

H 4/12/01

H. 3/27/01 Human Resources
H. 4/6/01 Amend/So Pass
w/ H 446

FILED MAR 15 2001

SENATE FILE 466
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO SF 302)

Passed Senate, Date ^(P.846) 3-26-01 Passed House, Date ^(P.1403) 4/23/01
Vote: Ayes 47 Nays 0 Vote: Ayes 97 Nays 0
Approved April 11, 2002
re-passed 3-20-02 re-passed 4-1-02
vote 48-0 vote 93-0

A BILL FOR

1 An Act relating to child care and protection public policy
2 provisions involving children.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

4 ^{(P.1381) 4-27-01}
5 Senate Conf. Comm
6 Miller
7
8 Hammond
9 King
10 Shearer
11
12 Dineman

House Conf. Committee
4-27-01
P.1624
Bevera
Cormack
Boddicker
Murphy
Smith

SF 466

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1 Section 1. Section 237A.29, Code 2001, is amended to read
2 as follows:

3 237A.29 ~~STATE-AND-FEDERAL~~ PUBLIC FUNDING OF CHILD CARE.

4 1. State funds and federal funds provided to the state in
5 accordance with federal requirements shall not be used to pay
6 for the care, supervision, and guidance of a child for periods
7 of less than twenty-four hours per day on a regular basis
8 unless the care, supervision, and guidance is defined as child
9 care as used in this chapter.

10 2. a. For the purposes of this subsection, "fraudulent
11 means" means knowingly making or causing to be made, a false
12 statement or a misrepresentation of a material fact, knowingly
13 failing to disclose a material fact, or committing a
14 fraudulent practice.

15 b. If a child care provider has been found in an
16 administrative or criminal proceeding to have obtained, by
17 fraudulent means, public funding for provision of child care
18 in an amount equal to or in excess of the minimum amount for a
19 fraudulent practice in the second degree under section 714.10,
20 subsection 1, the child care provider is ineligible to receive
21 subsequent public funding for provision of child care.

22 c. In determining the value of the public funding obtained
23 by fraudulent means, if the public funding is obtained by two
24 or more acts of fraudulent means by the same person or
25 location, or is obtained by different persons by two or more
26 acts which occur in approximately the same location or time
27 period so that the fraudulent means used to obtain the public
28 funding are attributable to a single scheme, plan, or
29 conspiracy, these acts may be considered as a single instance
30 of the use of fraudulent means and the value may be the total
31 value of all money involved.

32 EXPLANATION

33 This bill provides that a child care provider who has been
34 found in an administrative or criminal proceeding to have used
35 fraudulent means to obtain public funding for child care is

1 ineligible to receive further public funding for provision of
2 child care.

3 The bill defines "fraudulent means" to mean knowingly
4 making a false statement or misrepresenting a material fact,
5 knowingly failing to disclose a material fact, or committing a
6 fraudulent practice. If a child care provider is found to
7 have used fraudulent means to obtain public funding for
8 provision of child care in an amount equal to or in excess of
9 the minimum amount for a fraudulent practice in the second
10 degree, the provider is ineligible to receive further public
11 funding for provision of child care. The minimum amount for a
12 fraudulent practice in the second degree under Code section
13 714.10(1) is an amount in excess of \$1,000. Such fraudulent
14 practice is a class "D" felony.

15 The bill provides that in determining the value of the
16 public funding obtained by fraudulent means, if two or more
17 acts of fraudulent means used to obtain the funding are
18 attributable to a single scheme, plan, or conspiracy, these
19 acts may be considered to be a single instance of the use of
20 fraudulent means and the value is the total value of all money
21 involved.

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SENATE FILE 466

H-1446

1 Amend Senate File 466, as passed by the Senate, as
2 follows.

3 1. Page 1, line 11, by striking the word "made,"
4 the following: "made".

