

2403

SHESS

HB 357

2403

- 1 10. There are risks stemming from insufficient and improper equipments
2 and toys including those which are hazardous and inappropriate to
3 the ages of the children.
4 11. There are special operational risks including the reception of sick
5 children, improper release of children and transportation of
6 children.

7 ~~The achievement of risk reduction is by means of the formulation, imple-~~
8 ~~mentation and enforcement of child day care center standards in the form of~~
9 ~~structural-operational requirements.~~ To be initially approved a center must
10 demonstrate compliance with the risk reducing standards. To continue to
11 operate after being licensed the facility must stand ready to demonstrate
12 continued compliance to standards. Operationally conceived, standards might
13 be described as legitimated community expectations of performance by those
14 who take on the responsibility of caring for other people's children.

15 As already indicated the power of the state to provide such minimal
16 safeguarding of out-of-home care to children has been manifest legislatively
17 for approximately a century. Of the state as parens patriae acts to reduce
18 the tangible risks in day care centers by means of child care licensing pro-
19 grams, then the exemption of a church operation which in effect is a de facto
20 day care center regardless of what it may be called, would seem to constitute
21 unequal protection of the most defenseless and vulnerable category of persons
22 in the American society.

23 3

24 ~~The feasibility of any specific licensing standard impinging greatly~~
25 ~~upon free exercise of religion is minimal in light of the licensing agency's~~
26 ~~capability for positive accommodations by means of making exceptions and/or~~
27 ~~granting waivers and variances.~~ The exception is granted on a basis of
28 individualized review by the licensing agency with possible community partici-
29 pation being present. When the possibility of immediate danger to the child
30 does not exist and where the requirement is deemed to be particularly burden-
31 some on the free exercise of religious posture, accommodation may be possible.
32 However, these administrative features are present: (1) The religious
33 organization should request the exception in writing, and indicate how the
34 goal of the standard will be achieved by alternate operations. (2) The
35 granting of exceptions should be "open" operations with the fact of a modified
36 requirement for a given facility being in the public domain. (Justice Holmes
37 statement is recalled: "Silence breeds conspiracy.") This possibility of
38 positive accommodation by the licensing agency in respect to a given standard
39 in a given facility is most essential in a politically democratic society
40 characterized by a higher level of cultural pluralism. More important, this
41 approach of positive accommodation eliminates the need for total exemption
42 because of a conflict with perhaps a single specific requirement.

1 IV. Unacceptability of "token" regulation as an escape from licensure.

2 The challenge of exemption from the licensing of child care by religious
3 organizations has taken a number of forms. One such approach is "token" regu-
4 lation, which requires approval from a local fire marshal and health depart-
5 ment with respect to certain minimal physical plant requirements. For example,
6 relatively recent laws enacted in Indiana and several other states including
7 Virginia and South Carolina, in which church affiliated day care centers would
8 be exempt from the child care licensing statute provided there is compliance
9 with certain statutory stipulations. These stipulations may also include
10 registration of the fact of operating a day care center, seeking certain types
11 of approval from the fire marshal's office and the health department, and per-
12 haps notifying the parent consumer that the facility doesn't have a general
13 child care license.

14 We would express opposition to these exemption statutes for three reasons:
15 1. At best they are tokenism of child care safeguarding and beg the issue
16 of what constitutes proper and adequate protection of all young
17 children in out-of-home care situations.
18 2. This arrangement gives an economic advantage to the exempt facilities
19 and is unfair to nonchurch affiliated facilities, especially in light
20 of the fact that the church affiliated centers already may have a com-
21 petitive advantage by reason of the church's tax exemption status.
22 3. The granting of exemptions generally, and especially when it provides
23 an economic or administrative advantage, is conducive to community
24 divisiveness, or at least confusion to the consumer, and may well
25 contribute to undermining or actually destroying most of the state's
26 safeguarding effort.

27 1. Tokenism safeguarding

28 Fire safety and sanitation are important concerns in safeguarding
29 young children in out-of-home care. They constitute, however, only a small
30 proportion of the total risks in center care. In terms of actual experience
31 serious negative, detrimental care may result: To take just three examples
32 from: 1) insufficient staff to properly supervise the daily activity of the
33 children so that they do not hurt themselves or the older, larger children do
34 not hurt the smaller, younger children; 2) child abuse often stemming from
35 excessively severe punishment; and 3) insufficient equipment (resulting in
36 "glued to the tube" for five or six hours a day) or just plain hazardous toys.
37 In addition to these frequently recurring risks there are others that are per-
38 haps not as commonplace but they need to be guarded against. When they do
39 eventuate it may take on group catastrophic proportions. They include (but
40 are not limited to these two instances) 1) improper handling of the "child who
41 comes sick" and may infect a whole center, and 2) irresponsible transporta-
42 tions of young children. Now neither of these risks and many more are not
43 dealt with in this so-called less intrusive regulatory approach. It is
44 wholly inadequate in the safeguarding of very young children and needs to be
45 seen ironically (in as much as this is a First Amendment controversy) as a
46 "politics of religion" situation!

47 In fact this type of proposal - or enactment - is even unsatisfactory
48 from the viewpoint of fire safety and sanitation, per se. In a formal
49 licensing operation the licensing staff is generally sensitized to non-
50 compliance in these areas of fire safety and health. Thus in supervisory
51 visits to the facility the child care licenser may become aware of possible
52 deficiencies in these areas and call attention to operator. If it seems
53 very serious they can communicate their concern directly to these regulatory
54 authorities. In a sense child care licensing is a complementary safeguarding
55 operation in the area of fire safety and certain public health matters.

1 In 1981 the Illinois legislature passed an exemption measure similar to
2 what is under discussion here. Governor James R. Thompson vetoed the law. In
3 his August 21, 1981 veto message he wrote in part: —

4 "... The exemption proposed in Senate Bill 524 serves to eliminate the
5 very intent and purpose of the Child Care Act -- that is to provide for the
6 protection of children in care away from their own parents. Child welfare
7 licensing is preventive in nature and is designed to reduce risks to children.
8 The regulation of day care centers extends this protection to our most
9 vulnerable population -- infants and young children -- a group for which the
10 known risks of group care situations are well documented.

11 "This proposal to exempt day care centers from licensing, based upon
12 sponsorship by a church or religious organization constitutes unequal protec-
13 tion to children in group care; unfairly discriminates against those facili-
14 ties subject to state licensure; and greatly inhibits the effective enforce-
15 ment of the entire statute...

16 "... Moreover, the State should not place itself in the position of
17 distinguishing what constitutes a recognized church or religious organization.

18 *One argument which has been voiced in favor of Senate Bill 524 is the*
19 *assertion that health and fire safety standards, since they are referenced in*
20 *the Bill, will be met by the exempt facilities. Since it is licensure itself*
21 *which authorizes health and fire safety inspections, this is a specious*
22 *argument. Indeed, it is the day care center licensing standards which ensure*
23 *that health and fire safety codes are met. Exempt facilities cannot be*
24 *(routinely) inspected. (Italics added)*

25 2. Economics advantage to church affiliated centers.

26 There is no doubt that certain types of standards (requirements)
27 increase costs of operation. This is a "law of situation" that applies in
28 most safeguarding operations: whether it is safer automobiles, hospitals,
29 pharmaceutical products or day care centers. For the state, however, to
30 relieve church affiliated centers from having to meet these requirements
31 cost and to continue to demand that they be met by non church affiliated
32 centers is to give a competitive economic advantage to the church related
33 operations.

34 It should be further noted that this economic advantage is compounded
35 by the fact that church property may benefit from tax exemption laws. The
36 creation of such economic advantage to church day care centers would seem to
37 move the state from a position of "neutrality" to one favoring (aiding)
38 church operated facilities at the expense of the non church centers.

39 3. The aftermath of exemption is community divisiveness.

40 A general finding from the field of regulatory administration is
41 that exemption provisions are conducive to community divisiveness: "why me
42 but not him?" This divisiveness is present even when the economic advantage
43 is not in the forefront. For example, in the early days of child care
44 licensing only private facilities were included in the statute. There may
45 have been good political theory - the separation of powers doctrine - for
46 not including public child care facilities. Regardless of the reasons there
47 was ever increasing resentment among the licensed private facilities.

1. Although not economically disadvantaged it was a deep-seated feeling of
2 unfairness - a cardinal evil in a politically democratic society. Thus
3 resentment continued to the point that new legislation has tended to make
4 public child care facilities subject to the same standards (requirements)
5 and to systematic compliance inspections although negative sanctions may be
6 applied in a different way.

7 . . . Where the exemptions give an economic advantage to one group of private
8 organizations over another there is bound to be even greater resentment.
9 The divisiveness may even manifest itself in community-wide meeting of day
10 care personnel. With much frequency, attempts to raise standards are reflex-
11 ibly resisted by non exempted organizations on a basis that it increases the
12 economic advantages of the exempt facilities. Exemption may also contribute
13 to marked divisiveness within the overall religious community of the states.
14 In a number of recent instances a proposal for exemption did not have the
15 support of the majority of church organizations and many church leaders were
16 in the forefront of opposition.

17 It is to be further noted that in all or almost all of the laws granting
18 exemption to religious organizations there is provision for the exempted
19 facility to elect to seek licensure. In every state with such a permission
20 to seek licensure provision, exempted religious organizations do as a matter
21 of fact seek licensure in substantial numbers. In one state the licensing
22 administrator estimated the number would be eighty percent of the total
23 exempted group. When operators of exempted facilities are asked why they
24 seek licensure a frequent answer is to the effect: "I believe in licensing
25 as a safeguard for children." One added, "The church has an added responsi-
26 bility to see that children get this protection."

27 As a postscriptive statement this might be added: The "offer" by
28 religious organizations to be subject to regulatory inspection by the fire
29 marshal and by the health department (but not by another state established
30 regulatory agency, namely the child care office) raises this practical
31 question in public policy formulation, implementation and enforcement: Are
32 church affiliated day care centers, because of the First Amendment, to be
33 authorized to pick and choose which state safety policies relating to young
34 children are to be applied to its facility?

35 In the conscientious objector cases (Gillette v. United States,
36 *Negre v. Larsens* 401 U.S. 437; 1971) dealing with situations when the
37 person's objection was not against all wars but only particular wars the
38 Court referred to the danger perceived by some that exempting persons who
39 dissent from a particular war, albeit on grounds of conscience and religion
40 in part would (and we quote from the case) "open the doors to a general
41 theory of selective disobedience to law"...

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FILED

U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

MAR 4 1993

CARL R. BRENTS, CLERK

By: _____
DEP. CLERK

ARKANSAS DAY CARE ASSOCIATION, INC.,
DR. BETTY CALDWELL; TIFFANY WELCH, by
her parents and next friends Mike and
Karen Welch; KATI MARTIN AND SHAWN
MARTIN, by their parents and next friends
Timothy and Vicki Martin

PLAINTIFFS

VS.

CIVIL ACTION

NO. LR-P-83-192

BILL CLINTON, Governor, State of Arkansas;
ARKANSAS CHILD CARE FACILITY REVIEW BOARD;
LOYD SCHUH; LEROY ACREE; JOHN LUSK; DR. SUSAN
KEATHLEY; RAY ALLEN; LARRY ROBERTSON; DR. P. B.
GREENHOUSE, all individually and in their official
capacities as members of the Arkansas Child Care
Facilities Review Board

DEFENDANTS

COMPLAINT

I. Jurisdiction

1. The court has jurisdiction pursuant to 28 U.S.C. §§1331, 1343 (3) and (4) for causes of action arising under the First and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. §1983 and 28 U.S.C. §§2201 and 2202.

II. Nature of the Action

2. This is an action for declaratory and injunctive relief declaring Act 245 of 1983 and Act 518 of

1981, and Act 123 of 1973, Acts of Arkansas, which exempts "religious" child care facilities from regulation by the Child Care Facilities Review Board (hereafter "Act 245" and "Act 518" and Act 123), in violation of the First and Fourteenth Amendments to the Constitution of the United States, and of 42 U.S.C. §1983, and enjoining its implementation and/or enforcement.

3.- Acts 245, 518, and 123 (a) constitute an establishment of religion, (b) are impermissably vague, and (c) deny to plaintiffs equal protection of the law, all in violation of the Constitution and laws of the United States.

4. Plaintiffs request injunctive relief prohibiting defendants from in any way implementing and/or enforcing the provisions of Acts 245, 518, and 123 including the promulgation of any rules or regulations incident to issuance of any certificate of exemption or exempting any facility from inspection or regulation.

III. Plaintiffs

5. Plaintiffs are:

A. Arkansas Day Care Association Inc. is an Arkansas non-profit corporation made up of proprietary day care providers.

B. Betty Caldwell is a resident of Pulaski County, Arkansas. She is National President of the National Association for the Education of Young Children. She has devoted her professional career to the advancement of health, education and welfare of minor children.

C. Tiffany Welch is a resident of Pulaski County, Arkansas who attended an unlicensed day care center in Little Rock until she suffered physical abuse there. She is four years old and now attends a licensed religious day care center in Little Rock.

D. Kati Martin and Shawn Martin are residents of Pulaski County who also attended an unlicensed day care center facility in Little Rock until they suffered physical abuse there. They are two years old and one year old respectively, and are now attending a licensed religious day care center in Little Rock.

IV. Defendants

6. Defendants are:

(A) Defendant Bill Clinton is the Governor of the State of Arkansas. He signed Act 245 which was enacted by the legislature of the State of Arkansas.

(B) Defendant State of Arkansas Child Care Facility Review Board (hereafter, the "Board") is established and functions pursuant to the laws of Arkansas.

(C) Defendants Kenny Whitlock, Chairman, and Arkansas Child Care Facility Review Board, Loyd Schuh, Leroy Acree, Dr. Susan Keathley, Ray Allen, Larry Robertson, and Dr. P. B. Greenhouse, all individually and in their official capacities as members of the Arkansas Child Care Facility Review Board.

FACTS

7. A. The State of Arkansas has regulated child care facilities since at least 1969. In 1969 the legislature enacted Act 434 of 1969 being Ark. Stats. Ann., §§83-901 through §83-919. Pursuant to these statutes the Board has inspected and licensed all child care facilities.

B. The Board has promulgated various minimum standards for various types of child care facilities covering all aspects of the operation of these facilities. These standards are designed to insure the health, safety and welfare of all children under the care of these facilities.

C. In 1973 the legislature enacted Act 123 of 1973 which provided that religious child care facilities organized and operating as of July 1, 1969, were required to be inspected but could apply for an exemption from licensing.

8. A. In 1981 the legislature enacted Act 518 of 1981 which provided that any religious child care facility organized and operating as of July 1, 1969 was entitled to

apply for exemption from inspection and licensing. The request for exemption is sufficient to entitle any such facility to exemption.

B. Only religious facilities were exempted by Act 518 and no legitimate or compelling interest was brought before the legislature to justify such exemption from traditional regulation.

9. A. On or about January 24, 1983, a subcommittee of the, Committee on State Agencies and Governmental Affairs Committee Arkansas House of Representatives considered a bill known then as House Bill (HB) 223. HB 223 bill proposed that child care facilities operated by church groups be exempted from regulation by the defendant Board. The sole purpose of the bill was to exempt these facilities from state regulation.

B. At the time of the initial deliberations the Attorney General of the State of Arkansas, the Honorable Steve Clark, had already issued a formal Attorney General's Opinion dated January 24, 1983 and numbered 83-15. In this opinion, attached hereto as Exhibit A and made a part hereof, Clark set forth several constitutional difficulties with the bill and concluded (p.5) "...it is my judgment that the bill would be struck down as a violation of the constitutional provisions I have mentioned."

