

SECOND REGULAR SESSION

HOUSE BILL NO. 2840

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KELLY (141).

5662H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 191.776 and 210.221, RSMo, and to enact in lieu thereof two new sections relating to child care facilities, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 191.776 and 210.221, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 191.776 and 210.221, to read as follows:

191.776. No person shall smoke or otherwise use tobacco **or marijuana** products in
2 any area of a child care facility licensed by the department of ~~[health and senior services]~~
3 **elementary and secondary education** pursuant to the provisions of sections 210.201 to
4 210.245 during the period of time when the children cared for under that license are present.
5 Any person who violates the provisions of this section **relating to tobacco or tobacco**
6 **products** shall be guilty of an infraction. **Any person who knowingly violates the**
7 **provisions of this section relating to marijuana or marijuana products shall be guilty of**
8 **a class B misdemeanor.**

210.221. 1. The department of elementary and secondary education shall have the
2 following powers and duties:

3 (1) After inspection, to grant licenses to persons to operate child-care facilities if
4 satisfied as to the good character and intent of the applicant and that such applicant is
5 qualified and equipped to render care or service conducive to the welfare of children. Each
6 license shall specify **its effective date and whether it is temporary**, the kind of child-care
7 services the licensee is authorized to perform, the number of children that can be received or
8 maintained, and their ages;

EXPLANATION — Matter enclosed in bold-faced brackets ~~[thus]~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

9 (2) To inspect the conditions of the homes and other places in which the applicant
10 operates a child-care facility, inspect their books and records, premises and children being
11 served, examine their officers and agents, deny, suspend, place on probation or revoke the
12 license of such persons as fail to obey the provisions of sections 210.201 to 210.245 or the
13 rules and regulations made by the department of elementary and secondary education. The
14 commissioner also may revoke or suspend a license when the licensee surrenders the license;

15 (3) To promulgate and issue rules and regulations the department deems necessary or
16 proper in order to establish standards of service and care to be rendered by such licensees to
17 children. No rule or regulation promulgated by the department shall in any manner restrict or
18 interfere with any religious instruction, philosophies or ministries provided by the facility and
19 shall not apply to facilities operated by religious organizations which are not required to be
20 licensed;

21 (4) To approve training concerning the safe sleep recommendations of the American
22 Academy of Pediatrics in accordance with section 210.223; ~~and~~

23 (5) To determine what records shall be kept by such persons and the form thereof, and
24 the methods to be used in keeping such records, and to require reports to be made to the
25 department at regular intervals; **and**

26 **(6) To grant a temporary child care license to a child care provider, upon**
27 **submittal of a complete license application to the department of elementary and**
28 **secondary education, to expand an existing site or to add a new location, provided that**
29 **the child care provider also submits an approved fire safety and sanitation inspection**
30 **approved for the site being expanded or added.**

31 2. Any child-care facility may request a variance from a rule or regulation
32 promulgated pursuant to this section. The request for a variance shall be made in writing to
33 the department of elementary and secondary education and shall include the reasons the
34 facility is requesting the variance. The department shall approve any variance request that
35 does not endanger the health or safety of the children served by the facility. The burden of
36 proof at any appeal of a disapproval of a variance application shall be with the department of
37 elementary and secondary education. Local inspectors may grant a variance, subject to
38 approval by the department of elementary and secondary education.

39 3. The department shall deny, suspend, place on probation or revoke a license if it
40 receives official written notice that the local governing body has found that license is
41 prohibited by any local law related to the health and safety of children. The department may
42 deny an application for a license if the department determines that a home or other place in
43 which an applicant would operate a child-care facility is located within one thousand feet of
44 any location where a person required to register under sections 589.400 to 589.425 either
45 resides, as that term is defined in subsection 3 of section 566.147, or regularly receives

46 treatment or services, excluding any treatment or services delivered in a hospital, as that term
47 is defined in section 197.020, or in facilities owned or operated by a hospital system. The
48 department may, after inspection, find the licensure, denial of licensure, suspension or
49 revocation to be in the best interest of the state.

50 4. Any rule or portion of a rule, as that term is defined in section 536.010, that is
51 created under the authority delegated in sections 210.201 to 210.245 shall become effective
52 only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable,
53 section 536.028. All rulemaking authority delegated prior to August 28, 1999, is of no force
54 and effect and repealed. Nothing in this section shall be interpreted to repeal or affect the
55 validity of any rule filed or adopted prior to August 28, 1999, if it fully complied with all
56 applicable provisions of law. This section and chapter 536 are nonseverable and if any of the
57 powers vested with the general assembly pursuant to chapter 536 to review, to delay the
58 effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then
59 the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999,
60 shall be invalid and void.

✓