directly or indirectly~~ related to the care provided.

4 §407.64. Rules and regulations; inspection requirements

5 A. ~~The Department of Health and Hospitals shall promulgate rules and~~
6 ~~regulations in accordance with the Administrative Procedure Act to carry out the~~
7 ~~provisions of this Part for all family child day care homes which receive state or~~
8 ~~federal funds except those family child day care homes which participate in the~~
9 ~~United States Child and Adult Care Food Program or the Child Care and~~
10 ~~Development Fund.~~

11 B. ~~The Department of Education~~ State Board of Elementary and Secondary
12 Education shall promulgate rules and regulations in accordance with the
13 Administrative Procedure Act to carry out the provisions of this Part for those family
14 child ~~day care homes that~~ providers and in-home providers who participate in the
15 United States Child and Adult Care Food Program or the Child Care and
16 Development Fund.

17 C. B. ~~A~~ Each family child ~~day care home~~ provider and in-home provider
18 shall be inspected and approved by the office of state fire marshal in accordance with
19 the rules and regulations as established ~~under Subsections A and B~~ pursuant to
20 Subsection A of this Section, developed in consultation with the office of state fire
21 marshal.

22 §407.65. Inspections

23 The ~~Department of Education~~ department, through its duly authorized agents,
24 shall reserve the right to visit and inspect each registered family child ~~day care~~
25 ~~homes~~ provider and in-home provider as deemed necessary by the department. ~~All~~
26 Any residence or home in which care is provided by a registered family child day
27 care homes provider or in-home provider shall be open to inspection by the
28 department, parents of children in care, and by other authorized inspection personnel
29 during normal working hours or when children are in care.

1 §407.66. Fees

2 A.(1) The office of state fire marshal shall have the authority to charge each
3 family child ~~day care home~~ provider and in-home provider applying for registration
4 or renewal of registration an annual fee for services. This fee shall be adopted in
5 accordance with the Administrative Procedure Act.

6 (2) A fee shall be charged to cover the cost of inspection for family child ~~day~~
7 ~~care homes~~ providers and in-home providers regulated by the ~~Department of State~~
8 Board of Elementary and Secondary Education in accordance ~~to~~ with R.S.
9 17:407.64~~(B)~~(A). The fee shall be set at thirty dollars per inspection and used for the
10 sole purpose of employing personnel to perform such inspections.

11 B. The office of state fire marshal shall transfer sufficient funds to the
12 ~~Department of Health and Hospitals or the Department of Education~~ department for
13 those family child ~~day care homes~~ which providers and in-home providers who
14 receive state or federal funds but do not participate in the United States Child and
15 Adult Care Food Program to carry out the registration process in accordance with
16 this Part.

17 §407.67. Revocation or refusal to renew registration; written notice

18 The ~~authorized~~ department shall have the authority to deny, revoke, or refuse
19 to renew a registration of a registered family child ~~day care home~~ provider or in-
20 home provider if an applicant has failed to comply with the provisions of this Part,
21 any applicable published rule or regulation relating to registered family child ~~day~~
22 ~~care homes~~ providers or in-home providers, or any other state, federal, or local rule
23 or regulation. If a registration is denied, revoked, or withdrawn, the action shall be
24 effective when made and the family child ~~day care home~~ provider or in-home
25 provider shall be notified in writing. This notice shall give the reason for denial,
26 revocation, or withdrawal of the registration.

27 §407.68. Revocation or refusal of registration; appeal procedure

28 Upon the refusal of the department to grant or renew a registration or upon
29 the revocation of a registration, the family child ~~day care home~~ provider or in-home

1 provider having been refused a registration or renewal or having had a registration
2 revoked shall have the right to appeal such action to the division of administrative
3 law by submitting a written request for an appeal to the department within thirty
4 calendar days after receipt of the notification of the refusal or revocation. The
5 department shall notify the division of administrative law within ten calendar days
6 of receipt of a request for an appeal and the appeal hearing shall be held no later than
7 thirty calendar days after such notice, with an administrative ruling no later than
8 thirty calendar days from the date of the hearing. This provision shall in no way
9 preclude the right of the party to seek relief through mandamus suit against the
10 department, as provided by law.

11 §407.69. Operating without or in violation of registration; penalty; injunctive relief

12 A. ~~Whoever operates a~~ Any family child day care home provider or in-home
13 provider who is required to be registered under this Part and who provides child care
14 services without a valid registration issued by the department shall be fined not less
15 than twenty-five dollars nor more than one hundred dollars. Each day ~~of operation~~
16 child care services are provided in violation of the requirements of this Part shall
17 constitute a separate offense.

