

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-1997

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Legislative Document

No. 1893

S.P. 667

In Senate, May 28, 1997

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### An Act Regarding Child Care Regulation.

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Reported by Senator PARADIS of Aroostook for the Joint Standing Committee on Health and Human Services pursuant to Joint Order S.P. 631 and printed under Joint Rule 401.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Be it enacted by the People of the State of Maine as follows:

2  
4       **Sec. 1. 17 MRSA §2871, sub-§1**, as enacted by PL 1985, c. 538,  
§1, is amended to read:

6       1. **Day care center.** "Day care ~~facility~~ center" means a day  
care ~~facility~~ center, as defined in Title 22, section ~~8301~~  
8 8301-A, subsection 1, paragraph A.

10       **Sec. 2. 17 MRSA §2871, sub-§3**, as enacted by PL 1985, c. 538,  
§1, is amended to read:

12       3. **Preschool facility.** "Preschool facility" means any day  
14 care ~~facility~~ center or nursery school.

16       **Sec. 3. 22 MRSA §1315, sub-§6-B**, as enacted by PL 1991, c.  
18 810, §11, is amended to read:

20       6-B. **Preschool facility.** "Preschool facility" means a day  
care ~~facility~~ center as defined in section ~~8301,--a--home~~  
~~baby-sitting--service--as--described--in--section--8305~~ 8301-A,  
22 subsection 1, paragraph A or a nursery school as defined in  
section 8401.

24       **Sec. 4. 22 MRSA §7701, sub-§1**, as enacted by PL 1975, c. 719,  
26 §6, is amended to read:

28       1. **Children.** As used in this subtitle, the word "children"  
shall ~~mean~~ means persons who are not related by blood or marriage  
30 to, or who have not been legally adopted by, the licensee or  
administrator of any facility, defined in ~~sections~~ section 8101,  
32 8201 or ~~8301~~ 8301-A, which ~~provide~~ that provides services to  
these children.

34       **Sec. 5. 22 MRSA §7701, sub-§2**, as amended by PL 1989, c. 502,  
36 Pt. A, §80, is further amended to read:

38       2. **Facility.** As used in this subtitle, the word "facility"  
means any of the places defined in section ~~7901-A,--subsection-3,~~  
40 ~~sections~~ 8001, 8101, 8201 or ~~8301~~ 8301-A, subsection 1, paragraph  
A.

42       **Sec. 6. 22 MRSA §7702**, as amended by PL 1987, c. 774, §3, is  
44 further amended to read:

46       **§7702. Violation; penalty**

48       Whoever violates any provision of this subtitle, except  
50 section 7801, subsection 1, paragraph A, shall ~~may~~ be punished by  
a fine of not more than \$500 or by imprisonment for not more than

11 months, or by both, except that anyone violating sections  
7703, ~~8305~~ 8301-A and 8603 shall may be punished only by a fine  
of not more than \$500.

Sec. 7. 22 MRSA §8301, as amended by PL 1989, c. 700, Pt. A,  
§97, is repealed.

Sec. 8. 22 MRSA §8301-A is enacted to read:

§8301-A. Licensure of day care centers; certification of home day  
care providers

1. Definitions. As used in this chapter, unless the  
context otherwise indicates, the following terms have the  
following meanings.

A. "Day care center" means a house or other place in which  
a person maintains or otherwise carries out a regular  
program, for consideration, for any part of a day providing  
care and protection for 13 or more children under 13 years  
of age. "Day care center" does not include any facility  
operated as a nursery school, a home day care provider or  
summer camp established solely for recreational and  
educational purposes or formal public or private school in  
the nature of a kindergarten or elementary or secondary  
school approved by the Commissioner of Education in  
accordance with Title 20-A.

B. "Home day care provider" means a person who provides day  
care in that person's home on a regular basis, for  
consideration, for 3 to 12 children under 13 years of age  
who are not the children of the provider.

