

PROGRAM BILL # 13

Legislative Bill Drafting Commission
12042-01-6

S. -----
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

SOCISELA

(Relates to safety in child day care
programs and repeals certain
provisions of law relating thereto)

Soc Serv. child day care programs

AN ACT

to amend the social services law, in
relation to safety in child day care
programs; and to repeal certain
provisions of such law relating
thereto

The People of the State of New
York, represented in Senate and
Assembly, do enact as follows:

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal:

s15 Addabbo	s31 Espaillat	s27 Hoytman	s25 Montgomery	s56 Robach
s52 Akshar	s49 Farley	s09 Kaminsky	s40 Murphy	s10 Sanders
s46 Amedore	s17 Feider	s63 Kennedy	s54 Nozzolio	s23 Savino
s11 Avella	s02 Flanagan	s34 Klein	s58 O'Mara	s41 Serino
s42 Bonacic	s55 Funke	s28 Krueger	s62 Ort	s29 Serrano
s04 Boyle	s59 Gallivan	s24 Lanza	s60 Panepinto	s51 Seward
s44 Breslin	s12 Gianaris	s39 Larkin	s21 Parker	s26 Squadron
s38 Carlucci	s22 Golden	s37 Latimer	s13 Peralta	s16 Stavisky
s14 Comrie	s47 Griffo	s01 LaValle	s30 Perkins	s35 Stewart-
s03 Croci	s20 Hamilton	s45 Little	s19 Persaud	Cousins
s50 DeFrancisco	s06 Hannon	s05 Marcellino	s61 Ranzenhofer	s53 Valesky
s32 Diaz	s36 Hassell-	s43 Marchione	s48 Ritchie	s08 Venditto
s18 Dilan	Thompson	s07 Martins	s33 Rivera	s57 Young

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

a049 Abbate	a034 DenDekker	a011 Jean-Pierre	a003 Murray	a076 Seawright
a092 Abinanti	a054 Dilan	a135 Johns	a133 Nojay	a087 Sepulveda
a084 Arroyo	a081 Dinowitz	a077 Joyner	a037 Nolan	a027 Simanowitz
a035 Aubry	a147 DiPietro	a094 Katz	a130 Oaks	a052 Simon
a120 Barclay	a115 Duprey	a074 Kavanagh	a069 O'Donnell	a036 Simotas
a106 Barrett	a004 Englebright	a142 Kearns	a051 Ortiz	a104 Skartados
a060 Barron	a109 Fahy	a040 Kim	a091 Otis	a099 Skoufis
a082 Benedetto	a071 Farrell	a131 Kolb	a132 Palmesano	a022 Solages
a042 Bichotte	a126 Finch	a105 Lalor	a002 Palumbo	a114 Stec
a079 Blake	a008 Fitzpatrick	a013 Lavine	a088 Paulin	a110 Steck
a117 Blankenbush	a124 Friend	a134 Lawrence	a141 Peoples-	a127 Stirpe
a098 Brabenc	a095 Galef	a050 Lentol	Stokes	a112 Tedisco
a026 Braunstein	a137 Gantt	a125 Lifton	a058 Perry	a101 Tenney
a044 Brennan	a007 Garbarino	a072 Linares	a086 Pichardo	a001 Thiele
a119 Brindisi	a148 Giglio	a102 Lopez	a089 Pretlow	a061 Titone
a138 Bronson	a080 Gjonaj	a123 Lupardo	a073 Quart	a031 Titus
a093 Buchwald	a066 Glick	a010 Lupinacci	a019 Ra	a055 Walker
a118 Butler	a023 Goldfeder	a121 Magee	a012 Raja	a146 Walter
a103 Cahill	a150 Goodell	a129 Magnarelli	a006 Ramos	a041 Weinstein
a065 Cancel	a075 Gottfried	a064 Malliotakis	a043 Richardson	a024 Weprin
a062 Castorina	a005 Graf	a030 Markey	a078 Rivera	a059 Williams
a145 Ceretto	a100 Gunther	a090 Mayer	a056 Robinson	a113 Woerner
a047 Colton	a046 Harris	a108 McDonald	a068 Rodriguez	a143 Wozniak
a032 Cook	a139 Hawley	a014 McDonough	a067 Rosenthal	a070 Wright
a144 Corwin	a083 Heastie	a017 McKeivitt	a025 Rozic	a096 Zebrowski
a085 Crespo	a028 Hevesi	a107 McLaughlin	a116 Russell	a020
a122 Crouch	a048 Hikind	a038 Miller	a149 Ryan	a033
a021 Curran	a018 Hooper	a015 Montesano	a009 Saladino	
a063 Cusick	a128 Hunter	a136 Morelle	a111 Santabarbara	
a045 Cymbrowitz	a029 Hyndman	a057 Mosley	a016 Schimel	
a053 Davila	a097 Jaffee	a039 Moya	a140 Schimminger	

