

LEGISLATIVE BILL 874

Approved by the Governor April 15, 2024

Introduced by Bostar, 29; Ibach, 44.

A BILL FOR AN ACT relating to child care licensing and child care facilities; to amend sections 71-1911 and 71-1911.03, Reissue Revised Statutes of Nebraska, and sections 28-713, 71-1908, 71-1912, and 77-202, Revised Statutes Cumulative Supplement, 2022; to change requirements for child care licensing, liability insurance for child care license applicants, background checks for child care employees, and use of blankets in child care facilities; to provide reporting requirements to the Legislature for the Department of Health and Human Services, the State Fire Marshal, and municipalities; to provide a property tax exemption; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 28-713, Revised Statutes Cumulative Supplement, 2022, is amended to read:

28-713 (1) Unless a report is assigned to alternative response, upon the receipt of a call reporting child abuse and neglect as required by section 28-711, it is the duty of the law enforcement agency to investigate the report, to take immediate steps to protect the child, and to institute legal proceedings consistent with section 43-247 if the child is seriously endangered in the child's surroundings and immediate removal is necessary for the protection of the child. The law enforcement agency may request assistance from the department during the investigation and shall, by the next working day, notify either the hotline established under section 28-711 or the department of receipt of the report, including whether or not an investigation is being undertaken by the law enforcement agency. A copy of all reports, whether or not an investigation is being undertaken, shall be provided to the department.

(2)(a) When a report is assigned for traditional response, the department shall utilize an evidence-informed and validated tool to assess the safety of the child at the time of the assessment, the risk of future child abuse or neglect, the need for services to protect and assist the child and to preserve the family, and whether the case shall be entered into the central registry pursuant to section 28-720. As part of such investigation, the department may request assistance from the appropriate law enforcement agency or refer the matter to the county attorney to initiate legal proceedings.

(b) If in the course of an investigation the department finds a child is seriously endangered in the child's surroundings and immediate removal is necessary for the protection of the child, the department shall make an immediate request for the county attorney to institute legal proceedings consistent with section 43-247.

(3) When a report contains an allegation of out-of-home child abuse or neglect, a law enforcement agency or the department shall immediately notify each person having custody of each child who has allegedly been abused or neglected that such report has been made unless the person to be notified is the subject of such report. The department or the law enforcement agency shall provide such person with information about the nature of the alleged child abuse or neglect and any other necessary information. The department shall also provide such social services as are necessary and appropriate under the circumstances to protect and assist the child and to preserve the family.

(4)(a) In situations of alleged out-of-home child abuse or neglect, if the subject of the report of child abuse or neglect is a school employee and the child is a student in the school to which such school employee is assigned for work, the department shall immediately notify the Commissioner of Education of receipt of the report, including whether or not an investigation is being undertaken by the law enforcement agency or the department.

(b) In situations of alleged out-of-home child abuse or neglect, if the subject of the report of child abuse or neglect is a child care provider or a child care staff member as defined by subdivision ~~(5)(k)~~ ~~(5)(h)~~ of section 71-1912, the Division of Children and Family Services of the Department of Health and Human Services shall immediately notify the Division of Public Health of the Department of Health and Human Services of receipt of the report, including whether or not an investigation is being undertaken by the law enforcement agency or the department.

(5) The department shall, by the next working day after receiving a report of child abuse or neglect under this section, make a written report or a summary on forms provided by the department to the proper law enforcement agency in the county and enter in the tracking system of child protection cases maintained pursuant to section 28-715 all reports of child abuse or neglect opened for investigation and any action taken.

(6) The department shall, upon request, make available to the appropriate investigating law enforcement agency and the county attorney a copy of all reports relative to a case of suspected child abuse or neglect.

