S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N S E N A T E

April 3, 2009

Introduced by Sen. MONTGOMERY -- (at request of the Office of Children and Family Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Children and Families in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, in relation to enforcement of child day care safety and standards; to amend the penal law, in relation to making technical corrections thereto; and to repeal paragraph (b) of subdivision 12 of section 390 of the social services law relating to the use of single family dwellings for family day care or group family day care

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraphs (d) and (e) of subdivision 1 of section 390 of the social services law, as amended by chapter 587 of the laws of 1997, are amended to read as follows:

(d) "Group family day care home" shall mean a program caring for children for more than three hours per day per child in which child day care is provided in a family home for seven to [ten] TWELVE children of all ages, [or up to twelve children where all of such children are over two years of age,] except for those programs operating as a family day care home, as such term is defined in paragraph (e) of this subdivision, which care for seven or eight children. A group family day care provider may provide child day care services to [two] FOUR additional children if such additional children are of school age and such children receive services only before or after the period such children are ordinarily in school or during school lunch periods, or school holidays, or during

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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those periods of the year in which school is not in session. There shall be one caregiver for every two children under two years of age in the group family home. A group family day care home must have at least one assistant to the operator present when child day care is being provided to seven or more children WHEN NONE OF THE CHILDREN ARE SCHOOL AGE, OR NINE OR MORE CHILDREN WHEN AT LEAST TWO OF THE CHILDREN ARE SCHOOL AGE AND SUCH CHILDREN RECEIVE SERVICES ONLY BEFORE OR AFTER THE PERIOD SUCH CHILDREN ARE ORDINARILY IN SCHOOL OR DURING SCHOOL LUNCH PERIODS, OR SCHOOL HOLIDAYS, OR DURING THOSE PERIODS OF THE YEAR IN WHICH SCHOOL IS NOT IN SESSION. This assistant shall be selected by the group family day care operator and shall meet the qualifications established for such position by the regulations of the [department] OFFICE OF CHILDREN AND FAMILY SERVICES.

(e) "Family day care home" shall mean a program caring for children for more than three hours per day per child in which child day care is provided in a family home for three to six children. THERE SHALL BE ONE CAREGIVER FOR EVERY TWO CHILDREN UNDER TWO YEARS OF AGE IN THE FAMILY DAY CARE HOME. A family day care provider may, however, care for seven or eight children at any one time if no more than six of the children are less than school age and the school-aged children receive care primarily before or after the period such children are ordinarily in school, during school lunch periods, on school holidays, or during those periods of the year in which school is not in session in accordance with the regulations of the [department] OFFICE OF CHILDREN AND FAMILY SERVICES and the [department] OFFICE inspects such home to determine whether the provider can care adequately for seven or eight children.

S 2. Paragraph (a) of subdivision 2 of section 390 of the social services law, as added by chapter 750 of the laws of 1990, is amended to read as follows:

(a) Child day care centers caring for seven or more children and group family day care programs, as defined in subdivision one of this section, shall obtain a license from the [department] OFFICE OF CHILDREN AND FAMILY SERVICES and shall operate in accordance with the terms of such license and the regulations of [the department] SUCH OFFICE. INITIAL LICENSES SHALL BE VALID FOR A PERIOD OF UP TO TWO YEARS; SUBSEQUENT LICENSES SHALL BE VALID FOR A PERIOD OF UP TO FOUR YEARS SO LONG AS THE PROVIDER REMAINS SUBSTANTIALLY IN COMPLIANCE WITH APPLICABLE LAW AND REGULATIONS DURING SUCH PERIOD.

S 3. Clause (A) of subparagraph (ii) of paragraph (d) of subdivision 2 of section 390 of the social services law, as amended by chapter 416 of the laws of 2000, is amended to read as follows:

(A) [Registration] INITIAL REGISTRATIONS shall be valid for a period of up to two years, SUBSEQUENT REGISTRATIONS SHALL BE VALID FOR A PERIOD OF UP TO FOUR YEARS so long as the provider remains SUBSTANTIALLY in compliance with applicable law and regulations during such period.

S 4. Paragraph (b) of subdivision 3 of section 390 of the social services law, as added by chapter 750 of the laws of 1990, is amended to read as follows:

(b) Where inspections have been made and violations of applicable statutes or regulations have been found, the [department] OFFICE OF CHILDREN AND FAMILY SERVICES shall WITHIN TEN DAYS advise the child day care provider in writing[, within ten days,] of the violations and require the provider to correct such violations. [If the child day care provider fails to correct such violations within thirty days after notice, the department] THE OFFICE OF CHILDREN AND FAMILY SERVICES may ALSO act pursuant to subdivisions ten and eleven of this section.

S 5. Paragraph (c) of subdivision 11 of section 390 of the social services law, as added by chapter 416 of the laws of 2000, is amended to read as follows:

(c)(i) Except as provided for in this paragraph, a child day care provider [may] SHALL avoid payment of a penalty imposed pursuant to this subdivision where the provider has rectified the condition [resulting] WHICH RESULTED in the imposition of the penalty within thirty days of notification of the [imposition of the penalty] EXISTENCE OF THE VIOLATION OF STATUTE OR REGULATION.

