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**§ 390. Child day care; license or registration required
(Effective: September 9, 2021)**

1. Definitions.

(a)

(i) "Child day care" shall mean child care where a license or registration pursuant to this section is required and shall include care for a child on a regular basis provided away from the child's residence for less than twenty-four hours per day by someone other than: (1) the parent, step-parent, guardian, or relative within the third degree of consanguinity of the parents or step-parents of such child; or (2) an enrolled legally-exempt provider as such term is defined in paragraph (g) of this subdivision.

(ii) Child day care shall not refer to care provided in:

(A) a day camp, as defined in the state sanitary code;

(B) an after-school program operated for the purpose of religious education, sports, or recreation;

(C) a facility:

(1) providing day services under an operating certificate issued by the department;

(2) providing day treatment under an operating certificate issued by the office of mental health or the office for people with developmental disabilities; or

(D) a kindergarten, pre-kindergarten, or nursery school for children three years of age or older, or after-school program for children operated by a public school district or by a private school or academy which is providing elementary or secondary education or both, in accordance with the compulsory education requirements of the education law, provided that the kindergarten, pre-kindergarten, nursery school, or after school program is located on the premises or campus where the elementary or secondary education is provided. Provided however, a kindergarten or a pre-kindergarten operated by a public school district shall not be considered a child day care if the kindergarten or pre-kindergarten is not located on the premises or campus where the elementary or secondary education is provided.

(b) "Child day care provider" shall mean any individual, association, corporation, partnership, institution or agency whose activities include providing child day care or operating a home or facility where child day care is provided.

(c) "Child day care center" shall mean any program or facility caring for children for more than three hours per day per child in which child day care is provided by a child day care provider except those programs operating as a group family day care home as such term is defined in paragraph (d) of this subdivision, a family day care home, as such term is defined in paragraph (e) of this subdivision, and a school-age child care program, as such term is defined in paragraph (f) of this subdivision.

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(d) “Group family day care home” shall mean a program caring for children for more than three hours per day per child in which child day care is provided in a family home for seven to twelve children of all ages, except for those programs operating as a family day care home, as such term is defined in paragraph (e) of this subdivision, which care for seven or eight children. A group family day care provider may provide child day care services to four additional children if such additional children are of school age and such children receive services only before or after the period such children are ordinarily in school or during school lunch periods, or school holidays, or during those periods of the year in which school is not in session. There shall be one caregiver for every two children under two years of age in the group family home. A group family day care home must have at least one assistant to the operator present when child day care is being provided to seven or more children when none of the children are school age, or nine or more children when at least two of the children are school age and such children receive services only before or after the period such children are ordinarily in school or during school lunch periods, or school holidays, or during those periods of the year in which school is not in session. This assistant shall be selected by the group family day care operator and shall meet the qualifications established for such position by the regulations of the office of children and family services.

(e) “Family day care home” shall mean a program caring for children for more than three hours per day per child in which child day care is provided in a family home for three to six children. There shall be one caregiver for every two children under two years of age in the family day care home. A family day care provider may, however, care for seven or eight children at any one time if no more than six of the children are less than school age and the school-aged children receive care primarily before or after the period such children are ordinarily in school, during school lunch periods, on school holidays, or during those periods of the year in which school is not in session in accordance with the regulations of the office of children and family services and the office inspects such home to determine whether the provider can care adequately for seven or eight children.

(f) “School age child care” shall mean a program caring for more than six school-aged children who are under thirteen years of age or who are incapable of caring for themselves. Such programs shall be in operation consistent with the local school calendar. School age child care programs shall offer care during the school year to an enrolled group of children at a permanent site before or after the period children enrolled in such program are ordinarily in school or during school lunch periods and may also provide such care on school holidays and those periods of the year in which school is not in session.

(g) “Enrolled legally exempt provider” shall mean a person who is a caregiver or entity that is not required to be licensed or registered pursuant to this section and that is enrolled to be a caregiver and provide subsidized child care services to eligible families in accordance with title five-C of this article and the regulations of the office of children and family services.

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2. (a) Child day care centers caring for seven or more children and group family day care programs, as defined in subdivision one of this section, shall obtain a license from the office of children and family services and shall operate in accordance with the terms of such license and the regulations of such office. Initial licenses and subsequent licenses shall be valid for a period of up to four years so long as the provider remains substantially in compliance with applicable law and regulations during such period.

(b) Family day care homes, child day care centers caring for at least three but fewer than seven children, and school-age child care programs shall register with the department and shall operate in compliance with the regulations of the department.

(c) Any child day care provider not required to obtain a license pursuant to paragraph (a) of this subdivision or to register with the department pursuant to paragraph (b) of this subdivision may register with the department.

(d)

(i) The office of children and family services shall promulgate regulations for licensure and for registration of child day care pursuant to this section. Procedures for obtaining a license or registration or renewing a license shall include a satisfactory inspection of the facility by the office of children and family services prior to issuance of the license or registration or renewal of the license.

(ii)

(A) Initial registrations and subsequent registrations shall be valid for a period of up to four years so long as the provider remains substantially in compliance with applicable law and regulations during such period.

(B) After initial registration by the child day care provider, the office of children and family services shall not accept any subsequent registration by such provider, unless:

(1) such provider has met the training requirements set forth in section three hundred ninety-a of this title;

(2) such provider has met the requirements of section three hundred ninety-b of this title relating to criminal history screening;

(3) such provider has complied with the requirements of section four hundred twenty-four-a of this article; and

(4) the office of children and family services has received no complaints about the home, center, or program alleging statutory or regulatory violations, or, having received such complaints, the office of children and family services has determined, after inspection pursuant to paragraph (a) of subdivision three of this section, that the home, center, or program is operated in compliance with applicable statutory and regulatory requirements.

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(C) Where the office of children and family services has determined that a registration should not be continued because the requirements of clause (B) of this subparagraph have not been satisfied, the office of children and family services may terminate the registration. If the office of children and family services does not terminate the registration, the office of children and family services shall inspect the home or program before acknowledging any subsequent registration. Where the home or program has failed to meet the requirements of this section, the office of children and family services may reject any subsequent registration of a provider. Nothing herein shall prohibit the office of children and family services from terminating or suspending registration pursuant to subdivision ten of this section where the office of children and family services determines that termination or suspension is necessary.

(iii) Renumbered (ii) by L.2000, c. 416, § 2, eff. Dec. 5, 2000.

(iv) Child day care providers who have been issued a license shall openly display such license in the facility or home for which the license is issued. Child day care providers who have registered with the department shall provide proof of registration upon request.

(d-1)

(i) The office of children and family services shall promulgate regulations for inspections of enrolled legally exempt providers, which shall include the completion of a satisfactory inspection of the premises where care is to be provided, by the office of children and family services.

(ii) Provided however, unless a complaint is made in or as otherwise authorized such inspections shall not be required when the enrolled legally exempt provider is an individual, age eighteen or older, and who, by virtue of blood, marriage or court decree, is, to all of the children that such person is enrolled to provide subsidized child care services to in accordance with title five-C of this article:

(A) a grandparent;

(B) a great-grandparent;

(C) a sibling, provided that such sibling resides in a separate household from the child;

(D) an aunt; or

(E) an uncle.

(e) Notwithstanding any other provision of this section, where a child is cared for by a parent, guardian or relative within the third degree of consanguinity of the parent of such child and such person simultaneously provides child day care for other children, only the other children shall be considered in determining whether such person must be registered or licensed, provided that such person is not caring, in total, for more than eight children.

2-a.

(a) The office of children and family services shall promulgate regulations which establish

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minimum quality program requirements for licensed and registered child day care homes, programs and facilities. Such requirements shall include but not be limited to

- (i) the need for age appropriate activities, materials and equipment to promote cognitive, educational, social, cultural, physical, emotional, language and recreational development of children in care in a safe, healthy and caring environment
- (ii) principles of childhood development
- (iii) appropriate staff/child ratios for family day care homes, group family day care homes, school age day care programs and day care centers, provided however that such staff/child ratios shall not be less stringent than applicable staff/child ratios as set forth in part four hundred fourteen, four hundred sixteen, four hundred seventeen or four hundred eighteen of title eighteen of the New York code of rules and regulations as of January first, two thousand
- (iv) appropriate levels of supervision of children in care
- (v) minimum standards for sanitation, health, infection control, nutrition, buildings and equipment, safety, security procedures, first aid, fire prevention, fire safety, evacuation plans and drills, prevention of child abuse and maltreatment, staff qualifications and training, record keeping, and child behavior management.

(b) The use of electronic monitors as a sole means of supervision of children in day care shall be prohibited, except that electronic monitors may be used in family day care homes and group family day care homes as an indirect means of supervision where the parents of any child to be supervised have agreed in advance to the use of such monitors as an indirect means of supervision and the use of such monitors is restricted to situations where the children so supervised are sleeping.

(c) No child less than six weeks of age may be cared for by a licensed or registered day care provider, except in extenuating circumstances where prior approval for care of such children has been given by the office of children and family services. Extenuating circumstances for the purposes of this section shall include but not be limited to the medical or health needs of the parent or child, or the economic hardship of the parent.

