

2007 Bill 4

Third Session, 26th Legislature, 56 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 4

CHILD CARE LICENSING ACT

THE MINISTER OF CHILDREN'S SERVICES

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 4

2007

CHILD CARE LICENSING ACT

(Assented to , 2007)

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Preamble

WHEREAS the Government of Alberta recognizes the importance of ensuring the safety, well-being and development of children receiving child care;

WHEREAS the Government of Alberta is committed to facilitating choice for families who require child care; and

WHEREAS the Government of Alberta recognizes and values the role of parents in the provision of quality child care;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) “child” means

- (i) a child under the age of 13 years, and
- (ii) a child of 13 or 14 years of age who because of a special need requires child care;
- (b) “child care” means the temporary care and supervision of a child by an individual other than the child’s parent or guardian, but does not include residential care;
- (c) “child care program” means a program with the primary purpose of providing child care to 7 or more children, but does not include the following:
 - (i) an education program provided under the *School Act*;
 - (ii) a day camp, vacation camp or other recreational program that operates for less than 12 consecutive weeks;
 - (iii) supervision of children at a recreational facility, retail centre or other commercial establishment where the parents of the children remain on the premises and are readily available;
- (d) “Court” means the Court of Queen’s Bench;
- (e) “director” means an individual designated by the Minister as the director for the purposes of this Act;
- (f) “licensed child care program” means a child care program in respect of which a licence has been issued under this Act;
- (g) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act.

Part 1 Licensed Child Care Programs

Director

2(1) The Minister may designate an employee of the Government under the administration of the Minister as the director for the purposes of this Act.

(2) The director may delegate any powers and duties of the director, including the power to form an opinion and the power to subdelegate, to any person employed or assisting in the administration of this Act.

Licence required

3 No person shall offer or provide a child care program unless the person holds a licence issued by the director authorizing that person to offer or provide the child care program.

Application for licence and renewal

4(1) An application for a licence or a renewal of a licence may be made by an adult or a corporation.

(2) A person who

- (a) has been refused a licence or a renewal of a licence under section 5(1)(b),
- (b) has been refused reinstatement of a suspended licence under section 15(5), or
- (c) has had a licence cancelled under section 16,

is ineligible, for a period of 2 years after the date of the refusal or cancellation, to apply for an initial licence.

(3) An application under this section must be made to the director in the prescribed form and must be accompanied with

- (a) the information required under the regulations, and
- (b) the application fee prescribed in the regulations.

Licence

5(1) On considering an application under section 4, the director may

- (a) issue or renew a licence, with or without conditions, or
- (b) refuse to issue or to renew a licence if the director

- (i) is not satisfied that the applicant is capable of providing a child care program in accordance with this Act or the regulations,
- (ii) is satisfied that the applicant has made a false statement in the application or in any information provided to the director in support of the application, or
- (iii) has reasonable and probable grounds to believe that any individual associated with the provision of the proposed child care program is not suitable to provide child care.

(2) The term of a licence must be set by the director, and must not be more than

- (a) one year, in the case of an initial licence, or
- (b) 3 years, in the case of the renewal of a licence.

Provisions of licence and variation

6(1) A licence issued or renewed under section 5 must indicate the following:

- (a) the name of the licence holder;
- (b) the category of child care program, in accordance with the categories established in the regulations, that may be provided under the licence;
- (c) the location of the premises where the child care program is to be provided;
- (d) the maximum number of children who may be cared for in the child care program;
- (e) the term of the licence.

(2) The director may, on the application by a licence holder in a manner satisfactory to the director, vary a provision of a licence referred to in subsection (1)(b) to (e).

Licence not transferable

7 A licence is not transferable by the licence holder to any other person.

Expiry

8 A licence expires at the end of the term of the licence unless it is renewed.

Duty to post information

9 A licence holder must post, in a clearly visible and prominent place on the premises where a licensed child care program is being provided,

- (a) the licence,
- (b) any report provided by the director under section 10(3),
- (c) any conditions imposed on the licence under section 5(1) or 13, and
- (d) any probationary licence issued under section 15.

Inspection and monitoring of licensed child care program

10(1) For the purpose of ensuring compliance with this Act and the regulations, the director may

- (a) at any reasonable hour, enter any premises where a licensed child care program is being offered or provided and inspect the premises and monitor the provision of the child care program, and
- (b) require the production of any records or other documents relevant to the operation of the child care program and remove them temporarily for the purpose of examining them and making copies.

(2) When the director removes any records or other documents pursuant to subsection (1)(b), the director must

- (a) give to the individual from whom those items were taken a receipt for those items, and
- (b) return those items to the licence holder after they have served the purpose for which they were taken.

(3) The director must, following an inspection and monitoring under subsection (1), provide the licence holder with a report of the results of the inspection and monitoring.

