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CHAPTER 13.

CHILDCARE FACILITIES

ARTICLE 1.

GENERAL PROVISIONS

SECTION 63-13-10. Purpose.

(A) The intent of this chapter is to define the regulatory duties of government necessary to safeguard children in care in places other than their own homes, ensuring for them minimum levels of protection and supervision. Toward that end, it is the purpose of this chapter to establish statewide minimum regulations for the care and protection of children in childcare facilities, to ensure maintenance of these regulations and to approve administration and enforcement to regulate conditions in such facilities. It is the policy of the State to ensure protection of children under care in childcare facilities, and to encourage the improvement of childcare programs.

(B) It is the further intent of this chapter that the freedom of religion of all citizens is inviolate. Nothing in this chapter shall give any governmental agency jurisdiction or authority to regulate, supervise, or in any way be involved in any Sunday school, Sabbath school, religious services or any nursery service or other program conducted during religious or church services primarily for the convenience of those attending the services.

(C) Nothing in this chapter shall create authority for the Department of Social Services to influence or regulate the curriculum of childcare facilities.

SECTION 63-13-20. Definitions.

For the purpose of this chapter:

(1) "Caregiver" means any person whose duties include direct care, supervision, and guidance of children in a childcare facility.

(2) "Childcare" means the care, supervision, or guidance of a child or children, unaccompanied by the parent, guardian, or custodian, on a regular basis, for periods of less than twenty-four hours per day, but more than four hours, in a place other than the child's or the children's own home or homes.

(3) "Childcare center" means any facility which regularly receives thirteen or more children for childcare.

(4) "Childcare facilities" means a facility which provides care, supervision, or guidance for a minor child who is not related by blood, marriage, or adoption to the owner or operator of the facility whether or not the facility is operated for profit and whether or not the facility makes a charge for services offered by it. This definition includes, but is not limited to, day nurseries, nursery schools, childcare centers, group childcare homes, and family childcare homes. The term does not include:

(a) an educational facility, whether private or public, which operates solely for educational purposes in grade one or above;

(b) five-year-old kindergarten programs;

(c) kindergartens or nursery schools or other daytime programs, with or without stated educational purposes, operating no more than four hours a day and receiving children younger than lawful school age;

(d) facilities operated for more than four hours a day in connection with a shopping center or service or other similar facility, where the same children are cared for less than four hours a day and not on a regular basis as defined in this chapter while parents or custodians of the children are occupied on the premises or are in the immediate vicinity and immediately available; however, these facilities must meet local fire and sanitation requirements and maintain documentation on these requirements on file at the facility available for public inspection;

- (e) school vacation or school holiday day camps for children operating in distinct sessions running less than three weeks per session unless the day camp permits children to enroll in successive sessions so that their total attendance may exceed three weeks;
 - (f) summer resident camps for children;
 - (g) bible schools normally conducted during vacation periods;
 - (h) facilities for the mentally retarded provided for in Chapter 21, Title 44;
 - (i) facilities for the mentally ill as provided for in Chapter 17, Title 44;
 - (j) childcare centers and group childcare homes owned and operated by a local church congregation or an established religious denomination or a religious college or university which does not receive state or federal financial assistance for childcare services; however, these facilities must comply with the provisions of Article 9, and Sections 63-13-60 and 63-13-110 and that these facilities voluntarily may elect to become licensed according to the process as set forth in Article 3 and Sections 63-13-30, 63-13-40, 63-13-70, 63-13-80, 63-13-90, 63-13-100, 63-13-160, and 63-13-170.
- (5) "Childcare operator" means the person, corporation, partnership, voluntary association, or other public or private organization ultimately responsible for the overall operation of a childcare facility.
- (6) "Committee" means the State Advisory Committee on the Regulation of Childcare Facilities, named under this chapter to advise the department on regulatory matters related to childcare facilities.
- (7) "Complaint" means a written statement reporting unsatisfactory conditions in a childcare facility.
- (8) "Curriculum" means and includes design of courses, teaching philosophy, methods, and activities.
- (9) "Declaratory order" means a written statement on the part of the department approving plans for construction or renovation ensuring against the imposition of more stringent regulations at a later date.
- (10) "Deficiency correction notice" means a written statement on the part of the department notifying a childcare facility which is not complying with any applicable regulations to correct the deficiencies stated in the notice within a reasonable time limit.
- (11) "Department" means the State Department of Social Services, the agency designated to administer the regulation of childcare facilities under this chapter, with the advice of the State Advisory Committee on the Regulation of Childcare Facilities.
- (12) "Director" means the administrative head of the department.
- (13) "Family childcare home" means a facility within a residence occupied by the operator in which childcare is regularly provided for no more than six children, unattended by a parent or legal guardian, including those children living in the home and children received for childcare who are related to the resident caregiver. However, an occupied residence in which childcare is provided only for a child or children related to the resident caregiver or only for the child or children of one unrelated family or only for a combination of these children is not a family childcare home.
- (14) "Group childcare home" means a facility within a residence occupied by the operator which regularly provides childcare for at least seven but not more than twelve children, unattended by a parent or a legal guardian including those children living in the home and children received for childcare who are related to the resident caregiver. However, an occupied residence in which childcare is provided only for a child or children related to the resident caregiver or only for the child or children of one unrelated family or only for a combination of these children is not a group childcare home.
- (15) "Infant" means a child age twelve months or younger for the purposes of this chapter.
- (16) "Minor child" means a person who has not reached the eighteenth birthday.
- (17) "Private childcare facility" means a facility as defined under item b. of this section which is not a public childcare facility, and which is able to be further classified as follows:
- (a) "Entrepreneurial childcare facility" means a facility whose childcare operator may receive public assistance funds directly or indirectly but which is managed as a profit-making business enterprise and whose corporation or private ownership is liable for payment of federal and state income taxes on profits earned by the facility.
 - (b) "Nonprofit childcare facility" means a facility whose childcare operator may receive public assistance funds directly or indirectly but which is operated under the tutelage and control of a nonprofit or

eleemosynary corporation, foundation, association, or other organization whose ownership may or may not be liable for payment of federal and state income taxes on profits earned by the facility.

(18) "Provisional approval" means a written notice issued by the department to a department, agency, or institution of the State, or a county, city, or other political subdivision approving the commencement of the operations of a public childcare center or group childcare home although the operator is temporarily unable to comply with all of the requirements for approval.

(19) "Provisional license" means a license issued by the department to an operator of a private childcare center or group childcare home or a family childcare home which elects to be licensed authorizing the licensee to begin operations although the licensee temporarily is unable to comply with all of the requirements for a license.

(20) "Public childcare facility" means a facility as defined under item b of this section which was created and exists by act of the State, or a county, city or other political subdivision, whose operation remains under the tutelage and control of a governmental agency.

(21) "Registration" means the process whereby childcare centers and group childcare homes owned and operated by a church or a publicly recognized religious educational or religious charitable institution are regulated under this chapter and the process whereby all family childcare homes are regulated under this chapter.

(22) "Regular approval" means a written notice issued by the department for a two-year period to a department, agency, or institution of the State, or a county, city, or other political subdivision, approving the operation of a public childcare center or group childcare home in accordance with the provisions of the notice, this chapter, and the regulations of the department.

