

Regular Session, 2010

SENATE BILL NO. 634

BY SENATOR JACKSON

SOCIAL SERVICES DEPT. Provides for penalties for violations of regulations of child care facilities and child-placing agencies and for procedures. (gov sig)

1 AN ACT

2 To enact R.S. 46:1413.1, relative to the Department of Social Services; to provide relative
3 to child care facilities and child placing agencies; to provide with respect to
4 licensing; to provide with respect to penalties for violations; and to provide for
5 related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 46:1413.1 is hereby enacted to read as follows:

8 **§1413.1. Operating without or in violation of license or regulations; penalties**
9 **and fines**

10 **A.(1) No person shall operate any child care facility or child-placing**
11 **agency, as defined in R.S. 46:1403, in violation of any provision of R.S. 46:1401**
12 **through 1428, or any other state or federal statute, regulation, or any**
13 **department rule adopted pursuant to the Administrative Procedures Act which**
14 **govern the ownership or operation of child care facilities or child-placing**
15 **agencies.**

16 **(2) Any person or entity violating these requirements, when such**
17 **violation poses a threat to the health, safety, rights, or welfare of any child in**

1 care or custody of a child care facility or child-placing agency, may be liable to
2 civil fines in addition to any criminal action which may be brought under other
3 applicable laws. The department shall adopt rules in accordance with the
4 Administrative Procedure Act which define specific classifications of violations,
5 articulate factors in assessing civil fines including mitigating circumstances, and
6 explain the treatment of continuing and repeat deficiencies. A schedule of civil
7 fines by class of violation shall be as follows:

8 (a) Class A--Violations that create a condition or occurrence relating to
9 the operation and maintenance of a child care facility or child-placing agency
10 which result in death or serious harm to a child. Civil fines for violations under
11 this Subparagraph shall not exceed one thousand dollars for the first violation
12 and shall not exceed two thousand dollars per day for repeat violations within
13 an eighteen month period.

14 (b) Class B--Violations that create a condition or occurrence relating to
15 the operation and maintenance of a child care facility or child-placing agency
16 which may result in death or serious physical or mental harm to a child will
17 result from the violation. Civil fines for violations under this Subparagraph
18 shall not exceed three hundred seventy-five dollars for the first violation and
19 shall not exceed seven hundred fifty dollars per day for repeat violations within
20 an eighteen month period.

21 (c) Class C--Violations that create a condition or occurrence relating to
22 the operation and maintenance of a child care facility or child-placing agency
23 which create a potential for harm by directly threatening the health, safety,
24 rights, or welfare of a child. Civil fines for violations under this Subparagraph
25 shall not exceed two hundred fifty dollars for the first violation and shall not
26 exceed five hundred dollars per day for repeat violations within an eighteen
27 month period.

28 (d) Class D--Violations related to administrative and reporting
29 requirements that do not directly threaten the health, safety, rights, or welfare

1 of a child. Civil fines for violations under this Subparagraph shall not exceed
2 one hundred twenty-five dollars for the first violation of any Class D regulation
3 and shall not exceed two hundred fifty dollars per day for repeat violations
4 within an eighteen month period.

5 (e) Class E--Violations for failure of any facility to submit a statistical or
6 financial report in a timely manner as provided in R.S. 46:1414.1. Civil fines for
7 violations under this Subparagraph shall not exceed seventy-five dollars for the
8 first violation and shall not exceed one hundred fifty dollars per day for repeat
9 violations within an eighteen month period.

10 (3) The aggregate fines assessed for violations determined in any one
11 month shall not exceed ten thousand dollars, except that the aggregate fines
12 assessed for Class A repeat violations shall not exceed fifty thousand dollars in
13 any one month, and the aggregate fines assessed for Class B repeat violations
14 shall not exceed thirty thousand dollars in any one month.

