

40:55D-66.5

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NJSA: 40:55D-66.5

(Child care  
centers--allow in  
all residential  
zones)

LAWS OF: 1991

CHAPTER: 278

Bill No: S1595

Sponsor(s): Cardinale and others

Date Introduced: Pre-filed

Committee: Assembly: Municipal Government

Senate: Children's Services

Amended during passage: Yes      Amendments during passage  
denoted by asterisks.

Date of Passage: Assembly: June 24, 1991

Senate: November 19, 1990

Date of Approval: September 13, 1991

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: Yes

Following were printed:

Reports: Yes

Hearings: Yes

(over)

974.90 New Jersey. Legislature. General Assembly. Task Force  
C 536 on Child Care.  
1990b Public hearing on issues relating to child care,  
held 2-14-91. Lakewood, NJ 1991.

[ see especially vol.1--pp 18-19 ]

974.90 New Jersey. Child Care Advisory Council.  
C 536 Child care in New Jersey: a report.  
1989c April, 1989. Trenton, 1989.

974.90 New Jersey Child Care Advisory Council.  
C 536 Child care, today's challenge...Trenton, NJ 1988.  
1988

974.90 New Jersey. Legislature. Senate. Institutions, Health & Welfare.  
C 536 Public hearing on child abuse...  
1984d held 10-3-84.

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Senators CARDINALE, HAINES, VAN WAGNER,  
McMANIMON and AMBROSIO

1 AN ACT allowing the location of certain <sup>2</sup>[child care centers]  
2 family day care homes<sup>2</sup> in all residential zones of a  
3 municipality and in <sup>2</sup>[all] certain<sup>2</sup> condominiums, cooperatives  
4 and horizontal property regimes <sup>3</sup>[and],<sup>3</sup> supplementing  
5 P.L.1975, c.291 (C.40:55D-1 et seq.)<sup>3</sup>, and amending <sup>4</sup>P.L.1987,  
6 c.27 and supplementing<sup>4</sup> various parts of the statutory law<sup>3</sup>.

7  
8 BE IT ENACTED *by the Senate and General Assembly of the*  
9 *State of New Jersey:*

10 1. The Legislature finds and declares that:

11 a. With over 50 percent of working-age women now in the  
12 workforce, the need for high quality child care is of vital  
13 importance;

14 b. Not only does the availability of child care allow <sup>1</sup>[women]  
15 parents<sup>1</sup> the peace of mind to pursue their careers and lead  
16 active, productive, professional lives, but it is also a necessity  
17 given the high cost of living in this State and the ever increasing  
18 need for families to bring home two incomes just to get by;

19 c. A significant number of people in this State, recognizing the  
20 tremendous need for quality child care, and who, in some cases,  
21 are already staying home caring for their own children, are  
22 providing child care services for a few additional children,  
23 thereby augmenting the supply of child care and providing a vital  
24 service that might otherwise not be available elsewhere; and

25 d. Given the paucity of decent, affordable child care combined  
26 with the current labor shortage in this State, it seems  
27 unreasonable to erect zoning barriers which effectively prevent  
28 the establishment of or, in some cases, continuation of, these  
29 valuable and vitally necessary <sup>1</sup>[home child care centers] family  
30 day care homes<sup>1</sup>.

31 <sup>2</sup>e. It is therefore in the public interest and a valid public  
32 policy for this Legislature to eliminate those barriers which  
33 currently exist which prevent the establishment, or continued  
34 operation of, family day care homes in residential neighborhoods.<sup>2</sup>

35 <sup>2</sup>[2. It is therefore in the public interest and a valid public  
36 policy for this Legislature to eliminate those barriers which  
37 currently exist which prevent the establishment, or continued

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate SCH committee amendments adopted March 15, 1990.

<sup>2</sup> Senate floor amendments adopted October 15, 1990.

<sup>3</sup> Assembly AMG committee amendments adopted March 18, 1991.

<sup>4</sup> Assembly floor amendments adopted June 13, 1991.

1 operation of, <sup>1</sup>[home child care centers] family day care homes<sup>1</sup>  
2 in residential neighborhoods.]<sup>2</sup>

3 <sup>2</sup>[3.] 2. a.<sup>2</sup> <sup>1</sup>[Home child care centers] Family day care  
4 homes<sup>1</sup> shall be a permitted use in all residential districts of a  
5 municipality <sup>2</sup>[and in all]. The requirements for family day care  
6 homes shall be the same as for single family dwelling units  
7 located within such residential districts. <sup>3</sup>Any deed restriction  
8 <sup>4</sup>[that existed prior to the effective date of P.L. , c.  
9 (C. ) (pending before the Legislature as this bill) and]<sup>4</sup> that  
10 would prohibit the use of a single family dwelling unit as a family  
11 day care home shall not be enforceable unless that restriction is  
12 necessary for the preservation of the health, safety, and welfare  
13 of the other residents in the neighborhood. The burden of proof  
14 shall be on the party seeking to enforce the deed restriction to  
15 demonstrate, on a case-by-case basis, that the restriction is  
16 necessary for the preservation of the health, safety and welfare  
17 of the residents in the neighborhood who were meant to benefit  
18 from the restriction.<sup>3</sup>

