

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5317

60th Legislature
2007 Regular Session

Passed by the Senate April 20, 2007
YEAS 49 NAYS 0

President of the Senate

Passed by the House April 18, 2007
YEAS 97 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5317** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5317

AS AMENDED BY THE HOUSE

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Kohl-Welles, Brandland, Hargrove, Stevens, Regala and McAuliffe)

READ FIRST TIME 02/26/07.

1 AN ACT Relating to child care safety; amending RCW 43.215.005,
2 43.215.010, 43.215.200, 43.215.525, 43.215.530, and 43.215.535; adding
3 new sections to chapter 43.215 RCW; creating a new section; and
4 prescribing 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, which is
19 paramount over the right of any person to provide care;

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

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

24 (ii) Providing parents with child care licensing action histories
25 regarding child care providers; and

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

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

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

34 ((+f)) (g) To license agencies and to assure the users of such
35 agencies, their parents, the community at large and the agencies
36 themselves that adequate minimum standards are maintained by all child
37 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 parents
25 or guardians, and persons representative of the various type agencies
26 to be licensed, to adopt and publish minimum requirements for licensing
27 applicable to each of the various categories of agencies to be licensed
28 under this chapter(~~-~~

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

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

33 ~~(b) The character, suitability, and competence of an agency and~~
34 ~~other persons associated with an agency directly responsible for the~~
35 ~~care of children. In consultation with law enforcement personnel, the~~
36 ~~director shall investigate the conviction record or pending charges and~~
37 ~~dependency record information under chapter 43.43 RCW of each agency~~

1 and its staff seeking licensure or relicensure. No unfounded
2 allegation of child abuse or neglect as defined in RCW 26.44.020 may be
3 disclosed to a provider licensed under this chapter. In order to
4 determine the suitability of applicants for an agency license,
5 licensees, their employees, and other persons who have unsupervised
6 access to children in care, and who have not resided in the state of
7 Washington during the three year period before being authorized to care
8 for children shall be fingerprinted. The fingerprints shall be
9 forwarded to the Washington state patrol and federal bureau of
10 investigation for a criminal history records check. The fingerprint
11 criminal history records checks will be at the expense of the licensee.
12 The licensee may not pass this cost on to the employee or prospective
13 employee, unless the employee is determined to be unsuitable due to his
14 or her criminal history record. The director shall use the information
15 solely for the purpose of determining eligibility for a license and for
16 determining the character, suitability, and competence of those persons
17 or agencies, excluding parents, not required to be licensed who are
18 authorized to care for children. Criminal justice agencies shall
19 provide the director such information as they may have and that the
20 director may require for such purpose;

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

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

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

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

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

32 (3) In consultation with law enforcement personnel, the director
33 shall investigate the conviction record or pending charges of each
34 agency and its staff seeking licensure or relicensure, and other
35 persons having unsupervised access to children in care;

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

1 ~~((4))~~ (5) To prescribe the procedures and the form and contents
2 of reports necessary for the administration of this chapter and to
3 require regular reports from each licensee;

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

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

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

13 NEW SECTION. **Sec. 4.** MINIMUM REQUIREMENTS FOR LICENSING.
14 Applications for licensure shall require, at a minimum, the following
15 information:

16 (1) 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 (2) The character, suitability, and competence of an agency and
20 other persons associated with an agency directly responsible for the
21 care of children;

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

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

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

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

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

33 NEW SECTION. **Sec. 5.** CHARACTER, SUITABILITY, AND COMPETENCE. (1)
34 In determining whether an individual is of appropriate character,
35 suitability, and competence to provide child care and early learning
36 services to children, the department may consider the history of past

1 involvement of child protective services or law enforcement agencies
2 with the individual for the purpose of establishing a pattern of
3 conduct, behavior, or inaction with regard to the health, safety, or
4 welfare of a child. No report of child abuse or neglect that has been
5 destroyed or expunged under RCW 26.44.031 may be used for such
6 purposes. No unfounded or inconclusive allegation of child abuse or
7 neglect as defined in RCW 26.44.020 may be disclosed to a provider
8 licensed under this chapter.

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

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

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

21 (c) The director shall use the information solely for the purpose
22 of determining eligibility for a license and for determining the
23 character, suitability, and competence of those persons or agencies,
24 excluding parents, not required to be licensed who are authorized to
25 care for children.

26 (d) Criminal justice agencies shall provide the director such
27 information as they may have and that the director may require for such
28 purpose.