(23) "Regular license" means a license issued by the department for two years to an operator of a private childcare center or group childcare home or a family childcare home which elects to be licensed showing that the licensee is in compliance with the provisions of this chapter and the regulations of the department at the time of issuance and authorizing the licensee to operate in accordance with the license, this chapter, and the regulations of the department.

(24) "Regularly, or on a regular basis": these terms refer to the frequency with which childcare services are available and provided at a facility in any one week; these terms mean the availability and provision of periods of daycare on more than two days in such week.

(25) "Related" means any of the following relationships by marriage, blood, or adoption: parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, aunt, cousin of the first degree.

(26) "Renewal" means in regard to childcare centers and group childcare homes, to grant an extension of a regular license or regular approval for another two-year period provided an investigation of such facilities verifies that they are in compliance with the applicable regulations, in regard to family childcare homes, to place the name of the operator on the registration list for another year provided procedures indicated in this chapter have been completed.

(27) "Revocation" means to void the regular license of a childcare center or group childcare home.

(28) "Summer day camp for children" means a program offered during the summer that provides recreational activities primarily during daytime hours throughout the period of the program and may include an occasional overnight activity under the supervision of the operator.

(29) "Summer resident camp for children" means a twenty-four-hour residential program offered during the summer that provides recreational activities for children.

SECTION 63-13-30. Caregiver requirements.

(A) A caregiver who begins employment in a licensed or approved childcare center in South Carolina after June 30, 1994, must have at least a high school diploma or General Educational Development (GED) and at least six months' experience as a caregiver in a licensed or approved childcare facility. If a caregiver does not meet the experience requirements, the caregiver must be directly supervised for six months by a staff person with at least one year experience as a caregiver in a licensed or approved childcare facility. Within six months of being employed, a caregiver must have six clock hours of

training in child growth and development and early childhood education or shall continue to be under the direct supervision of a caregiver who has at least one year of experience as a caregiver in a licensed or approved childcare facility.

(B) A caregiver who has two years' experience as a caregiver in a licensed or approved facility and is employed as of July 1, 1994, in a licensed or approved childcare center in South Carolina is exempt from the high school diploma and General Educational Development (GED) requirements of subsection (A).

SECTION 63-13-40. Background checks for employment.

(A) No childcare center, group childcare home, family childcare home, or church or religious childcare center may employ a person or engage the services of a caregiver who is required to register under the sex offender registry act pursuant to Section 23-3-430 or who has been convicted of:

- (1) a crime listed in Chapter 3 of Title 16, Offenses Against the Person;
- (2) a crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency;
- (3) the crime of contributing to the delinquency of a minor, contained in Section 16-17-490;
- (4) the felonies classified in Section 16-1-10(A), except that this prohibition does not apply to Section 56-5-2930, the Class F felony of driving under the influence pursuant to Section 56-5-2940(4) if the conviction occurred at least ten years prior to the application for employment and the following conditions are met:

(a) the person has not been convicted in this State or any other state of an alcohol or drug violation during the previous ten-year period;

(b) the person has not been convicted of and has no charges pending in this State or any other state for a violation of driving while his license is canceled, suspended, or revoked during the previous ten-year period; and

(c) the person has completed successfully an alcohol or drug assessment and treatment program provided by the South Carolina Department of Alcohol and Other Drug Abuse Services or an equivalent program designated by that agency.

A person who has been convicted of a first-offense violation of Section 56-5-2930 must not drive a motor vehicle or provide transportation while in the official course of his duties as an employee of a childcare center, group childcare home, family childcare home, or church or religious childcare center.

If the person subsequently is convicted of, receives a sentence upon a plea of guilty or of nolo contendere, or forfeits bail posted for a violation of Section 56-5-2930 or for a violation of another law or ordinance of this State or any other state or of a municipality of this State or any other state that prohibits a person from operating a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics, the person's employment must be terminated;

(5) the offenses enumerated in Section 16-1-10(D); or

(6) a criminal offense similar in nature to the crimes listed in this subsection committed in other jurisdictions or under federal law.

This section does not prohibit employment or provision of caregiver services when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this subsection has been pardoned. However, notwithstanding the entry of a pardon, an operator or the department may consider all information available, including the person's pardoned convictions or pleas and the circumstances surrounding them, to determine whether the applicant is unfit or otherwise unsuited for employment or to provide caregiver services.

(B) A person who has been convicted of a crime enumerated in subsection (A) who applies for employment with, is employed by, or is a caregiver at a childcare center, group childcare home, family childcare home, or church or religious childcare center is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(C) Application forms for employment at childcare centers, group childcare homes, family childcare homes, or church or religious childcare centers must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in subsection (A) who

applies for employment with, is employed by, or seeks to provide caregiver services or is a caregiver at a facility is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(D)(1) To be employed by or to provide caregiver services at a childcare facility licensed, registered, or approved under this subarticle, a person first shall undergo a state fingerprint-based background check to be conducted by the State Law Enforcement Division (SLED) to determine any state criminal history, a fingerprint-based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history, and a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child.

(2) However, a person may be provisionally employed or may provisionally provide caregiver services after the favorable completion of the State Law Enforcement Division name and date of birth-based background check until such time as the SLED and Federal Bureau of Investigation fingerprint-based background checks, and the Central Registry check are completed if the person executes a sworn statement on a form provided by the department that he or she has not been convicted of any crime enumerated in this section and that he or she is not on the Central Registry for having perpetrated abuse or neglect upon a child. A person provisionally employed must be directly supervised by a nonprovisionally employed person at all times when providing direct care to children.

(3) Provisional status will be repealed if the requests for the Central Registry check and SLED and FBI fingerprint-based background checks are not sent by facsimile, mail, or another manner approved by the department by the end of the next business day after the person was employed.

(4) If the director of a childcare facility violates the terms of provisional employment, for a first offense, the facility may not employ a person provisionally for twelve months. For a second or subsequent offense, the facility may not employ a person provisionally for twenty-four months. The penalty shall apply to any facility that may employ the director of the facility during the period of suspension. A childcare facility owner with five or more facilities that sustains violations in twenty-five percent or more of facilities owned in the State during a period of two years may not employ a person provisionally in any facility for twenty-four months. The department shall have authority to determine that a violation has occurred and shall notify the owner and the director in writing of the violation and the penalty. The owner or director under penalty may appeal this determination through the process provided in this subarticle for appeal of the revocation or denial of a childcare license. Authority to employ persons in provisional status must remain suspended while the appeal is pending. Upon disposition of the appeal in favor of the appellant, authority to use provisional status must be restored.

(5) The results of the fingerprint-based background checks are valid and reviews are not required to be repeated as long as the person remains employed by or continues providing caregiver services in a childcare center, group childcare home, family childcare home, or church or religious childcare center; however, if a person is not employed or does not provide caregiver services for one year or longer, the fingerprint reviews must be repeated.

(6) For provisional employment under this section, the department must complete the Central Registry check within two business days of receipt of the request. For other employment under this section, the department must complete the Central Registry check within five business days of receipt of the request. If the department notifies the provider that research into other records is required, these deadlines may be extended for up to ten additional business days.

(E) Unless otherwise required by law, this section does not apply to volunteers in a childcare center, group childcare home, family childcare home, or church or religious childcare center. For purposes of this section, "volunteer" means a person who:

(1) provides services without compensation relating to the operation of a childcare center, group childcare home, family childcare home, or church or religious childcare center; and

(2) is in the presence of an operator, employee, or caregiver when providing direct care to children.

