

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 637
HOUSE BILL 115

AN ACT TO PROVIDE FOR THE LICENSING OF RESIDENTIAL GROUP CARE
FACILITIES FOR CHILDREN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-5 is repealed.

Sec. 2. Chapter 131D is amended by inserting a new Article 1A to read:

"ARTICLE 1A.

"Control Over Child Placing and Child Care.

"§ 131D-10.1. **Purpose.** – It is the policy of this State to strengthen and preserve the family as a unit. When a child requires care outside the family unit, it is the duty of the State to assure that the quality of substitute care is as close as possible to the care and nurturing that society expects of a family.

The purpose of this Article is to assign the authority to protect the health, safety and well-being of children separated from or being cared for away from their families.

"§ 131D-10.2. **Definitions.** – For purposes of this Article, unless the context clearly implies otherwise:

- (1) 'Adoption' means the act of creating a legal relationship between parent and child where it did not exist genetically.
- (2) 'Adoptive Home' means a family home approved by a child placing agency to accept a child for adoption.
- (3) 'Child' means an individual less than 18 years of age, who has not been emancipated under the provisions of Article 56 of Chapter 7A of the General Statutes.
- (4) 'Child Placing Agency' means a person authorized by statute or license under this Article to receive children for purposes of placement in residential group care, family foster homes or adoptive homes.
- (5) 'Children's Camp' means a residential child-care facility which provides foster care at either a permanent camp site or in a wilderness setting.
- (6) 'Commission' means the Commission for Social Services.
- (7) 'Department' means the Department of Human Resources.
- (8) 'Family Foster Home' means the private residence of one or more individuals who permanently reside as members of the household and who provide continuing full-time foster care for a child or children who are placed there by a child placing agency or who provide continuing full-time foster care for two or more children who are

unrelated to the adult members of the household by blood, marriage, guardianship or adoption.

- (9) 'Foster Care' means the continuing provision of the essentials of daily living on a 24-hour basis for dependent, neglected, abused, abandoned, destitute, orphaned, undisciplined or delinquent children or other children who, due to similar problems of behavior or family conditions, are living apart from their parents, relatives, or guardians in a family foster home or residential child-care facility. The essentials of daily living include but are not limited to shelter, meals, clothing, education, recreation, and individual attention and supervision.
- (10) 'Person' means an individual, partnership, joint stock company, trust, voluntary association, corporation, agency, or other organization or enterprise doing business in this State, whether or not for profit.
- (11) 'Primarily Educational Institution' means any institution which operates one or more scholastic or vocational education programs that can be offered in satisfaction of compulsory school attendance laws, in which the primary purpose of the housing and care of children is to meet their educational needs, provided such institution has complied with Article 39 of Chapter 115C of the General Statutes.
- (12) 'Provisional License' means a type of license granted by the Department to a person who is temporarily unable to comply with a rule or rules adopted under this Article.
- (13) 'Residential Child-Care Facility' means a staffed premise with paid or volunteer staff where children receive continuing full-time foster care. Residential child-care facility includes child- caring institutions, group homes, and children's camps which provide foster care.

"§ 131D-10.3. Licensure required. – (a) No person shall operate, establish or provide foster care for children or receive and place children in residential care facilities, family foster homes, or adoptive homes without first applying for a license to the Department and submitting the required information on application forms provided by the Department.

(b) Persons licensed or seeking a license under this Article shall permit the Department access to premises and information required to determine whether the person is in compliance with licensing rules of the Commission.

(c) Persons licensed pursuant to this Article shall be periodically reviewed by the Department to determine whether they comply with Commission rules and whether licensure shall continue.

(d) This Article shall apply to all persons intending to organize, develop or provide foster care for children or receive and place children in residential child-care facilities, family foster homes or adoptive homes irrespective of such persons having applied for or obtained a certification, registration or permit to carry on work not controlled by this Article except persons exempted in G.S. 131D-10.4.

(e) Unless revoked or modified to a provisional or suspended status, the terms of a license issued by the Department shall be in force for a period not to exceed 24 months from the date of issuance under rules adopted by the Commission.

(f) Persons licensed or seeking a license who are temporarily unable to comply with a rule or rules may be granted a provisional license. The provisional license can be issued for a period not to exceed six months. The noncompliance with a rule or rules shall not present an immediate threat to the health and safety of the children, and the person shall have a plan approved by the Department to correct the area(s) of noncompliance within the provisional period. A provisional license for an additional period of time to meet the same area(s) of noncompliance shall not be issued.

