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*Bill Analysis*  
*Legislative Service Commission*

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125th General Assembly  
(As Reported by S. Judiciary)

**Sens. Austria, Stivers, Goodman, Randy Gardner, Armbruster, Jacobson**

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**BILL SUMMARY**

- As used in R.C. Chapter 5104., replaces the term "child day-care" with the term "child care" and replaces the term "publicly funded child day-care" with the term "publicly funded child care," but does not change the substance of the definition, and generally makes the new terms applicable throughout the Revised Code in provisions that currently refer to child day-care or publicly funded child day-care.
- Modifies provisions regarding the inspection by the Department of Job and Family Services (ODJFS) of child day-care centers and type A family day-care homes when ODJFS receives a complaint that they are operating without a license and regarding the seeking of injunctions against the operation of an unlicensed center or home.
- Prohibits ODJFS's Director from issuing or renewing a license under R.C. 5104.03 for a type A family day-care home or child day-care center if the Director, based on documentation provided by the appropriate county department of job and family services (county DJFS), determines that the applicant previously had been certified as a type B family day-care home, that the county DJFS revoked that certification, that the revocation was based on the applicant's refusal or inability to comply with the criteria for certification, and that the refusal or inability resulted in a risk to the health or safety of children.
- Renames the Day-care Advisory Council as the Child Care Advisory Council, and modifies its membership and functions.

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

- Modifies the penalty for a violation of the prohibition against operating, establishing, managing, conducting, or maintaining a child day-care center or type A family day-care home without a license, so that: (1) a person who violates the prohibition must be fined, for each offense, not less than \$100 nor more than \$500 multiplied by the number of children receiving child care at the center or type A home that exceeds either the number of children to which a type B family day-care home may provide child care or, if the offender is a licensed type A home that is operating as a center without being licensed as a center, exceeds the license capacity of the type A home, and (2) in addition to the fine: (a) except as described below, the court must order the offender to reduce the number of children to which it provides child care to a number that does not exceed the number of children to which a type B home may provide child care or, if the offender is a licensed type A home operating as a center without being licensed as a center, the license capacity of the type A home, (b) if the offender previously has been convicted of one violation of the prohibition, the court must order the offender to cease the provision of child care to any person until it obtains a license as a center or type A home, as appropriate, (c) if the offender previously has been convicted of two violations of the prohibition, the offender is guilty of a misdemeanor of the first degree, and the court must order the offender to cease the provision of child care to any person until it obtains a license as a center or type A home, as appropriate, or (d) if the offender previously has been convicted of or pleaded guilty to "three or more violations" of the prohibition, the offender is guilty of a felony of the fifth degree, and the court must order the offender to cease the provision of child care to any person until it obtains a license as a center or type A home, as appropriate.
- Revises some of the application, certification, investigation, and inspection procedures regarding type B family day-care homes, including: (1) requiring the county DJFS that receives an application for certification as a type B family day-care home to request from the public children services agency information concerning any abuse or neglect report made pursuant to existing R.C. 2151.421 of which the applicant is the subject and to consider any information provided by the agency pursuant to R.C. 5153.175, (2) if the county DJFS determines that the information, when viewed within the totality of the circumstances, reasonably leads to the conclusion that the applicant may endanger the health, safety, or welfare of children, requiring it to deny the application

for certification or revoke a prior certification, and (3) modifying provisions regarding the inspection of a certified type B home, upon receipt of a complaint.

- Requires the Director of ODJFS to adopt rules that include standards for the training of individuals whom any county DJFS employs, with whom any county DJFS contracts, or with whom ODJFS's Director contracts, to inspect or investigate type B family day-care homes pursuant to R.C. 5104.11.
- Creates a study group for universal registration of type B family day-care homes.
- Requires the Director of ODJFS to recommend standards for imposing sanctions on persons and entities that are licensed or certified under R.C. Chapter 5104. and that violate any provision of that Chapter, which standards must be based on the scope and severity of the violations, and to provide copies of the recommendations to the Governor, the leadership of the General Assembly, and, upon request, the public.
- Modifies provisions regarding the inspection of homes where in-home aides provide care to children receiving publicly funded child care, upon receipt of a complaint.
- Provides that, if an owner, licensee, or administrator of a child day-care center or type A family day-care homes, a person 18 years of age or older who lives in a type A home, an authorized provider of a type B family day-care home, or a person 18 years of age or older who lives in a type B home for whom existing law requires a criminal records check does not present proof that the subject person has been an Ohio resident for the five-year period immediately prior to the date upon which the check is requested or does not provide evidence that within that five-year period BCII's Superintendent has requested information about the subject person from the FBI in a criminal records check, the appropriate director must request that BCII's Superintendent obtain information from the FBI as a part of the check for the subject person.
- Prohibits the Director of ODJFS from licensing a child day-care center or type A family day-care home and a director of a county DJFS from certifying a type B family day-care home if the owner, operator, or licensee of the center or type A home or the authorized provider of the

type B home has been convicted of or pleaded guilty to any one of an expanded list of offenses.

- Prohibits a person from owning or operating a child day-care center, type A family day-care home, or type B family day-care home if the person has been convicted of or pleaded guilty to one of the offenses in that expanded list of offenses.
- Repeals a provision dealing with funding and eligibility for publicly funded child day-care provided to a child in a Head Start program.
- Requires ODJFS (instead of authorizing it, as under existing law) to develop and maintain a registry of persons providing child care.
- Requires a public children services agency to promptly provide to ODJFS or a county DJFS any information the agency determines to be relevant for the purpose of evaluating the fitness of a person who has applied for licensure as a type A family day-care home or certification as a type B family day-care home, including a summary report of the chronology in abuse and neglect reports made under R.C. 2151.421 of which the person is the subject and the final disposition or current status of the investigations and any underlying documentation concerning those reports, and specifies that the name of the person or entity that made the report or participated in the making of the report of child abuse or neglect cannot be included in the information so provided.
- Revises certain time periods within which, and the authorized form in which, the Director of ODJFS and the director of a county DJFS must provide copies of certain adopted rules to specified persons and entities.
- Prohibits a child care provider from knowingly misrepresenting to specified persons, including users and prospective users of the provider's services, specified government officials, and peace officers, a factor or condition that relates to the provision of child care and substantially affects the health or safety of children in the provider's facility or receiving child care from the provider.
- Prohibits the owner, provider, or administrator of a type A or type B family day-care home from failing to make specified disclosures to prospective users of the home, regarding the death of or injuries suffered



by a child in specified circumstances, before accepting the prospective user's child into that home.

- Prohibits the owner, provider, or administrator of a type A or type B family day-care home from failing to notify specified persons, including users of the home, specified government officials, and peace officers, if a currently enrolled child dies while under the care of the home or while receiving child care from the owner, provider, or administrator.
- Prohibits the owner, provider, or administrator of a type A or type B family day-care home from failing to notify users of the home if a currently enrolled child is hospitalized for more than 24 hours because of injuries sustained while under the care of the home or while receiving child care from the owner, provider, or administrator, and from failing to provide a second notice if the child dies as a result of those injuries.
- Prohibits a child care center licensee from failing to make specified disclosures to prospective users of the center, regarding the death of a child or, if the prospective user requests the information, injuries suffered by a child in specified circumstances, before accepting the prospective user's child into that center.
- Prohibits a child care center licensee from failing to notify specified persons, including users of the center, specified government officials, and peace officers, when a currently enrolled child dies while under the care of the center, while receiving child care from the owner, provider, or administrator, or as a result of injuries suffered while under the care of the center or while receiving child day-care from the owner, provider, or administrator.

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## CONTENT AND OPERATION

### "Child day-care" and "publicly funded child day-care" renamed "child care" and "publicly funded child care"

#### Existing law

Existing law defines "child day-care," for purposes of R.C. Chapter 5104., as 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. 5104.01(K)). Numerous Revised Code sections in Chapter 5104. use the term "child day-care," numerous sections outside of that Chapter use the term and adopt the R.C. 5104.01 definition of it by cross-reference, and numerous sections outside of that Chapter use the term but do not specifically adopt the R.C. 5104.01 definition of the term.

