

HOUSE BILL NO. 113

INTRODUCED BY R. FARRIS-OLSEN

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA CHILD CARE ACT; ESTABLISHING LICENSURE CATEGORIES AND REQUIREMENTS; REQUIRING BACKGROUND CHECKS OF CHILD CARE APPLICANTS AND PERSONNEL; PROVIDING DEFINITIONS; EXTENDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 15-30-2131, 15-31-131, 15-31-133, 41-3-201, 41-3-205, 50-50-102, 52-2-702, 52-2-703, 52-2-704, 52-2-711, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-725, 52-2-726, 52-2-731, 52-2-732, 52-2-733, 52-2-736, 52-2-741, AND 76-2-412, MCA."

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

Section 1. Section 15-30-2131, MCA, is amended to read:

"15-30-2131. Deductions allowed in computing net income. (1) In computing net income, there are allowed as deductions:

(a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code, 26 U.S.C. 161 and 211, subject to the following exceptions, which are not deductible:

- (i) items provided for in 15-30-2133;
- (ii) state income tax paid;
- (iii) premium payments for medical care as provided in subsection (1)(g)(i);
- (iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii); and
- (v) a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in 33-20-701;

(b) federal income tax paid within the tax year, not to exceed \$5,000 for each taxpayer filing singly, head of household, or married filing separately or \$10,000 if married and filing jointly;

(c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as follows:



- 1 (i) expenses for household and dependent care services necessary for gainful employment incurred for:
2 (A) a dependent under 15 years of age for whom an exemption can be claimed;
3 (B) a dependent as allowable under 15-30-2114(5), except that the limitations for age and gross income
4 do not apply, who is unable to provide self-care because of physical or mental illness; and
5 (C) a spouse who is unable to provide self-care because of physical or mental illness;
- 6 (ii) employment-related expenses incurred for the following services, but only if the expenses are incurred
7 to enable the taxpayer to be gainfully employed:
8 (A) household services that are attributable to the care of the qualifying individual; and
9 (B) care of an individual who qualifies under subsection (1)(c)(i);
10 (iii) expenses incurred in maintaining a household if ~~over~~ more than half of the cost of maintaining the
11 household is furnished by an individual or, if the individual is married during the applicable period, is furnished
12 by the individual and the individual's spouse;
- 13 (iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:
14 (A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during
15 the year only to the extent that the expenses do not exceed \$4,800;
16 (B) expenses for services in the household are deductible under subsection (1)(c)(i) for
17 employment-related expenses only if they are incurred for services in the taxpayer's household, except that
18 employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if
19 incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that the
20 expenses incurred during the year do not exceed:
21 (I) \$2,400 in the case of one qualifying individual;
22 (II) \$3,600 in the case of two qualifying individuals; and
23 (III) \$4,800 in the case of three or more qualifying individuals;
24 (v) if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the tax year during
25 which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by
26 one-half of the excess of the combined adjusted gross income over \$18,000;
27 (vi) for purposes of this subsection (1)(c):
28 (A) married couples shall file a joint return or file separately on the same form;
29 (B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred
30 are deductible only if:

- 1 (I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent
2 that they are a direct result of the employment; or
- 3 (II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);
- 4 (C) an individual legally separated from the individual's spouse under a decree of divorce or of separate
5 maintenance may not be considered as married;
- 6 (D) the deduction for employment-related expenses must be divided equally between the spouses when
7 filing separately on the same form;
- 8 (E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year
9 and payments made to an individual with respect to whom a deduction is allowable under 15-30-2114(5) are not
10 deductible as employment-related expenses;
- 11 (d) in the case of an individual, political contributions determined in accordance with the provisions of
12 section 218(a) and (b) of the Internal Revenue Code of 1954 (now repealed) that were in effect for the tax year
13 that ended December 31, 1978;
- 14 (e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed
15 as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;
- 16 (f) contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject to
17 the conditions set forth in 15-30-2143;
- 18 (g) the entire amount of premium payments made by the taxpayer, except premiums deducted in
19 determining Montana adjusted gross income, or for which a credit was claimed under 15-30-2366, for:
- 20 (i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the
21 taxpayer's dependents, and the parents and grandparents of the taxpayer; and
- 22 (ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified
23 long-term care services, as defined in 26 U.S.C. 7702B(c), for:
- 24 (A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or
- 25 (B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the
26 taxpayer for tax years beginning after December 31, 1996;
- 27 (h) light vehicle registration fees, as provided for in 61-3-321(2) and 61-3-562, paid during the tax year;
- 28 and
- 29 (i) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209,
30 81-7-118, or 81-7-201.

1 (2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home
 2 or a group day-care home, as ~~these~~ the terms are defined in 52-2-703, and who cares for the taxpayer's own child
 3 and at least one unrelated child in the ordinary course of business may deduct employment-related expenses
 4 considered to have been paid for the care of the child.

5 (b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal
 6 to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of
 7 care. The employment-related expenses apply regardless of whether any expenses actually have been paid.
 8 Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).

9 (c) Only a day-care operator who is licensed ~~and registered~~ as required in 52-2-721 is allowed the
 10 deduction under this subsection (2)."

11

12 **Section 2.** Section 15-31-131, MCA, is amended to read:

13 **"15-31-131. Credit for dependent care assistance and referral services.** (1) There is a credit against
 14 the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the tax
 15 year by the employer for dependent care assistance actually provided to or on behalf of an employee if the
 16 assistance is furnished by a ~~registered~~ or licensed day-care provider and pursuant to a program that meets the
 17 requirements of section 129(d)(2) through (6) of the Internal Revenue Code, 26 U.S.C. 129(d)(2) through (d)(6).

18 (2) (a) The amount of the credit allowed under subsection (1) is 25% of the amount paid or incurred by
 19 the employer during the tax year, but the credit may not exceed \$1,575 of day-care assistance actually provided
 20 to or on behalf of the employee.

21 (b) For the purposes of this subsection, marital status must be determined under the rules of section
 22 21(e)(3) and (4) of the Internal Revenue Code, 26 U.S.C. 21(e)(3) and (e)(4).

23 (c) In the case of an onsite facility, the amount upon which the credit allowed under subsection (1) is
 24 based, with respect to any dependent, must be based upon utilization and the value of the services provided.

25 (3) (a) In addition to the credit allowed under subsection (1), there is a credit against the taxes otherwise
 26 due under this chapter allowable to an employer for amounts paid or incurred during the tax year by the employer
 27 to provide information and referral services to assist employees of the employer employed within this state to
 28 obtain dependent care.

29 (b) The amount of the credit allowed under subsection (3)(a) is equal to 25% of the amount paid or
 30 incurred in the tax year.

1 (4) An amount paid or incurred during the tax year of an employer in providing dependent care
2 assistance to or on behalf of any employee does not qualify for the credit allowed under subsection (1) if the
3 amount was paid or incurred to an individual described in section 129(c)(1) or (2) of the Internal Revenue Code,
4 26 U.S.C. 129(c)(1) or (c)(2).

5 (5) An amount paid or incurred by an employer to provide dependent care assistance to or on behalf of
6 an employee does not qualify for the credit allowed under subsection (1):

7 (a) to the extent the amount is paid or incurred pursuant to a salary reduction plan; or

8 (b) if the amount is paid or incurred for services not performed within this state.

