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SECOND SUBSTITUTE SENATE BILL 5660

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State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Kohl, Long, Hargrove and Winsley)

Read first time 03/10/97.

1 AN ACT Relating to out-of-home care; amending RCW 74.15.130;  
2 reenacting and amending RCW 74.15.020; adding new sections to chapter  
3 74.15 RCW; creating new sections; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that consumers of  
6 child care services have a legitimate interest in receiving timely  
7 information about child care service providers in order to make  
8 meaningful choices regarding the facilities and people who provide care  
9 for their children. The legislature further finds that as a result of  
10 improvements in information management systems, the state's ability to  
11 provide relevant information to child care service consumers has also  
12 improved.

13 The legislature finds that parents often do not receive timely  
14 information about enforcement actions when complaints are made alleging  
15 serious issues affecting the health or safety of children. The  
16 legislature intends to utilize the state's improved ability to collect  
17 and manage information about child care service providers by requiring  
18 that all relevant licensing actions and enforcement actions be reported  
19 to appropriate individuals and organizations in a timely manner. The

1 legislature further intends to authorize the department to report such  
2 information to the general public when necessary and appropriate for  
3 the health or safety of children.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 74.15 RCW  
5 to read as follows:

6 (1) Every child day-care center and family day-care provider shall  
7 prominently post the following items, clearly visible to parents and  
8 staff:

9 (a) The license issued under this chapter;

10 (b) The notice of any pending enforcement action. The notice must  
11 be posted immediately upon receipt. The notice must be posted for at  
12 least two weeks or until the violation causing the enforcement action  
13 is corrected, whichever is longer;

14 (c) A notice that inspection reports and any notices of enforcement  
15 actions for the previous three years are available from the licensee  
16 and the department; and

17 (d) Any other information required by the department.

18 (2) The department is authorized to report to the general public  
19 and counterpart licensing departments in other states, as may be  
20 necessary and appropriate to protect the health or safety of children,  
21 any information that is required to be reported under subsection (1) of  
22 this section.

23 (3) If the child day-care center or family day-care provider is  
24 later found to have not committed the acts or conduct justifying the  
25 enforcement action under subsection (1) or (2) of this section, the  
26 department shall forthwith prepare a notice of public exoneration. The  
27 department shall report the public exoneration to the same people and  
28 entities, and in the same manner, who received a report under  
29 subsection (1) or (2) of this section. Such notice must also be  
30 maintained as part of the department's permanent record of the  
31 enforcement action.

32 (4) The department shall disclose, upon request, the receipt,  
33 general nature, and resolution or current status of all complaints on  
34 record with the department after the effective date of this act against  
35 a child day-care center or family day-care provider that result in an  
36 enforcement action.

1 This section shall not be construed to require the disclosure of  
2 any information that is exempt from public disclosure under chapter  
3 42.17 RCW.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 74.15 RCW  
5 to read as follows:

6 (1) Every child day-care center and family day-care provider shall  
7 have readily available for review by the department, parents, and the  
8 public a copy of each inspection report and notice of enforcement  
9 action received by the center or provider from the department for the  
10 past three years. This subsection only applies to reports and notices  
11 received on or after the effective date of this act.

12 (2) The department shall make available to the public during  
13 business hours all inspection reports and notices of enforcement  
14 actions involving child day-care centers and family day-care providers  
15 consistent with chapter 42.17 RCW. The department shall include in the  
16 inspection report a statement of the corrective measures taken by the  
17 center or provider.

18 **Sec. 4.** RCW 74.15.130 and 1995 c 302 s 5 are each amended to read  
19 as follows:

20 (1) An agency may be denied a license, or any license issued  
21 pursuant to chapter 74.15 RCW and RCW 74.13.031 may be suspended,  
22 revoked, modified, or not renewed by the secretary upon proof (a) that  
23 the agency has failed or refused to comply with the provisions of  
24 chapter 74.15 RCW and RCW 74.13.031 or the requirements promulgated  
25 pursuant to the provisions of chapter 74.15 RCW and RCW 74.13.031; or  
26 (b) that the conditions required for the issuance of a license under  
27 chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect  
28 to such licenses. RCW 43.20A.205 governs notice of a license denial,  
29 revocation, suspension, or modification and provides the right to an  
30 adjudicative proceeding.