"Volunteer" includes, but is not limited to, parents, grandparents, students, and student teachers.

(F) Unless otherwise required by law, this section applies to:

- (1) an employee who provides care to the child or children without the direct personal supervision of a person licensed, registered, or approved under this chapter; and
- (2) any other employee at a facility licensed, registered, or approved under this chapter who has direct access to a child outside the immediate presence of a person who has undergone the fingerprint review required under this chapter.

SECTION 63-13-45. Notice to parents of childcare center provisional staff employment; statements from parents indicating receipt of notice.

(A) An owner or operator of a childcare center, group childcare home, or family childcare home, as defined by Section 63-13-20, must notify and obtain signed statements from the custodial parent or parents or guardian or guardians of each child currently enrolled in the childcare center, group childcare home, or family childcare home indicating that the parent or parents or guardian or guardians have received notice that the childcare center, group childcare home, or family childcare home may provisionally employ a person in order to comply with Section 63-7-1980 and Section 63-13-40(D) when an unexpected staff vacancy occurs. Provisional employment may only occur pursuant to the provisions of Section 63-13-40(D).

(B) Within sixty days of this act's effective date, an owner or operator of a childcare center, group childcare home, or family childcare home, as defined by Section 63-13-20 of the 1976 Code, must notify and obtain signed statements pursuant to the provisions of this section from the custodial parent or parents or guardian or guardians of each child enrolled on this act's effective date in the childcare center, group childcare home, or family childcare home.

SECTION 63-13-50. Fingerprint exemptions.

The fingerprint reviews required by this chapter are not required of a certified education personnel who has undergone a fingerprint review pursuant to Section 59-26-40 or of a person licensed as a foster parent who has undergone a state and federal fingerprint review pursuant to Section 63-7-2340, and the results of these reviews have been submitted to the department and the person has remained employed since the review in certified education or licensed as a foster parent or the reviews have been conducted within the preceding year.

SECTION 63-13-60. Criminal history review fee.

For conducting a state criminal history review as required by this chapter State Law Enforcement Division may not impose a fee greater than the fee imposed by the Federal Bureau of Investigation for conducting such a review.

SECTION 63-13-70. Register required.

Every childcare center or group childcare home shall maintain a register setting forth essential facts concerning each child enrolled under the age of eighteen years.

SECTION 63-13-80. Investigations and inspections.

(A) In exercising the powers of licensing, approving, renewing, revoking, or making provisional licenses and approvals, the department shall investigate and inspect licensees and approved operators and applicants for a license or an approval. The authorized representative of the department may visit a childcare center or group childcare home anytime during the hours of operation for purposes of investigations and inspections. In conducting investigations and inspections, the department may call on

political subdivisions and governmental agencies for appropriate assistance within their authorized fields. The inspection of the health and fire safety of childcare centers and group childcare homes must be completed upon the request of the department by the appropriate agencies (i.e., Department of Health and Environmental Control, the Office of the State Fire Marshal, or local authorities). Inspection reports completed by state agencies and local authorities must be furnished to the department and become a part of its determination of conformity for licensing and approval. After careful consideration of the reports and consultation where necessary, the department shall assume responsibility for the final determination of licensing, approving, renewing, revoking, or making provisional licenses and approvals.

(B) Before issuing a license or approval the department shall conduct an investigation of the applicant and the proposed plan of care for children and for operating a childcare center or a group childcare home. If the results of the investigation satisfy the department that the provisions of this chapter and the applicable regulations promulgated by the department are satisfied, a license or approval must be issued.

SECTION 63-13-90. Zoning.

At the time of initial licensing, approval, or registration a childcare facility must provide proof of conformity or authorized nonconformity with county or municipal zoning ordinances or resolutions. The department may impose conditions on the license, approval, or registration consistent with restrictions imposed by zoning authorities.

SECTION 63-13-100. Provisional licensure, approval, and registration.

(A) The department has power to issue a provisional registration, provisional license, or provisional approval only when the department is satisfied that:

(1) the regulations can and will be met within a reasonable time; and
(2) the deviations do not seriously threaten the health or safety of the children. A provisional registration, provisional license, or provisional approval, may be extended for a period as may be determined by the department.

(B) Except as noted in subsection (C) of this section, no provisional license or provisional approval may be issued effective for any longer than one year.

(C) Any facility granted a license or exempt from obtaining a license under the act previously in effect in this State and which does not qualify for a regular license under this chapter must be granted a provisional license in accord with subsection a. of this section. The provisional license may be issued without regard to the time limit of subsection (B) of this section. No provisional license issued under subsection (C) is effective, either by its initial issue or by renewal, for a period greater than three years.

SECTION 63-13-110. First aid and CPR certificates.

During the hours of operation all childcare facilities, except registered family childcare homes, must have on the premises at least one caregiver with a current certificate for the provision of basic first aid and child-infant cardiopulmonary resuscitation.

SECTION 63-13-120. Training on domestic violence.

The Department of Social Services in conjunction with existing training regulations shall make available to childcare owners and operators staff training on domestic violence including, but not limited to:

- (1) the nature, extent, and causes of domestic and family violence;
- (2) issues of domestic and family violence concerning children;
- (3) prevention of the use of violence by children;
- (4) sensitivity to gender bias and cultural, racial, and sexual issues;
- (5) the lethality of domestic and family violence;

(6) legal issues relating to domestic violence and child custody.

SECTION 63-13-130. Consultation.

The department shall offer consultation through employed staff or other qualified person to assist applicants and operators in meeting and maintaining regulations.

SECTION 63-13-140. Compliance review.

Upon request of an applicant or operator, the department shall offer consultation to address any aspect of compliance with this chapter or the regulations promulgated under this chapter. Consultation includes, but is not limited to, review and comment on drawings and specifications related to construction and renovations proposed by a facility.

SECTION 63-13-150. Violation citations.

At any time the department cites a childcare center, group childcare home, or family childcare home for a violation of this chapter or regulations promulgated pursuant to this chapter, the department shall provide the owner and operator of the center with a brochure stating, in language easily understood, the rights and procedures available to the owner or operator for a hearing in accordance with the department's fair hearing regulations and the rights and procedures available to appeal a decision rendered under the department's fair hearing process.

SECTION 63-13-160. Injunctions.

The department is empowered to seek an injunction against the continuing operation of a childcare facility in the family court having jurisdiction over the county in which the facility is located:

- (1) when a facility is operating without a license or statement of registration;
- (2) when there is any violation of this chapter or of the regulations promulgated by the department which threatens serious harm to children in the childcare facility;
- (3) when an operator has repeatedly violated this chapter or the regulations of the department.

SECTION 63-13-170. Penalties.

A person violating the provisions of this chapter is guilty of a misdemeanor and, upon conviction, must be punished by a fine not exceeding one thousand five hundred dollars or imprisonment not exceeding six months, or both.

SECTION 63-13-180. Regulations and suggested standards.