19 b. In<sup>2</sup> condominiums, cooperatives and horizontal property  
20 regimes<sup>2</sup>[, notwithstanding any deed restrictions or bylaws to the  
21 contrary. The requirements for <sup>1</sup>[home child care centers] family  
22 day care homes<sup>1</sup> shall be the same as for single family dwelling  
23 units located within such residential districts, condominiums,  
24 cooperatives and horizontal property regimes.] that represent  
25 themselves as being primarily for retirees or elderly persons, or  
26 which impose a minimum age limit tending to attract persons who  
27 are nearing retirement age, deed restrictions or bylaws may  
28 prohibit family day care homes from being a permitted use.

29 c. In condominiums, cooperatives and horizontal property  
30 regimes other than those permitted to prohibit family day care  
31 homes from being a permitted use under subsection b. of this  
32 section, deed restrictions or bylaws may prohibit family day care  
33 homes from being a permitted use; however, if such  
34 condominiums, cooperatives, or horizontal property regimes  
35 prohibit such use, the burden of proof shall be on the  
36 condominium association, cooperative association, or council of  
37 coowners to demonstrate, on a case-by-case basis, that the  
38 prohibition is reasonably related to the health, safety, and  
39 welfare of the residents. The burden of proof also shall be on the  
40 condominium association, cooperative association, or council of  
41 coowners to demonstrate, on a case-by-case basis, that any other  
42 restrictions imposed upon a family day care home, including but  
43 not limited to noise restrictions and restrictions on the use of  
44 interior common areas, are reasonably related to the health,  
45 safety and welfare of the residents.

46 d.<sup>2</sup> For the purposes of this act: <sup>3</sup>[a <sup>1</sup>[home child care center]  
47 family day care home<sup>1</sup> shall mean any <sup>1</sup>[center] facility<sup>1</sup> which is  
48 maintained for the care or supervision of <sup>1</sup>[six] five<sup>1</sup> or fewer  
49 children <sup>2</sup>[and which] <sup>2</sup>, is situated in a private residence <sup>2</sup>, and is

1 registered pursuant to the "Family Day Care Provider  
 2 Registration Act," P.L.1987, c.27 (C.30:5B-16 et seq.)<sup>2</sup>; a  
 3 condominium shall mean a condominium formed under the  
 4 "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.); a  
 5 cooperative shall mean a cooperative as defined under "The  
 6 Cooperative Recording Act of New Jersey," P.L.1987, c.381  
 7 (C.46:8D-1 et seq.); and a horizontal property regime shall mean  
 8 a horizontal property regime formed under the "Horizontal  
 9 Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.)]

10 "Family day care home" means a private residence which is  
 11 registered as a family day care home pursuant to the "Family  
 12 Day Care Provider Registration Act," P.L.1987, c.27 (C.30:5B-16  
 13 et seq.);

14 <sup>4</sup>"Applicant" means a person who applies for a certificate of  
 15 registration pursuant to the "Family Day Care Provider  
 16 Registration Act," P.L.1987, c.27 (C.30:5B-16 et seq.);

17 "Commissioner" means the Commissioner of Human Services;<sup>4</sup>

18 "Condominium" means a condominium formed under the  
 19 "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.);

20 "Cooperative" means a cooperative as defined under "The  
 21 Cooperative Recording Act of New Jersey," P.L.1987, c.381  
 22 (C.46:8D-1 et seq.); and

23 "Horizontal property regime" means a horizontal property  
 24 regime formed under the "Horizontal Property Act," P.L.1963,  
 25 c.168 (C.46:8A-1 et seq.)<sup>3</sup>.

26 <sup>3</sup>3. Section 3 of P.L.1987, c.27 (C.30:5B-18) is amended to  
 27 read as follows:

28 3. As used in this act:

29 a. "Certificate of registration" means a certificate issued by  
 30 the division to a family day care provider, acknowledging that the  
 31 provider is registered pursuant to the provisions of this act.

32 b. "Division" means the Division of Youth and Family Services  
 33 in the State Department of Human Services.