31 (2) In any adjudicative proceeding regarding the denial,  
32 modification, suspension, or revocation of a foster family home  
33 license, the department's decision shall be upheld if there is  
34 reasonable cause to believe that:

35 (a) The applicant or licensee lacks the character, suitability, or  
36 competence to care for children placed in out-of-home care;

1 (b) The applicant or licensee has failed or refused to comply with  
2 any provision of chapter 74.15 RCW, RCW 74.13.031, or the requirements  
3 adopted pursuant to such provisions; or

4 (c) The conditions required for issuance of a license under chapter  
5 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such  
6 licenses.

7 (3) In any adjudicative proceeding regarding the denial,  
8 modification, suspension, or revocation of any license under this  
9 chapter, other than a foster family home license, the department's  
10 decision shall be upheld if it is supported by a preponderance of the  
11 evidence.

12 (4) The department may assess civil monetary penalties upon proof  
13 that an agency has failed or refused to comply with the rules adopted  
14 under the provisions of this chapter and RCW 74.13.031 or that an  
15 agency subject to licensing under this chapter and RCW 74.13.031 is  
16 operating without a license except that civil monetary penalties shall  
17 not be levied against a licensed foster home. Monetary penalties  
18 levied against unlicensed agencies that submit an application for  
19 licensure within thirty days of notification and subsequently become  
20 licensed will be forgiven. These penalties may be assessed in addition  
21 to or in lieu of other disciplinary actions. Civil monetary penalties,  
22 if imposed, may be assessed and collected, with interest, for each day  
23 an agency is or was out of compliance. Civil monetary penalties shall  
24 not exceed seventy-five dollars per violation for a family day-care  
25 home and two hundred fifty dollars per violation for group homes, child  
26 day-care centers, and child-placing agencies. Each day upon which the  
27 same or substantially similar action occurs is a separate violation  
28 subject to the assessment of a separate penalty. The department shall  
29 provide a notification period before a monetary penalty is effective  
30 and may forgive the penalty levied if the agency comes into compliance  
31 during this period. The department may suspend, revoke, or not renew  
32 a license for failure to pay a civil monetary penalty it has assessed  
33 pursuant to this chapter within ten days after such assessment becomes  
34 final. Chapter 43.20A RCW governs notice of a civil monetary penalty  
35 and provides the right of an adjudicative proceeding. The  
36 preponderance of evidence standard shall apply in adjudicative  
37 proceedings related to assessment of civil monetary penalties.

38 (5)(a) The department may place a child day-care center or family  
39 day-care provider on nonreferral status or stop placement status if the

1 center or provider has failed or refused to comply with this chapter or  
2 rules adopted under this chapter and an enforcement action has been  
3 taken. The nonreferral status or stop placement status may continue  
4 until the department determines that: (i) No enforcement action is  
5 appropriate; (ii) a complaint is not founded or valid; or (iii) a  
6 corrective action plan has been successfully concluded. The department  
7 shall then remove the center or provider from nonreferral status and  
8 provide appropriate notice to the public and private child care  
9 resource and referral agencies.

10 (b) The department shall notify appropriate public and private  
11 child care resource and referral agencies of the department's decision  
12 to take an enforcement action against the center or provider.

13 (6) Whenever an enforcement action is taken, the department shall  
14 notify the agency subject to the action in writing by certified mail  
15 within two business days.

16 NEW SECTION. Sec. 5. A new section is added to chapter 74.15 RCW  
17 to read as follows:

18 (1) The department shall compile an annual report summarizing all  
19 enforcement actions for the previous fiscal year relating to children  
20 in the care of child day-care centers and family day-care providers.  
21 The report must be provided to the legislature, the child care  
22 coordinating committee, and child care resource and referral agencies  
23 by August 1st of each year beginning in 1998.

