

Amendment No. 659

Senate Amendment to Assembly Bill No. 89 First Reprint (BDR 38-334)

Proposed by: Senate Committee on Health and Education**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) **blue bold italics** is new language in the original bill; (2) **green bold italic underlining** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) **green bold dashed underlining** is newly added transitory language.

RBL



Date: 5/13/2009

A.B. No. 89—Revises provisions governing the regulation of licensed child care facilities. (BDR 38-334)



ASSEMBLY BILL NO. 89—COMMITTEE ON
HEALTH AND HUMAN SERVICES

(ON BEHALF OF THE DIVISION OF CHILD AND FAMILY SERVICES)

PREFILED DECEMBER 15, 2008

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions governing the regulation of licensed child care facilities. (BDR 38-334)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to the protection of children; making various changes concerning the investigation of applicants for a license to operate a child care facility, licensees and others over whom applicants or licensees exercise some control; requiring applicants and licensees to terminate certain employees and remove certain residents and participants in outdoor youth programs who have been convicted of certain crimes or who have had a substantiated report of child abuse or neglect made against them; expanding the grounds for denying a license and for taking other disciplinary action against a licensee; authorizing the imposition of administrative fines for violations of certain laws and regulations concerning licensure of child care facilities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the licensure of certain child care facilities. (NRS 432A.131-432A.220) As part of the process for obtaining a license, the Bureau of Services for Child Care of the Division of Child and Family Services of the Department of Health and Human Services conducts a background check of each applicant for a license, licensee, employee of an applicant or licensee and every resident of a child care facility or participant in an outdoor youth program who is 18 years of age or older. (NRS 432A.170, 432A.175) **Section 5** of this bill expands the list of crimes that the Bureau must inquire about as part of such an investigation and requires the Bureau to request information concerning every applicant, licensee, employee, resident or participant from the Statewide Central Registry for the Collection of Information Concerning the Abuse or Neglect of a Child to determine whether there has been a substantiated report of child abuse or neglect made against any of those persons. (NRS 432A.170) **Section 6** of this bill requires the Bureau to obtain permission from each such applicant, licensee, employee, resident or participant to obtain such information from the Statewide Central Registry. (NRS 432A.175) If an employee of an applicant or licensee, or a resident or participant, has been convicted of one of the crimes inquired about as part of the investigation, the Bureau is required to notify the applicant or licensee. Upon

receiving such notice, **section 2** of this bill requires the applicant or licensee to terminate the employment of the employee, remove the resident from the child care facility or remove the participant from the outdoor youth program, as applicable, after affording the person an opportunity to correct the information. **Section 6** further requires an applicant or licensee to notify the Bureau when the applicant, licensee, employee, resident or participant is involved in certain legal proceedings or disciplinary hearings or charged with certain crimes. (NRS 432A.175)

Section 4 of this bill prohibits the Bureau from issuing a provisional license to operate a child care facility unless the Bureau has completed an investigation into the qualifications and background of the applicant and his employees to ensure that they have not been convicted of certain crimes or had a substantiated report of child abuse or neglect made against them. (NRS 432A.160)

Section 7 of this bill expands the grounds for denial of an application for a license to operate a child care facility and for taking disciplinary action against a licensee and authorizes the Bureau to impose administrative fines for a violation of the statutes governing licensure of child care facilities or the regulations adopted pursuant thereto. (NRS 432A.190)

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

Section 1. Chapter 432A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. *Upon receiving information pursuant to NRS 432A.175 from the Central Repository for Nevada Records of Criminal History or the Statewide Central Registry for the Collection of Information Concerning the Abuse or Neglect of a Child established pursuant to NRS 432.100 or evidence from any other source that an employee of an applicant for a license to operate a child care facility or a licensee, or a resident of a child care facility or participant in an outdoor youth program who is 18 years of age or older has been convicted of a crime listed in subsection 2 of NRS 432A.170 or has had a substantiated report of child abuse or neglect made against him, the applicant or licensee shall terminate the employment of the employee or remove the resident from the facility or participant from the outdoor youth program after allowing the employee, resident or participant time to correct the information as required pursuant to subsection 2.*

2. If an employee, resident or participant believes that the information provided to the applicant or licensee pursuant to subsection 1 is incorrect, he must inform the applicant or licensee immediately. The applicant or licensee shall give any such employee, resident or participant 30 days to correct the information.