/ 10. The subcommittee deliberated concerning the bill approximately two hours without being able to reach

consensus on the merits of the bill. The subcommittee then created a special ad hoc committee to which HB 223 was to be referred. This ad hoc committee was made up of five representatives of church groups favoring exemption from licensing, five persons opposing exemption from licensing and at least three members of the Board. Each of the five persons selected for those favoring legislation were clergy.

11. The ad hoc committee met on at least four separate occasions to consider "compromise legislation". The first meeting was for approximately six hours on January 26, 1983. The proposals made were referred to the Attorney General. The Attorney General issued a memorandum opinion attached hereto as Exhibit B and made a part hereof. This opinion, dated January 28, expressed the view that the proposed legislation continued to remain "constitutionally suspect and unlikely to be upheld as constitutional if challenged."

12. On January 28, after receipt of Exhibit B, the ad hoc committee met again for approximately three hours. The draft reached as a result of this meeting was dated January 29 and, again, was submitted to the Attorney General for his opinion. The Attorney General again reviewed the legislation. A copy of the Attorney General's opinion dated January 31 is attached hereto as Exhibit C and made a part of. The opinion again expressed the view that the proposed legislation possessed significant constitutional infirmities.

The Attorney General concluded his opinion "...it is my opinion that this draft is unlikely to be upheld as constitutional if challenged."

B. On January 31, the ad hoc committee met again for four hours. As a result of this meeting the proposed changes were submitted to Representative Lloyd George, the Chairman of the subcommittee. The submission was in the form of a letter from Ray Scott, Director of the Arkansas Department of Human Services, to Representative George. A copy of the letter from Scott forwarding the amendments is attached as Exhibit D and made a part hereof. Attached to this letter by Scott are the amendments as well as the names and affiliations of the members of the ad hoc Committee.

13. A. The members of the ad hoc committee in favor of exemption for religious facilities and their affiliations were:

<u>Name</u>	<u>Affiliation</u>
1. Dr. W. A. Dillard	President, American Baptist Association
2. Rev. Jerry Millikin	Faith Christian Home for Children, Forrest City, AR
3. Dr. Glenn Riggs	President, Arkansas Christian Schools Association
4. Rev. Bill Thomas	United Pentecostal Church
5. Rev. David Wiggins	Supervisor, Assemblies of God of Arkansas

B. At the time of the meetings of the ad hoc committee the Faith Christian Home for Children was a

defendant in an action brought by the State of Arkansas, concerning child abuse allegations in the operation of that facility covered by the State's licensing provisions.

C. At the time of the enactment of Act 518 of 1981 a facility under the supervision of W. A. Dillard was a defendant in an action brought by the State of Arkansas concerning aspects of the operation of that facility covered by the State's licensing provisions.

14. A. The Attorney General in a formal opinion dated February 2 and numbered 83-32 expressed the opinion that the amendments attached to the Scott letter dated February 1, 1983 were also unconstitutional. A copy of that opinion is attached hereto as Exhibit E and made a part hereof.

B. The Attorney General's opinion concluded, "...it is my belief that these proposed amendments are constitutionally suspect and would not withstand a legal challenge in state or federal court.

15. A. The ad hoc committee met for the final time on February 7, 1983 to consider their prior suggested amendments. They developed their final version of the proposed legislation, which was again forwarded to Representative George by Ray Scott in a letter dated February 9, 1983, a copy of which is attached hereto as Exhibit F and made a part hereof. Attached to the Scott letter was the proposed amended legislation. The proposed amendments were

identical in all material respects to the legislative enactment which became Act 245 of 1983.

B. The last version was not submitted to the Attorney General for his opinion.

C. The last version was not submitted to the Attorney General because his opinion would remain the same regarding constitutionality.

D. The last version was not materially different from prior versions in those matters found constitutionally suspect by the Attorney General.

16. A copy of Act 245 is attached hereto as Exhibit G and made a part hereof. The title as well as the actual provisions of Act 245 explicitly provide only for the exemption of religious child care facilities and no others.

17. The preamble to Act 245 notes that "many religious child care facilities have been organized since July 1, 1969" and that "many religious child care facilities are now included within the definition of child care facilities."

18. A. Act 245 provides that "Any church or group of churches, exempt from the State income tax levied by Act 118 of 1929, as amended, [Ark. Stat. Ann. §84-2006(3)] operating a child care facility, shall be exempt from obtaining a license..."

B. There is no definition of church contained in Ark. Stat. Ann. §84-2006(3). The only reference contained in

that statute which could possibly be applicable to Act 245 is "...corporations organized for religious, charitable, scientific or educational purposes."

19. A. Act 245 requires of church run facilities that they be in "substantial compliance" with published standards in order to maintain their exempt status.

B. Act 245 contains no definition of substantial compliance.

C. The existing regulations contain no definition of substantial compliance.

D. There nowhere exists a definition of substantial compliance as it is used in Act 245.

20. A. Act 245 establishes the concept of exemption only for church operated facilities.

B. Act 245 establishes a concept of being in substantial compliance only for church operated facilities.

C. Act 245 establishes a process of judicial review outside of and in conflict with the Arkansas Administrative Procedures Act only for church operated facilities.

D. Act 245 represents an unlawful delegation of legislative authority.

21. Act 245 establishes a scheme of self-regulation only for church operated facilities.

22. A. No secular or neutral legislative purpose was advanced by the ad hoc committee, the subcommittee of the

legislature, or the Governor to justify the exemption of church operated facilities from licensing.

B. Act 245 denies equal protection of the law to the children of the State of Arkansas who are in uninspected and unlicensed facilities as contrasted with those in licensed facilities.

23. A. Acts 245, 518 and 123 are the latest attempts in a longstanding pattern and practice of the State of Arkansas to promote religion and to assist in the establishment of religion.

B. Many religious leaders in Arkansas, as well as groups and associations, oppose the exemption from licensing for religious institutions and position statements are attached hereto as Exhibit H and made a part hereof.

24. A. The cost of being in "substantial compliance" for the exempt centers will be significantly less than the cost of complying with the requirements imposed on nonexempt centers by the licensing standards set forth in the Arkansas minimum standards. Exempt centers may also reduce their fixed costs per child, as compared with nonexempt centers, by increasing their enrollments beyond the levels imposed on nonexempt centers by the licensing standards.

B. A copy of minimum standards for one type of child care facility, the Day Care Center is attached hereto as Exhibit H and made a part hereof.

25. The opening of exempt centers will increase the supply of child care spaces in particular neighborhoods. Most children attend centers within a few miles of their home or within a few miles of their parents' workplaces. As a result of the increase in supply in particular neighborhoods caused by the opening of new exempt centers, the number of available spaces exceeds and will exceed the number of children in such neighborhoods who would attend day care centers, which in turn will lead to further unfair and unlawful competitive pressures on plaintiffs' costs and revenues.

26. Plaintiffs will suffer, if relief is not granted, substantial injury because they will lose customers to newly opened exempt centers.

27. This injury is continuing and irreparable and will persist until and unless defendants require religiously affiliated centers to comply with the minimum standards for day care licensing set forth in Exhibit I. Defendants will not be able to require compliance, because of Acts 245, 518, and 123 unless the relief prayed for herein is granted. Plaintiffs have no adequate remedy at law nor adequate administrative remedy to secure the relief requested herein.

28. The classifications established by Acts 245 and 518 constitute an invidious discrimination against plaintiff. Such classification furthers no valid or legitimate governmental purpose. The differences and

distinction between the established classification and the plaintiff classification of non-exempt facilities deprives plaintiffs of the equal protection of the law.

29. Acts 245, 518 and 123 constitute the establishment of religion by the State of Arkansas.

30. Plaintiffs have no plain or adequate remedy at law.

WHEREFORE, plaintiffs respectfully pray that this court:

1. Declare and adjudge Acts 245, 518 and 123 to be in violation of the First and Fourteenth Amendments to the Constitution of the United States and therefore null and void and of no legal effect;

2. Issue a preliminary and permanent injunction (a) requiring the licensing of all child care facilities without regard to their religious affiliation; (b) enjoining defendant Board from exempting any child care facility from inspection and licensing by the State of Arkansas;

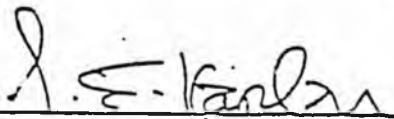
3. Award plaintiffs a reasonable attorney's fee and their costs;

4. Grant such other relief it may deem just and proper.

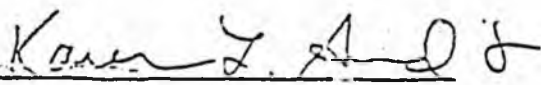
Respectfully submitted,

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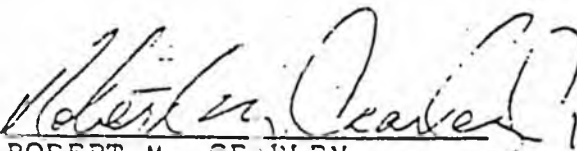

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DAY CARE CENTERS

- 185. Code requirements, modifications, and waivers
- 190. (Repealed)
- 195. Administration requirements
- 197. Ensuring care in emergencies
- 200. (Repealed)
- 205. Personnel qualifications
- 210. Number of staff required
- 220. (Repealed)
- 230. (Repealed)
- 240. General program
- 242. Environment requirements
- 245. Fire safety
- 247. Environmental health
- 250. Health program
- 255. Immunizations required
- 260. Nutrition
- 270. (Repealed)
- 275. Definitions

7 AAC 50.120. LICENSING STANDARDS. Repealed 2/3/77.

7 AAC 50.125. LICENSING AUTHORITY. The authority of the department under AS 47.35.010 - 47.35.080 has been delegated by the commissioner of health and social services to the division of social services within the department. This authority includes, but is not limited to

- (1) licensing determinations;
- (2) investigation and supervision of day care facilities;
- (3) proposing standards and enforcing those contained in regulations adopted by the commissioner;
- (4) acting as the single departmental agency on all matters pertaining to licensing. (Eff. 2/3/77, Reg. 61)

Authority: AS 47.35.010
AS 47.35.030

ARTICLE 2.
DAY CARE

- Section
- 120. (Repealed)
 - 125. Licensing authority
 - 130. (Repealed)
 - 140. (Repealed)
 - 145. Voluntary licensure
 - 150. (Repealed)
 - 155. Licensing application procedures
 - 160. (Repealed)
 - 165. Annual licensing renewal procedure
 - 170. (Repealed)
 - 175. Special provisions regarding licensure
 - 180. (Repealed)

7 AAC 50.130. LICENSING REGULATIONS FOR NURSERIES. Repealed 2/3/77.

7 AAC 50.140. DEFINITIONS. Repealed 2/3/77.

7 AAC 50.145. VOLUNTARY LICENSURE. A facility for which a license is not required by

AS 47.35.020 is entitled to a day care license upon application and satisfactory findings. These include

(1) an occupied residence in which day care is regularly provided only to a child or children related to the resident caregiver;

(2) an occupied residence in which day care is regularly provided for four or fewer children unrelated to the caregiver; and

(3) an establishment whose primary purpose is educational and which is certified by the Department of Education. (Eff. 2/3/77, Reg. 61)

Authority: AS 47.35.020
AS 47.35.030

7 AAC 50.150. ADMINISTRATIVE RESPONSIBILITY. Repealed 2/3/77.

7 AAC 50.155. LICENSING APPLICATION PROCEDURES. (a) An application for a license must be made on a form prescribed by the division, which can be obtained from its office in Nome, Fairbanks, Bethel, Anchorage, Juneau, or Ketchikan. There is no charge for licensing. The application must be returned to the division office nearest to the location of the facility sought to be licensed.

(b) Upon receipt of a completed application, a division representative will within 60 days

(1) review the application, confer with the applicant, inspect the facility for which application is made; and

(2) if the application is for operation of a day care center, request appropriate authorities to verify compliance with applicable fire safety standards, environmental protection standards, building codes, zoning ordinances, or other state and local law; and

(3) if the application is for operation of a family day care home, request an advisory environmental protection or fire safety inspection from appropriate authorities, whenever such an inspection is considered necessary.

(c) When the results of the study and inspections verify that the provisions of 7 AAC 50.125 -

7 AAC 50.275 have been met, a license will be issued. (Eff. 2/3/77, Reg. 61; am 11/21/80, Reg. 76)

Authority: AS 47.35.030
AS 47.35.040

7 AAC 50.160. STATEMENT OF PURPOSE. Repealed 2/3/77.

7 AAC 50.165. ANNUAL LICENSING RENEWAL PROCEDURE. (a) A license will be renewed

(1) upon application 30 days before the expiration date of the annual license for a family day care home and 60 days before the expiration date of the annual license for a day care center; and

(2) upon satisfactory completion of a study and inspection by the licensing representative and approval by the division.

(b) No later than 10 days before the expiration of a license, a written report of the study and inspection will be given to the day care operator. (Eff. 2/3/77, Reg. 61)

Authority: AS 47.35.030

7 AAC 50.170. RECORDS AND REPORTS. Repealed 2/3/77.

7 AAC 50.175. SPECIAL PROVISIONS REGARDING LICENSURE. (a) A facility which has made application to the Department of Education for a preelementary school certificate that has been denied is subject to the licensure provisions of 7 AAC 50.125 - 7 AAC 50.275

(1) fifteen days following notification of denial; or

(2) upon a final finding on appeal affirming the denial of the application.

(b) Persons caring for children at the time that an application for license is made may, on

approval of the division, continue care of the children while the application is being studied and evaluated.

(c) Although under AS 47.35.050 a license remains in effect for a period of one year, unless revoked for cause, the division will in its discretion issue a provisional license for a period not to exceed six months to allow time for a day care facility to comply with applicable requirements. An exception to the six-month limitation for provisional licenses may be approved where considerations such as weather or shipping would prevent compliance within six months.

(d) Licensees and applicants shall permit licensing representatives to visit their day care facilities at any time during the facility's hours of operation. In carrying out these visits, licensing representatives are authorized to call upon governmental agencies for appropriate assistance. Licensees or applicants shall cooperate in these visits by providing access to their facilities, records, and staff.

(e) Changes that may substantially alter the extent or quality of services offered, including, but not limited to, expansion or reduction of services; construction or elimination of walls, stairs, exits; changes in the staff-to-child ratio; and change in location must be reported to the division at least 30 days before the expected change to facilitate review and decision by the division.

(f) A day care license must be displayed in a prominent place on the facility premises.

(g) An applicant who has been denied a license or an operator who has been denied a renewal of a license or whose license has been conditioned or revoked may request a hearing of the director or his authorized designee within 15 days after receipt of the accusation or statement of issues authorized by AS 44.62.360 and 44.62.370 of the Administrative Procedure Act. (Eff. 2/3/77, Reg. 61)

Authority: AS 14.07.020(8)
AS 47.35.030

7 AAC 50.180. LIABILITY INSURANCE.
Repealed. (Eff. 2/3/77, Reg. 61)

7 AAC 50.185. CODE REQUIREMENTS, MODIFICATIONS, AND WAIVERS. (a) Each day care facility shall meet required local and state fire safety, health, sanitation, and licensing requirements. However, the director or his designee may modify or waive a provision of secs. 125 - 275 of this chapter when an acceptable alternative method for meeting the safeguarding intent of that provision is established and the health and well-being of children is assured. Requests for modifications or waivers of fire safety, health, or sanitation requirements must be reviewed and approved by the appropriate agencies before any determination by the director or his designee on the request.

(b) Applications for modifications or waivers must be made in writing to the division and must include

(1) a statement of the provision for which modification or waiver is requested;

(2) an explanation of why the provision cannot be met; and

(3) a description of the alternative method proposed for meeting the safeguarding intent of the provision to be waived or modified.

