

2020 Regular Session

HOUSE BILL NO. 823

BY REPRESENTATIVE HILFERTY

EARLY CHILDHOOD: Creates a new category of early childhood care facility, the early learning home provider, and requires licensure by the state Department of Education as a condition of operation

1 AN ACT

2 To amend and reenact R.S. 17:407.35(C) and 407.62(5) and (7) and R.S. 44:4.1(B)(9) and  
3 to enact R.S. 17:407.35(D), 407.63(D), and Part X-F of Chapter 1 of Title 17 of the  
4 Louisiana Revised Statutes of 1950, to be comprised of R.S. 17:407.101 through  
5 407.116, relative to the licensure and registration of early childhood care facilities;  
6 to provide for the creation of a category of facilities known as early learning homes;  
7 to require licensure of an early learning home by the state Department of Education  
8 as a condition of operation; to provide for fees; to provide for civil fines and other  
9 penalties for operating without a license; to require the State Board of Elementary  
10 and Secondary Education to adopt rules relative to early learning homes; to provide  
11 a limitation relative to public records; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 17:407.35(C) and 407.62(5) and (7) are hereby amended and  
14 reenacted and R.S. 17:407.35(D), 407.63(D), and Part X-F of Chapter 1 of Title 17 of the  
15 Louisiana Revised Statutes of 1950, comprised of R.S. 17:407.101 through 407.116, are  
16 hereby enacted to read as follows:

17 §407.35. Exemptions from licensure requirements

18 \* \* \*

1 C. An early learning home as defined by R.S. 17:407.103 is exempt from the  
2 provisions of this Part.

3 D. Nothing in this Part shall apply to children in programs licensed or  
4 operated by the Louisiana Department of Health or the Department of Children and  
5 Family Services.

6 \* \* \*

7 §407.62. Definitions

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

10 \* \* \*

11 (5) "Family child care provider" means an individual who resides and  
12 provides child care services in a private residence for fewer than twenty-four hours  
13 per day per child, as the sole caregiver, for six or fewer children, ~~in a private~~  
14 ~~residence~~ not including those related to the individual.

15 \* \* \*

16 (7) "Relative" or "related" means the child; or grandchild; ~~niece, or nephew~~  
17 ~~of the primary child care provider of a family child care provider or in-home~~  
18 ~~provider~~ or a child in the legal custody of the provider.

19 §407.63. Requirement for registration; exemptions

20 \* \* \*

21 D. An early learning home as defined by R.S. 17:407.103 is exempt from the  
22 provisions of this Part.

23 \* \* \*

24 PART X-F. Early Learning Home Licensing Law

25 §407.101. Short title

26 This Part may be cited as the "Early Learning Home Licensing Law".

27 §407.102. Legislative intent; declaration of purpose and policy

28 It is the intent of the legislature to protect the health, safety, and well-being  
29 of the children of the state who are in early learning homes on a regular or consistent

1 basis. Toward that end, it is the purpose of this Part to establish statewide minimum  
2 standards for the safety and well-being of children in early learning homes, to ensure  
3 maintenance of these standards, and to regulate conditions in these homes through  
4 a program of licensing. The State Board of Elementary and Secondary Education  
5 shall promulgate rules and regulations to implement a program of licensing for early  
6 learning homes and the state Department of Education shall administer the licensing  
7 program pursuant to such rules and regulations.

8 §407.103. Definitions

9 As used in this Part, the following definitions shall apply unless the context  
10 clearly states otherwise:

11 (1) "Child" means a person who has not reached age eighteen or otherwise  
12 been legally emancipated.

13 (2) "Department" means the state Department of Education.

14 (3) "Early learning home" means a private residence in which an individual  
15 lives and provides child care services, for fewer than twenty-four hours per day per  
16 child, for at least seven but not more than twelve children not including those related  
17 to the individual.

18 (4) "Related" or "relative" means the child or grandchild of the early learning  
19 home provider or a child in the legal custody of the provider.

20 (5) "State board" means the State Board of Elementary and Secondary  
21 Education.

22 §407.104. Requirement of licensure

23 All early learning homes shall be licensed by the department prior to  
24 beginning operations in Louisiana regardless of whether they directly or indirectly  
25 receive state or federal funds related to the care provided.

