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COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 12-215

"Child Development Facilities Regulation Act of 1998"

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198 "the Act", the Council of the District of Columbia adopted Bill No. 12-325, on first and second readings, October 6, 1998 and November 10, 1998, respectively. Following the signature of the Mayor on December 9, 1998, pursuant to Section 404(e) of "the Act", and was assigned Act No. 12-530 and published in the January 15, 1999, edition of the D.C. Register (Vol. 46 page 274) and transmitted to Congress on February 3, 1999 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 12-215, effective April 13, 1999.



LINDA W CROPP
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

Feb. 3,4,8,9,10,11,12,22,23,24,25

Mar. 1,2,3,4,5,8,9,10,11,15,16,17,18,19,22,23,24,25

Apr. 12

AN ACT

D.C. ACT 12-530

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
DECEMBER 9, 1998

*Codification
District of
Columbia
Code
1999 Supp.*

To create a statutory framework for the regulation of child development facilities.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Child Development Facilities Regulation Act of 1998".

*New
Subchapter
II,
Chapter 36*

Sec. 2. Definitions.

For the purposes of this act, the term:

*New Section
6-3621*

- (1) "Care giver" means an individual whose duties include direct care, supervision, and guidance of infants or children in a child development facility.
- (2) "Child" or "children" means an individual or individuals from 2 years to 15 years of age.
- (3) "Child development facility" means a center, home, or other structure that provides care and other services, supervision, and guidance for children, infants, and toddlers on a regular basis, regardless of its designated name. "Child development facility" does not include a public or private elementary or secondary school engaged in legally required educational and related functions.
- (4) "Infant" means an individual younger than 12 months of age.
- (5) "Licensee" means a child development facility that is licensed pursuant to this act.
- (6) "Person" means any individual, firm, partnership, company, corporation, trustee, or association.
- (7) "Related person" means any legal guardian or any of the following relationships established by marriage, adoption, or blood to the 5th degree:
 - (A) Parent or step-parent;
 - (B) Grandparent;
 - (C) Brother, sister, step-sister, or step-brother;
 - (D) Uncle or aunt; or
 - (E) Niece or nephew.

(8) "Toddler" means an individual older than 12 months but less than 24 months of age.

Sec. 3. Applicability and scope.

**New Section
6-3622**

(a) This act shall apply to every child development facility and care giver in the District of Columbia.

(b) Unless exempted by this act or the laws of other jurisdictions, the provisions and requirements in this act shall also apply to all child development facilities operated by the District government outside the District of Columbia.

Sec. 4. Exemptions.

**New Section
6-3623**

The provisions of this act shall not apply to the following:

- (1) Occasional babysitting in a babysitter's home for the children of one family;
- (2) Informal parent-supervised neighborhood play groups;
- (3) Care furnished in places of worship during religious services;
- (4) Care given by an individual who is related to the child, infant, or toddler; or
- (5) Child development facilities operated by the federal government on federal government property; however, a private child care provider utilizing space in or on federal government property is not exempt unless federal law specifically exempts the facility from the District's regulatory authority.

Sec. 5. License required.

**New Section
6-3624**

(a) Except as otherwise provided in this act, no person shall, either directly or indirectly, operate a child development facility in the District without first having obtained a license to do so.

(b) An applicant for a license to operate a child development facility shall establish to the satisfaction of the Mayor, that the facility meets all requirements set forth in this act and rules adopted pursuant to this act.

(c) An applicant for a license shall:

(1) Submit an application to the Mayor on a form required and provided by the Mayor;

(2) Submit supporting documentation required by the Mayor; and

(3) Pay the applicable fee established by the Mayor, except that no license fee shall be required of any child development facility operated by the District government.

(d) The license shall be valid for a period of time to be determined by the Mayor and only for the premises and persons named as applicants in the application. Any change in ownership of a licensee owned by a person or in the legal or beneficial ownership of a percentage of stock established by rule of a corporate licensee shall require relicensure.

(e) The Mayor may authorize the issuance of provisional and restricted licenses under specific circumstances and criteria to be established by rule.

Sec. 6. Licenses issued pursuant to prior law.

New Section
6-3625

Except as otherwise provided by this act, any child development facility licensed pursuant to the Child Development Facilities Regulation, enacted December 14, 1974 (Reg. 74-34; 29 DCMR § 300 *et seq.*) ("Child Development Facilities Regulation"), as amended, shall be considered licensed pursuant to this act and shall be subject to renewal requirements established pursuant to this act.

Sec. 7. Powers and duties of the Mayor.