(c) All requests will be answered in writing and a record of them maintained. (Eff. 2/3/77, Reg. 61)

Authority: AS 47.35.030

7 AAC 50.190. FINANCIAL STATUS.
Repealed. (Eff. 2/3/77, Reg. 61)

7 AAC 50.195. ADMINISTRATION REQUIREMENTS. (a) The name, address, and telephone number of the person(s) with the legal responsibility and the administrative authority for operating the day care facility must be provided to the division.

(b) The operator of a day care facility

(1) is responsible for providing a child care program and facility which meets the requirements of secs. 125 - 275 of this chapter;

(2) shall comply with AS 18.80.230 to ensure that enrollment policies, access to

services, and services and activities of the facility are nondiscriminatory with regard to the religion, sex, color, race, and national origin of children in care and their parents;

(3) shall ensure confidentiality of records and information pertaining to an individual child or his parents, except as required by facility staff in working with the child and his family, by the licensing representative in carrying out the license study and monitoring activities, or when a release of information form is signed by the parents;

(4) shall maintain current individual child emergency information records in family day care homes and, in day care centers, maintain current individual records including, but not limited to

(A) caregiver employment and health records;

(B) child emergency information records; and

(C) caregiver and child attendance records;

(5) shall maintain records on forms prescribed by the division, unless prior division approval has been granted to use alternate forms;

(6) is responsible for the screening, scheduling, supervision, and conduct of all staff, volunteers, or others who provide services in the facility, and for designating an adult caregiver to be in charge of the facility in the operator's absence;

(7) shall, in day care centers, maintain bodily injury liability insurance (including transporting coverage, if applicable) in an amount not less than \$100,000 per child, \$300,000 per accident, with a company authorized to write insurance policies in the State of Alaska; these insurance policies must contain the following endorsement:

"in the event of cancellation or nonrenewal of this policy, the company agrees to give 30 days prior notice to the Division of Social Services, Pouch H-05, Juneau, Alaska 99811";

(8) shall, in day care centers, have written policies covering, but not limited to, nondiscrimination, the type of service to be offered to children served, provisions which can be made for special needs of individual children, enrollment requirements and procedures, fees and payment arrangement plans, insurance coverage, rules concerning personal belongings brought to the facility, transportation arrangements, parental permission for trips and related activities outside the day care center, ill children, and disclosure of information; these policies must be presented and explained to parents at the time of enrollments and a copy filed with the division;

(9) shall, in family day care homes, give evidence, through the application for a license, of established policies as specified in paragraph (8) of this subsection; these policies must be discussed with parents at the time of enrollment of a child; and

(10) must be at least 19 years of age. (Eff. 2/3/77, Reg. 61)

Authority: AS 47.35.030
AS 47.35.060

7 AAC 50.197. ENSURING CARE IN EMERGENCIES. (a) Each day care facility must have a plan for evacuation of children in case of fire or other disaster. The plan must include provisions for accountability for each child, until released to an appropriate authority. In day care centers, the plan must be written and posted. Caregivers must be aware of the plan and must hold evacuation drills at least once every two months.

(b) Provision must be made in all day care facilities for emergency electrical lighting by generator or battery power for use in case of power failure.

(c) Day care facilities must have a telephone or radiophone, if that service is locally available. Emergency telephone numbers must be conspicuously posted on or adjacent to the phone.

(d) In all day care facilities, first aid supplies appropriate to the size of the facility must be maintained and readily available at all times.

(e) In family day care homes, a second adult must be readily available to be summoned to assist in any emergency.

(f) Every caregiver or operator who, in the performance of his or her duties, has cause to believe that a child has suffered harm as a result of abuse or neglect shall immediately report the harm to the nearest office of the department. If the caregiver or operator cannot reasonably contact the nearest office of the department, and immediate action is necessary for the well-being of the child, the caregiver or operator shall make the report to a peace officer.

(g) Whenever a child is left in day care by his parents for a period exceeding the preplanned arrangement or more than 14 hours without contacting the operator, the operator shall immediately report that situation to the nearest office of the division. (Eff. 2/3/77, Reg. 61)

Authority: AS 47.35.031

7 AAC 50.200. PERSONAL QUALIFICATIONS. Repealed. (Eff. 2/3/77, Reg. 61)

7 AAC 50.205. PERSONNEL QUALIFICATIONS. (a) Each caregiver and adult member of a family day care home must have an annual negative tuberculin skin test or a negative report of a chest X-ray before contact with day care children. For caregivers whose skin test is positive, the X-ray is required in accordance with the Alaska TB Control Program schedule or the recommended schedule of the caregiver's physician, rather than annually.

(b) Each caregiver, excluding operators, volunteers, substitutes, and day care center students, must furnish the names, addresses, and telephone numbers of three unrelated references to the operator. Reference letters must be kept on file at the day care facility. The day care operator shall furnish the names, addresses, and telephone numbers of three unrelated references to the division with their initial license application; reference letters shall attest to the good character and reputation of the operator and to the qualities which enable the operator to work successfully with children.

(c) Each caregiver, excluding operators, must have reached the age of 18 to be counted toward

meeting the staff-to-child ratio requirements. However, persons aged 14 through 17 may be employed as caregivers and counted toward staff-to-child ratio requirements if

(1) they have completed a child care training course or have demonstrated to the operator competency in child care;

(2) they work under the close supervision of an adult caregiver;

(3) they constitute no more than one-third of the total caregiving staff; and

(4) they are never placed in sole charge of a group of children in a center.

(d) Each caregiver must be able to

(1) encourage children and provide them with a variety of learning and social experiences appropriate to the age of the children served;

(2) work with children without recourse to physical or psychological abuse;

(3) recognize and act against hazards to health and physical safety. (Eff. 2/3/77, Reg. 61)

Authority: AS 47.35.030

7 AAC 50.210. NUMBER OF STAFF REQUIRED. (a) Each facility must have sufficient personnel to ensure that the children are never left without supervision by a responsible caregiver.

(b) In a family day care home, if there are children under age two in care, there may not be

(1) more than two children under age two;

(2) more than five children unrelated to the caregiver; or

(3) more than eight children under age 12, including children related to the caregiver.

(c) In a family day care home, if there are no children under age two in care, there may not be

(1) more than six children unrelated to the caregiver; or

(2) more than a total of 10 children under age 12, including children related to the caregiver.

(d) In a day care center, the ratios of caregivers to children must be maintained at all times as follows:

(1) no newborn children may receive care in a day care center;

(2) there must be one caregiver for every five children between the ages of six weeks and 24 months;

(3) there must be one caregiver for every 10 children between their second and sixth birthdays;

(4) for school children aged six to 10 years, there must be one caregiver for every 15 children;

(5) for school children aged 10 - 14 years, there must be one caregiver for every 20 children.

(e) In a day care center where there are more than 10 children present, there must be a minimum of two caregivers on the premises.

(f) In a day care center, only caregivers who spend at least 75 percent of their working time providing direct care for children will be counted in meeting staff-to-child ratios. (Eff. 4/4/62, Reg. 5; am 2/3/77, Reg. 61)

Authority: AS 47.35.030

7 AAC 50.220. PHYSICAL PLANT. Repealed. (Eff. 2/3/77, Reg. 61)

7 AAC 50.230. EQUIPMENT. Repealed. (Eff. 2/3/77, Reg. 61)

7 AAC 50.240. GENERAL PROGRAM. (a) The program conducted in a day care facility must provide planned experiences which promote the individual child's physical, emotional, social, and intellectual growth and a positive identity. Satisfactory compliance with this subsection requires that

(1) caregivers generally follow a written schedule of daily activities which provide a

balance of quiet and active, group and individual activities and include adequate time for meals, snacks, sleep, and toileting according to individual needs, and indoor/outdoor play; however, the schedule in family day care facilities need not be written;

(2) opportunities be provided for individual self-expression in conversation, imaginative play, and creative expression;

(3) opportunities be provided for vigorous physical activities such as running and climbing, and for daily supervised activity outdoors, taking into consideration climatic conditions;

(4) opportunities be provided for each child to participate in activities such as taking out or putting away materials, and caring for his own clothing and bedding;

(5) opportunities be provided for intellectual and social development through use of a variety of games, toys, books, crafts, puzzles, sand, crayons, infant toys, and other activities and materials;

(6) opportunities be provided for such activities as walking excursions and field trips, weather permitting, to increase each child's awareness beyond his immediate environment;

(7) caregivers not use any form of corporal punishment unless otherwise approved in writing by the parent of the child, and that they not use any other technique which is humiliating, shaming, frightening, or otherwise damaging to a child;

(8) the amount and variety of materials and equipment available, and its arrangement and use are appropriate to the developmental needs of the children in care so that

(A) the quantity of materials and equipment is sufficient to avoid excessive competition and long waits by children and to meet criteria contained in paragraphs (1), (2), (3), and (5) of this subsection;

(B) individual storage areas are accessible to each child for storage of his or her own belongings;

(C) furniture and equipment is durable and safe and that in day care centers it is of child size or appropriately adapted for children's use.

(b) Where newborns, infants, and toddlers are in care, compliance with the criteria in subsection (a) must be appropriate to their developmental stage. In addition

(1) separate sleeping space must be provided for infants and toddlers in day care centers; a play or crawl area exclusive of crib space must be provided for their use; and provisions must be made to ensure that they are not endangered by the active play of older children;

(2) these children may not be routinely left in a crib without direct adult contact for long periods of time while awake (e.g., typically not more than 45 minutes);

(3) infants and toddlers must be allowed, under supervision, some opportunities during the day when they can explore and learn on their own;

(4) there must be toys and materials available for their use which provide opportunities for the child to learn through seeing, feeling, hearing, smelling, and tasting;

(5) there must be frequent verbal communication between caregivers and these children; and

(6) there must be physical stimulation through being held and rocked and played with as well as through being dressed, bathed, and carried. (Eff. 4/4/62, Reg. 5; am 2/3/77, Reg. 61)

Authority: AS 47.35.030

7 AAC 50.242. ENVIRONMENT REQUIREMENTS. (a) Each day care center must have sufficient indoor and outdoor space in relation to the number and ages of children in care to accommodate the physical and other developmental needs of children served. Satisfactory compliance with this subsection requires that

(1) there be at least 35 square feet of indoor space per child capacity used for the care of

children, exclusive of hallways, bathrooms, lockers, closets, laundry and furnace rooms, and the kitchen;

(2) there be at least 75 square feet per child of outdoor play space for the maximum number of children on the playground at any one time; where outdoor play space is not available at the facility, parks or other outdoor facilities that are easily accessible may be used.

(b) Each day care center must have appropriate storage and work space areas convenient to the area of use. (Eff. 2/3/77, Reg. 61)

Authority: AS 47.35.030

7 AAC 50.245. FIRE SAFETY. (a) The building housing a day care center must meet the standards for buildings and life safety contained in 13 AAC 50.010 – 13 AAC 50.030 and 13 AAC 55.010 – 13 AAC 55.150.

(b) When the division receives a license application from a day care center and when new construction or remodeling is completed, a fire inspection of the premises must be made by the fire marshal or his local designee to determine conformity with existing safety standards. Subsequent annual fire inspections might be required.

(c) Family day care homes must be free of fire hazards. They must have

(1) at least one five-pound ABC dry-chemical fire extinguisher or an AC primary power or monitored battery powered smoke-detection device;

(2) two exits remote from each other that are usable year round, one of which may be a window which can be opened;

(3) at least one usable exit directly to the outside at street level where a basement is utilized;

(4) a restriction limiting occupancy to the main floor, daylight basement, or second floor of the building, when more than two children under age five are in care;

(5) at least one exit leading directly to the

outside in any room used for sleeping purposes from midnight to 6:00 a.m.:

(6) a safe and effective heating system;

(7) adequate screening of radiators, hot water pipes, open fires, oil or wood-burning stoves, and similar hazards to prevent burns;

(8) storage of flammable or liquid combustible materials safely away from heat sources and children; and

(9) no more than one electrical extension cord on the same outlet and no combination of extension cords. (Eff. 2/3/77, Reg. 61)

Authority: AS 47.35.030

7 AAC 50.247. ENVIRONMENTAL HEALTH.

(a) A day care center must meet the standards for sanitation and environmental protection contained in 18 AAC 30.800 - 18 AAC 30.880.

(b) A family day care home must have an ample supply of potable water.

(c) A family day care home must have an acceptable sewage disposal and refuse control system.

(d) A family day care home must have the facilities necessary for the proper care, storage, refrigeration, and preparation of food.

(e) A family day care home must be reasonably free of hazards which can cause injury or health risk.

(f) Medicines, cleansers, harmful chemicals, and dangerous tools in a family day care home must be stored so as to be inaccessible to young children.

(g) Firearms in a family day care home must be unloaded and stored in a place reasonably inaccessible to young children. Ammunition must be stored separately from the firearms in a place reasonably inaccessible to young children. (Eff. 2/3/77, Reg. 61; am 2/24/78, Reg. 65; am 11/21/80, Reg. 76; am 3/31/82, Reg. 81)

Authority: AS 47.35.030

7 AAC 50.250. HEALTH PROGRAM. (a) Medicines or drugs may not be administered to any child except with written permission of the child's parent or physician or other medical authority. However, in the case of prescription medicine, a prescription label with the medical authority's name, the child's name, and a recent date may be accepted as showing that the drug may be administered to the child. Medicines or drugs kept at the facility for a child must be clearly labeled with the child's name and the dosage and must be inaccessible to children.

(b) Each day care facility must provide a place where a tired, ill, injured, or upset child may rest or play quietly, apart from other children, yet under adult observation. Ill children need not be sent home as a routine policy, but may be cared for during minor illness at the discretion of the parent and operator. If the child appears to be more than moderately ill or a communicable disease other than a cold is indicated, the child may not be allowed to expose other children to his or her illness and must be isolated in a separate room under adult observation until appropriate arrangements are made. Caregivers shall inform parents when their children have been exposed to illness or communicable disease.

(c) Extra clothing must be available for a child if needed.

(d) Children under age six who are in care for periods longer than four hours must have a time and place to lie down and sleep or rest quietly, as follows:

(1) in day care centers, individual cots, mats, or beds and bedding must be provided and must be clean and individually labeled;

(2) in family day care homes, there must be sleeping arrangements with clean individual bedding provided; and

(3) infants must be provided a crib or other safe and suitable place to sleep. (Eff. 4/4/62, Reg. 5; am 2/3/77, Reg. 61)

Authority: AS 47.35.030

7 AAC 50.255. IMMUNIZATIONS REQUIRED. (a) The operator of a day care center shall maintain evidence of current

immunization, or exemption from it, for each child in attendance. This evidence must be obtained from the child's parent or guardian upon his admission, and show that he has received or has begun and is continuing to receive immunizations appropriate to his age as prescribed in the Alaska Division of Public Health's schedule for active immunization, or that he is exempt from immunization under (b) of this section. Satisfactory compliance requires that each child's day care center health record contain evidence of immunization or evidence of exemption. Evidence of immunization must include

(1) the name of the health service provider, and the date of immunization against diphtheria, tetanus, polio, measles, rubella and, if the child

is less than six years of age, pertussis; and

(2) only valid immunization certificates, which are limited to

(A) an international immunization certificate; or

(B) a statement by a physician listing the date each required immunization was given; or

(C) a copy of a clinic or health center record listing the date each required immunization was given.

(b) Evidence of exemption from immunization must include

(1) a signed affidavit by a doctor of medicine (M.D.) or osteopathy (D.O.) licensed in Alaska attesting that immunizations would, in his professional opinion, be injurious to the health of the child or members of the child's family or household; or

(2) an affidavit signed by the parent or guardian, affirming that immunization conflicts with the tenets and practices of the church or religious denomination of which the applicant is a member; or

(3) an entry demonstrating that the child is attending for the first time a day care center providing drop-in care.

(c) A day care center providing drop-in care must require immunization as provided in (a) of this section, if not exempt, on the child's second admission date.

