**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “CHILDCARE SAFETY ENHANCEMENT ACT OF 2009” BY AMENDING SECTION 63-13-180, RELATING TO THE DEPARTMENT OBTAINING THE ADVICE AND CONSENT OF THE STATE ADVISORY COMMITTEE ON THE PROMULGATION OF REGULATIONS FOR CHILDCARE FACILITIES, TO PROVIDE THAT THE DEPARTMENT SHALL ONLY OBTAIN THE ADVICE OF THE COMMITTEE ON THE PROMULGATION OF REGULATIONS; TO AMEND SECTION 63-13-1210, RELATING TO THE ESTABLISHMENT OF THE STATE ADVISORY COMMITTEE ON THE REGULATION OF CHILDCARE FACILITIES AND THE MEMBERSHIP OF THE COMMITTEE, TO INCREASE THE NUMBER OF PARENT MEMBERS ON THIS COMMITTEE BY ONE AND TO DECREASE THE NUMBER OF OWNERS AND OPERATORS OF CHILDCARE FACILITIES ON THIS COMMITTEE BY ONE; TO AMEND SECTION 63-13-1220, RELATING TO THE DUTIES OF THE STATE ADVISORY COMMITTEE ON THE REGULATION OF CHILDCARE FACILITIES, TO DELETE THE PROVISION THAT NO REGULATION MAY BE PROMULGATED IF DISAPPROVED BY THE COMMITTEE; AND TO ADD SECTION 63-13-220, TO SPECIFY THE TYPE OF VIOLATIONS SUBJECT TO FINES AND THE MAXIMUM FINE AMOUNT FOR EACH TYPE VIOLATION AND TO PROVIDE PROCEDURES FOR NOTIFICATION OF VIOLATIONS, FOR IMPOSITION OF FINES, FOR CORRECTION OF VIOLATIONS, FOR PAYMENT OF FINES, AND FOR APPEALING FINES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “Childcare Safety Enhancement Act of 2009”.

SECTION 2. Section 63-13-180(A) of the 1976 Code is amended to read:

“(A) The department, ~~shall~~ with the advice ~~and consent~~ of the Advisory Committee, shall develop and promulgate regulations depending upon the nature of services to be provided for the operation and maintenance of childcare centers and group childcare homes. The department, with the advice of the Advisory Committee, shall develop suggested standards which shall serve as guidelines for the operators of family childcare homes and the parents of children who use the service. In developing these regulations and suggested standards, the department shall consult with:

(1) ~~Other~~ other state agencies, including the ~~State~~ Department of Health and Environmental Control, the Office of the State Fire Marshal, and the Office of the Attorney General~~.~~;

(2) ~~Parents~~ parents, guardians, or custodians of children using the service~~.~~;

(3) ~~Child~~ child advocacy groups~~.~~;

(4) ~~The~~ the State Advisory Committee on the Regulation of Childcare Facilities established by this chapter~~.~~;

(5) ~~Operators~~ operators of childcare facilities from all sectors~~.~~;

(6) ~~Professionals~~ professionals in fields relevant to childcare and development~~.~~; and

(7) ~~Employers~~ employers of parents, guardians, or custodians of children using the service.

Draft formulations must be widely circulated for criticism and comment.”

SECTION 3. Section 63-13-1210 of the 1976 Code is amended to read:

“Section 63-13-1210.(A) A State Advisory Committee on the Regulation of Childcare Facilities is established. It consists of seventeen members appointed by the Governor, in accordance with the following:

(1) ~~Five~~ Six of the members appointed must be parents of children who are receiving childcare services at the time of appointment, with no ~~less~~ fewer than three representing the entrepreneurial facilities.

(2) ~~Eight~~ Seven of the members appointed must be representative of owners and operators of childcare facilities, one of which must be an operator of a childcare home. No ~~less~~ fewer than five ~~other~~ of the seven appointees must be operators of facilities subject to regulation who are actively engaged in the operation for profit.