26 §407.105. Exemptions from licensure requirements

27 A. A family child care provider as defined by R.S. 17:407.62 is not required  
28 to be licensed under this Part.

1           B. This Part does not apply to children in programs licensed or operated by  
2           the Louisiana Department of Health, the Department of Children and Family  
3           Services, or the United States Department of Defense.

4           §407.106. Operating without a license; penalties

5           The department may take action against a person who operates an early  
6           learning home without a valid license issued by the department. Such actions may  
7           include the following:

8                   (1) Assessing a civil fine of up to one thousand dollars for each day of the  
9                   knowing and continued unlicensed operation of an early learning home.

10                   (2) Filing a suit in the district court in the parish in which the early learning  
11                   home is located for injunctive relief, including a temporary restraining order to  
12                   enjoin the continuing the violation.

13           §407.107. Licenses; application; temporary or provisional

14                   A. Application for licensure of a new early learning home shall be made by  
15                   the home to the department using forms furnished by the department. Upon receipt  
16                   of an application for a license and verification that minimum requirements for such  
17                   license as established by rule are satisfied, and upon verifying that the home is in  
18                   compliance with all applicable state and local laws and regulations, the department  
19                   shall issue an early learning home license for such period as may be provided for by  
20                   rule.

21                   B. The state board may provide by rule for the issuance of temporary,  
22                   provisional, or extended licenses if a disapproval has not been received from a state  
23                   or local agency authorized by any law or rule to inspect or approve such homes.

24                   C. A license shall apply only to the home stated on the application, and such  
25                   license, once issued, is not transferable from one person to another or from one home  
26                   to another.

27                   D. Each licensed early learning home shall display its license in a prominent  
28                   place at the home where it is visible to parents of children in care.

1        §407.108. Rules, regulations, and standards for licenses

2            A. The state board shall promulgate regulations for licensure of early  
3        learning homes which, at a minimum, shall accomplish all of the following:

4            (1) Promote the health, safety, and welfare of children in care at an early  
5        learning home.

6            (2) Promote safe and proper physical facilities at all early learning homes.

7            (3) Ensure adequate supervision of those in care at all early learning homes.

8            (4) Include procedures for the receipt, recordation, and disposition of  
9        complaints.

10          B. The department shall not issue a license for an early learning home unless  
11        the facility has received approval from the state fire marshal.

12          C. The state board, upon request by the department, may waive compliance  
13        with a licensing minimum standard upon determination that the economic impact is  
14        sufficiently great to make compliance impractical, as long as the health or well-being  
15        of children is not imperiled. If it is determined that the early learning home is  
16        meeting or exceeding the intent of a standard or regulation, the standard or regulation  
17        may be deemed to be met.

18          D. No rule, regulation, or standard adopted pursuant to this Section shall  
19        authorize or require medical examination, immunization, or treatment of any child  
20        whose parents object to such examination, immunization, or treatment.

21        §407.109. Review of criminal history information and state central registry of child  
22        abuse and neglect

23          A. No person who has been convicted of or pled nolo contendere to a crime  
24        listed in R.S. 15:587.1(C), whose name is recorded on the state registry within the  
25        Department of Children and Family Services as a perpetrator for a justified finding  
26        of abuse or neglect of a child, whose name is on any other state's child abuse and  
27        neglect registry or repository, whose name is on the Louisiana Sex Offender and  
28        Child Predator Registry, whose name is on any other state's sex offender registry, or  
29        whose name is on the National Crime Information Center's National Sex Offender

1 Registry may be an early learning home provider, be employed in the residence or  
2 on the property of the residence where the care is provided by an early learning home  
3 provider, or live in the residence where care is provided by the early learning home  
4 provider. The cost of any criminal background check which may be required by the  
5 department as proof of compliance with this Subsection shall be the responsibility  
6 of the early learning home provider.

7 B.(1) The state board shall establish by regulation requirements and  
8 procedures through which the department shall:

9 (a) Request, consistent with the provisions of R.S. 15:587.1, from the Bureau  
10 of Criminal Identification and Information, information concerning whether or not  
11 an early learning home provider, any adult employed in the residence or on the  
12 property of the residence where care is provided by an early learning home provider,  
13 or any adult living in the residence where care is provided by an early learning home  
14 provider has been arrested for, convicted of, or pled nolo contendere to any criminal  
15 offense.

