

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 788
HOUSE BILL 853

AN ACT TO MAKE CHANGES IN THE CHILD DAY CARE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 110-85(3) is amended by deleting the phrase "day-care plans" and inserting the phrase "child day care homes".

Sec. 2. (a) G.S. 110-86(2) is rewritten to read "Child Day Care" means any child care arrangement wherein three or more children less than 13 years old receive care away from their own home by persons other than their parents, grandparents, aunts, uncles, brothers, sisters, first cousins, guardians or full-time custodians, or in the child's own home where other unrelated children are in care.

(b) G.S. 110-86(3) is amended by rewriting the first sentence to read: "'Day care facility' includes any child day care center or child care arrangement which provides day care for more than five children, not including the operator's own school-aged children, under the age of 13 years, on a regular basis of at least once per week for more than four hours but less than 24 hours per day, regardless of the time of day and regardless of whether the same or different children attend." The second sentence is amended by deleting the phrase "summer day camps which are run by nonprofit organizations exempt from taxation pursuant to Article 4 of Chapter 105 of the General Statutes".

G.S. 110-86(3) is further amended by adding a second paragraph to read:

"Day care facilities are separated by capacity into the following categories which determine applicable requirements and standards as established by the Commission pursuant to G.S. 110-88:

Facility Type

Large Home

Small Center

Medium Center

Large Center

The Commission shall establish the maximum capacity for each of the four categories of facilities."

(c) G.S. 110-86(4) is rewritten to read:

"'Child Day Care Home' means any day care program or child care arrangement wherein any person not excluded in G.S. 110-86(2) provides day care on a regular basis of at least once per week for more than four hours per day for more than two children under 13 years of age and fewer than six children at any one time, wherever operated, and whether or not operated for profit. The four hour limit applies regardless of the time of day and regardless of whether the same or different children attend.

Cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment are not included.

To determine whether a child care arrangement is a child day care home, all children shall be counted except the operator's own school-aged children and school-aged children who reside at the location of the day care home. Notwithstanding the limitation to five children prescribed above, the day care home operator may care for three additional school-aged children."

(d) G.S. 110-86(6) is amended by deleting the word "Commission" and substituting the word "Secretary".

Sec. 3. (a) G.S. 110-88(1) is amended by deleting the phrase "the health and safety" and substituting the phrase "all applicable".

(b) G.S. 110-88(2) is rewritten to read:

"To require inspections by and satisfactory written reports from representatives of local or State health agencies and fire and building inspection agencies and from representatives of the Department prior to the issuance of a license to any day care facility."

(c) G.S. 110-88(3) is amended by deleting the word "plans" and substituting the word "homes" in the first sentence.

(d) G.S. 110-88(6) is amended by deleting the phrase "relating to health and safety" and by removing the comma after the word "finds" and deleting the phrase "and the Commission concurs in the finding".

(e) G.S. 110-88(6a) is rewritten to read:

"To make rules for administrative action against a day care facility or home when the Secretary's investigations pursuant to G.S. 110-105(a)(3) or G.S. 110-105.1(4) substantiate that child abuse or neglect did occur in the facility or home. The type of sanction shall be determined by the severity of the incident and the probability of reoccurrence. The administrative actions shall include written warnings and special provisional licenses or registration certificates.

A written warning may be issued which shall specify the corrective action to be taken by the operator. The Department shall make an unannounced visit within one month after issuance of the written warning to determine whether the corrective action has occurred. If the corrective action has not occurred, a special provisional license or registration certificate may be issued.

When a special provisional license or registration certificate is issued, it shall require specific corrective action. It shall be in effect for six months from imposition and may not be renewed. The special provisional license or registration certificate and the letter which clearly states the reasons for the special provisional status shall be posted where parents can see them. Under the terms of the special provisional license or registration, the facility or home shall not enroll any new children until notified by the Department that it is satisfied the abusive or neglectful situation no longer exists. The Department shall make three unannounced visits during the period the special provisional license is in effect. Specific corrective action required by a written warning, special provisional license or special provisional registration may include the permanent removal from day care of the substantiated abuser or neglecter.

Nothing in this subdivision shall restrict the Secretary from using any other statutory or administrative remedies available."

(f) G.S. 110-88 is amended by adding a new subdivision (10) to read:

"To develop rules for the issuance of a temporary license which shall expire in 90 days and which may be issued to the operator of a previously licensed facility when a change in ownership or location occurs, provided the operator applied for a license prior to the change in status."

