

**As Introduced**

**124th General Assembly  
Regular Session  
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**S. B. No. 191**

**SENATORS Spada, White**

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**A B I L L**

To amend section 5123.19 of the Revised Code to revise 1  
the law governing the licensure of residential 2  
facilities for individuals with mental retardation 3  
or other developmental disability. 4

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 5123.19 of the Revised Code be 5  
amended to read as follows: 6

**Sec. 5123.19.** (A) As used in this section and in sections 7  
5123.191, 5123.194, and 5123.20 of the Revised Code: 8

(1) "Residential facility" means a home or facility in which 9  
a mentally retarded or developmentally disabled person resides, 10  
except the home of a relative or legal guardian in which a 11  
mentally retarded or developmentally disabled person resides, a 12  
respite care home certified under section 5126.05 of the Revised 13  
Code, a county home or district home operated pursuant to Chapter 14  
5155. of the Revised Code, or a dwelling in which the only 15  
mentally retarded or developmentally disabled residents are in an 16  
independent living arrangement or are being provided supported 17  
living. 18

(2) "Political subdivision" means a municipal corporation, 19  
county, or township. 20

(3) "Independent living arrangement" means an arrangement in which a mentally retarded or developmentally disabled person resides in an individualized setting chosen by the person or the person's guardian, which is not dedicated principally to the provision of residential services for mentally retarded or developmentally disabled persons, and for which no financial support is received for rendering such service from any governmental agency by a provider of residential services.

(4) "Supported living" has the same meaning as in section 5126.01 of the Revised Code.

(5) "Licensee" means the person or government agency that has applied for a license to operate a residential facility and to which the license was issued under this section.

(B) Every person or government agency desiring to operate a residential facility shall apply for licensure of the facility to the director of mental retardation and developmental disabilities unless the residential facility is subject to section 3721.02, 3722.04, 5103.03, or 5119.20 of the Revised Code. Notwithstanding Chapter 3721. of the Revised Code, a nursing home that is certified as an intermediate care facility for the mentally retarded under Title XIX of the "Social Security Act," 49 79 Stat. 620 286 (1935 1965), 42 U.S.C.A. 301 1396, as amended, shall apply for licensure of the portion of the home that is certified as an intermediate care facility for the mentally retarded.

(C) The director of mental retardation and developmental disabilities shall license and ~~inspect~~ survey the operation of residential facilities. The director may deny ~~or, renew,~~ terminate, and revoke such licenses.

~~Except as provided in divisions (G) and (O) of this section,~~  
a An initial license is valid until it is for one year unless terminated, revoked, or voluntarily surrendered earlier. Appeals A

renewed license is valid for three years unless terminated, 52  
revoked, or voluntarily surrendered earlier. 53

Appeals from proceedings initiated to deny applications for 54  
licenses or to terminate or revoke licenses shall be conducted in 55  
accordance with Chapter 119. of the Revised Code. 56

In accordance with Chapter 119. of the Revised Code, the 57  
director shall adopt and may amend and rescind rules for licensing 58  
and regulating the operation of residential facilities. The rules 59  
shall establish and specify the following: 60

(1) Procedures for issuing, denying, renewing, terminating, 61  
and revoking licenses; 62

(2) Circumstances, including the circumstance specified in 63  
division (G) of this section, under which a license is to be 64  
terminated rather than revoked; 65

(3) Fees for issuing and renewing licenses; 66

~~(3)~~(4) Procedures for ~~the inspection of~~ surveying residential 67  
facilities; 68

~~(4)~~(5) Requirements for the training of residential facility 69  
personnel; 70

~~(5)~~(6) Classifications for the various types of residential 71  
facilities; 72

~~(6)~~(7) Certification procedures for licensees and management 73  
contractors that the director determines are necessary to ensure 74  
that they have the skills and qualifications to properly operate 75  
or manage residential facilities; 76

~~(7)~~(8) The maximum number of persons who may be served in a 77  
particular type of residential facility; 78