24 (2) The report must include, at a minimum: (a) An analysis of the  
25 volume and general nature of all reports and disclosures made by the  
26 department as required or authorized under section 2 of this act; (b)  
27 an analysis of the volume and general nature of the enforcement  
28 actions, pending complaint investigations, and ongoing corrective  
29 action plans for which the department placed centers and providers on  
30 nonreferral or stop placement status under section 3 of this act; (c)  
31 an analysis of the volume and general nature of complaints determined  
32 to be invalid, inconclusive, or unfounded; and (d) information about  
33 the average length of time required by the department to complete  
34 investigations determined to be (i) founded or valid, (ii)  
35 inconclusive, and (iii) invalid or unfounded.

36 **Sec. 6.** RCW 74.15.020 and 1995 c 311 s 18 and 1995 c 302 s 3 are  
37 each reenacted and amended to read as follows:

1 For the purpose of chapter 74.15 RCW and RCW 74.13.031, and unless  
2 otherwise clearly indicated by the context thereof, the following terms  
3 shall mean:

4 ~~(1) ("Department" means the state department of social and health~~  
5 ~~services;~~

6 ~~(2) "Secretary" means the secretary of social and health services;~~

7 ~~(3))~~ "Adverse licensing action" means a denial, suspension,  
8 revocation, modification, or nonrenewal of a license pursuant to RCW  
9 74.15.130, or issuance of a probationary license pursuant to RCW  
10 74.15.125.

11 (2) "Agency" means any person, firm, partnership, association,  
12 corporation, or facility which receives children, expectant mothers, or  
13 persons with developmental disabilities for control, care, or  
14 maintenance outside their own homes, or which places, arranges the  
15 placement of, or assists in the placement of children, expectant  
16 mothers, or persons with developmental disabilities for foster care or  
17 placement of children for adoption, and shall include the following  
18 irrespective of whether there is compensation to the agency or to the  
19 children, expectant mothers or persons with developmental disabilities  
20 for services rendered:

21 (a) "Group-care facility" means an agency, other than a foster-  
22 family home, which is maintained and operated for the care of a group  
23 of children on a twenty-four hour basis;

24 (b) "Child-placing agency" means an agency which places a child or  
25 children for temporary care, continued care, or for adoption;

26 (c) "Maternity service" means an agency which provides or arranges  
27 for care or services to expectant mothers, before or during  
28 confinement, or which provides care as needed to mothers and their  
29 infants after confinement;

30 (d) "Child day-care center" means an agency which regularly  
31 provides care for a group of children for periods of less than twenty-  
32 four hours;

33 (e) "Family day-care provider" means a child day-care provider who  
34 regularly provides child day care for not more than twelve children in  
35 the provider's home in the family living quarters;

36 (f) "Foster-family home" means an agency which regularly provides  
37 care on a twenty-four hour basis to one or more children, expectant  
38 mothers, or persons with developmental disabilities in the family abode  
39 of the person or persons under whose direct care and supervision the

1 child, expectant mother, or person with a developmental disability is  
2 placed;

3 (g) "Crisis residential center" means an agency which is a  
4 temporary protective residential facility operated to perform the  
5 duties specified in chapter 13.32A RCW, in the manner provided in RCW  
6 74.13.032 through 74.13.036.

7 (~~(4)~~) (3) "Agency" shall not include the following:

8 (a) Persons related to the child, expectant mother, or person with  
9 developmental disabilities in the following ways:

10 (i) Any blood relative, including those of half blood, and  
11 including first cousins, nephews or nieces, and persons of preceding  
12 generations as denoted by prefixes of grand, great, or great-great;

13 (ii) Stepfather, stepmother, stepbrother, and stepsister;

14 (iii) A person who legally adopts a child or the child's parent as  
15 well as the natural and other legally adopted children of such persons,  
16 and other relatives of the adoptive parents in accordance with state  
17 law;

18 (iv) Spouses of any persons named in (a)(i), (ii), or (iii) of this  
19 subsection, even after the marriage is terminated; or

20 (v) Extended family members, as defined by the law or custom of the  
21 Indian child's tribe or, in the absence of such law or custom, a person  
22 who has reached the age of eighteen and who is the Indian child's  
23 grandparent, aunt or uncle, brother or sister, brother-in-law or  
24 sister-in-law, niece or nephew, first or second cousin, or stepparent  
25 who provides care in the family abode on a twenty-four-hour basis to an  
26 Indian child as defined in 25 U.S.C. Sec. 1903(4);