5 2. Page 1, by striking lines 15 through 21 and
6 inserting the following:

7 "b. If a person with a controlling interest in a
8 child care home or facility or an employee of a child
9 care home or facility assigned financial management
10 responsibilities for the child care home or facility
11 has been found in a criminal proceeding to have
12 obtained by fraudulent means, public funding for the
13 provision of child care by the home or facility in an
14 amount equal to or in excess of the minimum amount
15 necessary to constitute a fraudulent practice in the
16 second degree under section 714.10, subsection 1, the
17 following shall apply:

18 (1) For a first offense, for a period of one year,
19 any child care home or facility in which the offender
20 continues to have a controlling interest or at which
21 the offender remains employed as a financial manager
22 shall be ineligible to receive public funding for the
23 provision of child care.

24 (2) For a second offense committed by the same
25 offender or by an employee assigned financial
26 management responsibilities employed at the same child
27 care home or facility at which a first offense
28 occurred, for a period of five years, the child care
29 home or facility at which the second offense occurred
30 shall be ineligible to receive public funding for the
31 provision of child care.

32 (3) For a third offense committed by the same
33 offender or by an employee assigned financial
34 management responsibilities employed at the same child
35 care home or facility at which a first and second
36 offense occurred, the child care home or facility at
37 which the third offense occurred shall be ineligible
38 to receive public funding for provision of child care.

39 The department shall adopt rules to administer this
40 subsection and the rules shall provide for a
41 transition period before applying the requirements of
42 this subsection in order to allow the ownership or
43 employment prohibitions to be addressed without
44 interrupting the provision of child care and for
45 requiring, as a condition of providing public funding,
46 that a child care home or facility at which an offense
47 described in this paragraph "b" occurred must submit
48 periodic financial audits to the department."

49 3. Page 1, by inserting after line 31, the
50 following:

H-1446

H-1446

Page 2

1 "d. If the director determines that the
2 ineeligibility of a child care home or facility to
3 receive public funding pursuant to paragraph "b" will
4 cause the provision of child care services by that
5 home or facility to be interrupted or to become no
6 longer available, the director may file a verified
7 application in the district court of the county in
8 which the child care home or facility is located,
9 requesting that an individual nominated by the
10 director be appointed as receiver for the child care
11 home or facility until continuation of the child care
12 services is assured.

13 (1) The court shall expeditiously hold a hearing
14 on the application, at which the director shall
15 present evidence in support of the application. The
16 owner of the child care home or facility against which
17 the application is filed may also present evidence,
18 and both parties may subpoena witnesses. The court
19 may appoint a receiver for the child care home or
20 facility in advance of the hearing if the director's
21 verified application states that an emergency exists
22 in which closure of the child care home or facility is
23 imminent. If the owner against whose facility the
24 receivership application is filed informs the court at
25 or before the time set for the hearing that the owner
26 does not object to the application, the court shall
27 wave the hearing and at once appoint a receiver for
28 the child care home or facility.

29 (2) The court, on the basis of the verified
30 application and evidence presented at the hearing, may
31 order the child care home or facility placed under
32 receivership, and if so ordered, the court shall
33 direct either that the receiver assume the duties of
34 administrator of the child care home or facility or
35 that the receiver supervise the child care home's or
36 facility's administrator in conducting the day-to-day
37 business of the child care home or facility. The
38 receiver shall be empowered to control the child care
39 home's or facility's financial resources and to apply
40 its revenues as the receiver deems necessary to
41 continue the operation of the child care home or
42 facility in compliance with this chapter and the rules
43 adopted under this chapter, but shall be accountable
44 to the court for management of the child care home's
45 or facility's financial resources.

46 (3) A receivership established under this
47 paragraph "d" may be terminated by the district court
48 which established it, after a hearing upon an
49 application for termination.