~~(8)~~(9) Uniform procedures for admission of persons to and 79  
transfers and discharges of persons from residential facilities; 80

~~(9)~~(10) Other standards for the operation of residential facilities and the services provided at residential facilities; 81 82

~~(10)~~(11) Procedures for waiving any provision of any rule adopted under this section. 83 84

(D) Before issuing a license, the director of the department or the director's designee shall conduct ~~an inspection~~ a survey of the residential facility for which application is made. The director or the director's designee shall conduct ~~an inspection~~ a survey of each licensed residential facility at least once ~~each year during the period the license is valid~~ and may conduct additional inspections as needed. ~~An inspection~~ A survey includes but is not limited to an on-site examination and evaluation of the residential facility, its personnel, and the services provided there. 85 86 87 88 89 90 91 92 93 94

In conducting ~~inspections~~ surveys, the director or the director's designee shall be given access to the residential facility; all records, accounts, and any other documents related to the operation of the facility; the licensee; the residents of the facility; and all persons acting on behalf of, under the control of, or in connection with the licensee. The licensee and all persons on behalf of, under the control of, or in connection with the licensee shall cooperate with the director or the director's designee in conducting the ~~inspection~~ survey. 95 96 97 98 99 100 101 102 103

Following each ~~inspection~~ survey, unless the director initiates a license revocation proceeding, the director or the director's designee shall provide the licensee with a report listing any deficiencies, specifying a timetable within which the licensee shall submit a plan of correction describing how the deficiencies will be corrected, and, when appropriate, specifying a timetable within which the licensee must correct the deficiencies. After a plan of correction is submitted, the director or the director's designee shall approve or disapprove 104 105 106 107 108 109 110 111 112

the plan. A copy of the report and any approved plan of correction 113  
shall be provided to any person who requests it. 114

If it is determined that a residential facility is not being 115  
operated in compliance with this chapter or the rules adopted 116  
under it, the director may take such steps as are necessary, 117  
including, but not limited to, suspension of admissions to the 118  
residential facility, placement of a monitor at the residential 119  
facility, and the initiation of license revocation proceedings. 120

If it is determined that a person's operation of two or more 121  
residential facilities is not in compliance with this chapter or 122  
the rules adopted under it, the director may suspend admissions to 123  
each residential facility that the person operates. 124

When the director initiates license revocation proceedings, 125  
no opportunity for submitting a plan of correction shall be given. 126  
The director shall notify the licensee by letter of the initiation 127  
of such proceedings. The letter shall list the deficiencies of the 128  
residential facility and inform the licensee that no plan of 129  
correction will be accepted. The director shall also notify each 130  
affected resident, the resident's guardian if the resident is an 131  
adult for whom a guardian has been appointed, the resident's 132  
parent or guardian if the resident is a minor, and the county 133  
board of mental retardation and developmental disabilities. 134

Pursuant to rules which shall be adopted in accordance with 135  
Chapter 119. of the Revised Code, the director may order the 136  
immediate removal of residents from a residential facility 137  
whenever conditions at the facility present an immediate danger of 138  
physical or psychological harm to the residents. 139

In determining whether a residential facility is being 140  
operated in compliance with this chapter or the rules adopted 141  
under it, or whether conditions at a residential facility present 142  
an immediate danger of physical or psychological harm to the 143  
residents, the director may rely on information obtained by a 144

county board of mental retardation and developmental disabilities  
or other governmental agencies ~~in the course of investigating~~  
~~major unusual incidents. The director shall adopt rules in~~  
~~accordance with Chapter 119. of the Revised Code that specify what~~  
~~constitute "major unusual incidents."~~

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The director shall ~~suspend without pay for a period of at~~  
~~least three days~~ initiate disciplinary action against any  
department employee who notifies or causes the notification to any  
unauthorized person of an unannounced inspection survey of a  
residential facility by an authorized representative of the  
department.

