

# *Miss. Code Ann. § 43-20-1*

Current through the 2019 Regular Session.

Mississippi Code 1972 Annotated  
Title 43. Public Welfare  
Chapter 20. Child Care Facilities  
Mississippi Child Care Licensing Law

## **§ 43-20-1. Title.**

This chapter shall be cited as the “Mississippi Child Care Licensing Law.”

**History:** Sources: Codes, 1942, § 7129-131; Laws, 1972, ch. 528, § 1; brought forward, Laws, 1990, ch. 552, § 1, eff from and after July 1, 1990.

## **§ 43-20-3. Declaration of purpose.**

The purpose of this chapter is to protect and promote the health and safety of the children of this state by providing for the licensing of child care facilities as defined herein so as to assure that certain minimum standards are maintained in such facilities. This policy is predicated upon the fact that a child is not capable of protecting himself, and when his parents for any reason have relinquished his care to others, there arises the probability of exposure of that child to certain risks to his health and safety which require the offsetting statutory protection of licensing.

**History:** Sources: Codes, 1942, § 7129-132; Laws, 1972, ch. 528, § 2; Laws, 1990, ch. 552, § 2, eff from and after July 1, 1990.

## **§ 43-20-5. Definitions.**

When used in this chapter, the following words shall have the following meanings:

(a) “Child care facility” means a place that provides shelter and personal care for six (6) or more children who are not related within the third degree computed according to the civil law to the operator and who are under thirteen (13) years of age, for any part of the twenty-four-hour day, whether that place is organized or operated for profit or not. The term “child care facility” includes day nurseries, day care centers and any other facility that falls within the scope of the definitions set forth in this paragraph, regardless of auspices. Exemptions from the provisions of this chapter include:

(i) Child care facilities that operate for no more than two (2) days a week, whose primary purpose is to provide respite for the caregiver or temporary care during other scheduled or related activities and organized programs that operate for three (3) or fewer weeks per year such as, but not limited to, Vacation Bible Schools and scout day camps.

(ii) Any child residential home as defined in, and in compliance with the provisions of, Section 43-16-3(b) et seq.

(iii) 1. Any elementary, including kindergarten, and/or secondary school system, accredited by the Mississippi State Department of Education, the Southern Association of Colleges and Schools, the Mississippi Private School Education Association, the American Association of Christian Schools, the Association of Christian Schools International, a school affiliated with Accelerated Christian Education, Inc., and any Head Start program operating in conjunction with an elementary school system, whether it is public, private or parochial, whose primary purpose is a structured school or school readiness program.

2. Accreditation, for the purpose of exemption from the provisions of this chapter, means: a. receipt by any school or school system of full accreditation from an accrediting entity listed in item 1 of this subparagraph (iii), or b. proof of application by the school or school system for accreditation status from the accrediting entity. Proof of application for accreditation status shall include, but not be limited to, a copy of the applicant's completed application for accreditation filed with the licensing agency and a letter or other authenticating documentation from a signatory authority with the accrediting entity that the application for accreditation has been received and that the applicant is currently under consideration or review for full accreditation status by the accrediting entity. An exemption for a nonaccredited applicant under this item 2 shall be for a maximum of one (1) year from the receipt date by the licensing agency of the completed documentation for proof of application for accreditation status. Failure to receive full accreditation by the end of the one-year exemption period for a nonaccredited applicant shall result in the nonaccredited applicant no longer remaining exempt from the provisions of this chapter at the end of the one-year period. However, if full accreditation is not received by the end of the one-year exemption period, the State Board of Health, in its discretion, may extend the exemption period for any nonaccredited applicant for periods of six (6) months, with the total extension not to exceed one (1) year. During any such extension periods, the board shall have the authority to enforce child care facility licensure provisions relating to the health and safety of the children in the school or school system. If a nonaccredited applicant fails to receive full accreditation by the end of all extended exemption periods, the applicant shall no longer remain exempt from the provisions of this chapter at the end of the extended exemption periods.

(iv) Any membership organization affiliated with a national organization that charges only a nominal annual membership fee, does not receive monthly, weekly or daily payments for services, and is certified by its national association as being in compliance with the association's minimum standards and procedures including, but not limited to, the Boys and Girls Club of America, and the YMCA.

(v) Any family child care home as defined in Section 43-20-53(a) et seq.

All other preschool child care programs and/or extended day school programs must meet requirements set forth in this chapter. Any entity exempt from the requirements to be licensed but voluntarily chooses to obtain a license is subject to all provisions of this chapter.

(b) “Health” means that condition of being sound in mind and body and encompasses an individual’s physical, mental and emotional welfare.

(c) “Safety” means that condition of being protected from hurt, injury or loss.

(d) “Person” means any person, firm, partnership, corporation or association.