34 c. "Family day care home" means a private residence in which  
 35 child care services are provided for a fee to no less than three  
 36 and no more than five children at any one time for no less than 15  
 37 hours per week; except that the division shall not exclude a  
 38 family day care home with less than three children from  
 39 voluntary registration. [A child being cared for under the  
 40 following circumstances is not included in the total number of  
 41 children receiving child care services:

42 (1) The child being cared for is legally related to the provider;  
 43 or

44 (2) Care is being provided as part of a cooperative agreement  
 45 between parents or guardians for the care of their children by one  
 46 or more of the parents or guardians, where no payment for the  
 47 care is being provided.]

48 d. "Family day care provider" means a person at least 18 years  
 49 of age who is responsible for the operation and management of a

1 family day care home.

2 e. "Family day care sponsoring organization" means an agency  
3 or organization which contracts with the division to assist in the  
4 registration of family day care providers in a specific  
5 geographical area.

6 f. "Monitor" means to visit a family day care provider to  
7 review the provider's compliance with the standards established  
8 pursuant to this act.<sup>3</sup>

9 (cf: P.L.1987, c.27, s.3)

10 <sup>34</sup>. Section 6 of P.L.1987, c.27 (C.30:5B-21) is amended to  
11 read as follows:

12 6. a. The family day care sponsoring organization shall  
13 evaluate a family day care provider prior to the issuance of a  
14 certificate of registration. The evaluation shall include at least  
15 one visit to the family day care home, in order to ensure that the  
16 family day care home is in compliance with the standards  
17 required in subsection e. of this section, in addition to personal  
18 and health references, and shall be made part of the family day  
19 care sponsoring organization's permanent records for that  
20 provider. The local code enforcement officer may evaluate the  
21 family day care home on an advisory basis. The local code  
22 enforcement officer shall notify the sponsoring organization and  
23 the family day care provider of the time of the inspection and  
24 shall advise the sponsoring organization concerning the correction  
25 of any code violations noted. The certificate of registration shall  
26 be renewed every three years. The family day care provider is  
27 required to pay a registration fee of \$25.00 to the sponsoring  
28 organization each time a certificate is granted or renewed. The  
29 sponsoring organization shall provide the municipality with a list  
30 of all family day care providers under its jurisdiction within the  
31 municipality and shall be responsible for keeping the list current.  
32 Each sponsoring organization shall provide its mailing address and  
33 telephone number to the police department in each municipality  
34 in which it has day care providers under its jurisdiction.  
35 Complaints received by local police concerning a family day care  
36 provider shall be forwarded to the appropriate sponsoring  
37 organization. The sponsoring organization shall keep a file of all  
38 such complaints.

39 b. The family day care sponsoring organization shall provide a  
40 minimum of one preservice training or orientation session for  
41 each applicant for a certificate of registration prior to the  
42 issuance of the certificate of registration and shall provide  
43 appropriate training, consultation and technical assistance to the  
44 family day care provider after the certificate of registration has  
45 been issued.

46 c. The family day care sponsoring organization is authorized to  
47 monitor and evaluate each registered family day care provider at  
48 least once every two years. In addition, the sponsoring  
49 organization shall annually monitor no less than 20% of the

1 family day care providers in its designated geographic area on a  
2 random basis to insure compliance with the standards established  
3 under this act, provide assistance and insure that corrective  
4 action is taken as needed.

5 d. The family day care provider registered by a family day  
6 care sponsoring organization shall post and display the certificate  
7 of registration at all times in a prominent location within the  
8 home. A certificate of registration issued pursuant to this act is  
9 not transferable.

10 e. At the time of inspection the sponsoring organization shall  
11 ensure, at a minimum, that the physical environment, general  
12 safety, fire safety, and outdoor space are in compliance with  
13 applicable regulations promulgated by the Division of Youth and  
14 Family Services in the Department of Human Services.

15 f. The sponsoring organization may revoke or suspend the  
16 certificate of any provider who does not maintain the standards  
17 required in subsections e. of this section.<sup>3</sup>

18 (cf: P.L.1987, c.27, s.6)

19 <sup>3</sup>5. Section 8 of P.L.1987, c.27 (C.30:5B-23) is amended to  
20 read as follows:

21 8. a. The division shall also establish standards for the  
22 issuance, renewal, denial, suspension and revocation of a  
23 certificate of registration which the family day care sponsoring  
24 organization shall apply. In developing the standards, the division  
25 shall consult with the Advisory Council on Child Care established  
26 pursuant to the "Child Care Center Licensing Act," P.L.1983,  
27 c.492 (C.30:5B-1 et seq.).