50 (4) Payment of the expenses of a receivership

H-1446

-2-

H-1446

Page 3

1 established under this paragraph "d" is the
2 responsibility of the child care home or facility for
3 which the receiver is appointed, unless the court
4 directs otherwise. The expenses include, but are not
5 limited to:
6 (a) Salary of the receiver.
7 (b) Expenses incurred for the continued child care
8 services.
9 (c) Expenses incurred for the maintenance of
10 buildings and grounds of the child care home or
11 facility.
12 (d) Expenses incurred in the ordinary course of
13 business, such as employee salaries and accounts
14 payable.
15 (5) The receiver is not personally liable for the
16 expenses of the child care home or facility during the
17 receivership. The receiver is an employee of the
18 state as defined in section 669.2, subsection 4, only
19 for the purpose of defending a claim filed against the
20 receiver. Chapter 669 applies to all suits filed
21 against the receiver.
22 (6) This lettered paragraph "d" does not do any of
23 the following:
24 (a) Preclude the sale or lease of a child care
25 home or facility while the child care home or facility
26 is in receivership, provided these actions are not
27 taken without approval of the receiver.
28 (b) Affect the civil or criminal liability of the
29 owner of the child care home or facility placed in
30 receivership, for any acts or omissions of the owner
31 which occurred before the receiver was appointed.
32 Sec. ____ . SUBSEQUENT OFFENSES. For the purposes
33 of administering section 237A.29, subsection 2, as
34 enacted by this Act, if a person with a controlling
35 interest in a child care home or facility or an
36 employee of a child care home or facility assigned
37 financial management responsibilities for the child
38 care home or facility was found in a criminal
39 proceeding to have obtained by fraudulent means during
40 the two-year period preceding July 1, 2001, public
41 funding for the child care home or facility in an
42 amount equal to or in excess of the minimum amount
43 necessary to constitute fraudulent practice in the
44 second degree under section 714.10, subsection 1, the
45 department of human services shall consider the first
46 subsequent offense for obtaining by fraudulent means
47 public funding for child care in such an amount and
48 committed by such person or by such an employee of
49 such home or facility on or after July 1, 2001, as
50 found in a criminal proceeding, to be a second offense

H-1446

H-1446

Page 4

1 and a second or greater subsequent offense to be a
 2 third offense under section 237A.29, subsection 2."
 3 4. Title page, by striking lines 1 and 2, and
 4 inserting the following: "An Act relating to the
 5 eligibility of certain child care providers connected
 6 with the commitment of a fraudulent act involving
 7 public child care funding to receive further public
 8 funding."
 9 5. By renumbering as necessary.

By COMMITTEE ON HUMAN RESOURCES
 BODDICKER of Cedar, Chairperson

H-1446 FILED APRIL 6, 2001

Adopted
4/23/01
(P.1403)

**HOUSE AMENDMENT TO
SENATE FILE 466**

S-3443

1 Amend Senate File 466, as passed by the Senate, as
2 follows:

3 1. Page 1, line 11, by striking the word "made,"
4 and inserting the following: "made".

5 2. Page 1, by striking lines 15 through 21 and
6 inserting the following:

7 "b. If a person with a controlling interest in a
8 child care home or facility or an employee of a child
9 care home or facility assigned financial management
10 responsibilities for the child care home or facility
11 has been found in a criminal proceeding to have
12 obtained by fraudulent means, public funding for the
13 provision of child care by the home or facility in an
14 amount equal to or in excess of the minimum amount
15 necessary to constitute a fraudulent practice in the
16 second degree under section 714.10, subsection 1, the
17 following shall apply:

18 (1) For a first offense, for a period of one year,
19 any child care home or facility in which the offender
20 continues to have a controlling interest or at which
21 the offender remains employed as a financial manager
22 shall be ineligible to receive public funding for the
23 provision of child care.

24 (2) For a second offense committed by the same
25 offender or by an employee assigned financial
26 management responsibilities employed at the same child
27 care home or facility at which a first offense
28 occurred, for a period of five years, the child care
29 home or facility at which the second offense occurred
30 shall be ineligible to receive public funding for the
31 provision of child care.

32 (3) For a third offense committed by the same
33 offender or by an employee assigned financial
34 management responsibilities employed at the same child
35 care home or facility at which a first and second
36 offense occurred, the child care home or facility at
37 which the third offense occurred shall be ineligible
38 to receive public funding for provision of child care.

39 The department shall adopt rules to administer this
40 subsection and the rules shall provide for a
41 transition period before applying the requirements of
42 this subsection in order to allow the ownership or
43 employment prohibitions to be addressed without
44 interrupting the provision of child care and for
45 requiring, as a condition of providing public funding,
46 that a child care home or facility at which an offense
47 described in this paragraph "b" occurred must submit
48 periodic financial audits to the department."

