

1 HOUSE BILL NO. 128

2 INTRODUCED BY SOFT

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW REGULATING DAY CARE;
 6 CLARIFYING DEFINITIONS AND IMMUNIZATION EXEMPTIONS; ALLOWING HEALTH CARE TRAINING AND
 7 INSPECTIONS IN ALL TYPES OF DAY-CARE FACILITIES; INCREASING THE AMOUNT THAT A HEALTH
 8 INSPECTOR MAY CHARGE FOR INSPECTION OF A DAY-CARE FACILITY; PERMITTING ENFORCEMENT
 9 OF LICENSING REQUIREMENTS IN JUSTICE'S, MUNICIPAL, OR CITY COURT; AMENDING SECTIONS
 10 52-2-702, 52-2-703, 52-2-713, 52-2-721, 52-2-735, AND 52-2-741, MCA; AND PROVIDING AN
 11 IMMEDIATE EFFECTIVE DATE."

12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
 15 **Section 1.** Section 52-2-702, MCA, is amended to read:

16 **"52-2-702. Purpose -- findings.** (1) The purpose of this part is to ~~assure~~ ensure that children
 17 ~~requiring, while in~~ day care, be provided ~~such~~ the food, shelter, security and safety, guidance and direction,
 18 nurture and comfort, and learning experiences commensurate to their ages and capabilities ~~so as~~ to
 19 safeguard the growth and development of ~~such~~ the children, thereby facilitating their proper physical and
 20 emotional maturation.

21 (2) (a) The legislature finds that the number of children living in homes where both parents work
 22 or in homes with a single parent who works has increased dramatically ~~over the last decade.~~

23 (b) The legislature finds that the availability of quality child care is critical to the self-sufficiency
 24 and independence of Montana families, including the growing number of mothers who have young children
 25 and who work out of economic necessity.

26 (c) The legislature further finds that the number of quality child-care arrangements falls far short
 27 of the number required for children in need of child-care services.

28 (d) It is the intent of the legislature that the state promote day care for the purposes of:

29 (i) improving the quality of, and coordination among, child-care programs and providing additional
 30 resources for child-care services;

- 1 (ii) promoting the availability and diversity of quality child-care services for all children and families
2 that need ~~such~~ services;
- 3 (iii) providing assistance, within the confines of available funding, to families whose financial
4 resources are not sufficient to enable them to pay the full costs of necessary child-care services;
- 5 (iv) ensuring that parents are not forced by lack of available programs or financial resources to place
6 a child in an unsafe or unhealthy child-care facility; and
- 7 (v) assisting people in finding and maintaining employment by lessening the stress related to the
8 lack of adequate child care."

9

10 **Section 2.** Section 52-2-703, MCA, is amended to read:

11 "**52-2-703. Definitions.** In this part, the following definitions apply:

12 (1) "Child" means a person under 13 years of age or a person with special needs, as defined by
13 the department, who is under 18 years of age or is 18 years of age and a full-time student expected to
14 complete an educational program by 19 years of age.

15 (2) "Day care" or "child care" means care for children provided by an adult, other than a parent
16 of the children or other person living with the children as a parent, on a regular basis for daily periods of
17 less than 24 hours, whether that care is for daytime or nighttime hours.

18 (3) "Day-care center" means an out-of-home place in which day care is provided to 13 or more
19 children on a regular basis.

20 (4) "Day-care facility" means a person, association, or place, incorporated or unincorporated, that
21 provides day care on a regular basis or a place licensed or registered to provide day care on an irregular
22 basis for children suffering from illness. It includes a family day-care home, a day-care center, a group
23 day-care home, or a facility providing care in a child's home for the purpose of meeting registration
24 requirements for the receipt of payments as provided in 52-2-713. The term does not include:

25 (a) a person who limits care to children who are related to the person by blood or marriage or who
26 are under the person's legal guardianship, unless registration or licensure as a day-care facility is required
27 to receive payments as provided in 52-2-713; ~~or~~

28 (b) ~~any group~~ a facility established chiefly for educational purposes that limits its services to
29 children who are 3 years of age or older and that limits the number of hours for each child to 4 hours a day;

30 (c) a facility used solely by members of a health club while using the health club facilities; or

1 (d) a facility operated by a church, whose property is exempt from property taxation under
2 15-6-201, during periods of actual religious worship and church-related functions.

3 (5) "Department" means the department of public health and human services provided for in
4 2-15-2201.

