

1 SENATE BILL NO. 368

2 INTRODUCED BY T. MANZELLA

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING IMMUNIZATION LAWS RELATED TO
5 DAY-CARE FACILITIES; ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO
6 REQUIRE IMMUNIZATIONS FOR STATE AND FEDERALLY FUNDED DAY-CARE CENTERS; REQUIRING
7 THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO RECOGNIZE EXEMPTIONS TO
8 IMMUNIZATION REQUIREMENTS FOR MEDICAL REASONS AND RELIGIOUS AND PERSONAL BELIEFS;
9 ALLOWING FAMILY DAY-CARE HOMES, GROUP DAY-CARE HOMES, AND DAY-CARE CENTERS THAT
10 DO NOT RECEIVE STATE OR FEDERAL FUNDS FOR OPERATION TO DEVELOP THEIR OWN
11 COMMUNICABLE DISEASE STANDARDS AND IMMUNIZATION REQUIREMENTS; REQUIRING THESE
12 FACILITIES TO OFFER IMMUNIZATION EXEMPTIONS FOR MEDICAL REASONS OR RELIGIOUS OR
13 PERSONAL BELIEFS; PROHIBITING LOCAL BOARDS OF HEALTH FROM DEVELOPING IMMUNIZATION
14 REQUIREMENTS FOR DAY-CARE FACILITIES; PROVIDING RULEMAKING AUTHORITY; AMENDING
15 SECTIONS 7-1-111, 50-2-116, 52-2-704, 52-2-721, AND 52-2-735, MCA; AND PROVIDING EFFECTIVE
16 DATES AND A RETROACTIVE APPLICABILITY DATE."

17

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

19

20 **Section 1.** Section 7-1-111, MCA, is amended to read:

21 **"7-1-111. (Subsection (21) effective October 1, 2021) Powers denied.** A local government unit with
22 self-government powers is prohibited from exercising the following:

23 (1) any power that applies to or affects any private or civil relationship, except as an incident to the
24 exercise of an independent self-government power;

25 (2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to
26 those provisions, it may exercise any power of a public employer with regard to its employees;

27 (3) any power that applies to or affects the public school system, except that a local unit may impose
28 an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall

1 exercise any power that it is required by law to exercise regarding the public school system;

2 (4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public
3 convenience and necessity pursuant to Title 69, chapter 12;

4 (5) any power that establishes a rate or price otherwise determined by a state agency;

5 (6) any power that applies to or affects any determination of the department of environmental quality
6 with regard to any mining plan, permit, or contract;

7 (7) any power that applies to or affects any determination by the department of environmental quality
8 with regard to a certificate of compliance;

9 (8) any power that defines as an offense conduct made criminal by state statute, that defines an
10 offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6
11 months' imprisonment, or both, except as specifically authorized by statute;

12 (9) any power that applies to or affects the right to keep or bear arms;

13 (10) any power that applies to or affects a public employee's pension or retirement rights as
14 established by state law, except that a local government may establish additional pension or retirement
15 systems;

16 (11) any power that applies to or affects the standards of professional or occupational competence
17 established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

18 (12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title
19 75, chapter 7, part 1, or Title 87;

20 (13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is
21 intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title
22 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require
23 landlords to comply with ordinances or provisions that are applicable to all other businesses or residences
24 within the local government's jurisdiction.

25 (14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

26 (15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage,
27 distribution, use, or application of commercial fertilizers or soil amendments, except that a local government
28 may enter into a cooperative agreement with the department of agriculture concerning the use and application

1 of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local
2 government from adopting or implementing zoning regulations or fire codes governing the physical location or
3 siting of fertilizer manufacturing, storage, and sales facilities.

4 (16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing,
5 sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable
6 seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from
7 adopting or implementing zoning regulations or building codes governing the physical location or siting of
8 agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution
9 facilities.

10 (17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle,
11 including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired
12 official amateur radio station license and operator's license, "technician" or higher class, issued by the federal
13 communications commission of the United States;

14 (18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio
15 antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a
16 person who holds an unrevoked and unexpired official amateur radio station license and operator's license,
17 "technician" or higher class, issued by the federal communications commission of the United States;

18 (19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles,
19 load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a
20 highway that is under the jurisdiction of an entity other than the local government unit;

21 (20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in
22 relation to a wildfire;

23 (21) any power to prohibit completely adult-use providers, adult-use marijuana-infused products
24 providers, and adult-use dispensaries from being located within the jurisdiction of the local government except
25 as allowed in Title 16, chapter 12; or

26 (22) any power to set forth immunization requirements for day-care facilities."

