CHAPTER 172

(SB 148)

AN ACT relating to child care and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 199.896 is amended to read as follows:

(1) No person, association, or organization shall conduct, operate, maintain, or advertise any child-care center without obtaining a license as provided in KRS 199.892 to 199.896.

(2) The cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A relating to license fees and may***, in the administrative regulations,*** establish standards of care and service for a child-care center, criteria for the denial of a license if criminal records indicate convictions that may impact the safety and security of children in care, and procedures for enforcement of penalties ***which are not in contravention of this section***.

(3) Each initial application for a license shall be made to the cabinet and shall be accompanied by a fee that shall not exceed administrative costs of the program to the cabinet and shall be renewable annually upon expiration and reapplication when accompanied by a renewal fee that shall not exceed administrative costs of the program to the cabinet. Regular licenses and renewals thereof shall expire one (1) year from their effective date.

(4) No child-care center shall be refused a license or have its license revoked for failure to meet standards set by the secretary until after the expiration of a period not to exceed six (6) months from the date of the first official notice that the standards have not been met. If, however, the cabinet has probable cause to believe that an immediate threat to the public health, safety, or welfare exists, the cabinet may take emergency action pursuant to KRS 13B.125. All administrative hearings conducted under authority of KRS 199.892 to 199.896 shall be conducted in accordance with KRS Chapter 13B.

(5) If, upon inspection or investigation, the inspector general finds that a child-care center licensed under this section has violated the administrative regulations, standards, or requirements of the cabinet, the inspector general shall issue a statement of deficiency to the center containing:

(a) A statement of fact;

(b) A statement of how an administrative regulation, standard, or requirement of the cabinet was violated; and

(c) The timeframe, negotiated with the child-care center, within which a violation is to be corrected, except that a violation that poses an immediate threat to the health, safety, or welfare of children in the center shall be corrected in no event later than five (5) working days from the date of the statement of deficiency.

(6) The Cabinet for Health and Family Services, in consultation with the Office of the Inspector General, shall establish by administrative regulations promulgated in accordance with KRS Chapter 13A an informal dispute resolution process through which a child-care provider may dispute licensure deficiencies that have an adverse effect on the child-care provider's license.

(7) A child-care center shall have the right to appeal to the Cabinet for Health and Family Services under KRS Chapter 13B any action adverse to its license or the assessment of a civil penalty issued by the inspector general as the result of a violation contained in a statement of deficiency within twenty (20) days of the issuance of the action or assessment of the civil penalty. An appeal shall not act to stay the correction of a violation.

(8) In assessing the civil penalty to be levied against a child-care center for a violation contained in a statement of deficiency issued under this section, the inspector general or the inspector general's designee shall take into consideration the following factors:

(a) The gravity of the threat to the health, safety, or welfare of children posed by the violation;

(b) The number and type of previous violations of the child-care center;

(c) The reasonable diligence exercised by the child-care center and efforts to correct the violation; and

(d) The amount of assessment necessary to assure immediate and continued compliance.

(9) Upon a child-care center's failure to take action to correct a violation of the administrative regulations, standards, or requirements of the cabinet contained in a statement of deficiency, or at any time when the operation of a child-care center poses an immediate threat to the health, safety, or welfare of children in the center, and the child-care center continues to operate after the cabinet has taken emergency action to deny, suspend, or revoke its license, the cabinet or the cabinet's designee shall take at least one (1) of the following actions against the center:

(a) Institute proceedings to obtain an order compelling compliance with the administrative regulations, standards, and requirements of the cabinet;

(b) Institute injunctive proceedings in Circuit Court to terminate the operation of the center;

(c) Institute action to discontinue payment of child-care subsidies; or

(d) Suspend or revoke the license or impose other penalties provided by law.

(10) Upon request of any person, the cabinet shall provide information regarding the denial, revocation, suspension, or violation of any type of child-care center license of the operator. Identifying information regarding children and their families shall remain confidential.

(11) The cabinet shall provide, upon request, public information regarding the inspections of and the plans of correction for the child-care center within the past year. All information distributed by the cabinet under this subsection shall include a statement indicating that the reports as provided under this subsection from the past five (5) years are available from the child-care center upon the parent's, custodian's, guardian's, or other interested person's request.

(12) All fees collected under the provisions of KRS 199.892 to 199.896 for license and certification applications shall be paid into the State Treasury and credited to a special fund for the purpose of administering KRS 199.892 to 199.896 including the payment of expenses of and to the participants in child-care workshops. The funds collected are hereby appropriated for the use of the cabinet. The balance of the special fund shall lapse to the general fund at the end of each biennium.

(13) Any advertisement for child-care services shall include the address of where the service is being provided.

