

SB 246-3
(LC 3040)
3/14/17 (BLS/ps)

Requested by Senator GELSER

**PROPOSED AMENDMENTS TO
SENATE BILL 246**

1 On page 1 of the printed bill, line 2, after the first semicolon insert
2 “creating new provisions;”.

3 On page 2, line 18, delete “In the following circumstances;”.

4 In line 20, delete “, and”.

5 In lines 21 and 22, delete the boldfaced material.

6 After line 30, insert:

7 “(d) If any of the circumstances described in paragraph (c) of this sub-
8 section exists, the department may immediately place conditions on the li-
9 cense, certificate or authorization of the child-caring agency prior to a
10 hearing if, consistent with ORS 183.430, the department finds there is a se-
11 rious danger to the public health or safety and sets forth specific reasons for
12 such findings.”.

13 In line 31, delete “(d)” and insert “(e)”.

14 In line 41, delete “Attorney General” and insert “Director of the Oregon
15 Youth Authority”.

16 On page 3, line 1, delete “and the Attorney General”.

17 In line 2, after “Governor” insert a period and delete the rest of the line.

18 In line 3, delete “child welfare.” and insert “The notice of intent to
19 rescind is a public record and open for inspection by any person without
20 order of a court.”.

21 In line 6, after “General” insert “, the Oregon Youth Authority”.

1 Delete lines 18 through 24.

2 In line 25, delete “(f)” and insert “(d)”.

3 In line 28, delete “(g)” and insert “(e)”.

4 On page 4, after line 39, insert:

5 **“SECTION 2.** ORS 418.240, as amended by section 4, chapter 106, Oregon
6 Laws 2016, and section 1 of this 2017 Act, is amended to read:

7 “418.240. (1) All child-caring agencies shall obtain from the Department
8 of Human Services a license, certificate or other authorization to provide
9 care or services to children under ORS 418.205 to 418.327, 418.470, 418.475 or
10 418.950 to 418.970. The criteria for issuance, renewal, suspension or revoca-
11 tion of, or for placing conditions on, a license, certificate or authorization
12 under this section must:

13 “(a) Be set forth in rules adopted by the department;

14 “(b) Include the full compliance requirements set forth in subsection (2)
15 of this section; and

16 “(c) Include, but are not limited to, the following:

17 “(A) The fitness of the child-caring agency.

18 “(B) The employment of capable, trained or experienced staff that meet
19 minimum staffing requirements.

20 “(C) Sufficient financial backing to ensure effective operations.

21 “(D) The probability of permanence in the child-caring agency.

22 “(E) The care and services provided to the children served will be in their
23 best interests and that of society.

24 “(F) That the child-caring agency is or will be in compliance with the
25 standards of care and treatment established in rules adopted by the depart-
26 ment.

27 “(2)(a) The department may not issue or renew a license, certificate or
28 other authorization to a child-caring agency unless the department finds the
29 agency is or will be in full compliance with all of the following:

30 “(A) The agency ensures child and family rights.

1 “(B) The agency complies with abuse reporting and investigation re-
2 quirements.

3 “(C) The agency engages in and applies appropriate behavior management
4 techniques.

5 “(D) The agency provides adequate furnishings and personal items for
6 children.

7 “(E) The agency provides appropriate food services.

8 “(F) The agency ensures the safety of children.

9 “(G) The agency utilizes approved procedures and protocols for use of
10 medications for children receiving care or services from the agency.

11 “(H) The agency or the agency’s employees or agents have not engaged
12 in financial mismanagement.

13 “(I) The agency fully and timely corrects violations and maintains stan-
14 dards in accordance with any plan of correction imposed by the department.

15 “(J) The agency provides access as required under ORS 418.305 to a child
16 or the agency’s premises to the department or the department’s employees,
17 investigators, court appointed special advocates, attorneys for a child or
18 other authorized persons or entities.