9 (6) If the credit allowed under subsection (1) or (3) is claimed, the amount of any deduction allowed or
10 allowable under this chapter for the amount that qualifies for the credit (or upon which the credit is based) must
11 be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section
12 must be made at the time of filing the tax return.

13 (7) The amount upon which the credit allowed under subsection (1) is based may not be included in the
14 gross income of the employee to whom the dependent care assistance is provided. However, the amount
15 excluded from the income of an employee under this section may not exceed the limitations provided in section
16 129(b) of the Internal Revenue Code, 26 U.S.C. 129(b). For purposes of Title 15, chapter 30, part 25, with respect
17 to an employee to whom dependent care assistance is provided, "wages" does not include any amount excluded
18 under this subsection. Amounts excluded under this subsection do not qualify as expenses for which a deduction
19 is allowed to the employee under 15-30-2131.

20 (8) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular
21 year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any
22 credit remaining unused in the next succeeding tax year may be carried forward and used in the second
23 succeeding tax year and likewise through the fifth year succeeding the tax year in which the credit was first
24 allowed or allowable. A credit may not be carried forward beyond the fifth succeeding tax year.

25 (9) If the taxpayer is an S. corporation, as defined in section 1361 of the Internal Revenue Code, 26
26 U.S.C. 1361, and the taxpayer elects to take tax credit relief, the election may be made on behalf of the
27 corporation's shareholders. A shareholder's credit must be computed using the shareholder's pro rata share of
28 the corporation's costs that qualify for the credit. In all other respects, the effect of the tax credit applies to the
29 corporation as otherwise provided by law.

30 (10) For purposes of the credit allowed under subsection (1) or (3):

1 (a) the definitions and special rules contained in section 129(e) of the Internal Revenue Code, 26 U.S.C.
2 129(e), apply to the extent applicable; and

3 (b) "employer" means an employer carrying on a business, trade, occupation, or profession in this state."
4

5 **Section 3.** Section 15-31-133, MCA, is amended to read:

6 **"15-31-133. Credit for day-care facilities.** (1) There is a credit against the taxes otherwise due under
7 this chapter that is allowable to an employer based on the amounts paid or incurred during the tax year by the
8 employer to acquire, construct, reconstruct, renovate, or otherwise improve real property so that the property may
9 be used primarily as a day-care facility. Subject to the conditions of this section, the amount of the credit is equal
10 to:

11 (a) the amount of the day-care facility credit determined under subsection (2); and

12 (b) any day-care facility tax credit carryforwards.

13 (2) The credit allowed under subsection (1) is the lesser of:

14 (a) \$2,500, multiplied by the number of dependents that the day-care facility is designed to accommodate
15 at the end of the first tax year for which credit is first claimed;

16 (b) 15% of the cost of the acquisition, construction, reconstruction, renovation, or other improvement;

17 or

18 (c) \$50,000.

19 (3) The amounts paid or incurred by the employer for the acquisition, construction, reconstruction,
20 renovation, or other improvement to real property that qualify for the credit may be paid or incurred either:

21 (a) to another person to be used to acquire, construct, reconstruct, renovate, or otherwise improve real
22 property that is operated as a day-care facility and with whom the employer contracts to make day-care
23 assistance payments, and the payments are excluded, or partially excluded, under 26 U.S.C. 129 from the
24 income of the employee for federal tax purposes; or

25 (b) to acquire, construct, reconstruct, renovate, or otherwise improve real property that is operated by
26 the employer, or a combination of employers, to provide day-care assistance to the employees of the employer
27 under a program or programs, and the program or programs are excluded, or partially excluded, under 26 U.S.C.
28 129 from the income of the employee for federal tax purposes.

29 (4) To qualify for the credit allowed under subsection (1), the following conditions apply:

30 (a) The property must be in actual use in Montana as a day-care facility on the last day of the tax year

1 for which the credit or any carryforward amount of the credit is claimed.

2 (b) Day-care services assisted by the employer must take place on the property on the last day of the
3 tax year for which the credit or any carryforward amount of the credit is claimed.

4 (c) The person operating the day-care facility must hold a current license ~~or registration certificate~~ under
5 Title 52, chapter 2, part 7, on the last day of the tax year for which the credit under subsection (1) is claimed.

6 (d) The day-care facility must accommodate six or more children.

7 (e) The day-care facility must be placed in operation before January 1, 2006.

8 (5) The total amount of the costs upon which the credit allowed under subsection (1) is based and the
9 total amount of the credit must be determined by the employer, subject to rules adopted by the department, during
10 the tax year in which the property acquired, constructed, reconstructed, renovated, or otherwise improved is first
11 placed in operation as a day-care facility.

12 (6) The amount paid or incurred by the employer upon which the credit allowed under subsection (1) is
13 based must be excluded from the income of an employee subject to the limitations provided in 26 U.S.C. 129(b).

14 (7) The taxpayer is allowed one-tenth of the total credit determined under subsection (2) in the first tax
15 year in which the taxpayer may claim the credit and one-tenth of the total credit is allowed in each succeeding
16 tax year, not to exceed 9 tax years.

17 (8) Except as provided in subsections (4)(a) and (4)(b), if the tax credit allowed under subsection (1)
18 exceeds the taxpayer's liability, the credit may be carried forward to the succeeding tax year or years, except that
19 a carryforward amount is not allowed beyond the period allowed for the credit as provided in subsection (7).

20 (9) The provisions of this section do not affect the computation of depreciation or basis for a day-care
21 facility. However, if the credit allowed under this section is claimed, the amount of any deduction that is allowed
22 or allowable under this chapter for the amounts paid or incurred, or upon which the credit is based, must be
23 reduced by the dollar amount of the credit allowed.

24 (10) The department shall require evidence from the taxpayer that the person operating the day-care
25 facility on the date that the taxpayer's tax year ends is licensed ~~or registered~~ to operate the facility. The evidence
26 must accompany the tax return in which any amount of tax credit allowed under this section is claimed. If the
27 evidence is not furnished, the credit is not allowed for the tax year for which the evidence is not furnished. Upon
28 request of the department, the department of public health and human services shall report to the department
29 on whether the day-care facility was operated as a licensed ~~or registered~~ day-care facility on the last day of the
30 tax year of the person claiming the credit.

1 (11) The employer must meet any other requirements or furnish any information to the department that
2 the department requires under rules adopted by the department to carry out the purposes of this section.

3 (12) If the credit allowed under this section is claimed by a small business corporation, as defined in
4 15-30-3301, or a partnership, the credit must be attributed to shareholders or partners, using the same proportion
5 to report the corporation's or partnership's income or loss for Montana income tax purposes.

6 (13) For purposes of the credit allowed under subsection (1):

7 (a) the definitions and special rules contained in 26 U.S.C. 129(e) apply to the extent applicable; and

8 (b) "employer" means an employer carrying on a business, trade, occupation, or profession in this state."
9

10 **Section 4.** Section 41-3-201, MCA, is amended to read:

11 **"41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have
12 reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that
13 a child is abused or neglected by anyone regardless of whether the person suspected of causing the abuse or
14 neglect is a parent or other person responsible for the child's welfare, they shall report the matter promptly to the
15 department of public health and human services.

