

HOUSE BILL NO. 2096

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SCHUPP (Sponsor), LANT, LAFEVER, MORGAN, NEWMAN, MCDONALD, RIZZO, DUNN, CURTIS, PACE, MONTECILLO, KELLY (45), MCCANN BEATTY, ENGLUND, MEREDITH, MCNEIL, HUMMEL, NORR, MCMANUS, BLACK, FITZWATER, REIBOLDT, BERRY AND SOLON (Co-sponsors).

6329L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 210.211 and 210.245, RSMo, and to enact in lieu thereof two new sections relating to child care facilities, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 210.211 and 210.245, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 210.211 and 210.245, to read as follows:

210.211. 1. It shall be unlawful for any person to establish, maintain or operate a
2 child-care facility for children, or to advertise or hold himself or herself out as being able to
3 perform any of the services as defined in section 210.201, without having in effect a written
4 license granted by the department of health and senior services; except that nothing in sections
5 210.203 to 210.245 shall apply to:

6 (1) Any person who is caring for four or fewer children. For purposes of this
7 subdivision, children who are related by blood, marriage or adoption to such person within the
8 third degree shall [not] **only** be considered in the total number of children being cared for **if the**
9 **person is also caring for at least two other children for pecuniary gain who are unrelated**
10 **by blood, marriage, or adoption to such person within the third degree and such children**
11 **are not being cared for due to extenuating circumstances not exceeding thirty days within**
12 **one calendar year. For purposes of this subdivision, children who live in the caregiver's**
13 **home and are eligible for enrollment in a public kindergarten or elementary school shall**
14 **not be considered in the total number of children being cared for;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (2) Any person who has been duly appointed by a court of competent jurisdiction the
16 guardian of the person of the child or children, or the person who has legal custody of the child
17 or children;

18 (3) Any person who receives free of charge, and not as a business, for periods not
19 exceeding ninety consecutive days, as bona fide, occasional and personal guests the child or
20 children of personal friends of such person, and who receives custody of no other unrelated child
21 or children;

22 (4) Any graded boarding school, summer camp, hospital, sanitarium or home which is
23 conducted in good faith primarily to provide education, recreation, medical treatment, or nursing
24 or convalescent care for children;

25 (5) Any child-care facility maintained or operated under the exclusive control of a
26 religious organization. When a nonreligious organization, having as its principal purpose the
27 provision of child-care services, enters into an arrangement with a religious organization for the
28 maintenance or operation of a child-care facility, the facility is not under the exclusive control
29 of the religious organization;

30 (6) Any residential facility or day program licensed by the department of mental health
31 pursuant to sections 630.705 to 630.760 which provides care, treatment and habilitation
32 exclusively to children who have a primary diagnosis of mental disorder, mental illness, mental
33 retardation or developmental disability, as defined in section 630.005; and

34 (7) Any nursery school.

35 2. Notwithstanding the provisions of subsection 1 of this section, no child-care facility
36 shall be exempt from licensure if such facility receives any state or federal funds for providing
37 care for children, except for federal funds for those programs which meet the requirements for
38 participation in the Child and Adult Care Food Program pursuant to 42 U.S.C. 1766. Grants to
39 parents for child care pursuant to sections 210.201 to 210.257 shall not be construed to be funds
40 received by a person or facility listed in subdivisions (1) and (5) of subsection 1 of this section.

41 3. [Any] **All** child care [facility not exempt from licensure] **facilities** shall disclose the
42 licensure status of the facility to the parents or guardians of children for which the facility
43 provides care. No child care facility exempt from licensure shall represent to any parent or
44 guardian of children for which the facility provides care that the facility is licensed when such
45 facility is in fact not licensed.

