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HEALTH AND SAFETY CODE - HSC

DIVISION 2. LICENSING PROVISIONS [1200 - 1796.70] (*Division 2 enacted by Stats. 1939, Ch. 60.*)

CHAPTER 3.4. California Child Day Care Act [1596.70 - 1596.895] (*Chapter 3.4 added by Stats. 1984, Ch. 1615, Sec. 9.*)

ARTICLE 5. Offenses [1596.89 - 1596.895] (*Article 5 added by Stats. 1984, Ch. 1615, Sec. 9.*)

1596.89. The director may bring an action to enjoin the violation or threatened violation of Section 1596.80 or 1596.805 in the superior court in and for the county in which the violation occurred or is about to occur. Any proceeding under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the director shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or irreparable damage or loss. Upon a finding by the director that the violation threatens the health or safety of any child in, or served by, a child day care facility, the department or agency contracted with may bring an action to enjoin the violation, threatened violation, or continued violation by any child day care facility which is located in an area for which it is responsible pursuant to the terms of the contract.

With respect to any and all actions brought pursuant to this section alleging actual violation of Section 1596.80 or 1596.805, the court shall, if it finds such allegations to be true, issue its order enjoining the child day care facility from continuance of the violation.

This section applies to family day care homes when the provider has failed to comply with Section 1596.80 or 1596.805 within 30 days of notice by the director of noncompliance, or at any time when a threat to the health and safety of children exists.

(Amended by Stats. 1985, Ch. 1064, Sec. 22.)

1596.890. (a) Any person who willfully or repeatedly violates any provision of this chapter, or any rule or regulation promulgated under this chapter is guilty of a misdemeanor. Upon conviction thereof, such a person shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail for a period not to exceed 180 days, or by both the fine and imprisonment. The operation of a child daycare facility without a license issued pursuant to this chapter shall make the owner or operator, or both, subject to a summons to appear in court.

(b) Notwithstanding subdivision (a) or any other provision of law, the sole sanction for failure of a resources and referral agency or an alternative payment program to comply with paragraph (2) of subdivision (a) of Section 1596.859 shall be set forth in the "Funding Terms and Conditions" agreement between the affected agency or program and the department.

(Amended by Stats. 2021, Ch. 116, Sec. 254. (AB 131) Effective July 23, 2021.)

1596.891. (a) A person who violates Section 1596.80 may be liable for an immediate assessment of civil penalties in the amount of two hundred dollars (\$200) per day.

(b) The penalty specified in subdivision (a) shall be imposed if the operator of an unlicensed facility refuses to seek licensure or the operator seeks licensure and is denied but continues to operate, unless other remedies available to the department, including criminal prosecution, are deemed more effective by the department.

(c) The operator may appeal the assessment to the director. The department shall adopt regulations setting forth the appeals procedure.

(d) The operator shall be exempt from the civil penalty specified in subdivision (a) if a lack of liability insurance is the sole reason for nonlicensure and the reason for operating without liability insurance is not due to any fault on the part of the operator.

(Amended by Stats. 1990, Ch. 1488, Sec. 4.)

1596.8915. Any person who, without lawful authorization from a duly authorized officer, employee, or agent of the department, informs an owner, operator, employee, or agent of a child day care facility of an impending and unannounced site visit to that facility by personnel of the department, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed

one thousand dollars (\$1,000), by imprisonment in the county jail for a period not to exceed 180 days, or by both a fine and imprisonment.

(Amended by Stats. 1991, Ch. 888, Sec. 13.)

1596.892. The civil, criminal, and administrative remedies available to the department pursuant to this article are not exclusive, and may be sought and employed in any combination deemed advisable by the department to enforce the provisions of this chapter.

(Added by Stats. 1985, Ch. 1110, Sec. 3.)

1596.893a. (a) When the licensing agency has reason to believe that an unlicensed day care facility is operating or that a day care facility is in violation of the California Child Day Care Facilities Act or of the rules and regulations promulgated under the California Child Day Care Facilities Act, the agency may issue a citation to the facility. Each citation shall be in writing and shall describe with particularity the nature of the violation and the action proposed by the licensing agency. If the citation has been developed pursuant to an evaluator visit, the citation shall include the plan developed by the operator and evaluator to correct each deficiency. The citation shall be served upon the facility operator personally or through registered mail.

(b) The licensing agency shall give due consideration to the appropriateness of the penalty to the alleged violation, considering each of the following factors:

- (1) The gravity of the violation.
- (2) The history of previous violations.
- (3) The possibility of a threat to the health or safety of any child in the facility.
- (4) The number of children affected by the violation.
- (5) The availability of equipment or personnel necessary to correct the violation, if appropriate.

(c) If the facility desires to contest a citation or the proposed assessment of a civil penalty, the facility shall, within 10 business days after service of the citation, notify the licensing agency in writing of a request for an informal conference. The licensing agency shall hold, within 30 days from the receipt of the request, an informal conference. At the conclusion of the conference, the licensing agency may affirm, modify, or dismiss the citation or proposed penalty. The agency shall state in writing the reasons for any action taken in the informal conference.

