



Sub. H.B. 111*

124th General Assembly

(As Reported by S. Judiciary on Criminal Justice)

Reps. Jerse, Salerno, D. Miller, DePiero, Ford, Patton, Distel, S. Smith, Hartnett, Allen, Flannery, Kearns, Krupinski, Redfern, Callender, Britton, Boccieri, Barrett, Latell, Sullivan, Womer Benjamin, Sulzer, Seitz, Sykes, Perry, Driehaus, Wilson, Raga, Sferra, Carano, R. Miller, Grendell, Kilbane, Roman, Hollister, Brown, Niehaus, Metzger, Carey, Hoops, Flowers, Olman, Ogg, Hughes, G. Smith, Widowfield, Trakas, Schmidt, Carmichael, Fedor, Woodard, Key, DeBose, Strahorn, Husted, Mason, Stapleton, Beatty, Collier, Latta, Jolivette, Cirelli, Rhine, Otterman, Lendrum, Reidelbach, Schneider, Clancy, Cates, Willamowski

BILL SUMMARY

- Prohibits a child day-care provider from knowingly misrepresenting to specified persons any factor or condition that relates to the provision of child day-care and that substantially affects the health or safety of a child or children in that provider's facility or receiving child day-care from that provider.
- Prohibits the owner, provider, or administrator of a child day-care facility and the director of a preschool program or school child program knowing that the particular event has occurred, from accepting a child into the facility or program without first disclosing to the parent, guardian, custodian, or other person responsible for the care of the child any of the following that has occurred: (1) a child died while under the care of the facility or program or while receiving care from the owner, provider, administrator, or director or died as a result of injuries suffered while under the care of the facility or program or while receiving care from the owner, provider, administrator, or director, or (2) within the preceding ten years, a child suffered injuries while under the care of the facility or

* *This analysis was prepared before the report of the Senate Judiciary on Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

program or while receiving care from the owner, provider, administrator, or director, and those injuries led to the child being hospitalized for more than 24 hours.

- Prohibits the owner, provider, or administrator of a child day-care facility and the director of a preschool program or school child program from failing to provide any of the following notices: (1) if a child under the care of the facility or program or receiving child day-care from the owner, provider, administrator, or director dies while under the care of the facility or program or while receiving that care from the owner, provider, administrator, or director or dies as a result of injuries suffered while under the care of the facility or program or while receiving that care from the owner, provider, administrator, or director, notices about the death to the parents, guardians, custodians, or other persons responsible for the care of each child currently receiving child day-care at the facility or program or from the owner, provider, or administrator and to specified peace officers and other local government entities, or (2) if a child under the care of the facility or program or receiving child day-care from the owner, provider, administrator, or director is hospitalized for more than 24 hours as a result of injuries suffered while under the care of the facility or program or while receiving that care from the owner, provider, administrator, or director, notices about the injuries to the parents, guardians, custodians, or other persons responsible for the care of each child currently receiving child day-care at the facility or program or from the owner, provider, or administrator.
- Specifies that the prohibitions described in the second and third dot points do not require more than one person to give notices to the same parent, guardian, custodian, other person responsible for the care of the child, specified peace officers, or other specified local government entities regarding any single injury or death for which disclosure is required under the prohibitions.
- Provides that the prohibitions described in the second and third dot points apply to the owner, provider, or administrator of a child day-care center or type A family day-care home that provides child day-care at five or more separate premises, and to the director of a preschool program or school child program that provides child day-care at five or more separate premises, only as follows: (1) the prohibition in the second dot point applies only to the extent that the injury or death in question occurred at the same premises at which the child who is being accepted

into the center, home, or program for the provision of child day-care will be provided the care, but does not apply if the child who is being accepted will be provided the care at a premises other than the premises at which the injury or death in question occurred, and (2) the prohibition in the third dot point applies regarding notice to a parent, guardian, or custodian of a currently-enrolled child only to the extent that the injury or death in question occurs at the same premises at which the child of the parent, guardian, custodian, or other person is receiving child day-care, but does not apply if the child of the parent, guardian, custodian, or other person is receiving care at a premises other than the premises at which the injury or death in question occurred (this prohibition always applies regarding notice to the specified peace officers and other local government entities).