19 “(b) The department may suspend, revoke or place conditions on a license,
20 certificate or authorization of a child-caring agency if the department finds
21 the agency is not in full compliance with any one or more of the full com-
22 pliance requirements listed in paragraph (a) of this subsection.

23 “(c) The department must take immediate steps to suspend or revoke the
24 license, certificate or other authorization of a child-caring agency if any of
25 the following are found to exist:

26 “(A) There has been the death of a child as a result of abuse or neglect
27 on the part of the agency or any of the agency’s employees or agents.

28 “(B) There has been sexual or physical abuse or neglect of a child in the
29 agency’s care or custody that was known to the agency and the agency did
30 not take immediate steps to report the abuse or neglect and to ensure the

1 child's safety.

2 “(C) The agency failed to cooperate fully with any local, state or federal
3 regulatory entity's investigation of the agency or the agency's operations or
4 employees.

5 “(D) The agency failed to provide financial statements as required under
6 ORS 418.255.

7 “(d) If any of the circumstances described in paragraph (c) of this sub-
8 section exists, the department may immediately place conditions on the li-
9 cense, certificate or authorization of the child-caring agency prior to a
10 hearing if, consistent with ORS 183.430, the department finds there is a se-
11 rious danger to the public health or safety and sets forth specific reasons for
12 such findings.

13 “(e) It is grounds to deny issuance or renewal, suspend, revoke or place
14 conditions on a license, certificate or other authorization if the department
15 becomes aware that a child-caring agency, or the owner or operator of the
16 agency, has been found by other state or federal entities to have engaged in
17 financial, civil or criminal misconduct.

18 “(3)(a) If the Director of Human Services has taken action under sub-
19 section (2)(c) of this section to suspend or revoke a license, certificate or
20 other authorization, the notice of intent to suspend or revoke may be
21 rescinded if the director determines that the concerns regarding the health
22 and safety of the children in the child-caring agency's care or custody have
23 been ameliorated and any conditions placed on the license, certificate or
24 other authorization of the child-caring agency have been resolved. [A
25 *rescission under this subsection must be made by agreement between the Di-*
26 *rector of Human Services and the Director of the Oregon Youth Authority and,*
27 *if the child-caring agency is licensed to provide medical or psychiatric services,*
28 *with the additional agreement of the Director of the Oregon Health Authority*
29 *in consultation with the medical director for such services within the*
30 *authority.*]

1 “(b) Fourteen days before rescinding a notice of intent to suspend or re-
2 voke, the Director of Human Services must provide written notice regarding
3 the intent to rescind to the Governor. The notice of intent to rescind is a
4 public record and open for inspection by any person without order of a court.
5 The notice of intent to rescind must include the following information:

6 “(A) The circumstances that led to the notice of intent to suspend or re-
7 voke;

8 “(B) The actions taken by the child-caring agency, the Department of
9 Human Services, the Attorney General, the Oregon Youth Authority and the
10 Oregon Health Authority in response to the circumstances leading to the
11 notice of intent to suspend or revoke;

12 “(C) Any penalties, fees or charges made or levied against the child-caring
13 agency; and

14 “(D) A complete description of changes that were made at the child-caring
15 agency and the reasons for the determination that the concerns regarding the
16 health and safety of children in the child-caring agency’s care or custody
17 have been ameliorated or that any conditions placed on the license, certif-
18 icate or other authorization of the child-caring agency have been resolved.

19 “(c) In making a decision to rescind a notice of intent to suspend or re-
20 voke under this subsection, the decision must be based solely on the health
21 and safety of the children served by the child-caring agency. Systemwide
22 capacity of the child welfare system may not be considered as an element
23 of the decision.

24 “(d) For three years after a notice of intent to suspend or revoke is
25 rescinded under this subsection, the child-caring agency must apply for a
26 renewal of the child-caring agency’s license, certificate or other authori-
27 zation on an annual basis.

28 “(e) The department must provide the following with copies of a notice
29 of intent to rescind within five business days of issuing the notice:

30 “(A) The Governor; and

1 “(B) The committees of the Legislative Assembly relating to child welfare.