(d) A day care center in a community where regular medical services are not available on at least a weekly basis may provisionally admit a child who does not have the required immunizations, for a reasonable period of time in exceptional circumstances, but for no longer than 90 days. Provisional admissions must be reported to the Communicable Disease Control Section of the Division of Public Health of the department, which shall then determine that the required immunizations are completed during the provisional period if the child is to be admitted.

(e) Day care centers may not admit a child who does not comply with the provisions of this section. (Eff. 2/24/78, Reg. 65)

Authority: AS 47.35.030

7 AAC 50.260. NUTRITION. (a) To ensure adequate nutrition and promote good eating habits and attitudes, a day care facility must ensure that

(1) at least one nutritious meal is offered to each child in care for five hours or more;

(2) a wholesome snack is offered between breakfast and lunch and between lunch and dinner;

(3) each child in care over 10 hours is offered an additional snack or meal unless parents request otherwise; and

(4) with respect to all snacks and meals offered, the National Academy of Science's Recommended Dietary Allowance, 8th Ed. 1974, available from the division, is met.

(b) Vitamin and mineral supplements may be provided to a child only with parental permission.

(c) Children may be encouraged but not forced to eat.

(d) An infant must be fed according to his own schedule, and by the same person insofar as possible. Typically, infants not able to hold their own bottles should be held, and bottles may be propped only when the caregiver is unable to hold the child and only when he or she is present within sight of the child.

(e) When more than one infant is in care, bottles of formula must be labeled with each child's name.

(f) The caregiver shall obtain information from the parents concerning any food allergies or special needs the child has and shall plan his or her meals accordingly.

(g) In a day care center, menus must be planned, be available to parents, be retained for inspection for one year after the day for which

they are prepared, and reflect actual food served. (Eff. 4/4/62, Reg. 5; am 2/3/77, Reg. 61)

Authority: AS 47.35.030

7 AAC 50.270. PROVISIONS REGARDING LICENSURE. Repealed. (Eff. 2/3/77, Reg. 61)

7 AAC 50.275. DEFINITIONS. In secs. 125 - 275 of this chapter, unless the context requires otherwise

(1) "an establishment whose primary purpose is educational" means

(A) a public or private educational facility registered with the Department of Education as providing legally authorized educational and related functions; or

(B) a pre-elementary school for children aged three through five years that is certified by the Department of Education;

(2) "caregiver" means a person whose duties include direct care, supervision, and guidance of children in a day care facility;

(3) "day care" means the care, supervision, and guidance of a child or children unaccompanied by a parent or legal guardian on a regular basis, for periods of less than 24 hours a day;

(4) "day care center" means

(A) a facility other than an occupied residence, in which day care is regularly provided for any number of children;

(B) an occupied residence in which day care is regularly provided for 11 or more children, counting both children living in the home and children received for day care whether or not they are related to the resident caregiver;

(5) "day care facility" means a day care center or family day care home as defined in this section, but does not include any establishment whose primary purpose is educational;

(6) "day care operator" means the person or organization ultimately responsible for the

overall operation of a day care facility;

(7) "department" means the Department of Health and Social Services;

(8) "director" means the director of the division;

(9) "division" means the Division of Social Services;

(10) "family day care home" means an occupied residence in which day care is regularly provided for no more than 10 children, some of whom are not related to the resident caregiver;

(11) "infant" means a child aged six weeks to 12 months;

(12) "licensing representative" means a staff member of the division or an authorized designee;

(13) "newborn" means a child from birth to age six weeks;

(14) "regularly or on a regular basis" means a frequency of providing day care services of more than one day a week for at least five continuous weeks;

(15) "related" means any of the following relationships by marriage, blood, or legal adoption: parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, aunt; it also means the relationship of a legal guardian and ward;

(16) "school age child" means a child aged six through 14;

(17) "toddler" means a child aged 12 months to 24 months;

(18) "drop-in care" means care provided when no space is reserved in advance by the day care facility. (Eff. 2/3/77, Reg. 61; am 2/24/78, Reg. 65)

Authority: AS 47.35.030

Editor's Note: 7 AAC 50.275 replaces 7 AAC 50.140 which became effective 4/4/62, Register 5.

COMMUNITY CARE FACILITY LICENSING

PURPOSE

Children by their very nature are dependent. Children and dependent adults survival and their physical, intellectual, and social development depend on the love, care, and protection of others. Alaska child care facilities are licensed to care for 9,641 children. In addition, adult facilities are licensed to care for 276 dependent adults.

The purpose for regulating day care and residential facilities providing care for children or dependent adults is to reduce predictable risk to their health and safety and to ensure adequate programs and opportunity for development. Licensing establishes a floor of quality which must be met for a program to be permitted to operate.

THE STATUTE

The licensing law, AS 47.35, contains the language prohibiting the operation of a child or dependent adult facility without a license. It specifies the types of facilities that are regulated by the State. These include, day care centers, family day care homes, residential child care facilities, child foster homes, adult residential care facilities, adult foster homes, and child placing agencies. The statute gives the authority to regulate to the Department of Health and Social Services where the direct responsibility has been delegated to the Division of Family and Youth Services in the Department. Regulations are authorized to implement the broad language of the statute by establishing statewide standards. Some standards are based on the knowledge that certain practices are necessary to promote health, safety, and well being, and other practices, if permitted, would be detrimental to those in care.

REGULATIONS

Most regulations were designed to reduce predictable risk to health and safety. These include fire, sanitation, and equipment safety; planning for evacuation, handling serious illness, or serious injury, and reporting child abuse; assuring sufficient numbers of careprovider adults and emergency back-up staff; ensuring that careprovider adults have adequate background or preparation for child or dependent care and tuberculin clearance; ensuring that dietary needs are met, immunizations are current, medical care is provided, when needed, and emergency reports are provided to persons responsible; ensuring that medicines, poisons, guns and other hazardous objects are in a place inaccessible to children and adults with impaired judgement; ensuring discipline and behavior management are acceptable and that persons in care are not humiliated, shamed, frightened, locked up, or force fed.

Some regulatory standards are designed to promote appropriate developmental opportunities. A toddler who is routinely left in a playpen for long periods of time without adult contact and without toys or other materials is safe, but is deprived of adequate developmental opportunities. Developmental standards are few, but are of significant importance. Each set of regulations requires a program that provides a balance of quiet and active, group and individual activity. Opportunities for intellectual and social development, correcting problem behaviors, and appropriate recreational, cultural, or religious activity are required. There is special emphasis on maintaining or enhancing parental or other relative contacts. Materials and equipment must be available in sufficient number and appropriate to the development needs of persons in care and the program. Indoor and outdoor footage must be adequate.

Parents of infants and children in day care facilities have quite a lot of opportunity to observe their children in care, so the need for regulation is not as extensive as in 24-hour care of children. In order for parents or other relatives of children or dependent adults to make an informed judgement about the appropriateness of a program for their child or relative, they need certain information. The most important consumer protection provision in each set of regulations is the requirement that policies and the specifics of a program be presented and explained to parents and agency personnel prior to the admission of a child or dependent adult. In residential facilities pre-admission planning and placement agreements are an essential consumer protection.

THE LICENSING PROCESS

Most licensing studies are performed by licensing specialists located in six regional locations. Some home-sized facility licensing is performed by Division field office staff. Approved public or private agency staff perform some child foster home studies. The number of facilities licensed in January of 1983 was 1,365.

For information and planning assistance, individuals contact a regional or field office of the Division. In many communities there are monthly or semi-monthly meetings to familiarize potential applicants with licensing requirements and procedures. In one community, pre-licensing foster care training is being conducted. For a residential facility or a day care center, one year of planning and organization prior to opening is realistic. Except in emergency circumstances, 60 days is appropriate for planning and licensing prior to the opening of a home-sized facility.

An applicant generally submits an application form that requires a number of supporting documents such as a report of tuberculosis clearance, an authorization to conduct a background check including references and a law enforcement clearance, background applicant information, plans for operation, facility forms, and an operational manual, if required. In home-sized facilities the applicant is visited by a licensing specialist who inspects the home and discusses the applicants background and plans to provide care and to otherwise meet the requirements. For the larger facilities the specialist also requests inspections by appropriate fire safety and environmental health authorities. The prelicensing and review process in larger facilities may entail several visits by a specialist and include file reviews, policy reviews, program observation, and interviews with parents, staff, and placing agencies. Generally, within 60 to 90 days of receipt of an application when there has been adequate planning and after the study and inspection to verify compliance with requirements, a license is issued. There are no fees for an Alaska Community Care Facility License.

Specialists also provide professional consultation to facilities and agencies to upgrade the quality of services. Because of their unique position of knowledge about community facilities, they also serve as referral resources to families, social service staff, and others in selecting an appropriate facility for an individual child or adult, and in stimulating related community support services for facilities and agencies.

FAIR TREATMENT

While licensing protects children, dependent adults, and their families, the Administrative Procedures Act, AS 44.62, has built-in procedures which ensure that laws, such as the Licensing Statute, will be administered fairly. The rights of those regulated include, the right to notice if the requirements, notice of non-compliances, and reasonable time limits for corrections, receiving information on how to achieve correction, equitable enforcement, and access to administrative hearings and court decisions. Consultation from the Division is offered to new programs and to programs that have experienced difficulty following licensure.

ALASKA STATUTE TITLE 47

Chapter 35. Private Institutions
(Includes 1982 Amendments)

Article

1. Foster Homes, Boarding Homes and Institutions for Children (AS 47.35.010 - 47.35.080)
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Article 1. Foster Homes, Boarding Homes and
Institutions for Children.

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Sec. 17.35.010. Powers of department. (a) The department may

- (1) license and supervise boarding homes, foster homes, group homes, nurseries, institutions caring for children and foster homes, group homes and institutions caring for dependent adults;
- (2) investigate and supervise licensees;
- (3) enforce the standards established by it;
- (4) contract with private or municipal agencies to investigate and make recommendations to the department for licensing and supervision of boarding homes, foster homes, group homes, nurseries, institutions caring for children and foster homes, group homes and institutions caring for dependent adults under procedures and standards of operation established by the department.

(b) The department shall, within 90 days after receiving a written request that it do so, delegate its powers relating to nurseries under this section and under AS 47.35.040, 47.35.050, and 47.35.060 to a municipality which has adopted an ordinance providing for day care licensing under home rule powers or as authorized under AS 29.48.035 (a)(20). A municipality to which these powers have been delegated may waive or modify any regulation or standard established by the department under the authority of AS 47.35.010 -- 47.35.080 as it applies to nurseries or the application of any such regulation or standard as it applies to a particular day care licensee but must notify the department of any waiver.

Sec. 47.35.020. License or permit required. No person may, without a license or permit to do so, (1) maintain or conduct, for more than 90 days, a boarding home, foster home, group home, institution or other place for the regular reception or care of children under 16 years of age, or a foster home, group home or institution for the care of

dependent adults, or (2) engage in the business of receiving or caring for children under 14 years of age, with or without compensation, in a nursery in which five or more children not related by blood or marriage, or legal adoption, to the owner, operator or manager of the business are lodged.

Sec. 47.35.030. Authority to issue regulations. The department may adopt regulations and standards consistent with other requirements of law. This authority does not deny a religious group from establishing and operating an institution solely because of the prior installation or operation of another religious group in the same area. The authority to adopt regulations and standards shall be exercised to insure compliance with the intents and purpose of AS 47.35.010 -- 47.35.100. The department may inspect and examine an institution, home or place, or the performance of a service.

Sec. 47.35.040. Licensing. (a) The department shall issue a license to a facility if it determines that the facility has met the standards for operation set out in AS 47.35.010 -- 47.35.080 and the regulations adopted under AS 47.35.010 -- 47.35.080.

(b) A license is valid for two years after the date of issuance unless it is revoked or modified. The department may revoke a license or modify a license to provisional status if it determines that a facility is not in compliance with AS 47.35.010 -- 47.35.080 or the regulations adopted under AS 47.35.010 -- 47.35.080.

(c) The department may waive compliance with a standard set out in regulations adopted under AS 47.35.010 -- 47.35.080 if an acceptable alternative is established which meets the purpose of the provision, and reasonably assures the well-being of persons in care.

(d) A license may not be transferred to a different facility or owner.

(e) The department shall give written notice of revocation or modification under (b) of this section 30 days before the effective date of the action. However, if the health or well-being of children or dependent adults is in jeopardy, the revocation or modification action is effective immediately upon the issuance of written notice by the department.

Sec. 47.35.055. Provisional license. (a) The department shall issue a provisional license to a new facility if the facility submits to the department an acceptable plan for operation which is in conformity with the provisions of AS 47.35.010 -- 47.35.080, and the regulations adopted under AS 47.35.010 -- 47.35.080. After the department determines that the new facility is operating in conformance with the provisions of AS 47.35.010 -- 47.35.080, and the regulations adopted under AS 47.35.010 -- 47.35.080, the department shall issue a license under AS 47.35.040 to the facility.

(b) The department may issue a provisional license to a facility which is licensed under AS 47.35.040 but is temporarily unable to conform to the provisions of AS 47.35.010 -- 47.35.080 or the regulations adopted under AS 47.35.010 -- 47.35.080.

(c) The department may issue a provisional license under (b) of this section only if the facility submits to the department an acceptable plan to bring the facility into conformity with the provisions of AS 47.35.010 -- 47.35.080, and the regulations adopted

under AS 47.35.010 -- 47.35.080 within the time specified in the provisional license.

(d) A provisional license is valid for a period not exceeding one year from the date of issuance. The department may renew a provisional license for an additional period not to exceed one year.

Sec. 47.35.060. Records required. Each licensee or permit holder shall keep records regarding each child or adult in its control and care, or placed by it, which the department prescribes, and shall report to the department the facts which the department requires with reference to the children or adults. All records regarding individuals placed for care in an institution or home under this chapter are confidential and shall be safeguarded from improper disclosure by the agency or department.

Sec. 47.35.070. Violations. A person who violates a provision of AS 47.35.010 -- 47.35.100 or a rule or regulation adopted under AS 47.35.010 -- 47.35.100 is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$200.

Sec. 47.35.075. Licensure of providers of care for dependent adults by municipalities. A first or second class borough or a first or second class city outside a first or second class borough may license and supervise institutions caring for dependent adults. If a borough or city chooses not to license care providers for dependent adults, the department shall be the licensing authority; if a borough or city chooses to license care providers for dependent adults, the borough or city may exercise any power or responsibility granted to the department under this chapter and shall enforce standards and regulations adopted by the department under AS 47.35.030.

Sec. 47.35.080. Definitions. In AS 47.35.010 - 47.35.100

(1) "boarding home or foster home" means an establishment providing regular care for less than six children not related by blood or marriage to the foster parents;

(2) "department" means the Department of Health and Social Services;

(3) "institution" means an establishment providing regular care and services for 11 or more children not related by blood or marriage to the owner or operator;

(4) "nursery" means an establishment providing care and services for any part of the 24-hour day for a child not related by blood or marriage to the owner or operator, but does not include any establishment whose primary purpose is educational;

(5) "group home" means a small establishment providing care and services for 10 or fewer children not related by blood, marriage, or legal adoption to the foster parent, and which is

(A) noncontiguous to another institution; and

(B) stresses normal family living.

(6) "facility" means the administration, program, and physical plant of a nursery caring for children, or a foster home, group home, or institution caring for children or dependent adults.

Article 2. Maternity Homes.

Section

90. Licensing and supervision of maternity homes

Sec. 47.35.090. Licensing and supervision of maternity homes. Maternity homes shall be licensed and supervised in the same manner as boarding homes or foster homes, nurseries and other institutions caring for children as provided in AS 47.35.010 -- 47.35.080. In this section "maternity home" means an institution or place of residence whose primary function is to give care to pregnant girls or women, regardless of age, before or during confinement, or which provides care, as needed, to mothers and their infants after confinement, with or without compensation.

