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**SUBSTITUTE SENATE BILL 5680**

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**State of Washington**

**54th Legislature**

**1995 Regular Session**

**By** Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Long, Franklin, Kohl and Winsley; by request of Department of Social and Health Services)

Read first time 02/22/95.

1       AN ACT Relating to the enforcement of child care agency licensing;  
2 amending RCW 74.15.010, 74.15.020, 74.15.030, 74.15.130, 74.15.100, and  
3 74.15.120; adding new sections to chapter 74.15 RCW; creating a new  
4 section; and prescribing penalties.

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

6       NEW SECTION.   **Sec. 1.** The legislature declares that the state of  
7 Washington has a compelling interest in protecting and promoting the  
8 health, welfare, and safety of children, including those who receive  
9 care away from their own homes. The legislature further declares that  
10 no person or agency has a right to be licensed under this chapter to  
11 provide care for children. The health, safety, and well-being of  
12 children must be the paramount concern in determining whether to issue  
13 a license to an applicant, whether to suspend or revoke a license, and  
14 whether to take other licensing action. The legislature intends,  
15 through the provisions of this act, to provide the department of social  
16 and health services with additional enforcement authority to carry out  
17 the purpose and provisions of this act. Furthermore, administrative  
18 law judges should receive specialized training so that they have the

1 specialized expertise required to appropriately review licensing  
2 decisions of the department.

3 Children placed in foster care are particularly vulnerable and have  
4 a special need for placement in an environment that is stable, safe,  
5 and nurturing. For this reason, foster homes should be held to a high  
6 standard of care, and department decisions regarding denial,  
7 suspension, or revocation of foster care licenses should be upheld on  
8 review if there are reasonable grounds for such action.

9 **Sec. 2.** RCW 74.15.010 and 1983 c 3 s 192 are each amended to read  
10 as follows:

11 The purpose of chapter 74.15 RCW and RCW 74.13.031 is:

12 (1) To safeguard the health, safety, and well-being of children,  
13 expectant mothers and developmentally disabled persons receiving care  
14 away from their own homes, which is paramount over the right of any  
15 person to provide care;

16 (2) To strengthen and encourage family unity and to sustain  
17 parental rights and responsibilities to the end that foster care is  
18 provided only when a child's family, through the use of all available  
19 resources, is unable to provide necessary care;

20 (3) To promote the development of a sufficient number and variety  
21 of adequate child-care and maternity-care facilities, both public and  
22 private, through the cooperative efforts of public and voluntary  
23 agencies and related groups((~~-~~));

24 (4) To provide consultation to agencies caring for children,  
25 expectant mothers or developmentally disabled persons in order to help  
26 them to improve their methods of and facilities for care;

27 (5) To license agencies as defined in RCW 74.15.020 and to assure  
28 the users of such agencies, their parents, the community at large and  
29 the agencies themselves that adequate minimum standards are maintained  
30 by all agencies caring for children, expectant mothers and  
31 developmentally disabled persons.

32 **Sec. 3.** RCW 74.15.020 and 1994 c 273 s 21 are each amended to read  
33 as follows:

34 For the purpose of chapter 74.15 RCW and RCW 74.13.031, and unless  
35 otherwise clearly indicated by the context thereof, the following terms  
36 shall mean:

1 (1) "Department" means the state department of social and health  
2 services;

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

4 (3) "Agency" means any person, firm, partnership, association,  
5 corporation, or facility which receives children, expectant mothers, or  
6 persons with developmental disabilities for control, care, or  
7 maintenance outside their own homes, or which places, arranges the  
8 placement of, or assists in the placement of children, expectant  
9 mothers, or persons with developmental disabilities for foster care or  
10 placement of children for adoption, and shall include the following  
11 irrespective of whether there is compensation to the agency or to the  
12 children, expectant mothers or persons with developmental disabilities  
13 for services rendered:

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

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

19 (c) "Maternity service" means an agency which provides or arranges  
20 for care or services to expectant mothers, before or during  
21 confinement, or which provides care as needed to mothers and their  
22 infants after confinement;

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

26 (e) "Family day-care provider" means a (~~licensed~~) child day-care  
27 provider who regularly provides child day care for not more than twelve  
28 children in the provider's home in the family living quarters;

29 (f) "Foster-family home" means an agency which regularly provides  
30 care on a twenty-four hour basis to one or more children, expectant  
31 mothers, or persons with developmental disabilities in the family abode  
32 of the person or persons under whose direct care and supervision the  
33 child, expectant mother, or person with a developmental disability is  
34 placed;

35 (g) "Crisis residential center" means an agency which is a  
36 temporary protective residential facility operated to perform the  
37 duties specified in chapter 13.32A RCW, in the manner provided in RCW  
38 74.13.032 through 74.13.036.