18 B. The department may also file suit in the district court in the parish in
19 which the family child ~~day care home is located~~ provider or in-home provider is
20 providing care, for injunctive relief, including a temporary restraining order, to
21 restrain the family child ~~day care home~~ provider or in-home provider from
22 continuing the violation.

23 §407.70. Notification of health and safety violations

24 The department shall notify the appropriate agencies if it ~~is determined~~
25 determines that one or more violations exist ~~within~~ at the residence where care is
26 being provided by a family child day care home which provider or in-home provider
27 that place the health and well-being of a child or children in imminent danger.

1 §407.71. Grounds for revocation or refusal to renew registration; criminal activities;
2 lack of CPR or first aid training

3 A.(1) ~~No family child day care home may have in its employ, or living in the~~
4 ~~home, any person who has been convicted of or pled nolo contendere to a crime~~
5 listed in R.S. 15:587.1(C) may be a family child care provider, be employed in the
6 residence or on the property of the residence where the care is provided, or live in
7 the residence where care is provided. The cost of any criminal background check
8 which may be required by the department as proof of compliance with this
9 Subsection shall be the responsibility of the family child day care home provider.

10 (2) No person who has been convicted of or pled nolo contendere to a crime
11 listed in R.S. 15:587.1(C) may be an in-home child care provider, be an adult
12 employed in the home or on the property of the home where care is provided, or be
13 any adult living in the home where care is provided who is not a caregiver. For the
14 purposes of this Paragraph, the term "caregiver" shall mean any person legally
15 obligated to provide or secure care for a child, including a parent, legal custodian,
16 foster home parent, or other person providing a residence for the child. The cost of
17 any criminal background check which may be required by the department as proof
18 of compliance with this Subsection shall be the responsibility of the in-home
19 provider.

20 (3) The State Board of Elementary and Secondary Education shall establish
21 by regulation requirements and procedures consistent with the provisions of R.S.
22 15:587.1 that require the submission of a person's fingerprints in a form acceptable
23 to the Louisiana Bureau of Criminal Identification and Information and through
24 which:

25 (a) The department may request information concerning whether or not a
26 family child care provider, any adult employed in the residence or on the property
27 of the residence where care is provided, or any adult living in the residence where
28 care is provided has been arrested for, convicted of, or pled nolo contendere to any
29 criminal offense.

1 **(b) The department may request information concerning whether or not the**
2 **in-home provider, any adult employed in the home or on the property of the home**
3 **where care is provided, or any adult living in the home where care is provided has**
4 **been arrested for, convicted of, or pled nolo contendere to any criminal offense.**

5 B. ~~The primary child care provider of any~~ Each family child day care home
6 **provider and in-home provider** shall have documented current certification in either
7 Infant/Child CPR or Infant/Child/Adult CPR.

8 C. The department may deny, revoke, or refuse to renew any registration of
9 a family child day care home ~~which~~ provider or in-home provider who violates the
10 provisions of this Section.

11 D. The provisions of this Section shall not apply to a family child day care
12 home ~~in which the primary child care~~ provider or in-home provider when such
13 **provider at such home** is related to all the children receiving child care ~~at such home~~.

14 E. The provisions of this Section shall not apply to a family child day care
15 home provider or in-home provider who is registered with the ~~Department of~~
16 **Education department** solely for participation in the United States Child and Adult
17 Care Food Program.

18 §407.72. Orientation

19 A. ~~All~~ Each family child day care home providers and in-home providers
20 **who are** receiving payments from the ~~Department of Education~~ department shall be
21 required to participate in a four-hour orientation. The orientation curriculum shall
22 include but not be limited to the following subjects: recordkeeping; immunization
23 schedules and requirements; recognizing signs of child abuse; child abuse
24 prevention; communicating with parents; age appropriate activities for young
25 children; child development; child safety; and nutritional needs of children. The
26 orientation ~~will~~ shall count toward the required hours of professional development
27 training mandated by the ~~Department of Education~~ State Board of Elementary and
28 **Secondary Education.**

1 B. New family child ~~day~~ care home providers and in-home providers are
2 required to provide proof of orientation participation within ~~twelve~~ six months ~~after~~
3 ~~beginning operation of initial registration.~~ New Newly registered providers, at the
4 time of initial application, are required to sign an agreement committing to attend the
5 required orientation within ~~twelve~~ six months.

6 Section 3. This Act shall become effective upon signature by the governor or, if not
7 signed by the governor, upon expiration of the time for bills to become law without signature
8 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
9 vetoed by the governor and subsequently approved by the legislature, this Act shall become
10 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 734 Original

2015 Regular Session

Seabaugh

Abstract: Provides relative to the registration and regulation of certain child care providers who receive state or federal funds related to the care provided.