(4) If a person

- (a) refuses or fails to permit the director to enter any premises under subsection (1)(a), or
- (b) after permitting the director to enter the premises obstructs the director in exercising rights and performing duties under this section,

the director may apply to the Court by originating notice for an order under subsection (5).

(5) On being satisfied that an order is necessary for the purpose of ensuring compliance with this section, the Court may make an order

- (a) directing the licence holder to allow the director to enter the premises where the child care program is being offered or provided and inspect the premises and monitor the child care program,
- (b) directing the licence holder to produce to the director any records or other documents required by the director,
- (c) directing any police officer to assist the director in enforcing the order, and
- (d) addressing any other matter the Court considers appropriate.

(6) An application under subsection (4) may be made ex parte if the Court considers it appropriate.

Part 2 Enforcement Respecting Licensed Child Care Programs

Authority of director

11 Where the director is of the opinion that a licensed child care program is not being provided in accordance with this Act or the

regulations, the director may take any action authorized by this Part that the director considers appropriate.

Variation of licence provisions

12 The director may vary a provision of a licence referred to in section 6(1)(b) to (e).

Imposition of conditions on licence

13 The director may impose conditions on a licence for a specified period of time.

Order to remedy non-compliance

14 The director may, in writing, order a licence holder to take measures specified in the order within the time limits specified in the order.

Suspension of licence and issuance of probationary licence

15(1) The director may suspend a licence and issue a probationary licence.

(2) The term of a probationary licence

- (a) must not be more than 3 months, and
- (b) must not exceed the unexpired term of the suspended licence.

(3) A probationary licence must indicate, in addition to the matters referred to in section 6(1),

- (a) the non-compliance that resulted in the issuance of the probationary licence,
- (b) the measures the licence holder is required to take to remedy the non-compliance, and
- (c) the time within which the licence holder is required to remedy the non-compliance.

(4) If the director is satisfied that a licence holder to whom a probationary licence has been issued has taken the measures indicated in the probationary licence in the time specified in that licence, the director may, at any time during the term of the

probationary licence, reinstate the suspended licence for the remainder of the unexpired term of the suspended licence.

(5) If a licence holder to whom a probationary licence has been issued fails to take the measures indicated in the probationary licence within the time specified in that licence, the director may refuse to reinstate the suspended licence, and in that case both the probationary licence and the suspended licence expire at the end of the term of the probationary licence.

(6) A probationary licence may not be renewed.

Cancellation of licence

16(1) The director may cancel a licence.

(2) The cancellation of a licence takes effect

- (a) immediately on the posting of a notice of cancellation on the premises, if the director is of the opinion that the licensed child care program is being provided in a manner that presents an imminent danger to the health, safety or well-being of a child, or
- (b) 15 days after the day on which a notice of cancellation is served on the licence holder under section 17(1), in any other case.

Duty to notify licence holder

17(1) Where the director takes an action under sections 12 to 16, the director must serve on the licence holder a notice in writing

- (a) setting out the action taken by the director and the reasons for the action, and
- (b) informing the licence holder of the licence holder's right to appeal the matter to an appeal panel under section 21.

(2) Where the cancellation of a licence under section 16 takes effect immediately, the notice under subsection (1) must be served forthwith.

(3) A notice under subsection (1) may be served

- (a) by personal service,

- (b) by ordinary mail to the licence holder's last address known to the director,
- (c) by fax to the licence holder's last fax number known to the director, if there is a record of the fax,
- (d) by e-mail to the licence holder's last e-mail address known to the director, if there is a record of the e-mail, or
- (e) in any manner that may be directed by the Court.

(4) The Court may, on the application of the director, make an order directing the manner of service on a licence holder of a notice under subsection (1).

Posting of notice

18(1) The director

- (a) may post a notice of an action taken under sections 12 to 15, and
- (b) must post a notice of a cancellation under section 16,

in a clearly visible and prominent place on the premises where the licensed child care program is provided.

(2) A notice posted under subsection (1)(b) must indicate when the cancellation takes effect.

Part 3 Appeals

Appeal panel

19(1) The Minister may establish one or more appeal panels each consisting of not fewer than 3 persons appointed by the Minister.

(2) The Minister may

- (a) fix the term of office of a member of an appeal panel in accordance with the regulations,
- (b) designate the chair and vice-chair of an appeal panel,

- (c) prescribe the number of members of an appeal panel that constitutes a quorum, and
- (d) authorize and provide for the payment of the remuneration and expenses of the members of an appeal panel.

Appeal panel powers

20(1) The *Administrative Procedures and Jurisdiction Act* applies to the proceedings of an appeal panel.

(2) An appeal panel

- (a) may confirm, vary or rescind a decision of the director that is appealed under section 21, and
- (b) must notify the appellant and the director in writing of its decision.

