

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

SECOND SPECIAL SESSION
July 29, 2005

SECOND REGULAR SESSION
January 4, 2006 to May 24, 2006

THE GENERAL EFFECTIVE DATE FOR
SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
OCTOBER 28, 2005

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 23, 2006

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2006

authority of that foreign limited liability partnership to carry on business in this State is canceled and the foreign limited liability partnership may not carry on business in this State.

Sec. 9. 31 MRSA §871, sub-§18-B, as amended by PL 2005, c. 12, Pt. FF, §13, is further amended to read:

18-B. Amended annual report. For filing an amended annual report under section 873-A, for a domestic limited liability partnership, a fee of \$85; for a foreign limited liability partnership, a fee of \$150;

See title page for effective date.

CHAPTER 530

H.P. 1327 - L.D. 1887

An Act To Update Licensing and Certification Requirements for Child Care Facilities and Family Child Care Providers

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

Sec. 1. 20-A MRSA §12501-A, sub-§5, as enacted by PL 2003, c. 427, §2, is amended to read:

5. Child care facility. "Child care facility" means a child care center or a ~~home-day~~ family child care provider as defined in Title 22, section 8301-A.

Sec. 2. 22 MRSA §1319-C, sub-§1, as amended by PL 2003, c. 421, §3, is further amended to read:

1. Annual screening required. The department shall require a child care facility and the premises of a ~~home-day~~ family child care provider as defined in chapter 1673 and a nursery school as defined in chapter 1675 to have an annual screening for potential lead hazards. If potential lead hazards are identified, a full lead inspection must be conducted.

Sec. 3. 22 MRSA §1319-C, sub-§3, as enacted by PL 1999, c. 276, §10, is amended to read:

3. Approval dependent on compliance. As of July 1, 1998, a ~~day-care-center~~ family child care provider, child care facility or nursery school may not be licensed, registered, certified or otherwise approved or receive any state funds unless it is in compliance with this section.

Sec. 4. 22 MRSA §1321, as amended by PL 2003, c. 421, §§6 to 8, is further amended to read:

§1321. Notice and removal

If the department determines that an environmental lead hazard exists in or on any dwelling, premises, residential child-occupied facility, child care facility, premises of a ~~home-day~~ family child care provider or nursery school:

1. Notice posted. The department shall post in or upon the dwelling, premises, residential child-occupied facility, child care facility, premises of the ~~home-day~~ family child care provider or nursery school, in a conspicuous place or places, notice of the existence of environmental lead hazard. Notice may not be removed until the department states that the environmental lead hazard no longer exists;

2. Notice to persons. The department shall give notice of the existence of the environmental lead hazard to all occupants;

3. Notice to owner; removal. The department shall give notice of the existence of the environmental lead hazard to the owner and order that the lead-based substances be removed, replaced or securely and permanently covered within 30 days of receipt of the notice. If the lead-based substances can not be removed, replaced or securely and permanently covered within 30 days, the department may grant an extension of reasonable time. All lead-based paint activities must be performed in accordance with rules adopted by the Department of Environmental Protection pursuant to Title 38, chapter 12-B. In the case of an owner-occupied, single-family residence, the department may provide technical assistance and guidance in lieu of enforcement activity at the department's discretion; and

4. Sale of dwelling, residential facility, child-occupied facility or nursery school. If, before the end of the 30-day period or extension, the owner sells the dwelling, premises, child care facility, premises of the ~~home-day~~ family child care provider, residential child-occupied facility or nursery school, the owner shall notify the prospective buyer of the environmental lead hazard and the new owner must assume the responsibility of carrying out the requirements of this section within the specified time period.

Sec. 5. 22 MRSA §1326, as amended by PL 2003, c. 421, §10, is further amended to read:

§1326. Injunction requiring removal

If the lead-based substance remains an environmental lead hazard at the expiration of 30 days or at the expiration of an extension given by the commissioner pursuant to section 1321, the State, in addition to any other remedies it has, may seek a mandatory injunction ordering the environmental lead hazard removed by a suitable 3rd party at the expense of the owner of the dwelling, premises, residential child-

occupied facility, child care facility, premises of the ~~home-day family child care provider~~ or nursery school.

