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ENGROSSED SUBSTITUTE SENATE BILL 5317

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State of Washington

60th Legislature

2007 Regular Session

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

READ FIRST TIME 02/26/07.

1 AN ACT Relating to child care safety; amending RCW 43.215.005,  
2 43.215.010, 43.215.200, 43.215.525, 43.215.530, and 43.215.535; adding  
3 new sections to chapter 43.215 RCW; creating a new section; and  
4 prescribing penalties.

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

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

8 (1) The legislature recognizes that:

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

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

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

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

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

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

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

13 (3) The purpose of this chapter is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (a) The license issued under this chapter;

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

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

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



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

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

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

9 (a) On a web site; or

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

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

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

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

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

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

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

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

10        NEW SECTION.    **Sec. 9.**    REPORTING ACTIONS--POSTING ON WEB SITE.    For  
11 the purposes of reporting actions taken against agency licensees, the  
12 following actions shall be posted to the department's web site  
13 accessible by the public:    Suspension, surrender, revocation, denial,  
14 stayed suspension, or reinstatement of a license, and any written  
15 reprimand related to abuse and sexual misconduct or abuse.

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

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

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

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

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

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

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

31        (c) The department may take action as provided in RCW 74.15.130 if  
32 the licensee fails to maintain in full force and effect the insurance  
33 required by this subsection.

34        (d) This subsection applies to child day-care centers holding  
35 licenses, initial licenses, and probationary licenses under this  
36 chapter.

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

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

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

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

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

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

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

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

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

28 (d) The department may take action as provided in RCW 74.15.130 if  
29 the licensee fails to (~~notify the department when coverage has been~~  
30 ~~terminated as required under (b))~~ comply with the requirements of this  
31 subsection.

32 (e) A family day-care provider holding a license under this chapter  
33 on July 24, 2005, is not required to be in compliance with this  
34 subsection until the time of renewal of the license or until January 1,  
35 2006, whichever is sooner.

36 (3) Noncompliance or compliance with the provisions of this section  
37 shall not constitute evidence of liability or nonliability in any  
38 injury litigation.

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

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

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