49 3. Page 1, by inserting after line 31, the
50 following:

S-3443

S-3443

Page 2

1 "d. If the director determines that the
2 ineligibility of a child care home or facility to
3 receive public funding pursuant to paragraph "b" will
4 cause the provision of child care services by that
5 home or facility to be interrupted or to become no
6 longer available, the director may file a verified
7 application in the district court of the county in
8 which the child care home or facility is located,
9 requesting that an individual nominated by the
10 director be appointed as receiver for the child care
11 home or facility until continuation of the child care
12 services is assured.

13 (1) The court shall expeditiously hold a hearing
14 on the application, at which the director shall
15 present evidence in support of the application. The
16 owner of the child care home or facility against which
17 the application is filed may also present evidence,
18 and both parties may subpoena witnesses. The court
19 may appoint a receiver for the child care home or
20 facility in advance of the hearing if the director's
21 verified application states that an emergency exists
22 in which closure of the child care home or facility is
23 imminent. If the owner against whose facility the
24 receivership application is filed informs the court at
25 or before the time set for the hearing that the owner
26 does not object to the application, the court shall
27 waive the hearing and at once appoint a receiver for
28 the child care home or facility.

29 (2) The court, on the basis of the verified
30 application and evidence presented at the hearing, may
31 order the child care home or facility placed under
32 receivership, and if so ordered, the court shall
33 direct either that the receiver assume the duties of
34 administrator of the child care home or facility or
35 that the receiver supervise the child care home's or
36 facility's administrator in conducting the day-to-day
37 business of the child care home or facility. The
38 receiver shall be empowered to control the child care
39 home's or facility's financial resources and to apply
40 its revenues as the receiver deems necessary to
41 continue the operation of the child care home or
42 facility in compliance with this chapter and the rules
43 adopted under this chapter, but shall be accountable
44 to the court for management of the child care home's
45 or facility's financial resources.

46 (3) A receivership established under this
47 paragraph "d" may be terminated by the district court
48 which established it, after a hearing upon an
49 application for termination.

50 (4) Payment of the expenses of a receivership

S-3443

S-3443

Page 3

1 established under this paragraph "d" is the
2 responsibility of the child care home or facility for
3 which the receiver is appointed, unless the court
4 directs otherwise. The expenses include, but are not
5 limited to:

6 (a) Salary of the receiver.

7 (b) Expenses incurred for the continued child care
8 services.

9 (c) Expenses incurred for the maintenance of
10 buildings and grounds of the child care home or
11 facility.

12 (d) Expenses incurred in the ordinary course of
13 business, such as employee salaries and accounts
14 payable.

15 (5) The receiver is not personally liable for the
16 expenses of the child care home or facility during the
17 receivership. The receiver is an employee of the
18 state as defined in section 669.2, subsection 4, only
19 for the purpose of defending a claim filed against the
20 receiver. Chapter 669 applies to all suits filed
21 against the receiver.

22 (6) This lettered paragraph "d" does not do any of
23 the following:

24 (a) Preclude the sale or lease of a child care
25 home or facility while the child care home or facility
26 is in receivership, provided these actions are not
27 taken without approval of the receiver.

28 (b) Affect the civil or criminal liability of the
29 owner of the child care home or facility placed in
30 receivership, for any acts or omissions of the owner
31 which occurred before the receiver was appointed.

32 Sec. ____ . SUBSEQUENT OFFENSES. For the purposes
33 of administering section 237A.29, subsection 2, as
34 enacted by this Act, if a person with a controlling
35 interest in a child care home or facility or an
36 employee of a child care home or facility assigned
37 financial management responsibilities for the child
38 care home or facility was found in a criminal
39 proceeding to have obtained by fraudulent means during
40 the two-year period preceding July 1, 2001, public
41 funding for the child care home or facility in an
42 amount equal to or in excess of the minimum amount
43 necessary to constitute fraudulent practice in the
44 second degree under section 714.10, subsection 1, the
45 department of human services shall consider the first
46 subsequent offense for obtaining by fraudulent means
47 public funding for child care in such an amount and
48 committed by such person or by such an employee of
49 such home or facility on or after July 1, 2001, as
50 found in a criminal proceeding, to be a second offense

S-3443

S-3443

Page 4

- 1 and a second or greater subsequent offense to be a
- 2 third offense under section 237A.29, subsection 2."
- 3 4. Title page, by striking lines 1 and 2, and
- 4 inserting the following: "An Act relating to the
- 5 eligibility of certain child care providers connected
- 6 with the commitment of a fraudulent act involving
- 7 public child care funding to receive further public
- 8 funding."
- 9 5. By renumbering as necessary.