Sec. 6. 22 MRSA §7702-A, sub-§3, as enacted by PL 1999, c. 363, §3, is amended to read:

3. Licensure provisions. A person who violates the following sections or rules adopted pursuant to those sections is subject to the sanctions provided for under the rules of licensure applicable to the facility, ~~day care center~~ child care facility or ~~home-day family child care provider~~:

A. Section 7801, subsection 1, paragraph A;

B. Section 8301-A; or

C. Section 8302-A, subsection 1, paragraphs B to I and subsection 2, paragraphs A to F and H to J.

Sec. 7. 22 MRSA §8301-A, as amended by PL 2005, c. 224, §1, is further amended to read:

§8301-A. Licensure of child care facilities; certification of family child care providers

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

A. "Child care center" means:

(1) 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; or

(2) Any location or locations operated as a single child care program or by a person or persons when there are more than 12 children being cared for.

B. "Child care facility" means a child care center, small child care facility or nursery school. "Child care facility" does not include a facility operated by a ~~home-day family child care provider~~, a summer camp established solely for recreational and educational purposes ~~or, programs offering instruction to children for the purpose of teaching a skill such as karate, dance or basketball~~, a 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 or a private school recognized by the Department of Education as a provider of equivalent instruction for the purpose of compulsory school attendance. Any program for children under 5 years of age

that is located in a private school, other than programs that contract with one or more Child Development Services System sites, is required to be licensed as a child care facility.

C. "~~Home-day Family child 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 or who are not residing in the provider's home. If a provider is caring for children living in that provider's home and is caring for no more than 2 other children, the provider is not required to be certified as a family child care provider.

D. "Nursery school" means a house or other place in which a person or combination of persons maintains or otherwise carries out for consideration during the day a regular program that provides care for 3 or more children 33 months of age or older and under 8 years of age, provided that:

(1) No session conducted for the children is longer than 3 1/2 hours in length;

(2) No more than 2 sessions are conducted per day;

(3) Each child in attendance at the nursery school attends only one session per day; and

(4) No hot meal is served to the children.

"Nursery school" does not include any facility operated as a child care center or small child care facility licensed under subsection 2, a summer camp established solely for recreational and educational purposes or a public or private school in the nature of a kindergarten approved by the Commissioner of Education, in accordance with Title 20-A.

E. "Small child care facility" means a house or other place, not the residence of the operator, in which a person or combination of persons maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for 3 to 12 children under 13 years of age.

2. Child care facility licensure. The owner or operator of a child care facility shall pay the licensing fee required under section 8303-A. A child care facility 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. Except as otherwise provided, a

nursery school must meet the requirements of this chapter and chapter 1675.

3. Family child care provider certification. A ~~home-day family child~~ care provider shall pay the certification fee required under section 8303-A. A ~~home-day family child~~ 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 child care facility or a certified ~~home-day family child~~ care provider and if the department has reasonable cause to suspect that a violation of the licensure or certification requirements has occurred, the department may investigate the complaint and enter the premises at any reasonable time for the purposes of the investigation.

5. Administrative suspension. Whenever conditions exist that immediately jeopardize the health and safety of children, the commissioner may issue an order of closure, which suspends the certification of the ~~home-day family child~~ care provider or the child care facility license for up to 10 days, pending further investigation or prior to obtaining an order of emergency suspension from the court. The department shall require that an order of closure be posted at the facility and made public as it determines to be most appropriate for parents and other potential customers.

6. Temporary license. Whenever a certified ~~home-day family child~~ care provider or licensed child care facility moves to a new location the department may issue a temporary certificate or license, valid pending final action on the application for the new location by the department, when:

- A. All applicable standards have been met except a requirement that is dependent on the action of an agency of State Government or a contractor of that agency; and
- B. Through no action by the applicant that causes a significant delay, timely issuance of a provisional or full license has been delayed by the agency or contractor.

7. Injunctive relief. The department may seek an injunction to require compliance with the provisions of this section or rules adopted pursuant to this section.

8. Rulemaking. The department shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

9. Exemption from certain requirements for accredited Montessori schools. Notwithstanding any

provision of this chapter or rules adopted pursuant to this chapter, a child care facility that is accredited as a Montessori school by a national or international accreditation organization may apply to the commissioner for an exemption from those requirements of this chapter or rules adopted pursuant to this chapter that conflict with the recognized tenets of the Montessori philosophy.