Article 3. Agencies for Placement and Counseling.

Section

100. License required

Sec. 47.35.100. License required. (a) Without a license issued by the department in accordance with its regulations no person may operate an agency providing any of the following services:

- (1) the placement of children for foster home care;
- (2) the placement of children for adoption; or
- (3) individual and family counseling.

(b) The license shall remain in effect until revoked for cause. The department shall give written notice of revocation at least 90 days before the effective date of the revocation.

(c) In this section "agency" does not include an individual who occasionally provides the services set out in (a) of this section.

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DEPARTMENT OF EDUCATION

CHAPTER 60

PRE-ELEMENTARY (EARLY CHILDHOOD) SCHOOL

ARTICLE 1

PRE-ELEMENTARY SCHOOLS

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DEPARTMENT OF EDUCATION

4 AAC 60.009. APPLICABILITY. The provisions of 4 AAC 60.009 - 4 AAC 60.101, apply to pre-elementary schools as defined in 4 AAC 60.199.

4 AAC 60.010. REQUIREMENTS. Repealed

4 AAC 60.019. CERTIFICATE REQUIRED. (a) A person who does not have a certificate issued under 4 AAC 60.009 - 4 AAC 60.191 may not:

- (1) operate a pre-elementary school; or
- (2) advertise or represent that which the person offers pre-elementary educational services to children.

4 AAC 60.020 is amended to read:

EXEMPTIONS. (a) The following programs are exempt from the requirements of 4 AAC 60.009 - 4 AAC 60.199.

- (1) schools operated by the federal government
- (2) programs licensed as day care facilities under 7 AAC .009 - 7 AAC.

4 AAC 60.029. CERTIFICATE. (a) An applicant must apply for a certificate on a form provided by the department.

(b) Within 60 days after receipt of a completed application, a department representative will

- (1) review the application, confer with the applicant if necessary, and schedule an inspection of the pre-elementary school; and

- (2) request appropriate authorities to verify compliance with applicable fire safety regulations, environmental health regulations, building codes, zoning ordinances, and other state and municipal laws.

(c) If the results of the application review indicate that the pre-elementary school meets the requirements of 4 AAC 60.009 - 4 AAC 60.199, the department will issue a certificate to the applicant.

(d) If the department finds that the program does not comply with the requirements of 4 AAC 60.009 - 4 AAC 60.199, the department will deny a certificate, and provide the applicant in writing with reasons for the denial.

4 AAC 60.030. APPLICATION FOR A CERTIFICATE OF APPROVAL.
Repealed.

4 AAC 60.031. PROVISIONS OF CERTIFICATE. (a) A certificate issued in accordance with 4 AAC 60.009 - 4 AAC 60.191 must state

(1) the period for which it is in effect;

(2) the name of person certified to operate the pre-elementary school;

(3) the address of person certified to operate the pre-elementary school;

(4) the maximum number of children who may enroll in the program;

(5) ages of children who may enroll in the program;

(6) the minimum number of staff members required to be in attendance for the number of children enrolled;

(b) The certificate must be displayed in the pre-elementary school in plain view of the public.

4 AAC 60.039. PROVISIONAL CERTIFICATE. (a) The department will, in its discretion, issue a provisional license to a pre-elementary school for a period not to exceed one year if the school complies with all the requirements of 4 AAC 60.009 - 4 AAC 60.199 other than a requirement that does not cause an immediate risk to life or safety is failure to comply with the requirement is caused by practical considerations including weather or shipping.

~~4 AAC 60.040. DENIAL OF APPROVAL; HEARING. Repealed.~~

4 AAC 60.041. DURATION OF APPROVAL. (a) A certificate issued under 4 AAC 60.009 - 4 AAC 60.191 is valid for a period of two years from the date of issuance.

(b) A certificate may be modified, revoked, or suspended for failure to comply with the requirements of 4 AAC 60.009 - 4 AAC 60.199 or other statutes and regulations covering the health, safety and welfare of students and staff.

(c) If the department finds that the holder of a certificate does not substantially the requirements of 4 AAC 60.09 - 4 AAC 60.199, the department will deny or revoke the certificate subject to 4 AAC 60.039. The holder of the certificate may request before a hearing of the commissioner

within 15 days after receipt of the accusation or statement of issues in accordance with AS 44.62.360 and AS 44.62.370.

(d) The commissioner will appoint a hearing officer to preside over the hearing and to control its proceedings. The hearing must be public and all interested persons who have information relevant to the inquiry shall be permitted to be heard or to submit written statements and arguments. A record shall be kept of the hearings.

(e) Following the hearing, the hearing officer shall prepare the findings and recommend appropriate action to the commissioner. The commissioner shall review the hearing officer's recommendations and determine what action shall be taken. The decision of the commissioner is subject to review in the manner outlined in AS 44.62.560.

4 AAC 60.049. SPECIAL CHANGES AFFECTING CERTIFICATION. (a) The certificate holder shall report an anticipated change in any of the following to the department as early as possible but not more than 90 days before the change occurs.

- (1) a change in the administrator of the program;
- (2) a change in the name of the person certified to operate the facility;
- (3) a change of the location of the facility;
- (4) a change in the name of the pre-elementary school;
- (5) a substantial change in the program offered, or
- (6) a substantial change in the building housing the pre-elementary school.

(b) An applicant or certificate holder shall permit certification representatives to inspect the pre-elementary school at any time during the facility's hours of operation. In carrying out these visits, certification representatives will call upon governmental agencies for appropriate assistance. Applicants or certificate holders shall cooperate in these visits by providing access to their facilities, records, children and staff.

4 AAC 60.050. DURATION OF APPROVAL. Repealed.

4 AAC 60.051. CERTIFICATE RENEWAL. (a) The department will provide the certificate holder with a renewal application form at least 60 days before the expiration of the certificate holder's existing certificate.

(b) The certificate holder shall submit the completed renewal application to the department at least 30 days before the expiration of the existing certificate; however, the department will, in its discretion, waive the requirements of this subsection if it determines there is good cause for the waiver.

(c) The department will conduct a review and take appropriate action within ten days before expiration of the existing certificate.

(d) If the department cannot complete the review within the period set out in (c) of this section, it will issue the applicant a temporary certificate effective until completion of the department's review.

4 AAC 60.059. WAIVER OF REQUIREMENTS. (a) The commissioner will, at his discretion, waive a requirement of 4 AAC 60.009 - 4 AAC 60.199, if an alternative method of satisfying the purpose of the requirement is established.

(b) The appropriate municipal or state authority must review a request for a waiver involving fire safety, environmental health, or other municipal or state requirements within their jurisdiction before the commissioner will allow the waiver.

(c) An applicant for a waiver shall apply in writing to the department. The application must include

(1) a statement of the requirement for which the waiver is requested;

(2) an explanation of the reasons why the requirement cannot be satisfied; and

(3) a description of the alternative method proposed to satisfy the purpose of the requirement for which the waiver is requested.

(d) A waiver granted under this section is effective for the time specified on the certificate. The department will review a waiver upon the termination of the waiver and will, at its discretion, renew the waiver.

(e) The department will answer a request for a waiver in writing within 30 days.

4 AAC 60.060. DISPLAY OF CERTIFICATE. Repealed.

4 AAC 60.061. VOLUNTARY CERTIFICATE. A pre-elementary school for which a certificate is not required under 4 AAC 60.009 - 4 AAC 60.199 may apply for a certificate. The department will,

in its discretion, issue a certificate if it determines that the pre-elementary school satisfies the requirements of 4 AAC 60.009 - 4 AAC 60.199.

4 AAC 60.069. ADMINISTRATIVE REQUIREMENTS. (a) The name, address, and telephone numbers of the person with the legal responsibility and the person with the administrative authority for operating the pre-elementary school must be provided to the department and, if the facility is operated by an association, corporation or other entity, the name, address, and telephone numbers of each member of its board or governing body must also be provided to the department.

(1) specific responsibilities and duties of the governing body must be written and communicated to the administrator of the pre-elementary school and to parents and staff when applicable.

(b) A pre-elementary school

(1) shall provide an educational program and facility which meets the requirements of 4 AAC 60.009 - 4 AAC 60.191;

(2) shall provide the department with a description and the name of the owner of the land and building in which the pre-elementary school is located;

(3) shall comply with AS 18.80.230 to ensure that enrollment policies, and access to services and activities of the program are non-discriminatory with regard to the sex, color, race, creed, and national origin of children and their parents;

(4) shall ensure the confidentiality of records and information pertaining to an individual child or the parents, except as required by program staff in working with the child and the family, or when a release of information form is signed by the parents;

(5) shall maintain current individual records including:

(A) individual child emergency information records;

(B) staff employment and health records;

(C) staff and child attendance records.

(6) shall maintain records on forms provided by the department unless prior department approval is given to use alternate forms.

(7) shall maintain bodily liability insurance (including transportation coverage if applicable) in an amount not less than \$100,000 per child, \$300,000 per accident with a company authorized to write insurance policies and must contain the following endorsement:

"In the event of cancellation or non-renewal of this policy, the company agrees to give 30 days prior notice to the Department of Education, Pouch "F", Juneau, Alaska 99811."

(8) shall have written materials covering non-discrimination, provisions to be made for the special needs of individual children, program description, enrollment requirements and procedures, fees and payment arrangement plans, insurance coverage, transportation arrangements, parental permission for trips and related activities outside the classroom, cold weather outdoor play policies, cold weather closure, child abuse reporting, ill children, disclosure of information, and notifications of changes in programs; these materials must be presented and explained to parents at the time of the child's enrollment, and a copy filed with the department.

4 AAC 60.070. CERTIFICATE OF APPROVAL. Repealed.

4 AAC 60.079. ENSURING CARE IN EMERGENCY. (a) A pre-elementary school shall have a plan for the evacuation of all children including the handicapped in case of fire or other disaster. The plan must include provisions for accountability for each child until released to an appropriate authority. The plan must be written and posted. Staff must be aware of the plan and hold evacuation drills at least once every month.

(b) Provision must be made in a pre-elementary school facility for emergency electrical lighting by generator or battery power for use in case of power failure.

(c) A pre-elementary school facility shall have a telephone or radio-phone if that service is locally available. Emergency telephone numbers must include fire, police, physician, poison control, and must be conspicuously posted on or adjacent to the telephone.

(d) In a pre-elementary school facility, first aid supplies appropriate to the size of the facility must be maintained and readily available for use at all times.

(e) A facility must have at least one staff member with a current first aid certificate on duty at all times unless first aid courses are not regularly available in the community in which the facility is located. If courses are not regularly available, the pre-elementary school must enroll one or more employees in the first available first aid course offered in the community to meet this requirement.

(f) A staff member, who, in the performance of duties, has cause to believe that a child has suffered harm as a result of abuse or neglect shall immediately report the harm to the nearest office of the Department of Health and Social Services. If the staff cannot reasonably contact the nearest office of the Division of Family and Youth Services of the Department of Health and Social Services, and immediate action is necessary for the well-being of the child, the administrator shall make the report to a peace officer.

(g) A pre-elementary school must have an emergency back-up staffing plan for periods when only one staff member is on duty.

(h) When a child is left in the pre-elementary school by parents for a period extending more than one hour after the closing of the program without contacting the staff, the administrator shall immediately report that situation to the nearest office of the Division of Family and Youth Services of the Department of Health and Social Services.

4 AAC 60.080. INSURANCE. Repealed.

4 AAC 60.089. ADMINISTRATIVE QUALIFICATIONS. (a) The administrator of a pre-elementary school is responsible for the screening, scheduling and supervising of all staff, volunteers and others who provide services in the pre-elementary school, and for designating a staff member to be in charge of the facility in the administrator's absence.

(b) The administrator of a pre-elementary school must be at least 19 years of age.

(c) The administrator shall furnish the names, addresses, and telephone numbers of three person unrelated to the administrator, who could provide character references to the department with the certificate application; the references, one of which must be from a supervisor in previous work experience, shall attest to the good character and reputation of the administrator and to the management and interpersonal skills which enable the administrator to work successfully with children, staff, and parents.

(d) An individual may not be the administrator of a pre-elementary school if the individual is under indictment or has been convicted of a felony or has had a child adjudicated as a child in need of aid within the last five years. The department will, in its discretion, require a release to review law enforcement records for each administrator. In this subsection, "child in need of aid" means a child who has been adjudicated, a dependent child under AS 47.10.010 or under a similar statute in another state or jurisdiction.

(e) The administrator must also meet the staff qualifications in 4 AAC 60.099.

4 AAC 60.090. RECORDS. Repealed.

4 AAC 60.099. STAFF QUALIFICATIONS. (a) A staff member shall possess tuberculin clearance before contact with children in a facility. The tuberculin clearance must be renewed annually.

(b) A staff member, excluding the administrator, and parent classroom volunteers must furnish the names, addresses, and telephone numbers of three persons unrelated to the staff member, to the administrator. Personnel files, including references, must be kept on file at the pre-elementary school.

(c) A staff member, excluding the administrator, must have reached the age of 18 to be counted toward meeting the staff-to-child ratio requirements. However, a person aged 14 and older may be employed as staff members and counted toward staff-to-child ratio requirements if he/she:

(1) works under the close supervision of an adult staff member;

(2) constitutes no more than one third of the total staff; and

(3) is never placed in sole charge of a group of children in a classroom;

(4) is enrolled in or have completed a training program or have demonstrated competence to an administrator.

(d) A staff member must be able to

(1) provide children with a variety of learning and social experiences appropriate to their age;

(2) recognize and act against hazards to health and physical safety.

(e) A staff member shall be provided an orientation within the first month of employment which shall include

(1) administrative procedures, program goals and objectives;

(2) written specific personnel policies including written job responsibilities;

(3) crisis management, duties to be carried out in an emergency, and emergency and safety procedures;

(4) acceptable behavior management techniques, including the pre-elementary school's discipline policy;

(5) available appropriate resources to carry out their responsibilities.

4 AAC 60.100. PHYSICAL EXAMINATIONS FOR CHILDREN.
Repealed.

4 AAC 60.109. NUMBER OF STAFF REQUIRED. (a) A facility must have sufficient personnel to ensure that the children are never left without supervision by a responsible staff member.

(1) there must be one staff member for every eight children between their third and fifth birthdays;

(2) there must be one staff member for every ten children between their fifth and sixth birthdays;

(b) In a facility where there are more than ten children present, there must be a minimum of two staff members on the premises.

(c) In a pre-elementary school, only a staff member who spends at least 75 percent of his/her working time in direct contact with children will be counted in meeting staff-to-child ratios.

4 AAC 60.110. Repealed.

4 AAC 60.115. STAFF. Repealed.

4 AAC 60.119. ENVIRONMENT REQUIREMENTS. (a) a pre-elementary school facility must have sufficient indoor and outdoor space in relation to the number and ages of children to accommodate the physical and other developmental needs of

children served. Satisfactory compliance with this subsection requires that:

(1) there be at least 35 square feet of indoor space per child capacity used for the care of children, exclusive of hallways, bathrooms, lockers, closets, laundry and furnace rooms, and the kitchen;

(2) there be at least 75 square feet per child of outdoor play space for the maximum number of children on the playground at any one time. Where outdoor play space is not available at the facility, parks or other outdoor facilities that are easily accessible may be used.

(b) A pre-elementary school must have appropriate storage and work space for children and staff, convenient to the areas of use, to accommodate the following functions:

(1) record storage and administrative function;

(2) food preparation and serving, if applicable;

(3) meeting space for staff;

(4) storage of program materials and resources for staff and parents;

(5) storage of repair and maintenance supplies.