New Section
6-3626

(a) The Mayor shall promulgate all rules necessary to implement the provisions of this act, including the following:

(1) Minimum standards of operation of a child development facility concerning staff qualification, requirements and training, facility size, staff-child ratios and group size, program design and equipment requirements, safety and health standards, care for children with special needs, nutrition standards, and record keeping requirements;

(2) Administrative procedures for hearings consistent with the requirements of section 10 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1208; D.C. Code § 1-1509), unless otherwise provided in this act;

(3) Allowance for a child development facility to operate on a 24-hour basis so long as no child, infant, or toddler will be under the care of the child development facility for more than 18 consecutive hours in a 24-hour period, or appropriate hours as provided by rule; and

(4) The establishment of a fee schedule to recover the costs of regulating child development facilities pursuant to this act.

(b) The Mayor may conduct investigations and inspections needed to ensure compliance with this act. In this regard, the Mayor may administer oaths, examine witnesses, and issue subpoenas to compel attendance and testimony of witnesses and the production of books, records, and other documents needed to enforce this act. In case of contumacy or refusal to obey a subpoena, the Superior Court of the District of Columbia, at the request of the Mayor, shall issue an order requiring the contumacious person to appear and testify or produce books, papers, or other evidence bearing on the hearing. Failure to obey the court's order shall be punishable as contempt of court.

(c) The Mayor shall maintain and make available to the public information concerning:

(1) The application, licensure, and renewal requirements and procedures; and

(2) An official register of currently licensed child development facilities.

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Sec. 8. Variances.

**New Section
6-3627**

An applicant operating a child development facility prior to July 1, 1975, may be granted a variance from the physical or structural requirements of any rule adopted pursuant to this act upon a determination by the Mayor that full compliance would result in exceptional and undue hardship. Any variance shall be granted in accordance with procedures established by rule.

Sec. 9. License renewal.

**New Section
6-3628**

(a) A license shall be renewed in accordance with rules established pursuant to this act, unless there is a pending disciplinary action by the Mayor.

(b) An application for renewal of a license shall be submitted to the Mayor no later than 90 days before expiration of the license on a form provided by the Mayor with the appropriate renewal fee. An application for renewal fewer than 90 days after expiration, shall be renewed in accordance with renewal requirements established by rule, including the payment of the renewal fee and any late penalty.

(c) A child development facility holding a valid license at the time of application for renewal shall continue to operate as licensed until the Mayor acts on the renewal application.

Sec. 10. Denial of a license.

**New Section
6-3629**

The Mayor may, subject to the right to a hearing, deny an initial or renewal license to an applicant who fails to establish that the applicant meets the requirements for licensure established by this act and rules issued pursuant to this act.

Sec. 11. Revocation, suspension, denial of license.

**New Section
6-3630**

The Mayor may, subject to the right to a hearing, refuse to issue, revoke, suspend, or deny renewal of a license to operate a child development facility to a person who is found to have:

(1) Failed to comply with the provisions of this act and any rules or regulations promulgated pursuant to this act;

(2) Failed to comply with other federal and District laws applicable to child development facilities;

(3) Committed, aided, abetted, or permitted to be committed any act of dishonesty, fraud, gross negligence, abuse, assault, battery, or other illegal acts related to the operation of the facility; or

(4) Been convicted of a crime involving moral turpitude.

Sec. 12. Summary suspension.

**New Section
6-3631**

(a) If, after an investigation, the Mayor determines that a licensee has failed to comply with the provisions of this act or any rules promulgated pursuant to this act in such a manner as

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to present an imminent danger to the health, safety, and welfare of children, infants, toddlers, or the general public, the Mayor may summarily suspend or restrict the license prior to a hearing.

(b) The Mayor must provide the licensee with written notice of the summary suspension initiated pursuant to subsection (a) of this section, the reason for the suspension, and the right to request a hearing.

(c) The licensee shall have 5 days after service of the notice of the summary suspension in which to request a hearing to challenge the summary suspension. A hearing shall be held within 5 business days of a timely request and the Mayor shall issue a decision within 5 business days after closing the record.

Sec. 13. Cease and desist orders.

**New Section
6-3632**

(a) If, after investigation, the Mayor determines that a person has violated any provision of this act or any rule issued pursuant to this act, and the violation presents an imminent danger to the public, the Mayor may issue a written order directing the person to cease and desist from the violation.

(b) Within 5 days of service of the cease and desist order, the person shall request an expedited hearing on the violation. If no request for a hearing is made within the 5-day period, the cease and desist order shall be final. Within 5 business days of a timely request for an expedited hearing, the Mayor shall conduct a hearing.