Existing law defines "publicly funded child day-care," for purposes of R.C. Chapter 5104., as administering to the needs of infants, toddlers, preschool children, and school children under age 13 during any part of the 24-hour day by persons other than their caretaker parents for remuneration wholly or in part with federal or state funds, including funds available under the child care block grant act, Title IV-A, and Title XX, distributed by the Ohio Department of Job and Family Services (ODJFS) (R.C. 5104.01(JJ)). Numerous Revised Code sections in Chapter 5104. use the term "publicly funded child day-care," numerous sections outside of that Chapter use the term and adopt the R.C. 5104.01 definition of it by cross-reference, and numerous sections outside of that Chapter use the term but do not specifically adopt the R.C. 5104.01 definition of the term.

### **Operation of the bill**

**Child care.** In the R.C. 5104.01(K) definition, the bill replaces the term "child day-care" with the term "child care" but it does not change the substance of the definition. Under the bill, "child 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. The bill also specifies that, on and after its effective date, both of the following apply: (1) any reference in any Revised Code provision to "child day-care" that also refers to R.C. 5104.01 for a definition of that term is to be construed as being a reference to the term "child care," as defined in the preceding sentence, and (2) unless the context clearly requires otherwise, any reference in any Revised Code provision to "child day-care" that does not also refer to R.C. 5104.01 for a definition of that term is to be construed as being a reference to the term "child care," as defined in the preceding sentence. (R.C. 5104.01(K).) Related to this change in terminology, the bill changes all existing references in R.C. Chapter 5104. to "child day-care" to references to "child care," except that it does not change the terms "child day-care center," "type A family day-care home," or "type B family day-care home."

**Publicly funded child day-care.** In the R.C. 5104.01(JJ) definition, the bill replaces the term "publicly funded child day-care" with the term "publicly funded child care" but it does not change the substance of the definition. Under the bill, "publicly funded child care" means administering to the needs of infants, toddlers, preschool children, and school children under age 13 during any part of the 24-hour day by persons other than their caretaker parents for remuneration wholly or in part with federal or state funds, including funds available under the child care block grant act, Title IV-A, and Title XX, distributed by ODJFS. The bill also specifies that, on and after its effective date, both of the following apply: (1) any reference in any Revised Code provision to "publicly funded child day-care" that also refers to R.C. 5104.01 for a definition of that term is to be construed as being a reference to the term "publicly funded child care," as defined in the preceding sentence, and (2) unless the context clearly requires otherwise, any reference in any Revised Code provision to "publicly funded child day-care" that does not also refer to R.C. 5104.01 for a definition of that term is to be construed as being a reference to the term "publicly funded child care," as defined in the preceding sentence. (R.C. 5104.01(JJ).) Related to this change in terminology, the bill changes all existing references in R.C. Chapter 5104. to "publicly funded child day-care" to references to "publicly funded child care."

**Child day-care centers and type A family day-care homes--application for certification, and investigation and inspection of applicants and operating homes**

**Existing law**

**Investigation and inspection of applicants.** Existing law provides that any person, firm, organization, institution, or agency desiring to establish a "child day-care center" or "type A family day-care home" (see "**Definitions**," below) must apply for a license to ODJFS. Upon the filing of an application, ODJFS's Director *must investigate and inspect* the center or home to determine the license capacity for each age category of children of the center or home, and whether the center or home complies with R.C. Chapter 5104. and rules adopted under it. When, after investigation and inspection, the Director is satisfied that R.C. Chapter 5104. and the rules are complied with, a provisional license must be issued as soon as practicable. A provisional license is valid for six months from the date of issuance unless revoked. The Director *must investigate and inspect* the center or type A home at least once during its operation under the provisional license. If, after the investigation and inspection, the Director determines that the requirements of R.C. Chapter 5104. and rules adopted under it are met, the Director must issue a license, to be effective for two years from the date of issuance of the provisional license. The law also prescribes *investigation and inspection* duties for the Director upon the filing of an application for renewal of a license by a center or type A home, and for the issuance of a renewal license, to be effective for two years from the expiration date of the prior license. (R.C. 5104.03--not in the bill.)

**Investigation and inspection of operating centers and homes.** Existing law also requires ODJFS, at least twice during every 12-month period of operation of a center or type A home, to *inspect* the center or home, and to *inspect* a part-time center or part-time type A home at least once during every 12-month period of operation. The law establishes procedures and criteria regarding the inspections. Upon receipt of any complaint that a center or type A home is out of compliance with the requirements of R.C. Chapter 5104. or rules under it, ODJFS *must investigate and may inspect* the center or home. The law sets forth procedures to be followed in the event a licensed center or type A home is determined to be out of compliance with the requirements of R.C. Chapter 5104. or rules adopted under it, which procedures include the opportunity to correct the violation and the possibility of ODJFS bringing an action under R.C. Chapter 119. to revoke the license.

Whenever ODJFS receives a complaint, is advised, or otherwise has any reason to believe that a center or type A home is providing child day-care without a license issued or renewed pursuant to R.C. 5104.03 and is not exempt from licensing, ODJFS *must investigate* the center or home and *may inspect* specified

areas in the center or home used in the care of children during suspected hours of operation to determine whether the center or home is subject to R.C. Chapter 5104. or rules adopted under it. The law sets forth procedures to be followed in the event the center or home is determined to be operating without a license, which procedures include the bringing of an action in a court of common pleas to obtain an order enjoining the owner from operating the center or home.

Finally, existing law requires ODJFS to establish procedures to be followed in investigating, inspecting, and licensing child day-care centers and type A family day-care homes. (R.C. 5104.04.)

### **Operation of the bill**

The bill makes two changes in the application, certification, investigation, and inspection procedures regarding child day-care centers and type A family day-care homes.

**Investigations and inspection.** The bill changes the application, certification, investigation, and inspection procedures regarding child day-care centers and type A family day-care homes as follows:

(1) It retains the requirement that, upon receipt of any complaint that a center or type A home is out of compliance with the requirements of R.C. Chapter 5104. or rules adopted under it, ODJFS must investigate the center or home, but it revises the inspection provisions regarding such a complaint. Under the bill, upon receipt of such a complaint: (1) if the complaint alleges that a child suffered physical harm while receiving child care at the center or home or that the noncompliance alleged in the complaint involved, resulted in, or poses a substantial risk of physical harm to a child receiving child care at the center or home, ODJFS must inspect the home, and (2) if clause (1) does not apply regarding the complaint, ODJFS may inspect the center or home. The bill states that the inspection provisions it enacts that are described in the preceding sentence do not limit, restrict, or negate any duty of ODJFS to inspect a center or type A home that otherwise is imposed under R.C. 5104.04, or any authority of ODJFS to inspect a center or home that otherwise is granted under the section when ODJFS believes the inspection is necessary and it is permitted under the grant. (R.C. 5104.04(B)(1)(b).)

(2) It provides that, in the event ODJFS determines a center or home is operating without a license, the common pleas court action that must be brought by the specified prosecuting authority must seek an order enjoining the owner from operating the center or home *in violation of R.C. 5104.02* (R.C. 5104.04(H); currently, the provision does not include the R.C. 5104.02 reference). Existing R.C. 5104.02, not in the bill, generally prohibits any person or entity from

operating, establishing, managing, conducting, or maintaining a child day-care center or type A home without a license issued under R.C. 5104.03, and specifies a series of exemptions from the general prohibition.

**Prohibition against issuing license to applicant with a revoked certification for a type B family day-care home, in certain circumstances**

The bill specifies that in no case may ODJFS's Director issue a provisional license or license, or renew a license, under R.C. 5104.03 for a type A family day-care home or child day-care center if the Director, based on documentation provided by the appropriate county DJFS, determines that the applicant previously had been certified as a type B family day-care home, that the county DJFS revoked that certification, that the revocation was based on the applicant's refusal or inability to comply with the criteria for certification, and that the refusal or inability resulted in a risk to the health or safety of children (R.C. 5104.03(G)).