16 (b) Request information from the Department of Children and Family  
17 Services as to whether the individual's name is recorded on the state central registry  
18 for child abuse and neglect.

19 (c) Request information from the National Crime Information Center as to  
20 whether the individual's name is recorded on the National Sex Offender Registry.

21 (2) The department shall require and provide for the submission of a person's  
22 fingerprints in a form acceptable to the Louisiana Bureau of Criminal Identification  
23 and Information. A person who has submitted his fingerprints to the Louisiana  
24 Bureau of Criminal Identification and Information, and for whom the department has  
25 received a Louisiana or federal criminal history information report, may be hired on  
26 a provisional basis until such time as all required background checks have been  
27 completed; a provisional employee shall be monitored in accordance with rules  
28 adopted by the state board by an individual who has completed a criminal  
29 background check. Under no circumstances shall an early learning home employ a

1 person in any capacity until the department has received the required Louisiana or  
2 federal criminal history information report.

3 (3) The department may charge a processing fee not to exceed fifteen dollars  
4 and may collect the processing fees charged by the Bureau of Criminal Identification  
5 and Information for a state criminal history report, the Federal Bureau of  
6 Investigation for a federal criminal history information report, the National Crime  
7 Information Center for a search of the National Sex Offender Registry, the  
8 Department of Children and Family Services for a search of its state central registry  
9 of abuse and neglect, and processing fees charged by other states when it receives  
10 a request for a criminal background check and shall timely submit the appropriate  
11 processing fees to the appropriate agencies.

12 §407.110. Inspections

13 The department shall, through its duly authorized agents, inspect at regular  
14 intervals not to exceed one year, and without previous notice, and as deemed  
15 necessary by the department, all early learning homes subject to the provisions of  
16 this Part. The early learning homes shall be open to inspection by authorized  
17 inspection personnel and by parents or legal custodians of children in care only  
18 during working hours.

19 §407.111. Denial, refusal to renew, or revocation of license; written notice

20 The department shall have the power to deny, revoke, or refuse to renew a  
21 license for an early learning home if an applicant has failed to comply with the  
22 provisions of this Part or any applicable, published rule or regulation of the state  
23 board relating to early learning homes. If a license is denied or revoked, or renewal  
24 is refused, the action shall be effective when made, and the department shall notify  
25 the applicant or licensee of such action in writing immediately, and of the reason for  
26 the denial or revocation, or refusal to renew the license.

27 §407.112. Denial, refusal to renew, or revocation of license; appeal procedure

28 A. Upon the refusal of the department to grant or renew a license or upon the  
29 revocation of a license, the applicant or licensee having been refused a license or

1 renewal, or having had a license revoked shall have the right to appeal such action  
2 to the division of administrative law by submitting a written request for an appeal to  
3 the department within thirty calendar days after receipt of the notification of the  
4 refusal to grant a license, or within fifteen calendar days after receipt of the  
5 notification of the refusal to renew or revocation. The department shall notify the  
6 division of administrative law within ten calendar days of receipt of a request for an  
7 appeal and the appeal hearing shall be held no later than thirty calendar days after  
8 such notice, with an administrative ruling no later than fifteen calendar days from the  
9 date of a hearing for revocation or refusal to renew a license, or within thirty days  
10 from the date of a hearing for the denial of a new license.

11 B. Notwithstanding any law, rule, regulation, or provision to the contrary,  
12 including but not limited to R.S. 49:964(A)(2), the department may seek judicial  
13 review from any final decision or order rendered by the division of administrative  
14 law in any appeal hearing arising under this Part. The venue of judicial review shall  
15 be the district court of the parish in which the licensee is located.

16 §407.113. Complaints against homes

17 A. The department shall, through its duly authorized agents, report all  
18 complaints, including but not limited to complaints alleging child abuse or the  
19 prevention or spread of communicable diseases, against any early learning home  
20 provider to the appropriate agencies for investigation and disposition.

21 B. The identity of a person making a complaint against an early learning  
22 home shall be confidential and shall not be subject to the Public Records Law.

23 §407.114. Disclosure of home information

24 A. The department shall make available, upon written request of a parent or  
25 legal custodian of any child who has applied for placement in an early learning home  
26 licensed by the department, the following information relative to such early learning  
27 home:

28 (1) Any violation of standards, rules, or regulations in the prior twelve  
29 months.