- Provides a "child day-care disclosure form" and specifies that: (1) if a person completely and accurately completes the form and presents it either to a parent, guardian, custodian, or other person responsible for the care of a child in the provider's facility or receiving child day-care from the provider or to a parent, guardian, custodian, or other person responsible for the care of a child who is considering using the provider for the child, to the extent the information on the form is accurate, the person who presents it is not subject to prosecution under the bill's prohibition described in the first dot point regarding the presentation of that information to that person, (2) a person required to make a disclosure of the type described in the second dot point may comply with that requirement by providing a copy of the completed form to the parent, guardian, custodian, or other person responsible for the care of a child and to whom disclosure is to be made under that provision, (3) the use of the form is discretionary, and is not required to comply with any requirement contained in the bill, and (4) if a person uses the form, leaving a portion of it blank does not constitute a misrepresentation under the prohibition described in the first dot point but may constitute a violation of the prohibition described in the second dot point.
- Authorizes the owner, provider, or administrator of a child day-care facility or the director of a preschool program or school child program who completes the child day-care disclosure form and provides a copy of the form to the specified persons to retain a copy of the completed form and to require that the person receiving the form acknowledge that receipt on the copy retained by the owner, provider, administrator, or director.

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CONTENT AND OPERATION

Misrepresentation by a child day-care provider

The bill prohibits a "child day-care provider" from knowingly misrepresenting any factor or condition that relates to the provision of "child day-care" and that substantially affects the health or safety of any child or children in that provider's facility or receiving child day-care from that provider to any of the following (see "Definitions," below, regarding the terms in quotation marks):

- (1) A parent, guardian, custodian, or other person responsible for the care of a child in the provider's facility or receiving child day-care from the provider;
- (2) A parent, guardian, custodian, or other person responsible for the care of a child considering the provider as a child day-care provider for the child;
- (3) A public official responsible for issuing the provider a license or certificate to provide child day-care;

(4) A public official investigating or inquiring about the provision of child day-care by the provider;

(5) A "peace officer" (see "Definitions," below).

The bill specifies that, for purposes of this prohibition, "any factor or condition that relates to the provision of child day-care" includes, but is not limited to, the following:

(1) The person or persons who will provide child day-care to the child of the parent, guardian, custodian, or other person responsible for the care of the child, or to the children in general;

(2) The qualifications to provide child day-care of the child day-care provider, of a person employed by the provider, or of a person who provides child day-care as a volunteer;

(3) The number of children to whom child day-care is provided at one time or the number of children receiving child day-care in a child day-care facility or school at one time;

(4) The conditions or safety features of the day-care facility or school;

(5) The area of the child day-care facility or school in which child day-care is provided.

A person who violates this prohibition is guilty of "misrepresentation by a child day-care provider," a misdemeanor of the first degree. (R.C. 2919.224.)

Failure to disclose the death or serious injury of a child

The bill enacts two separate provisions that prohibit an owner, provider, or administrator of a child day-care facility or the director of a preschool program or school child program from failing to disclose to specified persons in specified circumstances a death or serious injury suffered by a child in the facility or program or under the care of the owner, provider, administrator, or director.

Notice to prospective users of a facility or program

Subject to the exception described below in "Exception to the prohibition," the bill prohibits the owner, provider, or administrator of a "child day-care facility" and the director of a "preschool program" or "school child program" (see "Definitions," below, regarding the terms in quotation marks), knowing that the event described below in (1) or (2) has occurred, from accepting a child into that facility or program without first disclosing to the parent, guardian, custodian, or

other person responsible for the care of that child any of the following that has occurred:

(1) A child died while under the care of the facility or program or while receiving child day-care from the owner, provider, administrator, or director, or died as a result of injuries suffered while under the care of the facility or program or while receiving child day-care from the owner, provider, administrator, or director.

(2) Within the preceding ten years, a child suffered injuries while under the care of the facility or program or while receiving child day-care from the owner, provider, administrator, or director and those injuries led to the child being hospitalized for more than 24 hours.