(g) G.S. 110-88 is amended by adding a new subdivision (11) to read "to develop rules for the care of sick children in facilities and homes."

Sec. 4. (a) G.S. 110-90 is amended in subdivisions (1) and (7) by deleting the word "plans" and substituting the word "homes".

(b) G.S. 110-90(5) is rewritten to read "to revoke the license of any day care facility which ceases to meet the standards established by this Article. Such revocations shall be done in accordance with the procedures set out in G.S. 150B and this Article and rules adopted by the Commission."

(c) G.S. 110-90(9) is rewritten to read:

"To levy a civil penalty pursuant to G.S. 110-103.1, or an administrative penalty pursuant to G.S. 110-102.2, or to order summary suspension of a license or registration. Such actions shall be done in accordance with the procedures set out in G.S. 150B and this Article and rules adopted by the Commission."

(d) G.S. 110-90 is further amended by adding a new subdivision (10) to read:

"To issue final agency decisions in all G.S. 150B contested cases proceedings filed as a result of actions taken under this Article including, but not limited to the denial, revocation or suspension of a license or the levying of a civil or administrative penalty."

Sec. 5. (a) G.S. 110-90.1 is amended by deleting the word "plan" and substituting the word "home" on each occurrence.

(b) G.S. 110-90.1 is amended in the second sentence by deleting the phrase "or a high school graduate" and substituting the words "and literate", and in the third sentence by deleting the phrase "who is not a high school graduate, and".

Sec. 6. (a) G.S. 110-91 is amended in the first sentence by deleting the phrase "relating to the health and safety of children".

(b) G.S. 110-91(1) is amended in the third sentence of the first paragraph by deleting the word "Commission" on its first occurrence and substituting the word "Secretary" and by deleting the word "Commission" on its second occurrence and substituting the word "Department".

(c) G.S. 110-91(1) is further amended in the first sentence of the second paragraph by placing a comma after the word "Examiners" and inserting the phrase "or comparable certifying board in any state contiguous to North Carolina,", and by deleting the words "two weeks" and substituting the words "30 days".

(d) G.S. 110-91(1) is amended in the fourth paragraph by inserting the word "written" between the word "specific" and the word "instructions" in the second sentence.

(e) G.S. 110-91(1) is further amended by rewriting the first sentence of the fifth paragraph to read:

"There shall be a separate bed, cot or mat, equipped with individual linen, for each child to use during rest periods, except for school-aged children; if a mat is used, it shall be of a waterproof, washable material at least two inches thick and shall be stored so that the floor side does not touch the sleeping side."

(f) G.S. 110-91(6) is amended in the second paragraph by inserting a new second sentence to read:

"The Commission shall adopt standards to establish minimum requirements for equipment appropriate for the size facility being operated pursuant to G.S. 110-86(3)."

(g) G.S. 110-91(7) is rewritten to read:

"Staff-Child Ratio. In determining the staff-child ratio, all children younger than 13 years shall be counted. The Commission shall adopt rules and regulations regarding staff-child ratios, group sizes and multi-age groupings for each category of facility provided that such rules and regulations shall be no less stringent than those currently required for staff-child ratios as enacted in Section 156(e) of Chapter 757 of the 1985 Session Laws."

(h) G.S. 110-91(8) is amended in the first paragraph by deleting the number "18" and substituting the number "16"; and by placing a comma after the word "age", deleting the phrase "or a high school graduate" and substituting the clause "provided that persons younger than 18 years of age work under the direct supervision of a literate staff person who is at least 21 years of age" in the second sentence, and by deleting the third sentence.

G.S. 110-91(8) is further amended by rewriting the first two sentences of the second paragraph to read:

"The Commission shall adopt standards to establish minimum qualifications for operators, supervisors, caregivers and other staff who have direct contact with the children. These standards shall reflect training, experience, education or credentialing and shall be appropriate for the size facility being operated according to the categories defined in G.S. 110-86(3)."

(i) G.S. 110-91(9) is amended in the last word of the first paragraph and in the third paragraph by deleting the word "Commission" and substituting the word "Department". G.S. 110-91(9) is further amended in the fourth paragraph by deleting the word "Commission" on its first occurrence and substituting the word "Department" and by deleting the word "Commission" on its second occurrence and substituting the word "Secretary".

(j) G.S. 110-91(12) is amended by adding a third sentence to read:

"The Commission shall establish minimum standards for age-appropriate activities appropriate for each category of facility as defined in G.S. 110-86(3)."