The commissioner shall adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 8. 22 MRSA §8302-A, as amended by PL 2001, c. 645, §7, is further amended to read:

§8302-A. Rules for child care facilities and family child care providers

The commissioner shall adopt rules for child care facilities and ~~home-day family child~~ care providers according to this section. Nursery schools are subject to the requirements of chapter 1675 and this section, except that subsection 1, paragraph F does not apply to nursery schools.

1. Rules for child care facilities. Rules for child care facilities must include, but are not limited to, rules pertaining to the following:

- A. Child to staff ratios;
- B. The health and safety of the children and staff, including training on communicable diseases;
- C. Water for drinking and cooking;
- D. Wastewater;
- E. Rabies vaccinations for pets;
- F. The quality of the program provided;
- G. The age, criminal record and personal history of the provider of care for children and staff members;
- H. The administration of medication; and
- I. Licensing procedures.

Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

2. Rules for family child care providers. Rules for ~~home-day family child~~ care providers must include, and are limited to, rules pertaining to the following:

- A. Cardiopulmonary resuscitation;

- B. Water for drinking and cooking;
- C. Wastewater;
- D. Rabies vaccinations for pets;
- E. Recording the times, reasons and numbers of children involved when more than 12 children are cared for;
- F. Ongoing training for providers on health and safety issues, including training on communicable diseases. This training must be offered at times that are convenient to the providers;
- G. Child to staff ratios;
- H. Health and safety of the children and staff;
- I. Procedures for waivers of rules and for suspension and revocation of certification; and
- J. The age, criminal record and personal history of the ~~home-day~~ family child care provider, staff and members of the household.

Rules adopted pursuant to paragraphs A to F are routine technical rules pursuant to Title 5, chapter 375, subchapter ~~H-A~~ 2-A and rules adopted pursuant to paragraphs G to J are major substantive rules pursuant to Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

Sec. 9. 22 MRSA §8302-B, first ¶, as enacted by PL 1997, c. 494, §11 and affected by §15, is amended to read:

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

Sec. 10. 22 MRSA §8303-A, as amended by PL 1997, c. 494, §12 and affected by §15, is further amended to read:

§8303-A. Fee for licenses

By January 1, 1998, the department shall adopt rules to establish reasonable fees for both initial licensure or certification and license or certification renewals for ~~day-care centers~~ child care facilities, nursery schools and certified ~~home-day~~ family child care providers. Rules adopted pursuant to this section are major substantive rules pursuant to Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

Sec. 11. 22 MRSA §8304-A, sub-§1, as amended by PL 2001, c. 645, §8, is further amended to read:

1. Inspection required. As an ongoing condition of licensure or certification, the Commissioner of Public Safety must provide at least biennially to the department a written statement that the child care facility or certified ~~home-day~~ family child care provider complies with applicable fire safety rules adopted pursuant to Title 25, section 2452. The Commissioner of Public Safety shall adopt rules in accordance with the Maine Administrative Procedure Act to implement this subsection. The rules must provide for at least the following.

A. The Commissioner of Public Safety shall issue a fire safety technician certificate to any person who successfully completes a training course established by the Department of Public Safety. A person who receives a fire safety technician certificate pursuant to this paragraph may perform fire safety inspections under this section.

B. In addition to ongoing license or certification requirements, inspection and certification are required under this section whenever a child care facility or certified ~~home-day~~ family child care provider changes or augments a heating system or makes major structural alterations to the facility or home.

Sec. 12. 22 MRSA §8306, as enacted by PL 1985, c. 358, §2, is repealed.

Sec. 13. Rulemaking. By October 1, 2006, the Department of Health and Human Services shall amend the rules for family child care providers and child care facilities to conform to the changes made in this Act using the procedures for routine technical rulemaking under the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

See title page for effective date.

CHAPTER 531

H.P. 1431 - L.D. 2034

An Act Relating to Mergers and Consolidations of Corporations without Capital Stock

Emergency preamble. Whereas, acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation needs to take effect before the expiration of the 90-day period to enable corporations to act pursuant to the provisions of this legislation as soon as possible; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of