39 (4) "Agency" shall not include the following:

1 (a) ~~Persons related ((by blood or marriage to the child, expectant~~  
2 ~~mother, or persons with developmental disabilities in the following~~  
3 ~~degrees: Parent, grandparent, brother, sister, stepparent,~~  
4 ~~stepbrother, stepsister, uncle, aunt, and/or first cousin)) to the~~  
5 child, expectant mother, or person with developmental disability in the  
6 following ways:

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

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

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

15 (iv) Spouses of any persons named in (i), (ii), or (iii) of this  
16 subsection (4)(a), even after the marriage is terminated; or

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

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

26 (c) Persons who care for a neighbor's or friend's child or  
27 children, with or without compensation, where the person does not  
28 engage in such activity on a regular basis, or where parents on a  
29 mutually cooperative basis exchange care of one another's children, or  
30 persons who have the care of an exchange student in their own home;

31 (d) A person, partnership, corporation, or other entity that  
32 provides placement or similar services to exchange students or  
33 international student exchange visitors;

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

37 (f) Schools, including boarding schools, which are engaged  
38 primarily in education, operate on a definite school year schedule,

1 follow a stated academic curriculum, accept only school-age children  
2 and do not accept custody of children;

3 (g) Seasonal camps of three months' or less duration engaged  
4 primarily in recreational or educational activities;

5 (h) Hospitals licensed pursuant to chapter 70.41 RCW when  
6 performing functions defined in chapter 70.41 RCW, nursing homes  
7 licensed under chapter 18.51 RCW and boarding homes licensed under  
8 chapter 18.20 RCW;

9 (i) Licensed physicians or lawyers;

10 (j) Facilities providing care to children for periods of less than  
11 twenty-four hours whose parents remain on the premises to participate  
12 in activities other than employment;

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

14 (l) Any agency having been in operation in this state ten years  
15 prior to June 8, 1967, and not seeking or accepting moneys or  
16 assistance from any state or federal agency, and is supported in part  
17 by an endowment or trust fund;

18 (m) Persons who have a child in their home for purposes of  
19 adoption, if the child was placed in such home by a licensed child-  
20 placing agency, an authorized public or tribal agency or court or if a  
21 replacement report has been filed under chapter 26.33 RCW and the  
22 placement has been approved by the court;

23 (n) An agency operated by any unit of local, state, or federal  
24 government or an agency, located within the boundaries of a federally  
25 recognized Indian reservation, licensed by the Indian tribe;

26 (o) An agency located on a federal military reservation, except  
27 where the military authorities request that such agency be subject to  
28 the licensing requirements of this chapter.

29 (5) "Requirement" means any rule, regulation, or standard of care  
30 to be maintained by an agency.

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

34 **Sec. 4.** RCW 74.15.030 and 1988 c 189 s 3 are each amended to read  
35 as follows:

36 The secretary shall have the power and it shall be the secretary's  
37 duty:

1 (1) In consultation with the children's services advisory  
2 committee, and with the advice and assistance of persons representative  
3 of the various type agencies to be licensed, to designate categories of  
4 facilities for which separate or different requirements shall be  
5 developed as may be appropriate whether because of variations in the  
6 ages, sex and other characteristics of persons served, variations in  
7 the purposes and services offered or size or structure of the agencies  
8 to be licensed hereunder, or because of any other factor relevant  
9 thereto;

10 (2) In consultation with the children's services advisory  
11 committee, and with the advice and assistance of persons representative  
12 of the various type agencies to be licensed, to adopt and publish  
13 minimum requirements for licensing applicable to each of the various  
14 categories of agencies to be licensed.