4 AAC 60.120. RECOGNITION OF SPECIAL NEEDS. Repealed.

4 AAC 60.129. FIRE SAFETY. (a) The building housing a pre-elementary school must meet the standards for buildings and life safety contained in 13 AAC 50.010 - 13 AAC 50.030 and 13 AAC 55.010 - 13 AAC 55.150.

(b) When the department receives a certification application from a pre-elementary school, or when any new construction or remodeling is completed, a fire inspection of the premises must be made by the fire marshal or his local designee to determine conformity with existing safety standards. Subsequent annual fire inspection may be required.

(c) A facility must satisfy the following additional fire safety requirements:

(1) the facility must make and retain a record of each drill required under 13 AAC 50.060(6)(1) or 13 AAC 50.060(s) which must be made available upon request to the state fire marshal or his authorized representative and to the department;

(2) the facility may not use open flame heaters except approved fireplaces;

(3) the facility may not use window screens which obstruct egress;

(4) the facility must designate an area for smoking, if smoking is permitted;

(5) at least one 5-pound ABC dry chemical fire extinguisher must be charged at all times and strategically located;

(6) no accumulation of any combustible waste materials is permitted in or around the premises. Flammable liquids must be stored in metal containers with tight fitting lids;

(7) heating appliances:

(A) that which presents a hazard because of exposed flame or heating elements must be equipped with guards in such a way that small children cannot place articles inside or on the heater or heating element;

(B) must be maintained in a safe and serviceable manner.

4 AAC 60.130. DISASTER PLAN. Repealed.

4 AAC 60.139. SANITATION AND ENVIRONMENTAL PROTECTION. (a) Pre-elementary school facilities must meet applicable standards for sanitation and environmental protection set out in 7 AAC 22.550 - 7 AAC 22.680.

(b) When the department receives a certification application—~~from~~ a pre-elementary school or when any new construction or remodeling is completed, an environmental health inspection by the Department of Environmental Conservation or its local designee to determine conformity with existing standards must be made. Subsequent annual inspection may be required.

(c) Medicines, cleansers, and other harmful chemicals must be stored so as to be inaccessible to the children.

4 AAC 60.140. FACILITY INSPECTIONS. Repealed.

4 AAC 60.149. HEALTH PROGRAM. (a) Pre-elementary school staff shall not administer medicines or drugs to any child except with written permission of the child's parent or physician or other medical authority; however, in the case of prescription medicine, a prescription label with the medical authority's name, the child's name, and a recent date may be accepted as showing

that the drug may be administered to the child. Medicines or drugs kept at the pre-elementary school for a child must be clearly marked with the child's name and the dosage, and must be inaccessible to children.

(b) A pre-elementary school must provide a place where a tired, ill, injured, or upset child may rest or play quietly, apart from other children, yet under adult observation. Ill children need not be sent home as a routine policy, but may be cared for at the pre-elementary school at the administrator's discretion and with the concurrence of the parents.

(c) If a child appears to be more than moderately ill or a communicable disease other than a cold is indicated, the child must not be allowed to expose other children to the illness and must be isolated in a separate room under adult observation until appropriate arrangements are made. Staff members shall inform parents when their children have been exposed to illness or communicable disease.

(d) Children under age six, who attend a pre-elementary school for periods longer than four hours must have a time and place to lie down and sleep, or rest quietly.

4 AAC 60.150. CHANGES IN MAJOR WRITTEN POLICIES, PLANS, PROGRAMS. Repealed.

4 AAC 60.159. IMMUNIZATIONS REQUIRED. (a) The administrator of a pre-elementary school shall maintain evidence of current immunization, or exemption from it, for each child in attendance. This evidence must be obtained from the child's parent or guardian upon admission, and show that the child has received or has begun and is continuing to receive immunizations appropriate to age as prescribed in the Alaska Division of Public Health's schedule for active immunization or that the child is exempt from immunization under—(b) of this section. Satisfactory compliance requires that each child's health record contain evidence of immunization or evidence of exemption. Evidence of immunization must include

(1) the name of the health service provider, and the date of immunization against diphtheria, tetanus, polio, measles, rubella, and, if the child is less than six years of age, pertussis, and

(2) only valid immunization certificates, which are limited to

(A) an international immunization certificate; or

(B) a statement by a physician listing the date each required immunization was given; or

(C) a copy of a clinic or health center record listing the date each required immunization was given.

(b) Evidence of exemption of immunization must include:

(1) a signed affidavit by a doctor (M.D. or P.O.) licensed in Alaska, attesting that immunizations would, in his professional opinion, be injurious to the health of the child or members of the child's family or household; or

(2) an affidavit signed by the parent or guardian, offering that immunization conflicts with the tenets and practices of the church or religious denomination of which the applicant is a member.

(c) A pre-elementary school in a community where regular medical services are not available on at least a weekly basis may provisionally admit a child who does not have the required immunizations for a reasonable period of time in exceptional circumstances, but for no longer than 90 days. Provisional admissions must be reported to the communicable disease control section of the Division of Public Health of the Department of Health and Social Services, which shall then determine that the required immunizations are completed during the provisional period if the child is to be admitted.

(d) A pre-elementary school may not admit a child who does not comply with the provision of this section.

4 AAC 60.160. NONDISCRIMINATION. Repealed.

4 AAC 60.169. NUTRITION. (a) To ensure adequate nutrition and promote good eating habits and attitudes, a pre-elementary school must ensure that:

(1) at least one nutritious meal is offered to each child in the program for five hours per day or more;

(2) a wholesome snack is offered between breakfast and lunch and between lunch and dinner;

(3) all snacks and meals, meet the standards of the National Academy of Science's Recommended Dietary Allowances, 9th Ed. 1974.

(b) Vitamins and mineral supplements may be provided to a child only with parental permission.

(c) Children may be encouraged but may not be forced to eat.

* Editor's Note: A copy of the 9th Edition of the "Recommended Dietary Allowances" mentioned in (3) of this section is available for review from the Department of Health and Social Services.

4 AAC 60.170. PROGRAMMATIC REQUIREMENTS OF THE PRE-ELEMENTARY SCHOOLS. Repealed.

4 AAC 60.175. TRANSPORTATION. Repealed.

4 AAC 60.179. TRANSPORTATION. (a) A pre-elementary school must provide means for transporting children in case of emergency.

(b) A vehicle used in transporting children must be licensed in accordance with state law.

(c) A staff member of the pre-elementary school or other person acting on behalf of the program operating a vehicle for the purpose of transporting children shall be properly licensed to operate that class of vehicle according to state law.

(d) A pre-elementary school must ensure that there is prudent supervision in a vehicle used by the program to transport children, including but not limited to, use of seat belts, and prohibiting riding in the back of open pickup trucks and other similar open vehicles.

4 AAC 60.180. DEFINITIONS. Repealed.

4 AAC 60.189. GENERAL EDUCATIONAL PROGRAM. (a) The educational program conducted in a pre-elementary school must provide pre-planned experiences which promote the individual child's physical, emotional, social, and intellectual growth. Satisfactory compliance of this section requires that:

(1) a staff member generally follow a written schedule of daily activities which provide a balance of quiet and active, group and individual, indoor and outdoor, teacher-directed, and child-initiated activities, as well as adequate time for meals, snacks, sleep, and toileting according to individual needs, as appropriate;

(2) opportunities be provided for individual self-expression in conversation, imaginative play, art, and creative expression;

(3) opportunities be provided for vigorous physical activities and gross motor activities, both indoors and outdoors;

(4) opportunities be provided to foster independence.

(5) opportunities be provided for intellectual and social development through use of a variety of books, games, toys, crafts, puzzles, crayons, blocks, and other activities and materials;

(6) the amount and variety of materials and equipment available, and its arrangements and use, are appropriate to the developmental needs of the children; and

(A) the quantity of materials and equipment is sufficient to avoid excessive competition and long waits by children and to meet the criteria contained in paragraphs (2), (3), and (5) of this section;

(B) individual storage areas are accessible to each child for storage of his own belongings;

(C) furniture and equipment is durable and safe and developmentally appropriate.

(7) staff members may not use any form of corporal punishment unless otherwise approved in writing by the parent of the child and that they not use any other technique which is humiliating, cruel, shaming, frightening, or otherwise damaging to the child.

4 AAC 60.191. EXCEPTIONAL CHILDREN. In accordance with 30 AAC 14.30.180. - .350 competent educational services will be provided for exceptional children who are at least three years of age and for whom regular school facilities are inadequate or not available. Pre-elementary schools shall cooperate with school districts in correctly identifying exceptional children between the ages of three and five.

4 AAC 60.199. DEFINITIONS. IN 4 AAC 60.009 - 4 AAC 60.191, unless the context requires otherwise.

(1) "administrator" means the person delegated the responsibility for the daily management of the pre-elementary school;

(2) "board" means the State Board of Education;

(3) "certificate" means a certificate of approval issued to the pre-elementary school from the Department of Education;

(4) "certification representative" means an employee of the Department of Education given the responsibility to conduct reviews and on-site inspections of pre-elementary schools to determine compliance with this chapter;

(5) "commissioner" means the Commissioner of Education;

(6) "department" means the Department of Education;

(7) "facility" means the administration, program and physical plant of a program calling itself a pre-elementary school.

(8) "guardian" means an individual who is appointed by a court to manage the affairs of another person;

(9) "person" means an individual, a corporation, a company, partnership, firm, association, organization, business trust, or society, as defined in Alaska statutes and used in regulations;

(10) "pre-elementary school" means a program for children ages three through five years, with more than six unrelated children regularly attending the program, and which is established and operated primarily for educational purposes to meet the developmental needs of the children served;

(11) "staff member" means anyone who provides direct services to children in the classroom and may be one of the following:

(A) a person 18 years or older who is salaried;

(B) classroom volunteers who are at least 17 years of age;

(C) persons who are at least 14 years of age, and who are enrolled in or have completed a training program or have demonstrated competence to an administrator.

Alaska State Legislature

REP. MAE TISCHER
CO-CHAIRMAN

REP. MILO FRITZ
CO-CHAIRMAN



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REP. PETER GOLL
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POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3777

House of Representatives HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

MEMORANDUM

To: Senate HESS Committee Members Date: May 9, 1983
House HESS Committee Members

From: Rep. Milo Fritz, Co-Chairman *MFR*
House HESS Committee

Re: State Teleconference/ HB 357/ Regulation of
Religious Schools

The House HESS Committee is extending an invitation to the Senate HESS Committee to join in a statewide teleconference in regard to the proposed legislation cited above. The teleconference will take place on Friday, May 13, from 1:00 p.m. until 3:00 p.m. PST. The public hearing will be held in Court Room A of the Court Building, Juneau, Alaska.

Testimony of Barbara Tyndall before the Senate H.E.S.S. Committee
on Wednesday, June 1, 1983.

My name is Barbara Tyndall. I am here to speak in favor of the Committee Substitute for House Bill 357, "an act relating to the regulation of religious schools."

As the mother of five children, four of them of school age, I am vitally interested in this bill. For the past nine years our children have attended Christian Schools and we have seen excellent results, both academically, emotionally, and morally. We have appreciated the fact that in Alaska our schools have enjoyed a widespread freedom to function as they please.

My husband and I have had our children in three different Christian Schools and also in the public school system. All three Christian schools (two in the Juneau area and one in Anchorage) have maintained high academic standards and provided a wholesome, comfortable environment for our children to work and grow in.

My husband and I have spent over \$13,000 in the past nine years for a Christian education for our children. Parents who are spending that much money for education are going to insist on quality. I know that I do, and I am satisfied that I am getting it. I do not regret the money spent.

Christian Schools are on the increase and are saving the state money. At the State Teleconference in May of this year, Pete Harvey of Soldotna, stated that the 460 students attending Christian Schools on the Kenai Peninsula are saving the state an estimated 3.2 million dollars a year.

The public schools can benefit from the challenge presented by the religious schools. Because of the excellent results our religious schools have produced, I urge you to work toward the passage of this bill.

Thank you very much.

Barbara Tyndall

Barbara Tyndall

FOREWORD

[Background]

Since 1977, the Faith Baptist Church of Louisville, NE, [population 1,000], has been in a running argument with the State of Nebraska. State Dept. of Education demands church's Christian day school be licensed and only "certified" [i.e. State-approved] teachers be employed. Faith Baptist and its pastor, Everett Sileven, decline licensure and seek first to employ teachers approved unto God rather than the State.

1978 - Faith Baptist Church charged with violating 14 State laws by operating "unlicensed" day school (11 of the "laws" are administrative regulations).

Feb., 1979 - Court orders Faith Baptist Church to cease and desist operation of Christian day school. Church continues to operate school.

Sept. 13, 1981 - District Judge Raymond Case orders Faith Baptist Church closed.

8:30 P.M. - While evening services are being held, Cass County Sheriff, Fred Tesch, instructs congregation to vacate church building. Members leave sanctuary to avoid confrontation. Church chained and padlocked. Judge subsequently approves opening church for Sunday and midweek services only. Christian school "moved" 40 miles away to Baptist church in Iowa.

Oct. 4, 1981 - Pastor Sileven announces congregation has voted not to allow its doors to be relocked. Volunteers will occupy church 24 hours a day; vow to leave only if physically removed.

Oct. 5, 1981 - U.S. Supreme Court declines to hear appeal filed by Christian Law Association for Faith Baptist Church.

Church's education ministry returns to Nebraska. Declares pastor, "Our people live in Nebraska. They work and pay taxes here. Their church is here. This is their State and they intend to worship and educate their children here." Faith Baptist school reopens in Louisville.

[Continued on Inside Back Cover]

[Continued from Inside Front Cover]

Feb., 1982 - Judge Case finds Pastor Sileven in contempt of court; orders him to jail. After pastor serves 13 days congregation votes to close school; pastor is released.

April, 1982 - Faith Baptist Church reopens school. Judge Case orders Pastor Sileven to serve balance of jail sentence, starting on Sept. 1, 1982.

Sept. 1, 1982 - Pastor Sileven does not return to jail.

Sept. 2, 1982 - Judge Case issues bench warrant for Pastor Sileven's arrest.

Sept. 3, 1982 - Pastor Sileven remanded to county jail. Faith Baptist Church again chained and padlocked.

6:08 A.M., Oct. 13, 1982 - Sheriff deputies and State highway patrolmen invade Faith Baptist Church during early morning prayer service.

85 visiting ministers and some laymen are forcibly evicted. Pastors and laymen carried out of sanctuary and deposited on church lawn. Church then padlocked from the inside; armed guards posted at entrances.

Feb., 1983 - Sixty-six of the Christians evicted during worship service at Faith Baptist on Oct. 13, 1982, file suit for violations of civil rights. Total damages sought: \$66 million.

March-April, 1983 - Pastor Sileven in "voluntary exile" travels nation with story of Faith Baptist's battle. Parents at Faith Baptist continue to operate Christian school to claim freedom to worship and to assert fundamental right to educate their children according to Biblical mandate.

Two fathers charged and convicted of truancy; sentenced to 15-days each. State Supreme Court agrees to hear their appeal. Meanwhile, several mothers of children attending Faith Baptist school are charged with encouraging "habitual truancy"; fined \$5.00-a-day the first week, \$10.-a-day the second week, with per diem fine to be doubled each week mothers fail to enroll their children in government schools.

[Plymouth Rock acknowledges with gratitude the assistance of Dan Whisner and the Christian Law Association in the preparation of this brochure.]

June 1, 1983

My name is Kathy Brown. I am a mother of three children, a former public school teacher, a former NEA member and building representative, and a present Christian school teacher.

I am opposed to HB 357 as it now reads. My understanding is the original intent for the bill was to exempt Christian schools from DOE regulations. However, the result of this bill places more regulations on the Christian elementary school.

As I read the working draft of the bill, three questions arose: Who owns the child? Who is responsible for his education? Is the church answerable to the State?

