

Regular Session, 2012

# ACT No. 599

HOUSE BILL NO. 861

BY REPRESENTATIVES SIMON AND LEGER AND SENATOR JOHNS

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AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

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

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

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

A.(1) For violations related to supervision, criminal history record checks, the state central registry disclosure process, staff-to-child ratios, motor vehicle checks, or failure to report critical incidents, the Department of Children and Family

1           Services may issue a written warning that includes a corrective action plan, in lieu  
2           of revocation, upon any person or entity violating these requirements if such  
3           condition or occurrence does not pose an imminent threat to the health, safety, rights,  
4           or welfare of a child. Failure to implement a corrective action plan issued pursuant  
5           to this Section may result in either the assessment of a civil fine or license revocation  
6           or may result in both actions being taken by the department. Such civil fine shall not  
7           exceed two hundred fifty dollars per day for each assessment; however, the  
8           aggregate fines assessed for violations determined in any consecutive twelve-month  
9           period shall not exceed two thousand dollars.

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

20           B. The department shall adopt rules and regulations in accordance with the  
21           Administrative Procedure Act to provide for notice to the child care facility or child-  
22           placing agency of any violation, for a departmental reconsideration process for  
23           sanctions issued, and for an appeal procedure including judicial review. Such appeal  
24           shall be suspensive. All appeals pursuant to this Subsection shall be heard by the  
25           division of administrative law pursuant to Chapter 13-B of Title 49 of the Louisiana  
26           Revised Statutes of 1950. The division shall furnish to the facility or agency a copy  
27           of the decision, together with notice of the manner for requesting judicial review.  
28           During the pendency of an appeal, a child care facility or child-placing agency may  
29           continue to receive funding for services provided to those eligible children as  
30           determined by the department.

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

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

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

20           (3) The monies in the fund shall be invested by the treasurer in the same  
21           manner as the monies in the state general fund, and all interest earned from the  
22           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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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_