27

28 **Section 2.** Section 50-2-116, MCA, is amended to read:

- 1 **"50-2-116. Powers and duties of local boards of health.** (1) In order to carry out the purposes of
2 the public health system, in collaboration with federal, state, and local partners, each local board of health shall:
- 3 (a) appoint and fix the salary of a local health officer who is:
- 4 (i) a physician;
- 5 (ii) a person with a master's degree in public health; or
- 6 (iii) a person with equivalent education and experience, as determined by the department;
- 7 (b) elect a presiding officer and other necessary officers;
- 8 (c) employ qualified staff;
- 9 (d) adopt bylaws to govern meetings;
- 10 (e) hold regular meetings at least quarterly and hold special meetings as necessary;
- 11 (f) identify, assess, prevent, and ameliorate conditions of public health importance through:
- 12 (i) epidemiological tracking and investigation;
- 13 (ii) screening and testing;
- 14 (iii) isolation and quarantine measures;
- 15 (iv) diagnosis, treatment, and case management;
- 16 (v) abatement of public health nuisances;
- 17 (vi) inspections;
- 18 (vii) collecting and maintaining health information;
- 19 (viii) education and training of health professionals; or
- 20 (ix) other public health measures as allowed by law;
- 21 (g) protect the public from the introduction and spread of communicable disease or other conditions of
22 public health importance, including through actions to ensure the removal of filth or other contaminants that
23 might cause disease or adversely affect public health;
- 24 (h) supervise or make inspections for conditions of public health importance and issue written orders
25 for compliance or for correction, destruction, or removal of the conditions;
- 26 (i) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation
27 of public health laws, rules, and local regulations;
- 28 (j) identify to the department an administrative liaison for public health. The liaison must be the local

1 health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a full-
2 time local health officer, the liaison must be the highest ranking public health professional employed by the
3 jurisdiction.

4 (k) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than
5 state standards for the control and disposal of sewage from private and public buildings and facilities that are
6 not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting
7 variances from the minimum requirements that are identical to standards promulgated by the board of
8 environmental review and must provide for appeal of variance decisions to the department as required by 75-5-
9 305. If the local board of health regulates or permits water well drilling, the regulations must prohibit the drilling
10 of a well if the well isolation zone, as defined in 76-4-102, encroaches onto adjacent private property without the
11 authorization of the private property owner.

12 (2) Local boards of health may:

13 (a) accept and spend funds received from a federal agency, the state, a school district, or other
14 persons or entities;

15 (b) adopt necessary fees to administer regulations for the control and disposal of sewage from private
16 and public buildings and facilities;

17 (c) adopt regulations that do not conflict with 50-50-126, section 6, or rules adopted by the
18 department:

19 (i) for the control of communicable diseases;

20 (ii) for the removal of filth that might cause disease or adversely affect public health;

21 (iii) subject to the provisions of 50-2-130, for sanitation in public and private buildings and facilities that
22 affects public health and for the maintenance of sewage treatment systems that do not discharge effluent
23 directly into state water and that are not required to have an operating permit as required by rules adopted
24 under 75-5-401;

25 (iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing
26 establishments and that are not less stringent than state standards for tattooing and body-piercing
27 establishments;

28 (v) for the establishment of institutional controls that have been selected or approved by the:

1 (A) United States environmental protection agency as part of a remedy for a facility under the federal
2 Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

3 (B) department of environmental quality as part of a remedy for a facility under the Montana
4 Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and

5 (vi) to implement the public health laws; and

6 (d) promote cooperation and formal collaborative agreements between the local board of health and
7 tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting,
8 information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters
9 addressed in this title.

10 (3) A local board of health may provide, implement, facilitate, or encourage other public health
11 services and functions as considered reasonable and necessary."

12

13 **Section 3.** Section 52-2-704, MCA, is amended to read:

14 **"52-2-704. Duties of department.** (1) The department is responsible for planning, implementing, and
15 coordinating programs under the Montana Child Care Act.

16 (2) The department shall:

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

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

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

20 (d) issue licenses to persons to receive children into a day-care center on a regular basis;

21 (e) prescribe the conditions and publish minimum standards upon which licenses and registration
22 certificates are issued consistent with the provisions of this part;

23 (f) adopt rules for day-care facilities consistent with the ~~purposes~~ provisions of this part;

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

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

28 (3) The department may:

- 1 (a) enter into interagency agreements to administer and coordinate child-care programs;
- 2 (b) accept any federal funds made available for the improvement or promotion of child-care services
- 3 within the state;
- 4 (c) administer any state and federal funds that may be appropriated for the purposes of the part; and
- 5 (d) issue a license to a person to receive children into a day-care center on an irregular basis if the
- 6 person chooses to apply for licensure."

7

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

9 **"52-2-721. License required -- registration required -- term of license or registration certificate -**

10 **- no fee charged.** (1) A person, group of persons, or corporation may not:

- 11 (a) establish or maintain a day-care center for children, in which day care is provided on a regular
- 12 basis, unless licensed to do so by the department;
- 13 (b) operate a family day-care home or group day-care home without first procuring a family day-care
- 14 or group day-care registration certificate from the department.