16 (2) Professionals and officials required to report are:

17 (a) a physician, resident, intern, or member of a hospital's staff engaged in the admission, examination,
18 care, or treatment of persons;

19 (b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any
20 other health or mental health professional;

21 (c) religious healers;

22 (d) school teachers, other school officials, and employees who work during regular school hours;

23 (e) a social worker, operator or employee of any ~~registered or licensed~~ day-care or substitute care
24 facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care
25 program, or an operator or employee of a child-care facility;

26 (f) a foster care, residential, or institutional worker;

27 (g) a peace officer or other law enforcement official;

28 (h) a member of the clergy, as defined in 15-6-201(2)(b);

29 (i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged
30 abuse or neglect; or

1 (j) an employee of an entity that contracts with the department to provide direct services to children.

2 (3) A professional listed in subsection (2)(a) or (2)(b) involved in the delivery or care of an infant shall
3 report to the department any infant known to the professional to be affected by a dangerous drug, as defined in
4 50-32-101.

5 (4) Any person may make a report under this section if the person knows or has reasonable cause to
6 suspect that a child is abused or neglected.

7 (5) (a) When a professional or official required to report under subsection (2) makes a report, the
8 department may share information with:

9 (i) that professional or official;

10 (ii) other individuals with whom the professional or official works in an official capacity if the individuals
11 are part of a team that responds to matters involving the child or the person about whom the report was made
12 and the professional or official has asked that the information be shared with the individuals; or

13 (iii) the child abuse and neglect review commission established in 2-15-2019.

14 (b) The department may provide information in accordance with 41-3-202(8) and also share information
15 about the investigation, limited to its outcome and any subsequent action that will be taken on behalf of the child
16 who is the subject of the report.

17 (c) Individuals who receive information pursuant to this subsection (5) shall maintain the confidentiality
18 of the information as required by 41-3-205.

19 (6) (a) Except as provided in subsection (6)(b) or (6)(c), a person listed in subsection (2) may not refuse
20 to make a report as required in this section on the grounds of a physician-patient or similar privilege.

21 (b) A member of the clergy or a priest is not required to make a report under this section if:

22 (i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the
23 member of the clergy or the priest in that person's capacity as a member of the clergy or as a priest;

24 (ii) the statement was intended to be a part of a confidential communication between the member of the
25 clergy or the priest and a member of the church or congregation; and

26 (iii) the person who made the statement or confession does not consent to the disclosure by the member
27 of the clergy or the priest.

28 (c) A member of the clergy or a priest is not required to make a report under this section if the
29 communication is required to be confidential by canon law, church doctrine, or established church practice.

30 (7) The reports referred to under this section must contain:

1 (a) the names and addresses of the child and the child's parents or other persons responsible for the
2 child's care;

3 (b) to the extent known, the child's age and the nature and extent of the child's injuries, including any
4 evidence of previous injuries;

5 (c) any other information that the maker of the report believes might be helpful in establishing the cause
6 of the injuries or showing the willful neglect and the identity of the person or persons responsible for the injury
7 or neglect; and

8 (d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful
9 neglect, within the meaning of this chapter. (Subsection (5)(a)(iii) terminates September 30, 2021--sec. 12, Ch.
10 235, L. 2017.)"

11

12 **Section 5.** Section 41-3-205, MCA, is amended to read:

13 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and its
14 local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken
15 under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except
16 as provided by this section. Except as provided in subsections (9) and (10), a person who purposely or knowingly
17 permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

18 (2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The
19 court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before
20 it.

21 (3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless
22 otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child
23 or harmful to another person who is a subject of information contained in the records, may be disclosed to the
24 following persons or entities in this state and any other state or country:

25 (a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal
26 organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that
27 otherwise meets the disclosure criteria contained in this section;

28 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family
29 or child who is the subject of a report in the records or to a person authorized by the department to receive
30 relevant information for the purpose of determining the best interests of a child with respect to an adoptive

1 placement;

2 (c) a health or mental health professional who is treating the family or child who is the subject of a report
3 in the records;

4 (d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in
5 41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in
6 the records or other person responsible for the child's welfare, without disclosure of the identity of any person who
7 reported or provided information on the alleged child abuse or neglect incident contained in the records;

8 (e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or
9 legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the
10 court to represent a child in a pending case;

11 (f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);

12 (g) approved foster and adoptive parents who are or may be providing care for a child;

13 (h) a person about whom a report has been made and that person's attorney, with respect to the relevant
14 records pertaining to that person only and without disclosing the identity of the reporter or any other person whose
15 safety may be endangered;

16 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision of
17 an alleged perpetrator of child abuse or neglect;

18 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and
19 that is authorized by the department to conduct the research or evaluation;

20 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family
21 group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a
22 treatment plan, and monitoring the plan;

23 (l) the coroner or medical examiner when determining the cause of death of a child;

24 (m) a child fatality review team recognized by the department[, including the child abuse and neglect
25 review commission established in 2-15-2019];

26 (n) a department or agency investigating an applicant for a license or registration that is required to
27 operate a youth care facility, day-care facility, or child-placing agency;

28 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
29 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
30 children through employment or volunteer activities. A request for information under this subsection (3)(o) must

1 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children,
2 persons with developmental disabilities, or older persons posed by the person about whom the information is
3 sought, as determined by the department.

4 (p) the news media, if disclosure is limited to confirmation of factual information regarding how the case
5 was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as
6 determined by the department;

7 (q) an employee of the department or other state agency if disclosure of the records is necessary for
8 administration of programs designed to benefit the child;

9 (r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure
10 of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

11 (s) a juvenile probation officer who is working in an official capacity with the child who is the subject of
12 a report in the records;

13 (t) an attorney who is hired by or represents the department if disclosure is necessary for the
14 investigation, defense, or prosecution of a case involving child abuse or neglect;

15 (u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review
16 board established under Title 41, chapter 3, part 10;

17 (v) a school employee participating in an interview of a child by a social worker, county attorney, or peace
18 officer, as provided in 41-3-202;

19 (w) a member of a county interdisciplinary child information and school safety team formed under the
20 provisions of 52-2-211;

21 (x) members of a local interagency staffing group provided for in 52-2-203;

22 (y) a member of a youth placement committee formed under the provisions of 41-5-121; or

23 (z) a principal of a school or other employee of the school district authorized by the trustees of the district
24 to receive the information with respect to a student of the district who is a client of the department.

25 (4) (a) The records described in subsection (3) must be disclosed to a member of the United States
26 congress or a member of the Montana legislature if all of the following requirements are met:

27 (i) the member receives a written inquiry regarding a child and whether the laws of the United States or
28 the state of Montana that protect children from abuse or neglect are being complied with or whether the laws need
29 to be changed to enhance protections for children;

30 (ii) the member submits a written request to the department requesting to review the records relating to

1 the written inquiry. The member's request must include a copy of the written inquiry, the name of the child whose
2 records are to be reviewed, and any other information that will assist the department in locating the records.

3 (iii) before reviewing the records, the member:

4 (A) signs a form that outlines the state and federal laws regarding confidentiality and the penalties for
5 unauthorized release of the information; and

6 (B) receives from the department an orientation of the content and structure of the records.