2 “(4) The department may immediately place conditions on any license,
3 certificate or authorization issued under this section, including but not lim-
4 ited to placing full or partial restrictions on admission of children, tempo-
5 rary suspension, limitation of operations subject to an intent to revoke and
6 limitation of operations subject to correction of violations as specified in a
7 plan of correction imposed by the department. The department shall imme-
8 diately notify any state or governmental agency or unit that has a contract
9 with the child-caring agency to provide care or services to a child, and the
10 governing board, trustees, owners, managers, operators or other appropriate
11 authorities responsible for the child-caring agency, of conditions placed by
12 the department on the child-caring agency’s license, certificate or authori-
13 zation under this section.

14 “(5) If applicable, an applicant shall submit written proof of compliance
15 with the notification requirements in ORS 336.575.

16 “(6) The department may not charge a fee for inspections leading to de-
17 cisions regarding, and issuance of, licenses, certifications or authorizations
18 under this section, but may impose fees to cover costs of related inspections
19 done for the department by other governmental agencies.

20 “(7) Except as provided in subsection (3) of this section, a license, certifi-
21 cate or authorization issued by the department under this section shall be
22 valid for a period of two years, unless suspended or revoked sooner by the
23 department. However, the department at any time may require amendments
24 to an existing license, certificate or authorization to accommodate changes
25 in the factors upon which the issuance was based.

26 “(8) When a condition exists that seriously endangers or places at risk
27 the health, safety or welfare of a child who is receiving care or services at
28 a child-caring agency:

29 “(a) The director shall issue an interim emergency order without notice,
30 or with reasonable notice under the circumstances, requiring the agency to

1 correct the conditions and ensure the safety of children in the care of the
2 agency. The interim emergency order shall remain in force until a final or-
3 der, after a hearing, has been entered in accordance with ORS chapter 183.

4 “(b) The director may commence an action to enjoin operation of a
5 child-caring agency:

6 “(A) If the agency is being operated without a valid license, certificate
7 or other authorization issued under this section; or

8 “(B) If the agency fails to comply with a plan of correction imposed by
9 the department or to correct conditions not in conformity with standards as
10 set out in an order issued under paragraph (a) of this subsection, within the
11 time specified in the order.

12 “(9) If the director, the director’s designee or the department becomes
13 aware through any means that a child-caring agency, or an owner, operator
14 or employee of a child-caring agency, is the subject of an investigation by
15 another state agency, law enforcement agency or federal agency, the director
16 or director’s designee shall take immediate steps to cause an investigation
17 to take place into the circumstances surrounding the investigation and
18 whether there is a threat to a child, or whether a child is at risk, at the
19 child-caring agency. Upon determination of the level of threat or risk to
20 children at the agency, the director shall take appropriate steps to protect
21 and ensure the health, safety and welfare of children as necessary under the
22 circumstances. Failure to comply with the requirements of this subsection
23 constitutes grounds for a charge of official misconduct in the second degree
24 under ORS 162.405.

25 “(10) If the Department of Justice or Bureau of Labor and Industries
26 commences an investigation of a child-caring agency or an owner, operator
27 or employee of a child-caring agency, the Department of Justice or Bureau
28 of Labor and Industries shall notify, inform and regularly update the direc-
29 tor, the director’s designee or such other personnel in the Department of
30 Human Services designated to receive such information regarding the inves-

1 tigation. The director and the department shall immediately undertake the
2 responsive action required by subsection (9) of this section upon receiving
3 such notification. Interference with, discouragement of or impediment to the
4 receipt of the notification, information and updates required under this sub-
5 section constitutes official misconduct in the second degree under ORS
6 162.405.

7 “(11) The Department of Human Services shall adopt rules to implement
8 the provisions of this section.

9 **“SECTION 3. The amendments to ORS 418.240 by section 2 of this
10 2017 Act become operative on January 1, 2023.”.**

11 In line 40, delete “2” and insert “4”.

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