15 The minimum requirements shall be limited to:

16 (a) The size and suitability of a facility and the plan of  
17 operation for carrying out the purpose for which an applicant seeks a  
18 license;

19 (b) The character, suitability and competence of an agency and  
20 other persons associated with an agency directly responsible for the  
21 care and treatment of children, expectant mothers or developmentally  
22 disabled persons. In consultation with law enforcement personnel, the  
23 secretary shall investigate the conviction record or pending charges  
24 and dependency record information under chapter 43.43 RCW of each  
25 agency and its staff seeking licensure or relicensure. In order to  
26 determine the suitability of applicants for an agency license,  
27 licensees, their employees, and other persons who have unsupervised  
28 access to children in care, and who have not resided in the state of  
29 Washington during the three-year period before being authorized to care  
30 for children shall be fingerprinted. The fingerprints shall be  
31 forwarded to the Washington state patrol and federal bureau of  
32 investigation for a criminal history records check. The fingerprint  
33 criminal history records checks will be at the expense of the licensee  
34 except that in the case of a foster family home, if this expense would  
35 work a hardship on the licensee, the department shall pay the expense.  
36 The licensee may not pass this cost on to the employee or prospective  
37 employee, unless the employee is determined to be unsuitable due to his  
38 or her criminal history record. The secretary shall use the  
39 information solely for the purpose of determining eligibility for a

1 license and for determining the character, suitability, and competence  
2 of those persons or agencies, excluding parents, not required to be  
3 licensed who are authorized to care for children, expectant mothers,  
4 and developmentally disabled persons. Criminal justice agencies shall  
5 provide the secretary such information as they may have and that the  
6 secretary may require for such purpose;

7 (c) The number of qualified persons required to render the type of  
8 care and treatment for which an agency seeks a license;

9 (d) The safety, cleanliness, and general adequacy of the premises  
10 to provide for the comfort, care and well-being of children, expectant  
11 mothers or developmentally disabled persons;

12 (e) The provision of necessary care, including food, clothing,  
13 supervision and discipline; physical, mental and social well-being; and  
14 educational, recreational and spiritual opportunities for those served;

15 (f) The financial ability of an agency to comply with minimum  
16 requirements established pursuant to chapter 74.15 RCW and RCW  
17 74.13.031; and

18 (g) The maintenance of records pertaining to the admission,  
19 progress, health and discharge of persons served;

20 (3) To investigate any person, including relatives by blood or  
21 marriage except for parents, for character, suitability, and competence  
22 in the care and treatment of children, expectant mothers, and  
23 developmentally disabled persons prior to authorizing that person to  
24 care for children, expectant mothers, and developmentally disabled  
25 persons. However, if a child is placed with a relative under RCW  
26 13.34.060 or 13.34.130, and if such relative appears otherwise suitable  
27 and competent to provide care and treatment the criminal history  
28 background check required by this section need not be completed before  
29 placement, but shall be completed as soon as possible after placement;

30 (4) On reports of child abuse and neglect, to investigate agencies  
31 in accordance with chapter 26.44 RCW, including child day-care centers  
32 and family day-care homes, to determine whether the abuse or neglect  
33 has occurred, and whether child protective services or referral to a  
34 law enforcement agency is appropriate;

35 (5) To issue, revoke, or deny licenses to agencies pursuant to  
36 chapter 74.15 RCW and RCW 74.13.031. Licenses shall specify the  
37 category of care which an agency is authorized to render and the ages,  
38 sex and number of persons to be served;

1 (6) To prescribe the procedures and the form and contents of  
2 reports necessary for the administration of chapter 74.15 RCW and RCW  
3 74.13.031 and to require regular reports from each licensee;

4 (7) To inspect agencies periodically to determine whether or not  
5 there is compliance with chapter 74.15 RCW and RCW 74.13.031 and the  
6 requirements adopted hereunder;

7 (8) To review requirements adopted hereunder at least every two  
8 years and to adopt appropriate changes after consultation with the  
9 child care coordinating committee and other affected groups for child  
10 day-care requirements and with the children's services advisory  
11 committee for requirements for other agencies; and

12 (9) To consult with public and private agencies in order to help  
13 them improve their methods and facilities for the care of children,  
14 expectant mothers and developmentally disabled persons.

15 **Sec. 5.** RCW 74.15.130 and 1989 c 175 s 149 are each amended to  
16 read as follows:

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

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

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

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



1       (c) The conditions required for issuance of a license under chapter  
2 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such  
3 licenses.