1) Single House Bill (introduced and printed separately in either or
both houses). Uni-Bill (introduced simultaneously in both houses and printed
as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2
signed copies of bill and 4 copies of memorandum in support (single house);
or 4 signed copies of bill and 8 copies of memorandum
in support (uni-bill).

1 Section 1. Paragraph (d) of subdivision 3 of section 390 of the social
2 services law, as amended by chapter 416 of the laws of 2000, is amended
3 to read as follows:

4 (d) (i) Where investigation or inspection reveals that a child day
5 care provider which must be licensed [or], registered or permitted is
6 not duly licensed, registered or permitted, the office of children and
7 family services, or for programs referenced in subdivision thirteen of
8 this section, the local governmental entity referenced in such subdivi-
9 sion, shall [advise the child day care provider] provide notice, in
10 writing, to the child day care provider indicating that the provider is
11 in violation of the licensing [or], registration or permitting require-
12 ments and shall take such further action as is necessary to cause the
13 provider to comply with the law, including directing an unlicensed [or],
14 unregistered or unpermitted provider to cease operation [In addition,
15 the office of children and family services shall] immediately.

16 (ii) The notice to the provider required by subparagraph (i) of this
17 paragraph shall advise parents and caregivers that the program is closed
18 for failure to comply with the applicable licensing, registration or
19 permitting requirements, as applicable, and shall be immediately posted
20 on the front door of the provider's premises in a prominent location and
21 on the provider's website, if one exists.

22 (iii) The office of children and family services, or for programs
23 referenced in subdivision thirteen of this section, the local govern-
24 mental entity referenced in such subdivision, shall also require the
25 provider to notify the parents or guardians of children receiving care
26 from the provider in writing that the provider is in violation of the
27 licensing [or], registration or permitting requirements and shall
28 require the provider to [notify] confirm in writing with the office of

1 children and family services or the local governmental entity referenced
2 in subdivision thirteen of this section, as applicable, that the provid-
3 er has done so.

4 (iv) Any provider who is directed to cease operations pursuant to this
5 paragraph shall be entitled to a hearing before the office of children
6 and family services, or for programs referenced in subdivision thirteen
7 of this section, the local governmental entity referenced in such subdi-
8 vision. If the provider requests a hearing to contest the directive to
9 cease operations, such hearing must be scheduled to commence as soon as
10 possible but in no event later than thirty days after the receipt of the
11 request [by the office of children and family services]. The provider
12 may not operate the center, home or program after being directed to
13 cease operations, regardless of whether a hearing is requested.

14 (v) If the provider does not cease operations, the office of children
15 and family services, or for programs referenced in subdivision thirteen
16 of this section, the local governmental entity referenced in such subdi-
17 vision, shall notify law enforcement.

18 (vi) The office of children and family services may impose a civil
19 penalty pursuant to subdivision eleven of this section, seek an injunc-
20 tion pursuant to section three hundred ninety-one of this title, or
21 both.

22 § 2. Subdivision 8 of section 390 of the social services law, as added
23 by chapter 750 of the laws of 1990, is amended to read as follows:

24 8. (a) The [department] office of children and family services shall
25 establish and maintain a [list of all current] searchable registry that
26 provides detailed information for all child day care programs registered
27 and licensed [child day care programs and a list of all programs whose
28 license or registration has been revoked, rejected, terminated, or

1 suspended] by the office of children and family services and all child
2 day care centers referenced in subdivision thirteen of this section that
3 are permitted by the local governmental entity referenced in such subdivi-
4 vision. Such information shall be available to the public[, pursuant to
5 procedures developed by the department] on the office of children and
6 family services' website and shall be searchable by the name of the
7 person on the license, registration or permit as well as by the name of
8 the child day care program.