(A) The department shall with the advice and consent of the Advisory Committee develop and promulgate regulations depending upon the nature of services to be provided for the operation and maintenance of childcare centers and group childcare homes. The department with the advice of the Advisory Committee shall develop suggested standards which shall serve as guidelines for the operators of family childcare homes and the parents of children who use the service. In developing these regulations and suggested standards, the department shall consult with:

- (1) Other state agencies, including the State Department of Health and Environmental Control, the Office of the State Fire Marshal, and the Office of the Attorney General.
- (2) Parents, guardians, or custodians of children using the service.
- (3) Child advocacy groups.
- (4) The State Advisory Committee on the Regulation of Childcare Facilities established by this chapter.

- (5) Operators of childcare facilities from all sectors.
- (6) Professionals in fields relevant to childcare and development.
- (7) Employers of parents, guardians, or custodians of children using the service.

Draft formulations must be widely circulated for criticism and comment.

(B) The regulations for operating and maintaining childcare centers and group childcare homes and the suggested standards for family childcare homes must be designed to promote the health, safety, and welfare of the children who are to be served by assuring safe and adequate physical surroundings and healthful food; by assuring supervision and care of the children by capable, qualified personnel of sufficient number. The regulations with respect to licensing and approval, and the suggested standards with respect to registration of family childcare homes must be designed to promote the proper and efficient processing of matters within the cognizance of the department and to assure applicants, licensees, approved operators, and registrants fair and expeditious treatment under the law.

(C) The department shall conduct a comprehensive review of its licensing and approval regulations and family childcare home suggested standards at least once each three years.

(D) No regulations for childcare facilities may exceed policies or minimum standards set for public childcare facilities regulated under this chapter.

(E) The department shall submit final drafts of its regulations to the Legislative Council as proposed regulations, and the Administrative Procedures Act Sections 1-23-10 et seq., governs their promulgation.

(F) The department shall establish a procedure for its representatives to follow in receiving and recording complaints. Standard forms may be produced and made available to parents and users of facilities upon request to the department. A copy of any complaint must be made available to the involved operator immediately upon his request.

SECTION 63-13-190. Fingerprint reviews of DSS personnel.

(A)(1) Before the Department of Social Services employs a person in its childcare licensing or child protective services divisions, the person shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history. No person may be employed in these divisions if the person has been convicted of or pled guilty or nolo contendere to any crime listed in Section 63-13-40(A).

(2) This section does not prohibit employment when a conviction or plea of guilty or nolo contendere for one of the crimes listed has been pardoned. However, notwithstanding the entry of a pardon, the department may consider all information available, including the person's pardoned convictions or pleas and the circumstances surrounding them, to determine whether the applicant is unfit or otherwise unsuited for employment.

(B) Notwithstanding subsection (A) or any other provision of law, a person may be provisionally employed in the childcare licensing or child protective services divisions upon receipt and review of the results of the State Law Enforcement Division fingerprint review if the results show no convictions of the crimes referenced in subsection (A). Pending receipt of the results of the Federal Bureau of Investigation fingerprint review, the department must obtain from the prospective employee a written affirmation on a form provided by the department that the employee has not been convicted of any crime referenced in subsection (A).

(C) A person who has been convicted of a crime referenced in subsection (A) who applies for employment with the childcare licensing or child protective services divisions is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

SECTION 63-13-200. Unlawful offenses near childcare facilities.

It is a separate criminal offense, and a felony, for a person to unlawfully commit any of the offenses listed in Chapter 3 of Title 16, Offenses Against the Person, a crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency, or the crime of contributing to the delinquency of a minor contained in Section 16-17-490 while within a radius of one hundred yards of the grounds of a public or private childcare facility. A person who commits this offense must, upon conviction, be punished by a fine not to exceed ten thousand dollars or imprisonment not to exceed ten years or both, in addition to any other penalty imposed by law and not in lieu of any other penalty.

SECTION 63-13-210. Notice to parents that childcare business does not carry liability insurance.

(A) An owner or operator of a childcare center, group childcare home, or family childcare home, as defined by Section 63-13-20, who does not carry liability insurance for the operation of his childcare business, shall, by no later than January 1, 2009, obtain signed statements from the custodial parent or parents or guardian or guardians of each child currently enrolled in the childcare center, group childcare home, or family childcare home indicating that the parent or parents or guardian or guardians have received notice that the childcare center, group childcare home, or family childcare home does not carry liability insurance for the operation of its childcare business. The owner or operator of a childcare center, group childcare home, or family childcare home must maintain a file of these signed statements at the home during the period of time a child is enrolled. For new enrollees to a childcare center, group childcare home, or family childcare home, the owner or operator must provide the parent or parents or guardian or guardians of a new enrollee with this information at the time of enrollment, obtain a signed statement from each parent or guardian at the time of enrollment, and maintain these signed statements at the home during the period of time a child is enrolled.

(B) If an owner or operator of a childcare center, group childcare home, or family childcare home, as defined by Section 63-13-20, has liability insurance for the operation of his childcare business that lapses or is canceled and not reinstated or replaced, the owner or operator shall obtain and maintain statements in accordance with subsection (A) from the custodial parent or parents or guardian or guardians of each child enrolled in the childcare center, group childcare home, or family childcare home no later than thirty days after the liability insurance lapses or is canceled.

(C) The department shall send a letter to each childcare center, group childcare home, and family childcare home licensed or registered as of June 30, 2008, with the department informing each home of the requirements of subsections (A) and (B), that each home must comply with these requirements by no later than January 1, 2009, and that compliance is a requirement for initial licensure and a continuing annual requirement for relicensure. For childcare centers, group childcare homes, and family childcare homes licensed or registered after June 30, 2008, the department shall provide the information contained in subsections (A) and (B) at the time the childcare center, group childcare home, or family childcare home applies for a license or registration.

ARTICLE 3.

PRIVATE CHILDCARE CENTERS AND GROUP CHILDCARE HOMES

SECTION 63-13-410. Licensure required for private centers and group homes.

No person, corporation, partnership, voluntary association, or other organization may operate a private childcare center or group childcare home unless licensed to do so by the department.

SECTION 63-13-420. Licensure requirements.

(A) Application for license must be made on forms supplied by the department and in the manner it prescribes.

(B) Before issuing a license the department shall conduct an investigation of the applicant and the proposed plan of care for children and for operating a private childcare center or group childcare home. If the results of the investigation verify that the provisions of this chapter and the applicable regulations promulgated by the department are satisfied, a license must be issued. The applicant shall cooperate with the investigation and related inspections by providing access to the physical plant, records, excluding financial records, and staff. Failure to comply with the regulations promulgated by the department within the time period specified in this chapter, if adequate notification of deficiencies has been made, is a ground for denial of application. The investigation and inspections may involve consideration of any facts, conditions, or circumstances relevant to the operation of the childcare center or group childcare home, including references and other information about the character and quality of the personnel.

(C) Each license must be conditioned by stating clearly the name and address of the licensee, the address of the childcare center or group childcare home, and the number of children who may be served.

(D) Failure of the department, except as provided in Section 63-13-200, to approve or deny an application within ninety days results in the granting of a provisional license.

(E) No license may be issued to an operator who has been convicted of:

(1) a crime listed in Chapter 3 of Title 16, Offenses Against the Person;

(2) a crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency;

(3) the crime of contributing to the delinquency of a minor, contained in Section 16-17-490;

(4) the felonies classified in Section 16-1-10(A);

(5) the offenses enumerated in Section 16-1-10(D); or

(6) a criminal offense similar in nature to the crimes listed in this subsection committed in other jurisdictions or under federal law.

