

1 HOUSE BILL NO. 575

2 INTRODUCED BY T. MANZELLA

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING IMMUNIZATION REQUIREMENTS
5 RELATING TO DAY-CARE FACILITIES; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND
6 HUMAN SERVICES TO RECOMMEND IMMUNIZATIONS FOR EMPLOYERS AND CHILDREN AT DAY-CARE
7 FACILITIES; PROHIBITING THE DEPARTMENT FROM MANDATING EXCLUSION OF EMPLOYEES AND
8 CHILDREN FROM DAY-CARE FACILITIES BASED ON FAILURE TO OBTAIN RECOMMENDED
9 IMMUNIZATIONS; AMENDING SECTION 52-2-735, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
10 DATE AND AN APPLICABILITY DATE."
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12 WHEREAS, section 52-2-702, MCA, announces the Legislature's finding that "the availability of quality
13 child care is critical to the self-sufficiency and independence of Montana families, including the growing number
14 of mothers who have young children and who work out of economic necessity" and describes the purposes of
15 the Montana Child Care Act, including "promoting the availability and diversity of quality child-care services for
16 all children and families that need such services," "providing assistance to families whose financial resources are
17 not sufficient to enable them to pay the full costs of necessary child-care services," and "assisting people in
18 finding and maintaining employment by lessening the stress related to the lack of adequate child care"; and

19 WHEREAS, under the Montana Child Care Act, "day-care facility" is defined to include a family day-care
20 home, a day-care center, a group day-care home, or other facility licensed and registered to provide care for a
21 child under 13 years of age or a child with special needs who is under 18 years of age; and

22 WHEREAS, the Montana Child Care Act contains only one express immunization requirement, requiring
23 that children under 5 years of age be immunized against Haemophilus influenza type "b" unless an exemption
24 has been claimed pursuant to section 20-5-405, MCA; and

25 WHEREAS, the Legislature notes that the Department of Public Health and Human Services has
26 promulgated rules mandating certain immunizations for children attending day-care facilities at 37.95.140, ARM,
27 and employees, volunteers, and residents at licensed day-care facilities at 37.95.184, including at least 20
28 immunization doses between birth and 12 years of age for children; and

29 WHEREAS, the rules promulgated by the Department do not contain definitive language requiring the
30 recognition of a religious exemption for any immunization other than Haemophilus influenza type "b", and the

1 Department has directed day-care facilities to exclude children or employees claiming a religious exemption to
 2 required immunization other than Haemophilus influenza type "b"; and

3 WHEREAS, the Legislature finds that Article II, section 5, of the Constitution of the State of Montana
 4 states that the "state shall make no law respecting an establishment of religion or prohibiting the free exercise
 5 thereof"; and

6 WHEREAS, the Legislature finds that it is necessary to more clearly define and limit the scope of the
 7 Department's authority to make rules regarding immunizations in order to ensure that child care is open and
 8 accessible to any Montana child or employee, consistent with the intent of the Montana Child Care Act.

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

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12 **Section 1.** Section 52-2-735, MCA, is amended to read:

13 **"52-2-735. Health protection -- exemptions to rules regarding immunizations -- certification**
 14 **required.** (1) The department shall adopt rules for the protection of children in day-care centers from the health
 15 hazards of inadequate food preparation, poor nutrition, and communicable diseases.

16 (2) Rules The rules adopted by the department:

17 (a) must include rules requiring children under 5 years of age to be immunized against Haemophilus
 18 influenza type "b" before being admitted for care in the facility unless an exemption has been claimed as provided
 19 in 20-5-405; and

20 (b) may include rules recommending but not requiring immunizations in addition to the immunization
 21 against Haemophilus influenza type "b".

22 (3) The department may not mandate an immunization that is not expressly required under this section,
 23 and the department may not direct day-care facilities to deny enrollment in or employment at a day-care facility
 24 to an individual on the basis that the individual has not received a recommended immunization.

25 ~~(2)~~(4) Local public health authorities shall arrange to provide training to day-care center providers and
 26 employees regarding health hazards. Upon successful completion of the training the local public health authorities
 27 shall issue certificates to the providers and employees.

28 ~~(3)~~(5) In lieu of training, local public health authorities may elect to inspect facilities and issue certificates
 29 of approval to child-care center providers.

30 ~~(4)~~(6) Each applicant for a license to operate a day-care center shall submit to the department a

1 certificate issued pursuant to subsection ~~(2)~~(4) or ~~(3)~~(5) before the department will issue a license.

2 ~~(5)~~(7) The local public health authority may charge the applicant a reasonable fee, not to exceed \$25,
3 for any inspection necessary to issue a certificate of approval, or a fee not to exceed the documented cost for
4 training it provides under this section."

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6 NEW SECTION. **Section 2. Notification to day-care facilities.** The secretary of state shall send a copy
7 of [section 1] to each day-care facility licensed and registered with the state of Montana.

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9 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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11 NEW SECTION. **Section 4. Applicability.** [This act] applies to all children enrolled or seeking to enroll
12 in a day-care facility and all employees, volunteers, and residents at a day-care facility on or after [the effective
13 date of this act], regardless of whether the department has revised its rules relating to immunizations at day-care
14 facilities.

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