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(E) In proceedings initiated to deny or revoke licenses under  
this section, the director may deny or revoke a license regardless  
of whether some or all of the deficiencies that prompted the  
proceedings have been corrected at the time of the hearing.

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(F) In addition to any other information which may be  
required of applicants for a license pursuant to this section, the  
director shall require each applicant to provide a copy of an  
approved plan for a proposed residential facility pursuant to  
section 5123.042 of the Revised Code.

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(G) Pursuant to rules which shall be adopted in accordance  
with Chapter 119. of the Revised Code, the director may require  
notification to the department of any significant change in the  
ownership of a residential facility or in the identity of the  
licensee or management contractor. When such notification is not  
given, the director may ~~cancel~~ terminate the residential  
facility's license. If the director determines that a significant  
change of ownership is proposed, the director shall consider the  
proposed change to be an application for development by a new  
operator pursuant to section 5123.042 of the Revised Code and  
shall advise the applicant within sixty days of such notification

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that the current license shall continue in effect or a new license 177  
will be required pursuant to this section. 178

(H) A county board of mental retardation and developmental 179  
disabilities, the legal rights service, and any interested person 180  
may file complaints alleging violations of statute or department 181  
rule relating to residential facilities with the department. All 182  
complaints shall be in writing and shall state the facts 183  
constituting the basis of the allegation. The department shall not 184  
reveal the source of any complaint unless the complainant agrees 185  
in writing to waive the right to confidentiality or until so 186  
ordered by a court of competent jurisdiction. 187

~~The department shall acknowledge receipt of the complaint and 188  
notify the complainant of the action that will be taken with 189  
respect to it within five working days of receiving it adopt rules 190  
in accordance with Chapter 119. of the Revised Code establishing 191  
procedures for the receipt, referral, investigation, and 192  
disposition of complaints filed with the department under this 193  
division. 194~~

~~The substance of a complaint shall not be provided to a 195  
licensee until the commencement of an inspection or investigation. 196~~

(I) The department shall establish procedures for the 197  
notification of interested parties of the transfer or interim care 198  
of residents from residential facilities that are closing or are 199  
losing their license. 200

~~(J) Before issuing a license under this section to a 201  
residential facility that will accommodate at any time more than 202  
one mentally retarded or developmentally disabled individual, the 203  
director shall, by first class mail, notify the following: 204~~

~~(1) If the facility will be located in a municipal 205  
corporation, the clerk of the legislative authority of the 206  
municipal corporation; 207~~

~~(2) If the facility will be located in unincorporated territory, the clerk of the appropriate board of county commissioners and the clerk of the appropriate board of township trustees.~~ 208  
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~~The director shall not issue the license for ten days after mailing the notice, excluding Saturdays, Sundays, and legal holidays, in order to give the notified local officials time in which to comment on the proposed issuance.~~ 212  
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~~Any legislative authority of a municipal corporation, board of county commissioners, or board of township trustees that receives notice under this division of the proposed issuance of a license for a residential facility may comment on it in writing to the director within ten days after the director mailed the notice, excluding Saturdays, Sundays, and legal holidays. If the director receives written comments from any notified officials within the specified time, the director shall make written findings concerning the comments and the director's decision on the issuance of the license. If the director does not receive written comments from any notified local officials within the specified time, the director shall continue the process for issuance of the license.~~ 216  
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~~(K) Any person may operate a licensed residential facility that provides room and board, personal care, habilitation services, and supervision in a family setting for at least six but not more than eight persons with mental retardation or a developmental disability as a permitted use in any residential district or zone, including any single-family residential district or zone, of any political subdivision. These residential facilities may be required to comply with area, height, yard, and architectural compatibility requirements that are uniformly imposed upon all single-family residences within the district or zone.~~ 229  
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~~(I)~~(K) Any person may operate a licensed residential facility 240  
that provides room and board, personal care, habilitation 241  
services, and supervision in a family setting for at least nine 242  
but not more than sixteen persons with mental retardation or a 243  
developmental disability as a permitted use in any multiple-family 244  
residential district or zone of any political subdivision, except 245  
that a political subdivision that has enacted a zoning ordinance 246  
or resolution establishing planned unit development districts may 247  
exclude these residential facilities from such districts, and a 248  
political subdivision that has enacted a zoning ordinance or 249  
resolution may regulate these residential facilities in 250  
multiple-family residential districts or zones as a conditionally 251  
permitted use or special exception, in either case, under 252  
reasonable and specific standards and conditions set out in the 253  
zoning ordinance or resolution to: 254