3.

(a) The office of children and family services may make announced or unannounced inspections of the records and premises of any child care provider, whether or not such provider has a license from, or is registered with, the office of children and family services. The office of children and family services shall make unannounced inspections of the records and premises of any child day care provider within fifteen days after the office of children and family services receives a complaint that, if true, would indicate such provider does not comply with the applicable regulations of the office of children and family services or with statutory requirements. If the complaint indicates that there may be imminent danger to the children, the office of children and family services shall investigate the complaint no later than the next day of operation of the provider. The office of children and family services may provide for inspections through the purchase of services.

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(b)

(i) Where inspections have been made and violations of applicable statutes or regulations have been found, the office of children and family services shall within ten days advise the child day care provider in writing of the violations and require the provider to correct such violations. The office of children and family services may also act pursuant to subdivisions ten and eleven of this section.

(ii) Where inspections have been made and violations of applicable statutes or regulations have been found, the office of children and family services or its designee shall, within ten days, advise the enrolled legally-exempt provider in writing of the violations and require the provider to correct such violations.

(c)

(i) The office of children and family services shall establish a toll-free statewide telephone number to receive inquiries about child day care homes, programs and facilities and complaints of violations of the requirements of this section or regulations promulgated under this section. The office of children and family services shall develop a system for investigation, which shall include inspection, of such complaints. The office of children and family services may provide for such investigations through purchase of services. The office of children and family services shall develop a process for publicizing such toll-free telephone number to the public for making inquiries or complaints about child day care homes, programs or facilities.

(ii) Information to be maintained and available to the public through such toll-free telephone number shall include, but not be limited to:

(A) current license and registration status of child day care homes, programs and facilities including whether a license or registration is in effect or has been revoked or suspended; and

(B) child care resource and referral programs providing services pursuant to title five-B of this article¹ and other resources known to the office of children and family services which relate to child day care homes, programs and facilities in the state.

(iii) Upon written request identifying a particular child day care home, program or facility, the office of children and family services shall provide the information set forth below. The office of children and family services may charge reasonable fees for copies of documents provided, consistent with the provisions of article six of the public officers law. The information available pursuant to this clause shall be:

(A) the results of the most recent inspection for licensure or registration and any subsequent inspections by the office of children and family services;

(B) complaints filed against child day care homes, programs or facilities which describes the nature of the complaint and states how the complaint was resolved, including the status of the office of children and family services investigation, the steps taken to rectify the complaint, and the penalty, if any, imposed; and

(C) child day care homes, programs or facilities which have requested or received a waiver from any applicable rule or regulation, and the regulatory

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requirement which was waived.

(iv) Nothing in this paragraph shall be construed to require or permit the disclosure either orally or in writing of any information that is confidential pursuant to law.

(d) Where investigation or inspection reveals that a child day care provider which must be licensed or registered is not, the office of children and family services shall advise the child day care provider in writing that the provider is in violation of the licensing or registration requirements and shall take such further action as is necessary to cause the provider to comply with the law, including directing an unlicensed or unregistered provider to cease operation. In addition, the office of children and family services shall require the provider to notify the parents or guardians of children receiving care from the provider that the provider is in violation of the licensing or registration requirements and shall require the provider to notify the office of children and family services that the provider has done so. Any provider who is directed to cease operations pursuant to this paragraph shall be entitled to a hearing before the office of children and family services. If the provider requests a hearing to contest the directive to cease operations, such hearing must be scheduled to commence as soon as possible but in no event later than thirty days after the receipt of the request by the office of children and family services. The provider may not operate the center, home or program after being directed to cease operations, regardless of whether a hearing is requested. If the provider does not cease operations, the office of children and family services may impose a civil penalty pursuant to subdivision eleven of this section, seek an injunction pursuant to [section three hundred ninety-one](#) of this title, or both.

(e)

(i) Where an authorized agency is subsidizing child day care pursuant to any provision of this chapter, the authorized agency may submit to the department justification for a need to impose additional requirements upon child day care providers and a plan to monitor compliance with such additional requirements. No such additional requirements or monitoring may be imposed without the written approval of the department.

(ii) An authorized agency may refuse to allow a child day care provider who is not in compliance with this section and regulations issued hereunder or any approved additional requirements of the authorized agency to provide child day care to the child. In accordance with the plan approved by the department, an authorized agency shall have the right to make announced or unannounced inspections of the records and premises of any provider who provides care for such children, including the right to make inspections prior to subsidized children receiving care in a home where the inspection is for the purpose of determining whether the child day care provider is in compliance with applicable law and regulations and any additional requirements imposed upon such provider by the authorized agency. Where an authorized agency makes such inspections, the authorized agency shall notify the department immediately of any violations of this section or regulations promulgated hereunder, and shall provide the department with an inspection report whether or not violations were found, documenting the results of such inspection.

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(iii) Nothing contained in this paragraph shall diminish the authority of the department to conduct inspections or provide for inspections through purchase of services as otherwise provided for in this section. Nothing contained in this paragraph shall obligate the department to take any action to enforce any additional requirements imposed on child day care providers by an authorized agency.

(f) Individual local social services districts may alter their participation in activities related to arranging for, subsidizing, delivering and monitoring the provision of subsidized child day care provided, however, that the total participation of an individual district in all activities related to the provision of subsidized child day care shall be no less than the participation level engaged in by such individual district on the effective date of this section.

4.

(a) The office of children and family services on an annual basis shall inspect all child day care programs and all enrolled legally-exempt providers except when such provider is determined to be exempt in accordance with subparagraph (ii) of paragraph (d-one) of subdivision two of this section. The office of children and family services may provide for such inspections through purchase of services.

(b) Any family day care home or school-age child care program licensed, registered, or certified by the department or by any authorized agency on the effective date of this section shall be deemed registered until the expiration of its then-current license or certificate unless such license or certificate is suspended or revoked pursuant to subdivision ten of this section. Family day care homes and school-age child care programs not licensed, registered, or certified on the effective date of this section shall register pursuant to subdivision two of this section.

5. Child day care providers required to have a license from the department or to be registered with the department pursuant to this section shall not be exempt from such requirement through registration with another state agency, or certification, registration, or licensure by any local governmental agency or any authorized agency.

5-a. The office of children and family services shall provide, upon request, all applications and forms necessary to become a licensed or registered child day care provider in English, French, Polish, or any of the ten most common non-English languages spoken by individuals with limited-English proficiency in the state of New York, based on United States census data.

6. Unless otherwise limited by law, a parent with legal custody or a legal guardian of any child in a child day care program shall have unlimited and on demand access to such child or ward. Such parent or guardian unless otherwise limited by law, also shall have the right to inspect on demand during its hours of operation any area of a child day care

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center, group family day care home, school-age child care program, or family day care home to which the child or ward of such parent or guardian has access or which could present a hazard to the health and safety of the child or ward.

7. (a) The department shall implement on a statewide basis programs to educate parents and other potential consumers of child day care programs about their selection and use. The department may provide for such implementation through the purchase of services. Such education shall include, but not be limited to, the following topics:

- (i) types of child day care programs;
- (ii) factors to be considered in selecting and evaluating child day care programs;
- (iii) regulations of the department governing the operation of different types of programs;
- (iv) rights of parents or guardians in relation to access to children and inspection of child day care programs;
- (v) information concerning the availability of child day care subsidies;
- (vi) information about licensing and registration requirements;
- (vii) prevention of child abuse and maltreatment in child day care programs, including screening of child day care providers and employees;
- (viii) tax information; and
- (ix) factors to be considered in selecting and evaluating child day care programs when a child needs administration of medications during the time enrolled.

(b) The department shall implement a statewide campaign to educate the public as to the legal requirements for registration of family day care and school-age child care, and the benefits of such registration. The department may provide for such implementation through the purchase of services. The campaign shall:

- (i) use various types of media;
- (ii) include the development of public educational materials for families, family day care providers, employers and community agencies;
- (iii) explain the role and functions of child care resource and referral programs, as such term is used in title five-B of this article;
- (iv) explain the role and functions of the department in regard to registered programs; and
- (v) publicize the department's toll-free telephone number for making complaints of violations of child day care requirements related to programs which are required to be licensed or registered.

(c) [Eff. April 1, 2022.] The office of children and family services shall implement a statewide campaign to educate parents and other consumers of child day care programs about adverse childhood experiences, the importance of protective factors, and the availability of services for children at risk for or experiencing adverse childhood experiences as defined in paragraph (c) of subdivision one of section twenty-d of this chapter. Such statewide campaign, shall include but is not limited to, providing all licensed, registered and enrolled child care providers with educational materials developed pursuant to subdivision two of section three hundred seventy-c of this chapter. The educational materials may be made available electronically and shall be offered to

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parents and other consumers at the time of enrollment.

8. The department shall establish and maintain a list of all current registered and licensed child day care programs and a list of all programs whose license or registration has been revoked, rejected, terminated, or suspended. Such information shall be available to the public, pursuant to procedures developed by the department.