(3) The decision of an appeal panel is final.

Appeal

21(1) A licence holder, a person who applies for a licence or the renewal of a licence or a person to whom a decision referred to in clause (j) pertains, as the case may be, may appeal any of the following decisions of the director to an appeal panel:

- (a) a decision under section 5(1)(a) to issue or renew a licence subject to conditions;
- (b) a decision under section 5(1)(b) to refuse to issue or renew a licence, except a decision to refuse to issue a licence to provide a child care program that is categorized as an innovative child care program under the regulations;
- (c) a decision under section 6(2) to refuse to vary a provision of a licence;
- (d) a decision under section 12 to vary a provision of a licence;
- (e) a decision under section 13 to impose conditions on a licence;
- (f) a decision under section 14 to issue an order;

- (g) a decision under section 15(1) to suspend a licence and issue a probationary licence;
- (h) a decision under section 15(5) to refuse to reinstate a licence that has been suspended;
- (i) a decision under section 16 to cancel a licence;
- (j) a decision prescribed in the regulations as being subject to an appeal to an appeal panel.

(2) A cancellation of a licence under section 16 remains in force pending the outcome of an appeal.

(3) An appeal must be commenced by serving a notice of appeal, in the prescribed form, on the director within 30 days after the day on which the appellant is notified of the decision that is being appealed.

(4) The director must, within 10 days after receiving a notice of appeal, deliver it to the chair of an appeal panel.

Part 4 Investigation Respecting Unlicensed Child Care Programs

Investigation of unlicensed child care program

22(1) If the director has reasonable and probable grounds to believe that a person is offering or providing a child care program without a licence, the director may, with the permission of the person in charge of the premises in which the child care program is being offered or provided,

- (a) at any reasonable hour, enter the premises for the purpose of conducting an investigation with respect to the child care program, and
- (b) examine any records or other documents relevant to the investigation.

(2) The director may apply to the Court by originating notice for an order under subsection (3) if

- (a) the person in charge of the premises

- (i) refuses to permit the director to enter the premises or to examine records or documents under subsection (1), or
- (ii) after permitting the director to enter the premises, obstructs the director in exercising rights and performing duties under this section,

or

- (b) the director is of the opinion that requesting permission to enter from the person in charge of the premises might compromise the purpose of an investigation.

(3) On being satisfied that there are reasonable and probable grounds to believe that a person is offering or providing a child care program without a licence, the Court may make an order

- (a) directing the person in charge of the premises to allow the director to enter the premises where the child care program is being offered or provided for the purpose of conducting an investigation with respect to the child care program,
- (b) directing the person in charge of the premises to produce to the director any records or other documents relevant to the investigation,
- (c) directing any police officer to assist the director in enforcing the order, and
- (d) addressing any other matter the Court considers appropriate.

(4) An application under subsection (2) may be made ex parte if the Court considers it appropriate.

Stop order

23(1) If the director is satisfied that a person is offering or providing a child care program without a licence, the director may, in writing, order that person to cease offering or providing the child care program.

(2) If the person to whom an order under subsection (1) is directed fails to comply with the order, the director may make an

application to the Court by originating notice for an order directing that person to cease offering or providing the child care program.

(3) On being satisfied that a person is offering or providing a child care program without a licence, the Court may make an order directing the person to cease offering or providing the child care program.

(4) The director must serve an order under subsection (1) or (3) by personal service on the person to whom it is directed.

(5) A person to whom an order of the Court under subsection (3) is directed may appeal that order to the Court of Appeal within 30 days after the day on which the order was served on that person.

(6) A notice of appeal under subsection (5) must be served on the director within 7 days after the filing of the notice.

Part 5 General Matters

Exemption

24 The Minister may, by order, temporarily exempt a licence holder or a category of licence holders from any requirement of this Act or the regulations if the Minister is of the opinion that

- (a) there is an exceptional and extraordinary circumstance that warrants a temporary exemption, and
- (b) it is in the public interest that a temporary exemption be granted.

Family day home program

25(1) In this section, “family day home program” means a program under which a person with whom the director has entered into an agreement under subsection (2) co-ordinates and monitors the provision of child care

- (a) in the private residence of one or more child care providers, and
- (b) to not more than 6 children in each private residence referred to in clause (a).

(2) The director may enter into an agreement with any person respecting the administration of a family day home program by that person.

Offence

26 Any person who

- (a) offers or provides a child care program without a licence, or
- (b) obstructs or interferes with, or attempts to obstruct or interfere with, the director, the director's delegate, a police officer or any other duly authorized person exercising any power or performing any duty under this Act

is guilty of an offence and liable to a fine of not more than \$10 000 or to imprisonment for a period of not more than 12 months or to both a fine and imprisonment.