5 (6) "Family day-care home" means a private residence in which day care is provided to three to
6 six children on a regular basis.

7 (7) "Group day-care home" means a private residence or other structure in which day care is
8 provided to 7 to 12 children on a regular basis.

9 (8) "License" means a written document issued by the department that the license holder has
10 complied with this part and the applicable standards and rules for day-care centers.

11 (9) "Licensee" means the holder of a license issued by the department in accordance with the
12 provisions of this part.

13 (10) "Registrant" means the holder of a registration certificate issued by the department in
14 accordance with the provisions of this part.

15 (11) "Registration" means the process whereby the department maintains a record of all family
16 day-care homes and group day-care homes, prescribes standards, promulgates rules, and requires the
17 operator of a family day-care home or a group day-care home to certify compliance with the prescribed
18 standards and promulgated rules.

19 (12) "Registration certificate" means a written instrument issued by the department to publicly
20 document that the certificate holder has, in writing, certified to the department compliance with this part
21 and the applicable standards for family day-care homes and group day-care homes.

22 (13) "Regular basis" means providing day care to children of separate families for any daily periods
23 of less than 24 hours for 4 or more days in a week and within 3 or more consecutive weeks.

24 (14) (a) "Related by blood or marriage" means the status of a child who is the son, daughter,
25 brother, sister, first cousin, nephew, niece, or grandchild of a person providing child care.

26 (b) The term includes the status of a child described in subsection (14)(a) in a step or adoptive
27 relationship."
28

29 **Section 3.** Section 52-2-713, MCA, is amended to read:

30 **"52-2-713. Payments for eligible children.** The department shall pay a daily rate established by

1 the department and appropriated by the legislature to a day-care facility licensed ~~or~~, registered, or certified
 2 by the department for each child receiving day-care service and certified eligible by the department to
 3 receive day-care services."

4

5 **Section 4.** Section 52-2-721, MCA, is amended to read:

6 **"52-2-721. License required -- registration required -- term of license or registration certificate --**
 7 **no fee charged -- exception.** (1) ~~No~~ A person, group of persons, or corporation ~~shall~~ may not:

8 (a) establish or maintain a day-care center for children unless licensed to do so by the department;

9 (b) operate a family day-care home or group day-care home without first procuring a family
 10 day-care or group day-care registration certificate from the department.

11 (2) The license and registration certificate ~~shall~~ must set forth the ages and numbers of children
 12 for whom day care may be provided.

13 (3) The applicant's own children must be included in the manner provided for in department
 14 regulations in the total number of children to be cared for under the license or registration certificate.

15 (4) Licenses or registration certificates ~~shall~~ may be issued for periods not to exceed 1 year. The
 16 department may not charge a fee to issue a license or registration certificate except as required in
 17 52-2-735."

18

19 **Section 5.** Section 52-2-735, MCA, is amended to read:

20 **"52-2-735. Health protection -- certification required.** (1) The department shall adopt rules for the
 21 protection of children in day-care centers from the health hazards of inadequate food preparation, poor
 22 nutrition, and communicable diseases. Rules adopted by the department must include rules requiring
 23 children under 5 years of age to be immunized ~~against Haemophilus influenza type "b" before being~~
 24 ~~admitted for care in the facility unless an exemption has been claimed as provided in 20-5-405.~~

25 (2) Local public health authorities shall arrange to provide training to day-care center providers and
 26 employees regarding health hazards. Local public health authorities may arrange to provide training to other
 27 types of day-care providers and employees regarding health hazards. Upon successful completion of the
 28 training, the local public health authorities shall issue certificates to the providers and employees.

29 (3) In lieu of training, local public health authorities may elect to inspect facilities and issue
 30 certificates of approval to child-care ~~center~~ providers.

1 (4) Each applicant for a license to operate a day-care center shall submit to the department a
2 certificate issued pursuant to subsection (2) or (3) before the department will issue a license.

3 (5) The local public health authority may charge the applicant a reasonable fee, not to exceed ~~25~~
4 \$50, for any inspection necessary to issue a certificate of approval, or a fee not to exceed the documented
5 cost for training it provides under this section."

6

7 **Section 6.** Section 52-2-741, MCA, is amended to read:

8 **"52-2-741. Penalty -- remedies.** (1) A person, group of persons, or corporation ~~who~~ that
9 establishes or maintains a day-care facility or assists in conducting or maintaining a day-care facility without
10 first obtaining a license or registration certificate from the department, as provided for in this part, is guilty
11 of a misdemeanor and upon conviction is punishable by a fine not to exceed \$500.