8-a. The office of children and family services shall not make available to the public online any group family day care home provider's or family day care provider's home street address or map showing the location of such provider's home where such provider has requested to opt out of the online availability of this information. The office shall provide a written form informing a provider of their right to opt out of providing information online, and shall also permit a provider to request to opt out through the office's website.

9. The department shall make available, directly or through purchase of services, to registered child day care providers information concerning:

- (a) liability insurance;
- (b) start-up grants;
- (c) United States department of agriculture food programs;
- (d) subsidies available for child day care;
- (e) tax information; and
- (f) support services required to be provided by child care resource and referral programs as set forth in subdivision three of section four hundred ten-r of this article.

10. Any home or facility providing child day care shall be operated in accordance with applicable statutes and regulations. Any violation of applicable statutes or regulations shall be a basis to deny, limit, suspend, revoke, or terminate a license or registration. Consistent with articles twenty-three and twenty-three-A of the correction law, and guidelines referenced in subdivision two of section four hundred twenty-five of this article, if the office of children and family services is made aware of the existence of a criminal conviction or pending criminal charge concerning an operator of a family day care home, group family day care home, school-age child care program, or child day care center or concerning any assistant, employee or volunteer in such homes, programs or centers, or any persons age eighteen or over who reside in such homes, such conviction or charge may be a basis to deny, limit, suspend, revoke, reject, or terminate a license or registration. Before any license issued pursuant to the provisions of this section is suspended or revoked, before registration pursuant to this section is suspended or terminated, or when an application for such license is denied or registration rejected, the applicant for or holder of such registration or license is entitled, pursuant to section twenty-two of this chapter and the regulations of the office of children and family services, to a hearing before the office of children and family services. However, a license or registration shall be temporarily suspended or limited without a hearing upon written notice to the operator of the facility following a finding that the public health, or an individual's safety or welfare, are in imminent danger. The holder of a license or registrant is entitled to a

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hearing before the office of children and family services to contest the temporary suspension or limitation. If the holder of a license or registrant requests a hearing to contest the temporary suspension or limitation, such hearing must be scheduled to commence as soon as possible but in no event later than thirty days after the receipt of the request by the office of children and family services. Suspension shall continue until the condition requiring suspension or limitation is corrected or until a hearing decision has been issued. If the office of children and family services determines after a hearing that the temporary suspension or limitation was proper, such suspension or limitation shall be extended until the condition requiring suspension or limitation has been corrected or until the license or registration has been revoked.

11.

(a)

(i) The office of children and family services shall adopt regulations establishing civil penalties of no more than five hundred dollars per day to be assessed against child day care centers, school age child care programs, group family day care homes or family day care homes for violations of this section, sections three hundred ninety-a and three hundred ninety-b of this title and any regulations promulgated thereunder. The regulations establishing civil penalties shall specify the violations subject to penalty.

(ii) The office of children and family services shall adopt regulations establishing civil penalties of no more than five hundred dollars per day to be assessed against child day care providers who operate child day care centers or group family day care homes without a license or who operate family day care homes, school-age child care programs, or child day care centers required to be registered without obtaining such registration.

(iii) In addition to any other civil or criminal penalty provided by law, the office of children and family services shall have the power to assess civil penalties in accordance with its regulations adopted pursuant to this subdivision after a hearing conducted in accordance with procedures established by regulations of the office of children and family services. Such procedures shall require that notice of the time and place of the hearing, together with a statement of charges of violations, shall be served in person or by certified mail addressed to the school age child care program, group family day care home, family day care home, or child day care center at least thirty days prior to the date of the hearing. The statement of charges shall set forth the existence of the violation or violations, the amount of penalty for which the program may become liable, the steps which must be taken to rectify the violation, and where applicable, a statement that a penalty may be imposed regardless of rectification. A written answer to the charges of violations shall be filed with the office of children and family services not less than ten days prior to the date of hearing with respect to each of the charges and shall include all material and relevant matters which, if not disclosed in the answer, would not likely be known to the office of children and family services.

(iv) The hearing shall be held by the commissioner of the office of children and family services or the commissioner's designee. The burden of proof at such

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hearing shall be on the office of children and family services to show that the charges are supported by a preponderance of the evidence. The commissioner of the office of children and family services or the commissioner's designee, in his or her discretion, may allow the child day care center operator or provider to attempt to prove by a preponderance of the evidence any matter not included in the answer. Where the child day care provider satisfactorily demonstrates that it has rectified the violations in accordance with the requirements of paragraph (c) of this subdivision, no penalty shall be imposed except as provided in paragraph (c) of this subdivision.

(b)

(i) In assessing penalties pursuant to this subdivision, the office of children and family services may consider the completeness of any rectification made and the specific circumstances of such violations as mitigating factors.

(ii) Upon the request of the office of children and family services, the attorney general shall commence an action in any court of competent jurisdiction against any child day care program subject to the provisions of this subdivision and against any person, entity or corporation operating such center or school age child care program, group family day care home or family day care home for the recovery of any penalty assessed by the office of children and family services in accordance with the provisions of this subdivision.

(iii) Any such penalty assessed by the office of children and family services may be released or compromised by the office of children and family services before the matter has been referred to the attorney general; when such matter has been referred to the attorney general, such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the attorney general with the consent of the office of children and family services.

(c)

(i) Except as provided for in this paragraph, a child day care provider shall avoid payment of a penalty imposed pursuant to this subdivision where the provider has rectified the condition which resulted in the imposition of the penalty within thirty days of notification of the existence of the violation of statute or regulation.

(ii) Clause (i) of this paragraph notwithstanding, rectification shall not preclude the imposition of a penalty pursuant to this subdivision where:

(A) the child day care provider has operated a child day care center or group family day care home without a license, has refused to seek a license for the operation of such a center or home, or has continued to operate such a center or home after denial of a license application, revocation of an existing license or suspension of an existing license;

(B) the child day care provider has operated a family day care home, school-age child care program or child day care center required to be registered without being registered, has refused to seek registration for the operation of such home, program or center or has continued to operate such a home,

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program or center after denial of a registration application, revocation of an existing registration or suspension of an existing registration;
(C) there has been a total or substantial failure of the facility's fire detection or prevention systems or emergency evacuation procedures;
(D) the child day care provider or an assistant, employee or volunteer has failed to provide adequate and competent supervision;
(E) the child day care provider or an assistant, employee or volunteer has failed to provide adequate sanitation;
(F) the child day care provider or an assistant, employee, volunteer or, for a family day care home or group family day care home, a member of the provider's household, has injured a child in care, unreasonably failed to obtain medical attention for a child in care requiring such attention, used corporal punishment against a child in care or abused or maltreated a child in care;
(G) the child day care provider has violated the same statutory or regulatory standard more than once within a six month period;
(H) the child day care provider or an assistant, employee or volunteer has failed to make a report of suspected child abuse or maltreatment when required to do so pursuant to section four hundred thirteen of this article; or
(I) the child day care provider or an assistant, employee or volunteer has submitted to the office of children and family services a forged document as defined in section 170.00 of the penal law.

(d) Any civil penalty received by the office of children and family services pursuant to this subdivision shall be deposited to the credit of the "quality child care and protection fund" established pursuant to section ninety-seven-www of the state finance law.

(e)

(i) The office of children and family services shall deny a new application for licensure or registration made by a day care provider whose license or registration was previously revoked or terminated based on a violation of statute or regulation for a period of two years from the date that the revocation or termination of the license or registration became finally effective, unless such office determines, in its discretion, that approval of the application will not in any way jeopardize the health, safety or welfare of children in the center, program or home. For the purposes of this paragraph, the date that the revocation or termination became finally effective shall be, as applicable:

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

(B) the date that the hearing decision was issued upholding the revocation or termination;

(C) the date of issuance of a final court order affirming the revocation or termination or affirming a hearing decision that upheld the revocation or termination; or

(D) another date mutually agreed upon by the office of children and family

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services and the provider.

(ii)

(A) Such office shall deny a new application for licensure or registration made by a day care provider who is enjoined or otherwise prohibited by a court order from operation of a day care center, group family day care home, family day care home or school-age child care program without a license or registration for a period of two years from the date of the court order unless the court order specifically enjoins the provider from providing day care for a period longer than two years, in which case the office shall deny any new application made by the provider while the provider is so enjoined.

(B) Such office shall deny a new application for licensure or registration made by a day care provider who is assessed a second civil penalty by such office for having operated a day care center, group family day care home, family day care home or school-age child care program without a license or registration for a period of two years from the date of the second fine. For the purposes of this paragraph, the date of the second fine shall be either the date upon which the day care provider signs a stipulation agreement to pay the second fine or the date upon which a hearing decision is issued affirming the determination of such office to impose the second fine, as applicable.

(iii) A day care provider who surrenders the provider's license or registration while such office is engaged in enforcement seeking suspension, revocation or termination of such provider's license or registration pursuant to the regulations of such office, shall be deemed to have had their license or registration revoked or terminated and shall be subject to the prohibitions against licensing or registration pursuant to subparagraph (i) of this paragraph for a period of two years from the date of surrender of the license or registration.

12.