27 (b) Persons who are legal guardians of the child, expectant mother,  
28 or persons with developmental disabilities;

29 (c) Persons who care for a neighbor's or friend's child or  
30 children, with or without compensation, where: (i) The person  
31 providing care for periods of less than twenty-four hours does not  
32 conduct such activity on an ongoing, regularly scheduled basis for the  
33 purpose of engaging in business, which includes, but is not limited to,  
34 advertising such care; or (ii) the parent and person providing care on  
35 a twenty-four-hour basis have agreed to the placement in writing and  
36 the state is not providing any payment for the care;

37 (d) Parents on a mutually cooperative basis exchange care of one  
38 another's children;

1 (e) A person, partnership, corporation, or other entity that  
2 provides placement or similar services to exchange students or  
3 international student exchange visitors or persons who have the care of  
4 an exchange student in their home;

5 (f) Nursery schools or kindergartens which are engaged primarily in  
6 educational work with preschool children and in which no child is  
7 enrolled on a regular basis for more than four hours per day;

8 (g) Schools, including boarding schools, which are engaged  
9 primarily in education, operate on a definite school year schedule,  
10 follow a stated academic curriculum, accept only school-age children  
11 and do not accept custody of children;

12 (h) Seasonal camps of three months' or less duration engaged  
13 primarily in recreational or educational activities;

14 (i) Hospitals licensed pursuant to chapter 70.41 RCW when  
15 performing functions defined in chapter 70.41 RCW, nursing homes  
16 licensed under chapter 18.51 RCW and boarding homes licensed under  
17 chapter 18.20 RCW;

18 (j) Licensed physicians or lawyers;

19 (k) Facilities providing care to children for periods of less than  
20 twenty-four hours whose parents remain on the premises to participate  
21 in activities other than employment;

22 (l) Facilities approved and certified under chapter 71A.22 RCW;

23 (m) Any agency having been in operation in this state ten years  
24 prior to June 8, 1967, and not seeking or accepting moneys or  
25 assistance from any state or federal agency, and is supported in part  
26 by an endowment or trust fund;

27 (n) Persons who have a child in their home for purposes of  
28 adoption, if the child was placed in such home by a licensed child-  
29 placing agency, an authorized public or tribal agency or court or if a  
30 replacement report has been filed under chapter 26.33 RCW and the  
31 placement has been approved by the court;

32 (o) An agency operated by any unit of local, state, or federal  
33 government or an agency, located within the boundaries of a federally  
34 recognized Indian reservation, licensed by the Indian tribe;

35 (p) An agency located on a federal military reservation, except  
36 where the military authorities request that such agency be subject to  
37 the licensing requirements of this chapter.

38 (4) "Department" means the state department of social and health  
39 services.



1       (5) "Enforcement action" means any disciplinary action taken by the  
2 department including:

3       (a) An adverse licensing action;

4       (b) Issuance of a deficiency statement, notification of a  
5 violation, or licensing compliance plan;

6       (c) A protective action including removal of a child or initiation  
7 of court proceedings; or

8       (d) Imposition of a civil penalty.

9       (6) "Probationary license" means a license issued as a disciplinary  
10 measure to an agency that has previously been issued a full license but  
11 is out of compliance with licensing standards.

12       (7) "Referent" means a person or agency who brings to the attention  
13 of the department a complaint or information resulting in an  
14 investigation or enforcement action.

15       (8) "Requirement" means any rule, regulation, or standard of care  
16 to be maintained by an agency.

17       (~~(6) "Probationary license" means a license issued as a~~  
18 ~~disciplinary measure to an agency that has previously been issued a~~  
19 ~~full license but is out of compliance with licensing standards.))~~

20       (9) "Secretary" means the secretary of social and health services.

21       NEW SECTION. Sec. 7. The department of social and health services  
22 shall adopt rules as necessary to implement sections 2 through 5 of  
23 this act.

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