9 (b) (i) Such registry shall include comprehensible information about
10 the programs listed in paragraph (a) of this subdivision that are oper-
11 ating or suspended and any program that has been revoked in the last six
12 years. Such information shall include, but not necessarily be limited
13 to, the particular program's compliance and inspection history, and
14 whether the program's license, registration or permit has been revoked,
15 rejected, denied, limited or suspended and the reason or reasons there-
16 fore.

17 (ii) Such registry shall also contain information on programs that
18 have been found to be operating without the required license, registra-
19 tion or permit in accordance with paragraph (d) of subdivision three of
20 this section.

21 (c) Notwithstanding any other provision of law to the contrary, a
22 local governmental entity referenced in subdivision thirteen of this
23 section shall provide to the office of children and family services, in
24 the time and manner required by the office, any information on child day
25 care centers referenced in subdivision thirteen of this section that is
26 needed pursuant to the requirements of this subdivision for the
27 registry.

1 § 3. Subdivision 10 of section 390 of the social services law, as
2 amended by chapter 416 of the laws of 2000, is amended to read as
3 follows:

4 10. (a) Any home or facility providing child day care shall be oper-
5 ated in accordance with applicable statutes and regulations. Any
6 violation of applicable statutes or regulations shall be a basis to
7 deny, reject, limit, suspend[,] or revoke[, or terminate] a license or
8 registration.

9 (b) Consistent with articles twenty-three and twenty-three-A of the
10 correction law, and guidelines referenced in subdivision two of section
11 four hundred twenty-five of this article, if the office of children and
12 family services is made aware of the existence of a criminal conviction
13 or pending criminal charge concerning an operator of a family day care
14 home, group family day care home, school-age child care program, or
15 child day care center or concerning any assistant, employee or volunteer
16 in such homes, programs or centers, or any persons age eighteen or over
17 who reside in such homes, such conviction or charge may be a basis to
18 deny, limit, suspend, revoke, or reject[, or terminate] a license or
19 registration.

20 (c)(i) Before any license or registration issued pursuant to the
21 provisions of this section is suspended, limited or revoked[, before
22 registration pursuant to this section is suspended or terminated], or
23 when an application for such license or registration is denied or
24 [registration] rejected, the applicant for or holder of such registra-
25 tion or license is entitled, pursuant to section twenty-two of this
26 chapter and the regulations of the office of children and family
27 services, to a hearing before the office of children and family
28 services.

1 (ii) However, a license or registration shall be [temporarily]
2 suspended or limited without a hearing upon written notice to the opera-
3 tor of the facility [following a finding] that suspension or limitation
4 of the license or registration is necessary to protect the health and
5 safety of children or the public health[, or an individual's safety or
6 welfare, are in imminent danger.] based on a finding, in accordance with
7 the applicable regulations of the office of children and family services
8 contained in article three of subchapter C of chapter II of title eigh-
9 teen of the New York code, rules and regulations, that may include but
10 not be limited to:

11 (A) injury or death of a child;

12 (B) inadequate supervision;

13 (C) overcapacity;

14 (D) staff to child ratios not being maintained;

15 (E) corporal punishment of a child;

16 (F) failure to obtain appropriate medical treatment for a child, which
17 may include failure to call 911 when appropriate;

18 (G) blocked exits or means of egress;

19 (H) failure to cooperate with the office of children and family
20 services or inspection staff in providing access to or information on
21 the program that is necessary to make appropriate determinations relat-
22 ing to the health and safety of children in the care of the program;

23 (I) use of force or verbal or written threats of force being made
24 against inspection staff or staff of the office of children and family
25 services who are involved in the oversight functions for the program;

26 (J) failure to maintain adequate sanitation, heating, cooling or
27 ventilation conditions within the program;

1 (K) allowing staff who have not completed background clearances in
2 accordance with the applicable statutory requirements and the applicable
3 regulations of the office of children and family services to provide
4 care for children; and

5 (L) the submission of fraudulent documents to the office of children
6 and family services or any other governmental entity in relation to the
7 license, registration or operation of the child day care program or any
8 child being served within the child day care program.