2. Day care center licensure. The owner or operator of a  
day care center shall pay the licensing fee required under  
section 8303-A. A day care center must be licensed under this  
chapter and must comply with the rules adopted by the  
commissioner under section 8302-A and the fire safety  
requirements of section 8304-A.

3. Home day care provider certification. A home day care  
provider shall pay the certification fee required under section  
8303-A. A home day care provider must be certified under this  
chapter and shall comply with the rules adopted by the  
commissioner under section 8302-A and the fire safety  
requirements of section 8304-A.

4. Complaints. Upon receipt of a complaint about a  
licensed day care center or a certified home day care provider  
and if the department has reasonable cause to suspect that a

2 violation of the licensure or certification requirements has  
3 occurred, the department may investigate the complaint and enter  
4 the premises at any reasonable time for the purposes of the  
5 investigation.

6 Sec. 9. 22 MRSA §8302, as amended by PL 1995, c. 74, §1, is  
7 repealed.

8 Sec. 10. 22 MRSA §8302-A is enacted to read:

10 §8302-A. Rules for day care centers and home day care providers  
11

12 The commissioner shall adopt rules for day care centers and  
13 home day care providers according to this section.

14  
16 1. Rules for day care centers. Rules for day care centers  
17 must include, but are not limited to, rules pertaining to the  
18 following:

20 A. Child to staff ratios;

22 B. The health and safety of the children and staff,  
23 including training on communicable diseases;

24 C. Water for drinking and cooking;

26 D. Wastewater;

28 E. Rabies vaccinations for pets;

30 F. The quality of the program provided;

32 G. The age, criminal record and personal history of the day  
33 care provider and staff members;

34 H. The administration of medication; and

36 I. Licensing procedures.

38  
40 Rules adopted pursuant to this subsection are routine technical  
41 rules pursuant to Title 5, chapter 375, subchapter II-A.

42  
44 2. Rules for home day care providers. Rules for home day  
45 care providers must include, and are limited to, rules pertaining  
46 to the following:

47 A. Cardiopulmonary resuscitation;

48 B. Water for drinking and cooking;  
50

2           C. Wastewater;

4           D. Rabies vaccinations for pets;

6           E. Recording the times, reasons and numbers of children  
involved when more than 12 children are cared for;

8           F. Ongoing training for providers on health and safety  
issues, including training on communicable diseases. This  
10 training must be offered at times that are convenient to the  
providers;

12           G. Child to staff ratios;

14           H. Health and safety of the children and staff;

16           I. Procedures for waivers of rules and for suspension and  
18 revocation of certification; and

20           J. The age, criminal record and personal history of the  
22 home day care provider, staff and members of the household.

24           Rules adopted pursuant paragraphs A to F are routine technical  
rules pursuant to Title 5, chapter 375, subchapter II-A and rules  
26 adopted pursuant to paragraphs G to J are major substantive rules  
pursuant to Title 5, chapter 375, subchapter II-A.

28           **Sec. 11. 22 MRSA §8302-B is enacted to read:**

30           **§8302-B. Providers subject to standards**

32           A person who provides day care in that person's home for one  
34 or 2 children whose care is paid for by state or federal funds is  
not required to be certified as a home day care provider pursuant  
36 to section 8301-A but is subject to the provisions of this  
section.

38           1. Investigation. The provider must pass a background  
investigation check by the State Bureau of Investigation, a check  
40 for involvement with child protective services and a motor  
vehicle record check.

42           2. Information provided by department. The department  
44 shall supply providers with information on the following topics:

46           A. Health and safety, including the control of communicable  
disease, and immunization requirements;

48           B. Physical premises safety; and

50

2           C. Training opportunities in health and safety, first aid  
3           and cardiopulmonary resuscitation and early care and  
4           education.

5           3. Authority to inspect. The department has the authority  
6           to inspect the premises of the person providing the care.