I am responsible to see that my children receive a quality education centered around Jesus Christ. God has given that responsibility to me, not the State of Alaska or any other agency of government. If I submit to any regulation of the State concerning the education of my children, then I am saying that the State has authority over me and my children in this area. This is not so. I love my country. I appreciate the freedoms we enjoy and will teach my children to be loyal to God, their families, and our country. I will render unto Caesar what he is due, but I am forbidden by God to render my children to you.

This bill as it is written is part of the continuing conflict between those who would deny our God-given and inalienable rights of religious liberty and those who would preserve and defend those rights.

Government was ordained by God as a result of the breakdown of individual human responsibility and is NOT inherently evil. My intent or responsibility is not to destroy government but to make sure to mold it on Biblical principles.

Some of these Biblical principles are:

- 1) All authority is God's. "Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God." Romans 13:1
- 2) God has given government limited authority.
All throughout the Bible, God tells what power and over which matters government is allowed to control.
- 3) God has given children as a special heritage to parents for their protection and development.

Psalms 127: 3 "Lo, children are a heritage of the Lord:
and the fruit of the womb is his reward.

Galatians 4:2 "But is under tutors and governors until
the time appointed of the father."

- 4) God has given parents the responsibility of educating their children. "Now these are the commandments, the statutes, and the judgments, which the Lord your God commanded to teach you, that ye might do them in the land whither ye go to possess it: And these words, which I command thee this day, shall be in thine heart: And thou shalt teach them diligently unto thy children, and shalt talk of them when thou sittest in thine house, and when thou walkest by the way, and when thou liest down, and when thou risest up." Deuteronomy 6: 1, 6-7

"Thus saith the Lord, Learn not the way of the heathen, and be not dismayed at the signs of heaven; for the heathen are dismayed at them." Jeremiah 10:2

Others are: Proverbs 1:8, 10, 15; 2:1; 3:1; 5:1; 6:1,2;
7:1; Ephesians 6:4

- 5) God owns the child. "Behold, the heaven and the heaven of heavens is the Lord's thy God, the earth also, with all that herein is." Deuteronomy 10:14

In view of the above, I object to the following lines of HE 357:

Page 2, lines 10 - 14, lines 17 - 21, lines 23 - 29

Page 3, lines 1 - 17, lines 21 and 23.

Over the past decades, American Christians have been careless about their involvement in civil government. As a result liberal educators, bureaucrats, and politicians have fostered legislation that is now being used to harass Christian schools and to put parents and pastors in jeopardy. Since 1977, the Faith Baptist Church of Louisville, Nebraska, has been in a running argument with the State of Nebraska. In 1978, the church was charged with violating 14 State laws, 11 of which were administrative regulations.... I will read to you the events that followed.

I have considered the "token" exemption that this bill offers. I agree with Christian schools being exempt from State regulations, but with no strings attached..... TOTAL exemption. I will not compromise God's standards!

Thank you for your time.

Sincerely,

Kathy Brown

Kathy Brown
P. O. Box 2869
Juneau, Alaska 99803

SECTION ANALYSIS OF CSHB 357 (RULES) - An Act relating to the regulation of religious schools.

SECTION 1 Adds to the duties of the Department of Education language that excludes pre-elementary schools and nurseries operated by a church or nonprofit religious organization from supervision.

NOTE: The House HESS CS kept language in the bill allowing the Department to oversee the educational component of these schools.

SECTION 2 Adds subsection (D) to the Compulsory attendance law which exempts children from attendance if enrolled in a church or religious nonprofit educational program.

SECTION 3 EXEMPTS RELIGIOUS SCHOOLS FROM ALL LAWS WITHIN THE CHAPTER EXCEPT LAWS AND REGULATIONS DEALING WITH HEALTH, FIRE SAFETY, SANITATION, IMMUNIZATION, AND PHYSICAL EXAMINATIONS.

SECTION 4 Adds language referencing new subsections (b) and (c).

SECTION 5 Adds new subsection (b) to Attendance and annual reports required (private and Denominational schools) section which gives the parent the responsibility of notifying the superintendent of the area public school that the child is attending a religious school. The religious school is to notify the public school immediately if the child is no longer in attendance,

(c) is a new subsection that adds language that if a religious school elects to comply with this chapter, they will send monthly reports, operate on a regular schedule of 180 days and make an annual report to the commissioner.

SECTION 6 Standardized testing requirements is a new section which provides that religious schools that elect to comply with this chapter shall administer a nationally standardized test to students enrolled in grades 1,3,6,and 9.

(b) lists subjects to be tested.

(c) relates to record keeping of tests, with those records open to parents, guardians and authorized representatives of the state.

SECTION 7 Adds to Duties of the Department of Education language to exclude educational components of religious schools from their administration.

SECTION 8 Repeals language that the Commissioner may furnish final examination questions and issue diplomas to eighth grade students.

MEMORANDUM

TO: SENATE HESS COMMITTEE
FROM: NANCY DEITRICK
RE: TODAY'S MEETING

HB 403 am

This bill, concerning insurance trade practices, was up before the committee before. Senator Halford had moved two amendments: To add the word "unfair" before discrimination on line 11, and delete the word "midwife" putting "and" before nurse midwife.

Wes Coiner has contacted the committee that he had resolved the problem with the bill and had no other objections.

CSHB 352

This bill, relating to the definition of death is based on a model Act endorsed by medical and legal professions. Dr. Stu Rabeau from DH&SS testified that the Department supports the bill but would rather have the exact language of the Uniform Definition of Death (see the DH&SS position paper).

The major problem identified by Dr. Rabeau is the language on lines 10, 11, and 12 which states that a person is dead only after a pronouncement of a physician, when, in fact, there are many areas of Alaska that do not have physicians. In these areas, death is pronounced by a wide variety of people.

The Department also suggested the following changes:

Deleting the last sentence, beginning on line 15 - 17.

There is no fiscal impact.

CSHB 357 (RULES)

This bill, dealing with the regulation of religious schools, is coming before the LBRC to settle the position of the Departments involved on Thursday at 3:00.

At this time I know that Education has not taken a position on the bill, leaving the policy decision involved to the Legislature.

Health and Social Services is concerned about equal protection for the three and four year olds. I have not yet seen a legal opinion, but the Department is considering the current lawsuit in Arkansas and its implications to Alaska. I have not yet seen a fiscal note.

Additional information in your files since last meeting:

A copy of Title 47, Alaska Statutes.

Community Care Facility Licensing - a handout from DH&SS describing the intent of licensing.

A copy of regulations from the Administrative Code concerning licensing requirements.

A copy of the Department of Education's DRAFT regulations for pre-elementary schools

SENATE AMENDMENT

By Josephson

To: _____ SENATE BILL No. _____

To: Committee substitute for HOUSE BILL No. 357 (RULES)

PAGE: 1 LINE: 9-18

Section 1. AS 14.07.020(8) is amended to read:

(8) [in cooperation with the Department of Health and Social Services,] exercise general supervision over public and private pre-elementary schools [and over the educational component of nurseries as defined in AS 47.35.080(4)] excluding the educational component of pre-elementary schools [and nurseries] operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive direct state or federal funding; pre-elementary schools in this paragraph means schools for children ages three through five years when the schools' primary function is educational;

NEA - ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

Jean Krause, President

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Don Osberg
Past President
Box 1084
Kenai, Alaska 99611

May 12, 1983

Goyla Pierce
President Elect
SR Box 51577
Fairbanks, Alaska 99701

TO: House HESS Committee

Bill Potter
NEA State Director
177 Behrends Avenue
Juneau, Alaska 99801

FROM: NEA-Alaska

Bob McGregor
Region I Director
Box 1043
Sitka, Alaska 99835

RE: HB 357

Heleen Cooke
Region I Director
9410 Belmont
Juneau, Alaska 99801

NEA-Alaska members wanted to participate in this teleconference for HB 357; but, because of the timing of the teleconference to fall during the peak hours of the school day, in every region of Alaska, they find themselves unable to testify. Therefore, on behalf of over 6,000 teachers NEA-Alaska submits this written testimony in opposition to HB 357 "An Act relating to the regulation of religious schools".

Gregory Ward
Region II Director
Box 23
Glennallen, Alaska 99586

Our opposition is premised both on constitutional and educational grounds.

Frank Furrer
Region III Director
Box 1019
Kodiak, Alaska 99618

The State of Alaska is not and cannot be concerned with instruction in sectarian, religious matters; but in non-sectarian disciplines such as mathematics, science, English, history, civics, physical and vocational education, etc. the state is and must be concerned. The Alaska State Constitution in Article I, Section I, "Inherent Rights", states:

Jean Robb
Region IV Director
Box 187
Ketchikan, Alaska 99901

"SECTION 1. This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State."

Ray Virgin
Region IV Director
P.O. Box 10000
Ketchikan, Alaska 99907

Chris Richards
Region V Director
Box 1020
Fairbanks, Alaska 99701

Pet Abney
Region VI Director
Box 461 SRA
Anchorage, Alaska 99507

Lee Wilson
Region VI Director
6410 Pioneer Drive
Anchorage, Alaska 99504

HB 357 removes all oversight and regulation by the State for those educational programs offered by religious institutions who do not receive federal or state funds. In doing so, HB 357 forces the State to abdicate its responsibility in the education, health and social services of youngsters enrolled in religious schools. The State of Alaska will not be able to ensure that religious school students are enjoying equal rights, opportunities and protections under the law:

Lori Sears
Region VI Director
SRA Box 581B
Anchorage, Alaska 99511

Peg Stout
Region VI Director
6208 E. 34th Avenue
Anchorage, Alaska 99504

Frank Holmes
Director at Large
Box 102
Haines, Alaska 99827

Section 14.45.030 as amended denies the State the power to receive and examine reports about the educational programs offered in religious schools;

Section 14.30.010 (b)(1)(D) and Section 14.45.030 as amended denies the State to compel attendance in an educational program offered in religious schools;

Section 14.30.010 (b)(1)(D) as amended denies the State the authority to ensure the presence of competent and capable staff who meet established criteria to teach in the State of Alaska.

These amendments serve to weaken substantially our educational system in Alaska. It appears to us that this bill sets the stage for anarchy: any religious order could establish and maintain any "educational" program it wanted to, even if that program did not include basic instruction in reading, math, science, etc., or require that pupils attend. It is conceivable and probable that this piece of legislation, if enacted, could create whole groups of citizens who have received no instruction in basic skills and/or in disciplines essential to one's ability to function in a democratic and technological society.

We cannot condone this abrogation of the State's authority to oversee and regulate the education of all its citizens. Whether or not a religious school receives federal or state funds is immaterial; the overriding consideration is the education of our youth. It seems most ironic that at the same time the National Commission on Excellence in Education and The Twentieth Century Fund both call for higher, more stringent standards this bill gives broad latitude to diminish educational standards in Alaska by removing accountability for certain schools.

NEA-Alaska urges you to strengthen, not weaken Alaska's system of education. We ask that you, too, oppose Hb 357.

Respectfully submitted:



Jean Krause
President

JK:jc

APR 5 1983

ROUTING AND TRANSMITTAL SLIP

Date

3/15

TO: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
1. <i>Pat</i>		
2.		
3.		
4.		
5.		

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

True

This "complaint" from Little Rock will be very significant, especially since it's in the U.S. District court. It's also pretty well done. I thought the other things might be helpful, or in some way useful.

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)	Room No.—Bldg.
<i>Jake</i>	Phone No.

5041-102

U.S. G.P.O. 1982-361-529/156

OPTIONAL FORM 41 (Rev. 7-76)
Prescribed by GSA
FPMR (41 CFR) 101-11.206

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FILED

U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

MAR 4 1983

CARL R. BRENTS, CLERK

By: _____
DEP. CLERK

ARKANSAS DAY CARE ASSOCIATION, INC.,
DR. BETTY CALDWELL; TIFFANY WELCH, by
her parents and next friends Mike and
Karen Welch; KATI MARTIN AND SHAWN
MARTIN, by their parents and next friends
Timothy and Vicki Martin

PLAINTIFFS

VS.

CIVIL ACTION

NO. LR-C-83-192

BILL CLINTON, Governor, State of Arkansas;
ARKANSAS CHILD CARE FACILITY REVIEW BOARD;
LOYD SCHUH; LEROY ACREE; JOHN LUSK; DR. SUSAN
KEATHLEY; RAY ALLEN; LARRY ROBERTSON; DR. P. B.
GREENHOUSE, all individually and in their official
capacities as members of the Arkansas Child Care
Facilities Review Board

DEFENDANTS

COMPLAINT

I. Jurisdiction

1. The court has jurisdiction pursuant to 28 U.S.C. §§1331, 1343 (3) and (4) for causes of action arising under the First and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. §1983 and 28 U.S.C. §§2201 and 2202.

II. Nature of the Action

2. This is an action for declaratory and injunctive relief declaring Act 245 of 1983 and Act 518 of

1981, and Act 123 of 1973, Acts of Arkansas, which exempts "religious" child care facilities from regulation by the Child Care Facilities Review Board (hereafter "Act 245" and "Act 518" and Act 123), in violation of the First and Fourteenth Amendments to the Constitution of the United States, and of 42 U.S.C. §1983, and enjoining its implementation and/or enforcement.

3. Acts 245, 518, and 123 (a) constitute an establishment of religion, (b) are impermissably vague, and (c) deny to plaintiffs equal protection of the law, all in violation of the Constitution and laws of the United States.

4. Plaintiffs request injunctive relief prohibiting defendants from in any way implementing and/or enforcing the provisions of Acts 245, 518, and 123 including the promulgation of any rules or regulations incident to issuance of any certificate of exemption or exempting any facility from inspection or regulation.

III. Plaintiffs

5. Plaintiffs are:

A. Arkansas Day Care Association Inc. is an Arkansas non-profit corporation made up of proprietary day care providers.

B. Betty Caldwell is a resident of Pulaski County, Arkansas. She is National President of the National Association for the Education of Young Children. She has devoted her professional career to the advancement of health, education and welfare of minor children.

C. Tiffany Welch is a resident of Pulaski County, Arkansas who attended an unlicensed day care center in Little Rock until she suffered physical abuse there. She is four years old and now attends a licensed religious day care center in Little Rock.

D. Kati Martin and Shawn Martin are residents of Pulaski County who also attended an unlicensed day care center facility in Little Rock until they suffered physical abuse there. They are two years old and one year old respectively, and are now attending a licensed religious day care center in Little Rock.

IV. Defendants

6. Defendants are:

(A) Defendant Bill Clinton is the Governor of the State of Arkansas. He signed Act 245 which was enacted by the legislature of the State of Arkansas.

(B) Defendant State of Arkansas Child Care Facility Review Board (hereafter, the "Board") is established and functions pursuant to the laws of Arkansas.

(C) Defendants Kenny Whitlock, Chairman, and Arkansas Child Care Facility Review Board, Loyd Schuh, Leroy Acree, Dr. Susan Keathley, Ray Allen, Larry Robertson, and Dr. P. B. Greenhouse, all individually and in their official capacities as members of the Arkansas Child Care Facility Review Board.

FACTS

7. A. The State of Arkansas has regulated child care facilities since at least 1969. In 1969 the legislature enacted Act 434 of 1969 being Ark. Stats. Ann., §§83-901 through §83-919. Pursuant to these statutes the Board has inspected and licensed all child care facilities.

B. The Board has promulgated various minimum standards for various types of child care facilities covering all aspects of the operation of these facilities. These standards are designed to insure the health, safety and welfare of all children under the care of these facilities.

C. In 1973 the legislature enacted Act 123 of 1973 which provided that religious child care facilities organized and operating as of July 1, 1969, were required to be inspected but could apply for an exemption from licensing.

