
SENATE BILL 5317

State of Washington 60th Legislature 2007 Regular Session

By Senators Kohl-Welles, Brandland, Hargrove, Stevens and Regala

Read first time 01/17/2007. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to child care safety; amending RCW 43.215.005,
2 43.215.010, 43.215.200, 43.215.525, and 43.215.530; adding new sections
3 to chapter 43.215 RCW; creating a new section; and prescribing
4 penalties.

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

6 **Sec. 1.** RCW 43.215.005 and 2006 c 265 s 101 are each amended to
7 read as follows:

8 (1) The legislature recognizes that:

9 (a) Parents are their children's first and most important teachers
10 and decision makers;

11 (b) Research across disciplines now demonstrates that what happens
12 in the earliest years makes a critical difference in children's
13 readiness to succeed in school and life;

14 (c) Washington's competitiveness in the global economy requires a
15 world-class education system that starts early and supports life-long
16 learning;

17 (d) Washington state currently makes substantial investments in
18 voluntary child care and early learning services and supports, but
19 because services are fragmented across multiple state agencies, and

1 early learning providers lack the supports and incentives needed to
2 improve the quality of services they provide, many parents have
3 difficulty accessing high quality early learning services;

4 (e) A more cohesive and integrated voluntary early learning system
5 would result in greater efficiencies for the state, increased
6 partnership between the state and the private sector, improved access
7 to high quality early learning services, and better employment and
8 early learning outcomes for families and all children.

9 (2) The legislature finds that the early years of a child's life
10 are critical to the child's healthy brain development and that the
11 quality of caregiving during the early years can significantly impact
12 the child's intellectual, social, and emotional development.

13 (3) The purpose of this chapter is:

14 (a) To establish the department of early learning;

15 (b) To coordinate and consolidate state activities relating to
16 child care and early learning programs;

17 (c) To safeguard and promote the health, safety, and well-being of
18 children receiving child care and early learning assistance;

19 (d) To provide tools to promote the hiring of suitable providers of
20 child care by:

21 (i) Providing parents with access to information regarding child
22 care providers;

23 (ii) Providing child care providers with known information
24 regarding applicants' sexual misconduct or other abusive conduct;

25 (iii) Providing parents with child care licensing complaint
26 histories regarding child care providers; and

27 (iv) Requiring background checks of applicants for employment in
28 any child care facility licensed or regulated under current law;

29 (e) To promote linkages and alignment between early learning
30 programs and elementary schools and support the transition of children
31 and families from prekindergarten environments to kindergarten;

32 ((+e)) (f) To promote the development of a sufficient number and
33 variety of adequate child care and early learning facilities, both
34 public and private; and

35 ((+f)) (g) To license agencies and to assure the users of such
36 agencies, their parents, the community at large and the agencies
37 themselves that adequate minimum standards are maintained by all child
38 care and early learning facilities.

1 (4) This chapter does not expand the state's authority to license
2 or regulate activities or programs beyond those licensed or regulated
3 under existing law.

4 **Sec. 2.** RCW 43.215.010 and 2006 c 265 s 102 are each amended to
5 read as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

8 (1) "Agency" means any person, firm, partnership, association,
9 corporation, or facility that provides child care and early learning
10 services outside a child's own home and includes the following
11 irrespective of whether there is compensation to the agency:

12 (a) "Child day care center" means an agency that regularly provides
13 child day care and early learning services for a group of children for
14 periods of less than twenty-four hours;

15 (b) "Early learning" includes but is not limited to programs and
16 services for child care; state, federal, private, and nonprofit
17 preschool; child care subsidies; child care resource and referral;
18 parental education and support; and training and professional
19 development for early learning professionals;

20 (c) "Family day care provider" means a child day care provider who
21 regularly provides child day care and early learning services for not
22 more than twelve children in the provider's home in the family living
23 quarters;

24 (d) "Service provider" means the entity that operates a community
25 facility.

26 (2) "Agency" does not include the following:

27 (a) Persons related to the child in the following ways:

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

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

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

36 (iv) Spouses of any persons named in (i), (ii), or (iii) of this
37 subsection (2)(a), even after the marriage is terminated;