(k) G.S. 110-91(13) is amended in the fourth sentence by deleting the phrase "commercial vehicles, or other" and by inserting the phrase "by federal law" between the word "required" and the word "to".

G.S. 110-91(13) is amended in the first sentence of the second paragraph by deleting the word "exceed" and substituting the words "be less than".

Sec. 7. G.S. 110-93(b) is amended in the first sentence by deleting the phrase "effective for one year" and substituting the phrase "for no more than 12 months".

Sec. 8. G.S. 110-94 is amended by deleting the reference "150A" and substituting "150B".

Sec. 9. G.S. 110-98 is amended by deleting the word "plan" and substituting the word "home".

Sec. 10. G.S. 110-98.1 is amended by deleting the word "facility" in the catch line; by deleting the word "five" and substituting the word "two", and by removing the period and inserting the phrase "or day care home." at the end of the Section.

Sec. 11. G.S. 110-101 is rewritten to read:

"Registration: Minimum standards for child day care homes. It shall be unlawful for any person to operate a day care home unless such day care home is registered with the Department in accordance with the requirements for registration adopted by the Commission. The person who is registered shall be the individual who is on site providing care. A registration certificate shall be issued and remain valid for a two-year period unless revoked, suspended or modified. Each home shall display its current registration certificate in a prominent place. The registration certificate shall remain the property of the State. Day care homes shall comply with the reasonable minimum standards for health, safety, and sanitation adopted by the Commission. Each day care home shall be located in a residence or other building which meets the requirements of the North Carolina Building Code under standards developed by the Building Code Council in consultation with the Division of Facility Services, and subject to adoption by the Commission, specifically for day care homes."

Sec. 12. G.S. 110-102.1 is amended in the catch line by inserting the words "or deceased" between the words "missing" and "children."; by numbering the existing paragraph "(a)" and adding a subsection to read:

"(b) If a child dies while in day care, or of injuries sustained in day care, a report of the death must be made by the day care operator to the Secretary within 24 hours of the child's death or on the next working day."

G.S. 110-102.1 is further amended by deleting the word "plan" and substituting the word "home".

Sec. 13. G.S. 110-102.2 is amended by deleting the first sentence and substituting the sentence:

"The Department may order one or more of the following sanctions for violation of a provision of this Article or the rules which implement it:".

G.S. 110-102.2 is further amended by deleting the last sentence and substituting the sentence:

"The issuance of an administrative penalty may be appealed as provided in G.S. 110-90(5) and G.S. 110-90(9)."

Sec. 14. G.S. 110-103 is amended by deleting the words "fifty dollars (\$50.00)" and substituting the words "three hundred dollars (\$300.00)".

Sec. 15. G.S. 110-103.1(c) is amended in the first sentence by deleting the phrase "After a hearing as provided in G.S. 110-90(5), the" and substituting the word "The"; and by adding a new second sentence to read:

"The issuance of an assessment may be appealed as provided in G.S. 110-90(9)."

G.S. 110-103.1(c) is further amended by deleting the phrase "If the licensee assessed" and substituting the clauses "If after receipt of the notice, the licensee fails to exercise his appeal rights in accordance with G.S. 110-90(9) or", and by deleting the reference to "150A" and substituting "150B".

Sec. 16. G.S. 110-104 is amended by deleting the word "plan" on each occurrence and substituting the word "home".

Sec. 17. G.S. 110-105(a)(3) is amended in the second sentence by deleting the word "Commission" on the first two occurrences and substituting the word "Department", by deleting the phrase "at least two mandatory inspections" and substituting the words "an inspection", by deleting the word "any" and substituting the word "the", and by placing a period after the word "occurred" and deleting the rest of the sentence. The third sentence is rewritten to read:

"This inspection shall be conducted within seven calendar days of receipt of the report, and when circumstances warrant additional visits, the second inspection shall be conducted within one month of the first visit."

Sec. 18. (a) G.S. 110-105.1 is amended in the catch line by deleting the word "plans" and substituting the phrase "child day care homes".

(b) G.S. 110-105.1(a)(1) is amended by deleting the words "plan provider" and substituting "child day care home operator".

(c) G.S. 110-105.1(a)(2) is rewritten to read:

"A plan for announced inspections of randomly-selected registered homes prior to registration renewal;"

(d) G.S. 110-105.1(a)(3) is amended by deleting the word "routine" and by deleting the phrase "at regular intervals" and substituting the phrase "of randomly-selected registered homes".