9 (iii) The holder of a license or registrant is entitled to a hearing
10 before the office of children and family services to contest the [tempo-
11 rary] suspension or limitation. If the holder of a license or registrant
12 requests a hearing to contest the [temporary] suspension or limitation,
13 such hearing must be scheduled to commence as soon as possible but in no
14 event later than thirty days after the receipt of the request by the
15 office of children and family services. Suspension shall continue until
16 the condition requiring suspension or limitation is corrected or until a
17 hearing decision has been issued. If the office of children and family
18 services determines after a hearing that the [temporary] suspension or
19 limitation was proper, such suspension or limitation shall be extended
20 until the condition requiring suspension or limitation has been
21 corrected or until the license or registration has been revoked.

22 § 4. Paragraph (a) of subdivision 11 of section 390 of the social
23 services law, as amended by chapter 416 of the laws of 2000, is amended
24 to read as follows:

25 (a) (i) The office of children and family services shall adopt regu-
26 lations establishing civil penalties of no more than five [hundred]
27 thousand dollars per day to be assessed against child day care centers,
28 school age child care programs, group family day care homes or family

1 day care homes for violations of this section, sections three hundred
2 ninety-a and three hundred ninety-b of this title and any regulations
3 promulgated thereunder. The regulations establishing civil penalties
4 shall specify the violations subject to penalty.

5 (ii) The office of children and family services shall adopt regu-
6 lations establishing civil penalties of no more than five [hundred]
7 thousand dollars per day to be assessed against child day care providers
8 who operate child day care centers or group family day care homes with-
9 out a license or who operate family day care homes, school-age child
10 care programs, or child day care centers required to be registered with-
11 out obtaining such registration.

12 (iii) In addition to any other civil or criminal penalty provided by
13 law, the office of children and family services shall have the power to
14 assess civil penalties in accordance with its regulations adopted pursu-
15 ant to this subdivision after a hearing conducted in accordance with
16 procedures established by regulations of the office of children and
17 family services. Such procedures shall require that notice of the time
18 and place of the hearing, together with a statement of charges of
19 violations, shall be served in person or by certified mail addressed to
20 the school age child care program, group family day care home, family
21 day care home, or child day care center at least thirty days prior to
22 the date of the hearing. The statement of charges shall set forth the
23 existence of the violation or violations, the amount of penalty for
24 which the program may become liable[,] and the steps which must be taken
25 to rectify the violation[, and where applicable, a statement that a
26 penalty may be imposed regardless of rectification]. A written answer to
27 the charges of violations shall be filed with the office of children and
28 family services not less than ten days prior to the date of hearing with

1 respect to each of the charges and shall include all material and rele-
2 vant matters which, if not disclosed in the answer, would not likely be
3 known to the office of children and family services.

4 (iv) The hearing shall be held by the commissioner of the office of
5 children and family services or the commissioner's designee. The burden
6 of proof at such hearing shall be on the office of children and family
7 services to show that the charges are supported by a preponderance of
8 the evidence. The commissioner of the office of children and family
9 services or the commissioner's designee, in his or her discretion, may
10 allow the child day care center operator or provider to attempt to prove
11 by a preponderance of the evidence any matter not included in the
12 answer. [Where the child day care provider satisfactorily demonstrates
13 that it has rectified the violations in accordance with the requirements
14 of paragraph (c) of this subdivision, no penalty shall be imposed except
15 as provided in paragraph (c) of this subdivision.]

16 § 5. Paragraph (c) of subdivision 11 of section 390 of the social
17 services law is REPEALED.