28 b. A person operating as a registered family day care provider  
29 who violates the provisions of this act by failing to adhere to the  
30 standards established by the division pursuant to this act shall be  
31 notified in writing of the violation of the provisions of this act  
32 and provided with an opportunity to comply with those  
33 provisions. For a subsequent violation, the person's certificate  
34 of registration may be revoked, or the person may be fined in an  
35 amount determined by the Commissioner of Human Services, or  
36 both. The receipt of excessive complaints by the municipal  
37 police or other local or State authorities concerning neglect of  
38 children, excessive noise, or property damage resulting from the  
39 operation of a family day care home may be considered by the  
40 division when renewing, suspending or revocating a certificate of  
41 registration.

42 c. The division, before denying, suspending, revoking or  
43 refusing to renew a certificate of registration, shall give notice  
44 thereof to the provider personally, or by certified or registered  
45 mail to the last known address of the family day care home with  
46 return receipt requested. The notice shall afford the provider the  
47 opportunity to be heard. The hearing shall take place within 60  
48 days from the receipt of the notice and shall be conducted in  
49 accordance with the "Administrative Procedure Act," P.L.1968,

1 c.410 (C.52:14B-1 et seq.).

2 d. If the certificate of registration is suspended or revoked or  
3 not renewed, the provider shall so notify the parent of each child  
4 attending the family day care home in writing within 10 days of  
5 the action.

6 e. The division shall not issue a certificate of registration <sup>4</sup>or  
7 renewal<sup>4</sup> to a person unless the division has first determined that  
8 <sup>4</sup>[no information exists on file with the division which would  
9 disqualify that person, and any assistant provider, substitute  
10 provider or applicant's household member who is 14 years of age  
11 or older, from being issued a certificate of registration.

12 (1) The division shall conduct a check of its records, upon  
13 receiving a written request for the check from a family day care  
14 sponsoring organization on behalf of a person who is applying for  
15 a certificate of registration as a family day care provider, for the  
16 purpose of ascertaining whether the applicant, or any member of  
17 the applicant's household who is 14 years of age or older, has  
18 been the subject of a child abuse report made pursuant to section  
19 3 of P.L.1971, c.437 (C.9:6-8.10), a report received pursuant to  
20 section 20 of P.L.1974, c.119 (C.9:6-8.40), or a report of findings  
21 forwarded to the central registry in the division pursuant to  
22 section 4 of P.L.1971, c.437 (C.9:6-8.11), or whether the division  
23 has obtained any other information in investigating a child abuse  
24 report which relates to the applicant or other member of the  
25 applicant's household.

26 The division shall not conduct the check without the written  
27 consent of the person who is applying for a certificate of  
28 registration, and the applicant's assistant, substitute provider  
29 and any members of the household 14 years of age or older. If  
30 the applicant or assistant, substitute provider or member of the  
31 household 14 years of age or older refuses to consent to the  
32 check, the family day care sponsoring organization shall  
33 immediately terminate the application process.

34 (2) The division shall, in a confidential manner provide the  
35 applicant, assistant provider, substitute provider or applicant's  
36 household member who is 14 years of age or older with a copy of  
37 any record, information or report of child abuse in its files which  
38 relates to the person, either personally or by certified or  
39 registered mail to the address indicated on the person's release  
40 form with return receipt requested, and shall at the same time  
41 notify the family day care sponsoring organization in writing that  
42 it has forwarded a copy of the record, information or report to  
43 the applicant, assistant provider, substitute provider or  
44 applicant's household member who is 14 years of age or older. If  
45 no record, information or report exists in its files, the division  
46 shall notify the applicant and the family day care sponsoring  
47 organization in writing to that effect.

48 (3) An applicant, assistant provider, substitute provider or  
49 applicant's household member who is 14 years of age or older



1 who receives from the division a copy of a record, information or  
2 report of child abuse pursuant to this subsection shall contact the  
3 family day care sponsoring organization no later than 10 days  
4 after the date that the copy is issued to the person and shall  
5 make a copy of the record, information or report available to the  
6 sponsoring organization. If the applicant fails to do so, the  
7 sponsoring organization shall immediately terminate the  
8 application process.

9 (4) A family day care sponsoring organization shall review the  
10 copy provided by the applicant, assistant provider, substitute  
11 provider or applicant's household member who is 14 years of age  
12 or older and shall, after allowing the person to present evidence  
13 of mitigating circumstances surrounding an act of child abuse or  
14 evidence of affirmative rehabilitation by the person, recommend  
15 to the division that a certificate of registration be issued or  
16 denied to the applicant. In determining whether mitigating  
17 circumstances exist or whether an applicant, assistant provider,  
18 substitute provider or other member of the applicant's household  
19 has demonstrated affirmative rehabilitation, the sponsoring  
20 organization shall consider: the nature and seriousness of the  
21 act; the circumstances under which it occurred; the date of the  
22 act; the age of the applicant, assistant provider, substitute  
23 provider or other member of the applicant's household, when the  
24 act was committed; whether the act was an isolated or repeated  
25 incident; any social conditions which may have contributed to the  
26 act; and any evidence of rehabilitation, including good conduct,  
27 counseling or psychiatric treatment received, educational and  
28 vocational records, and the recommendation of other persons.