This section does not prohibit licensing when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this subsection has been pardoned. However, notwithstanding the entry of a pardon, the department may consider all information available, including the person's pardoned convictions or pleas and the circumstances surrounding them, to determine whether the person is unfit or otherwise unsuited to be an operator.

(F) Application forms for licenses issued under this section must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in subsection (E) who applies for a license as an operator is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(G) A person applying for a license as an operator under this section shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history. The fingerprint reviews required by this subsection are not required upon each renewal.

(H) A person applying for a license as an operator under this section or seeking employment or seeking to provide caregiver services at a facility licensed under this section shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history. The fingerprint reviews required by this subsection are not required upon each renewal unless the renewal coincides with employment of a new operator, employee, or caregiver.

SECTION 63-13-430. License renewal.

(A) Regular licenses may be renewed upon application and approval. Notification of a childcare center or group childcare home regarding renewal is the responsibility of the department.

(B) Application for renewal must be made on forms supplied by the department in the manner it prescribes.

(C) Before renewing a license the department shall conduct an investigation of the childcare center or group childcare home. If the results of the investigation verify that the provisions of this chapter and the applicable regulations promulgated by the department are satisfied, the license must be renewed. The

licensee shall cooperate with the investigation and related inspections by providing access to the physical plant, records, and staff. Failure to comply with the regulations promulgated by the department within the time period specified in this chapter, if adequate notification of deficiencies has been made, is a ground for revocation of the license. The investigation and inspections may involve consideration of any facts, conditions, or circumstances relevant to the operation of the childcare center or group childcare home.

(D) No license may be renewed for any operator who has been convicted of:

- (1) a crime listed in Chapter 3 of Title 16, Offenses Against the Person;
- (2) a crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency;
- (3) the crime of contributing to the delinquency of a minor, contained in Section 16-17-490;
- (4) the felonies classified in Section 16-1-10(A);
- (5) the offenses enumerated in Section 16-1-10(D); or
- (6) a criminal offense similar in nature to the crimes listed in this subsection committed in other jurisdictions or under federal law.

This section does not prohibit renewal when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this subsection has been pardoned. However, notwithstanding the entry of a pardon, the department may consider all information available, including the person's pardoned convictions or pleas and the circumstances surrounding them, to determine whether the person is unfit or otherwise unsuited to be an operator.

(E) Application forms for license renewals issued under this section must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in subsection (D) who applies for a license renewal as operator is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(F) A licensee seeking license renewal under this section, its employees, and its caregivers, who have not done so previously, on the first renewal after June 30, 1995, shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history.

(G) No facility may employ or engage the services of an employee or caregiver who has been convicted of one of the crimes listed in this section.

SECTION 63-13-440. Display of license.

(A) Each childcare center or group childcare home shall maintain its current license displayed in a prominent place at all times and must state its license number in all advertisements of the childcare center or group daycare home.

(B) No license may be transferred nor shall the location of any childcare center or group childcare home or place of performance of service be changed without the written consent of the department. The department shall consent to the change for a reasonable period of time when emergency conditions require it, so long as the new location or place of performance substantially conforms to state fire and health requirements.

(C) Upon occurrence of death of a child on the premises of a childcare center or group childcare home in which the child is enrolled or while under the constructive control of the holder of the license of the facility, it is the responsibility of the holder of the license to notify the department within forty-eight hours and follow up with a written report as soon as the stated cause of death is certified by the appropriate government official.

SECTION 63-13-450. Deficiency correction notices.

(A) Whenever the department finds upon inspection that a private childcare center or group childcare home is not complying with any applicable licensing regulations, the department shall notify the operator to correct these deficiencies.

(B) Every correction notice must be in writing and must include a statement of the deficiencies found, the period within which the deficiencies must be corrected and the provision of the chapter and regulations relied upon. The period must be reasonable and, except when the department finds an emergency dangerous to the health or safety of children, not less than thirty days from the receipt of the notice.

(C) Within two weeks of receipt of the notice, the operator of the facility may file a written request with the department for administrative reconsideration of the notice or any portion of the notice.

(D) The department shall grant or deny a written request within seven days of filing and shall notify the operator of the grant or denial.

(E) In the event that the operator of the facility fails to correct deficiencies within the period prescribed, the department may revoke the license.

SECTION 63-13-460. License denial; nonrenewal; notice, hearings; appeals.

(A) An applicant who has been denied a license by the department must be given prompt written notice by certified or registered mail. The notice shall indicate the reasons for the proposed action and shall inform the applicant of the right to appeal the decision to the director in writing within thirty days after the receipt of notice of denial. An appeal from the final decision of the director may be taken to an administrative law judge pursuant to the Administrative Procedures Act.

(B) A licensee whose application for renewal is denied or whose license is about to be revoked must be given written notice by certified or registered mail. The notice must contain the reasons for the proposed action and shall inform the licensee of the right to appeal the decision to the director or his designee in writing within thirty calendar days after the receipt of the notice. An appeal from the final decision of the director may be taken to an administrative law judge pursuant to the Administrative Procedures Act.

(C) At the hearing provided for in this section, the applicant or licensee may be represented by counsel and has the right to call, examine, and cross-examine witnesses and to otherwise introduce evidence. Parents appearing at the hearing may also be represented by counsel. The hearing examiner is empowered to require the presence of witnesses and evidence by subpoena on behalf of the appellant or department. The final decision of the department must be in writing, must contain the department's findings of fact and rulings of law, and must be mailed to the parties to the proceedings by certified or registered mail to their last known addresses as may be shown in the application, or otherwise. A full and complete record must be kept of all proceedings, and all testimony must be reported but need not be transcribed unless the department's decision is appealed, or a transcript is requested by an interested party. Upon an appeal, the department shall furnish to any appellant, free of charges, a certified copy of the transcript of all evidentiary proceedings before it. Other parties shall pay the cost of transcripts prepared at their request.

(D) The decision of the department is final unless appealed by a party to an administrative law judge pursuant to the Administrative Procedures Act.

ARTICLE 5.

PUBLIC CHILDCARE CENTERS AND GROUP CHILDCARE HOMES

SECTION 63-13-610. Approval required for public centers and group homes.

Every operator or potential operator of a public childcare center or group childcare home must apply to the department for an investigation and a statement of standard conformity or approval, except those facilities designated in Section 63-13-20.

SECTION 63-13-620. Statement of approval requirements.

(A) Application for a statement of standard conformity or approval must be made on forms supplied by the department and in the manner it prescribes.

(B) Before issuing approval the department shall conduct an investigation of the applicant and the proposed plan of care for children and for operating a public childcare center or group childcare home. If the results of the investigation verify that the provisions of the chapter and the applicable regulations promulgated by the department are satisfied, approval must be issued. The applicant shall cooperate with the investigation and inspections by providing access to the physical plant, records, and staff. The investigation and related inspections may involve consideration of any facts, conditions, or circumstances relevant to the operation of the childcare center or group childcare home, including references and other information about the character and quality of the personnel. If the childcare center or group childcare home fails to comply with the regulations promulgated by the department within the time period specified in this chapter, if adequate notification regarding deficiencies has been given, the appropriate public officials of the state and local government must be notified.