12 (2) (a) If the department is advised or has reason to believe that a person, group of persons, or
13 corporation is operating a day-care facility without a license or registration certificate, it shall make an
14 investigation to ascertain the facts. If the department finds that the day-care facility is being or has been
15 operated without a license or registration certificate, it may report the results of its investigation to the
16 attorney general or the county attorney of the county where the day-care facility is being operated for
17 prosecution and request that an injunction be issued against the facility until a license or certificate is
18 issued.

19 (b) The department may institute any action necessary to enforce compliance with this part or any
20 order or rule of the department under this part or to obtain a judicial interpretation of any of the foregoing.

21 (c) The department may, by its own attorney or counsel, any county attorney or city attorney, or
22 the attorney general, initiate an action in the district court, justice's court, municipal court, or city court of
23 the appropriate county, city, or town and be represented by ~~such~~ the representative on appeal to the
24 supreme court of Montana."

25

26 **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.

27

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0128, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the law regulating day care; clarifying definitions and immunization exemptions; allowing health care training and inspections in all types of day-care facilities; increasing the amount that can be charged by the local public health authority for inspections of day care facilities; and permitting enforcement of licensing requirements in justice's, municipal or city court.

Assumptions:

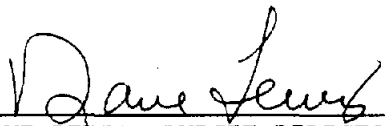
1. Raising the fee which can be charged by county inspectors, from the current level of \$25 to \$50, would enable counties to recoup more of their inspection costs. However, the increase in local revenues is not anticipated to be significant.
2. It is up to the counties to determine if they will charge the higher fee.
3. The state would not receive additional revenue as a result of the higher fees.

FISCAL IMPACT:

None.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Please see assumptions 1 and 2 above.

 1-9-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning



LOREN SOFT, PRIMARY SPONSOR DATE

Fiscal Note for HB0128, as introduced

HB 128

APPROVED BY COM ON
HUMAN SERVICES

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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(2) (a) The legislature finds that the number of children living in homes where both parents work or in homes with a single parent who works has increased dramatically ~~over the last decade~~.

(b) The legislature finds that the availability of quality child care is critical to the self-sufficiency and independence of Montana families, including the growing number of mothers who have young children and who work out of economic necessity.

(c) The legislature further finds that the number of quality child-care arrangements falls far short of the number required for children in need of child-care services.

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2 that need ~~such~~ services;

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4 resources are not sufficient to enable them to pay the full costs of necessary child-care services;

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26 are under the person's legal guardianship, unless registration or licensure as a day-care facility is required
27 to receive payments as provided in 52-2-713; ~~or~~

28 (b) ~~any group a facility established chiefly for educational purposes~~ PRESCHOOL, AS DEFINED IN
29 20-5-402, BUT that limits its services to children who are AT LEAST 3 years of age or older and that limits
30 the number of hours for each child to 4 hours a day AND NOT CHILDREN 5 YEARS OF AGE OR YOUNGER;

1 (c) a facility used solely by members OR GUESTS OF MEMBERS of a health club while using the
2 health club facilities RECREATIONAL, EDUCATIONAL, FRATERNAL, CHARITABLE, OR CIVIC
3 ORGANIZATION WHILE USING THE FACILITIES OF THE ORGANIZATION IF THE CARE PROVIDED ON THE
4 PREMISES IS NOT PROVIDED ON A REGULAR BASIS; or

5 (d) a facility operated by a church, whose property is exempt from property taxation under
6 15-6-201, during periods of actual religious worship and church-related functions.

7 (5) "Department" means the department of public health and human services provided for in
8 2-15-2201.

9 (6) "Family day-care home" means a private residence in which day care is provided to three to
10 six children on a regular basis.

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12 provided to 7 to 12 children on a regular basis.

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14 complied with this part and the applicable standards and rules for day-care centers.

15 (9) "Licensee" means the holder of a license issued by the department in accordance with the
16 provisions of this part.

17 (10) "Registrant" means the holder of a registration certificate issued by the department in
18 accordance with the provisions of this part.

19 (11) "Registration" means the process whereby the department maintains a record of all family
20 day-care homes and group day-care homes, prescribes standards, promulgates rules, and requires the
21 operator of a family day-care home or a group day-care home to certify compliance with the prescribed
22 standards and promulgated rules.