(e) “Operator” means any person, acting individually or jointly with another person or persons, who establishes, owns, operates, conducts or maintains a child care facility. The child care facility license shall be issued in the name of the operator, or, if there is more than one (1) operator, in the name of one (1) of the operators. If there is more than one (1) operator, all statutory and regulatory provisions concerning the background checks of operators shall be equally applied to all operators of a facility including, but not limited to, a spouse who jointly owns, operates or maintains the child care facility regardless of which particular person is named on the license.

(f) “Personal care” means assistance rendered by personnel of the child care facility in performing one or more of the activities of daily living which includes, but is not limited to, the feeding, personal grooming, supervising and dressing of children placed in the child care facility.

(g) “Licensing agency” means the Mississippi State Department of Health.

(h) “Caregiver” means any person who provides direct care, supervision or guidance to children in a child care facility, regardless of title or occupation.

**History:** Sources: Codes, 1942, § 7129-133; Laws, 1972, ch. 528, § 3; Laws, 1983, ch. 522, § 39; Laws, 1986, ch. 371, § 6; Laws, 1990, ch. 552, § 3; Laws, 1992, ch. 374, § 1; Laws, 2001, ch. 396, § 1; Laws, 2003, ch. 449, § 1; Laws, 2004, ch. 579, § 1; Laws, 2006, ch. 517, § 1; Laws, 2008, ch. 495, § 1, eff from and after July 1, 2008.

#### **§ 43-20-7. Advisory council.**

(1) There is hereby created an advisory council which shall be appointed by the State Health Officer, who shall serve at the pleasure of the State Health Officer.

(2) The advisory council shall consist of twelve (12) persons, six (6) of whom shall be licensed child care providers, and six (6) of whom shall represent child care professional organizations, child advocacy groups, child care associations or state agencies which provide child care funding, education or services. No more than four (4) members shall be appointed from any one (1) state Supreme Court district.

(3) It shall be the duty of the advisory council to assist and advise the licensing agency in the development of regulations governing the licensure and regulation of child care facilities and to advise the licensing agency on matters relative to the administration and interpretation of the provisions of this chapter.

(4) Members of the advisory council shall be reimbursed for mileage and expenses as is authorized by law.

**History:** Sources: Codes, 1942, § 7129-134; Laws, 1972, ch. 528, § 4; Laws, 1983, ch. 522, § 40; Laws, 1990, ch. 552, § 4; Laws, 2000, ch. 415, § 1; Laws, 2008, ch. 495, § 2, eff from and after July 1, 2008.

**§ 43-20-8. Powers and duties of licensing agency; parental access to facilities; obtaining criminal records and child abuse registry records of current and prospective caregivers; authority to exclude certain crimes or findings as disqualifying for licensure; immunity; fee for background check; immunization against invasive pneumococcal disease [Repealed effective July 1, 2020].**

(1) The licensing agency shall have powers and duties as set forth below, in addition to other duties prescribed under this chapter:

(a) Promulgate rules and regulations concerning the licensing and regulation of child care facilities as defined in Section 43-20-5;

(b) Have the authority to issue, deny, suspend, revoke, restrict or otherwise take disciplinary action against licensees as provided for in this chapter;

(c) Set and collect fees and penalties as provided for in this chapter; any increase in the fees charged by the licensing agency under this paragraph shall be in accordance with the provisions of Section 41-3-65; and

(d) Have such other powers as may be required to carry out the provisions of this chapter.

(2) Child care facilities shall assure that parents have welcome access to the child care facility at all times and shall comply with the provisions of Chapter 520, Laws of 2006.

(3) Each child care facility shall develop and maintain a current list of contact persons for each child provided care by that facility. An agreement may be made between the child care facility and the child's parent, guardian or contact person at the time of registration to inform the parent, guardian or contact person if the child does not arrive at the facility within a reasonable time.

(4) Child care facilities shall require that, for any current or prospective caregiver, all criminal records, background and sex offender registry checks and current child abuse registry checks are obtained. In order to determine the applicant's suitability for employment, the applicant shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check.

(5) The licensing agency shall require to be performed a criminal records background check and a child abuse registry check for all operators of a child care facility and any person living in a residence used for child care. The Department of Human Services shall have the authority to disclose to the State Department of Health any potential applicant whose name is listed on the

Child Abuse Central Registry or has a pending administrative review. That information shall remain confidential by all parties. In order to determine the applicant's suitability for employment, the applicant shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check.

(6) The licensing agency shall have the authority to exclude a particular crime or crimes or a substantiated finding of child abuse and/or neglect as disqualifying individuals or entities for prospective or current employment or licensure.

(7) The licensing agency and its agents, officers, employees, attorneys and representatives shall not be held civilly liable for any findings, recommendations or actions taken under this section.