7 (b) Records disclosed pursuant to subsection (4)(a) are confidential, must be made available for the
8 member to view at a location determined by the department but may not be copied, recorded, photographed, or
9 otherwise replicated by the member, and must remain solely in the department's possession.

10 (c) Access to records requested pursuant to this subsection (4) is limited to 6 months from the date the
11 written request to review records was received by the department.

12 (5) (a) The records described in subsection (3) must be promptly released to any of the following
13 individuals upon a written request by the individual to the department or the department's designee:

14 (i) the attorney general;

15 (ii) a county attorney or deputy county attorney of the county in which the alleged abuse or neglect
16 occurred;

17 (iii) a peace officer, as defined in 45-2-101, in the jurisdiction in which the alleged abuse or neglect
18 occurred; or

19 (iv) the office of the child and family ombudsman.

20 (b) The records described in subsection (3) must be promptly disclosed by the department to an
21 appropriate individual described in subsection (5)(a) or to a county interdisciplinary child information and school
22 safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating that any of the
23 following has occurred:

24 (i) the death of the child as a result of child abuse or neglect;

25 (ii) a sexual offense, as defined in 46-23-502, against the child;

26 (iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502; or

27 (iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances
28 constituting the criminal manufacture or distribution of dangerous drugs.

29 (c) (i) The department shall promptly disclose the results of an investigation to an individual described
30 in subsection (5)(a) or to a county interdisciplinary child information and school safety team established pursuant

1 to 52-2-211 upon the determination that:

2 (A) there is reasonable cause to suspect that a child has been exposed to a Schedule I or Schedule II
3 drug whose manufacture, sale, or possession is prohibited under state law; or

4 (B) a child has been exposed to drug paraphernalia used for the manufacture, sale, or possession of
5 a Schedule I or Schedule II drug that is prohibited by state law.

6 (ii) For the purposes of this subsection (5)(c), exposure occurs when a child is caused or permitted to
7 inhale, have contact with, or ingest a Schedule I or Schedule II drug that is prohibited by state law or have contact
8 with drug paraphernalia as defined in 45-10-101.

9 (6) A school or school district may disclose, without consent, personally identifiable information from the
10 education records of a pupil to the department, the court, a review board, and the child's assigned attorney,
11 guardian ad litem, or special advocate.

12 (7) Information that identifies a person as a participant in or recipient of substance abuse treatment
13 services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent
14 provisions of the law.

15 (8) The confidentiality provisions of this section must be construed to allow a court of this state to share
16 information with other courts of this state or of another state when necessary to expedite the interstate placement
17 of children.

18 (9) A person who is authorized to receive records under this section shall maintain the confidentiality of
19 the records and may not disclose information in the records to anyone other than the persons described in
20 subsections (3)(a) and (5). However, this subsection may not be construed to compel a family member to keep
21 the proceedings confidential.

22 (10) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting
23 facts or statements made by an immediate family member under subsection (9) if the news organization,
24 employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

25 (11) This section is not intended to affect the confidentiality of criminal court records, records of law
26 enforcement agencies, or medical records covered by state or federal disclosure limitations.

27 (12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this
28 section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or
29 guardian's attorney must be provided without cost. (Bracketed language in subsection (3)(m) terminates
30 September 30, 2021--sec. 12, Ch. 235, L. 2017.)"

1

2 **Section 6.** Section 50-50-102, MCA, is amended to read:

3 **"50-50-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
4 apply:

5 (1) "Consumer" means a person who is a member of the public, takes possession of food, and does not
6 offer the food for resale.

7 (2) "Contract cook" means a person who specializes in a home food service and prepares food in an
8 individual's domestic residence only for members of that household and house guests.

9 (3) "Cottage food operation" means a person who provides, manufactures, or packages cottage food
10 products only in a kitchen in a registered area of a domestic residence and only for direct sale to a consumer in
11 this state.

12 (4) "Cottage food products" means foods that are not potentially hazardous and are processed or
13 packaged in a cottage food operation, including jams, jellies, dried fruit, dry mixes, and baked goods. Other
14 similar foods that are not potentially hazardous may be defined by the department by rule.

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

16 (6) "Direct sale" means a face-to-face purchase or exchange of the cottage food product between the
17 manufacturer or packager of a cottage food product and a consumer or individual purchasing the cottage food
18 product as a gift. The direct sale may not be by consignment or involve shipping or internet sales.

19 (7) "Domestic residence" means a single-family house or a unit in a multiunit residential structure,
20 whether rented, leased, or owned by the person in charge of the cottage food operation.

21 (8) "Farmer's market" means a farm premises, a food stand owned and operated by a farmer, or an
22 organized market authorized by the appropriate municipal or county authority under 7-21-3301.

23 (9) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for
24 human consumption.

25 (10) "Local board of health" means a county, city, city-county, or district board of health.

26 (11) "Local health officer" means a county, city, city-county, or district health officer, appointed by the local
27 board of health, or the health officer's authorized representative.

28 (12) "Meat market" means an operation and buildings or structures in connection with the meat market
29 that are used to process, store, or display meat or meat products for retail sale to the public or for human
30 consumption.

1 (13) (a) "Mobile food establishment" means a retail food establishment that serves or sells food from a
2 motor vehicle, a nonmotorized cart, a boat, or other movable vehicle that periodically or continuously changes
3 location and requires a servicing area to accommodate the unit for cleaning, inspection, and maintenance.

4 (b) The term does not include:

5 (i) a motor vehicle used solely to transport or deliver food by a motorized carrier regulated by the state
6 or the federal government;

7 (ii) a cottage food operation transport vehicle; or

8 (iii) a concession stand designed to operate as a temporary food establishment.

9 (14) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26
10 U.S.C. 501.

11 (15) "Person" means an individual, a partnership, a corporation, an association, a cooperative group, the
12 state or a political subdivision of the state, or other entity.

13 (16) "Potentially hazardous food" means food that requires time and temperature control for safety to limit
14 toxin formation or the growth of pathogenic microorganisms.

15 (17) (a) "Raw agricultural commodity" means any food in its raw, unaltered state, including fruits,
16 vegetables, raw honey, and grains. A raw agricultural commodity may be in a container if putting the commodity
17 in a container does not alter the raw state.

18 (b) The term does not include an agricultural commodity that has been altered by being:

19 ~~(a)~~(i) cooked;

20 ~~(b)~~(ii) canned;

21 ~~(c)~~(iii) preserved, except for drying;

22 ~~(d)~~(iv) combined with other food products; or

23 ~~(e)~~(v) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

24 (18) "Registered area" means the portion of a domestic residence that has been registered as provided
25 in 50-50-117 and in which food ingredients intended for cottage food products are transported or stored or the
26 domestic residence kitchen where cottage food products are processed, packaged, or stored.

27 (19) "Regulatory authority" means the department, the local board of health, the local health officer, or
28 the local sanitarian.

29 (20) "Retail" means the provision of food directly to the consumer.