**Child Day-care (changed to Child Care) Advisory Council**

**Existing law**

Existing law creates in ODJFS a Day-care Advisory Council to advise and assist ODJFS in the administration of R.C. Chapter 5104. and in the development of child day-care. The Council consist of 18 members appointed by ODJFS's Director with the approval of the Governor. The Director of ODJFS, the Superintendent of Public Instruction, the Director of Health, the Director of Commerce, and the State Fire Marshal serve as nonvoting members of the Council.

Six members of the Council must be representatives of child day-care centers subject to licensing, the members to represent a variety of centers, including nonprofit and proprietary, from different geographical areas of the state. At least three members must be parents, guardians, or custodians of children in a head start program or receiving child day-care or publicly funded child day-care in the child's own home, a center, type A home, certified type B home, or type B home at the time of appointment. Three members must be representatives of in-home aides, type A homes, certified type B homes, or type B homes or head start programs. At least two members must represent county departments of job and family services. The remaining members must be representatives of the teaching, child development, and health professions, and other individuals interested in the welfare of children. At least six members must not be employees or licensees of a child day-care center or type A home, or providers operating a certified type B home or type B home, or in-home aides.

Six of the original appointments are for one year, six for two years, and six for three years, and subsequent appointments are for three-year terms. Vacancies are filled for the unexpired terms. Members of the Council serve without compensation but are reimbursed for necessary expenses.

The Council is required to advise ODJFS's Director on matters affecting the licensing of centers and type A homes and the certification of type B homes and in-home aides. The Council must make an annual report concerning the licensing, certification, and regulation program, the provision of publicly funded child day-care by border state child day-care providers, and the Council's recommendations concerning the regulation program and border state child day-care providers. Copies of the report must be provided to the Director, Governor, Speaker and Minority Leader of the House of Representatives, and President and Minority Leader of the Senate and, on request, must be made available to the public. (R.C. 5104.08.)

### **Operation of the bill**

The bill renames the Day-care Advisory Council as the Child Care Advisory Council, and modifies its membership and functions. Under the bill, the Child Care Advisory Council consists of 22 voting members appointed by ODJFS's Director with the approval of the Governor, and it is to advise and assist ODJFS in the administration of R.C. Chapter 5104. and in the development of child care. The Director of ODJFS, the Director of Mental Retardation and Developmental Disabilities, the Director of Mental Health, the Superintendent of Public Instruction, the Director of Health, the Director of Commerce, and the State Fire Marshal serve as nonvoting members of the Council.

Six members of the Council must be representatives of child care centers subject to licensing, the members to represent a variety of centers, including nonprofit and proprietary, from different geographical areas of the state. At least three members must be parents, guardians, or custodians of children receiving child care or publicly funded child care in the child's own home, a center, a type A home, a head start program, a certified type B home, or a type B home at the time of appointment. Three members must be representatives of in-home aides, type A homes, certified type B homes, or type B homes or head start programs. At least six members must represent county departments of job and family services. The remaining members must be representatives of the teaching, child development, and health professions, and other individuals interested in the welfare of children. At least six members must not be employees or licensees of a child day-care center, head start program, or type A home, or providers operating a certified type B home or type B home, or in-home aides.

Appointments are for three-year terms. Vacancies are filled for the unexpired terms. A member of the Council is subject to removal by ODJFS's Director for a willful and flagrant exercise of authority or power that is not authorized by law, for a refusal or willful neglect to perform any official duty as a member of the Council imposed by law, or for being guilty of misfeasance, malfeasance, nonfeasance, or gross neglect of duty as a member of the Council.

There will be two co-chairpersons of the Council. One co-chairperson will be ODJFS's Director or the Director's designee, and one co-chairperson will be elected by the members of the Council. The Council must meet as often as is necessary to perform its duties, provided that it must meet at least once in each quarter of each calendar year and at the call of the co-chairpersons. The co-chairpersons or their designee must send to each member a written notice of the date, time, and place of each meeting. Members of the Council will serve without compensation, but shall be reimbursed for necessary expenses.

The Council must advise ODJFS's Director on matters affecting the licensing of centers and type A homes and the certification of type B homes and in-home aides. The Council must make an annual report to ODJFS's Director that addresses the availability, affordability, accessibility, and quality of child care and that summarizes the recommendations and plans of action that the Council has proposed to the Director during the preceding fiscal year. The Director must provide copies of the report to the Governor, Speaker and Minority Leader of the House of Representatives, and President and Minority Leader of the Senate and, on request, must make copies available to the public.

The Director of ODJFS must adopt rules pursuant to the Administrative Procedure Act to implement the above-described provisions. (R.C. 5104.08.)

**Penalty for operation of a child day-care center or type A family day-care home without a license**

**Existing law**

Existing law provides that the Director of ODJFS is responsible for the licensing of child day-care centers and type A family day-care homes, and for the enforcement of R.C. Chapter 5104. and rules promulgated under it. The provision prohibits any person, firm, organization, institution, or agency from operating, establishing, managing, conducting, or maintaining a child day-care center or type A family day-care home without a license issued under R.C. 5104.03. The current license must be posted in a conspicuous place in the center or type A home that is accessible to parents, custodians, or guardians and employees of the center or home at all times when the center or home is in operation. (R.C. 5104.02.)

Existing law specifies that a person, firm, institution, organization, or agency operating any of the following programs is exempt from the requirements of R.C. Chapter 5104.: (1) a program of child day-care that operates for two or less consecutive weeks, (2) child day-care in places of worship during religious activities during which children are cared for while at least one parent, guardian, or custodian of each child is participating in the activities and is readily available, (3) religious activities that do not provide child day-care, (4) supervised training, instruction, or activities of children in specific areas, including, but not limited to: art, drama, dance, music, gymnastics, swimming, another athletic skill or sport, computers, or an educational subject conducted on an organized or periodic basis no more than one day a week and for no more than six hours duration, (5) programs in which ODJFS's Director determines that at least one parent, custodian, or guardian of each child is on the premises of the facility offering child day-care and is readily accessible at all times, except that child day-care provided on the premises at which a parent, custodian, or guardian is employed more than two and one-half hours a day must be licensed, (6) programs that provide child day-care funded and regulated or operated and regulated by state departments other than ODJFS or the State Board of Education when ODJFS's Director has determined that the rules governing the program are equivalent to or exceed the rules promulgated pursuant to R.C. Chapter 5104., (7) any preschool program or school child program that is subject to licensure by the Department of Education, (8) any program providing child day-care that meets certain specified requirements and, on October 20, 1987, was being operated by a nonpublic school that holds a charter issued by the State Board of Education for kindergarten only, and (9) a youth development program operated in specified circumstances outside of school hours by a community-based center. (R.C. 5104.02.)

Existing law provides that any person or entity that violates the prohibition described above must be fined not less than \$100 nor more than \$500 for each offense (R.C. 5104.99(A)).

### **Operation of the bill**

The bill modifies the penalty for a violation of the prohibition contained in R.C. 5104.02 against operating, establishing, managing, conducting, or maintaining a child day-care center or type A family day-care home without a license. Under the bill, a person who violates the prohibition must be fined, for each offense, not less than \$100 nor more than \$500 multiplied by the number of children receiving child care at the center or type A home that either exceeds the number of children to which a type B family day-care home may provide child care or, if the offender is a licensed type A family day-care home that is operating as a child day-care center without being licensed as a center, exceeds the license capacity of the type A home (see "**Definitions**," below, for a description of that

number) (R.C. 5104.99(A)(1)). In addition to the fine specified in the preceding sentence, all of the following apply (R.C. 5104.99(A)(2)):

(1) Except as described in (2), (3), and (4), below, the court must order the offender to reduce the number of children to which it provides child care to a number that does not exceed either the number of children to which a type B family day-care home may provide child care or, if the offender is a licensed type A family day-care home that is operating as a child day-care center without being licensed as a center, the license capacity of the type A home.

