

SECOND REGULAR SESSION

# SENATE BILL NO. 712

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHUPP.

Pre-filed December 1, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4684S.011

## AN ACT

To repeal sections 210.211 and 210.245, RSMo, and to enact in lieu thereof two new sections relating to child care facilities, with penalty provisions.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 210.211 and 210.245, RSMo, are repealed and two new  
2 sections enacted in lieu thereof, to be known as sections 210.211 and 210.245, to  
3 read as follows:

210.211. 1. It shall be unlawful for any person to establish, maintain or  
2 operate a child-care facility for children, or to advertise or hold himself or herself  
3 out as being able to perform any of the services as defined in section 210.201,  
4 without having in effect a written license granted by the department of health  
5 and senior services; except that nothing in sections 210.203 to 210.245 shall apply  
6 to:

7 (1) Any person who is caring for four or fewer children. For purposes of  
8 this subdivision, children who are related by blood, marriage or adoption to such  
9 person within the third degree shall **[not] only** be considered in the total number  
10 of children being cared for **if the person is also caring for at least two other**  
11 **children for pecuniary gain who are unrelated by blood, marriage, or**  
12 **adoption to such person within the third degree and such children are**  
13 **not being cared for due to extenuating circumstances not exceeding**  
14 **thirty days within one calendar year. For purposes of this subdivision,**  
15 **children who live in the caregiver's home and are eligible for**  
16 **enrollment in a public kindergarten or elementary school shall not be**  
17 **considered in the total number of children being cared for;**

18 (2) Any person who has been duly appointed by a court of competent

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

19 jurisdiction the guardian of the person of the child or children, or the person who  
20 has legal custody of the child or children;

21 (3) Any person who receives free of charge, and not as a business, for  
22 periods not exceeding ninety consecutive days, as bona fide, occasional and  
23 personal guests the child or children of personal friends of such person, and who  
24 receives custody of no other unrelated child or children;

25 (4) Any graded boarding school, summer camp, hospital, sanitarium or  
26 home which is conducted in good faith primarily to provide education, recreation,  
27 medical treatment, or nursing or convalescent care for children;

28 (5) Any child-care facility maintained or operated under the exclusive  
29 control of a religious organization. When a nonreligious organization, having as  
30 its principal purpose the provision of child-care services, enters into an  
31 arrangement with a religious organization for the maintenance or operation of a  
32 child-care facility, the facility is not under the exclusive control of the religious  
33 organization;

34 (6) Any residential facility or day program licensed by the department of  
35 mental health pursuant to sections 630.705 to 630.760 which provides care,  
36 treatment and habilitation exclusively to children who have a primary diagnosis  
37 of mental disorder, mental illness, intellectual disability or developmental  
38 disability, as defined in section 630.005; and

39 (7) Any nursery school.

40 2. Notwithstanding the provisions of subsection 1 of this section, no  
41 child-care facility shall be exempt from licensure if such facility receives any state  
42 or federal funds for providing care for children, except for federal funds for those  
43 programs which meet the requirements for participation in the Child and Adult  
44 Care Food Program pursuant to 42 U.S.C. Section 1766. Grants to parents for  
45 child care pursuant to sections 210.201 to 210.257 shall not be construed to be  
46 funds received by a person or facility listed in subdivisions (1) and (5) of  
47 subsection 1 of this section.

48 3. ~~[Any]~~ **All** child care ~~[facility not exempt from licensure]~~ **facilities**  
49 shall disclose the licensure status of the facility to the parents or guardians of  
50 children for which the facility provides care. No child care facility exempt from  
51 licensure shall represent to any parent or guardian of children for which the  
52 facility provides care that the facility is licensed when such facility is in fact not  
53 licensed.

54 4. Any in-home licensed child care facility that is organized as a

55 corporation, association, firm, partnership, proprietorship, limited liability  
56 company, or any other type of business entity in this state shall qualify for the  
57 exemption for related children for children who are related to the member of the  
58 corporation, association, firm, partnership, proprietorship, limited liability  
59 company, or other type of business entity who is responsible for the daily  
60 operation of the child care facility and who meets the requirements of the child  
61 care provider. If more than one member of the corporation, association, firm,  
62 partnership, proprietorship, limited liability company, or other type of business  
63 entity is responsible for the daily operation of the child care facility, the  
64 exemption for related children shall only be granted for children who are related  
65 to one of the members. All child care facilities under this subsection shall  
66 disclose the licensure status of the facility to the parents or guardians of children  
67 for which the facility provides care. A parent or guardian shall sign a written  
68 notice indicating he or she is aware of the licensure status of the facility. The  
69 facility shall keep a copy of this signed written notice on file. All child care  
70 facilities shall provide the parent or guardian enrolling a child in the facility with  
71 a written explanation of the disciplinary philosophy and policies of the child care  
72 facility.