30 (21) (a) "Retail food establishment" means an operation, whether mobile or at a temporary or stationary

1 facility or location, that meets one or more of the conditions in subsections (21)(a)(i) and (21)(a)(ii) and that may
2 include a central processing facility that supplies a transportation vehicle or a vending location or satellite feeding
3 location. A retail food establishment:

4 (i) stores, processes, packages, serves, or vends food directly to the consumer or otherwise provides
5 food for human consumption at a venue that may include:

6 (A) a restaurant;

7 (B) a market;

8 (C) a satellite or catered feeding location;

9 (D) a catering operation if the catering operation provides food directly to a consumer or to a conveyance
10 used to transport people;

11 (E) a vending location;

12 (F) a conveyance used to transport people;

13 (G) an institution; or

14 (H) a food bank; and

15 (ii) relinquishes possession of food to a consumer directly or indirectly by using either a delivery service,
16 as is done for grocery or restaurant orders, or a common carrier that provides deliveries.

17 (b) The term is not dependent on whether consumption is on or off the premises or whether there is a
18 charge for food served to the public.

19 (c) The term does not include:

20 (i) milk producers' facilities, milk pasteurization facilities, or milk product manufacturing plants;

21 (ii) slaughterhouses, meat packing plants, or meat depots;

22 (iii) growers or harvesters of raw agricultural commodities;

23 (iv) a cottage food operation;

24 (v) a person that sells or serves only commercially prepackaged foods that are not potentially hazardous;

25 (vi) a food stand that offers raw agricultural commodities;

26 (vii) a wholesale food establishment, including those wholesale food establishments that are located on
27 the same premises as a retail food establishment;

28 (viii) a kitchen in a domestic residence used for preparing food to sell or serve at a function by a nonprofit
29 organization as provided in subsection (21)(c)(xiii);

30 (ix) custom meat and game animal processors that receive from an owner the remains of a carcass and

1 process those remains for delivery to the owner for the exclusive use in the owner's household by the owner or
2 members of the owner's household, including the owner's family pets, or of the owner's nonpaying guests or
3 employees. For this exemption to apply, the carcass must be kept separate from other meat food products and
4 parts that are to be prepared for sale.

5 (x) private, religious, fraternal, youth, patriotic, or civic organizations that serve or sell food to the public
6 over no more than 4 days in a 12-month period;

7 (xi) a private organization that serves food only to its members and their guests;

8 (xii) a bed and breakfast, a hotel, a motel, a roominghouse, a guest ranch, an outfitting and guide facility,
9 a boardinghouse, or a tourist home as defined in 50-51-102 that serves food only to registered guests and day
10 visitors;

11 (xiii) a nonprofit organization that operates a temporary food establishment under a permit as provided
12 in 50-50-120;

13 (xiv) persons who sell or serve at a farmer's market or a food stand whole shell eggs, hot coffee, hot tea,
14 or other food not meeting the definition of potentially hazardous, as authorized by the appropriate municipal or
15 county authority;

16 (xv) ~~a day-care center person licensed under 52-2-721(1)(a) or day-care providers who are not subject~~
17 ~~to licensure under 52-2-721(1)(a) to provide child care;~~

18 (xvi) a private domestic residence that receives catered or home-delivered food;

19 (xvii) a contract cook; or

20 (xviii) a provider of free samples to the public as a marketing activity if the provider is a licensed
21 wholesale food establishment, a cottage food operation, or a seller at a farmer's market.

22 (22) "Temporary food establishment" means a retail food establishment that in a licensing year either:

23 (a) operates at a fixed location for no more than 21 days in conjunction with a single event or celebration;

24 or

25 (b) uses a fixed menu and operates within a single county at a recurring event or celebration for no more
26 than 45 days.

27 (23) (a) "Water hauler" means a person engaged in the business of transporting water for human
28 consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter
29 6.

30 (b) The term does not include a person engaged in the business of transporting water for human

1 consumption that is used for individual family households and family farms and ranches."

2

3 **Section 7.** Section 52-2-702, MCA, is amended to read:

4 **"52-2-702. Purpose -- findings.** (1) The purpose of this part is to ~~assure~~ ensure that children requiring
5 day child care be provided ~~such~~ food, shelter, security and safety, guidance and direction, nurture and comfort,
6 and learning experiences commensurate to their ages and capabilities ~~so as~~ to safeguard the growth and
7 development of ~~such~~ the children, ~~thereby facilitating~~ and to facilitate their proper physical, ~~and emotional~~
8 maturation social, emotional, and cognitive development.

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

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

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

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

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

20 (ii) promoting the availability and diversity of quality child-care services for all children and families that
21 need ~~such~~ the services;

22 (iii) providing assistance to families whose financial resources are not sufficient to enable them to pay
23 the full costs of necessary quality child-care services;

24 (iv) ensuring that parents are not forced by lack of available programs or financial resources to place a
25 child in an unsafe or unhealthy child-care facility; and

26 (v) ~~assisting people in finding and maintaining~~ helping people maintain employment by ~~lessening~~
27 reducing the stress related to the lack of ~~adequate~~ quality child care."

28

29 **Section 8.** Section 52-2-703, MCA, is amended to read:

30 **"52-2-703. Definitions.** In this part, the following definitions apply:

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

4 (2) ~~"Day care" or "child care"~~ "Child care" or "day care" means care for children provided by an adult,
 5 other than a parent of the children or other person living with the children as a parent, ~~on a regular or irregular~~
 6 ~~basis, as applicable, for daily periods of less than 24 hours,~~ whether that care is for daytime or nighttime hours.

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

9 (b) The term does not include a place where ~~day~~ child care is provided if a parent of a child for whom
 10 ~~day~~ child care is provided remains on the premises, unless the parent is an employee of the day-care center.

11 (4) (a) "Day-care facility" means a person, association, or place, incorporated or unincorporated, that
 12 provides day ~~licensed to provide child~~ care on a regular basis or a place licensed or registered to provide day care
 13 ~~on an irregular basis, as provided for in subsection (3)(a), or for children suffering from illness. The term includes~~
 14 ~~a family day-care home, a day-care center, a group day-care home, or a facility providing care in a child's home~~
 15 ~~for the purpose of meeting registration requirements for the receipt of payments as provided in 52-2-713. at a:~~

16 (i) day-care center;

17 (ii) drop-in day-care center;

18 (iii) group day-care home; or

19 (iv) family day-care home.

20 (b) The term does not include:

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

24 ~~—(b) any group facility established chiefly for educational purposes that limits its services to children who~~
 25 ~~are 3 years of age or older~~

26 (ii) a preschool; or

27 (iii) an individual who provides family, friend, and neighbor care.

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

29 (6) "Drop-in day-care center" means an out-of-home place in which child care is provided on an
 30 other-than-regular basis.

1 ~~(6)~~(7) "Family day-care home" means a private residence in which day child care is provided to ~~three~~
2 ~~to six or fewer~~ children on a regular basis.

3 (8) "Family, friend, and neighbor care" means child care provided by an individual who has been licensed
4 by the department to provide child care to two children of separate families or all of the children in a sibling group
5 for the sole purpose of receiving state payment.

6 ~~(7)~~(9) "Group day-care home" means a private residence or other structure in which day child care is
7 provided to 7 to 12 children on a regular basis.

8 ~~(8)~~(10) "License" means a written document issued by the department indicating that the license holder
9 has complied with this part and the applicable standards and rules for day-care ~~centers~~ facilities, preschools, or
10 family, friend, and neighbor care.

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

13 (12) "Preschool" means a place or facility that provides as its primary purpose educational instruction
14 designed for children 5 years of age or younger.