210.245. 1. Any person who violates any provision of sections 210.201 to 210.245, or
2 who for such person or for any other person makes materially false statements in order to obtain
3 a license or the renewal thereof pursuant to sections 210.201 to 210.245, shall be guilty of an
4 infraction for the first offense [and shall be assessed a fine not to exceed two hundred dollars]
5 and shall be guilty of a class A misdemeanor and shall be assessed a fine of up to two hundred

6 dollars per day, not to exceed a total of ten thousand dollars for subsequent offenses. In case
7 such guilty person is a corporation, association, institution or society, the officers thereof who
8 participate in such misdemeanor shall be subject to the penalties provided by law.

9 2. If the department of health and senior services proposes to deny, suspend, place on
10 probation or revoke a license, the department of health and senior services shall serve upon the
11 applicant or licensee written notice of the proposed action to be taken. The notice shall contain
12 a statement of the type of action proposed, the basis for it, the date the action will become
13 effective, and a statement that the applicant or licensee shall have thirty days to request in writing
14 a hearing before the administrative hearing commission and that such request shall be made to
15 the department of health and senior services. If no written request for a hearing is received by
16 the department of health and senior services within thirty days of the delivery or mailing by
17 certified mail of the notice to the applicant or licensee, the proposed discipline shall take effect
18 on the thirty-first day after such delivery or mailing of the notice to the applicant or licensee. If
19 the applicant or licensee makes a written request for a hearing, the department of health and
20 senior services shall file a complaint with the administrative hearing commission within ninety
21 days of receipt of the request for a hearing.

22 3. The department of health and senior services may issue letters of censure or warning
23 without formal notice or hearing. Additionally, the department of health and senior services may
24 place a licensee on probation pursuant to chapter 621.

25 4. The department of health and senior services may suspend any license simultaneously
26 with the notice of the proposed action to be taken in subsection 2 of this section, if the
27 department of health and senior services finds that there is a threat of imminent bodily harm to
28 the children in care. The notice of suspension shall include the basis of the suspension and the
29 appeal rights of the licensee pursuant to this section. The licensee may appeal the decision to
30 suspend the license to the department of health and senior services. The appeal shall be filed
31 within ten days from the delivery or mailing by certified mail of the notice of appeal. A hearing
32 shall be conducted by the department of health and senior services within ten days from the date
33 the appeal is filed. The suspension shall continue in effect until the conclusion of the
34 proceedings, including review thereof, unless sooner withdrawn by the department of health and
35 senior services, dissolved by a court of competent jurisdiction or stayed by the administrative
36 hearing commission. Any person aggrieved by a final decision of the department made pursuant
37 to this section shall be entitled to judicial review in accordance with chapter 536.

38 5. In addition to initiating proceedings pursuant to subsection 1 of this section, or in lieu
39 thereof, the prosecuting attorney of the county where the child-care facility is located may file
40 suit for a preliminary and permanent order overseeing or preventing the operation of a child-care
41 facility for violating any provision of sections 210.201 to 210.245. The order shall remain in

42 force until such a time as the court determines that the child-care facility is in substantial
43 compliance. If the prosecuting attorney refuses to act or fails to act after receipt of notice from
44 the department of health and senior services, the department of health and senior services may
45 request that the attorney general seek an injunction of the operation of such child-care facility.

46 6. In cases of imminent bodily harm to children in the care of a child-care facility, the
47 department may file suit in the circuit court of the county in which the child-care facility is
48 located for injunctive relief, which may include removing the children from the facility,
49 overseeing the operation of the facility or closing the facility.

50 **7. The department of health and senior services may immediately close any illegally**
51 **operating unlicensed child care facility upon documentation of the illegal status of the**
52 **facility or the finding of an emergency based on the harm or imminent harm to the**
53 **children involved. The prosecuting attorney of the county where such illegal child care**
54 **facility is located may file suit for a permanent order preventing the operation of such child**
55 **care facility. The order shall remain in effect until the court determines that the child care**
56 **facility is in compliance with all licensure requirements. Any person who operates an**
57 **illegal unlicensed child care facility is subject to the penalties set forth in subsection 1 of**
58 **this section. Any operator of a facility closed under this provision that is later found to**
59 **have been legal shall have the right to exercise any rights and remedies which may be**
60 **available at law or in equity.**

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