(e) G.S. 110-105.1(a)(4) is amended by rewriting the second and third sentences to read:

"When the Department is notified by any person that alleged abuse or neglect has occurred in a child day care home, the Commission's rules shall provide for an inspection conducted without notice to the home to determine whether the alleged abuse or neglect has occurred. This inspection shall be conducted within seven calendar days of receipt of the report; and when circumstances warrant additional visits, the second inspection shall be conducted within one month of the first visit."

(f) This section is further amended by deleting the phrase "day-care plan" whenever it occurs and substituting the phrase "child day care home".

Sec. 19. G.S. 110-105.2 is amended by deleting the word "plans" and substituting the word "homes".

Sec. 20. (a) G.S. 110-106 is amended in the first sentence by inserting the phrase "or summer day camp" between the word "facility" and the word "operated".

(b) G.S. 110-106(b)(1) is rewritten to read:

"Church day care facilities shall file with the Department a notice of intent to operate a day care facility and the date it will begin operation at least 30 days prior to that date. Within 30 days after beginning operation, the facility shall provide to the Department written reports and supporting data which show the facility is in compliance

with applicable provisions of G.S 110-91. After the church day care facility has filed this information with the Department, the facility shall be visited by a representative of the Department to assure compliance with the applicable provisions of G.S. 110-91."

(c) G.S. 110-106(b)(2) is amended in the first sentence by deleting the word "Commission" and substituting the word "Department", by deleting the phrase "G.S. 110-90.1 and" and by rewriting the second sentence to read:

"The reports shall be in accordance with rules adopted by the Commission."

This subdivision is further amended in the last sentence by deleting the word "Commission" and substituting the word "Department".

(d) G.S. 110-106(b)(3) is amended by deleting the word "Commission" and substituting the word "Department" on its first occurrence and substituting the word "Secretary" on the other three occurrences. This subdivision is further amended by deleting the words "After a hearing, the" at the beginning of the third sentence and substituting the word "The", and in the fourth sentence by deleting the phrase "the provisions of G.S. 110-90.1 and".

(e) G.S. 110-106(b)(4) and (5) are amended by deleting the phrase "G.S. 110-90.1 and" on each occurrence.

(f) G.S. 110-106(b)(4) is amended by inserting the words "including summer day camps" between the word "facilities" and the word "shall" in the first sentence.

(g) G.S. 110-106(c) is amended by the addition of a second sentence to read:

"No staff qualifications other than those prescribed by the first paragraph of G.S. 110-91(8) shall apply to religious sponsored day care facilities."

Sec. 21. G.S. 110-106.1 is amended by deleting the phrase "day-care plans" wherever it occurs and substituting the phrase "child day care homes". This section is further amended by deleting the period at the end of the section and adding the phrase "and 110-101, and with the minimum requirements for staff in a child day care home prescribed by G.S. 110-90.1."

Sec. 22. The Schedule of Applicability for implementation of minimum standards for child day care home set forth in Session Laws 1985, C. 757, s. 156(n) is amended to read:

"Subsections (i) through (m) of this section apply to child day care homes in existence or seeking registration according to the following schedule:

- (1) For day care homes in counties with populations of 100,000 or more, on or after January 1, 1987;
- (2) For day care homes in counties with populations of 50,000 or more, but less than 100,000, on or after January 1, 1988;
- (3) For day care homes in counties with populations of less than 50,000, on or after July 1, 1988.

The 1980 census shall provide the population data."

Sec. 23. G.S. 143B-168.1. Child Day-Care Licensing Commission-creation; powers and duties. is repealed.

Sec. 24. G.S. 143B-168.2. Child Day-Care Licensing Commission; members; selection; quorum; compensation. is repealed.

Sec. 25. G.S. 143B-168.3 is amended by deleting the phrase "day-care plans" wherever it occurs and substituting the phrase "child day care homes".

Sec. 26. G.S. 143B-168.3(b) is amended to delete the words "or the Social Services Commission" in the second sentence.

Sec. 27. All child day care facilities and homes currently registered or licensed, or seeking licensing or registration, or operating in accordance with G.S. 110-106 or G.S. 110-106.1, shall comply with all current regulations applicable to the type of facility or home until such time as the Commission has adopted regulations adjusted for size of facility pursuant to Sections 2(b) and 6(f), (g), (h) and (j) of this act and appropriate implementation procedures. The Commission's rules shall become effective on or before July 1, 1988.

Sec. 28. All other sections of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of August, 1987.