Regulations

27(1) The Minister may make regulations

- (a) prescribing forms required under this Act;
- (b) respecting the information that must accompany an application under section 4;
- (c) respecting fees payable with an application under section 4;
- (d) respecting the application process;
- (e) establishing categories of child care programs;
- (f) respecting the standards that must be maintained by licence holders for each category of child care program;
- (g) respecting levels of child care worker certification and the certification of individuals as child care workers by the director;
- (h) respecting the term of office of persons appointed as members of an appeal panel and the reappointment of members;

- (i) prescribing matters in respect of which a decision of the director may be appealed to an appeal panel;
- (j) respecting exemptions from the need to comply with one or more requirements of the regulations.

(2) A regulation under subsection (1) may adopt or incorporate, in whole or in part or with modifications, standards, codes or other bodies of rules, as they read at a particular time or as amended from time to time, that relate to any matter in respect of which a regulation may be made under subsection (1) if the standards, codes or other bodies of rules have been published and copies are available.

Transitional

28(1) A licence issued under the *Social Care Facilities Licensing Act* with respect to a day care facility that is in existence immediately before the coming into force of this Act is deemed to be a licence issued under this Act until

- (a) the term of the licence expires, or
- (b) the licence is cancelled by the director under section 16.

(2) An appeal before an appeal board under the *Social Care Facilities Licensing Act* that commenced before the coming into force of this Act is to be concluded under the *Social Care Facilities Licensing Act* as if this Act had not come into force.

Consequential amendments

29(1) The *Public Health Act* is amended

(a) in section 1

- (i) **in clause (x) by adding** “the premises where a child care program that is licensed under the *Child Care Licensing Act* is offered or provided” **after** “*Nursing Homes Act*,”;
- (ii) **in clause (mm) by repealing subclause (iii) and substituting the following:**
 - (iii) the premises where a child care program that is licensed under the *Child Care Licensing Act* is offered or provided;

Explanatory Notes

29(1) Amends chapter P-37 of the Revised Statutes of Alberta 2000. Sections 1(x) and (mm) and 66(1)(i) presently read:

(x) *“institution” means a correctional institution as defined in the Corrections Act, a facility as defined in the Mental Health Act, a nursing home within the meaning of the Nursing Homes Act, and a social care facility as defined in the Social Care Facilities Licensing Act;*

(mm) *“school” means*

(i) *a school operating under the School Act,*

(ii) *a place where an early childhood services program is offered or provided, and*

- (b) in section 66(1)(i) by striking out “a day care facility within the meaning of the *Social Care Facilities Licensing Act*” and substituting “a child care program that is licensed under the *Child Care Licensing Act*”.

(2) The *Social Care Facilities Licensing Act* is amended

- (a) in section 1 by repealing clauses (a), (b), (g) and (h)(ii), (iii) and (iv);

- (b) in section 2 by striking out “or” at the end of clause (c), adding “or” at the end of clause (d) and adding the following after clause (d):

- (e) the premises where a child care program that is licensed under the *Child Care Licensing Act* is offered or provided.

- (c) in section 4

- (i) in subsection (1) by striking out “subsections (2) and (3)” and substituting “subsection (3)”;

- (ii) by repealing subsection (2);

- (d) by repealing section 5;

- (e) in section 7

- (i) in subsection (1) by striking out “Subject to subsection (2), for” and substituting “For”;

- (ii) by repealing subsection (2);

- (iii) in subsection (5) by striking out “or a person interferes with a director performing the director’s duties in respect of a day care centre”;

- (f) by repealing section 12(i).

(3) The *Social Care Facilities Review Committee Act* is amended by repealing section 1(b)(ii) and substituting the following:

- (ii) the premises where a child care program that is licensed under the *Child Care Licensing Act* is offered or provided;

(iii) *a day care facility licensed under the Social Care Facilities Licensing Act;*

66(1) *The Lieutenant Governor in Council may make regulations*

(i) *respecting the immunization of children attending or wishing to attend a day care facility within the meaning of the Social Care Facilities Licensing Act;*

(2) Amends chapter S-10 of the Revised Statutes of Alberta 2000. As this Act will now govern only adult facilities, these changes are needed to remove references to children's facilities.

(3) Amends chapter S-11 of the Revised Statutes of Alberta 2000. Section 1(b)(ii) presently reads:

(b) *“facility” means*

(ii) *a day care facility as defined in the Social Care Facilities Licensing Act;*

Coming into force

30 This Act comes into force on Proclamation.

30 Coming into force.

RECORD OF DEBATE

Stage	Date	Member	From	To
		Questions and Comments	From	To
Stage	Date	Member	From	To
		Questions and Comments	From	To
Stage	Date	Member	From	To
		Questions and Comments	From	To
Stage	Date	Member	From	To
		Questions and Comments	From	To