(7)(a) In addition to the responsibilities under subsections (1) through (6) of this section, upon the receipt of any report that a child is a reported

or suspected victim of sex trafficking of a minor or labor trafficking of a minor as defined in section 28-830 and without regard to the subject of the report, the department shall:

(i) Assign the case to staff for an in-person investigation. The department shall assign a report for investigation regardless of whether or not the subject of the report is a member of the child's household or family or whether the subject is known or unknown, including cases of out-of-home child abuse and neglect;

(ii) Conduct an in-person investigation and appropriately coordinate with law enforcement agencies, the local child advocacy center, and the child abuse and neglect investigation team under section 28-729;

(iii) Use specialized screening and assessment instruments to identify whether the child is a victim of sex trafficking of a minor or labor trafficking of a minor or at high risk of becoming such a victim and determine the needs of the child and family to prevent or respond to abuse, neglect, and exploitation. On or before December 1, 2019, the department shall develop and adopt these instruments in consultation with knowledgeable organizations and individuals, including representatives of child advocacy centers, behavioral health providers, child welfare and juvenile justice service providers, law enforcement representatives, and prosecutors; and

(iv) Provide for or refer and connect the child and family to services deemed appropriate by the department in the least restrictive environment, or provide for safe and appropriate placement, medical services, mental health care, or other needs as determined by the department based upon the department's assessment of the safety, risk, and needs of the child and family to respond to or prevent abuse, neglect, and exploitation.

(b) On or before July 1, 2020, the department shall adopt rules and regulations on the process of investigation, screening, and assessment of reports of child abuse or neglect and the criteria for opening an ongoing case upon allegations of sex trafficking of a minor or labor trafficking of a minor.

(8) When a preponderance of the evidence indicates that a child is a victim of abuse or neglect as a result of being a trafficking victim as defined in section 28-830, the department shall identify the child as a victim of trafficking, regardless of whether the subject of the report is a member of the child's household or family or whether the subject is known or unknown. The child shall be included in the department's data and reporting on the numbers of child victims of abuse, neglect, and trafficking.

Sec. 2. Section 71-1908, Revised Statutes Cumulative Supplement, 2022, is amended to read:

71-1908 (1) Sections 71-1908 to 71-1923 and sections 6 to 9 of this act shall be known and may be cited as the Child Care Licensing Act.

(2) The Legislature finds that there is a present and growing need for quality child care programs and facilities. There is a need to establish and maintain licensure of persons providing such programs to ensure that such persons are competent and are using safe and adequate facilities. The Legislature further finds and declares that the development and supervision of programs are a matter of statewide concern and should be dealt with uniformly on the state and local levels. There is a need for cooperation among the various state and local agencies which impose standards on licensees, and there should be one agency which coordinates the enforcement of such standards and informs the Legislature about cooperation among the various agencies.

Sec. 3. Section 71-1911, Reissue Revised Statutes of Nebraska, is amended to read:

71-1911 (1) A person may operate child care for three or fewer children without having a license issued by the department. A person who is not required to be licensed may choose to apply for a license and, upon obtaining a license, shall be subject to the Child Care Licensing Act. A person who has had a license issued pursuant to this section and has had such license suspended or revoked other than for nonpayment of fees shall not operate or offer to operate a program for or provide care to any number of children until the person is licensed pursuant to this section.

(2) No person shall operate or offer to operate a program for four or more children under his or her direct supervision, care, and control at any one time from families other than that of such person without having in full force and effect a written license issued by the department upon such terms as may be prescribed by the rules and regulations adopted and promulgated by the department. The license may be a provisional license or an operating license. A city, village, or county which has rules, regulations, or ordinances in effect on July 10, 1984, which apply to programs operating for two or three children from different families may continue to license persons providing such programs. If the license of a person is suspended or revoked other than for nonpayment of fees, such person shall not be licensed by any city, village, or county rules, regulations, or ordinances until the person is licensed pursuant to this section.