The bill states that this prohibition does not require more than one person to make disclosures to the same parent, guardian, custodian, or other person responsible for the care of a child regarding any single injury or death for which disclosure is required under the prohibition. (R.C. 2919.225(A) and (C)(1).)

Notice to users of a facility or program at the time of the death or serious injury of a child, peace officers, and to government officials

Prohibition. Subject to the exception described below in "**Exception to the prohibitions**," the bill prohibits the owner, provider, or administrator of a child day-care facility and the director of a preschool program or school child program from failing to provide notice in accordance with the provisions described below in "**Manner of giving the notice**" to the persons and entities specified below in "**Persons to be given the notice**," of any of the following that occurs (R.C. 2919.225(B)(1)):

(1) A child who is under the care of the facility or program or is receiving child day-care from the owner, provider, administrator, or director dies while under the care of the facility or program or while receiving child day-care from the owner, provider, administrator, or director or dies as a result of injuries suffered while under the care of the facility or program or while receiving child day-care from the owner, provider, administrator, or director;

(2) A child who is under the care of the facility or program or is receiving child day-care from the owner, provider, administrator, or director is hospitalized for more than 24 hours as a result of injuries suffered while under the care of the facility or program or while receiving child day-care from the owner, provider, administrator, or director.

The bill states that this prohibition does not require more than one person to give notices to the same parent, guardian, custodian, other person responsible for

the care of the child, public children services agency, peace officer, or child fatality review board regarding any single injury or death for which disclosure is required as described above under the prohibition (R.C. 2919.225(C)(1)).

Persons to be given the notice. The bill provides that an owner, provider, or administrator of a facility or a director of a program must provide the notices required under the provisions described above under "**Prohibition**" to each of the following (R.C. 2919.225(B)(2)):

(1) For each child who, at the time of the injury or death for which the notice is required, is receiving or is enrolled to receive child day-care at the facility or program or from the owner, provider, administrator, or director, to the parent, guardian, custodian, or other person responsible for the care of the child;

(2) If the notice is required as the result of the death of a child as described above in (1) under "**Prohibition**," to the public children services agency of the county in which the facility or program is located or the child day-care was given, a municipal or county peace officer in the county in which the child resides or in which the facility or program is located or the child day-care was given, and the child fatality review board appointed under existing R.C. 307.621 (not in the bill) that serves the county in which the facility or program is located or the child day-care was given.

Manner of giving the notice. The bill specifies that an owner, provider, or administrator of a facility or a director of a program must provide the notices required under the provisions described above in "**Prohibition**" and "**Persons to be given the notice**" not later than 48 hours after the child dies or, regarding a child who is hospitalized for more than 24 hours as a result of injuries suffered while under the care of the facility or program, not later than 48 hours after the child suffers the injuries. If a child is hospitalized for more than 24 hours as a result of injuries suffered while under the care of the facility or program, and the child subsequently dies as a result of those injuries, the owner, provider, administrator, or director must provide separate notices as described above under "**Prohibition**" and "**Persons to be given the notice**" regarding both the injuries and the death. All notices provided under those provisions must state that the death or injury occurred and identify the cause of, and circumstances surrounding, the death or injuries. (R.C. 2919.225(B)(3).)

Exception to the prohibitions

The bill provides that the prohibitions described above in "**Notice to prospective users of a facility or program**" and "**Notice to users of a facility or program at the time of the death or serious injury of a child, peace officers, and**

to government officials" apply to the owner, provider, or administrator of a child day-care center or type A family day-care home *that provides child day-care at five or more separate premises*, and to the director of a preschool program or school child program *that provides child day-care at five or more separate premises*, only as follows (R.C. 2919.225(C)(2)):

(1) The prohibition described above in **'Notice to prospective users of a facility or program'** applies to the owner, provider, administrator, or director only to the extent that the injury or death in question that is the basis of the notification *occurred at the same premises at which the child who is being accepted into the center, home, or program for the provision of child day-care will be provided the child day-care*. That prohibition does not apply to the owner, provider, administrator, or director if the child who is being accepted into the center, home, or program for the provision of child day-care *will be provided the child day-care at a premises other than the premises at which the injury or death in question that is the basis of the notification occurred*.