(g) In accordance with Commission rules, a person may submit to the Department documentation of compliance with the standards of a nationally recognized accrediting body, and the Department on the basis of such accreditation may deem the person in compliance with one or more Commission licensing rules.

"§ 131D-10.4. Exemptions. – This Article shall not apply to:

- (1) Any residential child-care facility chartered by the laws of the State of North Carolina (or operating under charters of other states which have complied with the corporation laws of North Carolina) which has a plant and assets worth sixty thousand dollars (\$60,000) or more and which is owned or operated by a religious denomination or fraternal order and which was in operation before July 1, 1977;
- (2) State institutions for emotionally disturbed or delinquent children, the mentally ill, mentally retarded, and substance abusers;
- (3) Secure detention facilities as specified in Article 5 of Chapter 134A of the General Statutes;
- (4) Treatment programs subject to the rules of the Commission for Mental Health, Mental Retardation and Substance Abuse Services as specified in Article 1A of Chapter 122 of the General Statutes;
- (5) Persons authorized by statute to receive and place children for foster care and adoption in accordance with G.S. 108A-14;
- (6) Primarily educational institutions as defined in G.S. 131D-10.2(11); or
- (7) Individuals who are related by blood, marriage, or adoption to the child.

"§ 131D-10.5. Powers and duties of the Commission. – In addition to other powers and duties prescribed by law, the Commission shall exercise the following powers and duties:

- (a) Adopt, amend and repeal rules consistent with the laws of this State and the laws and regulations of the federal government to implement the provisions and purposes of this Article;
- (b) Issue declaratory rulings as may be needed to implement the provisions and purposes of this Article;
- (c) Adopt rules governing procedures to appeal Department decisions pursuant to this Article granting, denying, suspending or revoking licenses; and
- (d) Adopt criteria for waiver of licensing rules adopted pursuant to this Article.

"§ 131D-10.6. Powers and duties of the Department. – In addition to other powers and duties prescribed by law, the Department shall exercise the following powers and duties:

(a) Investigate applicants for licensure to determine whether they are in compliance with licensing rules adopted by the Commission and the provisions of this Article.

(b) Grant a license when an investigation shows compliance with this Article and Commission rules. The license shall be valid for a period not to exceed 24 months as specified by Commission rules and may be revoked or placed in suspended or provisional status sooner if the Department finds that licensure rules are not being met or upon a finding that the health, safety or welfare of children is threatened.

(c) Administer and enforce the provisions of this Article and the rules of the Commission.

(d) Appoint hearing officers to conduct appeals pursuant to this Article.

(e) Prescribe the form in which application for licensure shall be submitted.

(f) Inspect facilities and obtain records, documents and other information necessary to determine compliance with the provisions of this Article and Commission rules.

(g) Grant, deny, suspend or revoke a license or a provisional license, in accordance with Commission rules.

(h) Grant a waiver for good cause to Commission rules that do not affect the health, safety, or welfare of children in facilities subject to licensure under this Article, in accordance with Commission rules.

"§ 131D-10.7. Penalties. – Any person who establishes or provides foster care for children or who receives and places children in residential child-care facilities, family foster homes or adoptive homes without a license shall be guilty of a misdemeanor, and upon conviction shall be punishable by a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense.

"§ 131D-10.8. Injunction. – (a) Notwithstanding the existence or pursuit of any other remedy, the Department may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person to restrain or prevent the establishment, conduct, management or operation of a facility operating without a license or in a manner that threatens the health, safety or welfare of the individuals in the facility.

(b) If any person shall interfere with the proper performance or duty of the Department in carrying out this Article, the Department may institute an action in the superior court of the county in which the interference occurred for injunctive relief against the continued interference, irrespective of all other remedies at law.

"§ 131D-10.9. Appeals. – All procedures arising out of this Article, including all notification, hearing and appeal procedures, shall be governed by the appropriate provisions of Chapter 150A of the Administrative Procedure Act."

Sec. 3. G.S. 110-49 is repealed.

Sec. 4. This act shall become effective October 1, 1983.

In the General Assembly read three times and ratified, this the 29th day of June, 1983.