

SENATE BILL 1028

By Yarbro

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 50 and Title 56, relative to childcare
assistance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, is amended by adding SECTIONS 2
to 10 as a new chapter:

SECTION 2.

(a) This chapter is known and may be cited as the "Employee Child Care
Assistance Partnership Act."

(b) The general assembly finds and declares that the purpose of this chapter is
to support Tennessee families by incentivizing employers to contribute to the childcare
costs of its employees. In enacting this legislation, it is the intention of the general
assembly to enable the department to facilitate this public and private partnership pilot
program and administer program funds to achieve this purpose.

SECTION 3. As used in this chapter:

(1) "Childcare provider" means a provider licensed by the department under title
71, chapter 3, part 5;

(2) "Contribution" means a direct payment to a childcare provider either directly
by an employer or through a third-party vendor to subsidize an employee's eligible
childcare costs;

(3) "Department" means the department of human resources;

(4) "Eligible childcare costs" means costs to be incurred by an individual for
services rendered by an eligible childcare provider;

(5) "Employee" means an individual who works in this state and is employed by an employer;

(6) "Employer" means a nonprofit or for-profit entity with at least one (1) employee who works or has worked in this state for twenty (20) or more calendar weeks in the current or preceding calendar year;

(7) "Fund" means the fund created and administered by the department under Section 6;

(8) "Program" means the Employee Child Care Assistance Partnership program;

(9) "Small business" means a business with fewer than fifty (50) employees who are individually contracted to work more than thirty-five (35) hours per week;

(10) "State match" means the money paid directly to a childcare provider by the department from the fund; and

(11) "State median household income" means the most recent estimate available of real median household income for this state, as determined by the 2020 federal census or any subsequent federal census, adjusted for family size.

SECTION 4.

(a) The program is hereby established under the department. To administer the program, the department may:

(1) Delegate authority to a subsidiary department;

(2) Coordinate and share information with other executive branch agencies; and

(3) Enter into contracts with third parties to administer the program or specific parts of the program.

(b) The department shall:

(1) Create and make available a standardized contract for participation in the program;

(2) Process the contract between an employer, employee, and childcare provider that is submitted to the department;

(3) Notify the parties of their enrollment status in the program;

(4) Manage and administer the program funds;

(5) Secure third-party vendors in accordance with all applicable federal and state procurement regulations, if deemed necessary;

(6) Verify the eligibility of the respective employee, employer, and childcare provider as parties to a contract for participation in the program prior to disbursement of a state match;

(7) Collect and verify household income information from eligible employees and determine the amount of the state match for which an employee is eligible; and

(8) Distribute educational materials about the program's objectives, benefits, and eligibility requirements to employers, employees, and childcare providers.

(c) The department shall review the completed contract after it is submitted by the employer and, if the employee, employer, and the proposed childcare provider meet program eligibility requirements, agree to match the contribution made by the employer up to one hundred percent (100%) of the cost of service from the fund.

(d) The department shall only become party to a proposed contract under this program if the fund reflects a positive balance based on both:

(1) The department's existing contractual obligations already accrued under this program; and

(2) The department's additional financial obligation imposed by the proposed contract.

(e) The department shall not agree to become party to a proposed contract pursuant to this program if the corresponding financial obligation would cause the fund to accrue a negative balance.

(f) The department shall maintain a waitlist of contracts submitted after available funds were committed. The department shall become party to a proposed contract from the waitlist as new funds become available and according to the order in which contracts are received.

(g) The department shall issue a state match directly to the childcare provider or through a third-party vendor for the duration of the contract.

(h) The department shall not disclose an employee's personal information without that individual's express written consent.

(i) In the first fiscal year of the program, the department shall administer the program according to the following:

(1) The department shall begin administering the program after July 1, 2023, including, but not limited to:

(A) Promulgating rules in accordance with Section 5; and

(B) Soliciting third-party vendor contracts, if deemed necessary;

(2) The department shall not begin accepting proposed contracts from employers pursuant to this program more than thirty (30) calendar days before July 1, 2023; and

(3) The department shall not disperse state matches from the fund as a party to a contract with an employer, employee, and childcare provider pursuant to this program prior to July 1, 2023.

