

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 285

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Gerald Ortiz y Pino

AN ACT

RELATING TO CHILD PLACEMENT AGENCIES AND FOSTER HOMES;  
CLARIFYING RESPONSIBILITIES OF CHILD PLACEMENT AGENCIES;  
CLARIFYING REVOCATIONS, SUSPENSIONS, DENIALS AND NONRENEWALS OF  
LICENSES TO OPERATE A CHILD PLACEMENT AGENCY OR A FOSTER HOME;  
AMENDING SECTIONS OF THE CHILD PLACEMENT AGENCY LICENSING ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 40-7A-1 NMSA 1978 (being Laws 1981,  
Chapter 171, Section 1) is amended to read:

"40-7A-1. SHORT TITLE.--~~[Sections 1 through 8 of this  
act]~~ Chapter 40, Article 7A NMSA 1978 may be cited as the  
"Child Placement Agency Licensing Act"."

SECTION 2. Section 40-7A-3 NMSA 1978 (being Laws 1981,  
Chapter 171, Section 3) is amended to read:

"40-7A-3. DEFINITIONS.--As used in the Child Placement

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1 Agency Licensing Act:

2 A. "child" means an individual under the age of  
3 eighteen years;

4 B. "child placement agency" means any individual,  
5 partnership, unincorporated association or corporation  
6 undertaking to place a child in a home in this or any other  
7 state for the purpose of foster care or adoption of the child;

8 C. "department" means the [~~human services~~]  
9 children, youth and families department;

10 D. "division" means the [~~social~~] protective  
11 services division of the department;

12 E. "foster home" means a home maintained by an  
13 individual having the care and control, for periods exceeding  
14 twenty-four hours, of a child [~~who is abused, neglected,~~  
15 ~~dependent or homeless and~~] who is not placed for adoption;

16 F. "person" means any individual, partnership,  
17 unincorporated association or corporation; and

18 G. "secretary" means the secretary of [~~human~~  
19 ~~services~~] children, youth and families."

20 SECTION 3. Section 40-7A-4 NMSA 1978 (being Laws 1981,  
21 Chapter 171, Section 4, as amended) is amended to read:

22 "40-7A-4. LICENSING--~~[REGULATIONS]~~ RULES--APPLICATION FOR  
23 LICENSE.--

24 A. An application for a license to operate a child  
25 placement agency shall be made to the division on forms

.183116.1

underscored material = new  
[bracketed material] = delete

1 provided and in the manner prescribed by the division. A child  
2 placement agency may be licensed either to place children in  
3 foster homes or in homes for adoption, or both. The division  
4 shall investigate the applicant to ascertain whether the  
5 applicant qualifies under the ~~[regulations]~~ rules promulgated  
6 by the division. If qualified, the division shall issue a  
7 license valid for one year from date of issuance. A license  
8 shall be renewed for successive periods of time not to exceed  
9 three years, as determined by the division, if the division is  
10 satisfied that the child placement agency is in compliance with  
11 the division's ~~[regulations]~~ rules. No fee shall be charged  
12 for a license.

13 B. No person shall operate a child placement agency  
14 ~~[or foster home]~~ without first being licensed to operate the  
15 agency ~~[or home]~~ by the division. ~~[Placement of a child in the~~  
16 ~~home of a relative or guardian shall not require a license from~~  
17 ~~the division under the Child Placement Agency Licensing Act. A~~  
18 ~~person]~~ An individual desiring to operate a foster home ~~[under~~  
19 ~~the authority of a child placement agency]~~ shall obtain a  
20 license from the division ~~[through]~~ or the child placement  
21 agency under which it will operate. The child placement agency  
22 shall ~~[certify to]~~ notify the division ~~[that]~~ when the ~~[person]~~  
23 individual is ~~[a suitable person]~~ licensed to operate a foster  
24 home. The ~~[certification]~~ notification shall be on a form  
25 provided by the division and shall contain such information as

.183116.1

underscoring material = new  
[bracketed material] = delete

1 the division requires. ~~[The division shall give notice of~~  
2 ~~action taken upon a certification received from a child~~  
3 ~~placement agency within thirty days from the receipt thereof~~  
4 ~~and shall state the reasons for any denial.]~~ No foster home  
5 shall be ~~[certified]~~ licensed by more than one child placement  
6 agency. A ~~[certificate]~~ license shall be renewed for  
7 successive one- or two-year periods if the child placement  
8 agency is satisfied that the foster home is in compliance with  
9 the division's ~~[regulations. When certified by a child~~  
10 ~~placement agency, a foster home may receive a child for care~~  
11 ~~from sources other than the certifying agency upon the written~~  
12 ~~consent of the certifying agency]~~ rules.

13 C. Upon ~~[certification by a child placement agency~~  
14 ~~that a person is suitable]~~ licensure to operate a foster home,  
15 the child placement agency may place a child for foster care  
16 ~~[pending licensing of the foster home by the division. If the~~  
17 ~~division declines to license, the child placement agency shall~~  
18 ~~promptly remove the child from the placement]~~ in the licensed  
19 foster home.

