

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1906

Chapter 302, Laws of 1995

(partial veto)

54th Legislature
1995 Regular Session

CHILD CARE LICENSING

EFFECTIVE DATE: 7/23/95

Passed by the House April 19, 1995
Yeas 72 Nays 23

CLYDE BALLARD

**Speaker of the
House of Representatives**

Passed by the Senate April 12, 1995
Yeas 47 Nays 1

JOEL PRITCHARD

President of the Senate

Approved May 9, 1995, with the
exception of section 9, which is
vetoed.

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of
the House of Representatives of the
State of Washington, do hereby certify
that the attached is **SUBSTITUTE HOUSE
BILL 1906** as passed by the House of
Representatives and the Senate on the
dates hereon set forth.

TIMOTHY A. MARTIN

Chief Clerk

FILED

May 9, 1995 - 4:14 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1906

AS AMENDED BY THE SENATE

Passed Legislature - 1995 Regular Session

State of Washington 54th Legislature 1995 Regular Session

By House Committee on Children & Family Services (originally sponsored by Representatives Lambert and Cooke)

Read first time 03/01/95.

1 AN ACT Relating to child care licensing; amending RCW 74.15.010,
2 74.15.020, 74.15.030, 74.15.130, 74.15.100, and 74.15.120; adding new
3 sections to chapter 74.15 RCW; creating a new section; and prescribing
4 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: (i) The person
28 providing care for periods of less than twenty-four hours does not
29 ((engage in)) conduct such activity on ((a regular basis, or where)) an
30 ongoing, regularly scheduled basis for the purpose of engaging in
31 business, which includes, but is not limited to, advertising such care;
32 or (ii) the parent and person providing care on a twenty-four hour
33 basis have agreed to the placement in writing and the state is not
34 providing any payment for the care;

35 (d) Parents on a mutually cooperative basis exchange care of one
36 another's children((, or persons who have the care of an exchange
37 student in their own home));

38 ((+d)) (e) A person, partnership, corporation, or other entity
39 that provides placement or similar services to exchange students or

1 international student exchange visitors or persons who have the care of
2 an exchange student in their home;

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

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

10 ~~((g))~~ (h) Seasonal camps of three months' or less duration
11 engaged primarily in recreational or educational activities;

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

16 ~~((i))~~ (j) Licensed physicians or lawyers;

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

20 ~~((k))~~ (l) Facilities approved and certified under chapter 71A.22
21 RCW;

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

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

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

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

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

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

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

6 The secretary shall have the power and it shall be the secretary's
7 duty:

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

17 (2) In consultation with the children's services advisory
18 committee, and with the advice and assistance of persons representative
19 of the various type agencies to be licensed, to adopt and publish
20 minimum requirements for licensing applicable to each of the various
21 categories of agencies to be licensed.

22 The minimum requirements shall be limited to:

23 (a) The size and suitability of a facility and the plan of
24 operation for carrying out the purpose for which an applicant seeks a
25 license;

26 (b) The character, suitability and competence of an agency and
27 other persons associated with an agency directly responsible for the
28 care and treatment of children, expectant mothers or developmentally
29 disabled persons. In consultation with law enforcement personnel, the
30 secretary shall investigate the conviction record or pending charges
31 and dependency record information under chapter 43.43 RCW of each
32 agency and its staff seeking licensure or relicensure. In order to
33 determine the suitability of applicants for an agency license,
34 licensees, their employees, and other persons who have unsupervised
35 access to children in care, and who have not resided in the state of
36 Washington during the three-year period before being authorized to care
37 for children shall be fingerprinted. The fingerprints shall be
38 forwarded to the Washington state patrol and federal bureau of