(1) Require the architectural design and site layout of the 255  
residential facility and the location, nature, and height of any 256  
walls, screens, and fences to be compatible with adjoining land 257  
uses and the residential character of the neighborhood; 258

(2) Require compliance with yard, parking, and sign 259  
regulation; 260

(3) Limit excessive concentration of these residential 261  
facilities. 262

~~(M)~~(L) This section does not prohibit a political subdivision 263  
from applying to residential facilities nondiscriminatory 264  
regulations requiring compliance with health, fire, and safety 265  
regulations and building standards and regulations. 266  
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~~(N)~~(M) Divisions (J) and (K) ~~and (L)~~ of this section are not 268  
applicable to municipal corporations that had in effect on June 269  
15, 1977, an ordinance specifically permitting in residential 270

zones licensed residential facilities by means of permitted uses, 271  
conditional uses, or special exception, so long as such ordinance 272  
remains in effect without any substantive modification. 273

~~(O)~~(N)(1) The director may issue an interim license to 274  
operate a residential facility to an applicant for a license under 275  
this section if ~~all~~ either of the following conditions are met: 276

~~(1)~~(a) All of the following conditions are met: 277

(i) The director determines that an emergency exists that 278  
requires immediate placement of persons in a residential facility, 279  
and insufficient licensed beds are available. 280

~~(2)~~(ii) The residential facility meets the standards in rules 281  
for interim licenses that the director shall adopt in accordance 282  
with Chapter 119. of the Revised Code established in rules adopted 283  
under this division. 284

~~(3)~~(iii) The director determines that the residential 285  
facility is likely to receive a license under this section within 286  
thirty days after issuance of the interim license. 287

(b) The director determines that the issuance of an interim 288  
license is necessary to meet a temporary need for a residential 289  
facility and the residential facility meets the standards for an 290  
interim license established in rules adopted under this division. 291

(2) An interim license shall be valid for thirty days and may 292  
be renewed by the director ~~no more than twice~~. The director shall 293  
adopt rules in accordance with Chapter 119. of the Revised Code 294  
establishing standards for an interim license. 295

~~(P)~~(O) Notwithstanding rules adopted pursuant to this section 296  
establishing the maximum number of persons who may be served in a 297  
particular type of residential facility, a residential facility 298  
shall be permitted to serve the same number of persons being 299  
served by the facility on the effective date of such rules or the 300  
number of persons for which the facility is authorized pursuant to 301

a current application for a certificate of need with a letter of support from the department of mental retardation and developmental disabilities and which is in the review process prior to April 4, 1986.

~~(Q)~~(P) The director or the director's designee may enter at any time, for purposes of investigation, any home, facility, or other structure that has been reported to the director or that the director has reasonable cause to believe is being operated as a residential facility without a license issued under this section.

The director may petition the court of common pleas of the county in which an unlicensed residential facility is located for an order enjoining the person or governmental agency operating the facility from continuing to operate without a license. The court may grant the injunction on a showing that the person or governmental agency named in the petition is operating a residential facility without a license. The court may grant the injunction, regardless of whether the residential facility meets the requirements for receiving a license under this section.

**Section 2.** That existing section 5123.19 of the Revised Code is hereby repealed.

**Section 3.** The Director of Mental Retardation and Developmental Disabilities shall adopt rules in accordance with Chapter 119. of the Revised Code establishing a schedule for residential facilities licensed under section 5123.19 of the Revised Code on the effective date of this section to seek renewal of the license in accordance with the amendments made by this act to that section.