29 (5) The division shall issue or deny a certificate of registration  
30 to the applicant in accordance with the standards established  
31 pursuant to subsection a. of this section, taking into consideration  
32 the recommendation of the family day care sponsoring  
33 organization made pursuant to this subsection.<sup>3]</sup> no criminal  
34 history record information exists on file in the Federal Bureau of  
35 Investigation, Identification Division, or in the State Bureau of  
36 Identification in the Division of State Police, which would  
37 disqualify the applicant, assistant provider, substitute provider or  
38 any member of the applicant's household who is 18 years of age  
39 or older, from operating a registered family day care home.<sup>4</sup>

40 (cf: P.L.1987, c.27, s.8)

41 <sup>4</sup>[<sup>3</sup>6. Section 1 of P.L.1977, c.102 (C.9:6-8.10a) is amended to  
42 read as follows:

43 1. a. All records of child abuse reports made pursuant to  
44 section 3 of P.L.1971, c.437 (C.9:6-8.10), all information obtained  
45 by the Division of Youth and Family Services in investigating  
46 such reports including reports received pursuant to section 20 of  
47 P.L.1974, c.119 (C.9:6-8.40), and all reports of findings forwarded  
48 to the central registry pursuant to section 4 of P.L.1971, c.437  
49 (C.9:6-8.11) shall be kept confidential and may be disclosed only

1 under the circumstances expressly authorized under subsection b.  
2 herein.

3 b. The division may release the records and reports referred to  
4 in subsection a., or parts thereof, to:

5 (1) A public or private child protective agency authorized to  
6 investigate a report of child abuse or neglect;

7 (2) A police or other law enforcement agency investigating a  
8 report of child abuse or neglect;

9 (3) A physician who has before him a child whom he reasonably  
10 suspects may be abused or neglected;

11 (4) A physician, a hospital director or his designate, a police  
12 officer or other person authorized to place a child in protective  
13 custody when such person has before him a child whom he  
14 reasonably suspects may be abused or neglected and requires the  
15 information in order to determine whether to place the child in  
16 protective custody;

17 (5) An agency authorized to care for, treat, or supervise a  
18 child who is the subject of a child abuse report, or a parent,  
19 guardian or other person who is responsible for the child's  
20 welfare, or both, when the information is needed in connection  
21 with the provision of care, treatment, or supervision to such child  
22 or such parent, guardian or other person;

23 (6) A court, upon its finding that access to such records may  
24 be necessary for determination of an issue before the court, and  
25 such records may be disclosed by the court in whole or in part to  
26 the law guardian, attorney or other appropriate person upon a  
27 finding that such further disclosure is necessary for  
28 determination of an issue before the court;

29 (7) A grand jury upon its determination that access to such  
30 records is necessary in the conduct of its official business;

31 (8) Any appropriate State legislative committee acting in the  
32 course of its official functions, provided, however, that no names  
33 or other information identifying persons named in the report shall  
34 be made available to the legislative committee unless it is  
35 absolutely essential to the legislative purpose;

36 (9) Any person engaged in a bona fide research purpose,  
37 provided, however, that no names or other information  
38 identifying persons named in the report shall be made available to  
39 the researcher unless it is absolutely essential to the research  
40 purpose and provided further that the approval of the director of  
41 the Division of Youth and Family Services shall first have been  
42 obtained;

43 (10) Every organization approved as a family day care  
44 sponsoring organization pursuant to the "Family Day Care  
45 Provider Registration Act," P.L.1987, c.27 (C.30:5B-16 et seq.)  
46 for the purpose of the evaluation of a family day care provider  
47 applicant, assistant provider, substitute provider or member of  
48 the applicant's household 14 years of age or older for whom  
49 releases have been obtained and forwarded to the division. The

1 releases shall be on forms promulgated by the division.