Sec. 14. Right of entry and inspection.

**New Section
6-3633**

To ensure compliance with the provisions of this act and rules adopted pursuant to this act, the Mayor, or any duly authorized designee, shall be permitted at reasonable times to conduct an inspection of any child development facility licensed pursuant to this act or for which a license application has been filed.

Sec. 15. Hearings.

**New Section
6-3634**

(a) Exception as provided in section 12, before the Mayor denies an application, suspends, revokes, or restricts a license, or imposes a civil fine, the Mayor shall give the person notice of the contemplated action and an opportunity for a hearing. The Mayor shall send all notices by certified mail. Notice of a scheduled hearing shall be sent by certified mail at least 20 days before the hearing date except when an expedited hearing has been requested. The Mayor may request all parties to participate in a settlement conference prior to a hearing and may enter into a negotiated settlement agreement or consent decree in lieu of a hearing.

(b) The Mayor may delegate the authority to conduct a hearing and issue a final decision to an administrative law judge or an attorney examiner in accordance with rules issued pursuant to this act.

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Sec. 16. Judicial review.

**New Section
6-3635**

A person aggrieved by a final decision of the Mayor may appeal the decision to the District of Columbia Court of Appeals pursuant to section 11 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1209; D.C. Code § 1-1510).

Sec. 17. Criminal and civil penalties.

**New Section
6-3636**

(a) Any person who violates any provision of this act shall, upon conviction, be subject to imprisonment not to exceed 6 months or a fine not to exceed \$300, or both. Each unlawful act shall constitute a separate violation of this act.

(b) Any person who has been previously convicted pursuant to this act shall, upon conviction, be subject to imprisonment not to exceed one year or a fine not to exceed \$5,000, or both.

(c) Civil fines and penalties may be imposed as alternative sanctions for any violations of the provisions of this act or rules issued under the authority of this act pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Code § 6-2701 *et seq.*) ("Civil Infractions Act"). The adjudication of any infraction issued pursuant to the Civil Infractions Act shall be pursuant to titles I through III of the Civil Infractions Act.

Sec. 18. Prosecutions.

**New Section
6-3637**

(a) Prosecutions of violations of this act shall be brought by the Corporation Counsel in the name of the District of Columbia.

(b) In prosecutions initiated pursuant to this act, a child development facility claiming an exemption from a licensing requirement of this act shall have the burden of proving entitlement to the exemption.

Sec. 19. Injunctions.

**New Section
6-3638**

(a) The Corporation Counsel may bring an action in the Superior Court of the District of Columbia in the name of the District of Columbia to enjoin any violation of this act.

(b) Remedies established by this section shall be in addition to criminal sanctions, civil sanctions, or disciplinary action initiated by the Mayor.

(c) In any proceeding brought pursuant to this section, it shall not be necessary to prove that any person has been injured by the violation alleged.

Sec. 20. Repeal of existing regulations.

**New Section
6-3639**

The Child Development Facilities Regulation shall remain in effect until superseded by rules issued by the Mayor. Upon the effective date of rules promulgated pursuant to this act, the Child Development Facilities Regulation shall be deemed repealed.

Sec. 21. Pending actions and proceedings; existing orders.

(a) No judicial or administrative proceeding commenced by or against any child development facility, or officer or employee of a child development facility in his or her official capacity, shall abate by reason of the taking effect of this act; but the action or proceeding shall be continued with substitution as to parties and officers or agencies as are appropriate.

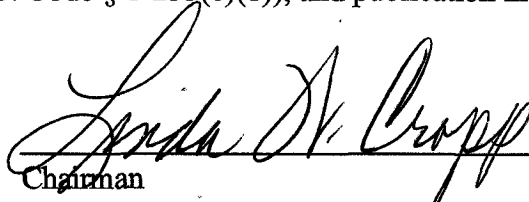
(b) All decisions issued pursuant to the Child Development Facilities Regulation shall continue in effect until modified, rescinded, or superseded by rules or regulation issued pursuant to this act.

Sec. 22. Fiscal impact statement.

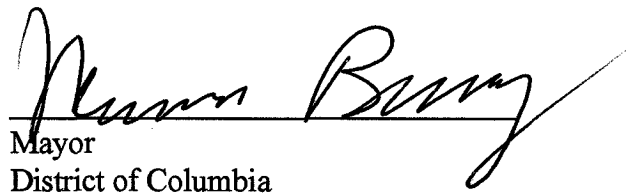
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(3)).

Sec. 23. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED: December 9, 1998