(2) If the offender previously has been convicted of or pleaded guilty to one violation of R.C. 5104.02, the court must order the offender to cease the provision of child care to any person until it obtains a child day-care center license or a type A family day-care home license, as appropriate, under R.C. 5104.03.

(3) If the offender previously has been convicted of or pleaded guilty to two violations of R.C. 5104.02, the offender is guilty of a misdemeanor of the first degree, and the court must order the offender to cease the provision of child care to any person until it obtains a child day-care center license or a type A family day-care home license, as appropriate, under R.C. 5104.03. The court must impose the fine specified above and may impose an additional fine, provided that the total amount of the fines so imposed does not exceed the maximum fine authorized for a misdemeanor of the first degree under R.C. 2929.28.

(4) If the offender previously has been convicted of or pleaded guilty to "three or more violations" of R.C. 5104.02, the offender is guilty of a felony of the fifth degree and the court must order the offender to cease the provision of child care to any person until it obtains a child day-care center license or a type A family day-care home license, as appropriate, under R.C. 5104.03. The court must impose the fine specified above, and may impose an additional fine provided that the total amount of the fines so imposed does not exceed the maximum fine authorized for a felony of the fifth degree under R.C. 2929.18. (R.C. 5104.99(A).)

**Type B family day-care homes--application for certification, and investigation and inspection of applicants and operating homes**

**Generally**

**Existing law.** Existing law requires ODJFS's Director to adopt rules governing the certification of type B family day-care homes. It provides that every person desiring to receive certification for a "type B family day-care home" (see "Definitions," below) must apply for certification to the director of the county department of job and family services (a county DJFS). Except as provided in R.C. 5104.11(G)(1), after receipt of an application for certification from a type B

home, the director of the county DJFS must inspect. If the director determines that the home complies with R.C. Chapter 5104. and rules adopted under it, the director must issue to the provider a certificate to provide "publicly funded child day-care" (see "Definitions," below) for 12 months, and the county DJFS must certify the type B home to provide publicly funded child day-care pursuant to R.C. Chapter 5104. and rules adopted under it. The director may contract with a government entity or a private nonprofit entity for that entity to inspect and certify type B family day-care homes pursuant to this provision. The county DJFS, government entity, or nonprofit entity must conduct the inspection prior to the issuance of a certificate for the home and, as part of that inspection, ensure that the home is safe and sanitary. The director may revoke the certificate after determining that revocation is necessary.

An "authorized provider" (see "Definitions," below) of a type B family day-care home that receives a certificate pursuant to this provision to provide publicly funded child day-care generally is an independent contractor and is not an employee of the county department of job and family services that issues the certificate. However, for purposes of R.C. Chapter 4141., determinations concerning the employment of an authorized provider of a type B family day-care home that receives a certificate pursuant to this provision must be determined under R.C. Chapter 4141.

The director of a county DJFS *must inspect* every certified type B family day-care home at least twice within each 12-month period of the operation of the home. A minimum of one inspection must be unannounced and all inspections may be unannounced. Upon receipt of a complaint, the director *must investigate and may inspect* the certified type B home. The authorized provider must permit the director to inspect any part of the certified type B home, and the director must prepare a written inspection report and furnish one copy to the authorized provider. Finally, the director of a county DJFS, in accordance with rules adopted pursuant to R.C. 5104.052 regarding fire safety and fire prevention, *must inspect* each type B home that applies to be certified that is providing or is to provide publicly funded child day-care. (R.C. 5104.11.)

**Operation of the bill.** The bill revises some of the application, certification, investigation, and inspection procedures regarding type B family day-care homes.

Under the bill, as under existing law, each person who desires to provide publicly funded child day-care as a type B family day-care home must apply for certification to the director of the county DJFS on forms the Director of ODJFS prescribes. As under existing law, the county director must provide at no charge to each applicant a copy of rules for certifying type B family day-care homes. (R.C. 5104.11(A)(1).)

As under existing law, except as provided in R.C. 5104.011(G)(1), after receipt of an application for certification from a type B family day-care home, the director of the county DJFS must inspect the home and, if it complies with R.C. Chapter 5104. and rules adopted under it, the county DJFS must certify the type B family day-care home to provide publicly funded child care. The bill retains the existing provisions that permit the director or the county DJFS to contract with a government entity or a private nonprofit entity for the inspection and certification of type B family day-care homes, and that require the inspection to be conducted prior to the issuance of a certificate for the type B home. (R.C. 5104.11(A)(2).)

The bill imposes new duties on county DJFSs regarding the consideration of applications for certification or renewal of certification of type B family day-care homes. Under the bill, on receipt of an application for certification or renewal of certification as a type B family day-care home, the county DJFS must request from the public children services agency information concerning any abuse or neglect report made pursuant to existing R.C. 2151.421 (see **COMMENT 1**) of which the applicant is the subject. The county DJFS must consider any information provided by the agency pursuant to R.C. 5153.175 (see "**Public children services agency--provision of information relevant to protection of children**," below). If the county DJFS determines that the information, when viewed within the totality of the circumstances, reasonably leads to the conclusion that the applicant may endanger the health, safety, or welfare of children, the county DJFS must deny the application for certification or renewal of certification, or revoke the certification of an authorized provider. As used in the provisions described in this paragraph, "public children services agency" means either an entity separate from the county DJFS or the part of the county DJFS that serves as the county's public children services agency, as appropriate. (R.C. 5104.11(A)(3).)

The bill retains the existing provision that specifies that a certificate issued to a type B home is valid for 12 months, but the bill includes language clarifying that the 12-month period is subject to earlier revocation of the certificate. (R.C. 5104.11(B).)

Regarding inspections of operating certified type B homes, the bill retains the existing "at least two inspections each 12 months" requirement and retains the existing mandatory investigation if a complaint is made, but it modifies the "inspection" provisions if a complaint is made. Under the bill, upon receipt of a complaint as described above, in addition to the investigation that is required, both of the following apply: (1) if the complaint alleges that a child suffered physical harm while receiving child care at the certified type B family day-care home or that the noncompliance with law or act alleged in the complaint involved, resulted in, or poses a substantial risk of physical harm to a child receiving child care at the

home, the county director must inspect the home, and (2) if clause (1) does not apply regarding the complaint, the county director may inspect the certified type B family day-care home. The bill specifies that the inspection provisions in the preceding sentence do not limit, restrict, or negate any duty of the county director to inspect a certified type B family day-care home that otherwise is imposed under R.C. 5104.11, or any authority of the county director to inspect a home that otherwise is granted under that section when the county director believes the inspection is necessary and it is permitted under the grant.

**Standards for training of individuals to inspect or investigate type B family day-care homes**

The bill requires the Director of ODJFS to adopt rules pursuant to the Administrative Procedure Act that establish standards for the training of individuals whom any county DJFS employs, with whom any county DJFS contracts, or with whom ODJFS's Director contracts, to inspect or investigate type B family-day care homes pursuant to R.C. 5104.11. ODJFS must provide training in accordance with those standards for individuals in those categories. (R.C. 5104.011(J)(6).)

**Study group for universal registration of type B family day-care homes**

The bill requires ODJFS, not later than 14 days after the effective date of the bill, to convene a study group to develop recommended language to provide for the universal registration of all type B family day-care homes, including those that are not certified to provide publicly funded child care. The study group will consist of two parents of children receiving child care who are recommended by the Child Care Advisory Council, and two representatives of each of the following groups and agencies: the Ohio Association of Child Care Providers, the Family Child Care Association, the Ohio Child Care Resource and Referral Agency, the Ohio Job and Family Services Directors Association, and the Department of Job and Family Services. The recommendations must include, but are not limited to, provisions requiring criminal records checks of registrants and for the making of any disclosures to parents, guardians, and custodians of children that are required by law. The study group must submit its recommendations to the General Assembly by September 1, 2004, or 60 days after the effective date of the bill, whichever is later. The bill provides that the General Assembly declares its intent to consider for enactment the recommendations so submitted. (Section 5.)

