

Amendment No. 1 to HB0106

Terry
Signature of Sponsor

AMEND Senate Bill No. 1288

House Bill No. 106*

by deleting SECTION 2 in its entirety and substituting:

SECTION 2. Tennessee Code Annotated, Section 71-3-503, is amended by deleting the section and substituting instead:

(a) A home school, as defined in § 49-6-3050; a program operated by a church-related school, as defined in § 49-50-801, for students whose parents are associated, registered, or participating as a parent-teacher with the church-related school for purposes of § 49-6-3050(a)(2) or (a)(3); or any educational or tutorial program designed to support or enhance the education of home school students, is not subject to licensure and does not require an exemption from licensing to operate lawfully.

(b) A program, such as an after-school care program, that does not provide child care for five (5) or more children who are not related to the primary caregiver for three (3) or more hours per day is not subject to licensure and does not require an exemption from licensing to operate lawfully. A program or activity that falls within the definition of a child care agency is exempt from the licensing requirements of this part upon demonstration by clear and convincing evidence that the program or activity meets one (1) of the following categories of exempt care:

(1) A person or entity licensed or otherwise regulated by other agencies of the state or federal government providing health, psychiatric, or psychological care or treatment or mental health care or counseling for children while the person or entity is engaged in such licensed or regulated activity;

(2) Preschool or school-age child care programs, a Title I program, a school-administered head start or an even start program, and all state-approved Montessori school programs that are subject to regulation by the department of education or other department of state government;

(3) Private or parochial kindergartens for children five (5) years of age if such kindergartens operate on the public school kindergarten schedule;

(4) Child care centers operated by church-related schools, as defined by § 49-50-801, that are subject to regulation by the department of education pursuant to title 49, chapter 1, part 11;

(5) Educational programs that meet the following criteria:

(A) The sole or primary purpose of the program is:

(i) To prepare children five (5) years of age and older or four-year-old children enrolled in a school-based pre-kindergarten program for advancement to the next educational level through a prescribed course of study or curriculum that is not typically available in a department-regulated child care setting; or

(ii) To provide specialized tutoring services to assist children with the passage of mandatory educational proficiency examinations;

(B) The program time scheduled to be dedicated to the educational activity is reasonably age appropriate for the type of activity and the ages served;

(C) The program operates no longer than three (3) hours per day, not to exceed fifteen (15) hours per week unless the children are accompanied by the children's parents or other custodians;

(D) The program is registered with the department and has received written approval to operate prior to offering the services; and

(E) The program maintains records that include dates and times of each child's attendance and the telephone numbers of persons to contact in the event of an emergency, and those records are made available during regular business hours to the department;

(6) "Parents' Day Out" or similar programs that meet the following criteria:

(A) The program is operated by a religious institution or religious organization that provides custodial care and services for children of less than school age;

(B) The program operates with no child attending more than twelve (12) hours in each calendar week;

(C) The program is registered with the department and has received written approval to operate prior to offering the services;

(D) The program maintains records that include dates and times of each child's attendance and the telephone numbers of persons to contact in the event of an emergency, and those records are made available during regular business hours to the department; and

(E) Each separate location or campus of a religious institution or religious organization is considered a separate religious institution or religious organization for the purpose of Parents' Day Out or any similar program;

(7) "Parents' Night Out" or similar "Special Event" programs that meet the following criteria:

(A) An entity or organization may offer programs to provide care on an occasional or infrequent basis, not to exceed fourteen (14) days per year; and

(B) If such a program is provided by a child care agency that is licensed by the department, the agency must first notify the department and receive written approval prior to providing such care, and the program must not be operated during licensed operating hours;

(8) Recreational programs that meet the following criteria:

(A) The sole or primary purpose of the program or activity is to provide recreational services, which include martial arts, organized sports, craft activities, and music activities;

(B) The recreational activity must be offered for at least seventy-five percent (75%) of the hours of operation;

(C) The majority of program staff responsible for the direct delivery of services must possess specialized qualifications that are directly related to the recreational services being offered;

(D) The supervision or care of children, or other types of child care-related services, must be incidental to its overall purpose;