RECEIVED FROM THE HOUSE

S-3443 FILED APRIL 23, 2001

Senate Refused
4/25/01

(P. 1218)

House Insists
4-27-01
(P. 1623)

REPORT OF THE CONFERENCE COMMITTEE
ON SENATE FILE 466

To the President of the Senate and the Speaker of the House of Representatives:

We, the undersigned members of the conference committee appointed to resolve the differences between the Senate and House of Representatives on Senate File 466, a bill for an Act relating to child care and protection public policy provisions involving children, respectfully make the following report:

1. That the House recedes from its amendment, S-3443.
2. That Senate File 466, as passed by the Senate, is amended as follows:
 1. Page 1, line 11, by striking the word "made," and inserting the following: "made".
 2. Page 1, by striking lines 15 through 31 and inserting

CCS-466.2

Page 2

the following:

"b. A child care provider that has been found in an administrative or judicial proceeding to have obtained, or has agreed to entry of a civil judgment or judgment by confession that includes a conclusion of law that the child care provider has obtained, by fraudulent means, public funding for provision of child care in an amount equal to or in excess of the minimum amount for a fraudulent practice in the second degree under section 714.10, subsection 1, shall be subject to sanction in accordance with this subsection. Such child care provider shall be subject to a period during which receipt of public funding for provision of child care is conditioned upon no further violations and to one or more of the following sanctions as determined by the department and imposed in an administrative proceeding:

- (1) Ineligibility to receive public funding for provision of child care.
- (2) Suspension from receipt of public funding for provision of child care.
- (3) Special review of the child care provider's claims for providing publicly funded child care.

c. The following factors shall be considered in determining the sanction or sanctions to be imposed under paragraph "b", subparagraphs (1) through (3):

- (1) Seriousness of the violation.
- (2) Extent of the violation.
- (3) History of prior violations.
- (4) Prior imposition of sanctions.
- (5) Prior provision of provider education.
- (6) Provider willingness to obey program rules.
- (7) Whether a lesser sanction will be sufficient to remedy the problem.

d. In determining the value of the public funding obtained by fraudulent means, if the public funding is obtained by two or more acts of fraudulent means by the same person or

CCS-466.2

Page 3

location, or is obtained by different persons by two or more acts which occur in approximately the same location or time period so that the acts of fraudulent means used to obtain the public funding are attributable to a single scheme, plan, or conspiracy, these acts may be considered as a single instance of the use of fraudulent means and the value may be the total value of all moneys involved.

3. a. If a child care provider is subject to sanctions under subsection 2, the provider shall submit to the department the names and addresses of children receiving child care from the provider. The department shall send information to the parents of the children regarding the provider's actions leading to the imposition of the sanctions and the nature of the sanctions imposed. If the provider fails to submit the names and addresses within five business days of the department notifying the provider, the department shall suspend the provider's registration or license under this chapter until the names and addresses are provided.

b. In addition to applying the suspension, the department may request that the attorney general file a petition with the district court of the county in which the provider is located for issuance of a temporary injunction enjoining the provider from providing child care until the names and addresses are submitted to the department. The attorney general may file the petition upon receiving the request from the department. Any temporary injunction may be granted without a bond being required from the department.

c. If the sanctions imposed under subsection 2 involve the provider's suspension or ineligibility for receiving public funding for provision of child care, the department shall not impose those sanctions before the parents of the affected children are informed, and upon request, shall provide assistance to the parents in locating replacement child care."

3. Title page, line 2, by inserting after the word "children" the following: "by authorizing sanctions for a

CCS-466.2

Page 4

child care provider who obtains public funding by fraudulent means".