**Standards regarding sanctions based on scope and severity of violations**

The bill requires the Director of ODJFS to recommend standards for imposing sanctions on persons and entities that are licensed or certified under R.C. Chapter 5104. and that violate any provision of that Chapter, which standards must

be based on the scope and severity of the violations. The Director must provide copies of the recommendations to the Governor, the Speaker and Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate and, on request, must make copies available to the public. (R.C. 5104.011(J)(5).)

**In-home aides--application for certification, and investigation and inspection**

**Existing law**

Existing law permits the county director of job and family services to certify "in-home aides" to provide publicly funded child day-care pursuant to R.C. Chapter 5104. and rules adopted under it. Any in-home aide who receives a certificate under the provision to provide publicly funded child day-care is an independent contractor and is not an employee of the county department of job and family services that issues the certificate. Every person desiring to receive certification as an in-home aide must apply for certification to the county director on such forms as ODJFS's Director prescribes. The county director must provide at no charge to each applicant a copy of rules for certifying in-home aides adopted pursuant to R.C. Chapter 5104.

If the county director of job and family services determines that public funds are available and that the person complies with R.C. Chapter 5104. and rules adopted under it, the county director must certify the person as an in-home aide and issue the person a certificate to provide publicly funded child day-care for 12 months. The county director may revoke the certificate after determining that revocation is necessary. The county director must furnish a copy of the certificate to the parent, custodian, or guardian. The certificate must state the name and address of the in-home aide, the expiration date of the certification, and the name and telephone number of the county director who issued the certificate.

The county director of job and family services must inspect every home of a child who is receiving publicly funded child day-care in the child's own home while the in-home aide is providing the services. Inspections may be unannounced. Upon receipt of a complaint, the county director must investigate the in-home aide and must investigate and may inspect the home of a child who is receiving publicly funded child day-care in the child's own home. The caretaker parent must permit the county director to inspect any part of the child's home. The county director must prepare a written inspection report and furnish one copy each to the in-home aide and the caretaker parent within a reasonable time after the inspection. (R.C. 5104.12.)

### **Operation of the bill**

The bill modifies the existing provisions regarding responses to complaints. As under existing law, upon receipt of a complaint, the county director must investigate the in-home aide and must investigate the home of a child who is receiving publicly funded child care in the child's own home. But regarding inspections, upon receipt of a complaint, in addition to the investigations, both of the following apply: (1) if the complaint alleges that a child suffered physical harm while receiving publicly funded child care in the child's own home from an in-home aide or that the noncompliance with law or act alleged in the complaint involved, resulted in, or poses a substantial risk of physical harm to a child receiving publicly funded child care in the child's own home from an in-home aide, the county director must inspect the home of the child, and (2) if clause (1) does not apply regarding the complaint, the county director may inspect the home of the child. The bill provides that the provisions in the preceding sentence do not limit, restrict, or negate any duty of the county director to inspect a home of a child who is receiving publicly funded child care from an in-home aide that otherwise is imposed under R.C. 5104.12, or any authority of the county director to inspect such a home that otherwise is granted under that section when the county director believes the inspection is necessary and it is permitted under the grant. (R.C. 5104.12(D).)

### **Licensing and certification of child day-care centers, type A family day-care homes, and type B family day-care homes--criminal records checks and disqualifying convictions**

#### **Existing law**

Under existing law, ODJFS's Director, as part of the licensure of such centers and homes, is required to request a criminal records check from the Bureau of Criminal Identification and Investigation (BCII) with respect to any owner, licensee, or administrator of a child day-care center or a type A family day-care home and any person 18 years of age or older who resides in a type A family day-care home. Additionally, the director of a county DJFS, as part of the certification of such homes, is required to request a criminal records check from BCII with respect to any authorized provider of a certified type B family day-care home and any person 18 years of age or older who resides in a certified type B family day-care home. (R.C. 5104.013(A).)

The Director of ODJFS is prohibited from granting a license to a child day-care center or type A family day-care center and the director of a county DJFS is prohibited from certifying a type B family day-care home if the criminal records check for one of these individuals shows that the person previously has been

convicted of or pleaded guilty to any of the following offenses (R.C. 5104.013(D)(1)):

(1) Aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, permitting child abuse, aggravated menacing, patient abuse or neglect, kidnapping, abduction, criminal child enticement, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, importuning, voyeurism, public indecency, compelling prostitution, promoting prostitution, procuring prostitution, prostitution, disseminating matter harmful to juveniles, pandering obscenity, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, illegal use of a minor in nudity-oriented material or performance, aggravated robbery, robbery, aggravated burglary, burglary, unlawful abortion, endangering children, contributing to unruliness of a child, domestic violence, carrying concealed weapons, having weapons while under disability, improperly discharging a firearm at or into habitation, corrupting another with drugs, trafficking in drugs, illegal manufacture of drugs or cultivation of marihuana, funding of drug or marihuana trafficking, illegal administration or distribution of anabolic steroids, placing harmful objects in food or confection, the former offense of child stealing as it existed prior to July 1, 1996, interference with custody if such offense would have been a violation of child stealing as it existed prior to July 1, 1996, drug possession that is not a minor drug possession offense, or the former offense of felonious sexual penetration.

(2) A violation of an existing or former law of Ohio, any other state, or the U.S. that is substantially similar to any of the offenses listed in (1), above.

However, ODJFS's Director is required to adopt rules that specify exceptions to the above-described prohibition for persons who have been convicted of or pleaded guilty to any offense listed in (1) or (2), above, but who meet standards in regard to rehabilitation that are set by ODJFS (R.C. 5104.013(G)).

Existing law requires BCII's Superintendent, upon receipt of such a request made as described above, to conduct a criminal records check for records of conviction of the specified offenses, and prescribes procedures for the records checks and for provision of the results to the requesting person or entity (R.C. 109.572).

### **Operation of the bill**

Regarding the request to BCII for the criminal records checks of owners, licensees, and administrators of child day-care centers, of owners, licensees, and administrators of type A family day-care homes and of persons 18 years of age or

older who live in such homes, and of authorized providers of type B family day-care homes and persons 18 years of age or older who live in such homes, the bill provides that, if the owner, licensee, administrator, or person 18 years of age or older who is the subject of the check does not present proof that the owner, licensee, administrator, authorized provider, or person has been a resident of Ohio for the five-year period immediately prior to the date upon which the criminal records check is requested or does not provide evidence that within that five-year period BCII's Superintendent has requested information about the owner, licensee, administrator, authorized provider, or person from the FBI in a criminal records check, the appropriate director must request that BCII's Superintendent obtain information from the FBI as a part of the criminal records check for the applicant. If the owner, licensee, administrator, authorized provider, or person presents proof that the owner, licensee, administrator, authorized provider, or person has been a resident of this state for that five-year period, the appropriate director may request that the Superintendent include information from the FBI in the criminal records check. (R.C. 5104.013(A)(3).)

Regarding the convictions that disqualify a person from licensing or certification, the bill additionally prohibits the Director of ODJFS, subject to the existing "rehabilitation standards" provision described above in *Existing law*," from licensing a child day-care center or type A family day-care home and the director of a county DJFS from certifying a type B family day-care home if an owner, licensee, or administrator of a child day-care center or type A family day-care home or an authorized provider of a certified type B family day-care home previously has been convicted of or pleaded guilty to any of the following offenses (R.C. 5104.013(D)(2), conforming changes in R.C. 5104.011(G)(1)(b)):

(1) Petty theft, theft, grand theft, aggravated theft, grand theft of a motor vehicle, theft of drugs, theft from an elderly person or disabled adult, unauthorized use of a vehicle, unauthorized use of property, unauthorized use of computer, cable, or telecommunication property, possession or sale of an unauthorized device, telecommunications fraud, unlawful use of telecommunications device, passing bad checks, misuse of credit cards, forgery, forging identification cards, selling or distributing forged identification cards, criminal simulation, making or using slugs, trademark counterfeiting, Medicaid fraud, tampering with records, securing writings by deception, personating an officer, unlawful display of the emblem of a law enforcement agency or an organization of law enforcement officers, defrauding creditors, illegal use of food stamps or WIC program benefits, insurance fraud, workers' compensation fraud, identify fraud, perjury, falsification, falsification in a theft offense, falsification to purchase a firearm, conspiracy, attempt or complicity in committing one of the above-listed offenses or one of the offenses listed above in paragraph (1) under *Existing law*," or a second offense of

state OVI or state OVUAC within five years of application for licensure or certification.