(3) One member appointed shall represent the educational community of the State.

Nominees for membership on the advisory committee pursuant to items (1), (2), and (3) must be made from lists furnished the Governor by South Carolina organizations representing the various types of childcare facilities defined in this chapter.

(4) One member appointed shall represent the business community of the State. Nominees for membership pursuant to this item must be made from lists furnished the Governor by the South Carolina Chamber of Commerce.

(5) Two members appointed shall represent church‑operated childcare centers, one of whom must be an operator of a church childcare center and one of whom must be a parent of a child who is receiving childcare services in a church‑operated childcare center at the time of appointment.

~~b.~~(B) Members shall serve for terms of three years and until their successors are appointed and qualify~~, except that of those initially appointed five shall serve for one year, five for two years, and five for three years~~. Vacancies must be filled in the manner of the original appointment for the unexpired portion of the term only. Reappointment to serve a full term may ensue at the discretion of the Governor~~,~~; however, no member may be permitted to succeed himself after serving a full term.

~~c.~~(C) The chairman of the committee must be designated by the Governor from among the ~~appointees selected pursuant to the provisions of items (1) and (2) of subsection a. of this section~~ members of the committee.”

SECTION 4. Section 63-13-1220 of the 1976 Code is amended to read:

“Section 63-13-1220. The State Advisory Committee on the Regulation of Childcare Facilities shall:

(1) ~~Review~~ review changes in the regulations and suggested standards proposed by the director or his designee and make recommendations on these changes to the director or his designee. The committee shall ~~evaluate~~ review the regulations and suggested standards at the three‑year review period ~~(~~, as provided for in subsection (C) of Section 63-13-180~~)~~, and recommend ~~necessary~~ changes~~. No regulation may be promulgated if the standard has been disapproved by a simple majority of the committee.~~;

(2) ~~Advise~~ advise the department regarding the improvement of the regulation of childcare facilities~~.~~;

(3) ~~Advise~~ advise the department on matters of regulatory policy, planning, and priorities~~.~~;

(4) ~~As~~ as it considers necessary, hold ~~a~~ public ~~hearing~~ ~~at least thirty days before adoption of the regulations.~~ hearings;

(5) ~~Plan~~ consult with the department ~~for~~ regarding the procedures to be used in notifying licensees, approved operators, and registrants regarding regulatory changes sixty days before intended promulgation~~.~~;

(6) ~~Maintain~~ maintain through the department the essential liaison with other departments and agencies of state and local government so as to preclude imposition of duplicate requirements upon operators subject to regulations under this chapter~~.~~;

(7) ~~Act~~ act to move the adoption of its recommendations and other pertinent disposition of matters before it by decision of a simple majority of those members present and voting, provided there is a quorum of eight members.”

SECTION 5. Article 1, Chapter 13, Title 63 of the 1976 Code is amended by adding:

“Section 63-13-220. (A) As used in this section:

(1) ‘Violation’ means a violation of a provision of this chapter or a regulation promulgated pursuant to this chapter that:

(a) constitutes an imminent danger to the health and safety of a child in a childcare facility;

(b) endangers, or has the potential to endanger, the health, safety, or well‑being of a child in a childcare facility; or

(c) due to the consistency and frequency of the violation, could result in a threat of harm to a child in their care .

(2) ‘Fine’ means a monetary penalty.

(3) ‘Imminent danger’ means a situation that if not immediately corrected would be likely to cause bodily injury, pain, or death.

(4) ‘Notice of noncompliance’ means the official written communication from the department that includes specifics of the violation of a provision of this chapter or a regulation promulgated pursuant to this chapter and the fine, if any.

(B)(1) An on‑site deficiency citation on the appropriate department form may state whether the violation is a first violation or subsequent violation and must:

(a) describe the violation;

(b) cite the provision of this chapter or the regulation that was violated.