(C) A person applying for approval under this section shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history. The fingerprint reviews required by this subsection are not required upon each renewal.

(D) No approval may be granted under this section if the person applying for approval or the operator, an employee, or a caregiver of the facility has been convicted of:

- (1) a crime listed in Chapter 3 of Title 16, Offenses Against the Person;
- (2) a crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency;
- (3) the crime of contributing to the delinquency of a minor, contained in Section 16-17-490;
- (4) the felonies classified in Section 16-1-10(A);
- (5) the offenses enumerated in Section 16-1-10(D); or
- (6) a criminal offense similar in nature to the crimes in this subsection committed in other jurisdictions or under federal law.

This section does not prohibit approval when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this subsection has been pardoned. However, notwithstanding the entry of a pardon, the department may consider all information available, including the person's pardoned convictions or pleas and the circumstances surrounding them, to determine whether the person is unfit or otherwise unsuited as an applicant or to be an operator, caregiver, or employee.

(E) Application forms for a statement of standard conformity or approval issued under this section must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in subsection (D) who applies for approval is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(F) Application forms for a statement of standard conformity or approval issued under this chapter by the department and application forms for employment at individual public childcare centers or group childcare homes must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of one of the crimes listed in this section who applies for a license as operator, applies for employment with, is employed by, seeks to provide caregiver services with, or is a caregiver at a facility is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

SECTION 63-13-630. Approval renewal.

(A) Regular approvals may be renewed upon application and approval. Notification of a childcare center or group childcare home regarding renewal is the responsibility of the department.

(B) Application for renewal must be made on forms supplied by the department and in the manner it prescribes.

(C) Before renewing an approval the department shall conduct an investigation of the childcare center or group childcare home. If the results of the investigation verify that the provisions of this chapter and the applicable regulations promulgated by the department are satisfied, the approval must be renewed. The operator shall cooperate with the investigation and related inspections by providing access to the physical plant, records, and staff. If the operator's statement of approval cannot be renewed, the appropriate public officials must be notified.

(D) A person applying for approval renewal under this section, a person who will operate the facility, and its employees and caregivers, who have not done so previously, on the first approval renewal after June 30, 1995, shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history.

No approval may be renewed under this section if the person applying for renewal, the operator of the facility, or an employee or a caregiver has been convicted of:

- (1) a crime listed in Chapter 3 of Title 16, Offenses Against the Person;
- (2) a crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency;
- (3) the crime of contributing to the delinquency of a minor, contained in Section 16-17-490;
- (4) the felonies classified in Section 16-1-10(A);
- (5) the offenses enumerated in Section 16-1-10(D); or
- (6) a criminal offense similar in nature to the crimes listed in this subsection committed in other jurisdictions or under federal law.

This section does not prohibit renewal when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this subsection has been pardoned. However, notwithstanding the entry of a pardon, the department may consider all information available, including the person's pardoned convictions or pleas and the circumstances surrounding them, to determine whether the person is unfit or otherwise unsuited as an applicant or to be an operator, caregiver, or employee.

(E) Application forms for renewal of a statement of standard conformity or approval issued under this section must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in subsection (D) who applies for approval renewal is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(F) No facility may employ or engage the services of an employee or a caregiver who has been convicted of one of the crimes listed in this section.

(G) Application forms for renewal of a statement of standard conformity or approval issued under this article by the department for individual public childcare centers or group childcare homes must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of one of the crimes listed in this section who applies for a license as operator, applies for employment with, is employed by, seeks to provide caregiver services with, or is a caregiver at a facility is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

SECTION 63-13-640. Deficiency correction notices.

(A) Whenever the department finds upon inspection that a public childcare center or group childcare home is not complying with any applicable regulations, the department may notify the operator to correct the deficiencies.

(B) Every correction notice must be in writing and shall include a statement of the deficiencies found, the period within which the deficiencies must be corrected and the provision of the chapter and regulations relied upon. The period must be reasonable and, except when the department finds an emergency dangerous to the health or safety of children, not less than thirty days from the receipt of the notice.

(C) Within two weeks of receipt of the notice, the operator of the public childcare center or group childcare home may file a written request with the department for administrative reconsideration of the notice or any portion of the notice.

(D) The department shall grant or deny a written request within seven days of filing and shall notify the operator of the childcare center or group childcare home of the grant or denial.

(E) In the event that the operator fails to correct any deficiency within the period prescribed for correction, the department shall notify the appropriate public officials.

SECTION 63-13-650. Review meeting.

(A) An applicant or operator who has been denied approval or renewal of approval by the department must be given prompt written notice of the denial, which shall include a statement of the reasons for the denial. The notice must also inform the applicant or operator that it may, within thirty days after the receipt of the notice of denial, appeal the denial by making a written request to the director or his designee for an opportunity to show cause why its application should not be denied.

(B) Upon receiving a written petition, the director or his designee shall give the applicant or operator reasonable notice and an opportunity for a prompt, informal meeting with the director or his designee with respect to the action by the department, and an opportunity to submit written material. On the basis of the available evidence, including information obtained at the informal meeting and from the written material, the director or his designee shall decide whether the application must be granted for approval, provisional approval, or denied. The decision of the director or his designee must be in writing, must contain findings of fact and must be mailed to the parties to the proceedings by certified or registered mail. Notification of the decision must be sent to the Governor and appropriate officials of the state or local government.

ARTICLE 7.

FAMILY CHILDCARE HOMES

SECTION 63-13-810. Registration required for family childcare homes.

(A) As used in this chapter, “family childcare home” means a facility within a residence occupied by the operator in which childcare regularly is provided for no more than six children, unattended by a parent or legal guardian, including those children living in the home and the children received for childcare who are related to the resident caregiver. However, an occupied residence in which childcare is provided only for a child or children related to the resident caregiver or only for the child or children of one unrelated family, or only for a combination of these children, is not a family childcare home.

(B) An operator of a family childcare home shall register with the department within six months of June 13, 1977.

(C) A family childcare home which elects to participate in a federal program which requires licensing as a prerequisite to participation may elect to be licensed under the procedures in Section 63-13-820. A family childcare home electing licensing shall demonstrate compliance with the suggested standards developed by the department under Section 63-13-180 and shall comply with provisions of Sections 63-13-420 and 63-13-430 relating to criminal history conviction records checks upon original licensing and upon renewal. Operators and caregivers of licensed family childcare homes are held to the standards in Sections 63-13-420 and 63-13-430 regarding criminal convictions.

SECTION 63-13-820. Registration requirements.

(A) Registration must be completed on forms supplied by the department and in the manner it prescribes.

(B) Before becoming a registered operator the applicant shall:

(1) sign a statement that he has read the suggested standards developed by the department under Section 63-13-180;

(2) furnish the department with a signed statement by each consumer parent verifying that the operator has provided each consumer parent with a copy of the suggested standards for family childcare homes and the procedures for filing complaints;

(3) upon request, provide the department with any facts, conditions, or circumstances relevant to the operation of the family childcare home, including references and other information regarding the character of the family childcare home operator.

(C) A person applying to become a registered operator of a family childcare home under this section and a person fifteen years of age or older living in the family childcare home shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history. The fingerprint reviews required by this subsection are not required upon each renewal.