(2) A violation of an existing or former law of Ohio, any other state, or the U.S. that is substantially equivalent to any of the offenses listed above in (1).

The bill expands the existing provisions governing criminal records checks conducted by the Superintendent of BCII with respect to any such licensure or certification, as described above in "**Existing law**," to also require the Superintendent, when conducting such a records check, to determine whether any information exists that the person who is the subject of the records check has been convicted of or pleaded guilty to any offense listed in paragraph (1) or (2), above (R.C. 109.572(A)(9), (A)(10), and (D)).

**Prohibition against certification as an in-home aide or employment in certain child day-care capacities, of persons convicted of specified offenses**

**Existing law**

Existing law prohibits a person from being certified as an in-home aide or being employed in any capacity in or owning or operating a child day-care center, type A family day-care home, type B family day-care home, or certified type B family day-care home if the person has been convicted of or pleaded guilty to an offense listed above in paragraph (1) or (2) of "**Existing law**" under "**Licensing and certification of certain day-care facilities**" or the offense of menacing, extortion, aggravated arson, arson, disrupting public services, vandalism, inciting to violence, aggravated riot, riot, inducing panic, intimidation, escape, aiding escape or resistance to lawful authority, or any substantially equivalent offense as described above in paragraph (2) of that part (R.C. 5104.09(A)(1), conforming change in R.C. 5104.011(G)).

Additionally, under existing law the following persons must sign a statement attesting that the person has not been convicted of or pleaded guilty to any of these offenses and that no child has been removed from the person's home pursuant to R.C. 2151.353 (R.C. 5104.09(A)(2), (3), and (4)): (1) each employee of a child day-care center and type A home, (2) each person 18 years of age or older residing in a type A home, (3) each in-home aide, (4) each authorized provider, (5) every person 18 years of age or older residing in a certified type B home, and (6) each administrator and licensee of a child day-care center or type A home.

### **Operation of the bill**

The bill additionally prohibits a person from owning or operating a child day-care center, type A family day-care home, type B family day-care home, or certified type B family day-care home if the person has been convicted of or pleaded guilty to an offense listed above in paragraph (1) or (2) in "**Operation of the bill**" under "**Licensing and certification of certain day-care facilities**" or two state OVI or OVUAC offenses during operation of the center or home (it is unclear whether the "substantially equivalent offense" provision described above in paragraph (2) of that part applies to this provision) (R.C. 5104.09(A)(1)(b)).

To conform with this added prohibition on employment, the bill specifies that an authorized provider's, administrator's, and licensee's statement attesting that the person has not been convicted of or pleaded guilty to the listed offenses also attest that the person has not been convicted of or pleaded guilty to any of the offenses identified in the preceding paragraph (R.C. 5104.09(A)(3) and (4)).

The bill requires the Director of ODJFS to adopt rules pursuant to R.C. Chapter 119. that implement the law described in the two prior paragraphs and the existing provision contained in the section, including rules that specify exceptions to the bill's prohibition and the existing prohibition described above for persons who have been convicted of an offense listed in R.C. 5104.09(A)(1)(a) or (b) but meets standards in regard to rehabilitation that are set by ODJFS (R.C. 5104.09(D)).

### **Repeal of funding and eligibility provisions related to family with child in Head Start program who receives publicly funded child day-care**

Existing R.C. 5104.381 provides that, notwithstanding rules adopted under R.C. 5104.38(A) and any other statute or rule governing eligibility for publicly funded day-care, a family that has a child enrolled in a Head Start program and that receives publicly funded child day-care for that child in a collaborative model at the same location is to continue to receive the publicly funded child day-care until the end of the Head Start program year unless the caretaker parent fails to pay the required fee for publicly funded child day-care. Under that section, a family that is participating in the program operated under R.C. Chapter 5107. and that is ineligible to receive cash assistance due to sanction or fraud is not eligible for publicly funded child day-care under R.C. 5104.381. Eligibility for publicly funded child day-care under R.C. 5104.381 is not subject to available funds. (R.C. 5104.381.)

The bill outright repeals R.C. 5104.381 (Section 2).

## **Registry of persons providing child day-care**

### **Existing law**

Existing law permits ODJFS to develop and maintain a registry of persons providing "child day care" (see "**Definitions**," below). The Director of ODJFS may adopt rules under R.C. Chapter 119. establishing procedures and requirements for the registry's administration. (R.C. 5104.30(D).)

### **Operation of the bill**

The bill replaces the existing discretionary registry of persons providing child care with a mandatory registry. Under the bill, ODJFS must develop and maintain a registry of persons providing child care and must adopt rules pursuant to R.C. Chapter 119. establishing procedures and requirements for the registry's administration. (R.C. 5104.14 and repeal of last paragraph in R.C. 5104.30(D).)

## **Public children services agency--provision of information relevant to protection of children**

The bill provides that, notwithstanding R.C. 2151.421 (see **COMMENT 1**) and 5153.17 (see **COMMENT 2**) and any other Revised Code section pertaining to confidentiality, a public children services agency must promptly provide to ODJFS or a county DJFS any information the agency determines to be relevant for the purpose of evaluating the fitness of a person who has applied for licensure or renewal of licensure as a type A family day-care home (but not a child day-care center) or certification or renewal of certification as a type B family day-care home, including, but not limited to, both of the following: (1) a summary report of the chronology of abuse and neglect reports made pursuant to R.C. 2151.421 of which the person is the subject and the final disposition of the investigation of the reports or, if the investigations have not been completed, the status of the investigations, and (2) any underlying documentation concerning those reports.

The agency cannot include in the information provided to ODJFS or the county DJFS the name of the person or entity that made the report or participated in the making of the report of child abuse or neglect. (R.C. 5153.175.)

## **Provision of copies of adopted rules**

### **Existing law**

Existing law provides for the adoption of rules, on various topics regarding the provision of day care, by the Director of ODJFS and by a director of a county DJFS. Regarding certain of the rules (R.C. 5104.011(J)):

(1) Existing law requires the Director of ODJFS to do all of the following: (a) send to each licensee notice of proposed rules governing the licensure of child day-care centers and type A child day-care homes, (b) give public notice of hearings regarding the rules to each licensee at least 30 days prior to the date of the public hearing, in accordance with R.C. 119.03, (c) *prior to the effective date of a rule*, provide, in either paper or electronic form, *a copy of the adopted rule* to each licensee, (d) send to each director of a county DJFS a notice of proposed rules governing the certification of type B family day-care homes and in-home aides that includes an Internet web site address where the proposed rules can be viewed, (e) give public notice of hearings regarding the proposed rules not less than 30 days in advance, and (f) provide to each director of a county DJFS an electronic *copy of each adopted rule prior to the rule's effective date*.

(2) Existing law requires the director of a county DJFS to send copies of proposed rules to each authorized provider and in-home aide and to give public notice of hearings regarding the rules to each authorized provider and in-home aide at least 30 days prior to the date of the public hearing, in accordance with R.C. 119.03. *Prior to the effective date of a rule*, the director of a county DJFS must provide *copies of the adopted rule* to each authorized provider and in-home aide.