18 § 6. Paragraph (e) of subdivision 11 of section 390 of the social
19 services law, as added by chapter 117 of the laws of 2010, is amended to
20 read as follows:

21 (e)(i) The office of children and family services shall deny or reject
22 a new application for licensure or registration made by a day care
23 provider whose license or registration was previously suspended or
24 revoked or [terminated] whose renewal was denied or rejected based on a
25 violation of statute or regulation for a period of [two] five years from
26 the date that the revocation [or termination] or suspension of the
27 license or registration became finally effective[, unless such office
28 determines, in its discretion, that approval of the application will not

1 in any way jeopardize the health, safety or welfare of children in the
2 center, program or home.] or the date the renewal was denied or
3 rejected. For the purposes of this paragraph, the date the suspension
4 became finally effective shall mean the date the suspension was issued
5 if a hearing challenging the suspension was not requested. For the
6 purposes of this paragraph, the date that the revocation [or termi-
7 nation] became finally effective shall be, as applicable:

8 (A) the date that the revocation [or termination] became effective
9 based on the notice of revocation [or termination];

10 (B) the date that the hearing decision was issued upholding the revo-
11 cation [or termination];

12 (C) the date of issuance of a final court order affirming the revoca-
13 tion [or termination] or affirming a hearing decision that upheld the
14 revocation [or termination]; or

15 (D) another date mutually agreed upon by the office of children and
16 family services and the provider.

17 (ii) (A) Such office shall deny or reject a new application or the
18 renewal of an application for licensure or registration made by a day
19 care provider who is enjoined or otherwise prohibited by a court order
20 from operation of a day care center, group family day care home, family
21 day care home or school-age child care program without a license or
22 registration for a period of [two] five years from the date of the court
23 order unless the court order specifically enjoins the provider from
24 providing day care for a period longer than [two] five years, in which
25 case the office shall deny or reject any new application made by the
26 provider while the provider is so enjoined.

27 (B) Such office shall deny or reject a new application for licensure
28 or registration made by a day care provider who is assessed a second

1 civil penalty by such office for having operated a day care center,
2 group family day care home, family day care home or school-age child
3 care program without a license or registration [for a period of two
4 years from the date of the second fine. For the purposes of this para-
5 graph, the date of the second fine shall be either the date upon which
6 the day care provider signs a stipulation agreement to pay the second
7 fine or the date upon which a hearing decision is issued affirming the
8 determination of such office to impose the second fine, as applicable].

9 (iii) A day care provider who surrenders the provider's license or
10 registration while such office is engaged in enforcement seeking suspen-
11 sion[,] or revocation [or termination] of such provider's license or
12 registration pursuant to the regulations of such office, shall be deemed
13 to have had their license or registration revoked [or terminated] and
14 shall be subject to the prohibitions against licensing or registration
15 pursuant to subparagraph (i) of this paragraph for a period of [two]
16 five years from the date of surrender of the license or registration.

17 § 7. Subdivision 11 of section 390 of the social services law is
18 amended by adding a new paragraph (f) to read as follows:

19 (f) The office of children and family services shall deny a new appli-
20 cation for licensure or registration or the renewal of an application
21 for licensure or registration made by a child day care provider who
22 operated a program referenced in subdivision thirteen of this section
23 and whose permit was previously revoked or suspended or whose renewal
24 was denied or rejected based on a violation of statute or regulation for
25 a period of five years from the date that the revocation or suspension
26 of the permit became finally effective or the date the renewal was
27 denied or rejected. For the purposes of this paragraph, the date that
28 the revocation or suspension became finally effective shall be based on

1 an application of the provisions enumerated in paragraph (e) of this
2 subdivision, as applicable.

3 § 8. Section 390 of the social services law is amended by adding a new
4 subdivision 11-a to read as follows:

5 11-a. When an enforcement action for suspension or revocation is
6 commenced against a child care provider that owns multiple programs, the
7 office of children and family services shall assess the health and safe-
8 ty of the children in the other programs owned by such provider within
9 two business days to determine if enforcement action is warranted at
10 those sites. The office of children and family services reserves the
11 right to take enforcement action against all sites owned by a provider
12 when an enforcement action for suspension or revocation has been initi-
13 ated at one of the provider's programs.