2 Any individual, agency, court, grand jury or legislative  
3 committee which receives from the division the records and  
4 reports referred to in subsection a., shall keep such records and  
5 reports, or parts thereof, confidential.<sup>3</sup>

6 (cf: P.L.1977, c.102, s.1)]<sup>4</sup>

7 <sup>4</sup>[<sup>3</sup>7. Section 4 of P.L.1971, c.437 (C.9:6-8.11) is amended to  
8 read as follows:

9 4. Upon receipt of any such report the [Bureau of Children's]  
10 Division of Youth and Family Services shall immediately take  
11 such action as shall be necessary to insure the safety of the child  
12 and to that end may request and shall receive appropriate  
13 assistance from local and State law enforcement officials. The  
14 [bureau] division shall also, within 72 hours, forward a report of  
15 such matter to the Central Registry of the [Bureau of Children's]  
16 Division of Youth and Family Services in Trenton. No  
17 information received in the central registry shall be considered as  
18 a public record within the meaning of P.L.1963, c.73. The alleged  
19 perpetrator of any instance of abuse recorded in the division's  
20 registry shall be notified, confidentially in accordance with rules  
21 and regulations issued by the division, within 21 days of insertion  
22 of the record into the registry, of the general contents of any  
23 such record. The notice shall state that the person is entitled to  
24 an administrative hearing, pursuant to the "Administrative  
25 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), on the sole  
26 issue of maintenance of that record in the registry.<sup>3</sup>

27 (cf: P.L.1971, c.437, s.4)]<sup>4</sup>

28 <sup>4</sup>6. (New section) a. An applicant shall be disqualified from  
29 receiving a certificate of registration if a criminal history record  
30 check of the applicant, assistant provider, substitute provider or  
31 any person residing in the applicant's household who is 18 years  
32 of age or older, reveals a record of conviction in any state or  
33 jurisdiction of any crime or offense, the type of which has been  
34 determined by the commissioner to render a person unfit to be a  
35 family home day care provider.

36 b. Notwithstanding the provisions of subsection a. of this  
37 section to the contrary, a certificate of registration or renewal  
38 shall not be denied under this act on the basis of any conviction  
39 disclosed by a criminal history record check performed pursuant  
40 to this act if the individual has affirmatively demonstrated to the  
41 commissioner clear and convincing evidence of rehabilitation. In  
42 determining whether an individual has affirmatively  
43 demonstrated rehabilitation, the following factors shall be  
44 considered:

45 (1) The nature and responsibility of the position which the  
46 convicted individual would hold;

47 (2) The nature and seriousness of the offense;

48 (3) The circumstances under which the offense occurred;

49 (4) The date of the offense;

1       (5) The age of the individual when the offense was committed;  
2       (6) Whether the offense was an isolated or repeated incident;  
3       (7) Any social conditions which may have contributed to the  
4       offense; and

5       (8) Any evidence of rehabilitation, including good conduct in  
6       prison or in the community, counseling or psychiatric treatment  
7       received, acquisition of additional academic or vocational  
8       schooling, successful participation in correctional work-release  
9       programs, or the recommendation of persons who have had the  
10       individual under their supervision.

11       c. If an applicant, assistant provider, substitute provider or  
12       any member of the applicant's household 18 years of age or older  
13       refuses to consent to, or cooperate in, the securing of a criminal  
14       history record background check, the commissioner shall direct  
15       the division not to issue or renew a family day care home  
16       certificate.<sup>4</sup>

17       <sup>4</sup>7. (New section) An applicant, assistant provider, substitute  
18       provider or any member of the applicant's household 18 years of  
19       age or older shall submit to the commissioner his name, address  
20       and fingerprints taken on standard fingerprint cards by a State or  
21       municipal law enforcement agency. The commissioner is  
22       authorized to exchange fingerprint data with and receive criminal  
23       history record information from the Federal Bureau of  
24       Investigation and the Division of State Police for use in making  
25       the determinations provided for in section 6 of this act.<sup>4</sup>

26       <sup>4</sup>8. (New section) The Department of Human Services shall  
27       act as a clearinghouse for the collection and dissemination of  
28       information obtained by the Federal Bureau of Investigation and  
29       the Division of State Police as a result of conducting a criminal  
30       history record background check pursuant to section 6 of P.L. ,  
31       c. (C. ) (now pending before the Legislature as this bill).  
32       The department shall advise a family home day care sponsoring  
33       organization of the information received from the bureau  
34       concerning an applicant, assistant provider, substitute provider or  
35       any member of the applicant's household who is 18 years of age  
36       or older.<sup>4</sup>

37       <sup>4</sup>9. (New section) The commissioner shall require that the  
38       cost of all criminal history record background checks conducted  
39       on applicants, assistant providers, substitute providers and any  
40       member of an applicant's household who is 18 years of age or  
41       older shall be paid by such persons at the time their written  
42       consent to the background check is given.<sup>4</sup>

43       <sup>4</sup>10. (New section) a. Upon receipt of the criminal history  
44       record information for an applicant, assistant provider, substitute  
45       provider or any member of the applicant's household who is 18  
46       years of age or older from the Federal Bureau of Investigation  
47       and the Division of State Police, the commissioner shall notify  
48       that person, in writing, of that individual's qualification or  
49       disqualification to be a family home day care provider. If the

1 individual is disqualified, the conviction or convictions which  
 2 constitute the basis for the disqualification shall be identified in  
 3 the written notice.