1 investigation for a criminal history records check. The fingerprint
2 criminal history records checks will be at the expense of the licensee
3 except that in the case of a foster family home, if this expense would
4 work a hardship on the licensee, the department shall pay the expense.
5 The licensee may not pass this cost on to the employee or prospective
6 employee, unless the employee is determined to be unsuitable due to his
7 or her criminal history record. The secretary shall use the
8 information solely for the purpose of determining eligibility for a
9 license and for determining the character, suitability, and competence
10 of those persons or agencies, excluding parents, not required to be
11 licensed who are authorized to care for children, expectant mothers,
12 and developmentally disabled persons. Criminal justice agencies shall
13 provide the secretary such information as they may have and that the
14 secretary may require for such purpose;

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

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

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

23 (f) The financial ability of an agency to comply with minimum
24 requirements established pursuant to chapter 74.15 RCW and RCW
25 74.13.031; and

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

28 (3) To investigate any person, including relatives by blood or
29 marriage except for parents, for character, suitability, and competence
30 in the care and treatment of children, expectant mothers, and
31 developmentally disabled persons prior to authorizing that person to
32 care for children, expectant mothers, and developmentally disabled
33 persons. However, if a child is placed with a relative under RCW
34 13.34.060 or 13.34.130, and if such relative appears otherwise suitable
35 and competent to provide care and treatment the criminal history
36 background check required by this section need not be completed before
37 placement, but shall be completed as soon as possible after placement;

38 (4) On reports of child abuse and neglect, to investigate agencies
39 in accordance with chapter 26.44 RCW, including child day-care centers

1 and family day-care homes, to determine whether the abuse or neglect
2 has occurred, and whether child protective services or referral to a
3 law enforcement agency is appropriate;

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

8 (6) To prescribe the procedures and the form and contents of
9 reports necessary for the administration of chapter 74.15 RCW and RCW
10 74.13.031 and to require regular reports from each licensee;

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

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

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

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

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

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

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

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

6 (c) The conditions required for issuance of a license under chapter
7 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such
8 licenses.

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

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

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 74.15 RCW
2 to read as follows:

3 (1) The office of administrative hearings shall not assign nor
4 allow an administrative law judge to preside over an adjudicative
5 hearing regarding denial, modification, suspension, or revocation of
6 any license to provide child care, including foster care, under this
7 chapter, unless such judge has received training related to state and
8 federal laws and department policies and procedures regarding:

9 (a) Child abuse, neglect, and maltreatment;

10 (b) Child protective services investigations and standards;

11 (c) Licensing activities and standards;

12 (d) Child development; and

13 (e) Parenting skills.

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

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

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

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

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

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

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

1 (4) An existing license is invalidated when a probationary license
2 is issued.

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

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

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

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

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

1 *The secretary of social and health services may, at his or her*
2 *discretion, issue ((a ~~provisional~~)) an initial license instead of a*
3 *full license to an agency or facility for a period not to exceed six*
4 *months, renewable for a period not to exceed two years, to allow such*
5 *agency or facility reasonable time to become eligible for full*
6 *license((, ~~except that a provisional~~)). An initial license shall not*
7 *be granted to any foster-family home except as provided in rules*
8 *adopted by the department.*

9 *Sec. 9 was vetoed. See message at end of chapter.

 Passed the House April 19, 1995.

 Passed the Senate April 12, 1995.

 Approved by the Governor May 9, 1995, with the exception of certain
 items which were vetoed.

 Filed in Office of Secretary of State May 9, 1995.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 9,
3 Substitute House Bill No. 1906 entitled:

4 "AN ACT Relating to child care licensing;"

5 Substitute House Bill No. 1906 clarifies that the health and safety
6 of children is paramount over the right of any person to be licensed to
7 provide care. Section 9 provides guidelines for the issuance of
8 initial foster-family home licenses. Section 22 of Engrossed
9 Substitute Senate Bill No. 5885 offers the same guidelines, but
10 explicitly spells out the conditions required for issuing an initial
11 license. Vetoing section 9 of Substitute House Bill No. 1906 gives
12 full effect to this bill while including the greater specificity
13 offered by section 22 of Engrossed Substitute Senate Bill No. 5885.

14 For this reason, I have vetoed section 9 of Substitute House Bill
15 No. 1906.

16 With the exception of section 9, Substitute House Bill No. 1906 is
17 approved."