3. During any period in which an employee, resident or participant seeks to correct information pursuant to subsection 2, it is within the discretion of the applicant or licensee whether to allow the employee, resident or participant to continue to work for or reside at the child care facility or participate in the outdoor youth program, as applicable.

Sec. 3. 1. *Each applicant for a license to operate a child care facility and licensee shall maintain records of the information concerning its employees and any residents of the child care facility or participants in any outdoor youth program who are 18 years of age or older that is collected pursuant to NRS 432A.170 and 432A.175, including, without limitation:*

(a) ~~A copy of the fingerprints submitted to the Central Repository for Nevada Records of Criminal History;~~

~~(b)) Proof that the applicant or licensee submitted fingerprints to the Central Repository for its report; and~~

~~(c)) (b) The written authorization to obtain information from the Statewide Central Registry for the Collection of Information Concerning the Abuse or Neglect of a Child established pursuant to NRS 432.100. It and~~

~~(d) Proof that the applicant or licensee requested information from the Statewide Central Registry.~~

2. The records maintained pursuant to subsection 1 must be made available for inspection by the Bureau at any reasonable time, and copies thereof must be furnished to the Bureau upon request.

Sec. 4. NRS 432A.160 is hereby amended to read as follows:

432A.160 1. ~~The~~ **Except as otherwise provided in this section, the** Bureau may issue a provisional license, effective for a period not exceeding 1 year, to a child care facility which:

(a) Is in operation at the time of adoption of standards and other regulations pursuant to the provisions of this chapter, if the Bureau determines that the facility requires a reasonable time under the particular circumstances, not to exceed 1 year from the date of the adoption, within which to comply with the standards and other regulations;

(b) Has failed to comply with the standards and other regulations, if the Bureau determines that the facility is in the process of making the necessary changes or has agreed to effect the changes within a reasonable time; or

(c) Is in the process of applying for a license, if the Bureau determines that the facility requires a reasonable time within which to comply with the standards and other regulations.

2. The provisions of subsection 1 do not require the issuance of a license or prevent the Bureau from refusing to renew or from revoking or suspending any license in any instance where the Bureau considers that action necessary for the health and safety of the occupants of any facility or the clients of any outdoor youth program.

3. A provisional license must not be issued pursuant to this section unless the Bureau has completed an investigation into the qualifications and background of the applicant and his employees pursuant to NRS 432A.170 to ensure that the applicant and each employee of the applicant, or every resident of the child care facility or participant in any outdoor youth program who is 18 years of age or older, has not been convicted of a crime listed in subsection 2 of NRS 432A.170 and has not had a substantiated report of child abuse or neglect made against him.

Sec. 5. NRS 432A.170 is hereby amended to read as follows:

432A.170 1. The Bureau may, upon receipt of an application for a license to operate a child care facility, conduct an investigation into the:

(a) Buildings or premises of the facility and, if the application is for an outdoor youth program, the area of operation of the program;

(b) Qualifications and background of the applicant or his employees;

(c) Method of operation for the facility; and

(d) Policies and purposes of the applicant.