4 b. The prospective family home day care provider shall have  
 5 30 days from the date of written notice of disqualification to  
 6 petition the commissioner for a hearing on the accuracy of the  
 7 criminal history record information or to establish his  
 8 rehabilitation under subsection b. of section 6 of P.L. , c.  
 9 (C. ) (now pending before the Legislature as this bill). The  
 10 commissioner may refer any case arising hereunder to the Office  
 11 of Administrative Law for administrative proceedings as a  
 12 contested case pursuant to the "Administrative Procedure Act,"  
 13 P.L.1968, c.410 (C.52:14B-1 et seq.).

14 c. The division shall not maintain any individual's criminal  
 15 history record information or evidence of rehabilitation  
 16 submitted under this section for more than six months from the  
 17 date of a final determination by the commissioner as to the  
 18 individual's qualification or disqualification to be a family home  
 19 day care provider.<sup>4</sup>

20 <sup>4</sup>11. (New section) The commissioner shall report to the  
 21 Governor and the Legislature no later than three years after the  
 22 effective date of this act on the effectiveness of the criminal  
 23 history record background checks in screening out prospective  
 24 family home day care providers who have criminal history records  
 25 which render them unfit to be family home day care providers.  
 26 The commissioner shall include in the report any  
 27 recommendations for modifying the provisions of this act.<sup>4</sup>

28 <sup>4</sup>12. (New section) The Commissioner of Human Services,  
 29 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
 30 (C.52:14B-1 et seq.), shall adopt rules and regulations to  
 31 effectuate the purposes of this act.<sup>4</sup>

32 <sup>4</sup>13. (New section) At the request of the Division of Youth  
 33 and Family Services in the Department of Human Services, the  
 34 Division of State Police in the Department of Law and Public  
 35 Safety shall conduct a criminal history record background check,  
 36 which includes a name and fingerprint identification check, of  
 37 each applicant, assistant provider, substitute provider or any  
 38 member of the applicant's household who is 18 years of age or  
 39 older in order to ascertain whether the person has a criminal  
 40 history record, pursuant to section 6 of P.L. , c. (C. ) (now  
 41 pending before the Legislature as this bill).<sup>4</sup>

42 <sup>2</sup>[4.] <sup>3</sup>[3.2] <sup>4</sup>[8.3] <sup>14</sup>.<sup>4</sup> This act shall take effect immediately.

#### CHILDREN

47 Establishes family day care homes as permitted use in residential  
 48 districts and in certain condominiums, cooperatives and  
 49 horizontal property regimes.

1 private residence; a condominium shall mean a condominium  
2 formed under the "Condominium Act," P.L.1969, c.257  
3 (C.46:8B-1 et seq.); a cooperative shall mean a cooperative as  
4 defined under "The Cooperative Recording Act of New Jersey,"  
5 P.L.1987, c.381 (C.46:8D-1 et seq.); and a horizontal property  
6 regime shall mean a horizontal property regime formed under the  
7 "Horizontal Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.).

8 4. This act shall take effect immediately.

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#### STATEMENT

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This bill would provide that home child care centers shall be a permitted use in all residential districts of a municipality and shall not be subject to standards which are more stringent than those established for single family dwelling units.

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The bill would also establish home child care centers as a permitted use in all condominiums, cooperatives and horizontal property regimes, notwithstanding any deed restrictions or bylaws to the contrary, and would prohibit the imposition of stricter standards than would otherwise be imposed on single family dwelling units within those developments.

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#### CHILDREN

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Establishes home child care centers as permitted use in residential districts, condominiums, cooperatives and horizontal property regimes.

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

[SECOND REPRINT]

SENATE, No. 1595

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 18, 1991

The Assembly Municipal Government Committee reports favorably Senate Bill No. 1595 (2R) with committee amendments.

The purpose of the original bill was to encourage the voluntary registration of family day care homes, many of which are currently unregulated. The bill provides that registered family day care homes shall be a permitted use in all residential districts of a municipality, regardless of any zoning restrictions, and that the requirements for registered family day care homes shall be the same as for single family dwelling units within the district.

The public policy to promote affordable community day care options is deemed to be so compelling that the committee amended the bill to provide that pre-existing deed restrictions that prohibit the use of a residence as a registered family day care home will not be enforceable unless the party seeking to enforce the restriction can demonstrate, on a case-by-case basis, that the restriction is necessary for the preservation of the health, safety, and welfare of the neighbors who were meant to benefit from the restriction.