### **Operation of the bill**

The bill modifies some of the copy provisions described above, as follows (R.C. 5104.011(J)(1)(c), (2)(c), and (3)): (1) under the bill, the copies of an adopted rule required as described above in (1)(c) must be provided by the Director of ODJFS to licensees *at least 30 days before the effective date* of the adopted rule (instead of *prior to the effective date* of the rule), (2) under the bill, the copies of an adopted rule required as described above in (1)(f) must be provided by the Director of ODJFS to each director of a county DJFS *at least 45 days prior to the effective date* of the adopted rule (instead of *prior to the effective date* of the rule), and (3) under the bill, the copies of an adopted rule required as described above in (2) must be provided by the director of the county DJFS to authorized providers and in-home aides, *in either paper or electronic form* (added by the bill), at least 30 days before the effective date of the rule (instead of *prior to the effective date of the rule*).

### **Definitions**

The following definitions apply to R.C. Chapter 5104. and are relevant to the provisions of the bill described in the preceding parts of this analysis (R.C. 5104.01; all of the definitions are unchanged by the bill, except for the definitions of "child day-care" and "publicly funded child day-care" and except for technical and conforming changes):

**Administrator** means the person responsible for the daily operation of a center or type A home; the administrator and the owner may be the same person (R.C. 5104.11(A)).

**Authorized provider** means a person authorized by a county DJFS to operate a certified type B family day-care home (R.C. 5104.01(C)).

**Certified type B family day-care home** and **certified type B home** mean a type B family day-care home that is certified by the director of the county DJFS pursuant to R.C. 5104.11 (R.C. 5104.01(F), as amended by the bill; under existing law, the definition states that the certification is "to receive public funds for providing child care pursuant to R.C. Chapter 5104. and any rules adopted under it").

**Child day-care** is renamed **child care**, and is described above in **"Child day-care" and "publicly funded child day-care" renamed "child care" and "publicly funded child care"** (R.C. 5104.01(K)).

**Child day-care center** and **center** mean any place in which child 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 care or publicly funded child care is provided for seven to 12 children at one time. In counting children for the purposes of this provision, any children under six years of age who are related to a licensee, administrator, or employee and who are on the premises of the center must be counted. "Child day-care center" and "center" do not include any of the following (R.C. 5104.01(L)): (1) a place located in and operated by a hospital, as defined in R.C. 3727.01, 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, or (3) a place that provides child care, but not publicly funded child care, if an organized religious body provides the child care, a parent, custodian, or guardian of at least one child receiving child care is on the premises and readily accessible at all times, the child care is not provided for more than 30 days a year, and the child day-care is provided only for preschool and school children.

**In-home aide** means a person certified by a county director of job and family services pursuant to R.C. 5104.12 to provide publicly funded child care to a child in a child's own home pursuant to R.C. Chapter 5104. and any rules adopted under it (R.C. 5104.01(X)).

**Licensee** means the owner of a child day-care center or type A family day-care home that is licensed pursuant to R.C. Chapter 5104. and who is responsible for ensuring its compliance with R.C. Chapter 5104. and rules adopted pursuant to that Chapter (R.C. 5104.01(BB)).

**Part-time child day-care center, part-time center, part-time type A family day-care home,** and **part-time type A home** mean a center or type A home that provides child care or publicly funded child care for no more than four hours a day for any child (R.C. 5104.01(FF)).

**Publicly funded child day-care** is renamed **publicly funded child care**, and is described above in **"Child day-care" and "publicly funded child day-care" renamed "child care" and "publicly funded child care"** (R.C. 5104.01(JJ)).

**Type A family day-care home** and **type A home** mean a permanent residence of the administrator in which child care or publicly funded child care is provided for seven to 12 children at one time or a permanent residence of the administrator in which child day-care is provided for four to 12 children at one time if four or more children at one time are under two years of age. In counting children for the purposes of this provision, any children under six years of age who are related to a licensee, administrator, or employee and who are on the premises of the type A home must be counted. **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** and **type A home** do not include any child day camp. (R.C. 5104.01(RR).)

**Type B family day-care home** and **type B home** mean a permanent residence of the provider in which child 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. In counting children for the purposes of this provision, any children under six years of age who are related to the provider and who are on the premises of the type B home must be counted. **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** and **type B home** do not include any child day camp. (R.C. 5104.01(SS).)

### **Misrepresentation by a child care provider**

The bill prohibits a "child care provider" (see below) from knowingly misrepresenting any factor or condition that relates to the provision of "child care" (see below) and that substantially affects the health or safety of any child in that

provider's facility or receiving child care from that provider to any of the following (R.C. 2919.224(A)): (1) a parent, guardian, custodian, or other person responsible for the care of a child in the provider's facility or receiving child care from the provider, (2) a parent, guardian, custodian, or other person responsible for the care of a child who is considering the provider as a child care provider for the child, (3) a public official responsible for issuing the provider a license or certificate to provide child care, (4) a public official investigating or inquiring about the provision of child care by the provider, or (5) a "peace officer" (see below).

The bill specifies that, for purposes of this prohibition, "any factor or condition that relates to the provision of child care" includes, but is not limited to, the following (R.C. 2919.224(B)): (1) the person or persons who will provide child 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 care of the child care provider, of a person employed by the provider, or of a person who provides child care as a volunteer, (3) the number of children to whom child care is provided at one time or the number of children receiving child care in the child care facility at one time, (4) the conditions or safety features of the child care facility, or (5) the area of the child care facility in which child care is provided.

A person who violates this prohibition is guilty of "misrepresentation by a child care provider," a misdemeanor of the first degree.

As used in these provisions (R.C. 2919.223(A), (C), (D), and (E)):

(1) "Child care provider" means an owner, provider, administrator, or employee of, or volunteer at, a "child care facility"; an "in-home aide"; or a person who represents that the person provides "child care."

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

(3) "Child care," "child day-care center," "in-home aide," "type A family day-care home," and "type B family day-care home" have the same meanings as in R.C. 5104.01, as described above in "Definitions."

(4) "Peace officer" has the same meaning as in R.C. 2935.01 (not in the bill); under that section, the term means a sheriff or deputy sheriff, marshal or deputy marshal, municipal police officer, State Highway Patrol Superintendent or trooper for specified purposes, or any of a number of other specified law enforcement officers.

**Failure of a type A or type B family day-care home to disclose death or serious injury**

The bill enacts two separate provisions that prohibit an owner, provider, or administrator of a type A or type B family day-care home from failing to disclose to specified persons in certain circumstances a death or serious injury suffered by a child in the home or under the care of the owner, provider, or administrator. The definitions described above in "**Misrepresentation by a child care provider**" also apply to these provisions.

**Notice to prospective users of a day-care home**

Subject to the exception described below, the bill prohibits the owner, provider, or administrator of a type A or type B family day-care home, knowing that the event described below in (1) or (2) has occurred, from accepting a child into the home 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 home or while receiving child care from the owner, provider, or administrator, or died as a result of injuries suffered while under the care of the home or while receiving child care from the owner, provider, or administrator.

(2) Within the preceding ten years, a child suffered injuries while under the care of the home or while receiving child care from the owner, provider, or administrator 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).)

**Notice at the time of a death or serious injury, to users of the home, peace officers, and government officials**

**Prohibition.** Subject to the exception described below, the bill prohibits the owner, provider, or administrator of a type A or type B family day-care home 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:

(1) A child who is under the care of the home or is receiving child care from the owner, provider, or administrator dies while under the care of the home or while receiving child care from the owner, provider, or administrator or dies as

a result of injuries suffered while under the care of the home or while receiving child care from the owner, provider, or administrator;

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

The bill provides 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 under the prohibition (R.C. 2919.225(B)(1) and (C)).

**Persons to be given the notice.** The bill provides that an owner, provider, or administrator of a type A or type B family day-care home must provide the notices described above in "**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 care at the home or from the owner, provider, or administrator, 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, to the public children services agency of the county in which the home is located or the child care was given, a municipal or county peace officer in the county in which the child resides or in which the home is located or the child 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 home is located or the child care was given.