(3) A provisional license shall be issued to all applicants following the completion of preservice orientation training approved or delivered by the department for the first year of operation. At the end of one year of operation, the department shall either issue an operating license, extend the provisional license, or deny the operating license. The provisional license may be extended once for a period of no more than six months. The decision regarding extension of the provisional license is not appealable. The provisional license may be extended if:

(a) A licensee is unable to comply with all licensure requirements and

standards, is making a good faith effort to comply, and is capable of compliance within the next six months;

(b) The effect of the current inability to comply with a rule or regulation does not present an unreasonable risk to the health, safety, or well-being of children or staff; and

(c) The licensee has a written plan of correction that has been approved by the department which is to be completed within the renewal period.

(4) The department may place a provisional or operating license on corrective action status. Corrective action status is voluntary and may be in effect for up to six months. The decision regarding placement on corrective action status is not a disciplinary action and is not appealable. If the written plan of correction is not approved by the department, the department may discipline the license. A probationary license may be issued for the licensee to operate under corrective action status if the department determines that:

(a) The licensee is unable to comply with all licensure requirements and standards or has had a history of noncompliance;

(b) The effect of noncompliance with any rule or regulation does not present an unreasonable risk to the health, safety, or well-being of children or staff; and

(c) The licensee has a written plan of correction that has been approved by the department.

(5) No child care licensee shall be prohibited from obtaining a dual license for the purpose of complying with attendance requirements.

~~(6)~~ (5) Operating licenses issued under the Child Care Licensing Act shall remain in full force and effect subject to annual inspections and fees. The department may amend a license upon change of ownership or location. Amending a license requires a site inspection by the department at the time of amendment. When a program is to be permanently closed, the licensee shall return the license to the department within one week after the closing.

~~(7)~~ (6) The license, including any applicable status or amendment, shall be displayed by the licensee in a prominent place so that it is clearly visible to parents and others. License record information and inspection reports shall be made available by the licensee for public inspection upon request.

Sec. 4. Section 71-1911.03, Reissue Revised Statutes of Nebraska, is amended to read:

71-1911.03 An applicant for a license under the Child Care Licensing Act shall provide to the department written proof of liability insurance coverage for the hours such applicant is operating and a child is in the applicant's care of at least one hundred thousand dollars per occurrence prior to issuance of the license. A licensee subject to the Child Care Licensing Act on July 1, 2014, shall obtain such liability insurance coverage and provide written proof to the department within thirty days after July 1, 2014. Failure by a licensee to maintain the required level of liability insurance coverage shall be deemed noncompliance with the Child Care Licensing Act. If the licensee is the State of Nebraska or a political subdivision, the licensee may utilize a risk retention group or a risk management pool for purposes of providing such liability insurance coverage or may self-insure all or part of such coverage.

Sec. 5. Section 71-1912, Revised Statutes Cumulative Supplement, 2022, is amended to read:

71-1912 (1) Before issuance of a license, the department shall investigate or cause an investigation to be made, when it deems necessary, to determine if the applicant or person in charge of the program meets or is capable of meeting the physical well-being, safety, and protection standards and the other rules and regulations of the department adopted and promulgated under the Child Care Licensing Act. The department may investigate the character of applicants and licensees, any member of the applicant's or licensee's household, and the staff and employees of programs. The department may at any time inspect or cause an inspection to be made of any place where a program is operating to determine if such program is being properly conducted.

(2) All inspections by the department shall be unannounced except for initial licensure visits and consultation visits. Initial licensure visits are announced visits necessary for a provisional license to be issued to a family child care home I, family child care home II, child care center, or school-age-only or preschool program. Consultation visits are announced visits made at the request of a licensee for the purpose of consulting with a department specialist on ways of improving the program.

(3) An unannounced inspection of any place where a program is operating shall be conducted by the department or the city, village, or county pursuant to subsection (2) of section 71-1914 at least annually for a program licensed to provide child care for fewer than thirty children and at least twice every year for a program licensed to provide child care for thirty or more children.

(4) Whenever an inspection is made, the findings shall be recorded in a report designated by the department. The public shall have access to the results of these inspections upon a written or oral request to the department. The request must include the name and address of the program. Additional unannounced inspections shall be performed as often as is necessary for the efficient and effective enforcement of the Child Care Licensing Act.