(D) No applicant may be registered as an operator if the person, an employee, a caregiver, or a person fifteen years of age or older living in the family childcare home has been convicted of:

(1) a crime listed in Chapter 3 of Title 16, Offenses Against the Person;

(2) a crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency;

(3) the crime of contributing to the delinquency of a minor, contained in Section 16-17-490;

(4) the felonies classified in Section 16-1-10(A);

(5) the offenses enumerated in Section 16-1-10(D); or

(6) a criminal offense similar in nature to the crimes listed in this subsection committed in other jurisdictions or under federal law.

This section does not operate to prohibit registration or renewal when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this subsection has been pardoned. However, notwithstanding the entry of a pardon, the department may consider all information available, including the person's pardoned convictions or pleas and the circumstances surrounding them, to determine whether the person is unfit or otherwise unsuited to be an operator, caregiver, employee, or to be living in the family daycare home.

(E) Application forms for registration issued under this section must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in subsection (D) who applies for registration as operator or a person who applies for registration as an operator who has a person fifteen years of age or older living in the family childcare home who has been convicted of a crime enumerated in subsection (D) is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(F) Application forms for registration issued under this chapter by the department and application forms for employment at a family childcare home must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of one of the crimes listed in this section who applies for a license as operator, applies for employment with, is employed by, seeks to provide caregiver services with, or is a caregiver at a facility is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

SECTION 63-13-830. Statement of registration.

(A) A statement of registration must be issued when the family childcare operator satisfactorily completes the procedures prescribed by this chapter. The current statement must be displayed in a prominent place in the facility at all times and the registration number must be stated in all advertisements of the family childcare home.

(B) Registration expires at the end of one year from the date of issuance of the statement of registration. Registration may be renewed according to the procedures developed by the department.

(C) A person applying for renewal of registration as an operator of a family childcare home registered under this article and a person employed or providing caregiver services at a family childcare home

registered under this article, who has not done so previously, on the first renewal after June 30, 1996, shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history.

Application forms for registration renewal issued under this section must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in Section 63-13-820(D) who applies for registration as an operator or a person who applies for registration as an operator who has a person fifteen years of age or older living in the home who has been convicted of a crime enumerated in Section 63-13-820(D) is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(D) Application forms for registration renewal issued under this chapter by the department for a family childcare home must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of one of the crimes listed in this section who applies for a license as operator, applies for employment with, is employed by, seeks to provide caregiver services with, or is a caregiver at a facility is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(E) The department may withdraw the statement of registration if one or more of the following apply:

- (1) the health and safety of the children require withdrawal;
- (2) the facility has enrolled children beyond the limits defined in this chapter;
- (3) the operator fails to comply with the registration procedures provided in this chapter.

SECTION 63-13-840. Visits to family childcare homes.

(A) The department shall visit the facility when concerns are expressed by the community regarding the health and safety of the children, child abuse, or enrollment beyond the limits set forth in this chapter.

(B) If the concern is in regard to the health and safety of the children, the department may call on other appropriate agencies (i.e., State Department of Health and Environmental Control, Office of the State Fire Marshal) as necessary to conduct an inspection.

(C) If the concern indicates that the child has been abused, the department shall carry out its responsibility as authorized under Chapter 7.

(D) If the visits and inspections verify conditions detrimental to the health and safety of the children or overenrollment, the department shall carry out its responsibility as authorized by Section 63-13-160 and Section 63-13-830(C).

SECTION 63-13-850. Appeals.

(A) A registrant whose statement of registration has been withdrawn by the department must be given written notice by certified or registered mail. The notice must contain the reasons for the proposed action and must inform the registrant of the right to appeal the decision to the director or his designee in writing within thirty calendar days after the receipt of the notice. Upon receiving a written appeal the director or his designee shall give the registrant reasonable notice and an opportunity for a prompt hearing before the director or his designee. On the basis of the evidence adduced at the hearing, the director or his designee shall make the final decision of the department as to whether the statement of registration must be withdrawn. If no written appeal is made, the statement of registration must be withdrawn as of the termination of the thirty-day period.

(B) At the hearing provided for in this section, the registrant may be represented by counsel, and has the right to call, examine, and cross-examine witnesses, and to otherwise introduce evidence. Parents appearing at the hearing may also be represented by counsel. The director is empowered to require the presence of witnesses and evidence by subpoena on behalf of the appellant or department. The final decision of the department must be in writing, must contain the department's findings of fact and rulings of law and must be mailed to the parties to the proceedings by certified or registered mail. A full and

complete record must be kept of all proceedings, and all testimony must be reported and need not be transcribed unless the decision is appealed, or a transcript is requested by an interested party. Upon an appeal, the department shall furnish to any appellate, free of charge, a certified copy of the transcript of all evidentiary proceedings before it. Other parties shall pay the cost of transcripts.

(C) The decision of the department is final unless appealed by a party pursuant to the Administrative Procedures Act.

SECTION 63-13-860. Consultation.

The department shall offer consultation through employed staff or other qualified persons to assist a potential applicant, an applicant or registered operator in meeting and maintaining the suggested standards for family childcare homes.

ARTICLE 9.

CHURCH AND RELIGIOUS CHILDCARE CENTERS AND GROUP CHILDCARE HOMES

SECTION 63-13-1010. Registration required for church and religious centers.

(A) No church congregation or established religious denomination or religious college or university which does not receive state or federal financial assistance for childcare services may operate a childcare center or group childcare home unless it complies with the requirements for registration and inspection and the regulations for health and fire safety as set forth in this chapter and Section 63-13-110 and requirements applicable to private and public childcare centers and group childcare homes for floor space, child-staff ratios, and staff training. Application for registration must be made on forms supplied by the department and in the manner it prescribes. Registration expires two years from the date of issuance of the statement of registration. Registration may be renewed according to the procedures developed by the department.

(B) Before issuing a registration, the department shall conduct an investigation of the applicant. This investigation is limited to:

- (1) the results of the criminal history review required by subsection (G);
- (2) the requirements for registration and inspection and the regulations for health and fire safety provided for in this chapter and Section 63-13-110; and
- (3) requirements applicable to private and public childcare centers and group childcare homes for floor space, child-staff ratios, and staff training.

(C) No license or registration may be issued to a church congregation, established religious denomination, or religious college or university if a person who provides service as an operator, caregiver, or employee at the childcare facility has been convicted of:

- (1) a crime listed in Chapter 3 of Title 16, Offenses Against the Person;
- (2) a crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency;
- (3) the crime of contributing to the delinquency of a minor, contained in Section 16-17-490;
- (4) the felonies classified in Section 16-1-10(A);
- (5) the offenses enumerated in Section 16-1-10(D); or
- (6) a criminal offense similar in nature to the crimes listed in this subsection committed in other jurisdictions or under federal law.

This section does not prohibit licensing, registration, or the renewal of a license or registration when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this subsection has been pardoned. However, notwithstanding the entry of a pardon, the department may consider all information available, including the person's pardoned convictions or pleas and the circumstances surrounding them, to determine whether the person is unfit or otherwise unsuited to be an operator, caregiver, or employee.

(D) Application forms for licensure or registration issued under this chapter must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in this section who applies for a license or registration as operator is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(E) A person applying for a license or registration as an operator of a church or religious childcare center shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history. The fingerprint reviews required by this subsection are not required upon each renewal.