(E) An individual child may not participate in the program or activity for more than seven (7) hours per day or for more than seven (7) consecutive weeks and for no more than one hundred twenty (120) days per calendar year;

(F) The program only provides recreational services to children four (4) years of age and older if unaccompanied by the children's parents or other custodians of the children but may also provide recreational services to children under four (4) years of age if the children's parents or other custodians remain on-site;

(G) The program is registered with the department and has received written approval to operate prior to offering the services; and

(H) The program shall maintain records that include dates and times of each child's attendance and the telephone numbers of persons to contact in the event of an emergency, and those records must be made available during regular business hours to the department;

(9) Camp programs that meet the following criteria:

(A) The primary purpose of the program or activity is to provide intensive recreational, religious, outdoor, or other activities that are not routinely available in full-time child care to children school-aged and older;

(B)

(i) The program or activity operates exclusively during the summer months and fewer than ninety (90) days in a calendar year; or

(ii) The program or activity operates exclusively during breaks that align with the school calendar of the district within which the program or activity is located;

(C) Enrollment periods for participation in the program or activity clearly define the duration of the program or activity and exclude drop-in child care;

(D) The camp programs must be developmentally appropriate for the ages of participating children;

(E) The program is registered with the department and has received written approval to operate prior to offering the services; and

(F) The program maintains records that include dates and times of each child's attendance and the telephone numbers of persons to contact in the event of an emergency, and those records are made available during regular business hours to the department;

(10) "Gym Care" programs that meet the following criteria:

(A) The care may only take place on-site at a gym or recreation center where adults can exercise while the care is being provided on-site;

(B) Children can be in care no longer than two (2) hours a day with a maximum care time limit of fourteen (14) hours per week;

(C) A parent must be engaged in activities on-site and must be available in case of emergency;

(D) The program is registered with the department and has received written approval to operate prior to offering the services; and

(E) The program maintains records that include dates and times of each child's attendance and the telephone numbers of persons to contact in the event of an emergency, and those records are made available during regular business hours to the department;

(11) "Tennessee Professional Sporting Event Care" programs that meet the following criteria:

(A) The care is provided on-site and available only for children of players and coaches of the home team during home games and includes adequate supervision based on the number, ages, and abilities of participating children;

(B) The program is registered with the department and has received written approval to operate prior to offering the services; and

(C) The program maintains records that include dates and times of each child's attendance and the telephone numbers of persons to contact in the event of an emergency, and those records are made available during regular business hours to the department;

(12) "Casual care" operations consisting of a place or facility operated by a person or entity that provides child care meeting the following criteria:

(A) Child care is provided for a minimum of five (5) children, but less than fifteen (15) children, who are not related to the primary caregiver, during short periods of time that do not exceed ten (10) hours per week or six (6) hours per day for an individual child while the parents or other custodians of the children are engaged in short-term activities, not including employment of the parent or other custodian of the child;

(B) The operation is registered with the department and has received written approval to operate prior to offering the services;

(C) The operation maintains records that include the children's names, ages, addresses, dates and times of attendance, the parents' or custodians' names, addresses, and intended whereabouts while the children are in care, and the telephone numbers of persons to contact in the event of an emergency. All records are made available at any time to an authorized representative of the department; and

(D) A person or entity that fails to comply with this subdivision (a)(12) is subject by the department to a fine not to exceed five hundred dollars (\$500) for the first violation and not to exceed one thousand dollars (\$1,000) for subsequent violations, and the department may seek injunctive relief in the chancery or circuit court of the county where the place or facility is located to prevent further operation of the place or facility or to obtain entry to conduct an inspection of the operation;

(13) Any program or facility operated by, or in affiliation with, any Boys and Girls Club that meets the following criteria:

(A) The program or facility provides care for school-aged children and holds membership in good standing with Boys and Girls Clubs of America and is certified as being in compliance with the purposes,

procedures, voluntary standards, and mandatory requirements of Boys and Girls Clubs of America;

(B) Any such Boys and Girls Club that applies to participate in state or federally funded programs that require child care licensing by the state as a term of eligibility may elect to apply to the department for child care licensing and regulation. Upon meeting departmental standards, the Boys and Girls Club may be licensed as a child care center or provider; and