15 B. The department shall adopt rules and regulations in accordance with
16 the Administrative Procedure Act to provide for notice to the child care facility
17 or child-placing agency of any violation, for an informal reconsideration
18 process, and for an appeal procedure including judicial review. Such appeal
19 shall be suspensive. All appeals under this Section shall be heard by the
20 Department of Social Services, bureau of appeals, any other provision of law
21 notwithstanding. The final decision shall be rendered by the secretary, who shall
22 furnish the facility or agency a copy of the decision, together with notice of the
23 manner for requesting judicial review.

24 C. The child care facility or child-placing agency shall furnish, with an
25 appeal, bond in the minimum amount of one and one-half times the amount of
26 the fine imposed by the department. The bond furnished shall provide in
27 substance, that it is furnished as security that the child care facility or child-
28 placing agency will prosecute its appeal, that any judgment against it, including
29 court costs, will be paid or satisfied from the amount furnished or that

1 otherwise the surety is liable for the amount assessed against the facility. The
2 appeal shall be heard in a summary proceeding which shall be given precedence
3 over other pending matters.

4 D. The department may institute all necessary civil court action to collect
5 fin es imposed and not timely appealed. No child care facility or child-placing
6 agency may claim imposed fines as reimbursable costs, nor increase charges to
7 clients as a result of such fines. Interest shall begin to accrue at the current
8 judicial rate on the day following the date on which any fines become due and
9 payable. All costs of any action to collect such fines, including travel expenses
10 and reasonable attorneys fees, shall be awarded to the department in addition
11 to the fines.

12 E.(1) Civil fines collected under the provisions of this Section shall be
13 deposited immediately into the state treasury.

14 (2) After compliance with the requirements of Article VII, Section 9(B)
15 of the Constitution of Louisiana relative to the Bond Security and Redemption
16 Fund, and prior to the monies being placed in the state general fund, an amount
17 equal to the amount deposited as provided in Paragraph (1) of this Subsection
18 shall be credited to a special fund hereby created in the state treasury to be
19 known as the "Child Welfare Agencies Trust Fund," hereinafter referred to as
20 the "fund." The monies in the fund shall be subject to annual appropriation
21 and shall be available exclusively for use by the Department of Social Services
22 for the following:

23 (a) The protection of health, welfare, rights, or property of children in
24 out-of-home care or receiving services from child care facilities and child-
25 placing agencies licensed or registered by the Department of Social Services.

26 (b) The enforcement of sanctions against child care facilities and child-
27 placing agencies licensed or registered by the Department of Social Services.

28 (c) Education, employment, and training of employees, staff, or other
29 personnel of child care facilities and child-placing agencies licensed or

1 registered by the Department of Social Services.

2 (d) Programs designed to improve the quality of care in child care
3 facilities and child-placing agencies.

4 (3) The monies in the fund shall be invested by the treasurer in the same
5 manner as the monies in the state general fund, and all interest earned from the
6 investment of monies in the fund shall be deposited in and remain to the credit
7 of the fund. All unexpended and unencumbered monies remaining in the fund
8 at the end of the fiscal year shall remain in the fund.

9 (4) The secretary of the Department of Social Services is authorized to
10 promulgate rules and regulations in accordance with the Administrative
11 Procedure Act to provide for the administration of the fund.

12 Section 2. This Act shall become effective upon signature by the governor or, if not
13 signed by the governor, upon expiration of the time for bills to become law without signature
14 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
15 vetoed by the governor and subsequently approved by the legislature, this Act shall become
16 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Bobbie Hunter.

DIGEST

Present law provides that all child care facilities and child-placing agencies, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency, shall be licensed. Child care licenses shall be of two types: Class A and Class B. All child-placing agency licenses shall be Class A only.

Present law provides that the Department of Social Services shall promulgate rules and regulations for Class A and B for specific licensing requirements. The department shall have the power to deny, revoke, or refuse to renew a license for a child care facility or child-placing agency if the applicant has failed to comply with the provisions of R.S. 46:1401 through 1428, or any applicable rule or regulation published by the department. If a license is denied, revoked or withdrawn, the department shall notify the applicant or licensee of such action in writing immediately and of the reason for the denial, revocation or withdrawal of the license.