- 1 (b) Persons who are legal guardians of the child;
- 2 (c) Persons who care for a neighbor's or friend's child or
3 children, with or without compensation, where the person providing care
4 for periods of less than twenty-four hours does not conduct such
5 activity on an ongoing, regularly scheduled basis for the purpose of
6 engaging in business, which includes, but is not limited to,
7 advertising such care;
- 8 (d) Parents on a mutually cooperative basis exchange care of one
9 another's children;
- 10 (e) Nursery schools or kindergartens that are engaged primarily in
11 educational work with preschool children and in which no child is
12 enrolled on a regular basis for more than four hours per day;
- 13 (f) Schools, including boarding schools, that are engaged primarily
14 in education, operate on a definite school year schedule, follow a
15 stated academic curriculum, accept only school-age children, and do not
16 accept custody of children;
- 17 (g) Seasonal camps of three months' or less duration engaged
18 primarily in recreational or educational activities;
- 19 (h) 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 (i) Any agency having been in operation in this state ten years
23 before June 8, 1967, and not seeking or accepting moneys or assistance
24 from any state or federal agency, and is supported in part by an
25 endowment or trust fund;
- 26 (j) An agency operated by any unit of local, state, or federal
27 government or an agency, located within the boundaries of a federally
28 recognized Indian reservation, licensed by the Indian tribe;
- 29 (k) An agency located on a federal military reservation, except
30 where the military authorities request that such agency be subject to
31 the licensing requirements of this chapter;
- 32 (l) An agency that offers early learning and support services, such
33 as parent education, and does not provide child care services on a
34 regular basis.
- 35 (3) "Applicant" means a person who requests or seeks employment in
36 an agency.
- 37 (4) "Department" means the department of early learning.
- 38 ~~((+4))~~ (5) "Director" means the director of the department.

1 ~~((5))~~ (6) "Employer" means a person or business that engages the
2 services of one or more people, especially for wages or salary to work
3 in an agency.

4 (7) "Enforcement action" means denial, suspension, revocation,
5 modification, or nonrenewal of a license pursuant to RCW 43.215.300(1)
6 or assessment of civil monetary penalties pursuant to RCW
7 43.215.300(3).

8 ~~((6))~~ (8) "Probationary license" means a license issued as a
9 disciplinary measure to an agency that has previously been issued a
10 full license but is out of compliance with licensing standards.

11 ~~((7))~~ (9) "Requirement" means any rule, regulation, or standard
12 of care to be maintained by an agency.

13 **Sec. 3.** RCW 43.215.200 and 2006 c 265 s 301 are each amended to
14 read as follows:

15 It shall be the director's duty with regard to licensing:

16 (1) In consultation and with the advice and assistance of persons
17 representative of the various type agencies to be licensed, to
18 designate categories of child care facilities for which separate or
19 different requirements shall be developed as may be appropriate whether
20 because of variations in the ages and other characteristics of the
21 children served, variations in the purposes and services offered or
22 size or structure of the agencies to be licensed, or because of any
23 other factor relevant thereto;

24 (2) In consultation and with the advice and assistance of persons
25 representative of the various type agencies to be licensed, to adopt
26 and publish minimum requirements for licensing applicable to each of
27 the various categories of agencies to be licensed under this chapter(~~-~~

28 ~~The minimum requirements shall be limited to:~~

29 ~~(a) The size and suitability of a facility and the plan of~~
30 ~~operation for carrying out the purpose for which an applicant seeks a~~
31 ~~license;~~

32 ~~(b) The character, suitability, and competence of an agency and~~
33 ~~other persons associated with an agency directly responsible for the~~
34 ~~care of children. In consultation with law enforcement personnel, the~~
35 ~~director shall investigate the conviction record or pending charges and~~
36 ~~dependency record information under chapter 43.43 RCW of each agency~~
37 ~~and its staff seeking licensure or relicensure. No unfounded~~

1 allegation of child abuse or neglect as defined in RCW 26.44.020 may be
2 disclosed to a provider licensed under this chapter. In order to
3 determine the suitability of applicants for an agency license,
4 licensees, their employees, and other persons who have unsupervised
5 access to children in care, and who have not resided in the state of
6 Washington during the three year period before being authorized to care
7 for children shall be fingerprinted. The fingerprints shall be
8 forwarded to the Washington state patrol and federal bureau of
9 investigation for a criminal history records check. The fingerprint
10 criminal history records checks will be at the expense of the licensee.
11 The licensee may not pass this cost on to the employee or prospective
12 employee, unless the employee is determined to be unsuitable due to his
13 or her criminal history record. The director shall use the information
14 solely for the purpose of determining eligibility for a license and for
15 determining the character, suitability, and competence of those persons
16 or agencies, excluding parents, not required to be licensed who are
17 authorized to care for children. Criminal justice agencies shall
18 provide the director such information as they may have and that the
19 director may require for such purpose;

20 (c) ~~The number of qualified persons required to render the type of~~
21 ~~care for which an agency seeks a license;~~

22 (d) ~~The health, safety, cleanliness, and general adequacy of the~~
23 ~~premises to provide for the comfort, care, and well being of children;~~

24 (e) ~~The provision of necessary care and early learning, including~~
25 ~~food, supervision, and discipline; physical, mental, and social well-~~
26 ~~being; and educational and recreational opportunities for those served;~~

27 (f) ~~The financial ability of an agency to comply with minimum~~
28 ~~requirements established under this chapter; and~~