15 ~~(4)~~(13) "Professional training" means training for early childhood or school-age care providers that is
16 recognized as professional development by a state or national education or certification organization or by a
17 higher education institution.

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

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

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

27 (14) "Regular basis" means providing day child care to children of separate families ~~for any daily periods~~
28 ~~of less than 24 hours and within 3 or more consecutive weeks~~ at least 6 hours a day and 4 days a week.

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

1 (b) The term includes the status of a child described in subsection (15)(a) in a step or adoptive
2 relationship.

3 (16) "School age" means a person who is at least 5 years of age and who is younger than 13 years of
4 age or a person with special needs, as defined by the department, who is under 18 years of age or is 18 years
5 of age and a full-time student expected to complete an educational program by 19 years of age.

6 (17) "School-age care" means an adult-supervised program that is provided for school-age children
7 during nonschool hours."

8

9 **Section 9.** Section 52-2-704, MCA, is amended to read:

10 **"52-2-704. Duties of department.** (1) The department is responsible for planning, implementing, and
11 coordinating programs under the Montana Child Care Act.

12 (2) The department shall:

13 (a) assess child-care needs and resources within the state;

14 (b) develop a state child-care plan;

15 ~~(c) coordinate child-care programs administered by all state agencies;~~

16 ~~(d)(c) issue licenses to persons to receive children into a day-care center on a regular basis for day-care~~
17 ~~facilities, preschools, and family, friend, and neighbor care;~~

18 ~~(e)(d) prescribe the conditions and publish minimum standards upon which licenses and registration~~
19 ~~certificates are issued;~~

20 ~~(f)(e) adopt rules for day-care facilities, preschools, and family, friend, and neighbor care that are~~
21 ~~consistent with the purposes of this part; and~~

22 ~~(f) adopt rules for child-care providers that provide care only to school-age children.~~

23 ~~(g) adopt rules for day-care centers that provide day care on an irregular basis, which includes~~
24 ~~exceptions regarding requirements for immunization records and staffing ratios; and~~

25 ~~————(h) issue registration certificates to a person or persons to receive children into a family day-care home~~
26 ~~or group day-care home on a regular basis.~~

27 (3) The department may:

28 (a) enter into interagency agreements to administer and coordinate child-care programs;

29 (b) accept any federal funds made available for the improvement or promotion of child-care services
30 within the state;

1 (c) administer any state and federal funds that may be appropriated for the purposes of the part; and
 2 ~~(d) issue a license to a person to receive children into a day-care center on an irregular basis if the~~
 3 ~~person chooses to apply for licensure.~~

4 (d) adopt rules related to facility standards for preschools that opt to be licensed under this part. The
 5 rules for preschools operated by school districts may not conflict with rules adopted by the board of public
 6 education or with other accreditation standards established for those preschools."

7
 8 **Section 10.** Section 52-2-711, MCA, is amended to read:

9 **"52-2-711. Resource and referral and ~~day-care~~ child-care improvement grant program.** (1) (a)
 10 There is a grant program established within the department for the allocation of grant money to ~~local~~ regional
 11 child-care resource and referral programs and for improving the availability of quality child care ~~and school-age~~
 12 day-care programs.

13 (b) Program funds may include money from the following sources:

- 14 (i) funds specifically appropriated by the legislature for use under this section;
 15 (ii) private gifts, grants, and donations;
 16 (iii) federal or foundation grants awarded to the state for the purposes of this section; and
 17 (iv) any other money made available for the purposes of this section.

18 (2) (a) The department may award grants to private, nonprofit organizations and public organizations
 19 that demonstrate the ability to provide child-care resource and referral services.

20 (b) To be eligible for a grant from the department as a regional resource and referral agency ~~for a local~~
 21 ~~area~~, an organization:

22 (i) shall work with the department to maintain a database of child-care services in the ~~community,~~
 23 ~~including day-care facilities and preschools, which the organization continually updates~~ region;

24 (ii) shall ~~include on the staff of the organization~~ employ at least one individual who has expertise in child
 25 development;

26 (iii) must have the capability to provide resource and referral services in the ~~local area~~ region;

27 (iv) must be able to respond to requests for information or assistance in a timely fashion;

28 (v) must be committed to providing services to all segments of the general public;

29 (vi) must be able to provide parents with a checklist to identify quality child-care services;

30 (vii) must be able to provide information on the availability of child-care subsidies;

1 (viii) shall work with the department to maintain and make available to the public the number of all
2 referrals made by the resource and referral agency; and

3 (ix) shall otherwise satisfy regulations promulgated by the department pursuant to this part.

4 (3) ~~(a)~~ The department may award grants for improving the availability of quality child care ~~and~~
5 ~~school-age day care~~ and for consumer education.

6 ~~(b) The following grant applications must be given priority:~~

7 ~~—— (i) grant applications for professional training for day-care or school-age care providers;~~

8 ~~—— (ii) grant applications for the startup of school-age care programs or facilities when a community need~~
9 ~~has been demonstrated;~~

10 ~~—— (iii) grant applications for consumer education; and~~

11 ~~—— (iv) grant applications for preservation or expansion of existing care programs that fill a demonstrated~~
12 ~~need.~~

13 (4) The department shall adopt rules to administer the provisions of this section."
14

15 **Section 11.** Section 52-2-713, MCA, is amended to read:

16 **"52-2-713. Payments for eligible children.** The department shall pay a rate established by the
17 department and appropriated by the legislature to ~~a day-care~~ an individual or facility licensed ~~or registered~~ by the
18 department for each child receiving ~~day-care service~~ child-care services and ~~certified~~ considered eligible by the
19 department to receive ~~day-care~~ child-care services."
20

21 **Section 12.** Section 52-2-721, MCA, is amended to read:

22 **~~"52-2-721. License required -- registration required --~~ Required and elective licenses -- term of**
23 **~~license or registration certificate -- no fee charged.~~ (1) A person, group of persons, or corporation may not:**

24 ~~—— (a) establish or maintain a day-care center~~ facility for children, ~~in which day care is provided on a regular~~
25 ~~basis,~~ unless licensed to do so by the department;

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

28 (2) A preschool or an individual providing family, friend, and neighbor care must obtain a license from
29 the department only if the preschool or individual applies for payments pursuant to 52-2-713.

30 ~~(2)(3) The license and registration certificate~~ Licenses issued under this part must contain the ages and

1 numbers of children for whom ~~day~~ child care may be provided.

2 ~~(3)(4)~~ The applicant's own children must be included in the manner provided for in department
3 ~~regulations~~ rules in the total number of children to be cared for under the license ~~or registration certificate~~.

4 ~~(4)(5)~~ The department:

5 (a) may issue a license ~~or registration certificate~~ that remains in effect for a period not to exceed ~~3 years~~
6 1 year; and

7 (b) may not charge a fee to issue a license ~~or registration certificate~~.

8 ~~(5) A 3-year license may be issued only to a provider who has not received notice of any deficiencies~~
9 ~~on the licensing criteria and implementing guidelines that are provided in department rule.~~

10 ~~———(6) The department may issue a license to a day-care center in which day care is provided on an~~
11 ~~irregular basis if the person operating the center chooses to apply for licensure."~~

12

13 **Section 13.** Section 52-2-722, MCA, is amended to read:

14 **"52-2-722. Application for a license ~~or registration certificate~~.** (1) Application for a license ~~or~~
15 ~~registration certificate shall~~ must be made to the department in the county in which the applicant lives ~~on forms~~
16 in a form prescribed by the department.