(d) If the penalty contained in the citation is affirmed in the informal conference, the licensing agency shall pursue enforcement of the penalty, and the facility may pursue any appeal mechanisms otherwise contained in law.

(e) The department shall implement this section during periods that Section 1596.893b is not being implemented in accordance with Section 18285.5 of the Welfare and Institutions Code.

(Added by Stats. 1993, Ch. 726, Sec. 4. Effective October 4, 1993.)

1596.893b. (a) When the licensing agency has reason to believe that an unlicensed day care facility is operating or that a day care facility is in violation of the California Child Day Care Facilities Act or of the rules and regulations promulgated under the California Child Day Care Facilities Act, the agency may issue a citation to, or impose penalties on, the facility. Each citation shall be in writing and shall describe with particularity the nature of the violation and the action proposed by the licensing agency. If the citation has been developed pursuant to an evaluator visit, the citation shall include the plan developed by the operator and evaluator to correct each deficiency. The citation shall be served upon the facility operator personally or through registered mail. Citations and penalties of licensed child care facilities shall be applied for the sole purpose of ensuring compliance with established statutes or regulations. The department shall distinguish between all of the following:

- (1) Violations that present an immediate risk to the health, safety, or personal rights of the children in care.
- (2) Violations that have the potential of becoming an immediate risk to the health, safety, or personal rights of the children in care.
- (3) Violations that do not present an immediate or potential risk to the health, safety, or personal rights of the children in care.

(b) Civil penalties shall be imposed in accordance with Sections 1596.99 and 1597.62 only after the day care licensee fails to correct the violation in the time period specified in the plan developed pursuant to Section 1596.98 or 1597.56 and the evaluator makes a finding that the violation presents risks identified in paragraph (1) or (2) of subdivision (a). Civil penalties shall begin to accrue on the day the evaluator revisits the site and verifies that the violation was not corrected, even if the evaluator's visit is after the time period specified in the plan.

(c) The department shall adopt regulations establishing procedures for the imposition of citations or civil penalties under this section.

(d) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

(Added by renumbering Section 1596.893 (as amended by Stats. 1992, Ch. 1316) by Stats. 1993, Ch. 726, Sec. 5. Effective October 4, 1993.)

1596.893c. (a) The department shall consider, in determining whether to issue a citation or impose a civil penalty under any provision of this chapter to a child daycare facility that contracts with the department or the State Department of Education, whether the child daycare facility is in the process of complying with Section 8489.1 of the Education Code or Section 10491.1 of the Welfare and Institutions Code.

(b) A child daycare facility may appeal a citation or civil penalty issued by the department that is related to the behavior of a child, including the actions of the facility or its staff related to the behavior of a child, if the facility is in the process of complying with Section 8489.1 of the Education Code or Section 10491.1 of the Welfare and Institutions Code. The department shall withdraw all citations or civil penalties upon the presentation of evidence by the facility that it was in the process of complying with Section 8489.1 of the Education Code or Section 10491.1 of the Welfare and Institutions Code.

(Amended by Stats. 2022, Ch. 915, Sec. 5. (AB 2806) Effective January 1, 2023.)

1596.894. Any action brought by the department against an unlicensed child day care facility shall not abate by reason of sale or other transfer of ownership of the child day care facility which is a party to the action except with the written consent of the licensing agency.

(Added by renumbering Section 1596.891 (as added by Stats. 1985, Ch. 1064) by Stats. 1988, Ch. 160, Sec. 96.)

1596.895. (a) The department shall notify resource and referral agencies funded pursuant to Section 10217 of the Welfare and Institutions Code of any priority one violation or any allegation of a priority one violation affecting the health and safety of children that is within the geographic area served by the agency. Resource and referral agencies shall use this information when deciding whether to make a referral to the licensee and shall maintain the confidentiality of information provided to them pursuant to this section.

(b) The Child Care Regulation Section shall notify these resource and referral agencies of the department's actions regarding these allegations of priority one violations within 30 days. The Child Care Regulation Section shall notify these resource and referral agencies of the department's actions regarding these allegations of priority one violations within 10 days after the allegations have been substantiated by the department.

(c) "Priority one violation" is defined to include sexual assault, physical abuse, ritualistic abuse, or suspicious deaths, if any of the following apply:

(1) The victim is a child in care and the suspect is the facility operator, the licensee, an employee of the facility, or is yet to be identified as any of the individuals specified in this paragraph.

(2) The facility is operating and the suspect has access to the victim or potential victim.

(3) The complaint is against an unlicensed facility and either a temporary suspension order is in effect or the license has been revoked.

(d) "Allegation of a priority one violation" is defined to include any complaints of priority one violations pursuant to subdivision (c).

(e) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

(Amended by Stats. 2021, Ch. 116, Sec. 256. (AB 131) Effective July 23, 2021.)