(F) Application forms for licensure or registration issued under this chapter by the department and application forms for employment at a facility operated by a church congregation, established religious denomination, or religious college or university must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of one of the crimes listed in this section who applies for a license as operator, applies for employment with, is employed by, seeks to provide caregiver services with, or is a caregiver at a facility is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(G) A person applying for a license or registration as an operator of a church or religious childcare center or seeking employment or seeking to provide caregiver services at a church or religious childcare center shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history. The fingerprint reviews required by this subsection are not required upon each renewal unless the renewal coincides with employment of a new operator, employee, or caregiver.

(H) A person applying for renewal of a license or registration as an operator of a church or religious childcare center licensed or registered under this chapter and a person employed or registered under this chapter, who has not done so previously, on the first renewal after June 30, 1996, shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history.

SECTION 63-13-1020. Registration and inspections.

The childcare operator shall submit a formal request for inspection of the childcare facility to the department. The department shall request the appropriate state health and fire safety agencies to conduct an inspection of the facility before renewal of the registration and more often if necessary to ensure compliance with health and fire safety regulations. The department shall register the childcare facility upon notification from health and fire safety agencies that the childcare facility is in compliance with these regulations and the requirements of Section 63-13-1010.

The applicable regulations must be the same health and fire safety regulations applied to other facilities regulated under this chapter.

SECTION 63-13-1030. Statement of registration.

A statement of registration must be issued when the church or religious childcare operator or group childcare home operator satisfactorily completes the procedures prescribed by this chapter. An application for a statement of registration must include the name and address of the director, the address of the facility, and the number of children who may be served. Failure of the department to approve or deny an application within ninety days results in the granting of a provisional registration. The current statement of registration must be displayed in a prominent place in the facility at all times, and the

registration number must be stated in all advertisements of the church or religious childcare center or group childcare home.

SECTION 63-13-1040. DSS curricula restrictions.

Notwithstanding the staff training requirements of Section 63-13-1010(A) and (B)(3), the department may not prescribe the curriculum for staff training, other than curriculum addressing administration, child growth and development, and health and safety, for a church congregation, established religious denomination, or religious college or university, childcare center or group childcare home. Additionally, the department may not prescribe the content of curriculum activities for children provided by these childcare centers or group childcare homes.

SECTION 63-13-1050. Deficiency correction notices.

(A) Whenever the health or fire safety agency finds upon inspection that a childcare center or group childcare home is not complying with the applicable regulations, the appropriate agency shall notify the department. The department shall then request the operator to correct such deficiencies.

(B) Every correction notice must be in writing and must include a statement of the deficiencies found, the period within which the deficiencies must be corrected and the provision of the chapter and regulations relied upon. The period must be reasonable and, except when the appropriate agency finds an emergency dangerous to the health or safety of children, not less than thirty days from the receipt of the notices.

(C) Within two weeks of receipt of the notice, the operator of the facility may file a written request with the department for administrative reconsideration of the notice or any portion of the notice.

(D) The department shall grant or deny a written request and shall notify the operator of action taken.

(E) In the event that the operator of the facility fails to correct deficiencies within the period prescribed, the department may suspend the registration of the facility to be effective thirty days after date of notice. An appeal may be taken pursuant to the Administrative Procedures Act.

SECTION 63-13-1060. Injunctions.

The department may seek an injunction against the continuing operation of a childcare center or group childcare home in the family court having jurisdiction over the county in which the facility is located when the facility is considered to be out of compliance with the provisions of Sections 63-13-1010 and 63-13-1020.

SECTION 63-13-1070. Appeals.

(A) When the registration of a facility has been suspended, the operator must be given prompt written notice. The notice must indicate the reasons for the suspension and inform the operator of the right to appeal the decision through administrative channels to the department and according to established appeals procedure for the department.

(B) Upon appeal, the decision of the department is final unless appealed by a party pursuant to the Administrative Procedures Act.

SECTION 63-13-1080. Penalties.

An operator violating the provisions of this article is guilty of a misdemeanor and, upon conviction, must be punished by a fine not exceeding one thousand five hundred dollars or imprisonment not exceeding six months, or both.

ARTICLE 11.

STATE ADVISORY COMMITTEE

SECTION 63-13-1210. State Advisory Committee established.

(A) A State Advisory Committee on the Regulation of Childcare Facilities is established. It consists of seventeen members appointed by the Governor, in accordance with the following:

(1) Five of the members appointed must be parents of children who are receiving childcare services at the time of appointment, with no less than three representing the entrepreneurial facilities.

(2) Eight of the members appointed must be representative of owners and operators of childcare facilities, one of which must be an operator of a childcare home. No less than five other appointees must be operators of facilities subject to regulation who are actively engaged in the operation for profit.

(3) One member appointed shall represent the educational community of the State.

Nominees for membership on the advisory committee pursuant to items (1), (2), and (3) must be made from lists furnished the Governor by South Carolina organizations representing the various types of childcare facilities defined in this chapter.

(4) One member appointed shall represent the business community of the State. Nominees for membership pursuant to this item must be made from lists furnished the Governor by the South Carolina Chamber of Commerce.

(5) Two members appointed shall represent church-operated childcare centers, one of whom must be an operator of a church childcare center and one of whom must be a parent of a child who is receiving childcare services in a church-operated childcare center at the time of appointment.

(B) Members shall serve for terms of three years and until their successors are appointed and qualify, except that of those initially appointed five shall serve for one year, five for two years, and five for three years. Vacancies must be filled in the manner of the original appointment for the unexpired portion of the term only. Reappointment to serve a full term may ensue at the discretion of the Governor, however, no member may be permitted to succeed himself after serving a full term.

(C) The chairman of the committee must be designated by the Governor from among the appointees selected pursuant to the provisions of items (1) and (2) of subsection (A) of this section.

SECTION 63-13-1220. Committee duties.

The State Advisory Committee on the Regulation of Childcare Facilities shall:

(1) Review changes in the regulations and suggested standards proposed by the director or his designee and make recommendations on these changes to the director or his designee. The committee shall evaluate the regulations and suggested standards at the three-year review period (subsection (C) of Section 63-13-180) and recommend necessary changes. No regulation may be promulgated if the standard has been disapproved by a simple majority of the committee.

(2) Advise the department regarding the improvement of the regulation of childcare facilities.

(3) Advise the department on matters of regulatory policy, planning, and priorities.

(4) As it considers necessary, hold a public hearing at least thirty days before adoption of the regulations.

(5) Plan with the department for the procedures to be used in notifying licensees, approved operators, and registrants regarding regulatory changes sixty days before intended promulgation.

(6) Maintain through the department the essential liaison with other departments and agencies of state and local government so as to preclude imposition of duplicate requirements upon operators subject to regulations under this chapter.

(7) Act to move the adoption of its recommendations and other pertinent disposition of matters before it by decision of a simple majority of those members present and voting, provided there is a quorum of eight members.

SECTION 63-13-1230. Federal funding waivers.

The provisions of Sections 63-13-180 and 63-13-1220(1) concerning the review authority and the promulgation of regulations and standards upon the advice and consent of the State Advisory Committee on the Regulation of Childcare Facilities are waived. However, nothing in this section affects the regulation of childcare facilities which choose not to receive federal funding.

SECTION 63-13-1240. Advisory committee staff support.

The department shall provide reasonable secretarial and administrative support to the advisory committee.