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

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

34 (a) The license issued under this chapter;

35 (b) The department's toll-free telephone number established by RCW
36 (~~(74.15.310)~~) 43.215.520;

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

5 (d) A notice that inspection reports and any notices of enforcement
6 actions for the previous three years are available from the licensee
7 and the department; and

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

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

14 (a) On a web site; or

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

17 (3) This section shall not be construed to require the disclosure
18 of any information that is exempt from public disclosure under chapter
19 42.56 RCW.

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

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

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

34 (3) The department may make available on a publicly accessible web
35 site all inspection reports and notices of licensing actions, including
36 the corrective measures required or taken, involving child day-care
37 centers and family day-care providers.

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

4 NEW SECTION. Sec. 8. PARENTAL NOTIFICATION. The department and
5 an agency must, at the first opportunity but in all cases within
6 forty-eight hours of receiving a report alleging sexual misconduct or
7 abuse by an agency employee, notify the parents or guardian of a child
8 alleged to be the victim, target, or recipient of the misconduct or
9 abuse. The department and an agency shall provide parents annually
10 with information regarding their rights under the public records act,
11 chapter 42.56 RCW, to request the public records regarding the
12 employee.

13 NEW SECTION. Sec. 9. REPORTING ACTIONS--POSTING ON WEB SITE. For
14 the purposes of reporting actions taken against agency licensees, upon
15 the development of an early learning information system, the following
16 actions shall be posted to the department's web site accessible by the
17 public: Suspension, surrender, revocation, denial, stayed suspension,
18 or reinstatement of a license.

19 **Sec. 10.** RCW 43.215.535 and 2005 c 473 s 7 are each amended to
20 read as follows:

21 (1) Every licensed child day-care center shall, at the time of
22 licensure or renewal and at any inspection, provide to the department
23 proof that the licensee has day-care insurance as defined in RCW
24 48.88.020, or is self-insured pursuant to chapter 48.90 RCW.

25 (a) Every licensed child day-care center shall comply with the
26 following requirements:

27 (i) Notify the department when coverage has been terminated;

28 (ii) Post at the day-care center, in a manner likely to be observed
29 by patrons, notice that coverage has lapsed or been terminated;

30 (iii) Provide written notice to parents that coverage has lapsed or
31 terminated within thirty days of lapse or termination.

32 (b) Liability limits under this subsection shall be the same as set
33 forth in RCW 48.88.050.

34 (c) The department may take action as provided in RCW (~~74.15.130~~)

1 43.215.300 if the licensee fails to maintain in full force and effect
2 the insurance required by this subsection.

3 (d) This subsection applies to child day-care centers holding
4 licenses, initial licenses, and probationary licenses under this
5 chapter.

6 (e) A child day-care center holding a license under this chapter on
7 July 24, 2005, is not required to be in compliance with this subsection
8 until the time of renewal of the license or until January 1, 2006,
9 whichever is sooner.

10 (2)(a) Every licensed family day-care provider shall, at the time
11 of licensure or renewal either:

12 (i) Provide to the department proof that the licensee has day-care
13 insurance as defined in RCW 48.88.020, or other applicable insurance;
14 or

15 (ii) Provide written notice of their insurance status on a standard
16 form developed by the department to parents with a child enrolled in
17 family day care and keep a copy of the notice to each parent on file.
18 Family day-care providers may choose to opt out of the requirement to
19 have day care or other applicable insurance but must provide written
20 notice of their insurance status to parents with a child enrolled and
21 shall not be subject to the requirements of (b)((~~7~~)) or (c)((~~7~~ or (~~d~~)))
22 of this subsection.

23 (b) Any licensed family day-care provider that provides to the
24 department proof that the licensee has insurance as provided under
25 (a)(i) of this subsection shall comply with the following requirements:

26 (i) Notify the department when coverage has been terminated;

27 (ii) Post at the day-care home, in a manner likely to be observed
28 by patrons, notice that coverage has lapsed or been terminated;

29 (iii) Provide written notice to parents that coverage has lapsed or
30 terminated within thirty days of lapse or termination.

31 (c) Liability limits under (a)(i) of this subsection shall be the
32 same as set forth in RCW 48.88.050.

33 (d) The department may take action as provided in RCW ((~~74.15.130~~))
34 43.215.300 if the licensee fails to ((~~notify the department when~~
35 ~~coverage has been terminated as required under (b))~~) comply with the
36 requirements of this subsection.

37 (e) A family day-care provider holding a license under this chapter

1 on July 24, 2005, is not required to be in compliance with this
2 subsection until the time of renewal of the license or until January 1,
3 2006, whichever is sooner.

4 (3) Noncompliance or compliance with the provisions of this section
5 shall not constitute evidence of liability or nonliability in any
6 injury litigation.

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

9 NEW SECTION. **Sec. 12.** Sections 4, 5, 8, and 9 of this act are
10 each added to chapter 43.215 RCW.

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