Within retirement communities, however, deed restrictions or community bylaws may prohibit family day care homes from being a permitted use. Within other condominium or cooperative communities, deed restrictions or bylaws would be effective to preclude the use of a unit as a family day care home only when the cooperative or condominium association demonstrates, on a case by case basis, that the restrictions are reasonably related to the health, safety and welfare of the residents in that community.

The committee amended the bill to change the definition of "family day care home" in the "Family Day Care Provider Registration Act," P.L.1987, c.27 (C.30:5B-16) to make clear that a family day care home may not provide care, for a fee, to more than five children at any one time. Language is deleted which excluded from the total number of children receiving child care services certain children who are related to the provider and children for whom care is provided without fee as part of a cooperative arrangement between parents.

The committee further amended the bill to change the "Family Day Care Provider Registration Act" to permit local code enforcement officers to evaluate family day care homes on an advisory basis and then to contact the sponsoring organization concerning the correction of any code violations that would be

applicable to single family dwelling units within the district. The sponsoring organization is required to provide each municipality with a list of all registered family day care providers within its jurisdiction and to keep the lists current. Complaints received by the police concerning a registered family day care providers are required to be forwarded to the appropriate sponsoring organization which shall keep a file of all such complaints.

The sponsoring organization is required, at the time of inspection of a family day care home, to ensure, at a minimum, that standards promulgated by the Division of Youth and Family Services (DYFS) concerning physical environment, safety, and outdoor space are met.

The bill, as amended, provides that the receipt of excessive complaints by municipal or State authorities concerning neglect of children, excessive noise, or property damage resulting from the operation of a registered family day care home may be considered by DYFS when renewing, suspending or revoking a certificate of registration.

The bill, as amended, requires that a check of the DYFS central registry of child abuse reports be made for each provider, assistant provider, substitute provider and member of the provider's household who is 14 years of age or older prior to issuance of a certificate of registration. Since the registry contains many unadjudicated allegations, the committee decided to amend various laws to provide certain due process protections to persons who are reported to the central registry as perpetrators of child abuse. The amended bill requires that notice be given whenever a person is added to the registry as an alleged perpetrator of child abuse so that an administrative hearing can be requested for the purpose of determining whether reasonable grounds exist for the maintenance of the record in the central registry. No check of the registry can be performed for the purpose of registering a family day care home without release forms signed by the persons required to be investigated; however, failure to consent to the check would prevent DYFS from issuing a certificate of registration since it would be unable to determine whether information exists on file which would disqualify that person from participating in the operation of a family day care home. If information does exist in the registry concerning a person, that person would have the opportunity to discuss the information with the sponsoring organization, which would then make recommendations to DYFS concerning any findings of mitigating circumstances or affirmative rehabilitation.

As amended, this bill is identical to the Assembly Committee Substitute for Assembly Bill Nos. 3790 and 3585.



SENATE CHILDREN'S SERVICES COMMITTEE

STATEMENT TO

SENATE, No. 1595

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 15, 1990

The Senate Children's Services Committee favorably reports Senate Bill No. 1595 with committee amendments.

As amended, this bill would provide that family day care homes shall be a permitted use in all residential districts of a municipality and shall not be subject to standards which are more stringent than those established for single family dwelling units.

The bill would also establish family day care homes as a permitted use in all condominiums, cooperatives and horizontal property regimes, notwithstanding any deed restrictions or bylaws to the contrary, and would prohibit the imposition of stricter standards than would otherwise be imposed on single family dwelling units within those developments.

The bill defines family day care homes as a center which is maintained for the care or supervision of five or fewer children and which is situated in a private residence.

The committee amended the bill to change the name of home child care centers to family day care homes. The amendments also changed the number of children who could be cared for in these family day care homes from six to five.

This bill was pre-filed for introduction in the 1990-1991 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.



# OFFICE OF THE GOVERNOR NEWS RELEASE

**CN-001  
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**TRENTON, N.J. 08625**

**Release: FRIDAY  
SEPT. 13, 1991**

Governor Jim Florio today signed a bill that allows family day care homes to operate in all residential districts and requires those who apply for state registration to undergo a criminal background check.

"Finding safe and affordable child care is often one of the most difficult challenges facing young families," Governor Florio said. "We all need to work together to expand the amount of quality day care available in New Jersey. This new law will help do that. "

The bill provides that family daycare homes will be permitted uses in all residential areas and requires that the zoning requirements for those homes be the same as for single family homes.

Certain residential properties may be exempt. The exemptions could apply to properties primarily for retirees or elderly persons. Exemptions could also be sought by condominiums, cooperatives and other multi-family properties if the governing body can show a day care center would adversely affect the health, safety and welfare of the building's residents.

The bill also requires that family day care providers, their assistants, and adult household members submit to criminal background checks if they choose to register with the state. That registration program is voluntary.

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