20 D. The division shall prescribe and publish minimum  
21 standards and other ~~[regulations]~~ rules for licensing of child  
22 placement agencies and ~~[certification]~~ licensing of foster  
23 homes. The prescribed minimum standards and other  
24 ~~[regulations]~~ rules shall be promulgated by the division ~~[no~~  
25 ~~later than six months after the effective date of the Child~~

.183116.1

underscored material = new  
[bracketed material] = delete

1 ~~Placement Agency Licensing Act]~~ and shall be restricted to:

2 (1) the responsibility assumed by the foster  
3 home or child placement agency for the shelter, health, diet,  
4 safety and education of the child served;

5 (2) the character, suitability and  
6 qualifications of the applicant for a license ~~[or certificate]~~  
7 and of other persons directly responsible for the health and  
8 safety of the child served;

9 (3) the general financial ability of the  
10 applicant for a license ~~[or certificate]~~ to provide care for  
11 the child served;

12 (4) the maintenance of records pertaining to  
13 the admission, progress, health and discharge of the child  
14 served; ~~[and]~~

15 (5) the maintenance of records concerning  
16 agency personnel, foster parents and foster parent applicants;  
17 and

18 ~~[(5)]~~ (6) the filing of reports with the  
19 division.

20 ~~[E. The regulations shall not proscribe or~~  
21 ~~interfere with the religious beliefs or religious training of~~  
22 ~~child placement agencies and foster homes, except when the~~  
23 ~~beliefs or training endanger the child's health or safety.~~

24 ~~F.]~~ E. The division may inspect child placement  
25 agencies and foster homes as necessary to ensure that they are

.183116.1

underscored material = new  
[bracketed material] = delete

1 in compliance with the [~~provisions of the Child Placement~~  
2 ~~Agency Licensing Act and regulations~~] rules of the division.

3 [G.] F. Any person licensed [~~or certified~~] to  
4 operate a child placement agency [~~or foster home~~] under the  
5 provisions of the Child Placement Agency Licensing Act has the  
6 right to appeal any [~~regulation which~~] rule that the person  
7 believes has been improperly applied by representatives of the  
8 division or [~~which~~] that exceeds the authority granted to the  
9 division by the Child Placement Agency Licensing Act. The  
10 secretary shall designate a hearing officer or officers from  
11 the department to hear an appeal. The hearing officer or  
12 officers shall make a written recommendation to the secretary  
13 for resolution of the appeal. The secretary's decision shall  
14 be in writing and shall be the final administrative  
15 determination of the matter.

16 G. Any individual licensed to operate a foster home  
17 under the provisions of the Child Placement Agency Licensing  
18 Act has the right to appeal a decision by the division or by a  
19 child placement agency to revoke, suspend or not renew a  
20 license and has the right to request an administrative review  
21 of a denial of a license."

22 SECTION 4. Section 40-7A-5 NMSA 1978 (being Laws 1981,  
23 Chapter 171, Section 5) is amended to read:

24 "40-7A-5. VARIANCES.--Upon written application from a  
25 child placement agency [~~or foster home~~], the division in

.183116.1

underscored material = new  
[bracketed material] = delete

1 exercise of its sole discretion may issue a variance [~~which~~  
2 that permits a noncompliance with the division's [~~regulations~~  
3 rules]. The variance shall be in writing and may be temporary  
4 or permanent. No variance shall be issued [~~which~~] that is  
5 contrary to the Child Placement Agency Licensing Act. There  
6 shall be no right to a variance."

7 SECTION 5. Section 40-7A-6 NMSA 1978 (being Laws 1981,  
8 Chapter 171, Section 6, as amended) is amended to read:

9 "40-7A-6. REVOCATION OR SUSPENSION OF LICENSE--NOTICE--  
10 REINSTATEMENT--APPEAL.--

11 A. The division may deny, revoke, suspend, place on  
12 probation or refuse to renew the license of any child placement  
13 agency [~~or foster home~~] for failure to comply with the  
14 division's rules. The holder of the license [~~sought~~] that is  
15 to be denied, revoked, suspended or placed on probation or that  
16 is not renewed shall be given notice in writing of the proposed  
17 action and the reason therefor and shall, at a date and place  
18 to be specified in the notice, be given a hearing before a  
19 hearing officer appointed by the secretary with an opportunity  
20 to produce testimony in the holder's behalf and to be assisted  
21 by counsel. The hearing shall be held no earlier than twenty  
22 days after service of notice thereof unless the time  
23 limitations are waived or a child safety or health issue is  
24 present. A person whose license has been denied, revoked,  
25 suspended, placed on probation or not renewed may, on

.183116.1

underscored material = new  
[bracketed material] = delete

1 application to the division, have the license issued,  
2 reinstated or reissued upon proof that the noncompliance with  
3 the rules has ceased.

4 B. A ~~[person]~~ child placement agency adversely  
5 affected by a decision of the division denying, revoking,  
6 suspending, placing on probation or refusing to renew a license  
7 may obtain a review by appealing to the district court pursuant  
8 to the provisions of Section 39-3-1.1 NMSA 1978.

9 C. The division or a child placement agency may  
10 deny, revoke, suspend or refuse to renew the license of any  
11 foster home for failure to comply with the division's rules.  
12 The holder of a license that is to be revoked or suspended or  
13 that is not renewed shall be given notice in writing of the  
14 proposed action and the reason for the proposed action and  
15 shall be given the opportunity to appeal the decision. A  
16 foster home that is denied a license shall be given the  
17 opportunity to request an administrative review of the reasons  
18 for the denial of the license.

19 ~~[G-]~~ D. When any foster home license is denied,  
20 suspended, revoked or not renewed, the care and ~~[custody]~~  
21 control of any child placed pursuant to the Child Placement  
22 Agency Licensing Act shall be transferred to the ~~[certifying]~~  
23 child placement agency or the division."