210.245. 1. Any person who violates any provision of sections 210.201 to  
2 210.245, or who for such person or for any other person makes materially false  
3 statements in order to obtain a license or the renewal thereof pursuant to sections  
4 210.201 to 210.245, shall be guilty of an infraction for the first offense and shall  
5 be assessed a fine not to exceed [two] **five** hundred dollars and shall be guilty of  
6 a class A misdemeanor and shall be assessed a fine of up to [two] **five** hundred  
7 dollars per day, not to exceed a total of ten thousand dollars for subsequent  
8 offenses. In case such guilty person is a corporation, association, institution or  
9 society, the officers thereof who participate in such misdemeanor shall be subject  
10 to the penalties provided by law.

11 2. If the department of health and senior services proposes to deny,  
12 suspend, place on probation or revoke a license, the department of health and  
13 senior services shall serve upon the applicant or licensee written notice of the  
14 proposed action to be taken. The notice shall contain a statement of the type of  
15 action proposed, the basis for it, the date the action will become effective, and a  
16 statement that the applicant or licensee shall have thirty days to request in  
17 writing a hearing before the administrative hearing commission and that such  
18 request shall be made to the department of health and senior services. If no

19 written request for a hearing is received by the department of health and senior  
20 services within thirty days of the delivery or mailing by certified mail of the  
21 notice to the applicant or licensee, the proposed discipline shall take effect on the  
22 thirty-first day after such delivery or mailing of the notice to the applicant or  
23 licensee. If the applicant or licensee makes a written request for a hearing, the  
24 department of health and senior services shall file a complaint with the  
25 administrative hearing commission within ninety days of receipt of the request  
26 for a hearing.

27 3. The department of health and senior services may issue letters of  
28 censure or warning without formal notice or hearing. Additionally, the  
29 department of health and senior services may place a licensee on probation  
30 pursuant to chapter 621.

31 4. The department of health and senior services may suspend any license  
32 simultaneously with the notice of the proposed action to be taken in subsection  
33 2 of this section, if the department of health and senior services finds that there  
34 is a threat of imminent bodily harm to the children in care. The notice of  
35 suspension shall include the basis of the suspension and the appeal rights of the  
36 licensee pursuant to this section. The licensee may appeal the decision to  
37 suspend the license to the department of health and senior services. The appeal  
38 shall be filed within ten days from the delivery or mailing by certified mail of the  
39 notice of appeal. A hearing shall be conducted by the department of health and  
40 senior services within ten days from the date the appeal is filed. The suspension  
41 shall continue in effect until the conclusion of the proceedings, including review  
42 thereof, unless sooner withdrawn by the department of health and senior services,  
43 dissolved by a court of competent jurisdiction or stayed by the administrative  
44 hearing commission. Any person aggrieved by a final decision of the department  
45 made pursuant to this section shall be entitled to judicial review in accordance  
46 with chapter 536.

47 5. In addition to initiating proceedings pursuant to subsection 1 of this  
48 section, or in lieu thereof, the prosecuting attorney of the county where the  
49 child-care facility is located may file suit for a preliminary and permanent order  
50 overseeing or preventing the operation of a child-care facility for violating any  
51 provision of sections 210.201 to 210.245. The order shall remain in force until  
52 such a time as the court determines that the child-care facility is in substantial  
53 compliance. If the prosecuting attorney refuses to act or fails to act after receipt  
54 of notice from the department of health and senior services, the department of

55 health and senior services may request that the attorney general seek an  
56 injunction of the operation of such child-care facility.

57         6. In cases of imminent bodily harm to children in the care of a child-care  
58 facility, the department may file suit in the circuit court of the county in which  
59 the child-care facility is located for injunctive relief, which may include removing  
60 the children from the facility, overseeing the operation of the facility or closing  
61 the facility.

62         7. **The department of health and senior services may, subject to**  
63 **the provisions of subsections 2 and 4 of this section, close any illegally**  
64 **operating unlicensed child care facility upon documentation of the**  
65 **illegal status of the facility or the finding of an emergency based on the**  
66 **harm or imminent harm to the children involved. The prosecuting**  
67 **attorney of the county where such illegal child care facility is located**  
68 **may file suit for a permanent order preventing the operation of such**  
69 **child care facility. The order shall remain in effect until the court**  
70 **determines that the child care facility is in compliance with all**  
71 **licensure requirements. Any person who operates an illegal unlicensed**  
72 **child care facility is subject to the penalties set forth in subsection 1 of**  
73 **this section. Any operator of a facility closed under this provision that**  
74 **is later found to have been legal shall have the right to exercise any**  
75 **rights and remedies which may be available at law or in equity.**

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