(2) A notice of noncompliance must:

(a) describe the violation;

(b) cite the provision of this chapter or the regulation that was violated;

(c) state whether the violation is a first violation or subsequent violation;

(d) state the period of time the childcare facility has to correct the condition or practice that constituted the violation; and

(e) state the amount of the fine, if any.

(C)(1) Violations must be corrected immediately unless a fixed period of time for correction is stipulated by the department and stated in the citation.

(2) An uncorrected violation may constitute a separate violation.

(D)(1) A facility that violates a provision of this chapter or a regulation promulgated pursuant to this chapter is deemed to be in wilful violation of the chapter or the regulation, and a fine may be imposed against the facility by the department as provided for in this section.

(2) Before the department imposes a fine against a facility, a panel comprised of the state director of the Division of Childcare Licensing, or a designee, and four supervisors in the division, or their designees, shall review the circumstances of the violation. The panel shall evaluate whether the circumstances warrant imposing a fine and the amount of the fine, and shall make these recommendations to the director or the director’s designee. The final decision to impose a fine and the amount of the fine must be determined by the director or the director’s designee.

(3) The department may not impose a fine against a facility if extenuating circumstances exist that prohibit the facility from immediately correcting a violation and the facility provides evidence to the satisfaction of the department proving that the facility has made a sufficient and reasonable attempt to correct the violation in a timely manner and has eliminated the possibility of imminent danger to the health and safety of children in the facility. If the violation is not corrected within a reasonable period of time, the department may impose a fine against the facility.

(E)(1) Fines must be based on these factors:

(a) wilful or negligent noncompliance by the facility;

(b) history of noncompliance;

(c) extent of deviation from the chapter or regulation;

(d) evidence of good faith effort to comply; and

(e) other factors relevant to the unique situation.

(2) A facility that commits a violation must be fined:

(a) not more than one thousand dollars if it is substantiated that a child was abused or neglected while in care and the violation presents an imminent danger to the health and safety of children;

(b) not more than five hundred dollars if a violation endangers, or has the potential to endanger, the children’s health, safety, or well‑being, including, but not limited to:

(i) repeated incidents exceeding the number of children allowed;

(ii) repeated incidents in which there has been a lack of supervision of the children; or

(iii) wilful, repeated pattern of noncompliance with a childcare requirement;

(iv) failure to comply with a corrective action plan designed by the department to correct noncompliance with an applicable childcare requirement.

(F) A fine imposed pursuant to this section must be paid in full not more than thirty days after receipt of the citation or notice of noncompliance. An entity that shows good faith in its intention to pay a fine, but which cannot pay the fine in full, may request that the department place the entity on a payment plan in accordance with departmental policy.

(G)(1) Within thirty days of receiving a notice of noncompliance imposing a fine, the childcare facility may file a written request with the Office of Administrative Hearings appealing the fine. The appeal stays the imposition of the fine and any conditions for additional citations for that violation.

(2) The Office of Administrative Hearings shall give notice of a hearing no later than thirty days after receiving the request appealing the fine.

(3) After the hearing, a final decision regarding the fine must be rendered by the director of the department or the director’s designee.

(4) The director’s designee does not have the authority to reduce a fine during the appeal process but in the final appeal order does have authority to revise the fine based on findings of fact.

(5) When the result of the appeal is favorable to the department, the fine must be paid on or before the date specified in the final appeal order. Fines collected by the department must be remitted to the State Treasurer and credited to the general fund.

(6) When the result of the appeal is favorable to the facility, any fines paid to the department must be returned to the facility and any reference to the citation removed from the department file.

(7) Failure to pay a fine by the date specified in the final appeal order or failure to file a request appealing a fine within thirty days after receiving the notice of noncompliance may result in revocation of the childcare facility’s license or registration.

(8) The final appeal order is the final decision of the department and may be appealed to an administrative law judge pursuant to the Administrative Procedures Act.”

SECTION 6. This act takes effect one hundred and eighty days after approval by the Governor.

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