15 (2) The license and registration certificate must contain the ages and numbers of children for whom

16 day care may be provided.

17 (3) The applicant's own children must be included in the manner provided for in department

18 regulations in the total number of children to be cared for under the license or registration certificate.

19 (4) The department:

20 (a) may issue a license or registration certificate that remains in effect for a period not to exceed 3

21 years; ~~and~~

22 (b) may not charge a fee to issue a license or registration certificate; and

23 (c) may not deny a license or registration certificate solely on the basis that an applicant has provided

24 or intends to provide exemptions to immunization requirements as provided in 52-2-735.

25 (5) A 3-year license may be issued only to a provider who has not received notice of any deficiencies

26 on the licensing criteria and implementing guidelines that are provided in department rule.

27 (6) The department may issue a license to a day-care center in which day care is provided on an

28 irregular basis if the person operating the center chooses to apply for licensure."

1

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

3 **"52-2-735. Health protection -- certification required for day-care centers.** (1) ~~The~~ Except as
4 provided in subsection (2), the department shall adopt rules for the protection of children in day-care centers
5 from the health hazards of inadequate food preparation, poor nutrition, and communicable diseases. ~~Rules~~
6 ~~adopted by the department must include rules requiring children under 5 years of age to be immunized against~~
7 ~~Haemophilus influenza type "b" before being admitted for care in the facility unless an exemption has been~~
8 ~~claimed as provided in 20-5-405.~~

9 (2) (a) The department may not adopt rules requiring immunizations unless:

10 (i) the rules include a right to claim a medical exemption as provided in 20-5-405 or an exemption
11 based on sincerely held religious or personal beliefs on submission of an affidavit by an employee or parent or
12 guardian of a child for a required immunization; and

13 (ii) the rules are limited in application to day-care centers that receive state or federal funding for
14 operations.

15 (b) For the purposes of this section, payments for eligible children under 52-2-713 are not considered
16 to be state or federal funding for operations.

17 ~~(2)(3)~~ Local public health authorities shall arrange to provide training to day-care center providers and
18 employees regarding health hazards. Upon successful completion of the training the local public health
19 authorities shall issue certificates to the providers and employees.

20 ~~(3)(4)~~ In lieu of training, local public health authorities may elect to inspect facilities and issue
21 certificates of approval to ~~child-care~~ day-care center providers.

22 ~~(4)(5)~~ Each applicant for a license to operate a day-care center shall submit to the department a
23 certificate issued pursuant to subsection ~~(2) or (3)~~ (3) or (4) before the department will issue a license.

24 ~~(5)(6)~~ The local public health authority may charge the applicant a reasonable fee, not to exceed \$25,
25 for any inspection necessary to issue a certificate of approval, or a fee not to exceed the documented cost for
26 training it provides under this section.

27 ~~(7)~~ The local public health authority may not condition the issuance of a certificate of approval on the
28 existence of immunization requirements.

1 (8) A licensed or registered family day-care home, a group day-care home, or any day-care center
 2 that does not receive state or federal funds for operation may set forth its own standards for prevention of
 3 communicable diseases. If the standards include immunization requirements, the day-care facility shall:

4 (a) include a right to claim a medical exemption as provided in 20-5-405 and an exemption based on
 5 sincerely held religious or personal beliefs on submission of an affidavit by an employee or parent or legal
 6 guardian of a child for any required immunizations;

7 (b) provide notice of the availability of the exemptions described in subsection (8)(a) in all marketing
 8 materials and on a website, if applicable; and

9 (c) maintain the privacy of health and medical records and may not permit the department, local
 10 public health authorities, or any other external entity to review or copy health and medical records."

11
 12 **NEW SECTION. Section 6. Immunization requirements -- rulemaking and local ordinance**
 13 **prohibition.** (1) A local board of health may not establish or continue in effect any regulation, ordinance, or rule
 14 that sets forth immunization requirements for a day-care facility.

15 (2) The department may not make any rule that sets forth immunization requirements for a day-care
 16 facility that are different from, or in addition to, any requirement under the provisions of this part.

17
 18 **NEW SECTION. Section 7. Codification instruction.** [Section 6] is intended to be codified as an
 19 integral part of Title 52, chapter 2, part 7, and the provisions of Title 52, chapter 2, part 7, apply to [section 6].

20
 21 **NEW SECTION. Section 8. Effective dates.** (1) Except as provided in subsection (2), [this act] is
 22 effective on passage and approval.

23 (2) [Section 5] is effective October 1, 2021.

24
 25 **NEW SECTION. Section 9. Retroactive applicability.** [This act] applies retroactively, within the
 26 meaning of 1-2-109, to any regulation, rule, or ordinance adopted by a local board of health or the department
 27 of public health and human services before, on, or after [the effective date of this act] that is in violation of
 28 [section 6].

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- END -