(a) Notwithstanding any other provision of law, except as may be required as a condition of licensure or registration by regulations promulgated pursuant to this section, no village, town (outside the area of any incorporated village), city or county shall adopt or enact any law, ordinance, rule or regulation which would impose, mandate or otherwise enforce standards for sanitation, health, fire safety or building construction on a one or two family dwelling or multiple dwelling used to provide group family day care or family day care than would be applicable were such child day care not provided on the premises. No village, town (outside the area of any incorporated village), city or county shall prohibit or restrict use of a one or two family dwelling, or multiple dwelling for family or group family day care where a license or registration for such use has been issued in accordance with regulations issued pursuant to this section. Nothing in this paragraph shall preclude local authorities with enforcement jurisdiction of the applicable sanitation, health, fire safety or building construction code from making appropriate inspections to assure compliance with such standards.

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(b) Notwithstanding any other provision of law, but pursuant to section five hundred eighty-one-b of the real property tax law, no assessing unit, as defined in subdivision one of section one hundred two of the real property tax law, in the assessment of the value of any parcel used for residential purposes and registered as a family day care home pursuant to this section, shall consider the use or registration of such parcel as a family day care home.

13. Notwithstanding any other provision of law, this section, except for paragraph (a-1) of subdivision two-a of this section, shall not apply to child day care centers in the city of New York.

**§ 390-a. Standards and training for child day care
(Effective: June 13, 2020)**

1. All office of children and family services and municipal staff employed to accept registrations, issue licenses or conduct inspections of child day care homes, programs or facilities, subject to the amounts appropriated therefor, shall receive training in at least the following: regulations promulgated by the office of children and family services pursuant to [section three hundred ninety](#) of this title; child abuse prevention and identification; safety and security procedures in child day care settings; the principles of childhood development, and the laws, regulations and procedures governing the protection of children from abuse or maltreatment.

2. No license or registration shall be issued to a family day care home, group family day care home, school age child care program or child day care center and no such registration or license shall be renewed until it can be demonstrated by the employer or licensing agency that there is a procedure developed and implemented, in accordance with [section three hundred ninety-b](#) of this title and pursuant to regulations of the office of children and family services, to:

(a) review and evaluate the backgrounds of and information supplied by any person applying to be a child day care center or school-age child care program employee or volunteer or group family day care assistant, a provider of family day care or group family day care, or a director of a child day care center, head start day care center or school-age child care program. Such procedures shall include but not be limited to the following requirements: that the applicant set forth his or her employment history, provide personal and employment references; submit such information as is required for screening with the statewide central register of child abuse and maltreatment in accordance with the provisions of section four hundred twenty-four-a of this article; sign a sworn statement indicating whether, to the best of his or her knowledge, he or she has ever been convicted of a crime in this state or any other jurisdiction; and provide his or her fingerprints for submission to the division of criminal justice services in accordance with the provisions of section three hundred ninety-b of this title;

(b) establish relevant minimal experiential and educational qualifications for employees and directors of child day care centers or head start day care center

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programs;

(c) assure adequate and appropriate supervision of employees and volunteers of group family day care homes, family day care homes, child day care centers and school-age child care programs; and

(d) demonstrate, in the case of child day care centers, group family day care homes, family day care homes and school-age child care programs the existence of specific procedures which will assure the safety of a child who is reported to the state central register of child abuse and maltreatment as well as other children provided care by such homes, centers or programs, immediately upon notification that a report has been made with respect to a child named in such report while the child was in attendance at such homes, centers or programs.

(e) establish necessary rules to provide for uniform visitor control procedures, including visitor identification.

3.

(a) The office of children and family services shall promulgate regulations requiring operators, program directors, employees and assistants of family day care homes, group family day care homes, school-age child care programs and child day care centers to receive pre-service and annual training, as applicable. Provided however that such providers shall be required to receive thirty hours of training every two years; provided, however, any individual or provider who is already in compliance with this subdivision, prior to the effective date of the chapter of the laws of two thousand nineteen that amended this subdivision, shall only be required to complete any additional federal training requirements which they have not already completed in order to be deemed in compliance with this subdivision. Fifteen hours of such training must be received within the first six months of the initial licensure, registration or employment. Such training requirements shall also apply to any volunteer in such day care homes, programs or centers who has the potential for regular and substantial contact with children. The thirty hours of training required during the first biennial cycle after initial licensure or registration shall include training received while an application for licensure or registration pursuant to [section three hundred ninety](#) of this title is pending. The office of children and family services may provide this training through purchase of services.

(b) The training required in paragraph (a) of this subdivision shall address topics and subject matters required by federal law and the following topics or subject matters, unless such topics or subject matters are substantially covered in training that is required pursuant to federal law:

- (i) principles of childhood development, focusing on the developmental stages of the age groups for which the program provides care;
- (ii) nutrition and health needs of infants and children;
- (iii) child day care program development;
- (iv) safety and security procedures;
- (v) business record maintenance and management;
- (vi) child abuse and maltreatment identification and prevention;

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- (vii) statutes and regulations pertaining to child day care;
- (viii) statutes and regulations pertaining to child abuse and maltreatment;
- (ix) for operators, program directors, employees and assistants of family day care homes, group family day care homes and child day care centers, education and information on the identification, diagnosis and prevention of shaken baby syndrome; and
- (x) adverse childhood experiences (ACEs), focused on understanding trauma and on nurturing resiliency.

(c) For the thirty hours of biennial training required after the initial period of licensure or registration, each provider who can demonstrate basic competency shall determine in which of the specified topics he or she needs further study, based on the provider's experience and the needs of the children in the provider's care.

(d) Family day care home and group family day care home operators shall obtain training pertaining to protection of the health and safety of children, as required by regulation, prior to the issuance of a license or registration by the office of children and family services.

(e) Upon request by the office of children and family services, the child day care applicant or provider shall submit documentation demonstrating compliance with the training requirements of this section.

4. No license or registration shall be issued to a family day care home or group family day care home and no such registration shall be renewed if barriers, as defined in paragraph (d) of subdivision one of section three hundred ninety-d of this title, are not present around any swimming pool or body of water, as defined in paragraphs (b) and (c) of subdivision one of section three hundred ninety-d of this title, located on its grounds, pursuant to section three hundred ninety-d of this title.

5.

a. The site provider of a family day care home or group family day care home shall provide that at least one employee who holds a valid certification in a course of study in first aid knowledge and skills and cardiopulmonary resuscitation, with an emphasis on providing that aid to children, as approved by the commissioner of the office of children and family services, be on premises during the operating hours of such family day care home or group family day care home.

b. The site supervisor of a school-age child care program shall provide that at least one employee who holds a valid certification in a course of study in first aid knowledge and skills and cardiopulmonary resuscitation, with an emphasis on providing that aid to children, as approved by the commissioner of the office of children and family services, be on premises during the operating hours of such school-age child care program.

c. The director of a child day care center shall provide that at least one employee who holds a valid certification in a course of study in first aid knowledge and skills and cardiopulmonary resuscitation, with an emphasis on providing that aid to children, as approved by the commissioner of the office of children and family

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services, be on premises during the operating hours of such child day care center.

**§ 390-b Criminal history review and background clearances of child care providers, generally
(Effective: March 31, 2021)**

1. Notwithstanding any other provision of law to the contrary, and subject to rules and regulations of the office of children and family services and, where applicable, the division of criminal justice services, the following clearances shall be conducted for entities specified in subdivision two of this section in the time and manner as required by this section:

- (a) a criminal history record check with the division of criminal justice services;
- (b) a search of the criminal history repository in each state other than New York where such person resides or resided during the preceding five years, if applicable unless such state's criminal history record information will be provided as part of the results or the clearance conducted pursuant to paragraph (c) of this subdivision;
- (c) a national criminal record check with the federal bureau of investigation; the division of criminal justice services is directed to submit fingerprints to the federal bureau of investigation for the purpose of a nationwide criminal history record check, pursuant to and consistent with public law 113-186 to determine whether such persons shall have a criminal history in any state or federal jurisdiction;
- (d) a search of the New York state sex offender registry;
- (e) a search of any state sex offender registry or repository in each state other than New York where such person resides or resided during the preceding five years, if applicable unless such state's sex offender registry information will be provided as part of the clearance conducted pursuant to paragraph (f) of this subdivision;
- (f) a search of the national sex offender registry using the national crime and information center, established under the Adam Walsh child protection and safety act of 2006 (42 U.S.C. 16901 et seq.);
- (g) a database check of the statewide central register of child abuse and maltreatment in accordance with section four hundred twenty-four-a of this article; and
- (h) a search of a state-based child abuse or neglect repository of any state other than New York where such person resides or resided during the preceding five years; if applicable.

1-a. For purposes of this section, and in accordance with federal law, the term "enrolled legally-exempt provider" shall refer to a person who meets the definition of "enrolled legally-exempt provider" as defined in paragraph (g) of subdivision one of section three hundred ninety of this title and who is not an individual who is related to all children for whom child care services are provided.