2. The Bureau shall secure from appropriate law enforcement agencies information on the background and personal history of every applicant, licensee or employee of an applicant or licensee, or every resident of a child care facility or participant in an outdoor youth program who is 18 years of age or older, to determine whether he has been convicted of:

(a) Murder, voluntary manslaughter or mayhem;

(b) Any other felony involving the use of a firearm or other deadly weapon;

(c) Assault with intent to kill or to commit sexual assault or mayhem;
(d) Sexual assault, statutory sexual seduction, incest, lewdness, indecent exposure or any other sexually related crime;

(e) Abuse or neglect of a child or contributory delinquency; ~~to~~

(f) A violation of any federal or state law regulating the possession, distribution or use of any controlled substance or any dangerous drug as defined in chapter 454 of NRS ~~to~~;

(g) Abuse, neglect, exploitation or isolation of older persons or vulnerable persons, including, without limitation, a violation of any provision of NRS 200.5091 to 200.50995, inclusive, or a law of any other jurisdiction that prohibits the same or similar conduct; or

(h) Any offense involving fraud, theft, embezzlement, burglary, robbery, fraudulent conversion or misappropriation of property within the immediately preceding 7 years.

3. *The Bureau shall request information concerning every applicant, licensee or employee of an applicant or licensee, or every resident of a child care facility or participant in an outdoor youth program who is 18 years of age or older, from the Statewide Central Registry for the Collection of Information Concerning the Abuse or Neglect of a Child established pursuant to NRS 432.100 to determine whether there has been a substantiated report of child abuse or neglect made against any of them.*

4. The Bureau may charge each person investigated pursuant to this section for the reasonable cost of that investigation.

5. *The information required to be obtained pursuant to subsections 2 and 3 must be requested concerning an:*

(a) Employee of an applicant or licensee, resident of a child care facility or participant in an outdoor youth program who is 18 years of age or older not later than 3 days after the employee is hired, the residency begins or the participant begins participating in the program, and then at least once every 6 years thereafter.

(b) Applicant at the time that an application is submitted for licensure, and then at least once every 6 years after the license is issued.

Sec. 6. NRS 432A.175 is hereby amended to read as follows:

432A.175 1. Every applicant ~~to~~ *for a license to operate a child care facility*, licensee and employee of *such* an applicant or licensee, and every resident of a child care facility or participant in an outdoor youth program who is 18 years of age or older, shall submit to the Bureau, or to the person or agency designated by the Bureau, *to enable the Bureau to conduct an investigation pursuant to NRS 432A.170, a:*

(a) Complete set of fingerprints and a written authorization for the Bureau or its designee to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report; ~~and~~

(b) Written statement detailing any prior criminal convictions ~~to~~ *to enable the Bureau to conduct an investigation pursuant to NRS 432A.170;* ;
~~and~~

(c) *Written authorization for the Bureau to obtain any information that may be available from the Statewide Central Registry for the Collection of Information Concerning the Abuse or Neglect of a Child established pursuant to NRS 432.100.*

2. If an employee of an applicant *for a license to operate a child care facility* or licensee, or ~~such~~ a resident *of a child care facility* or participant ~~to~~ *in an outdoor youth program who is 18 years of age or older*, has been convicted of any

crime listed in subsection 2 of NRS 432A.170 ~~or~~ *or has had a substantiated report of child abuse or neglect filed against him*, the Bureau shall immediately notify the applicant or licensee ~~or~~ *, who shall then comply with the provisions of section 2 of this act.*

3. *An applicant for a license to operate a child care facility or licensee shall notify the Bureau within 2 days after receiving notice that:*

(a) The applicant, licensee or an employee of the applicant or licensee, or a resident of the child care facility or participant in an outdoor youth program who is 18 years of age or older, or a facility or program operated by the applicant or licensee, is the subject of a lawsuit or any disciplinary proceeding; or

(b) The applicant or licensee, an employee, a resident or participant has been charged with a crime listed in subsection 2 of NRS 432A.170 or is being investigated for child abuse or neglect.

Sec. 7. NRS 432A.190 is hereby amended to read as follows:

432A.190 1. The Bureau may deny an application for a license *to operate a child care facility* or may suspend or revoke ~~any license issued under the provisions of this chapter~~ *such a license* upon any of the following grounds:

(a) Violation by the applicant or licensee or an employee of the applicant or licensee of any of the provisions of this chapter or of any other law of this State or of the standards and other regulations adopted thereunder.