(ii) Clause (i) of this paragraph notwithstanding, rectification shall not preclude the imposition of a penalty pursuant to this subdivision where:

(A) the child day care provider has operated a child day care center or group family day care home without a license, has refused to seek a license for the operation of such a center or home, or has continued to operate such a center or home after denial of a license application, revocation of an existing license or suspension of an existing license;

(B) the child day care provider has operated a family day care home, school-age child care program or child day care center required to be registered without being registered, has refused to seek registration for the operation of such home, program or center or has continued to operate such a home, program or center after denial of a registration application, revocation of an existing registration or suspension of an existing registration;

(C) there has been a total or substantial failure of the facility's fire detection or prevention systems or emergency evacuation procedures;

(D) the child day care provider or an assistant, employee or volunteer has failed to provide adequate and competent supervision;

(E) the child day care provider or an assistant, employee or volunteer has failed to provide adequate sanitation;

(F) the child day care provider or an assistant, employee [or], volunteer [has] OR, FOR A FAMILY DAY CARE HOME OR GROUP FAMILY DAY CARE HOME, A MEMBER OF THE PROVIDER'S HOUSEHOLD, HAS INJURED A CHILD IN CARE, UNREASONABLY FAILED TO OBTAIN MEDICAL ATTENTION FOR A CHILD IN CARE REQUIRING SUCH ATTENTION, USED CORPORAL PUNISHMENT AGAINST A CHILD IN CARE OR abused or maltreated a child in care; [or]

(G) the child day care provider has violated the same statutory or regulatory standard more than once within a six month period;

(H) THE CHILD DAY CARE PROVIDER OR AN ASSISTANT, EMPLOYEE OR VOLUNTEER HAS FAILED TO MAKE A REPORT OF SUSPECTED CHILD ABUSE OR MALTREATMENT WHEN REQUIRED TO DO SO PURSUANT TO SECTION FOUR HUNDRED THIRTEEN OF THIS ARTICLE; OR

(I) THE CHILD DAY CARE PROVIDER OR AN ASSISTANT, EMPLOYEE OR VOLUNTEER HAS SUBMITTED TO THE OFFICE OF CHILDREN AND FAMILY SERVICES A FORGED DOCUMENT AS DEFINED IN SECTION 170.00 OF THE PENAL LAW.

S 6. Subdivision 11 of section 390 of the social services law is amended by adding a new paragraph (e) to read as follows:

(E)(I) THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL DENY A NEW APPLICATION FOR LICENSURE OR REGISTRATION MADE BY A DAY CARE PROVIDER WHOSE LICENSE OR REGISTRATION WAS PREVIOUSLY REVOKED OR TERMINATED BASED ON A VIOLATION OF STATUTE OR REGULATION FOR A PERIOD OF TWO YEARS FROM THE DATE THAT THE REVOCATION OR TERMINATION OF THE LICENSE OR REGISTRATION BECAME FINALLY EFFECTIVE, UNLESS SUCH OFFICE DETERMINES, IN ITS DISCRETION, THAT APPROVAL OF THE APPLICATION WILL NOT IN ANY WAY JEOPARDIZE THE HEALTH, SAFETY OR WELFARE OF CHILDREN IN THE CENTER, PROGRAM

OR HOME. FOR THE PURPOSES OF THIS PARAGRAPH, THE DATE THAT THE REVOCATION OR TERMINATION BECAME FINALLY EFFECTIVE SHALL BE, AS APPLICABLE:

(A) THE DATE THAT THE REVOCATION OR TERMINATION BECAME EFFECTIVE BASED ON THE NOTICE OF REVOCATION OR TERMINATION;

(B) THE DATE THAT THE HEARING DECISION WAS ISSUED UPHOLDING THE REVOCATION OR TERMINATION;

(C) THE DATE OF ISSUANCE OF A FINAL COURT ORDER AFFIRMING THE REVOCATION OR TERMINATION OR AFFIRMING A HEARING DECISION THAT UPHELD THE REVOCATION OR TERMINATION; OR

(D) ANOTHER DATE MUTUALLY AGREED UPON BY THE OFFICE OF CHILDREN AND FAMILY SERVICES AND THE PROVIDER.

(II)(A) SUCH OFFICE SHALL DENY A NEW APPLICATION FOR LICENSURE OR REGISTRATION MADE BY A DAY CARE PROVIDER WHO IS ENJOINED OR OTHERWISE PROHIBITED BY A COURT ORDER FROM OPERATION OF A DAY CARE CENTER, GROUP FAMILY DAY CARE HOME, FAMILY DAY CARE HOME OR SCHOOL-AGE CHILD CARE PROGRAM WITHOUT A LICENSE OR REGISTRATION FOR A PERIOD OF TWO YEARS FROM THE DATE OF THE COURT ORDER UNLESS THE COURT ORDER SPECIFICALLY ENJOINS THE PROVIDER FROM PROVIDING DAY CARE FOR A PERIOD LONGER THAN TWO YEARS, IN WHICH CASE THE OFFICE SHALL DENY ANY NEW APPLICATION MADE BY THE PROVIDER WHILE THE PROVIDER IS SO ENJOINED.