(2) The prohibition described above in **'Notice to users of a facility or program at the time of the death or serious injury of a child, peace officers, and to government officials'** applies to the owner, provider, administrator, or director, regarding notice to a parent, guardian, or custodian of a currently-enrolled child only to the extent that the injury or death in question that is the basis of the notification *occurs at the same premises at which the child of the parent, guardian, custodian, or other person is receiving or is enrolled to receive child day-care*. The prohibition does not apply to the owner, provider, administrator, or director, regarding notice to a parent, guardian, or custodian of a currently-enrolled child, if the child of the parent, guardian, custodian, or other person *is receiving or is enrolled to receive child day-care at a premises other than the premises at which the injury or death in question that is the basis of the notification occurred*. The prohibition applies to the owner, provider, administrator, or director, regarding notice to the specified public children services agencies, municipal or county peace officers, and child fatality review boards *in every case in which an injury or death that satisfies the specified criteria occurred*.

Penalty

A person who violates either of the prohibitions described above in **'Notice to prospective users of a facility or program'** and **'Notice to users of a facility or program at the time of the death or serious injury of a child, peace officers, and to government officials'** is guilty of "failure to disclose the death or serious injury of a child," a misdemeanor of the fourth degree (R.C. 2919.225(D)).

Child day-care disclosure form

The bill provides that, if a person completely and accurately completes a child day-care disclosure form that is in substantially the form set forth in the **COMMENT** and presents the form either to a parent, guardian, custodian, or other person responsible for the care of a child who is in the provider's facility or receiving child day-care from the provider or to a parent, guardian, custodian, or other person responsible for the care of a child who is considering the provider as a child day-care provider for the child, to the extent that the information set forth on the form is accurate, the person who presents the form is not subject to prosecution under the bill's prohibition described above in "Misrepresentation by a child day-care provider" regarding the presentation of that information to that person. Also, a person required to make a disclosure of the type described above in "Notice to prospective users of a facility or program" under "Failure to disclose the death or serious injury of a child" may comply with those provisions by completely and accurately completing a child day-care disclosure form that is in substantially the form described in the **COMMENT** and providing a copy of the completed form to the parent, guardian, custodian, or other person responsible for the care of a child and to whom disclosure is to be made under that provision. The use of the form set forth in the **COMMENT** is discretionary, and is not required to comply with any disclosure requirement contained in the bill that is described above in "Failure to disclose the death or serious injury of a child" or for any purpose related to the provision described above in "Misrepresentation by a child day-care provider."

If a person completely and accurately completes a disclosure form that is substantially similar to the form described in the **COMMENT** and presents the form either to a parent, guardian, custodian, or other person responsible for the care of a child who is in the provider's facility or receiving child day-care from the provider or to a parent, guardian, custodian, or other person responsible for the care of a child who is considering the provider as a child day-care provider for the child, to the extent that the information set forth on the form is accurate, the form is sufficient for the purposes described in the preceding paragraph. A person who completely and accurately completes such a disclosure form and who provides a copy of the completed form to the parent, guardian, custodian, or other person responsible for the care of a child and to whom disclosure is to be made as described above in "Notice to prospective users of a facility or program" under "Failure to disclose the death or serious injury of a child" complies with the requirements under that provision. The bill specifies that, if a person uses the disclosure form, leaving a portion of the disclosure form blank does not constitute a misrepresentation for the purposes of the offense of "misrepresentation by a child day-care provider" but may constitute the offense of "failure to disclose the death or serious injury of a child." The owner, provider, or administrator of a

child day-care facility or the director of a preschool program or school child program who completes the disclosure form and provides a copy of the form to the persons described in those provisions may retain a copy of the completed form and require the person receiving the form to acknowledge that receipt on the copy retained by the owner, provider, administrator, or director. (R.C. 2919.226(A) and (C).)

Definitions

As used in the bill:

Child day-care provider

"Child day-care provider" means any of the following (R.C. 2919.223(C)):

- (1) An owner, provider, administrator, or employee of, or volunteer at, a child day-care facility;
- (2) An in-home aide;
- (3) A director or employee of, or volunteer at, a preschool program or school child program;
- (4) A person who represents that the person provides child day-care.