7           Sec. 12. 22 MRSA §8303-A, as enacted by PL 1993, c. 353, §2,  
8           is amended to read:

9           **§8303-A. Fee for licenses**

10           By January 1, ~~1994~~ 1998, the department shall adopt rules to  
11           establish reasonable fees for both initial licensure or  
12           certification and license or certification renewals for day care  
13           ~~facilities~~ centers, nursery schools and ~~registered---home~~  
14           ~~baby-sitting-services~~ certified home day care providers. Rules  
15           adopted pursuant to this section are major substantive rules  
16           pursuant to Title 5, chapter 375, subchapter II-A.

17           Sec. 13. 22 MRSA §8304-A, sub-§1, as enacted by PL 1993, c.  
18           158, §5, is amended to read:

19           1. Inspection required. As an ongoing condition of  
20           licensure or ~~registration~~ certification, the Office of the State  
21           Fire Marshal must provide annually at least biennially to the  
22           department a written statement that the day-care facility center,  
23           nursery school or certified home day care providers complies with  
24           applicable fire safety rules adopted pursuant to Title 25,  
25           section 2452. The Commissioner of Public Safety shall adopt  
26           rules in accordance with the Maine Administrative Procedure Act  
27           to implement this subsection. The rules must provide for at  
28           least the following.

29           A. The State Fire Marshall ~~Marshal~~ shall issue a fire  
30           safety technician certificate to any person who successfully  
31           completes a training course established by the Office of the  
32           State Fire Marshal. A person who receives a fire safety  
33           technician certificate pursuant to this paragraph may  
34           perform fire safety inspections under this section.

35           B. In addition to ongoing license or certification  
36           requirements, inspection and certification are required  
37           under this section whenever a day-care facility center,  
38           nursery school or certified home day care provider changes  
39           or augments a heating system or makes major structural  
40           alterations to the facility center or home.

41           Sec. 14. 22 MRSA §8305, as amended by PL 1993, c. 353, §§3 to  
42           5, is repealed.

2           **Sec. 15. Effective date.** This Act takes effect July 1, 1998.

4

#### FISCAL NOTE

6

8           If the State Fire Marshall within the Department of Public  
10       Safety issues child care inspections for 2-year periods, the  
12       department will shift the collection of dedicated revenue between  
14       fiscal years, increasing revenue in the first year of  
16       implementation but decreasing it in the following year. Over any  
18       2-year period, the net difference in total revenue collected over  
20       the period is not expected to be significant. The department may  
22       also realize some minor administrative savings from lower license  
24       and registration processing costs.

16

18           The Department of Human Services will experience some minor  
20       costs and minor savings as a result of the changes in child care  
22       regulation.

20

22

#### SUMMARY

24

26           This bill is the report of the Joint Standing Committee on  
28       Health and Human Services. It requires a home day care provider  
30       who cares for more than 2 unrelated children under 13 years of  
32       age to be certified and a day care center to be licensed and  
34       directs the Commissioner of Human Services to adopt rules  
36       regulating home day care providers and day care centers. It  
38       allows a home day care provider to care for children in the  
40       custody of the provider in addition to those children counted as  
42       day care children. It amends current law on day care facilities  
44       by renaming them day care centers and lowering the age of the  
46       children cared for from under 16 years of age to under 13 years  
      of age. It requires the Office of the State Fire Marshal to  
      inspect a day care center, nursery school or premises of a  
      certified home day care provider at least every 2 years. It  
      requires uncertified providers of care for one or 2 children  
      whose care is paid for by state or federal funds to pass a  
      background check, a check for involvement with child protective  
      services and a motor vehicle record check. It requires the  
      Department of Human Services to provide information to those  
      providers about health and safety, physical premises safety and  
      training opportunities in health and safety, first aid and  
      cardiopulmonary resuscitation and early care and education. It  
      allows the department to inspect the site. It also adds a fiscal  
      note.