2. In relation to any child day care program and any enrolled legally-exempt provider:

- (a) the clearances required pursuant to paragraphs (a), (c), (d) and (g) of

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subdivision one of this section shall be conducted for:

- (i) every prospective volunteer with the potential for unsupervised contact with children in care;
- (ii) every applicant to become an enrolled legally-exempt provider;
- (iii) every prospective employee, director or operator of such a program or provider; and
- (iv) every individual eighteen years of age and over residing or who begins to reside in a home where services are or will be provided in a family or group family setting; and
- (v) every individual eighteen years of age and over residing or who begins to reside in a home where services are or will be provided who are not related in any way to all children receiving services as or will be provided by an enrolled legally exempt provider;

(b) notwithstanding any other provision of law to the contrary, prior to October first, two thousand twenty, all clearances listed in subdivision one of this section that have not previously been conducted pursuant to paragraph (a) of this subdivision and for which on-going criminal history results are not already provided, shall be conducted in accordance with a schedule developed by the office of children and family services, for all:

- (i) existing volunteers with the potential for unsupervised contact with children in care;
- (ii) existing caregivers for an enrolled legally exempt provider;
- (iii) existing employees, directors and operators of any such program or provider; and
- (iv) every individual eighteen years of age and over residing or who begins to reside in a home where services are or will be provided in a family or group family setting; and
- (v) every individual eighteen years of age and over residing or who begins to reside in a home where services are or will be provided who are not related in any way to all children receiving services as or will be provided by an enrolled legally exempt provider;

(c) notwithstanding any other provision of law to the contrary, the clearances required pursuant to this section other than those for which on-going criminal history results are provided, shall be conducted for a person listed in subparagraphs (i), (ii), (iii) and (iv) of paragraph (b) of this subdivision at least once every five years in accordance with a schedule developed by the office of children and family services.

3. (a) Notwithstanding any other provision of law to the contrary, in relation to the clearances required pursuant to this section, an individual or a program or provider shall be deemed ineligible, as such term is defined in paragraph (b) of this subdivision, if such individual:
 - (i) refuses to consent to such clearance;

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- (ii) knowingly makes a materially false statement in connection with such a clearance;
- (iii) is registered, or is required to be registered, on a state sex offender registry or repository or the national sex offender registry established under the Adam Walsh child protection and safety act of 2006 (42 U.S.C. 16901 et seq.); or
- (iv) has been convicted of a crime enumerated in subparagraph (E) or clauses (i) through (viii) of subparagraph (D) of paragraph (1) of subdivision (C) of 42 U.S.C. 9858f.

(b) For purpose of this subdivision, the term “ineligible” shall mean:

(i) the individual who engaged in conduct listed in paragraph (a) of this subdivision shall not be permitted to:

- (1) operate, direct, be the caregiver for, or be employed by a child day care program or an enrolled legally-exempt provider; or
- (2) be a volunteer with the potential for unsupervised contact with children in a child day care program or with an enrolled legally-exempt provider; or
- (3) be an enrolled legally exempt provider; or

(ii) in relation to child day care programs or any enrolled legally-exempt providers, where child care is, or is proposed to be provided, to a child in a home setting where such child does not reside, such program or provider shall not be eligible to operate or to be enrolled to serve children receiving child care subsidies pursuant to title five-C of this article, if an individual over the age of eighteen who is not related in any way to all children for whom child care services are or will be provided, resides in the household where child care is, or is proposed to be provided, engaged in conduct listed in paragraph (a) of this subdivision.

3-a.

(a) In relation to child day care programs and any enrolled legally-exempt provider, when a clearance conducted pursuant to this section reveals that any existing operator, director, caregiver, or person over the age of eighteen who is not related in any way to all children for whom child care services are or will be provided, that resides in a home where child care is provided in a home setting where the child does not reside has been convicted of a crime other than one set forth in subparagraph (iv) of paragraph (a) of subdivision three of this section, and unless such crime is eligible for expungement pursuant to section 160.50 of the criminal procedure law, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program, and may deny, limit, suspend, revoke or reject such program’s license or registration or terminate or reject such program’s enrollment, as applicable, unless the office of children and family services, determines in its discretion, that continued operation by the child day care program or enrolled legally-exempt provider will not in any way jeopardize the health, safety or welfare of the children cared for in the program or by the provider.

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(b) In relation to child day care programs and any enrolled legally-exempt provider, when a clearance conducted pursuant to this section reveals that any existing employee or volunteer with the potential for unsupervised contact with children has been convicted of a crime other than one set forth in subparagraph (iv) of paragraph (a) of subdivision three of this section, and unless such crime is eligible for expungement pursuant to section 160.50 of the criminal procedure law, the office of children of family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program. The office of children and family services may direct the program or provider to terminate the employee or volunteer based on such a conviction, consistent with article twenty-three-A of the correction law.

(c)

(i) In relation to any child day care programs and any enrolled legally-exempt providers, where a clearance conducted pursuant to this section reveals a conviction for a crime other than one set forth in subparagraph (iv) of paragraph (a) of subdivision three of this section, and unless such crime is eligible for expungement pursuant to section 160.50 of the criminal procedure law, for any prospective employee or volunteer, the office of children and family services may direct that such person not be hired, as applicable, based on such a conviction, consistent with article twenty-three-A of the correction law.

(ii) In relation to any child day care program and any enrolled legally-exempt provider, when a clearance conducted pursuant to this section reveals a conviction for a crime other than one set forth in subparagraph (iv) of paragraph (a) of subdivision three of this section, and unless such crime is eligible for expungement pursuant to section 160.50 of the criminal procedure law, for any prospective caregiver seeking enrollment, or applicant to be a director or operator, the office of children and family services may deny the application or enrollment, consistent with article twenty-three-A of the correction law.

(d)

(i) Where a clearance conducted pursuant to this section reveals that an applicant to be the operator or director of a child day care program, or applicant to be a caregiver, or anyone who is not related in any way to all children for whom child care services will be provided, resides in the home over the age of eighteen where child day care is proposed to be provided to children in a home-based setting has been charged with a crime, the office of children and family services shall hold the application in abeyance until the charge is finally resolved.

(ii) Where a clearance conducted pursuant to this section reveals that the current operator or director of a child day care program, or any person over the age of eighteen who is not related in any way to all children for whom child care services will be provided, that resides in a home where child day care is provided has been charged with a crime, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of children in the program. The office of children and family

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services may suspend a license or registration or terminate enrollment based on such a charge when necessary to protect the health and safety of children in the program.

(iii) Where a clearance conducted pursuant to this section reveals that an existing caregiver, volunteer or an existing employee of an enrolled legally-exempt provider or any person over the age of eighteen that resides in a home where the child care is provided by an enrolled legally-exempt provider in a home setting where the child does not reside, has been charged with a crime, the office of children and family services shall take one or more of the following steps:

(A) Conduct a safety assessment; or

(B) Take all appropriate steps to protect the health and safety of children in the program.

(iv) Where a clearance conducted pursuant to this section reveals that an applicant to be an employee or volunteer with the potential for unsupervised contact with children of a child day care program or enrolled legally-exempt provider has been charged with a crime, the office shall hold the application in abeyance until the charge is finally resolved.

(v) Where a clearance conducted pursuant to this section reveals that a current employee, or current volunteer with the potential for unsupervised contact with children of a child day care program has been charged with a crime, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program.

3-b. All persons who are subjected to a criminal history and back-ground clearance and safety assessment pursuant to this section who the office of children and family services determines:

(i) should be denied enrollment, employment, or the ability to volunteer pursuant to a background clearance analysis performed by the office of children and family services, and

(ii) where such denial is not based on an offense listed in paragraph (a) of subdivision three of this section, shall have the ability to request a de novo review of the article twenty-three-a of the correction law determination in an administrative hearing before an administrative law judge, to be held and completed before the present employer is notified of such clearance determination. Such person shall have reasonable notice concerning the determination, and information regarding how to request a hearing to review that determination, and an opportunity to provide any additional information that such person deems relevant to such determination. Such person may choose to be heard in person, by video conference if reasonably available, or through submission of written materials. Where such request is made, the office of children and family services shall also have an opportunity to be heard.

4. Prior to making a determination to deny an application pursuant to subdivision three of this section, the office of children and family services shall afford the applicant an

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opportunity to explain, in writing, why the application should not be denied.

5. Notwithstanding any other provision of law to the contrary, the office of children and family services, upon receipt of a criminal history record from the division of criminal justice services, may request, and is entitled to receive, information pertaining to any crime contained in such criminal history record from any state or local law enforcement agency, district attorney, parole officer, probation officer or court for the purposes of determining whether any ground relating to such criminal conviction or pending criminal charge exists for denying a license, registration, application or employment.

6. The office of children and family services shall pay any required processing fee for a criminal history or sex offender clearance pursuant to this section. The office of children and family services shall promptly submit fingerprints obtained pursuant to this section and such processing fee to the division of criminal justice services.