Present law authorizes the Dept. of Education to oversee the registration and regulation of unlicensed child care providers. Proposed law generally retains present law and adds new provider types to the registration law and requires criminal background checks for such providers, as explained more fully below.

Definitions and Registration

Present law defines the types of unlicensed child care facilities that must be registered with the department.

Present law requires operators of "family child day care homes" to register with the department. Defines "family child day care home" as "any place, facility, or home operated by any institution, society, agency, corporation, person or persons, or any other group for the primary purpose of providing care, supervision, and guidance of six or fewer children." Proposed law repeals present law.

Proposed law requires "family child care providers" to register with the department and defines such providers as "an individual who provides child care services for fewer than 24 hours per day per child, as the sole caregiver, for six or fewer children, in a private residence."

Proposed law further requires "in-home providers" to register with the department. Defines such providers as "an individual who provides child care services in the child or children's own home."

Present law required registration by an unlicensed day care facility if such facility received state or federal funds, directly or indirectly. Proposed law requires the unlicensed day care provider to register if the federal or state funds received are related to the care provided.

Present law provides an exception to registration requirements for an unlicensed caregiver providing care exclusively for related family members. Proposed law retains present law.

Present law required the unlicensed child care provider to be registered before the provider could receive any state or federal funds, directly or indirectly. Proposed law retains present law for state or federal funds that are related to the care provided.

Oversight

Present law authorized the state Dept. of Health and Hospitals and the Dept. of Education to oversee unlicensed child care providers. Proposed law places all authority for overseeing such providers with the Dept. of Education.

Present law requires the overseeing dept. to promulgate rules and regulations in accordance with the APA for the registration, oversight, and inspection of unlicensed child care providers. Proposed law retains present law.

Inspections

Present law authorizes inspections of unlicensed child care facilities by the department, the state fire marshal, parents, and "other authorized inspection personnel" during normal working hours or when children are in care. Proposed law retains present law.

Present law authorizes the state fire marshal to assess a \$30 fee to unlicensed child care facilities who apply for registration to cover the cost of facility inspections. Proposed law retains present law.

Revocation of Registration; Appeal; Violations

Present law authorizes the overseeing department to deny, revoke, or refuse to renew a registration if an application has failed to comply with present law. Proposed law retains present law.

Present law establishes an appeal process for an unlicensed child care provider who has had his registration revoked or denied. Proposed law retains present law.

Present law provides that any provider who operates without a valid registration shall be fined not less than \$25 and not more than \$100. Provides that each day of operation in violation of present law constitutes a separate offense. Proposed law retains present law.

Grounds for Revocation and Criminal Background Checks

Present law prohibits any unlicensed child care provider from employing or allowing a person who had been convicted of or plead *nolo contendere* to any of a group of certain enumerated present law crimes, such as first-degree murder and cruelty to juveniles, to live in the place where care is provided.

Proposed law prohibits any individual who has been convicted of or plead *nolo contendere* to any such enumerated present law crimes from being a family child care provider, from being employed in the residence or on the property of the residence where the care is provided, or living in the residence where such care is provided.

For "in-home providers", proposed law is the same as proposed law relative to family child care providers, except that "caregivers" cannot be expelled for convictions or pleading *nolo*

contendere to any of the enumerated present law crimes. Defines "caregiver" as "any person legally obligated to provide or secure care for a child, including a parent, legal custodian, foster home parent, or other person providing a residence for the child."

Present law exempts providers who are related to all children receiving care from the criminal background check requirements. Proposed law retains present law.

Present law (R.S. 15:587.1) authorizes certain agencies and employers to obtain criminal background information on specific classes of people. Proposed law authorizes the Dept. of Ed. to obtain criminal background information on registered unlicensed child care providers and any adults living in the home or employed on the premises.

Present law (R.S. 15:587.1(D)), with certain exceptions, prohibits the individual whose criminal history is being reviewed from being charged for such background checks. Proposed law requires the unlicensed child care provider to pay the cost of any criminal background check necessary to prove compliance with proposed law.

Required Training

Present law requires each unlicensed child care provider to participate in a four-hour orientation.

Present law provides that such orientation counts toward required professional development training mandated by the Dept. of Ed. Proposed law provides that the orientation counts toward required training mandated by BESE.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 15:587.1(A)(1)(a) and (D)(2), the heading of Part X-C of Ch. 1 of Title 17, R.S. 17:407.61, 407.62(4)-(6), and 407.63-407.72; Adds R.S. 17:407.62(7))