8. A. In 1981 the legislature enacted Act 518 of 1981 which provided that any religious child care facility organized and operating as of July 1, 1969 was entitled to

apply for exemption from inspection and licensing. The request for exemption is sufficient to entitle any such facility to exemption.

B. Only religious facilities were exempted by Act 518 and no legitimate or compelling interest was brought before the legislature to justify such exemption from traditional regulation.

9. A. On or about January 24, 1983, a subcommittee of the, Committee on State Agencies and Governmental Affairs Committee Arkansas House of Representatives considered a bill known then as House Bill (HB) 223. HB 223 bill proposed that child care facilities operated by church groups be exempted from regulation by the defendant Board. The sole purpose of the bill was to exempt these facilities from state regulation.

B. At the time of the initial deliberations the Attorney General of the State of Arkansas, the Honorable Steve Clark, had already issued a formal Attorney General's Opinion dated January 24, 1983 and numbered 83-15. In this opinion, attached hereto as Exhibit A and made a part hereof, Clark set forth several constitutional difficulties with the bill and concluded (p.5) "...it is my judgment that the bill would be struck down as a violation of the constitutional provisions I have mentioned."

/ 10. The subcommittee deliberated concerning the bill approximately two hours without being able to reach

consensus on the merits of the bill. The subcommittee then created a special ad hoc committee to which HB 223 was to be referred. This ad hoc committee was made up of five representatives of church groups favoring exemption from licensing, five persons opposing exemption from licensing and at least three members of the Board. Each of the five persons selected for those favoring legislation were clergy.

11. The ad hoc committee met on at least four separate occasions to consider "compromise legislation". The first meeting was for approximately six hours on January 26, 1983. The proposals made were referred to the Attorney General. The Attorney General issued a memorandum opinion attached hereto as Exhibit B and made a part hereof. This opinion, dated January 28, expressed the view that the proposed legislation continued to remain "constitutionally suspect and unlikely to be upheld as constitutional if challenged."

12. On January 28, after receipt of Exhibit B, the ad hoc committee met again for approximately three hours. The draft reached as a result of this meeting was dated January 29 and, again, was submitted to the Attorney General for his opinion. The Attorney General again reviewed the legislation. A copy of the Attorney General's opinion dated January 31 is attached hereto as Exhibit C and made a part of. The opinion again expressed the view that the proposed legislation possessed significant constitutional infirmities.

The Attorney General concluded his opinion "...it is my opinion that this draft is unlikely to be upheld as constitutional if challenged."

B. On January 31, the ad hoc committee met again for four hours. As a result of this meeting the proposed changes were submitted to Representative Lloyd George, the Chairman of the subcommittee. The submission was in the form of a letter from Ray Scott, Director of the Arkansas Department of Human Services, to Representative George. A copy of the letter from Scott forwarding the amendments is attached as Exhibit D and made a part hereof. Attached to this letter by Scott are the amendments as well as the names and affiliations of the members of the ad hoc Committee.

13. A. The members of the ad hoc committee in favor of exemption for religious facilities and their affiliations were:

<u>Name</u>	<u>Affiliation</u>
1. Dr. W. A. Dillard	President, American Baptist Association
2. Rev. Jerry Millikin	Faith Christian Home for Children, Forrest City, AR
3. Dr. Glenn Riggs	President, Arkansas Christian Schools Association
4. Rev. Bill Thomas	United Pentecostal Church
5. Rev. David Wiggins	Supervisor, Assemblies of God of Arkansas

B. At the time of the meetings of the ad hoc committee the Faith Christian Home for Children was a

defendant in an action brought by the State of Arkansas, concerning child abuse allegations in the operation of that facility covered by the State's licensing provisions.

C. At the time of the enactment of Act 518 of 1981 a facility under the supervision of W. A. Dillard was a defendant in an action brought by the State of Arkansas concerning aspects of the operation of that facility covered by the State's licensing provisions.

14. A. The Attorney General in a formal opinion dated February 2 and numbered 83-32 expressed the opinion that the amendments attached to the Scott letter dated February 1, 1983 were also unconstitutional. A copy of that opinion is attached hereto as Exhibit E and made a part hereof.

B. The Attorney General's opinion concluded, "...it is my belief that these proposed amendments are constitutionally suspect and would not withstand a legal challenge in state or federal court.

15. A. The ad hoc committee met for the final time on February 7, 1983 to consider their prior suggested amendments. They developed their final version of the proposed legislation, which was again forwarded to Representative George by Ray Scott in a letter dated February 9, 1983, a copy of which is attached hereto as Exhibit F and made a part hereof. Attached to the Scott letter was the proposed amended legislation. The proposed amendments were

identical in all material respects to the legislative enactment which became Act 245 of 1983.

B. The last version was not submitted to the Attorney General for his opinion.

C. The last version was not submitted to the Attorney General because his opinion would remain the same regarding constitutionality.

D. The last version was not materially different from prior versions in those matters found constitutionally suspect by the Attorney General.

16. A copy of Act 245 is attached hereto as Exhibit G and made a part hereof. The title as well as the actual provisions of Act 245 explicitly provide only for the exemption of religious child care facilities and no others.

17. The preamble to Act 245 notes that "many religious child care facilities have been organized since July 1, 1969" and that "many religious child care facilities are now included within the definition of child care facilities."

18. A. Act 245 provides that "Any church or group of churches, exempt from the State income tax levied by Act 118 of 1929, as amended, [Ark. Stat. Ann. §84-2006(3)] operating a child care facility, shall be exempt from obtaining a license...".

B. There is no definition of church contained in Ark. Stat. Ann. §84-2006(3). The only reference contained in

that statute which could possibly be applicable to Act 245 is "...corporations organized for religious, charitable, scientific or educational purposes."

19. A. Act 245 requires of church run facilities that they be in "substantial compliance" with published standards in order to maintain their exempt status.

B. Act 245 contains no definition of substantial compliance.

C. The existing regulations contain no definition of substantial compliance.

D. There nowhere exists a definition of substantial compliance as it is used in Act 245.

20. A. Act 245 establishes the concept of exemption only for church operated facilities.

B. Act 245 establishes a concept of being in substantial compliance only for church operated facilities.

C. Act 245 establishes a process of judicial review outside of and in conflict with the Arkansas Administrative Procedures Act only for church operated facilities.

D. Act 245 represents an unlawful delegation of legislative authority.

21. Act 245 establishes a scheme of self-regulation only for church operated facilities.

22. A. No secular or neutral legislative purpose was advanced by the ad hoc committee, the subcommittee of the

legislature, or the Governor to justify the exemption of church operated facilities from licensing.

B. Act 245 denies equal protection of the law to the children of the State of Arkansas who are in uninspected and unlicensed facilities as contrasted with those in licensed facilities.

23. A. Acts 245, 518 and 123 are the latest attempts in a longstanding pattern and practice of the State of Arkansas to promote religion and to assist in the establishment of religion.

B. Many religious leaders in Arkansas, as well as groups and associations, oppose the exemption from licensing for religious institutions and position statements are attached hereto as Exhibit H and made a part hereof.

24. A. The cost of being in "substantial compliance" for the exempt centers will be significantly less than the cost of complying with the requirements imposed on nonexempt centers by the licensing standards set forth in the Arkansas minimum standards. Exempt centers may also reduce their fixed costs per child, as compared with nonexempt centers, by increasing their enrollments beyond the levels imposed on nonexempt centers by the licensing standards.

B. A copy of minimum standards for one type of child care facility, the Day Care Center is attached hereto as Exhibit H and made a part hereof.

25. The opening of exempt centers will increase the supply of child care spaces in particular neighborhoods. Most children attend centers within a few miles of their home or within a few miles of their parents' workplaces. As a result of the increase in supply in particular neighborhoods caused by the opening of new exempt centers, the number of available spaces exceeds and will exceed the number of children in such neighborhoods who would attend day care centers, which in turn will lead to further unfair and unlawful competitive pressures on plaintiffs' costs and revenues.

26. Plaintiffs will suffer, if relief is not granted, substantial injury because they will lose customers to newly opened exempt centers.

27. This injury is continuing and irreparable and will persist until and unless defendants require religiously affiliated centers to comply with the minimum standards for day care licensing set forth in Exhibit I. Defendants will not be able to require compliance, because of Acts 245, 518, and 123 unless the relief prayed for herein is granted. Plaintiffs have no adequate remedy at law nor adequate administrative remedy to secure the relief requested herein.

28. The classifications established by Acts 245 and 518 constitute an invidious discrimination against plaintiff. Such classification furthers no valid or legitimate governmental purpose. The differences and

distinction between the established classification and the plaintiff classification of non-exempt facilities deprives plaintiffs of the equal protection of the law.

29. Acts 245, 518 and 123 constitute the establishment of religion by the State of Arkansas.

30. Plaintiffs have no plain or adequate remedy at law.

WHEREFORE, plaintiffs respectfully pray that this court:

1. Declare and adjudge Acts 245, 518 and 123 to be in violation of the First and Fourteenth Amendments to the Constitution of the United States and therefore null and void and of no legal effect;

2. Issue a preliminary and permanent injunction (a) requiring the licensing of all child care facilities without regard to their religious affiliation; (b) enjoining defendant Board from exempting any child care facility from inspection and licensing by the State of Arkansas;

3. Award plaintiffs a reasonable attorney's fee and their costs;

4. Grant such other relief it may deem just and proper.

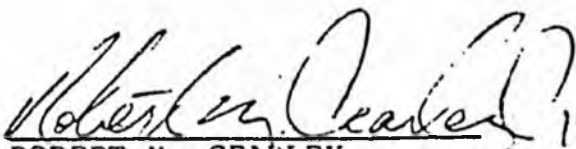
Respectfully submitted,

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OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

Wood
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Mike

(501) 371-2007

February 2, 1983

Opinion No. 83-32

The Honorable Jodie Mahony
State Representative
1983 General Assembly
State Capitol
Little Rock, AR 72201

Dear Representative Mahony:

I am writing in response to your request for an opinion regarding the constitutionality of the proposed amendments to House Bill 223.

Having reviewed these provisions according to the standards for constitutional validity in the areas of equal protection and clarity of language, it is my judgment that they are constitutionally suspect as drafted and could not withstand a legal challenge in state or federal court.

First, the provisions in Section 2 which permit an exempt facility to do a self-inspection and verify compliance establishes a dual standard of regulation between church (self-inspection) and non-church facilities which are inspected and must fully comply with the standards of the Child Care Facility Review Board. The issue of denial of equal protection can thus be argued.

The amendments do not offer any rational and legislatively neutral justification to support such a double standard of regulation.

Additionally, these amendments provide exempt facilities, church operated, a different legal remedy to appeal any adverse action of the Child Care Board than the remedy provided to secular facilities. This is the appeal de novo to Chancery Court.

January 2, 1983
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It is clear that such a provision is unconstitutional under Arkansas' constitution, which although authorizing the legislature to create Chancery courts, does not allow the legislature to expand chancery court jurisdiction. Article 7 §11 and §15; Gladish v. Lovewell, 95 Ark. 618; Nethercutt v. Pulaski County Special School District, 248 Ark. 143, 450 S.W.2d 277. Since there was no such equitable recourse when our Constitution was adopted, the foregoing legal authority forbids the legislature to create it now.

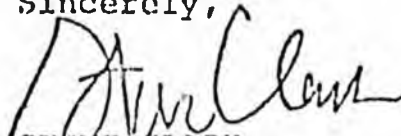
Additionally, this proposed chancery appeal do novo is in direct conflict with the award of circuit court jurisdiction of administrative appeals in Ark. Stat. Ann. §5-701 et seq. and the current Child Care Facility Review Board Act. Such conflicts, as a practical matter, destroy the remedy of judicial review, for the state or the facility, by leaving in doubt which court has jurisdiction and what standards of review are intended for the court to use.

Moreover, in the area of definitional clarity, this proposal fails in Section 2 to define the meaning of ". . .in substantial compliance with published standards that similar non-exempt facilities are required to meet."

Also the provision stating that substantial compliance standards shall not include those of a "religious or curriculum nature" leaves these terms undefined. Such vague language in a legislative regulatory scheme which is enforced by the state fails to meet constitutional due process standards of "notice" clarity as explained in Davis v. Smith, 266 Ark. 112.

In view of the comments above, it is my belief that these proposed amendments are constitutionally suspect and would not withstand a legal challenge in state or federal court.

Sincerely,


STEVE CLARK
Attorney General



STEVE CLARK
ATTORNEY GENERAL

STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

January 24, 1983

OPINION NO. 83-15

The Honorable Joseph K. Mahony
The Honorable Robert L. McGinnis
State Representatives
1983 General Assembly
State Capitol
Little Rock, AR 72201

RE: House Bill 54

Gentlemen:

I am writing in response to your request for an opinion regarding the constitutionality of House Bill 54. An examination of the bill reveals an obvious concern that House Bill 54 is legally invalid as a violation of the equal protection provisions of the Fourteenth Amendment to the United States Constitution and Article 2, Section 3 of the Arkansas Constitution.

The Fourteenth Amendment states, in pertinent part, as follows:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. [Emphasis supplied]

These constitutional provisions have consistently been interpreted to strike down statutes which discriminate between different groups of citizens or businesses which are regulated by the same legislation

That is to say, when the law attempts to regulate a business, industry or practice, it must do so on an equal basis to all the members of the regulated class unless there is a significant difference in the way the exempted class operates its business, industry or practice and the exemption is reasonably related to the purpose of the original legislation. Jacks v. State, 219 Ark. 392, 242 S.W.2d 704; Wanetco Services, Inc. v. Gaddy, 272 Ark. 452, 616 S.W.2d 466, Rayco Construction Co., Inc. v. Vorsanger, 397 F.Supp. 1105; Milnot Co. v. Douglas, 452 F.Supp. 505. See also Milnot v. Arkansas State Board of Health, 388 F.Supp. 901 and Dicks v. Naff, Mayor, 255 Ark. 357.

The Honorable Joseph K. Mahony
The Honorable Robert L. McGinnis
January 24, 1983
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In the Rayco case the Court stated:

A state may validly differentiate between people or corporations on the basis of classifications providing that the state has legitimate and significant (in some contexts a "compelling") interest in the differentiation and provided that the classification is based on some reasonable and rational criteria or criteria; however, absent an appropriate state interest or absent rational and relevant standards of classification, state-imposed differentiation amounts to unconstitutional discrimination. [Emphasis supplied]

The exemption which H.B. 54 creates is the type of "classification" which these cases address.

Therefore unless the exemption can be justified because of differences in the operation of religious child care facilities as opposed to non-religious facilities this bill appears to discriminate, unlawfully, against not one but two classes of citizens; the children the Child Care Facility Review Board Act was intended to protect and the owners and operators of non-religious facilities.

Since there is no language in the bill indicating that children in these religious facilities are fed, supervised, etc. any differently from children in secular facilities and since there is no language in the bill indicating that children in the religious facilities are any less likely to be neglected, abused or left in hazardous circumstances than children in secular facilities there is no justification for denying to the children in these centers the protection of the state and forcing the owners of secular facilities to compete with unlicensed facilities who are operating the identical kind of business.

It is important to remember in this regard that the intent of the original act, as stated at Ark. Stat. Ann. §83-904(b), is the protection of children:

(B) In establishing requirements and standards for the granting, revoking, refusing, and suspending of a license for a Child Care Facility the Welfare Department [Child Care Facility Review Board] shall adopt such rules and regulations as will: promote the health, safety and welfare of children attending a Child Care Facility; promote safe, comfortable, and healthy physical facilities for the children who attend the Child Care Facility; insure adequate supervision of the children who attend the Child Care Facility, insure adequate supervision of the children by capable, qualified and healthy individuals; insure appropriate educational programs and activities within each Child Care Facility; and insure adequate and healthy food service where food service is offered by the Child Care Facility.