7. Where the office of children and family services or its designee denies or directs a child day care or an enrolled legally-exempt provider to deny an application based on the criminal history record; (a) the provider must notify the applicant that such record is the basis of the denial; and (b) the office of children and family services shall also notify as the case may be, such current or prospective operator, director, employee, assistant, legally exempt provider, volunteer with the potential for unsupervised contact with children or other person eighteen years of age or older, who resides in the home where care is provided, other than the child's home, that the criminal record check was the basis for the denial of clearance and shall provide such individual with a copy of the results of the national criminal record check upon which such denial was based together with a written statement setting forth the reasons for such denial, as well as a copy of article twenty-three-A of the correction law¹ and inform such individual of his or her right to seek correction of any incorrect information contained in such national record check provided by the federal bureau of investigation.

8. Any safety assessment required pursuant to this section shall include a review of the duties of the individual, the extent to which such individual may have contact with children in the program or household and the status and nature of the criminal charge or conviction. Where the office of children and family services performs the safety assessment, it shall thereafter take all appropriate steps to protect the health and safety of children receiving care in the child day care center, school age child care program, family day care home or group family day care home.

9.

(a) Any criminal history record provided by the division of criminal justice services, and any summary of the criminal history record provided by the office of children and family services to a person that receives a clearance pursuant to this section, is confidential and shall not be available for public inspection; provided, however, nothing herein shall prevent the office of children and family services from disclosing criminal history information or the individual from disclosing his or her

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criminal history information at any administrative or judicial proceeding relating to the denial or revocation of an application, employment, license or registration. The subject of a criminal history review conducted pursuant to this section shall be entitled to receive, upon written request, a copy of the summary of the criminal history record. Unauthorized disclosure of such records or reports shall be subject to civil penalties in accordance with the provisions of subdivision eleven of section three hundred ninety of this title.

(b) The office of children and family services shall not release the content of the results of the nationwide criminal history record check conducted by the federal bureau of investigation in accordance with this subdivision to any non-public entity.

10. A child day care or enrolled legally-exempt provider shall advise the office of children and family services when an individual who is subject to criminal history record review in accordance with subdivision one or two of this section is no longer subject to such review. The office of children and family services shall inform the division of criminal justice services when an individual who is subject to criminal history review is no longer subject to such review so that the division of criminal justice services may terminate its retain processing with regard to such person. At least once a year, the office of children and family services will be required to conduct a validation of the records maintained by the division of criminal justice services.

11. Child day care centers which are not subject to the provisions of section three hundred ninety of this title shall not be subject to the provisions of this section, provided however, that the city of New York shall require that such child day care centers meet the requirements of any federal laws and regulations pertaining to the child care development and block grant and the related federally approved plans of the state of New York.

**§ 390-c. Notice of pesticide applications
(Effective: July 1, 2001)**

1. For the purposes of this section the following terms shall have the meanings set forth below:

(a) "Pesticide" shall have the same meaning as in subdivision thirty-five of section 33-0101 of the environmental conservation law.

(b) "Daycare facility" shall mean licensed and registered child daycare homes, programs and facilities.

2. Each daycare facility shall be subject to the following notice requirements when pesticides are used at such facility:

(a) A notice of each pesticide application shall be posted in a common area of the facility which is conspicuously visible to persons dropping off or picking up children from the facility. Such notice shall be posted not less than forty-eight hours prior to the pesticide application.

(b) The notice required to be posted pursuant to paragraph (a) of this subdivision

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shall include at a minimum:

(i) the location and specific date of the application at the daycare facility. In case of outdoor applications the notice must provide a specific date, and may include two alternative dates in case the application cannot be made due to weather conditions.

(ii) the product name and pesticide registration number assigned by the United States Environmental Protection Agency.

(iii) the following statement "This notice is to inform you of a pending pesticide application at this facility. You may wish to discuss with a representative of the daycare facility what precautions are being taken to protect your child from exposure to these pesticides. Further information about the product or products being applied, including any warnings that appear on the label of the pesticide or pesticides that are pertinent to the protection of humans, animals or the environment, can be obtained by calling the National Pesticide Telecommunications Network Information at 1-800-858-7378 or the New York State Department of Health Center for Environmental Health Info line at 1-800-458-1158".

(iv) the name of a representative of the daycare facility and contact number for additional information.

(c) For purposes of this section the following pesticide applications shall not be subject to the notification posting requirements:

(i) the application of anti microbial pesticides and anti microbial products as defined by FIFRA in 7 U.S.C. § 136 (mm) and 136q (h) (2);

(ii) the use of an aerosol product with a directed spray, in containers of eighteen fluid ounces, or less, when used to protect individuals from an imminent threat from stinging and biting insects including venomous spiders, bees, wasps and hornets. This section shall not exempt from notification the use of any fogger product or aerosol product that discharges to a wide area;

(iii) any application where the daycare facility remains unoccupied for a continuous seventy-two hour period following the application of the pesticide;

(iv) nonvolatile rodenticides in tamper resistant bait stations or in areas inaccessible to children;

(v) silica gels and other nonvolatile ready-to-use, paste, foam or gel formulations of insecticides in areas inaccessible to children;

(vi) nonvolatile insecticidal baits in tamper resistant bait stations or in areas inaccessible to children;

(vii) application of a pesticide classified by the United States Environmental Protection Agency as an exempt material under section 40 CFR Part 152.25;

(viii) boric acid and disodium octaborate tetrahydrate;

(ix) the application of a pesticide which the United States Environmental Protection Agency has determined satisfies its reduced risk criteria, including a biopesticide; or

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(x) any emergency application of a pesticide when necessary to protect against an imminent threat to human health, provided however, that prior to any such emergency application, the person making such application shall make a good faith effort to supply the written notice required pursuant to this section. Upon making such an emergency application, the person making such application shall notify the commissioner of health, using a form developed by such commissioner for such purposes that shall include minimally the name of the person making the application, the pesticide business registration number or certified applicator number of the person making such application, the location and date of such application, the product name and USEPA registration number of the pesticide applied and the reason for such application. The commissioner of health shall review such form to ensure that the circumstance did warrant such emergency application. Such forms shall be kept on file at the department of health for three years from the date of application and shall be available to any individual upon request.

3. Any person, other than a daycare facility, who contracts for the application of a pesticide at a daycare facility shall provide to such facility operator information required to be contained in the posting pursuant to subdivision two of this section at least forty-eight hours prior to such application.

4.

(a) Any daycare facility that violates the provisions of subdivision two of this section shall, for a first such violation of this section, in lieu of penalty, be issued a written warning and shall also be issued educational materials pursuant to subdivision two of section 33-1005 of the environmental conservation law. Such facility shall, however, for a second violation, be liable to the people of the state for a civil penalty not to exceed one hundred dollars, and not to exceed two hundred fifty dollars for any subsequent violation, such penalties to be assessed by the commissioner after a hearing or opportunity to be heard.

(b) Any person who violates subdivision three of this section shall, for a first such violation of this section, in lieu of penalty, be issued a written warning, and shall also be issued educational materials pursuant to subdivision two of section 33-1005 of the environmental conservation law. Such person shall, however, for a second violation, be liable to the people of the state for a civil penalty not to exceed one hundred dollars, and not to exceed two hundred fifty dollars for any subsequent violation, such penalties to be assessed by the commissioner of environmental conservation after a hearing or opportunity to be heard.

§ 390-c. Additional powers and duties of the office of children and family services (Effective: December 1, 2021)

1. The commissioner of children and family services is authorized and directed to

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promulgate necessary rules and regulations to ensure that, whenever a child day care provider is licensed or registered pursuant to section three hundred ninety of this article, the police department and fire department of the municipality wherein such licensee or registrant is authorized to operate and the state police shall be notified of the existence of the child day care center, its location and the fact that children are likely to be at that location in the event of an emergency. In those cases where the local municipality does not have a police department or a fire department, the sheriff of the appropriate county shall be notified in lieu thereof.

2. The commissioner of children and family services is authorized and directed to conduct a study to determine the best method of compiling an accurate and accessible central record of information regarding the safe operation of each day care center licensed or registered within the state. Such record should include but not be limited to complaints by parents or guardians, internal incident reports, reports by police or fire departments, local or state building code violations, any relevant information gathered from utility providers or other visitors to the day care center and any additional information held by another state or local agency regarding a day care provider or a day care center location which could affect safe operation of a day care center.

3. On or before the thirtieth day of June in the year next succeeding the year in which this section takes effect, the commissioner of children and family services shall report to the governor, the temporary president of the senate and the speaker of the assembly regarding the results of the study undertaken pursuant to subdivision two of this section.

4. The commissioner of children and family services is authorized and directed, no later than one year from the effective date of this subdivision, to promulgate rules and regulations to require that local social services districts offer child day care providers, as defined in section three hundred ninety of this title, the option to be paid any monies owed for providing subsidized child care by a deposit directly into a bank account of the child day care provider. Such direct deposit shall only be made at the express written consent of the provider and shall be requested on forms provided by the local social services district and duly filled in by the provider. Such written consent can be revoked at any time by the provider in writing on forms provided by the local social services district.

§ 390-d. Requiring barriers to be placed around swimming pools and bodies of water on the grounds of family day care homes or group family day care homes (Effective: May 4, 2004)

1. For the purposes of this section the following terms shall have the meanings set forth below:

(a) "Grounds of a family day care home or group family day care home" shall mean in, on or within any building, structure or land contained within the real property boundary line of a family day care home or a group family day care home.