29 (g) ~~The maintenance of records pertaining to the care of~~
30 ~~children));~~

31 (3) In consultation with law enforcement personnel, the director
32 shall investigate the conviction record or pending charges of each
33 agency and its staff seeking licensure or relicensure;

34 (4) To issue, revoke, or deny licenses to agencies pursuant to this
35 chapter. Licenses shall specify the category of care that an agency is
36 authorized to render and the ages and number of children to be served;

37 ((+4)) (5) To prescribe the procedures and the form and contents

1 of reports necessary for the administration of this chapter and to
2 require regular reports from each licensee;

3 ~~((+5))~~ (6) To inspect agencies periodically to determine whether
4 or not there is compliance with this chapter and the requirements
5 adopted under this chapter;

6 ~~((+6))~~ (7) To review requirements adopted under this chapter at
7 least every two years and to adopt appropriate changes after
8 consultation with affected groups for child day care requirements; and

9 ~~((+7))~~ (8) To consult with public and private agencies in order to
10 help them improve their methods and facilities for the care and early
11 learning of children.

12 NEW SECTION. **Sec. 4.** MINIMUM REQUIREMENTS FOR LICENSING.

13 Applications for licensure shall request, at a minimum, the following:

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

17 (2) The character, suitability, and competence of an agency and
18 other persons associated with an agency directly responsible for the
19 care of children;

20 (3) The number of qualified persons required to render the type of
21 care for which an agency seeks a license;

22 (4) The health, safety, cleanliness, and general adequacy of the
23 premises to provide for the comfort, care, and well-being of children;

24 (5) The provision of necessary care and early learning, including
25 food, supervision, and discipline; physical, mental, and social
26 well-being; and educational and recreational opportunities for those
27 served;

28 (6) The financial ability of an agency to comply with minimum
29 requirements established under this chapter; and

30 (7) The maintenance of records pertaining to the care of children.

31 NEW SECTION. **Sec. 5.** CHARACTER, SUITABILITY, AND COMPETENCE. (1)

32 In determining whether an individual is of appropriate character,
33 suitability, and competence to provide child care and early learning
34 services to children, the department may consider all child abuse and
35 neglect history information whether founded, unfounded, or inconclusive

1 regarding a prospective child care provider. No unfounded allegation
2 of child abuse or neglect as defined in RCW 26.44.020 may be disclosed
3 to a provider licensed under this chapter.

4 (2) In order to determine the suitability of applicants for an
5 agency license, licensees, their employees, and other persons who have
6 unsupervised access to children in care, and who have not resided in
7 the state of Washington during the three-year period before being
8 authorized to care for children, shall be fingerprinted.

9 (a) The fingerprints shall be forwarded to the Washington state
10 patrol and federal bureau of investigation for a criminal history
11 record check.

12 (b) The fingerprint criminal history record checks shall be at the
13 expense of the licensee. The licensee may not pass this cost on to the
14 employee or prospective employee, unless the employee is determined to
15 be unsuitable due to his or her criminal history record.

16 (c) The director shall use the information solely for the purpose
17 of determining eligibility for a license and for determining the
18 character, suitability, and competence of those persons or agencies,
19 excluding parents, not required to be licensed who are authorized to
20 care for children.

21 (d) Criminal justice agencies shall provide the director such
22 information as they may have and that the director may require for such
23 purpose.

24 **Sec. 6.** RCW 43.215.525 and 2006 c 209 s 11 are each amended to
25 read as follows:

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

29 (a) The license issued under this chapter;

30 (b) The department's toll-free telephone number established by RCW
31 (~~(74.15.310)~~) 43.215.520;

32 (c) The notice of any pending enforcement action. The notice must
33 be posted immediately upon receipt. The notice must be posted for at
34 least two weeks or until the violation causing the enforcement action
35 is corrected, whichever is longer;

36 (d) A notice that inspection reports and any notices of enforcement

1 actions for the previous three years are available from the licensee
2 and the department; and

3 (e) Any other information required by the department.

4 (2) The department shall disclose(~~(, upon request,)~~) the receipt,
5 general nature, and resolution or current status of all complaints on
6 record with the department after July 24, 2005, against a child day-
7 care center or family day-care provider that result in an enforcement
8 action. Information may be posted:

9 (a) On a web site; or

10 (b) In a physical location that is easily accessed by parents and
11 potential employers.

12 (3) This section shall not be construed to require the disclosure
13 of any information that is exempt from public disclosure under chapter
14 42.56 RCW.

15 **Sec. 7.** RCW 43.215.530 and 2006 c 209 s 12 are each amended to
16 read as follows:

17 (1) Every child day-care center and family day-care provider shall
18 have readily available for review by the department, parents, and the
19 public a copy of each inspection report and notice of enforcement
20 action received by the center or provider from the department for the
21 past three years. This subsection only applies to reports and notices
22 received on or after July 24, 2005.