17 ~~(2) Applications for a license or registration certificate by Indians residing on Indian reservations shall~~
18 ~~be made through the tribal governing body on forms prescribed by the department. Applications made through~~
19 ~~a tribal governing body shall be accompanied by a request by the tribal governing body that the department~~
20 ~~investigate to determine whether a license or registration certificate should be granted.~~

21 (2) An applicant residing within the boundaries of an Indian reservation may:

22 (a) directly submit an application to the department for licensure; or

23 (b) submit an application to the tribal governing body for consultation with the department to determine
24 the manner in which a state license may be granted.

25 ~~(3) Within~~ The department shall make a licensing determination within 30 days of receipt of the a license
26 application, the department shall determine whether a license or registration certificate should be issued."

27

28 **Section 14.** Section 52-2-723, MCA, is amended to read:

29 **"52-2-723. Requirements for licensure.** (1) An applicant for licensure, the applicant's employees, and
30 all persons who will come in direct contact with the children must have satisfactorily passed a background check

1 as required by the department by rule, including a fingerprint and background check by the department of justice
 2 and the federal bureau of investigation.

3 ~~(1)~~(2) The department shall include the following requirements in the minimum standards for ~~day-care~~
 4 ~~centers~~ the following requirements: day-care facilities and preschools:

5 ~~(a) The applicant, the applicant's employees, and all those persons who will come in direct contact with~~
 6 ~~the children are of good character.~~

7 (a) The applicant must participate in a preservice inspection.

8 (b) The staff of the day-care facility is sufficient in number as provided by rule to provide adequate
 9 supervision and care of the children in the facility.

10 (c) Essential programs and practices carried on out by the facility staff are must be developed and
 11 carried out with due regard for the protection of the health, safety, development, and well-being of the children.

12 (d) Applicant and staff are qualified by practical experience or education or training to give good care
 13 and treatment developmentally appropriate care to the children.

14 (e) Intake records are kept on each child admitted for care.

15 (f) The applicant and staff limit admissions to the maximum number indicated on the current license.

16 (g) The applicant will arrange for the necessary precautions to guard against communicable diseases.

17 (h) ~~Public liability~~ Liability insurance and fire insurance are currently in force for the protection of the
 18 operator, the staff, and the facility.

19 (i) The ages and numbers of children that may be cared for in a day-care facility are specified.

20 ~~(2)~~(3) It is the duty of the department or its authorized representative to assist applicants in meeting the
 21 minimum requirements."

22

23 **Section 15.** Section 52-2-724, MCA, is amended to read:

24 **"52-2-724. Provisional license -- ~~provisional registration certificate.~~** (1) The department may issue
 25 a provisional license ~~or provisional registration certificate~~ for a period which may not to exceed 6 months if it finds
 26 that a day-care facility, preschool, or provider of family, friend, and neighbor care or an applicant for licensure
 27 does not meet all standards established by the department, as long as the facility, preschool, or provider of family,
 28 friend, and neighbor care or the applicant is attempting to meet the minimum standards.

29 (2) The department may not waive the requirement that a day-care center be certified under the
 30 provisions of 52-2-734 and 52-2-735.

1 (3) The department may not waive the requirement that a day-care facility have current ~~and adequate~~
2 ~~public~~ liability insurance and fire insurance."

3

4 **Section 16.** Section 52-2-725, MCA, is amended to read:

5 **"52-2-725. Renewal license -- registration certificate.** ~~If a licensed or registered day-care facility~~
6 ~~desires to renew a license or registration certificate, the request for~~ A licensee must apply for license renewal
7 shall be made in writing, on forms prescribed by the department, in the county in which the applicant lives; at least
8 30 days prior to the expiration of its the facility's or provider's license or registration certificate."

9

10 **Section 17.** Section 52-2-726, MCA, is amended to read:

11 **"52-2-726. Denial, cancellation, reduction, revocation, and nonrenewal of licenses and**
12 **registration certificates -- fair hearing.** (1) The department, after written notice to the applicant; or licensee;
13 ~~or registrant;~~ may deny, suspend, cancel, reduce, modify, or revoke a license ~~or registration certificate~~ upon
14 finding that:

15 (a) any of the applicable conditions set forth in this part as prerequisites for the issuance of a license ~~or~~
16 ~~registration certificate~~ no longer exist;

17 (b) the licensee ~~or registrant~~ is no longer in compliance with the minimum standards prescribed by the
18 department; or

19 (c) the license ~~or registration certificate~~ was issued upon fraudulent or untrue representation.

20 (2) The applicant; or licensee; ~~or registrant~~ ~~by written request~~ may invoke the opportunity for hearing on
21 the department's action by requesting may request a hearing within 10 days of notice of department action. The
22 request must be made in writing. The hearing shall be conducted according to the department's rules."

23

24 **Section 18.** Section 52-2-731, MCA, is amended to read:

25 **"52-2-731. Standards for day child care.** In developing standards, the department shall seek the advice
26 and assistance of ~~the superintendent of public instruction, representatives of day-care facilities, specialists in child~~
27 ~~care, and representatives of parent groups who use the services of day-care facilities~~ child-care advisory groups
28 and stakeholders. The standards may pertain to:

29 (1) character, suitability, and qualifications of an applicant and other persons directly responsible for the
30 care of children;

- 1 (2) the number of individuals or staff required for adequate supervision and care of children in day-care
- 2 facilities;
- 3 (3) child-care programs and practices necessary to ensure the health, safety, safety in transportation,
- 4 development, and well-being of children;
- 5 (4) adequate and appropriate admission policies;
- 6 (5) adequacy of physical facilities and equipment;
- 7 (6) general financial ability and competence of an applicant to provide necessary care for children and
- 8 maintain prescribed standards; and
- 9 (7) the ages and numbers of children that may be cared for in a day-care facility."

10
11 **Section 19.** Section 52-2-732, MCA, is amended to read:

12 **"52-2-732. Licensees or registrants to maintain records, furnish reports, and permit inspections.**

13 ~~It shall be the duty of every applicant for a license or for registration and every licensee or registrant to~~ Persons
14 licensed or applying for a license under this part shall:

- 15 (1) give the right of entrance to and inspection of premises to representatives of the department at
- 16 reasonable times;~~to;~~
- 17 (2) keep and maintain such records as required by the department ~~may prescribe, to permit inspection~~
18 ~~of these~~ and permit the department to inspect the records, and to; and
- 19 (3) report to the department ~~such facts~~ information as ~~may be~~ required on forms furnished by the
20 department."

21
22 **Section 20.** Section 52-2-733, MCA, is amended to read:

23 **"52-2-733. Periodic visits to facilities by department -- investigations -- consultation with**

24 **licensees and registrants.** (1) The department or its authorized representative shall make periodic visits to all
25 ~~licensed day-care centers~~ licensees to ensure that minimum standards are maintained.

26 (2) The department may investigate and inspect the conditions and qualifications of any ~~day-care center,~~
27 ~~group day-care home, or family day-care home seeking or holding a license or registration certificate under the~~
28 ~~provisions of~~ licensee or applicant for a license to provide child care under this part.