(8) All fees incurred in compliance with this section shall be borne by the child care facility. The licensing agency is authorized to charge a fee that includes the amount required by the Federal Bureau of Investigation for the national criminal history record check in compliance with the Child Protection Act of 1993, as amended, and any necessary costs incurred by the licensing agency for the handling and administration of the criminal history background checks.

(9) From and after January 1, 2008, the State Board of Health shall develop regulations to ensure that all children enrolled or enrolling in a state licensed child care center receive age-appropriate immunization against invasive pneumococcal disease as recommended by the Advisory Committee on immunization practices of the Centers for Disease Control and Prevention. The State Board of Health shall include, within its regulations, protocols for children under the age of twenty-four (24) months to catch up on missed doses. If the State Board of Health has adopted regulations before January 1, 2008, that would otherwise meet the requirements of this subsection, then this subsection shall stand repealed on January 1, 2008.

**History:** Sources: Laws, 1990, ch. 552, § 5; Laws, 1996, ch. 479, § 1; Laws, 2000, ch. 415, § 2; Laws, 2000, ch. 499, § 26; Laws, 2003, ch. 554, § 1; Laws, 2004, ch. 579, § 2; Laws, 2005, ch. 450, § 5; Laws, 2006, ch. 520, § 13; Laws, 2007, ch. 418, § 1; Laws, 2016, ch. 510, § 33, eff from and after July 1, 2016.

#### **§ 43-20-9. License required.**

From and after August 1, 1972, no person acting individually or jointly with another person or persons shall establish, own, operate, conduct or maintain a child care facility in this state without a license issued under this chapter.

**History:** Sources: Codes, 1942, § 7129-135; Laws, 1972, ch. 528, § 5; brought forward, Laws, 1990, ch. 552, § 6, eff from and after July 1, 1990.

#### **§ 43-20-11. Application for and issuance of license [Repealed effective July 1, 2020].**

An application for a license under this chapter shall be made to the licensing agency upon forms provided by it, and shall contain such information as the licensing agency may reasonably require. Each application for a license shall be accompanied by a license fee not to exceed Four

Hundred Dollars (\$400.00), which shall be paid to the licensing agency. Any increase in the fee charged by the licensing agency under this section shall be in accordance with the provisions of Section 41-3-65. Licenses shall be granted to applicants upon the filing of properly completed application forms, accompanied by payment of the license fee, and a certificate of inspection and approval by the fire department of the municipality or other political subdivision in which the facility is located, and by a certificate of inspection and approval by the health department of the county in which the facility is located, and approval by the licensing agency; except that if no fire department exists where the facility is located, the State Fire Marshal shall certify as to the inspection for safety from fire hazards. The fire, county health department and licensing agency inspections and approvals shall be based upon regulations promulgated by the licensing agency as approved by the State Board of Health.

Each license shall be issued only for the premises and person or persons named in the application and shall not be transferable or assignable except with the written approval of the licensing agency. Licenses shall be posted in a conspicuous place on the licensed premises.

No governmental entity or agency shall be required to pay the fee or fees set forth in this section.

**History:** Sources: Codes, 1942, § 7129-136; Laws, 1972, ch. 528, § 6; Laws, 1979, ch. 445, § 8; Laws, 1986, ch. 371, § 7; Laws, 1990, ch. 552, § 7; Laws, 1991, ch. 606, § 8; Laws, 2000, ch. 415, § 3; Laws, 2008, ch. 495, § 3; Laws, 2016, ch. 510, § 34, eff from and after July 1, 2016.

#### **§ 43-20-12. Fees and penalties to be deposited in special fund.**

All fees collected by the State Board of Health under this chapter and any penalties collected by the board for violations of this chapter shall be deposited in a special fund hereby created in the State Treasury and shall be used for the implementation and administration of this chapter when appropriated by the Legislature for such purpose.

**History:** Sources: Laws, 1983, ch. 522, § 41; brought forward, Laws, 1990, ch. 552, § 8, eff from and after July 1, 1990.

#### **§ 43-20-13. Renewal of license [Repealed effective July 1, 2020].**

A license issued under the provisions of this chapter shall be renewed upon payment of a renewal fee not to exceed Four Hundred Dollars (\$400.00) per year, and upon filing by the licensee of a report upon such uniform dates and upon forms provided by the licensing agency, accompanied by a current certificate of inspection and approval by the fire department and the county health department specified in Section 43-20-11.

Any increase in the fee charged by the licensing agency under this section shall be in accordance with the provisions of Section 41-3-65.

No governmental entity or agency shall be required to pay the fee or fees set forth in this section.