14 § 9. Subdivision 13 of section 390 of the social services law, as
15 amended by chapter 160 of the laws of 2003, is amended to read as
16 follows:

17 13. Notwithstanding any other provision of law[,] to the contrary:

18 (a) this section, except for this subdivision and, where applicable,
19 paragraph [(a-1)] (a) of subdivision two-a, paragraph (d) of subdivision
20 three, subdivision eight and paragraph (f) of subdivision eleven of this
21 section, shall not apply to child day care centers in the city of New
22 York[.]

23 (b) the regulations for child day care centers adopted by the office
24 of children and family services in accordance with this section shall be
25 deemed to apply to the child day care centers referenced in paragraph
26 (a) of this subdivision when expressly stated within such regulations;
27 and

1 (c) the office of children and family services may direct the local
2 governmental entity that has oversight over the child day care centers
3 referenced in paragraph (a) of this subdivision to take any action
4 consistent with the provisions of this section when necessary to protect
5 child health or safety or the public health in relation to child day
6 care centers referenced in paragraph (a) of this subdivision.

7 § 10. Section 390-i of the social services law, as added by section 1
8 of part Q of chapter 56 of the laws of 2014, is amended to read as
9 follows:

10 § 390-i. Notice of inspection report, limitation, suspension or revo-
11 cation. 1. In every child day care program that is licensed or regis-
12 tered pursuant to section three hundred ninety of this title and in
13 every child day care center referenced in subdivision thirteen of
14 section three hundred ninety of this title, the child day care provider
15 shall post and maintain in a prominent place[, a]:

16 (a) A notice[, to be provided by the office of children and family
17 services,] that shall state the date the most recent child care
18 inspection occurred and provide information for parents and caregivers
19 regarding how to obtain information [from such office] regarding the
20 results of the inspection. Such notice shall be provided by the office
21 of children and family services to programs licensed and registered by
22 said office and shall be provided by the local governmental entity
23 referenced in subdivision thirteen of section three hundred ninety of
24 this title to child day care centers referenced in such subdivision, as
25 applicable. Such notice shall be immediately posted by the provider in a
26 prominent place visible to parents or caregivers, upon receipt.

27 (b) Any notice issued to the provider of the suspension, revocation or
28 limitation of the program. Such notice shall be immediately posted by

1 the provider in a prominent place visible to parents or caregivers, upon
2 receipt. A notice of suspension or limitation must remain posted until
3 such time as the condition requiring suspension or limitation has been
4 deemed corrected by the office of children and family services or the
5 local governmental entity referenced in subdivision thirteen of section
6 three hundred ninety of this title, or in the event that the condition
7 is not deemed corrected, until the program's license, registration or
8 permit has been revoked. A notice of revocation must remain posted for a
9 period of at least thirty days in a prominent place visible to parents
10 or caregivers.

11 (c) The provider's most recent compliance history as shown on the
12 office of children and family services website.

13 2. If [possible,] the child day care program has a website, the
14 provider shall also post [such] all the information and notices listed
15 in subdivision one of this section on the child day care program's
16 website. [Such child day care programs shall post and maintain, in a
17 prominent place, such program's most recent compliance history as shown
18 on the office of children and family services website.]

19 § 11. Section 389 of the social services law is amended by adding a
20 new subdivision 3 to read as follows:

21 3. (a) Any person, corporation, society, institution or other organ-
22 ization who knowingly provides care to children in a manner that would
23 require licensure or registration pursuant to section three hundred
24 ninety of this title without the requisite license or registration shall
25 be guilty of a class E felony.

26 (b) Any person, corporation, society, institution or other organiza-
27 tion who knowingly provides care to children in a manner that would
28 require a permit to operate as a child day care center referenced in

1 subdivision thirteen of section three hundred ninety of this title with-
2 out the requisite permit shall be guilty of a class E felony.

3 § 12. This act shall take effect immediately, provided, however, that:

4 a. Sections one, three, four, five, six, eight, nine, ten and eleven
5 of this act shall take effect on the ninetieth day after it shall have
6 become a law;

7 b. Sections two and seven of this act shall take effect eighteen
8 months after it shall have become a law; and

9 c. The office of children and family services is authorized to promul-
10 gate any rule or regulation necessary for the timely implementation of
11 this act.