Child day-care

"Child day-care" means administering to the needs of infants, toddlers, preschool children, and school children outside of school hours by persons other than their parents or guardians, custodians, or relatives by blood, marriage, or adoption for any part of the 24-hour day in a place or residence other than a child's own home (R.C. 2919.223(A) by reference to R.C. 5104.01(K)--not in the bill).

Child day-care facility

"Child day-care facility" means a child day-care center, a type A family day-care home, a type B family day-care home, or a type C family day-care home (R.C. 2919.223(B)).

Child day-care center

"Child day-care center" means any place in which child day-care or publicly funded child day-care is provided for 13 or more children at one time or any place that is not the permanent residence of the licensee or administrator in which child day-care or publicly funded child day-care is provided for 7 to 12

children at one time. (R.C. 2919.223(A) by reference to R.C. 5104.01(L)--not in the bill.) "Child day-care center" does not include any of the following:

(1) A place located in and operated by a hospital in which the needs of children are administered to, if all the children whose needs are being administered to are monitored under the on-site supervision of a licensed physician or a licensed registered nurse, and the services are provided only for children who, in the opinion of the child's parent, guardian, or custodian, are exhibiting symptoms of a communicable disease or other illness or are injured;

(2) A child day camp;

(3) A place that provides child day-care, but not publicly funded child day-care, if all of the following apply: (a) an organized religious body provides the child day-care, (b) a parent, custodian, or guardian of at least one child receiving child day-care is on the premises and readily accessible at all times, (c) the child day-care is not provided for more than 30 days a year, and (d) the child day-care is provided only for preschool and school children.

In-home aide

"In-home aide" means a person certified by a county director of job and family services to provide publicly funded child day-care to a child in a child's own home pursuant to the Child Day Care Law and any rules adopted under it (R.C. 2919.223(A), by reference to R.C. 5104.01(X)--not in the bill).

Peace officer

"Peace officer" generally includes a sheriff; deputy sheriff; marshal; deputy marshal; member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract; member of a police force employed by a metropolitan housing authority; member of a police force employed by a regional transit authority; state university law enforcement officer; designated enforcement agent of the Department of Public Safety; employee of the Department of Natural Resources who is designated a natural resources law enforcement staff officer, a designated forest officer, a designated preserve officer, a designated wildlife officer, a designated park officer, or a designated state watercraft officer; a designated park district employee; a designated conservancy district employee; Ohio veterans' home police officer; special police officer employed by a port authority; police constable of any township; police officer of a township or joint township police district; the House Sergeant at Arms if the House Sergeant at Arms has arrest authority; and an assistant House Sergeant at Arms; and, for specified purpose the Superintendent

and troopers of the State Highway Patrol (R.C. 2919.223(D) by reference to R.C. 2935.01(B)--not in the bill).

Preschool program

"Preschool program" means either of the following (R.C. 2919.223(E), by reference to R.C. 3301.52(A)--not in the bill):

(1) A child day-care program for preschool children that is operated by a school district board of education, an eligible nonpublic school, a head start grantee, or a head start delegate agency.

(2) A child day-care program for preschool children age three or older that is operated by a county MR/DD board.

School child program

"School child program" means a child day-care program for only school children that is operated by a school district board of education, county MR/DD board, or eligible nonpublic school (R.C. 2919.223(E), by reference to R.C. 3301.52(J)--not in the bill).

Type A family day-care home

"Type A family day-care home" means a permanent residence of the administrator in which child day-care or publicly funded child day-care is provided for 7 to 12 children at one time or a permanent residence of the administrator in which child day-care is provided for 4 to 12 children at one time if four or more children at one time are under two years of age. "Type A family day-care home" does not include a residence in which the needs of children are administered to, if all of the children whose needs are being administered to are siblings of the same immediate family and the residence is the home of the siblings. "Type A family day-care home" does not include any child day camp. (R.C. 2919.223(A), by reference to R.C. 5104.01(QQ)--not in the bill.)

Type B family day-care home

"Type B family day-care home" means a permanent residence of the provider in which child day-care is provided for one to six children at one time and in which no more than three children are under two years of age at one time. "Type B family day-care home" does not include a residence in which the needs of children are administered to, if all of the children whose needs are being administered to are siblings of the same immediate family and the residence is the home of the siblings. "Type B family day-care home" does not include any child day camp. (R.C. 2919.223(A), by reference to R.C. 5104.01(RR)--not in the bill.)