(5)(a) A person applying for a license as a child care provider or a licensed child care provider under the Child Care Licensing Act shall submit a request for a national criminal history record information check for each child care staff member, including a prospective child care staff member of the child care provider, at the applicant's or licensee's expense, as set forth in this

section.

~~(b) A Beginning on October 1, 2019, a prospective child care staff member shall submit to a national criminal history record information check (i) prior to employment, except as otherwise permitted under 45 C.F.R. 98.43, as such regulation existed on January 1, 2019, or (ii) prior to residing in a family child care home. A child care staff member who was employed by a child care provider prior to October 1, 2019, or who resided in a family child care home prior to October 1, 2019, shall submit to a national criminal history record information check by October 1, 2021, unless the child care staff member ceases to be a child care staff member prior to such date.~~

(c) The department shall provide documentation of national criminal history record information checks which proves eligibility for employment. Such documentation shall be made available to each child care staff member or prospective child care staff member by the applicant or licensee for at least one hundred eighty days after the last day of employment or date the documentation was provided by the department, whichever is later.

~~(d) (b)~~ A child care staff member shall be required to undergo a national criminal history record information check not less than once during each five-year period. A child care staff member shall submit a complete set of his or her fingerprints to the Nebraska State Patrol. The Nebraska State Patrol shall transmit a copy of the child care staff member's fingerprints to the Federal Bureau of Investigation for a national criminal history record information check. The national criminal history record information check shall include information concerning child care staff members from federal repositories of such information and repositories of such information in other states, if authorized by federal law for use by the Nebraska State Patrol. The Nebraska State Patrol shall issue a report to the department that includes the information collected from the national criminal history record information check concerning child care staff members. The department shall seek federal funds, if available, to assist child care providers and child care staff members with the costs of the fingerprinting and national criminal history record information check. If the department does not receive sufficient federal funds to assist child care providers and staff members with such costs, then the child care staff member being screened, applicant for a license, or licensee shall pay the actual cost of the fingerprinting and national criminal history record information check, except that the department may pay all or part of the cost if funding becomes available. The department and the Nebraska State Patrol may adopt and promulgate rules and regulations concerning the costs associated with the fingerprinting and the national criminal history record information check. The department may adopt and promulgate rules and regulations implementing national criminal history record information check requirements for child care providers and child care staff members.

~~(e) (c)~~ A child care staff member shall also submit to the following background checks at his or her expense not less than once during each five-year period:

(i) A search of the National Crime Information Center's National Sex Offender Registry; and

(ii) A search of the following registries, repositories, or databases in the state where the child care provider is located or where the child care staff member resides and each state where the child care provider was located or where the child care staff member resided during the preceding five years:

(A) State criminal registries or repositories;

(B) State sex offender registries or repositories; and

(C) State-based child abuse and neglect registries and databases.

(f) Background checks shall be portable between child care providers.

~~(g) (d)~~ Any individual shall be ineligible for employment by a child care provider if such individual:

(i) Refuses to consent to the national criminal history record information check or a background check described in this subsection;

(ii) Knowingly makes a materially false statement in connection with the national criminal history record information check or a background check described in this subsection;

(iii) Is registered, or required to be registered, on a state sex offender registry or repository or the National Sex Offender Registry; or

(iv) Has been convicted of a crime of violence, a crime of moral turpitude, or a crime of dishonesty.

~~(h) (e)~~ The department may adopt and promulgate rules and regulations for purposes of this section.

~~(i) (f)~~ A child care provider shall be ineligible for a license under the Child Care Licensing Act and shall be ineligible to participate in the child care subsidy program if the provider employs a child care staff member who is ineligible for employment under subdivisions (g) or (h) ~~(d) or (e)~~ of this subsection.

~~(j) (g)~~ National criminal history record information and information from background checks described in this subsection subject to state or federal confidentiality requirements may only be used for purposes of granting a child care license or approving a child care provider for participation in the child care subsidy program.