23 (12) "Registration certificate" means a written instrument issued by the department to publicly
24 document that the certificate holder has, in writing, certified to the department compliance with this part
25 and the applicable standards for family day-care homes and group day-care homes.

26 (13) "Regular basis" means providing day care to children of separate families for any daily periods
27 of less than 24 hours for 4 or more days in a week and within 3 or more consecutive weeks.

28 (14) (a) "Related by blood or marriage" means the status of a child who is the son, daughter,
29 brother, sister, first cousin, nephew, niece, or grandchild of a person providing child care.

30 (b) The term includes the status of a child described in subsection (14)(a) in a step or adoptive

1 relationship."

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3 **Section 3.** Section 52-2-713, MCA, is amended to read:

4 **"52-2-713. Payments for eligible children.** The department shall pay a daily rate established by
5 the department and appropriated by the legislature to a day-care facility licensed ~~or~~, registered, or certified
6 by the department for each child receiving day-care service and certified eligible by the department to
7 receive day-care services."

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9 **Section 4.** Section 52-2-721, MCA, is amended to read:

10 **"52-2-721. License required -- registration required -- term of license or registration certificate --**
11 **no fee charged -- exception.** (1) ~~No~~ A person, group of persons, or corporation ~~shall~~ may not:

12 (a) establish or maintain a day-care center for children unless licensed to do so by the department;

13 (b) operate a family day-care home or group day-care home without first procuring a family
14 day-care or group day-care registration certificate from the department.

15 (2) The license and registration certificate ~~shall~~ must set forth the ages and numbers of children
16 for whom day care may be provided.

17 (3) The applicant's own children must be included in the manner provided for in department
18 regulations in the total number of children to be cared for under the license or registration certificate.

19 (4) Licenses or registration certificates ~~shall~~ may be issued for periods not to exceed 1 year. The
20 department may not charge a fee to issue a license or registration certificate except as required in
21 52-2-735."

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23 **Section 5.** Section 52-2-735, MCA, is amended to read:

24 **"52-2-735. Health protection -- certification required.** (1) The department shall adopt rules for the
25 protection of children in day-care centers from the health hazards of inadequate food preparation, poor
26 nutrition, and communicable diseases. Rules adopted by the department must include rules requiring
27 children under 5 years of age to be immunized ~~against Haemophilus influenza type "b" before being~~
28 ~~admitted for care in the facility unless an exemption has been claimed as provided in 20-5-405.~~

29 (2) Local public health authorities shall arrange to provide training to day-care center providers and
30 employees regarding health hazards. Local public health authorities may arrange to provide training to other

1 types of day-care providers and employees regarding health hazards. Upon successful completion of the
 2 training, the local public health authorities shall issue certificates to the providers and employees.

3 (3) In lieu of training, local public health authorities may elect to inspect facilities and issue
 4 certificates of approval to child-care ~~center~~ providers.

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 6 certificate issued pursuant to subsection (2) or (3) before the department will issue a license.

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 8 \$50, for any inspection necessary to issue a certificate of approval, or a fee not to exceed the documented
 9 cost for training it provides under this section."

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 11 **Section 6.** Section 52-2-741, MCA, is amended to read:

12 **"52-2-741. Penalty -- remedies.** (1) A person, group of persons, or corporation ~~who~~ that
 13 establishes or maintains a day-care facility or assists in conducting or maintaining a day-care facility without
 14 first obtaining a license or registration certificate from the department, as provided for in this part, is guilty
 15 of a misdemeanor and upon conviction is punishable by a fine not to exceed \$500.

16 (2) (a) If the department is advised or has reason to believe that a person, group of persons, or
 17 corporation is operating a day-care facility without a license or registration certificate, it shall make an
 18 investigation to ascertain the facts. If the department finds that the day-care facility is being or has been
 19 operated without a license or registration certificate, it may report the results of its investigation to the
 20 attorney general or the county attorney of the county where the day-care facility is being operated for
 21 prosecution and request that an injunction be issued against the facility until a license or certificate is
 22 issued.

23 (b) The department may institute any action necessary to enforce compliance with this part or any
 24 order or rule of the department under this part or to obtain a judicial interpretation of any of the foregoing.

25 (c) The department may, by its own attorney or counsel, any county attorney or city attorney, or
 26 the attorney general, initiate an action in the district court, justice's court, municipal court, or city court of
 27 the appropriate county, city, or town and be represented by ~~such~~ the representative on appeal to the
 28 supreme court of Montana."

29
 30 **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.

-END-