1           (2) Any waiver of minimum standards authorized for such early learning  
2           homes.

3           B. Requests may be sent by electronic mail, facsimile, or mail and shall  
4           include the name of each early learning home for which information is requested.

5           C. Early learning homes shall make available to parents or legal custodians  
6           information on how to view or obtain copies of early learning home licensing  
7           inspections from the department's website.

8           §407.115. Immunization information; influenza

9           A. Each licensed early learning home, before November first of each year,  
10           shall make available to each child's parent or legal custodian information relative to  
11           the risks associated with influenza and the availability, effectiveness, known  
12           contraindications and possible side effects of the influenza immunization. Such  
13           information shall include the causes and symptoms of influenza, the means by which  
14           influenza is spread, the places where a parent or legal custodian may obtain  
15           additional information, and where a child may be immunized against influenza.  
16           Such information shall be updated annually if new information on such disease is  
17           available.

18           B.(1) The Louisiana Department of Health shall develop and provide  
19           information on influenza immunization to the department. The department shall  
20           provide such information to each licensed early learning home, which shall make the  
21           information available to each child's parent or legal custodian pursuant to Subsection  
22           A of this Section.

23           (2) The Louisiana Department of Health and the department shall determine  
24           respectively the most cost-effective and efficient means of distributing such  
25           information.

26           C. Nothing in this Section shall be construed to require any early learning  
27           home, the department, or the Louisiana Department of Health to provide or pay for  
28           immunizations against influenza.



**Early learning centers**

Present law provides for DOE licensing of early learning centers, defined as any child day care center (seven or more children), Early Head Start Center, Head Start Center, or stand-alone prekindergarten program not attached to a school. Requires that early learning centers be licensed as a condition of operation and provides penalties for operating without a license.

**Family child care providers; In-home providers**

Present law provides for DOE registration of family child care providers and in-home providers, defined as follows:

- (1) Present law defines "family child care provider" as an individual who provides child care services for six or fewer children for fewer than 24 hours per day per child as the sole caregiver, in a private residence. Proposed law revises this definition to specify that the individual also resides at the residence and that the "six or fewer" children do not include those related to the individual and otherwise retains present law.
- (2) Present law defines "in-home provider" as an individual who provides child care services in a child's own home. Proposed law retains present law.
- (3) Present law defines "relative" or "related" as the child, niece, or nephew of the provider. Proposed law redefines "relative" or "related" as the child or grandchild of the provider or a child in the provider's legal custody.

Present law requires that such providers be registered and provides penalties for operating without registration. Proposed law retains present law.

Present law exempts such providers who do not directly or indirectly receive state or federal funds related to the care provided and individuals who provide care for only related family members from registration requirements. Proposed law retains present law.

**Early learning homes**

Proposed law creates a new category of child care providers to be licensed by DOE, the "early learning home", defined as a private residence in which an individual lives and provides child care services for fewer than 24 hours per day per child for 7-12 children not including those related to the individual. (Defines "related" as the child or grandchild of the provider or a child in the provider's legal custody.) Requires all early learning homes to be licensed by DOE as a condition of operation and provides penalties for operating without a license; this requirement applies regardless of whether the provider receives state or federal funding related to the care provided.

Proposed law includes provisions for:

- (1) Standards for licenses.
- (2) Penalties for violations.
- (3) Criminal background reviews.
- (4) Inspections of licensed facilities.
- (5) Denial and revocations of licenses and appeal procedures.
- (6) Information that must be disclosed to parents.

- (7) Procedures regarding complaints.

**Public records exceptions**

Present law (R.S. 44:1 et seq. – the Public Records Law) provides for access and retention of public records. Establishes a framework for the ready availability of public records to requesting persons. Provides that the identity of a person making a complaint against an early learning center, a family child care provider, or an in-home provider shall be confidential and shall not be subject to present law (the Public Records Law). Proposed law additionally applies present law to the identity of a person making a complaint against an early learning home.

(Amends R.S. 17:407.35(C) and 407.62(5) and (7) and R.S. 44:4.1(B)(9); Adds R.S. 17:407.35(D), 407.63(D), and 407.101-407.116)