ON THE PART OF THE SENATE:

DAVID MILLER, Chairperson
JOHNIE HAMMOND
STEVE KING
MARK SHEARER
MAGGIE TINSMAN

ON THE PART OF THE HOUSE:

ROGER BROERS, Chairperson
DANIEL BODDICKER
MIKE CORMACK
PATRICK MURPHY
MARK SMITH

CCS-466.2 FILED MARCH 14, 2002

adopted
3.26-02
(p. 137)

adopted
4-1-02
R 1104

unless the care, supervision, and guidance is defined as child care as used in this chapter.

2. a. For the purposes of this subsection, "fraudulent means" means knowingly making or causing to be made a false statement or a misrepresentation of a material fact, knowingly failing to disclose a material fact, or committing a fraudulent practice.

b. A child care provider that has been found in an administrative or judicial proceeding to have obtained, or has agreed to entry of a civil judgment or judgment by confession that includes a conclusion of law that the child care provider has obtained, by fraudulent means, public funding for provision of child care in an amount equal to or in excess of the minimum amount for a fraudulent practice in the second degree under section 714.10, subsection 1, shall be subject to sanction in accordance with this subsection. Such child care provider shall be subject to a period during which receipt of public funding for provision of child care is conditioned upon no further violations and to one or more of the following sanctions as determined by the department and imposed in an administrative proceeding:

- (1) Ineligibility to receive public funding for provision of child care.
- (2) Suspension from receipt of public funding for provision of child care.
- (3) Special review of the child care provider's claims for providing publicly funded child care.

c. The following factors shall be considered in determining the sanction or sanctions to be imposed under paragraph "b", subparagraphs (1) through (3):

- (1) Seriousness of the violation.
- (2) Extent of the violation.
- (3) History of prior violations.
- (4) Prior imposition of sanctions.
- (5) Prior provision of provider education.

SENATE FILE 466

AN ACT

RELATING TO CHILD CARE AND PROTECTION PUBLIC POLICY PROVISIONS INVOLVING CHILDREN BY AUTHORIZING SANCTIONS FOR A CHILD CARE PROVIDER WHO OBTAINS PUBLIC FUNDING BY FRAUDULENT MEANS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 237A.29, Code 2001, is amended to read as follows:

237A.29 STATE-AND-FEDERAL PUBLIC FUNDING OF CHILD CARE.

1. State funds and federal funds provided to the state in accordance with federal requirements shall not be used to pay for the care, supervision, and guidance of a child for periods of less than twenty-four hours per day on a regular basis

(6) Provider willingness to obey program rules.

(7) Whether a lesser sanction will be sufficient to remedy the problem.

d. In determining the value of the public funding obtained by fraudulent means, if the public funding is obtained by two or more acts of fraudulent means by the same person or location, or is obtained by different persons by two or more acts which occur in approximately the same location or time period so that the acts of fraudulent means used to obtain the public funding are attributable to a single scheme, plan, or conspiracy, these acts may be considered as a single instance of the use of fraudulent means and the value may be the total value of all moneys involved.

3. a. If a child care provider is subject to sanctions under subsection 2, the provider shall submit to the department the names and addresses of children receiving child care from the provider. The department shall send information to the parents of the children regarding the provider's actions leading to the imposition of the sanctions and the nature of the sanctions imposed. If the provider fails to submit the names and addresses within five business days of the department notifying the provider, the department shall suspend the provider's registration or license under this chapter until the names and addresses are provided.

b. In addition to applying the suspension, the department may request that the attorney general file a petition with the district court of the county in which the provider is located for issuance of a temporary injunction enjoining the provider from providing child care until the names and addresses are submitted to the department. The attorney general may file the petition upon receiving the request from the department. Any temporary injunction may be granted without a bond being required from the department.

c. If the sanctions imposed under subsection 2 involve the provider's suspension or ineligibility for receiving public

funding for provision of child care, the department shall not impose those sanctions before the parents of the affected children are informed, and upon request, shall provide assistance to the parents in locating replacement child care.

MARY E. KRAMER
President of the Senate

BRENT SIEGRIST
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 466, Seventy-ninth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved 4/11, 2002

THOMAS J. VILSACK
Governor