(j) Beginning in 2024 and every year thereafter, the department shall begin accepting proposed contracts from employers, employees, and childcare providers for the next fiscal year according to the following:

(1) Thirty (30) calendar days before July 1st for employers with existing approved contracts pursuant to the program; and

(2) Forty-five (45) calendar days before July 1st for all other employers.

(k) Beginning in 2024 and every year thereafter, the department shall publish reports detailing the efficacy of the program by July 15th and December 15th of each year and shall submit the report to the speaker of the senate and the speaker of the house of representatives. The report must include at least the following information about the program:

(1) All appropriations made in the past fiscal year to the fund;

(2) The total number of standardized contracts submitted by employers;

(3) The total amount of state matches paid out of the fund by the department;

(4) The breakdown of the state matches paid by county;

(5) Information on the size, geographical location, and industry type of employers who participated in the program;

(6) The number, license type, quality rating, and geographical distribution of participating childcare providers;

(7) The average cost for services charged by childcare providers participating in the program and information on how these costs have increased or decreased during the most recent reporting period and previous reporting periods;

(8) The number and total dollar value of contracts not approved by the department; and

(9) The demographic information of employees participating in the program.

SECTION 5.

The department shall promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, including rules that:

(1) Create a standardized agreement for employers, employees, and providers wishing to participate in the program, to be completed and agreed to by each respective party that includes:

(A) Name, physical location, size, and industry of the employer;

(B) Name and phone number of the employer's point of contact;

(C) Name and physical location of the childcare provider;

(D) Name and phone number of the childcare provider's point of contact;

(E) Name and home address of the employee;

(F) Total contribution to be paid by the employer to the provider, either directly or through a third-party vendor;

(G) Total amount of the state match to be paid to the provider, either directly or through a third-party vendor;

(H) Duration of the contract, which must not last beyond the end of this state's fiscal year in a given year;

(I) Frequency of the contribution to be made directly to the childcare provider in accordance with the provider's established billing cycle; and

(J) Demographic information of the employee;

(2) Establish eligibility verification procedures for the following parties as a prerequisite for the department entering the agreement as a party and issuing a state match:

(A) Employer's enrollment in the program;

(B) Employee's eligibility; and

(C) Childcare provider's eligibility;

(3) Assist with collecting and verifying household income information from eligible employees and determining the amount of the state match for which the employee is eligible;

(4) Create procedures for issuing a notice to all parties to the agreement of their enrollment in the program upon receiving and processing the contract and determining eligibility;

(5) Compile confidentiality protocols for the department to safeguard the personal information of participating employees, employers, and childcare providers;

(6) Introduce reporting requirements for an employer or a childcare provider to report a lapse or nonpayment of contribution toward eligible childcare services;

(7) Create procedures for issuing and logging a state match to childcare providers pursuant to the respective contract;

(8) Maintain records of the fund in the fiscal year and all payments;

(9) Create criteria for participant disqualification from the program;

(10) Establish procedures for appeals hearings; and

(11) Establish procedures for recouping state matches or portions of state matches that result in overpayments to participating childcare providers.

SECTION 6.

(a) There is hereby established in the general fund of the state treasury a revolving account to be known as the Employee Child Care Assistance Partnership fund. The fund consists of moneys appropriated by the general assembly, contributions, gifts, or grants made available for the purposes of the program.

(b) The fund must be administered by the department or its designee.

(c) Moneys remaining in the fund at the close of the fiscal year do not revert to the general fund but must be carried forward to the next fiscal year.

(d) All interest earnings of the fund become a part of the fund and must not revert to the general fund.

(e) Moneys deposited in the fund are hereby appropriated for the purposes set forth in this chapter and must not be appropriated or transferred for another purpose.

(f) The department shall issue state matches out of the fund to childcare providers in accordance with the provisions of the respective contracts and in the order that the department processed the contracts.

(g)

(1) The state match must not exceed one hundred percent (100%) of the contribution made by the employer for contracts in which the employee's household income is equal to or less than one hundred percent (100%) of the state median household income.

(2) The state match must decrease by ten percent (10%) for each twenty percent (20%) increase in household income over one hundred percent (100%)

of the state median household income up to one hundred eighty percent (180%) of the state median household income.

(3) The state match must equal fifty percent (50%) for contracts in which the employee's household income exceeds one hundred eighty percent (180%) of the state median household income.