~~(k) (h)~~ For purposes of this subsection:

(i) Child care provider means a child care program required to be licensed under the Child Care Licensing Act; and

(ii) Child care staff member means an individual who is not related to all of the children for whom child care services are provided and:

(A) Who is employed by a child care provider for compensation, including contract employees or self-employed individuals;

(B) Whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; or

(C) Who is residing in a family child care home and who is eighteen years of age or older.

Sec. 6. Blankets shall not be used in cribs in any child care facility.

Sec. 7. The Department of Health and Human Services shall submit to the Health and Human Services Committee of the Legislature all licensing rules and regulations relating to child care for review once every five years.

Sec. 8. The State Fire Marshal shall submit to the Government, Military and Veterans Affairs Committee of the Legislature all fire code enforcement and regulations relating to child care facilities for review once every five years.

Sec. 9. Each municipality shall submit to the Urban Affairs Committee of the Legislature all fire and building safety codes, fire and building safety permits, and health department and sanitation ordinances, zoning, and regulations relating to child care facilities for review once every five years.

Sec. 10. Section 77-202, Revised Statutes Cumulative Supplement, 2022, is amended to read:

77-202 (1) The following property shall be exempt from property taxes:

(a) Property of the state and its governmental subdivisions to the extent used or being developed for use by the state or governmental subdivision for a public purpose. For purposes of this subdivision:

(i) Property of the state and its governmental subdivisions means (A) property held in fee title by the state or a governmental subdivision or (B) property beneficially owned by the state or a governmental subdivision in that it is used for a public purpose and is being acquired under a lease-purchase agreement, financing lease, or other instrument which provides for transfer of legal title to the property to the state or a governmental subdivision upon payment of all amounts due thereunder. If the property to be beneficially owned by a governmental subdivision has a total acquisition cost that exceeds the threshold amount or will be used as the site of a public building with a total estimated construction cost that exceeds the threshold amount, then such property shall qualify for an exemption under this section only if the question of acquiring such property or constructing such public building has been submitted at a primary, general, or special election held within the governmental subdivision and has been approved by the voters of the governmental subdivision. For purposes of this subdivision, threshold amount means the greater of fifty thousand dollars or six-tenths of one percent of the total actual value of real and personal property of the governmental subdivision that will beneficially own the property as of the end of the governmental subdivision's prior fiscal year; and

(ii) Public purpose means use of the property (A) to provide public services with or without cost to the recipient, including the general operation of government, public education, public safety, transportation, public works, civil and criminal justice, public health and welfare, developments by a public housing authority, parks, culture, recreation, community development, and cemetery purposes, or (B) to carry out the duties and responsibilities conferred by law with or without consideration. Public purpose does not include leasing of property to a private party unless the lease of the property is at fair market value for a public purpose. Leases of property by a public housing authority to low-income individuals as a place of residence are for the authority's public purpose;

(b) Unleased property of the state or its governmental subdivisions which is not being used or developed for use for a public purpose but upon which a payment in lieu of taxes is paid for public safety, rescue, and emergency services and road or street construction or maintenance services to all governmental units providing such services to the property. Except as provided in Article VIII, section 11, of the Constitution of Nebraska, the payment in lieu of taxes shall be based on the proportionate share of the cost of providing public safety, rescue, or emergency services and road or street construction or maintenance services unless a general policy is adopted by the governing body of the governmental subdivision providing such services which provides for a different method of determining the amount of the payment in lieu of taxes. The governing body may adopt a general policy by ordinance or resolution for determining the amount of payment in lieu of taxes by majority vote after a hearing on the ordinance or resolution. Such ordinance or resolution shall nevertheless result in an equitable contribution for the cost of providing such services to the exempt property;

(c) Property owned by and used exclusively for agricultural and horticultural societies;

(d) Property owned by educational, religious, charitable, or cemetery organizations, or any organization for the exclusive benefit of any such educational, religious, charitable, or cemetery organization, and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not (i) owned or used for financial gain or profit to either the owner or user, (ii) used for the sale of alcoholic liquors for more than twenty hours per week, or (iii) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. For purposes of this subdivision, educational organization means (A) an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects or

assisting students through services relating to the origination, processing, or guarantying of federally reinsured student loans for higher education, ~~or~~ (B) a museum or historical society operated exclusively for the benefit and education of the public, or (C) a nonprofit organization that owns or operates a child care facility. For purposes of this subdivision, charitable organization includes an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons and a fraternal benefit society organized and licensed under sections 44-1072 to 44-10,109; and

(e) Household goods and personal effects not owned or used for financial gain or profit to either the owner or user.