(B) SUCH OFFICE SHALL DENY A NEW APPLICATION FOR LICENSURE OR REGISTRATION MADE BY A DAY CARE PROVIDER WHO IS ASSESSED A SECOND CIVIL PENALTY BY SUCH OFFICE FOR HAVING OPERATED A DAY CARE CENTER, GROUP FAMILY DAY CARE HOME, FAMILY DAY CARE HOME OR SCHOOL-AGE CHILD CARE PROGRAM WITHOUT A LICENSE OR REGISTRATION FOR A PERIOD OF TWO YEARS FROM THE DATE OF THE SECOND FINE. FOR THE PURPOSES OF THIS PARAGRAPH, THE DATE OF THE SECOND FINE SHALL BE EITHER THE DATE UPON WHICH THE DAY CARE PROVIDER SIGNS A STIPULATION AGREEMENT TO PAY THE SECOND FINE OR THE DATE UPON WHICH A HEARING DECISION IS ISSUED AFFIRMING THE DETERMINATION OF SUCH OFFICE TO IMPOSE THE SECOND FINE, AS APPLICABLE.

(III) A DAY CARE PROVIDER WHO SURRENDERS THE PROVIDER'S LICENSE OR REGISTRATION WHILE SUCH OFFICE IS ENGAGED IN ENFORCEMENT SEEKING SUSPENSION, REVOCATION OR TERMINATION OF SUCH PROVIDER'S LICENSE OR REGISTRATION PURSUANT TO THE REGULATIONS OF SUCH OFFICE, SHALL BE DEEMED TO HAVE HAD THEIR LICENSE OR REGISTRATION REVOKED OR TERMINATED AND SHALL BE SUBJECT TO THE PROHIBITIONS AGAINST LICENSING OR REGISTRATION PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH FOR A PERIOD OF TWO YEARS FROM THE DATE OF SURRENDER OF THE LICENSE OR REGISTRATION.

S 7. Paragraph (a) of subdivision 12 of section 390 of the social services law, as added by chapter 750 of the laws of 1990, is amended to read as follows:

(a) Notwithstanding any other provision of law, except as may be required as a condition of licensure or registration by regulations promulgated pursuant to this section, no village, town (outside the area of any incorporated village), city or county shall adopt or enact any law, ordinance, rule or regulation which would impose, mandate or otherwise enforce standards for sanitation, health, fire safety or building construction on a one or two family dwelling or multiple dwelling used to provide group family day care or family day care than would be applicable were such child day care not provided on the premises. NO VILLAGE, TOWN (OUTSIDE THE AREA OF ANY INCORPORATED VILLAGE), CITY OR COUNTY SHALL PROHIBIT OR RESTRICT USE OF A ONE OR TWO FAMILY DWELLING, OR MULTIPLE DWELLING FOR FAMILY OR GROUP FAMILY DAY CARE WHERE A LICENSE OR REGISTRATION FOR SUCH USE HAS BEEN ISSUED IN ACCORDANCE WITH REGULATIONS ISSUED PURSUANT TO THIS SECTION. Nothing in this paragraph shall preclude local authorities with enforcement jurisdiction of the applica-

ble sanitation, health, fire safety or building construction code from making appropriate inspections to assure compliance with such standards. [The department of social services shall provide to the secretary of state on a monthly basis, a list of child day care registrants.]

S 8. Paragraph (b) of subdivision 12 of section 390 of the social services law is REPEALED and paragraph (c) is relettered paragraph (b).

S 9. Subparagraph (ix) of paragraph (b) of subdivision 3 of section 390-a of the social services law, as amended by chapter 552 of the laws of 2003, is amended to read as follows:

(ix) FOR OPERATORS, PROGRAM DIRECTORS, EMPLOYEES AND ASSISTANTS OF FAMILY DAY CARE HOMES, GROUP FAMILY DAY CARE HOMES AND CHILD DAY CARE CENTERS, education and information on the identification, diagnosis and prevention of shaken baby syndrome.

S 10. Section 410-x of the social services law is amended by adding a new subdivision 7 to read as follows:

7. A SOCIAL SERVICES DISTRICT MAY SUSPEND THE ELIGIBILITY OF A PROVIDER WHO IS NOT REQUIRED TO BE LICENSED OR REGISTERED UNDER SECTION THREE HUNDRED NINETY OF THIS ARTICLE TO PROVIDE CHILD CARE ASSISTANCE FUNDED UNDER THE BLOCK GRANT, WHERE THE PROVIDER IS THE SUBJECT OF A REPORT OF CHILD ABUSE OR MALTREATMENT THAT IS UNDER INVESTIGATION BY CHILD PROTECTIVE SERVICES.

S 11. Section 260.30 of the penal law, as added by chapter 600 of the laws of 1998, is renumbered section 260.31.

S 12. This act shall take effect immediately.