Type C family day-care home

"Type C family day-care home" means a family day-care home authorized to provide child day-care by Sub. H.B. 62 of the 121st General Assembly, as amended by Am. Sub. S.B. 160 of the 121st General Assembly and Sub. H.B. 407 of the 123rd General Assembly (R.C. 2919.223(F)).

Sub. H.B. 62 of the 121st General Assembly required the Ohio Department of Human Services to establish a pilot project under which a person providing child day-care in Paulding County to one to nine children at one time may obtain certification as a type C family day-care home and be exempt from type A home licensing requirements. Am. Sub. S.B. 160 of the 121st General Assembly lengthened the pilot project and expanded it to six additional counties in Northwest Ohio: Defiance, Fulton, Henry, Putnam, Van Wert, and Williams. Sub. H.B. 407 of the 123rd General Assembly lengthened the pilot program again; it currently is to terminate March 28, 2003.

COMMENT

The bill specifies that, to be sufficient for the purposes describe in the bill, a child day-care disclosure form must be in substantially the following form (R.C. 2919.226(B)):

CHILD DAY-CARE DISCLOSURE FORM

Please Note: This form contains information that is accurate only at the time the form is given to you. The information provided in this form is likely to change over time. It is the duty of the person responsible for the care of the child to monitor the status of child day-care services to ensure that those services remain satisfactory. If a question on this form is left unanswered, the child day-care provider makes no assertion regarding the question. Choosing appropriate child day-care for a child is a serious responsibility, and the person responsible for the care of the child is encouraged to make all appropriate inquiries. Also, in acknowledging receipt of this form, the person responsible for the care of the child acknowledges that in selecting the child day-care provider the person is not relying on any representations other than those provided in this form unless the child day-care provider has acknowledged the other representations in writing.



1. What are the names and qualifications to provide child day-care of: (a) the child day-care provider, (b) the employee who will provide child day-care to the applicant child, (c) the volunteer who will provide child day-care to the applicant child, and (d) any other employees or volunteers of the child day-care provider? (Attach additional sheets if necessary.):

2. What is the maximum number of children to whom you provide child day-care at one time? (If children are divided into groups or classes, please describe the maximum number of children in each group or class and indicate the group or class in which the applicant child will be placed.):

3. Where in the center, home, school, program, or other premises will you provide child day-care to the applicant child?:

4. Has a child died while in the care of, or receiving child day-care from, the child day-care provider (see paragraph (7), below, regarding the information provided in response to this question)? (Yes/No)

Description/explanation (attach additional sheets if necessary)

5. Has a child died as a result of injuries suffered while under the care of, or receiving child day-care from, the child day-care provider (see paragraph (7), below, regarding the information provided in response to this question)? (Yes/No)

Description/explanation (attach additional sheets if necessary)



6. Within the preceding ten years, has a child suffered injuries while under the care of, or receiving child day-care from, the child day-care provider that led to the child being hospitalized for more than 24 hours (see paragraph (7), below, regarding the information provided in response to this question)? (Yes/No)

Description/explanation (attach additional sheets if necessary)

7. It is important to note that if the information on this form is being provided by a child day-care center, type A family day-care home, preschool program, or school child program that provides child day-care at five or more separate premises, the information set forth in response to questions (4), (5), and (6) on this form pertains only to the same premises at which the applicant child will be provided the child day-care.

Signature of person completing form

Date

Name of person completing form
(Typed or printed)

Title of person completing form
(Typed or printed)

Acknowledgement:

I hereby acknowledge that I have been given a copy of the preceding document and have read and understood its contents. I further acknowledge that I am not relying on any other representations in selecting the child day-care provider unless the child day-care provider has acknowledged the other representations in writing.

Person receiving the form

Date



HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-20-01	p. 165
Reported, H. Criminal Justice	05-09-02	pp. 1733-1734
Passed House (96-0)	05-15-02	pp. 1766-1767
Reported, S. Judiciary on Criminal Justice	---	---

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