**Manner of giving the notice.** The bill specifies that an owner, provider, or administrator of a type A or type B family day-care home 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 home, 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 so suffered, and the child subsequently dies as a result of those injuries, the owner, provider, or administrator 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. (R.C. 2919.225(B)(3).)

### **Penalty**

A person who violates either of the prohibitions described above under "**Notice to prospective users of a day-care home**" and "**Notice at the time of a death or serious injury, etc.**" is guilty of "failure of a type A or type B family day-care home to disclose the death or serious injury of a child," a misdemeanor of the fourth degree (R.C. 2919.225(E)).

### **Immunity**

The bill provides that an owner, provider, or administrator is not subject to civil liability solely for making a required disclosure under the bill's provisions contained in R.C. 2919.225, as described above (R.C. 2919.225(D)).

### **Failure of a day-care center to disclose death or serious injury**

#### **Notice to prospective users of a child day-care center**

The bill prohibits a child care "center licensee" (see below) from accepting a child into that center without first providing certain information to the parent, guardian, custodian, or other person responsible for the care of the child, if the information is requested. The licensee must provide information regarding: (1) the types of injuries to children, as reported pursuant to rules adopted by ODJFS, that have occurred at the center on or after April 1, 2003, or the date that is two years before the date the information is requested, whichever date is more recent, and (2) the number of each type of injury to children that occurred during that period. Related to the provision described above in clause (1), the bill requires ODJFS to adopt rules prescribing a procedure for reporting injuries of children that occur at child day-care centers.

The bill also prohibits a child care center licensee from accepting a child into the center without first notifying the parent, guardian, custodian, or other person responsible for the care of a child who seeks to enroll the child in the child day-care center of the death, if either of the following have occurred within the 15 years preceding the date on which the enrollment is sought: (1) a child died while under the care of the center or while receiving child care from the owner, provider, or administrator of the center, or (2) a child died as a result of injuries suffered while under the care of the center or while receiving child care from the owner, provider, or administrator.

The bill requires each care center licensee to keep a copy of any information provided pursuant to this provision at the center for three years after providing the information. (R.C. 2919.227(A) and 5104.011(A)(18).)

As used in these provisions, "child care center licensee" means the owner of a child day-care center licensed under R.C. Chapter 5104. who is responsible for ensuring the center's compliance with that Chapter and rules adopted pursuant to it. The definitions described above in "Misrepresentation by a child care provider" also apply to these provisions. (R.C. 2919.223.)

Notice, at the time of a death, to users of the home, peace officers, and government officials

Prohibition. The bill prohibits a child care center licensee 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," if a child who is under the care of the center or is receiving child care from the owner, provider, or administrator of the center dies while under the care of the center or while receiving child care from the owner, provider, or administrator or dies as a result of injuries suffered while under the care of the center or while receiving child care from the owner, provider, or administrator (R.C. 2919.227(B)(1)).

The definitions described above in "Notice to prospective users of a child care center" and "Misrepresentation by a child care provider" also apply to these provisions. (R.C. 2919.223.)

Persons to be given the notice. The bill provides that a child care center licensee must provide the notices described above in "Prohibition" to all of the following (R.C. 2919.227(B)(2)):

(1) The parent, guardian, custodian, or other person responsible for the care of each child who, at the time of the death for which the notice is required, is receiving or is enrolled to receive child care from the center;

(2) The public children services agency of the county in which the center is located or the child care was given, a municipal or county peace officer in the county in which the child resides or in which the center is located or the child 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 center is located or the child care was given.

Manner of giving the notice. The bill specifies that a child care center licensee 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. The notice must state that the death occurred. (R.C. 2919.227(B)(3).)

### Penalty

A person who violates either of the prohibitions described above under "Notice to prospective users of a child day-care home" and "Notice at the time of a death, etc." is guilty of "failure of a child day-care center to disclose the death of a child," a misdemeanor of the fourth degree (R.C. 2919.227(C)).

### Child care disclosure form

The bill provides that, if a child care provider: (1) accurately answers the questions on a child care disclosure form that is in substantially the form set forth in the bill (see **COMMENT 3**), (2) presents the form to a parent, guardian, custodian, or other person responsible for the care of a child in the provider's facility or receiving child 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 care provider for the child, and (3) obtains the person's signature on the acknowledgement in the form, to the extent that the information set forth on the form is accurate, the provider who presents the form is not subject to prosecution under the bill's prohibition described above in "Misrepresentation by a child care provider" regarding the presentation of that information to that person. Also, an owner, provider, or administrator of a type A or type B family day-care home who is required to make a disclosure of the type described above in "Notice to prospective users of a day-care home" may comply with those provisions by accurately answering the questions on a child care disclosure form that is in substantially the form described in bill (see **COMMENT 3**), 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, and obtaining the signature of the person to whom it was presented on the acknowledgment. The use of the form set forth in the statute is discretionary and is not required to comply with any of the bill's disclosure requirements. (R.C. 2919.226(A).)

If a child care provider accurately answers the questions on a disclosure form that is substantially similar to the form described in the bill (see **COMMENT 3**), presents the form 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 care from the provider or who is considering the provider as a child care provider for the child, and obtains the signature of the person to whom it was presented on the acknowledgment in the form, 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. An owner, provider, or administrator of a type A or type B family day-care home who accurately answers the questions on such a disclosure form, 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 under the provisions described above in "Notice to prospective users of a day-care home," and obtains the signature of the person to whom the form was presented on the acknowledgment in the form complies with the bill's requirements regarding that disclosure. The bill specifies that, if such an owner, provider, or administrator uses the disclosure form, leaving a portion of it blank does not constitute a misrepresentation for the purposes of the offense of "misrepresentation by a child care provider" but may constitute the offense of "failure of a type A or type B family day-care home to disclose the death or serious injury of a child." An owner, provider, or administrator of a type A or type B family day-care home who completes the disclosure form and provides a copy of the form to the persons described in the sections containing those prohibitions may retain a copy of the completed form. (R.C. 2919.226(C).)

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## COMMENT

1. Existing R.C. 2151.421, not in the bill, generally requires a person in specified categories of professions who is acting in his or her official or professional capacity, and authorizes any other person, who knows or suspects that a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition that reasonably indicates abuse or neglect of the child, to report that knowledge or suspicion to the public children services agency or a municipal or county peace officer. A public children services agency must investigate a report made under the section, and make any recommendation to the local prosecuting authority that it considers necessary to protect any children that are brought to its attention. Reports made under the section generally are confidential; in a criminal proceeding, the report is admissible in evidence in accordance with the Rules of Evidence and is subject to discovery in accordance with the Criminal Rules.

2. Existing R.C. 5153.17, not in the bill, requires each public children services agency to prepare and keep written records of investigations of families, children, and foster homes, and of the care, training, and treatment afforded children, and to prepare and keep such other records as are required by ODJFS. The records are confidential, but, except as provided by R.C. 3107.17(B), are open to inspection by the agency, the director of the county DJFS, and by other persons, upon the written permission of the executive secretary.

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

"CHILD 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 care services to ensure that those services remain satisfactory. If a question on this form is left unanswered, the child care provider makes no assertion regarding the question. Choosing appropriate child 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 care provider the person is not relying on any representations other than those provided in this form unless the child care provider has acknowledged the other representations in writing.

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

.....  
.....  
.....

2. What is the maximum number of children to whom you provide child 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 home will you provide child care to the applicant child?:

.....  
.....  
.....

4. Has a child died while in the care of, or receiving child care from, the child care provider? (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 care from, the child care provider? (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 care from, the child care provider that led to the child being hospitalized for more than 24 hours? (Yes/No)

Description/explanation (attach additional sheets if necessary)

.....  
.....  
.....

.....  
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 care provider unless the child care provider has acknowledged the other representations in writing.



.....  
Person receiving the form

.....  
Date"

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	11-12-03	p. 1159
Reported, S. Judiciary	---	---

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