(C) The department is authorized to grant a waiver from any rule concerning grouping of children and adult-to-child ratios for child care centers to a Boys and Girls Club that is providing after-school child care to mixed groups of school-aged children;

(14) Any program or facility operated by, or in affiliation with, any YMCA of the United States that meets the following criteria:

(A) The program or facility provides care for only school-aged children and holds membership in good standing with the YMCA of the United States and is certified as being in compliance with the purposes, procedures, voluntary standards, and mandatory requirements of the YMCA of the United States;

(B) Any such YMCA that applies to participate in state or federally funded programs that require child care licensing by the state as a term of eligibility may elect to apply to the department for child care licensing and regulation. Upon meeting departmental standards, the YMCA school-aged program may be licensed as a child care center or provider;

(C) The staff of each facility or program provide adequate supervision based on the number, ages, and abilities of participating

children and take all necessary steps to ensure the safety and health of children; and

(D) The department is authorized to grant a waiver from any rule concerning grouping of children and adult-to-child ratios for child care centers to a YMCA that is providing after-school child care to mixed groups of school-aged children; and

(15) Child care services associated with religious services or related activities of churches or other houses of worship that are provided while the parents or other custodians of the children are on-site and that are not ordinarily operated on a daily basis, including nurseries, babysitting services, and other children's activities. Such services may also be provided during limited special events; provided, that such events must not exceed fourteen (14) days in a calendar year.

(c) In analyzing whether the program or activity is exempt pursuant to this section, unless the department determines upon clear and convincing evidence that the program or activity qualifies for an exemption based upon the criteria set forth in subdivisions (b)(1)-(15), the department shall consider the following nonexclusive criteria to determine if the program or activity is clearly distinguishable from child care services typically regulated by the department and otherwise qualifies for exemption from licensing:

(1) The sole or primary purpose of the program or activity is to provide specialized opportunities for the child's educational, social, cultural, religious, or athletic development, or to provide the child with mental or physical health services;

(2) The time period in which the program or activity provides these opportunities is consistent with a reasonable time period for the completion of the

program or activity, considering the age of each child served and the nature of the program;

(3) The primary purpose of the program or activity is not routinely available or could not be made routinely available in the typical child care settings regulated by the department;

(4) Parents could reasonably be expected to choose the program or activity because of the unique nature of what it offers, rather than as a substitute for full-time, before- or after-school, holiday, or weather-related child care; and

(5) If the program or activity is regulated by any other federal, state, or local agency, it is required by such other agency to comply with standards that substantially meet or exceed department licensing regulations.

(d)

(1) All exempt programs, except those programs or categories of care exempt under subdivisions (b)(1)–(4), (7), and (13)–(15), must:

(A) Register intent to operate as an exempt program or activity with the department in a manner and form as the department may require, including that the request must contain a detailed description of the operation of the program or activity, the program's or activity's purpose, and the applicant's basis for claiming an exemption;

(B) Post a sign stating: "This facility is not required to be licensed by the state as a child care agency.";

(C)

(i) Require that when a parent, custodian, or guardian initially registers a child with an exempt program, the parent, custodian, or guardian must sign a form indicating that the parent, custodian, or guardian has been advised and understands that the

program is not licensed and is not required to be licensed by the state as a child care agency; and

(ii) Maintain the signed form with the records of the exempt entity; and

(2) The department shall provide a written response to the exemption request described in subdivision (d)(1)(A) stating the reasons the exemption was granted or denied.

(e)

(1) The department is not required to grant exemptions to programs or activities that offer otherwise exempt opportunities or services as a mere component of a program or activity that the department determines primarily constitutes child care.

(2) A program or activity is not exempt from licensing solely for the reason that the care and supervision of children that constitutes child care is offered only on a part-time or periodic basis.

(3) Exemption from licensure does not exempt the program or activity from compliance with any other local, state, or federal requirements.

(f) A program or activity that falls within the definition of a child care agency, but has been determined to be exempt under one (1) of the categories of exempt care in subsection (b), upon failure to comply with any of the criteria required under the applicable category of exempt care, is no longer exempt and, therefore, is subject to the licensing requirements of this part.