29 (3) The department shall ~~visit and inspect at least 20% of all registered family day-care homes and group~~
30 ~~day-care homes in each of the governor's planning regions annually~~ conduct:

- 1 (a) annual unannounced inspections of all licensed child-care facilities and licensed preschools; and
 2 (b) annual announced inspections of licensed providers of family, friend, and neighbor care.
 3 ~~(4) (a) Subject to subsection (4)(b), the department shall make annual unannounced visits to day-care~~
 4 ~~centers that are licensed on an annual basis.~~
 5 ~~(b) The department may make annual unannounced visits to day-care centers that have been granted~~
 6 ~~2-year or 3-year licenses under 52-2-721 or that have successfully passed inspections for 10 consecutive years.~~
 7 ~~(5)(4)~~ Upon request of the department, the state fire prevention and investigation section of the
 8 department of justice shall inspect any day-care facility for which a license ~~or registration certificate~~ is applied for
 9 or issued and shall report its findings to the department.
 10 ~~(6)(5)~~ Upon request, the department shall ~~give consultation to every~~ consult with a licensee and
 11 ~~registrant~~ who desires to upgrade the services of the licensee's ~~or registrant's~~ program.
 12 ~~(7) This section may not be construed to require the department to conduct an inspection of each~~
 13 ~~day-care facility applying for a registration certificate under the provisions of this part."~~

- 14
 15 **Section 21.** Section 52-2-736, MCA, is amended to read:
 16 **"52-2-736. Prohibition against administering medicine without authorization -- provision for**
 17 **emergency -- definitions -- penalty.** (1) An employee, owner, household member, volunteer, or operator of a
 18 day-care facility, ~~as defined in 52-2-703, regardless of whether the facility is licensed or registered,~~ a preschool,
 19 or family, friend, and neighbor care may not purposely or knowingly administer any medicine, as defined in
 20 37-7-101, to a child attending the day-care facility, preschool, or family, friend, and neighbor care without written
 21 authorization. Written authorization must include the child's name, date or dates for which the authorization is
 22 applicable, dosage instructions, and signature of the child's parent or guardian.
 23 (2) If an emergency medical condition arises and the parent or guardian of the child is unavailable, an
 24 employee, owner, or operator ~~of a day-care facility~~ may administer medicine to a child attending ~~the~~ a day-care
 25 facility, preschool, or family, friend, and neighbor care without the written authorization of a parent or guardian
 26 as provided in subsection (1) if:
 27 (a) a medical practitioner provides a written authorization containing the child's name, date or dates for
 28 which the authorization is applicable, dosage instructions, and the medical practitioner's signature; or
 29 (b) a medical practitioner, emergency services provider, or 9-1-1 responder verbally directs the
 30 employee, owner, or operator ~~of the day-care facility attending the child~~ to immediately administer a medicine to

1 the child and the child is subsequently transported within a reasonable time by the child's parents, ~~an~~ the owner,
2 operator, or employee ~~of the child-care facility~~, a health care provider, or an emergency services provider to a
3 health care facility or a medical practitioner for followup care.

4 (3) A medicine administered to a child pursuant to subsection (1) or (2) may not be inappropriately
5 administered.

6 (4) An employee, owner, or operator ~~of a day-care facility~~ who has administered medicine to a child in
7 accordance with this section may not be prosecuted for causing bodily injury or severe bodily injury to a child.

8 (5) For the purposes of this section:

9 (a) "bodily injury" has the meaning provided in 45-2-101;

10 (b) "emergency medical condition" means circumstances in which a prudent lay person acting
11 reasonably would believe that an emergency medical condition exists;

12 (c) "emergency services provider" has the meaning provided in 50-16-701;

13 (d) "health care facility" means a profit or nonprofit, public or private physician's office, hospital, critical
14 access hospital, infirmary, clinic, outpatient center for primary care, outpatient center for surgical services, or
15 medical assistance facility, as any of those terms are defined in 50-5-101;

16 (e) "inappropriately administered" means to give medicine to a child that is not indicated, as to the
17 medicine's type, dosage, or frequency of use or the container instructions, if any, by the medical symptoms
18 exhibited by the child;

19 (f) "knowingly" has the meaning provided in 45-2-101;

20 (g) "medical practitioner" has the meaning provided in 37-2-101;

21 (h) "9-1-1 responder" means a law enforcement dispatcher or other person answering a 9-1-1 telephone
22 call, a person answering a telephone call made to a poison control center, or an emergency services provider;

23 (i) "purposely" has the meaning provided in 45-2-101; and

24 (j) "serious bodily injury" has the meaning provided in 45-2-101.

25 ~~(4)(6)~~ (a) A person convicted of purposely or knowingly administering medicine without authorization
26 resulting in bodily injury to a child shall be imprisoned in the county jail for a term not to exceed 6 months or be
27 fined an amount not to exceed \$500, or both.

28 (b) A person convicted of purposely or knowingly administering medicine without authorization resulting
29 in serious bodily injury to a child or in the death of a child shall be imprisoned for a term not to exceed 20 years
30 or be fined an amount not to exceed \$50,000, or both."

1

2 **Section 22.** Section 52-2-741, MCA, is amended to read:

3 **"52-2-741. Penalty -- remedies.** (1) A person, group of persons, or corporation who establishes or
4 maintains a day-care facility or assists in conducting or maintaining a day-care facility without first obtaining a
5 license ~~or registration certificate~~ from the department as provided for in this part is guilty of a misdemeanor and
6 upon conviction is punishable by a fine not to exceed \$500.

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

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

15 (c) The department may, by its own attorney, any county attorney, or the attorney general, initiate an
16 action in the justice's court, city court, municipal court, or district court of the appropriate jurisdiction and be
17 represented by that representative on appeal to the district court and supreme court of Montana, as applicable."

18

19 **Section 23.** Section 76-2-412, MCA, is amended to read:

20 **"76-2-412. Relationship of foster homes, kinship foster homes, youth shelter care facilities, youth**
21 **group homes, community residential facilities, and day-care homes to zoning.** (1) A foster home, kinship
22 foster home, youth shelter care facility, or youth group home operated under the provisions of 52-2-621 through
23 52-2-623 or a community residential facility serving eight or fewer persons is considered a residential use of
24 property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

25 (2) A family day-care home or a group day-care home ~~registered~~ licensed by the department of public
26 health and human services under Title 52, chapter 2, part 7, is considered a residential use of property for
27 purposes of zoning.

28 (3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including
29 but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department
30 of public health and human services or any other agency of the state or a political subdivision of the state that

1 is not applicable to residential occupancies in general may not be applied to a community residential facility
2 serving 8 or fewer persons or to a day-care home serving 12 or fewer children.

3 (4) This section may not be construed to prohibit a city or county from requiring a conditional use permit
4 in order to maintain a home pursuant to the provisions of subsection (1) if the home is licensed by the department
5 of public health and human services. A city or county may not require a conditional use permit in order to maintain
6 a day-care home ~~registered~~ licensed by the department of public health and human services."

7
8 **NEW SECTION. Section 24. Notification to tribal governments.** The secretary of state shall send
9 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
10 Chippewa tribe.

11 - END -