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

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

35       NEW SECTION. Sec. 6. A new section is added to chapter 74.15 RCW  
36 to read as follows:

37       (1) The office of administrative hearings shall not assign nor  
38 allow an administrative law judge to preside over an adjudicative

1 hearing regarding denial, modification, suspension, or revocation of  
2 any license to provide child care, including foster care, under this  
3 chapter, unless such judge has received training related to state and  
4 federal laws and department policies and procedures regarding:

- 5 (a) Child abuse, neglect, and maltreatment;
- 6 (b) Child protective services investigations and standards;
- 7 (c) Licensing activities and standards;
- 8 (d) Child development; and
- 9 (e) Parenting skills.

10 (2) The office of administrative hearings shall develop and  
11 implement a training program that carries out the requirements of this  
12 section. The office of administrative hearings shall consult and  
13 coordinate with the department in developing the training program. The  
14 department may assist the office of administrative hearings in  
15 developing and providing training to administrative law judges.

16 NEW SECTION. **Sec. 7.** A new section is added to chapter 74.15 RCW  
17 to read as follows:

18 (1) The department may issue a probationary license to a licensee  
19 who has had a license but is temporarily unable to comply with a rule  
20 or has been the subject of multiple complaints or concerns about  
21 noncompliance if:

22 (a) The noncompliance does not present an immediate threat to the  
23 health and well-being of the children but would be likely to do so if  
24 allowed to continue; and

25 (b) The licensee has a plan approved by the department to correct  
26 the area of noncompliance within the probationary period.

27 (2) A probationary license may be issued for up to six months, and  
28 at the discretion of the department it may be extended for an  
29 additional six months. The department shall immediately terminate the  
30 probationary license, if at any time the noncompliance for which the  
31 probationary license was issued presents an immediate threat to the  
32 health or well-being of the children.

33 (3) The department may, at any time, issue a probationary license  
34 for due cause that states the conditions of probation.

35 (4) An existing license is invalidated when a probationary license  
36 is issued.

1 (5) At the expiration of the probationary license, the department  
2 shall reinstate the original license for the remainder of its term,  
3 issue a new license, or revoke the original license.

4 (6) A right to an adjudicative proceeding shall not accrue to the  
5 licensee whose license has been placed on probationary status unless  
6 the licensee does not agree with the placement on probationary status  
7 and the department then suspends, revokes, or modifies the license.

8 **Sec. 8.** RCW 74.15.100 and 1982 c 118 s 11 are each amended to read  
9 as follows:

10 Each agency shall make application for a license or renewal of  
11 license to the department of social and health services on forms  
12 prescribed by the department. A licensed agency having foster-family  
13 homes under its supervision may make application for a license on  
14 behalf of any such foster-family home. Such a foster home license  
15 shall cease to be valid when the home is no longer under the  
16 supervision of that agency. Upon receipt of such application, the  
17 department shall either grant or deny a license within ninety days  
18 unless the application is for licensure as a foster-family home, in  
19 which case RCW 74.15.040 shall govern. A license shall be granted if  
20 the agency meets the minimum requirements set forth in chapter 74.15  
21 RCW and RCW 74.13.031 and the departmental requirements consistent  
22 herewith, except that (~~a provisional~~) an initial license may be  
23 issued as provided in RCW 74.15.120. Licenses provided for in chapter  
24 74.15 RCW and RCW 74.13.031 shall be issued for a period of three  
25 years. The licensee, however, shall advise the secretary of any  
26 material change in circumstances which might constitute grounds for  
27 reclassification of license as to category. The license issued under  
28 this chapter is not transferable and applies only to the licensee and  
29 the location stated in the application. For licensed foster-family and  
30 family day-care homes having an acceptable history of child care, the  
31 license may remain in effect for two weeks after a move, except that  
32 for the foster-family home this will apply only if the family remains  
33 intact.

34 **Sec. 9.** RCW 74.15.120 and 1979 c 141 s 361 are each amended to  
35 read as follows:

36 The secretary of social and health services may, at his or her  
37 discretion, issue (~~a provisional~~) an initial license instead of a

1 full license to an agency or facility for a period not to exceed six  
2 months, renewable for a period not to exceed two years, to allow such  
3 agency or facility reasonable time to become eligible for full  
4 license(~~(, except that a provisional)~~). An initial license shall not  
5 be granted to any foster-family home except as provided in rules  
6 adopted by the department.

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