Proposed law provides that no person shall operate any child care facility or child-placing agency, as defined in R.S. 46:1403, in violation of any provision of R.S. 46:1401 through 1428, or any other state or federal statute, regulation, or any department rule adopted pursuant to the APA which govern the ownership or operation of child care facilities or child-placing agencies.

Proposed law provides that any person or entity violating these requirements when such violation poses a threat to the health, safety, rights, or welfare of any child in care or custody of a child care facility or child-placing agency may be liable to civil fines and any criminal action which may be brought under applicable laws. The department shall adopt rules in accordance with the APA which define specific classifications of violations, assess civil fines, and outline penalties for continued and repeat deficiencies. A schedule of civil fines by class of violation shall be as follows:

1. Class A - Violations that create a condition or occurrence which result in death or serious harm to a child. Civil fines shall not exceed \$1,000 for the first violation and shall not exceed \$2,000 per day for repeat violations within 18 months.
2. Class B - Violations that create a condition or occurrence which may cause death or serious physical or mental harm to a child. Civil fines shall not exceed \$375 for the first violation and shall not exceed \$750 per day for repeat violations within 18 months.
3. Class C - Violations that create a condition or occurrence which create a potential for harm by directly threatening the health, safety, rights, or welfare of a child. Civil fines shall not exceed \$250 for the first violation and shall not exceed \$500 per day for repeat violations within 18 months.
4. Class D - Violations related to administrative and reporting requirements that do not directly threaten the health, safety, rights, or welfare of a child. Civil fines shall not exceed \$125 for the first violation of any Class D regulation and shall not exceed \$250 per day for repeat violations within 18 months.
5. Class E - Violations for failure of any facility to submit a statistical or financial report as required by regulation. Civil fines shall not exceed \$75 for the first violation and shall not exceed \$150 per day for repeat violations within 18 months.

Proposed law provides that the aggregate fines assessed for violations determined in any one month shall not exceed \$10,000, except that the aggregate fines assessed for Class A repeat violations shall not exceed \$50,000 in any one month, and the aggregate fines assessed for Class B repeat violations shall not exceed \$30,000 in any one month.

Proposed law provides the department shall adopt rules and regulations in accordance with the APA to provide for notice to the child care facility or child-placing agency of any violation, for an informal reconsideration process, and for an appeal procedure including judicial review. Such appeal shall be suspensive. All appeals under this proposed law shall be heard by the department's bureau of appeals. The final decision shall be rendered by the secretary, who shall furnish the facility or agency a copy of the decision, and information for requesting judicial review.

Proposed law provides that the child care facility or child-placing agency shall furnish, with an appeal, a bond in the minimum amount of one and one half times the amount of the fine imposed by the department. The bond shall be provided as security that the child care facility or child-placing agency will prosecute its appeal, that any judgment against it, including court costs, will be paid or satisfied from the amount furnished or that otherwise the surety is liable for the amount assessed against the facility.

Proposed law provides that the department may institute all necessary civil court action to collect fines imposed and not timely appealed. No child care facility or child-placing agency may claim imposed fines as reimbursable costs, nor increase charges to clients as a result of such fines. Interest shall begin to accrue at the current judicial rate on the day following the date on which any fines become due and payable. All costs of any action to collect such fines shall be awarded to the department. Civil fines collected under the provisions of this Section shall be deposited immediately into the state treasury.

Proposed law provides that after compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, and prior to the monies being placed in the state general fund, an amount equal to the amount deposited shall be credited to a special fund hereby created in the state treasury to be known as the "Child Welfare Agencies Trust Fund." The monies in the fund shall be subject to annual appropriation and shall be available exclusively for use by the department. The secretary of the department is authorized to promulgate rules and regulations in accordance with the APA to provide for the administration of the fund.

Proposed law provides that monies in the fund shall be invested by the treasurer in the same manner as the monies in the state general fund, and all interest earned from the investment of monies in the fund shall be deposited in and remain to the credit of the fund.

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

(Adds R.S. 46:1413.1)