**History:** Sources: Codes, 1942, § 7129-137; Laws, 1972, ch. 528, § 7; Laws, 1979, ch. 445, § 9; Laws, 1986, ch. 371, § 8; brought forward, Laws, 1990, ch. 552, § 9; Laws, 1991, ch. 606, § 9; Laws, 2000, ch. 415, § 4; Laws, 2008, ch. 495, § 4; Laws, 2016, ch. 510, § 35, eff from and after July 1, 2016.

**§ 43-20-14. Denial, suspension, or revocation of license; hearing; appeal.**

(1) The licensing agency may deny a license or refuse to renew a license for any of the reasons set forth in subsection (3) of this section.

(2) Before the licensing agency may deny or refuse to renew, the applicant or person named on the license shall be entitled to a hearing in order to show cause why the license should not be denied or should be renewed.

(3) The licensing agency may suspend, revoke or restrict the license of any child-care facility upon one or more of the following grounds:

(a) Fraud, misrepresentation or concealment of material facts;

(b) Conviction of an operator for any crime if the licensing agency finds that the act or acts for which the operator was convicted could have a detrimental effect on children cared for by any child-care facility;

(c) Violation of any of the provisions of this chapter or of the regulations governing the licensing and regulation of child-care facilities promulgated by the licensing agency;

(d) Any conduct, or failure to act, that is found or determined by the licensing agency to threaten the health or safety of children at the facility;

(e) Failure by the child-care facility to comply with the provisions of Section 43-20-8(3) regarding background checks of caregivers; and

(f) Information received by the licensing agency as a result of the criminal records background check and the child abuse registry check on all operators under Section 43-20-8.

(4) Before the licensing agency may suspend, revoke or restrict the license of any facility, any licensee affected by that decision of the licensing agency shall be entitled to a hearing in which the licensee may show cause why the license should not be suspended, revoked or restricted.

(5) Any licensee who disagrees with or is aggrieved by a decision of the Mississippi State Department of Health in regard to the denial, refusal to renew, suspension, revocation or restriction of the license of the licensee, may appeal to the chancery court of the county in which the facility is located. The appeal shall be filed no later than thirty (30) days after the licensee receives written notice of the final administrative action by the Mississippi State Department of Health as to the suspension, revocation or restriction of the license of the licensee.

**History:** Sources: Laws, 1978, ch. 413, § 1; Laws, 1990, ch. 552, § 10; Laws, 2000, ch. 415, § 5; Laws, 2003, ch. 554, § 2, eff from and after July 1, 2003.

#### **§ 43-20-15. Inspections.**

The licensing agency shall make or cause to be made inspections relative to compliance with the laws and regulations governing the licensure of child care facilities. Such inspections shall be made at least once a year but additional inspections may be made as often as deemed necessary by the licensing agency.

**History:** Sources: Codes, 1942, § 7129-138; Laws, 1972, ch. 528, § 8; Laws, 1990, ch. 552, § 11, eff from and after July 1, 1990.

#### **§ 43-20-17. Information confidential; authority to release findings of investigations into allegations of abuse.**

Information in the possession of the licensing agency concerning the license of individual child care facilities may be disclosed to the public, except such information shall not be disclosed in such manner as to identify children or families of children cared for at a child care facility. Nothing in this section shall affect the agency's authority to release findings of investigations into allegations of abuse pursuant to either Section 43-21-353(8) or Section 43-21-257.

**History:** Sources: Codes, 1942, § 7129-139; Laws, 1972, ch. 528, § 9; Laws, 1990, ch. 552, § 12; Laws, 1999, ch. 329, § 4; Laws, 2000, ch. 415, § 6, eff from and after July 1, 2000.

#### **§ 43-20-19. Penalty.**

Any person establishing, conducting, managing or operating a child care facility without a license under this chapter after August 1, 1972, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than One Hundred Dollars (\$100.00) for the first offense, and not more than Two Hundred Dollars (\$200.00) for each subsequent offense.

**History:** Sources: Codes, 1942, § 7129-141; Laws, 1972, ch. 528, § 11; brought forward, Laws, 1990, ch. 552, § 13, eff from and after July 1, 1990.

#### **§ 43-20-21. Injunctive relief.**

Notwithstanding the existence of any other remedy, the licensing agency may, in the manner provided by law, in termtime or in vacation, upon the advice of the Attorney General who, except as otherwise authorized in Section 7-5-39, shall represent the licensing agency in the proceedings, maintain an action in the name of the state for an injunction or other proper remedy against any person to restrain or prevent the establishment, conduct, management or operation of a child care facility without license under this chapter, or otherwise in violation of this chapter.

**History:** Sources: Codes, 1942, § 7129-140; Laws, 1972, ch. 528, § 10; brought forward, Laws, 1990, ch. 552, § 14; Laws, 2012, ch. 546, § 19, eff from and after July 1, 2012.