(h) In each fiscal year, twenty-five percent (25%) of the total fund must be distributed to agreements in which an employer is a small business.

(i) In fiscal year 2023-2024, five percent (5%) of the total fund must be distributed to the department to administer the program. In every fiscal year thereafter, three percent (3%) of the total fund must be distributed to the department to administer the program.

(j) A state match issued pursuant to this program and administered by the department is for the promotion of the general welfare and is not compensation for an employee's service.

SECTION 7.

(a) If an employer wishes to provide childcare assistance to an employee as a benefit of employment and participate in this program, the employer may enter into an agreement with its employee and a childcare provider using the standardized contract provided by the department.

(b) To participate in the program, an employer must:

- (1) Obtain the standardized contract created by the department and enter into it with the employee and childcare provider;
- (2) Submit the proposed contract to the department;
- (3) Submit all additional information as deemed necessary by the department; and

(4) Make contributions to the employee's eligible childcare costs directly to the childcare provider or through a third-party vendor in accordance with the amount and frequency agreed to in the final contract.

(c) To participate in the program, an employee shall complete the standardized contract with the employer and the childcare provider and provide all additional information as deemed necessary by the department.

(d) In the event that the agreement includes costs of service not covered by the employer's contribution and the state match, the employee shall make payments to the childcare provider according to the amount and frequency determined by the final contract. If another member of the employee's household or family becomes a party to an agreement in accordance with this chapter, then the employer contribution and state match under that agreement may be utilized to pay for costs of service not covered by the employer contribution and state match of the preceding agreement; provided, that it does not result in overpayment to the provider.

SECTION 8.

(a) Termination of an active contract between an employer, employee, childcare provider, and the department pursuant to this program must occur under the following circumstances:

(1) If the relationship between the employee and employer is severed, the employer shall notify the childcare provider and the department within three (3) business days of the separation, and the contract is terminated on the calendar date provided by the employer in the notification. If the employer fails to make this notification and the department issues a state match to the provider on behalf of that employer's employee, then the employer shall reimburse the department for the unnecessary state match; or

(2) If the employer fails to make a contribution for the eligible childcare costs in accordance to the terms of the contract, the childcare provider shall notify the department within five (5) business days. After receiving notification from the provider, the department shall temporarily cease providing a state match and shall notify the employer that the contract will be terminated unless the employer remedies the nonpayment within five (5) business days of receiving notification from the department. If the provider fails to make this notification and receives a state match from the department on behalf of that employer's employee, the provider shall reimburse the department for the unnecessary state match.

(b) Termination of an active contract between an employer, employee, childcare provider, and the department under the program may occur under the following circumstances:

(1) If the employee fails to pay the childcare provider for costs not covered by the employer contribution and the state match in accordance with the terms of the contract, the childcare provider may give the employee reasonable time to remedy the nonpayment. The childcare provider may notify the department and terminate the contract on the date that the notification was issued. If the childcare provider voluntarily excuses the employee's nonpayment or the childcare provider does not notify the department within two (2) calendar months from the date of the employee's nonpayment and continues to provide services, then the contract made between all the parties will automatically reflect the reduction in value;

(2) If the childcare provider ceases participation or otherwise loses its license, the provider shall notify all parties to the agreement immediately; and

(3) Either the employer or employee may terminate the contract at any time and for any reason. The terminating party shall notify all the parties to the contract and specify the desired termination date, which must not occur sooner than two (2) weeks from the date of notification unless the childcare provider gives its consent to an earlier termination date. All parties to the contract are financially obligated, according to the provisions of the contract, up to the termination date.

SECTION 9.

The departments of economic and community development and labor and workforce development may coordinate with the department to incorporate this program into agreements with employers seeking economic development incentives.

SECTION 10.

A person who intentionally submits false information to the department under this chapter in pursuit of benefits under this program is subject to a civil penalty of not more than five hundred dollars (\$500) per violation. All money collected as the result of penalties assessed under this chapter must be credited to the fund.

SECTION 11. For purposes of promulgating rules and carrying out administrative duties necessary to effectuate this act, this act takes effect upon becoming a law, the public welfare requiring it. This act takes effect on July 1, 2023, for all other purposes, the public welfare requiring it.