(b) "Swimming pool" shall mean any outdoor pool or tub intended for swimming, bathing or wading purposes.

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(c) "Bodies of water" shall include, but not limited to, ponds, springs, streams, creeks, lakes, rivers and oceans.

(d) "Barriers" shall mean all fences, enclosures or other materials sufficient to form an obstruction to the free passage of persons through such materials.

2.

(a) Any swimming pool or body of water located on the grounds of a family day care home or group family day care home shall be surrounded by a barrier sufficient to form an obstruction to the free passage of children through such barrier into such swimming pool or body of water. Such barrier shall be adequate to make such swimming pool or body of water inaccessible to children which, including gates thereto, shall be at least four feet high from the adjacent ground. All such gates shall include a locked barrier which shall be located at least four feet high above the adjacent ground or otherwise made inaccessible to children from the outside.

(b) Where a body of water is present and not wholly contained within the grounds of family day care home or group family day care home, the grounds of such home must be surrounded and enclosed by a barrier sufficient to make such body of water inaccessible to children.

(c) All pathways, walkways, decks or any other connecting entrance to such swimming pool or body of water shall be obstructed by a barrier sufficient to impede the free passage of children into or around the area immediately adjacent to such swimming pool or body of water.

(d) Swimming pools or bodies of water that are entirely covered by a solid object which is secured by sufficient weight, locking apparatus, and/or other device that would prevent a child in care from removing the solid object and accessing the swimming pool or body of water, shall be considered a sufficient barrier for the purposes of this section.

(e) As an alternative to surrounding the pool or other body of water located on the grounds of a family day care home or group family day care home with a barrier as described in paragraph (a) of this subdivision, the day care provider may use the property for day care if the provider bars access to such pool or other body of water by surrounding a part of the grounds not including such pool or other body of water with a barrier as described in paragraph (a) of this subdivision provided that:

(i) There is no unsecured means of egress from the home by which children could gain access to the pool or other body of water. For purposes of this paragraph, the day care provider may secure a door or other means of egress that is remotely located from the pool or other body of water by use of an alarm device or system that will alert the day care provider if the door or other means of egress is opened;

(ii) All children in care are directly and closely supervised by the provider or an assistant at all times the children are outside the home or other dwelling where the day care is provided; and

(iii) The parents or guardians of each child in care have submitted to the

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provider a written acknowledgment that the pool or other body of water exists, that a barrier as otherwise required by this section has not been provided, and that the children will have the potential for access to the pool or other body of water.

(f) Where a natural barrier or other obstacle located on the property lies between the pool or body of water and the building in which the family or group family day care is provided such that the natural barrier or other obstacle prevents access by children in care to the pool or body of water, a fence or additional barrier as otherwise required by this section shall not be required and the day care provider may use the property for day care provided that:

(i) There is no unsecured means of egress from the home by which children could gain access to the pool or other body of water. For purposes of this paragraph, the day care provider may secure a door or other means of egress that is remotely located from the pool or other body of water by use of an alarm device or system that will alert the day care provider if the door or other means of egress is opened;

(ii) All children in care are directly and closely supervised by the provider or an assistant at all times the children are outside the home or other dwelling where the day care is provided; and

(iii) The parents or guardians of each child in care have submitted to the provider a written acknowledgment that the pool or other body of water exists, that a barrier as otherwise required by this section has not been provided, and that the children will have the potential for access to the body of water.

In determining what constitutes a natural barrier or other obstacle for purposes of this paragraph, the presence of natural and artificial terrain features or constructs may be considered along with the distance between the building in which the family or group family day care is provided and the pool or body of water.

3. Where a swimming pool or body of water is located on a property adjacent to a family or group family day home, the child day care provider must take suitable precautions to prevent the children in care from having access to the adjacent swimming pool or body of water, including taking any precautions specifically required by the office of children and family services to protect the safety of children receiving day care.

4. Nothing in this section shall preclude local authorities with enforcement jurisdiction of the applicable sanitation, health, fire safety or building construction code from making appropriate inspections to assure compliance with such standards.

**§ 390-e. Criminal history review; mentoring programs
(Effective: April 1, 2007)**

1. For the purposes of this section, the following words shall have the following meanings:
(a) "Prospective employee" shall mean a person being considered for employment by a mentoring program.

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(b) "Prospective mentor" shall mean an individual who is currently applying to volunteer to help a child or a group of children in a mentoring program for a period of time. Such help shall include, but not be limited to, being a positive role model for youth, building relationships with youth, and providing youth with academic assistance and exposure to new experiences and examples of opportunity that enhance the ability of children to become responsible adults.

(c) "Mentoring program" shall mean a formalized program, operated by a corporation which has been incorporated pursuant to subparagraph five of paragraph (a) of section one hundred two of the not-for-profit corporation law or pursuant to subparagraph four of paragraph (a) of section one hundred two of the business corporation law, or operated by an educational institution or school district, that matches youth with adult volunteers with the purpose of providing such youth with positive role models to enhance their development.

(d) "Office" shall mean the office of children and family services.

2. Mentoring programs may perform a criminal history record check on all prospective employees and mentors.

3. Notwithstanding any other provision of law to the contrary, subject to the rules and regulations of the division of criminal justice services, mentoring programs may apply for a criminal history record check with the division of criminal justice services regarding any prospective employee or any prospective mentor who may engage in unsupervised activities with youth or in activities with youth in a setting without constant agency or parental oversight. Each mentoring program that chooses to complete such criminal background checks on prospective employees or on prospective mentors shall establish a policy for completing criminal background checks on such prospective employees or mentors. Such policy shall apply one uniform standard for the completion of criminal background checks for all prospective employees and one uniform standard for the completion of criminal background checks for all prospective mentors. Any mentoring program that chooses to complete criminal background checks on both prospective employees and prospective mentors may utilize the same uniform process for the completion of the criminal background checks on prospective employees and prospective mentors or they may choose one uniform process for prospective employees and another uniform process for prospective mentors.

4. Every mentoring program that chooses to apply for a criminal history background check with the division of criminal justice services shall obtain a set of fingerprints from each individual for whom a criminal background check is to be completed and such other information as is required by the office and the division of criminal justice services. For each prospective employee or mentor for whom the mentoring program completes a criminal background check, the mentoring program shall provide the applicant with blank fingerprint cards and a description of how the completed fingerprint card will be used upon submission to the mentoring program. The mentoring program shall promptly transmit such fingerprint card and the processing fee to the office. The office shall promptly submit the fingerprint card and the processing fee, imposed pursuant to subdivision eight-a of

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section eight hundred thirty-seven of the executive law, to the division of criminal justice services for its full search and retain processing.

5. Upon receipt of a criminal history record from the division of criminal justice services, the office shall promptly provide to the mentoring program the criminal history record, if any, with respect to the prospective employee or mentor, or a statement that the individual has no criminal history record.

6. Upon receipt of the results of a criminal background check pursuant to this section, the mentoring program shall determine whether or not the prospective employee or mentor shall be offered employment or the opportunity to volunteer with the program. Such determination shall be made in accordance with the criteria established in section seven hundred fifty-two of the correction law.

7. Upon the request of any person previously convicted of one or more criminal offenses who has been denied employment pursuant to subdivision six of this section, the mentoring program shall provide, within thirty days of such request, a written statement setting forth the reasons for such denial. Any such person denied employment pursuant to subdivision six of this section shall be afforded the opportunities for enforcement available pursuant to section seven hundred fifty-five of the correction law.

8. Notwithstanding the provisions of this section, with the exception of a sex offense or a crime against a child, a custodial parent or guardian may sign a waiver authorizing a mentor to work with his or her child regardless of a criminal charge or crime related to a mentor. Such process shall only be initiated upon the consent of the prospective mentor, and be on a form and of a content to be developed by the office. Where applicable, a mentoring program may notify a custodial parent or guardian of his or her waiver right, but a waiver shall only be authorized by a custodial parent or guardian.

9. Any criminal history record provided to a mentoring program pursuant to this section shall be confidential pursuant to the applicable federal and state laws, rules and regulations, and shall not be published or in any way disclosed to persons other than authorized personnel, unless otherwise authorized by law.

10. Every mentoring program shall provide each custodial parent or guardian of every child participating in its mentoring program with a description of the kind of criminal background checks conducted by the mentoring program on its prospective employees and mentors. Such description shall include identification of the source utilized to obtain criminal background histories on prospective employees and mentors, a list of crimes that would lead the program to deny employment or the opportunity to volunteer as a prospective employee or mentor, and any other process utilized to determine whether or not a prospective employee or mentor with a conviction record shall be offered employment or the opportunity to volunteer. Such description shall clearly state whether or not prospective employees or mentors may be hired or offered the opportunity to volunteer despite the existence of a conviction history.

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**§ 390-f. Report on child care insurance
(Effective: October 3, 2011)**

The commissioner of the office of children and family services in consultation with the superintendent of financial services, shall undertake a study of the availability, accessibility, and affordability of insurance policies to child care providers. The study shall include, but not be limited to, a review of homeowner insurance policies and health insurance policies. The study shall be completed and a report submitted no later than January first, two thousand nine, to the governor, the commissioner of the office of children and family services, the temporary president of the senate and the speaker of the assembly.