23 (2) The department shall make available to the public during
24 business hours all inspection reports and notices of enforcement
25 actions involving child day-care centers and family day-care providers
26 (~~(consistent with chapter 42.56 RCW)~~). The department shall include in
27 the inspection report a statement of the corrective measures taken by
28 the center or provider.

29 (3) The department may make available on a publicly accessible web
30 site all inspection reports and notices of enforcement actions
31 involving child day-care centers and family day-care providers. The
32 department shall include in the inspection report a statement of the
33 corrective measures taken by the center or provider.

34 (4) This section shall not be construed to require the disclosure
35 of any information that is exempt from public disclosure under chapter
36 42.56 RCW.

1 NEW SECTION. **Sec. 8.** DISCLOSURE STATEMENT. (1) Before hiring an

2 applicant, an employer shall request the applicant to sign a statement:

3 (a) Authorizing the applicant's current and past employers to
4 disclose to the hiring agency sexual misconduct or abuse, if any, by
5 the applicant and making available to the hiring agency copies of all
6 documents in the previous employer's personnel, investigative, or other
7 files relating to sexual misconduct or abuse by the applicant; and

8 (b) Releasing the applicant's current and past employers, and
9 employees acting on behalf of that employer, from any liability for
10 providing such information.

11 (2) Before hiring an applicant, an employer shall request that the
12 applicant's current and past employers disclose to the hiring agency
13 sexual misconduct or abuse, if any, by the applicant. The request
14 shall include a copy of the statement signed by the applicant.

15 (3) Not later than twenty business days after receiving a request
16 under subsection (2) of this section, former employers shall provide
17 the information requested and make available to the requesting employer
18 copies of all documents in the applicant's personnel record relating to
19 the sexual misconduct or abuse. The employer, or an employee acting on
20 behalf of the employer, who in good faith discloses information under
21 this section is immune from civil liability for the disclosure.

22 (4) An employer shall not hire an applicant who does not sign the
23 statement described in subsection (1) of this section.

24 (5) Employers may employ applicants on a conditional basis pending
25 the review of information obtained under this section.

26 (6) Information received under this section shall be used by an
27 employer only for the purpose of evaluating an applicant's
28 qualifications for employment in the position for which he or she has
29 applied. Except as otherwise provided by law, an employer or any
30 employee of an agency shall not disclose the information to any person,
31 other than the applicant, who is not directly involved in the process
32 of evaluating the applicant's qualifications for employment. A person
33 who violates this subsection is guilty of a misdemeanor.

34 (7) By September 1, 2007, the department shall adopt rules defining
35 "verbal abuse," "physical abuse," and "sexual misconduct" as used in
36 this section to apply to all applicants. The definitions of verbal
37 abuse, physical abuse, and sexual misconduct adopted by the department
38 must include the requirement that the department has made a

1 determination that there is sufficient information to conclude that the
2 abuse or misconduct occurred and that the abuse or misconduct resulted
3 in the employee's leaving his or her position at the agency.

4 (8) Except as limited by chapter 49.12 RCW, at the conclusion of an
5 agency's investigation, an applicant has the right to review his or her
6 entire personnel file, investigative file, or other file maintained by
7 the agency relating to sexual misconduct or abuse as addressed in this
8 section and to attach rebuttals to any documents as the employee deems
9 necessary. Rebuttal documents shall be disclosed in the same manner as
10 the documents to which they are attached. The provisions of this
11 subsection do not supersede the protections provided individuals under
12 the state whistleblower laws in chapter 42.41 RCW.

13 NEW SECTION. **Sec. 9.** PARENTAL NOTIFICATION. The department and
14 an agency must, at the first opportunity but in all cases within
15 forty-eight hours of receiving a report alleging sexual misconduct or
16 abuse by an agency employee, notify the parents of a child alleged to
17 be the victim, target, or recipient of the misconduct or abuse. The
18 department and an agency shall provide parents with information
19 regarding their rights under the public records act, chapter 42.56 RCW,
20 to request the public records regarding the employee. This information
21 shall be provided to all parents on an annual basis.

22 NEW SECTION. **Sec. 10.** REPORTING ACTIONS--POSTING ON WEB SITE.
23 For the purposes of reporting actions taken against agency employees or
24 licensees, the following actions shall be posted to the department's
25 web site accessible by the public: Suspension, surrender, revocation,
26 denial, stayed suspension, or reinstatement of a license, and any
27 written reprimand related to abuse and sexual misconduct or abuse.

28 NEW SECTION. **Sec. 11.** Captions used in this act are not any part
29 of the law.

30 NEW SECTION. **Sec. 12.** Sections 4, 5, and 8 through 10 of this act
31 are each added to chapter 43.215 RCW.

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