

Regular Session, 2012

HOUSE BILL NO. 861

BY REPRESENTATIVES SIMON AND LEGER

CHILD DAY CARE: Provides relative to penalties imposed on child care facilities and child-placing agencies which violate terms of licensure and individuals or entities that operate without or in violation of a license.

1 AN ACT

2 To amend and reenact R.S. 46:1421 and to enact R.S. 46:1430, relative to child care  
3 facilities and child-placing agencies; to provide relative to the penalty for operating  
4 without or in violation of license; to authorize the Department of Children and  
5 Family Services to issue a written warning which includes a corrective action plan,  
6 in lieu of revocation, for certain violations; to provide for the issuance of sanctions  
7 for failure to comply with a corrective action plan; to require the department to adopt  
8 rules and regulations providing for notice and appeal procedures; to authorize the  
9 department to institute civil court actions to collect fines; to create the Child Care  
10 Licensing Trust Fund; to provide for the use and administration of the fund; to  
11 provide an effective date; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 46:1421 is hereby amended and reenacted and R.S. 46:1430 is hereby  
14 enacted to read as follows:

15 §1421. Operating without or in violation of license; penalty

16 Whoever operates any child care facility or child-placing agency, as defined  
17 in R.S. 46:1403, without a valid license issued by the department shall be fined not  
18 less than ~~seventy-five dollars nor more than two hundred fifty~~ one thousand dollars  
19 for each day of such offense.

20 \* \* \*

1        §1430. Operating in violation of regulations; penalties and fines

2            A.(1) For violations related to supervision, criminal history record checks,  
3        the state central registry disclosure process, staff-to-child ratios, motor vehicle  
4        checks, or failure to report critical incidents, the Department of Children and Family  
5        Services may issue a written warning that includes a corrective action plan, in lieu  
6        of revocation, upon any person or entity violating these requirements if such  
7        condition or occurrence does not pose an imminent threat to the health, safety, rights,  
8        or welfare of a child. Failure to implement a corrective action plan issued pursuant  
9        to this Section may result in either the assessment of a civil fine or license revocation  
10       or may result in both actions being taken by the department. Such civil fine shall not  
11       exceed two hundred fifty dollars per day for each assessment; however, the  
12       aggregate fines assessed for violations determined in any consecutive twelve-month  
13       period shall not exceed two thousand dollars.

14           (2) The department shall adopt rules in accordance with the Administrative  
15        Procedure Act which articulate factors in determining the type of sanction imposed  
16        including the severity of risk, the actual harm and mitigating circumstances, the  
17        failure to implement a written corrective action plan, the history of noncompliance,  
18        an explanation of the treatment of continuing and repeat deficiencies, evidence of a  
19        good faith effort to comply, and any other relevant factors. The department shall  
20        develop and adopt rules and regulations required by this Paragraph with input and  
21        guidance from the Louisiana Advisory Council on Child Care and Early Education.  
22        The authority to impose sanctions pursuant to this Section shall commence on the  
23        effective date of the rules promulgated pursuant to this Section.

24           B. The department shall adopt rules and regulations in accordance with the  
25        Administrative Procedure Act to provide for notice to the child care facility or child-  
26        placing agency of any violation, for a departmental reconsideration process for  
27        sanctions issued, and for an appeal procedure including judicial review. Such appeal  
28        shall be suspensive. All appeals pursuant to this Subsection shall be heard by the  
29        division of administrative law pursuant to Chapter 13-B of Title 49 of the Louisiana

1        Revised Statutes of 1950. The division shall furnish to the facility or agency a copy  
2        of the decision, together with notice of the manner for requesting judicial review.  
3        During the pendency of an appeal, a child care facility or child-placing agency may  
4        continue to receive funding for services provided to those eligible children as  
5        determined by the department.

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

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

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

25               (3) The monies in the fund shall be invested by the treasurer in the same  
26       manner as the monies in the state general fund, and all interest earned from the  
27       investment of monies in the fund shall be deposited in and remain to the credit of the

- 1        fund. All unexpended and unencumbered monies remaining in the fund at the end  
2        of the fiscal year shall remain in the fund.  
3        Section 2. This Act shall become effective January 1, 2013.
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## 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)]

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Simon

HB No. 861

**Abstract:** Provides relative to penalties imposed on child care facilities and child-placing agencies that violate terms of licensure and individuals or entities that operate without or in violation of a license.

Present law establishes penalties for operating without or in violation of a license of not less than \$75 nor more than \$250 for each day of such offense.

Proposed law increases the penalty to \$1,000 for each day of the offense.

Proposed law authorizes, in lieu of revocation, the issuance of a written warning which includes a corrective action plan for violations related to supervision, criminal history record checks, 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.

Provides that the failure to implement a corrective action plan issued pursuant to proposed law may result in either the assessment of a civil fine or license revocation or may result in both actions being taken by the department. Establishes a \$250 civil fine per day for each assessment. Provides that the aggregate fines assessed for violations determined in any consecutive 12-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 determining the type of sanction imposed, including the severity of risk, the actual harm and mitigating circumstances, the failure to implement a written corrective action plan, 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 sanctions 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 sanctions 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.

(Amends R.S. 46:1421; Adds R.S. 46:1430)

#### Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Health and Welfare to the original bill.

1. Made technical changes.
2. Increased the penalty for operating without or in violation of a license from at least \$75 and not more than \$250 to not less than \$1,000 dollars for each day of the offense.
3. Clarified that criminal history record checks and the state central registry disclosure process are two separate violations.
4. Removed authority to exclusively assess civil fines in lieu of revocation.
5. Added a provision that authorizes the Department of Children and Family Services to issue a written warning that includes a corrective action plan in lieu of revocation for certain enumerated violations.
6. Added a provision that provides that the failure to implement a corrective action plan issued pursuant to proposed law may result in either the assessment of a civil fine or license revocation or may result in both actions being taken by the department.

7. Modified a provision to specify that the department must adopt rules that articulate factors in determining the type of sanction imposed for certain violations.
8. Added the failure to implement a written corrective action plan as a factor that the department may consider when determining the imposition of sanctions.