(b) Aiding, abetting or permitting the commission of any illegal act.

(c) Conduct inimical to the public health, morals, welfare and safety of the people of the State of Nevada in the maintenance and operation of the child care facility for which a license is issued.

(d) Conduct or practice detrimental to the health or safety of the occupants or employees of the child care facility, or the clients of the outdoor youth program.

(e) Conviction of any crime listed in subsection 2 of NRS 432A.170 committed by the applicant or licensee or an employee of the applicant or licensee, or by a resident of the child care facility or participant in the outdoor youth program who is 18 years of age or older.

(f) Failure to comply with the provisions of NRS 432A.178.

(g) Substantiation of a report of child abuse or neglect made against the applicant or licensee.

(h) Conduct which is found to pose a threat to the health or welfare of a child or which demonstrates that the applicant or licensee is otherwise unfit to work with children.

(i) Violation by the applicant or licensee of the provisions of section 2 of this act by continuing to employ a person, allowing a resident to continue to reside in the child care facility or allowing a participant in an outdoor youth program to continue to participate in the program if the employee, or the resident or participant who is 18 years of age or older, has been convicted of a crime listed in subsection 2 of NRS 432A.170 or has had a substantiated report of child abuse or neglect made against him.

2. In addition to the provisions of subsection 1, the Bureau may revoke a license to operate a child care facility if, with respect to that facility, the licensee that operates the facility, or an agent or employee of the licensee:

(a) Is convicted of violating any of the provisions of NRS 202.470;

(b) Is ordered to but fails to abate a nuisance pursuant to NRS 244.360, 244.3603 or 268.4124; or

(c) Is ordered by the appropriate governmental agency to correct a violation of a building, safety or health code or regulation but fails to correct the violation.

1 3. The Bureau shall maintain a log of any complaints that it receives relating
2 to activities for which the Bureau may revoke the license to operate a child care
3 facility pursuant to subsection 2. The Bureau shall provide to a child care facility:

4 (a) A summary of a complaint against the facility if the investigation of the
5 complaint by the Bureau either substantiates the complaint or is inconclusive;

6 (b) A report of any investigation conducted with respect to the complaint; and

7 (c) A report of any disciplinary action taken against the facility.

8 ➔ The facility shall make the information available to the public pursuant to
9 NRS 432A.178.

10 4. *In addition to any other disciplinary action, the Bureau may impose an*
11 *administrative fine for a violation of any provision of this chapter or any*
12 *regulation adopted pursuant thereto. The Bureau shall afford to any person so*
13 *fined an opportunity for a hearing. Any money collected for the imposition of*
14 *such a fine must be credited to the State General Fund.*

15 5. On or before February 1 of each odd-numbered year, the Bureau shall
16 submit to the Director of the Legislative Counsel Bureau a written report setting
17 forth, for the previous biennium:

18 (a) Any complaints included in the log maintained by the Bureau pursuant to
19 subsection 3; and

20 (b) Any disciplinary actions taken by the Bureau pursuant to subsection 2.

21 **Sec. 8.** NRS 432A.220 is hereby amended to read as follows:

22 432A.220 Any person who operates a child care facility without a license
23 issued pursuant to NRS 432A.131 to 432A.220, inclusive, *and sections 2 and 3 of*
24 *this act* is guilty of a misdemeanor.

25 **Sec. 9.** The Bureau of Services for Child Care of the Division of Child and
26 Family Services of the Department of Health and Human Services is not required to
27 obtain the information required pursuant to subsections 2 and 3 of section 5 of this
28 act concerning a person who, on October 1, 2009, is a licensee, employee of a
29 licensee, or resident of a child care facility or participant in an outdoor youth
30 program who is 18 years of age or older until 6 years after the license was issued or
31 renewed, or from the date of employment of an employee, residency of a resident or
32 participation of a participant.