

Regular Session, 2012

HOUSE BILL NO. 861

BY REPRESENTATIVE SIMON

CHILD DAY CARE: Provides penalties in lieu of revocation for child care facilities or child-placing agencies which violate terms of licensure or other regulations

1 AN ACT

2 To enact R.S. 46:1430, relative to child care facilities and child-placing agencies; to
3 authorize the Department of Children and Family Services to assess fines, in lieu of
4 revocation, for certain violations; to require the department to adopt rules and
5 regulations providing for notice and appeal procedures; to authorize the department
6 to institute civil court actions to collect fines; to create the Child Care Licensing
7 Trust Fund; to provide for the use and administration of the fund; to provide an
8 effective date; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 46:1430 is hereby enacted to read as follows:

11 §1430. Operating in violation of regulations; penalties and fines

12 A.(1) For violations related to supervision, criminal history record checks
13 through the state central registry disclosure process, staff-to-child ratios, motor
14 vehicle checks, or failure to report critical incidents, the Department of Children and
15 Family Services may assess a civil fine, in lieu of revocation, upon any person or
16 entity violating these requirements if such condition or occurrence does not pose an
17 imminent threat to the health, safety, rights, or welfare of a child. Such civil fine
18 shall not exceed two hundred fifty dollars per day for each assessment; however, the
19 aggregate fines assessed for violations determined in any consecutive twelve-month
20 period shall not exceed two thousand dollars.

1 (2) The department shall adopt rules in accordance with the Administrative
2 Procedure Act which articulate factors in assessing civil fines including the severity
3 of risk, the actual harm and mitigating circumstances, the history of noncompliance,
4 an explanation of the treatment of continuing and repeat deficiencies, evidence of a
5 good faith effort to comply, and any other relevant factors. The department shall
6 develop and adopt rules and regulations required by this Paragraph with input and
7 guidance from the Louisiana Advisory Council on Child Care and Early Education.
8 The authority to impose fines pursuant to this Section shall commence on the
9 effective date of the rules promulgated pursuant to this Section.

10 B. The department shall adopt rules and regulations in accordance with the
11 Administrative Procedure Act to provide for notice to the child care facility or child-
12 placing agency of any violation, for a departmental reconsideration process for fines
13 issued, and for an appeal procedure including judicial review. Such appeal shall be
14 suspensive. All appeals pursuant to this Subsection shall be heard by the division of
15 administrative law pursuant to Chapter 13-B of Title 49 of the Louisiana Revised
16 Statutes of 1950. The division shall furnish to the facility or agency a copy of the
17 decision, together with notice of the manner for requesting judicial review. During
18 the pendency of an appeal, a child care facility or child-placing agency may continue
19 to receive funding for services provided to those eligible children as determined by
20 the department.

21 C. The department may institute any necessary civil court action to collect
22 fines imposed and not timely appealed. No child care facility or child-placing
23 agency shall claim imposed fines as reimbursable. Interest shall begin to accrue at
24 the current judicial rate on the day following the date on which any fines become due
25 and payable. All costs of any successful action to collect such fines, including travel
26 expenses and reasonable attorney fees, shall be awarded to the department in
27 addition to the fines.

28 D.(1) Civil fines collected pursuant to the provisions of this Section shall be
29 deposited immediately into the state treasury.

1 (2) After compliance with the requirements of Article VII, Section 9(B) of
 2 the Constitution of Louisiana relative to the Bond Security and Redemption Fund,
 3 and prior to the monies being placed in the state general fund, an amount equal to the
 4 amount deposited as provided in Paragraph (1) of this Subsection shall be credited
 5 to a special fund hereby created in the state treasury to be known as the "Child Care
 6 Licensing Trust Fund", hereinafter referred to as "the fund". The monies in the fund
 7 shall be subject to annual appropriation and shall be available exclusively for use by
 8 the Department of Children and Family Services for the education and training of
 9 employees, staff, or other personnel of child care facilities and child-placing
 10 agencies.

11 (3) The monies in the fund shall be invested by the treasurer in the same
 12 manner as the monies in the state general fund, and all interest earned from the
 13 investment of monies in the fund shall be deposited in and remain to the credit of the
 14 fund. All unexpended and unencumbered monies remaining in the fund at the end
 15 of the fiscal year shall remain in the fund.

16 Section 2. This Act shall become effective January 1, 2013.

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)]

Simon

HB No. 861

Abstract: Establishes penalties, in lieu of revocation, for child care facilities or child-placing agencies that violate the terms of licensure or other regulations.

Proposed law authorizes, in lieu of revocation, the assessment of a civil fine by the department for violations related to supervision, criminal history record checks through the state central registry disclosure process, staff-to-child ratios, motor vehicle checks, or failing to report critical incidents to the department if such condition or occurrence does not pose an imminent threat to the health, safety, rights, or welfare of a child. Establishes a \$250 civil fine per day for each assessment. Provides that the aggregate fines assessed for violations determined in any consecutive twelve-month period shall not exceed \$2,000.

Proposed law requires the department to adopt rules in accordance with the Administrative Procedure Act that articulate factors in assessing civil fines, including the severity of risk, the actual harm and mitigating circumstances, the history of noncompliance, an explanation of the treatment of continuing and repeat deficiencies, evidence of a good faith effort to comply, and any other relevant factors. Also requires the department to develop and adopt rules and regulations required by proposed law with input and guidance from the La.

Advisory Council on Child Care and Early Education. Specifies that the authority to impose fines pursuant to proposed law commences on the effective date of the rules promulgated pursuant to proposed law.

Proposed law requires the department to adopt rules and regulations in accordance with the Administrative Procedure Act to provide for notice to the child care facility or child-placing agency of any violation, for a departmental reconsideration process for fines issued, and for an appeal procedure including judicial review. Provides that any such appeal is suspensive. Requires all appeals pursuant to proposed law to be heard by the division of administrative law pursuant to state law. Requires the division to furnish the facility or agency a copy of the decision, together with notice of the manner for requesting judicial review. Specifies that during the pendency of an appeal a child care facility or child-placing agency may continue to receive funding for services provided to those eligible children as determined by the department.

Proposed law authorizes the department to institute any necessary civil court action to collect fines imposed and not timely appealed. Prohibits child care facilities or child-placing agencies from claiming imposed fines as reimbursable. Specifies that interest will begin to accrue at the current judicial rate on the day following the date on which any fines become due and payable. Provides that all costs of any successful action to collect such fines, including travel expenses and reasonable attorney fees, will be awarded to the department in addition to the fines.

Proposed law requires civil fines collected pursuant to proposed law be deposited immediately into the state treasury.

Provides that after compliance with the requirements of state constitution 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 as provided in proposed law shall be credited to a special fund hereby created in the state treasury to be known as the "Child Care Licensing Trust Fund" (the fund). Specifies that the monies in the fund are subject to annual appropriation and must be available exclusively for use by the Dept. of Children and Family Services for the education, employment, and training of employees, staff, or other personnel of child care facilities and child-placing agencies.

Requires the monies in the fund 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. Requires all unexpended and unencumbered monies remaining in the fund at the end of the fiscal year to remain in the fund.

Effective Jan. 1, 2013.

(Adds R.S. 46:1430)