(2) The increased value of land by reason of shade and ornamental trees planted along the highway shall not be taken into account in the valuation of land.

(3) Tangible personal property which is not depreciable tangible personal property as defined in section 77-119 shall be exempt from property tax.

(4) Motor vehicles, trailers, and semitrailers required to be registered for operation on the highways of this state shall be exempt from payment of property taxes.

(5) Business and agricultural inventory shall be exempt from the personal property tax. For purposes of this subsection, business inventory includes personal property owned for purposes of leasing or renting such property to others for financial gain only if the personal property is of a type which in the ordinary course of business is leased or rented thirty days or less and may be returned at the option of the lessee or renter at any time and the personal property is of a type which would be considered household goods or personal effects if owned by an individual. All other personal property owned for purposes of leasing or renting such property to others for financial gain shall not be considered business inventory.

(6) Any personal property exempt pursuant to subsection (2) of section 77-4105 or section 77-5209.02 shall be exempt from the personal property tax.

(7) Livestock shall be exempt from the personal property tax.

(8) Any personal property exempt pursuant to the Nebraska Advantage Act or the ImagiNE Nebraska Act shall be exempt from the personal property tax.

(9) Any depreciable tangible personal property used directly in the generation of electricity using wind as the fuel source shall be exempt from the property tax levied on depreciable tangible personal property. Any depreciable tangible personal property used directly in the generation of electricity using solar, biomass, or landfill gas as the fuel source shall be exempt from the property tax levied on depreciable tangible personal property if such depreciable tangible personal property was installed on or after January 1, 2016, and has a nameplate capacity of one hundred kilowatts or more. Depreciable tangible personal property used directly in the generation of electricity using wind, solar, biomass, or landfill gas as the fuel source includes, but is not limited to, wind turbines, rotors and blades, towers, solar panels, trackers, generating equipment, transmission components, substations, supporting structures or racks, inverters, and other system components such as wiring, control systems, switchgears, and generator step-up transformers.

(10) Any tangible personal property that is acquired by a person operating a data center located in this state, that is assembled, engineered, processed, fabricated, manufactured into, attached to, or incorporated into other tangible personal property, both in component form or that of an assembled product, for the purpose of subsequent use at a physical location outside this state by the person operating a data center shall be exempt from the personal property tax. Such exemption extends to keeping, retaining, or exercising any right or power over tangible personal property in this state for the purpose of subsequently transporting it outside this state for use thereafter outside this state. For purposes of this subsection, data center means computers, supporting equipment, and other organized assembly of hardware or software that are designed to centralize the storage, management, or dissemination of data and information, environmentally controlled structures or facilities or interrelated structures or facilities that provide the infrastructure for housing the equipment, such as raised flooring, electricity supply, communication and data lines, Internet access, cooling, security, and fire suppression, and any building housing the foregoing.

(11) For tax years prior to tax year 2020, each person who owns property required to be reported to the county assessor under section 77-1201 shall be allowed an exemption amount as provided in the Personal Property Tax Relief Act. For tax years prior to tax year 2020, each person who owns property required to be valued by the state as provided in section 77-601, 77-682, 77-801, or 77-1248 shall be allowed a compensating exemption factor as provided in the Personal Property Tax Relief Act.

Sec. 11. Original sections 71-1911 and 71-1911.03, Reissue Revised Statutes of Nebraska, and sections 28-713, 71-1908, 71-1912, and 77-202, Revised Statutes Cumulative Supplement, 2022, are repealed.