**§ 390-g. Pesticide alternatives
(Effective: November 14, 2010)**

1. For purposes of this section the following terms shall have the meanings set forth below:

- (a) "Day care" shall apply to all child day care centers or head start day care centers, as defined in section three hundred ninety of this title.
- (b) "Pesticide" shall have the same meaning as set forth in subdivision thirty-five of section 33-0101 of the environmental conservation law, provided however that it shall not include:
 - (i) the application of anti-microbial pesticides and anti-microbial products as defined by FIFRA in 7 U.S.C. Section 136(mm) and 136q(h)(2);
 - (ii) the use of an aerosol product with a directed spray, in containers of eighteen fluid ounces or less, when used to protect individuals from an imminent threat from stinging and biting insects, including venomous spiders, bees, wasps and hornets;
 - (iii) the use of non-volatile insect or rodent bait in a tamper resistant container;
 - (iv) the application of a pesticide classified by the United States Environmental Protection Agency as an exempt material under 40 CFR Part 152.25;
 - (v) the use of boric acid and disodium octaborate tetrahydrate; or
 - (vi) the use of horticultural soap and oils that do not contain synthetic pesticides or synergists.

2. No day care shall apply pesticide to any playgrounds, turf, athletic or playing fields, except that an emergency application of a pesticide may be made as determined by the county health department or for a county not having a health department such authority as the county legislature shall designate, the commissioner of health or his or her designee, the commissioner of environmental conservation or his or her designee, or, in the case of a public school, the school board.

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**§ 390-h. Notice requirement before closing certain day care centers
(Effective: August 30, 2010)**

1. For the purposes of this section, the following terms shall have the following meanings:
 - (a) "Child day care center" shall mean a child day care center as defined in paragraph (c) of subdivision one of section three hundred ninety of this title.
 - (b) "Person legally responsible" shall mean a person legally responsible as defined in subdivision (g) of section one thousand twelve of the family court act.

2.
 - (a) Notwithstanding any other provision of law to the contrary, in a city having a population of one million or more, if the social services district seeks to close a child day care center under contract with such district, it shall provide at least six months written notice to the child day care center and the parents or persons legally responsible for children enrolled in such centers, prior to the closing.
 - (b) Paragraph (a) of this subdivision shall not apply in cases where a local social services district seeks to close a child day care center for violating the regulations of the office of children and family services, or for health and safety reasons.
 - (c) Paragraph (a) of this subdivision shall not apply in cases where a local social services district seeks to close a child day care center on an expedited basis for reasons of public safety, criminal behavior by the center, breach of contract with the local social services district, suspension or revocation of the center's license for non-economic reasons.

**§ 390-i. Notice of inspection report
(Effective: January 1, 2015)**

In every child day care program that is licensed or registered pursuant to section three hundred ninety of this title, the child day care provider shall post and maintain in a prominent place, a notice, to be provided by the office of children and family services, that shall state the date the most recent child care inspection occurred and provide information for parents and caregivers regarding how to obtain information from such office regarding the results of the inspection. If possible, the child day care provider shall also post such information on the child day care program's website. Such child day care programs shall post and maintain, in a prominent place, such program's most recent compliance history as shown on the office of children and family services website.

**§ 390-k. Child care availability taskforce
(Effective: December 22, 2021. Expires and deemed repealed Dec. 31, 2024.)**

1. There shall be established within the office of children and family services a child care taskforce for the purpose of evaluating the need for and availability of child care throughout the state.

2. The taskforce shall be chaired by a representative of the executive chamber and the

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commissioners of the office of children and family services and the department of labor, or their designees. Members of the taskforce shall serve without compensation for three year terms, but may be reimbursed for actual costs incurred for participation on such taskforce. Ensuring adequate geographic, racial and ethnic representation, members of the taskforce shall be appointed by the governor and comprised as follows:

- (a) four individuals shall be appointed upon the recommendation of the speaker of the assembly, at least one of whom shall be a parent who has utilized subsidized child care and at least one of whom shall be a parent who has utilized unsubsidized child care, from different regions of the state;
- (b) four individuals shall be appointed upon the recommendation of the temporary president of the senate, at least one of whom shall be a parent who has utilized subsidized child care and at least one of whom shall be a parent who has utilized unsubsidized child care, from different regions of the state;
- (c) one individual shall be appointed upon the recommendation of the minority leader of the assembly;
- (d) one individual shall be appointed upon the recommendation of the minority leader of the senate;
- (e) two representatives of a child care resource and referral agency;
- (f) a minimum of three and a maximum of four representatives of home-based child care providers;
- (g) a minimum of three and a maximum of four representatives of center-based child care providers;
- (h) two representatives from the business community;
- (i) two representatives from unions that represent child care providers; and
- (j) at least one representative from each of the following entities:
 - (i) the office of temporary and disability assistance;
 - (ii) the council on children and families;
 - (iii) the department of taxation and finance;
 - (iv) a regional economic development council;
 - (v) the state university of New York or the city university of New York;
 - (vi) the state education department;
 - (vii) the early childhood advisory council;
 - (viii) a social service district or county government or an entity that advocates on behalf of social services or county governments; and
 - (ix) a non-profit child care advocacy organization.

3. The taskforce shall examine the following with a focus on how each component has been affected by the implementation of policies supported by federally funded programs through various stimulus packages:

- (a) affordable child care with a focus on the cost of care for families and factors that contribute to such costs;
- (b) access to and availability of subsidized child care, including the identification of barriers families eligible under state law face obtaining or utilizing such subsidies;
- (c) availability of child care for non-traditional work hours;
- (d) whether parents are voluntarily leaving the workforce due to lack of affordable

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or accessible child care, and the demographic information of such parents, if known;

(e) whether employers have identified lack of child care as a reason for a shortage of a qualified workforce;

(f) the impact of child care, or lack thereof, on economic development throughout the state;

(g) varying levels of quality of care throughout the state;

(h) availability of quality child care by economic development region including identification of underserved communities;

(i) whether regulatory or statutory changes could promote access to child care and improve health and safety standards in child care programs;

(j) business incentives to increase child care access and the impact on tax credits and deductions relating to child care;

(k) ways to address concerns identified in the course of the examination required by this subdivision;

(l) the implementation of policies supported by federally funded programs through various stimulus packages; and

(m) anything else the taskforce deems necessary.

4.

(a) The taskforce shall report its interim findings and recommendations in accordance with subdivision three of this section to the governor, the speaker of the assembly and the temporary president of the senate no later than November first, two thousand twenty-two and its final findings and recommendations no later than December thirty-first, two thousand twenty-three.

(b) The taskforce shall also report on the implementation of any recommendations that resulted from the initial report required to be produced by the task force pursuant to subdivision four of chapter four hundred ninety-three of the laws of two thousand seventeen. Such additional report shall be provided annually, beginning July first two thousand twenty-two.

**§ 390-l. Securing of furniture
(Effective: February 9, 2020)**

1. This section shall apply to any child day care center as defined in paragraph (c) of subdivision one of section three hundred ninety of this title, or any authorized agency as defined in paragraph (a) of subdivision ten of section three hundred seventy-one of this title, including any agency boarding home or group home.

2. Any facility to which this section applies shall take measures to securely anchor to the floors or walls of such facility all items of large furniture and all electronic appliances capable of being tipped over due to design, height, weight, stability or other features, using angle-braces, anchors or other anchoring devices. Any item of furniture or electronic device which cannot be so anchored shall be removed from the facility.

**This is an unofficial compilation of Social Services Law (SSL) § 390, 390-a, 390-b, 390-c, 390-c, 390-d, 390-e, 390-f, 390-g, 390-h, 390-i, 390-k, 390-l and 391*

Social Services Law (SSL) § 390, 390-a, 390-b, 390-c, 390-c, 390-d, 390-e, 390-f, 390-g, 390-h, 390-i, 390-k, 390-l and 391

3. If a violation of the provisions of this section is discovered by the office of children and family services or any local social services district authorized to inspect the facility at which the violation occurs, the agency discovering the violation shall provide written notice of the violation to the operator of the facility and to the office of children and family services if such office is not the inspecting agency within ten calendar days of the discovery of the violation. The operator of the facility shall correct the violation immediately, upon notice. If the violation is not corrected, the office of children and family services may take enforcement action in accordance with the applicable sections of state law.

§ 391. Violation; injunction

Violations of any provision of this title may be prohibited by injunction. Whenever the commissioner has reason to believe that any provision of this title is being violated, or is about to be violated, he may maintain and prosecute, in the name of the people of this state, an action in the supreme court for the purpose of obtaining an injunction restraining such violation.

Notwithstanding any limitation of the civil practice law and rules, such court may, on motion and affidavit, and upon proof that such violation is one which reasonably may result in injury to any person, whether or not such person is a party to such action, grant a preliminary injunction or interlocutory injunction upon such terms as may be just. No security on the part of the people of this state shall be required.