(14) All inspections of licensed and unlicensed child-care centers by the Cabinet for Health and Family Services shall be unannounced.

(15) All employees and owners of a child-care center who provide care to children shall demonstrate within the first three (3) months of employment completion of at least a total of six (6) hours of orientation in the following areas:

(a) Basic health, safety, and sanitation;

(b) Recognizing and reporting child abuse; and

(c) Developmentally appropriate child-care practice.

(16) All employees and owners of a child-care center who provide care to children shall annually demonstrate to the department completion of at least six (6) hours of training in child development. These hours shall include but are not limited to one and one-half (1.5) hours one (1) time every five (5) years of continuing education in the recognition and prevention of pediatric abusive head trauma, as defined in KRS 620.020. Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric head trauma approved by the secretary of the Cabinet for Health and Family Services The one and one-half (1.5) hours required under this section shall be included in the current number of required continuing education hours.

(17) The Cabinet for Health and Family Services shall make available either through the development or approval of a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection (15) of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection (15) of this section.

(18) Child-care centers licensed pursuant to this section and family child-care homes certified pursuant to KRS 199.8982 shall not use corporal physical discipline, including the use of spanking, shaking, or paddling, as a means of punishment, discipline, behavior modification, or for any other reason. For the purposes of this

section, "corporal physical discipline" means the deliberate infliction of physical pain and does not include spontaneous physical contact that is intended to protect a child from immediate danger.

(19) Child-care centers that provide instructional and educational programs for preschool-aged children that operate for a maximum of twenty (20) hours per week and that a child attends for no more than fifteen (15) hours per week shall:

(a) Notify the cabinet in writing that the center is operating;

(b) Meet all child-care center licensure requirements and administrative regulations related to employee background checks;

(c) Meet all child-care center licensure requirements and administrative regulations related to tuberculosis screenings; and

(d) Be exempt from all other child-care center licensure requirements and administrative regulations.

(20) Child-care centers that provide instructional and educational programs for preschool-aged children that operate for a maximum of twenty (20) hours per week and that a child attends for no more than ten (10) hours per week shall be exempt from all child-care licensure requirements and administrative regulations.

(21) Instructional programs for school-age children shall be exempt from all child-care licensure administrative regulations if the following criteria are met:

(a) The program provides direct instruction in a single skill, talent, ability, expertise, or proficiency;

(b) The program does not provide services or offerings that are not directly related to the single talent, ability, expertise, or proficiency;

(c) The program operates outside the time period when school is in session, including before or after school hours, holidays, school breaks, teaching planning days, or summer vacation;

(d) The program does not advertise or otherwise represent that the program is a licensed child-care center or that the program offers child-care services;

(e) The program informs the parent or guardian:

1. That the program is not licensed by the cabinet; and

2. About the physical risks a child may face while participating in the program; and

(f) The program conducts the following background checks for all program employees and volunteers who work with children:

1. Check of the child abuse and neglect records maintained by the cabinet; and

2. In-state criminal background information check from the Justice and Public Safety Cabinet or Administrative Office of the Courts.

(22) Directors and employees of child-care centers in a position that involves supervisory or disciplinary power over a minor, or direct contact with a minor, shall submit to a criminal record check in accordance with KRS 199.8965.

(23) A director or employee of a child-care center may be employed on a probationary status pending receipt of the criminal background check. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.

(24) The cabinet shall promulgate administrative regulations to identify emergency care providers who provide essential child-care services during an identified state of emergency.

(25) Notwithstanding any state law, administrative regulation, executive order, or executive directive to the contrary, during the 2020 or 2021 state of emergency declared by the Governor in response to COVID-19, including but not limited to any mutated strain of the COVID-19 virus, the cabinet shall not establish any restrictions on capacity for class or group size or the ability to combine classes and groups for capacity limits in the morning or afternoon that is below the number that was in effect on February 1, 2020.

➔Section 2. KRS 199.8982 is amended to read as follows:

(1) (a) The cabinet shall establish a family child-care home certification program which shall be administered by the department. A family child-care provider shall apply for certification of the provider's home if the provider is caring for four (4) to six (6) children unrelated to the provider. A family child-care provider caring for three (3) or fewer children may apply for certification of the provider's home at the discretion of the provider. Applicants for certification shall not have been found by the cabinet or a court to have abused or neglected a child, and shall meet the following minimum requirements:

1. Submit two (2) written character references;

2. Provide a written statement from a physician or advanced practice registered nurse that the applicant is in good health;

3. Submit to a criminal record check in accordance with KRS 199.8965;

4. Provide smoke detectors, a telephone, an adequate water supply, sufficient lighting and space, and a safe environment in the residence in which care is provided;

5. Provide a copy of the results of a tuberculosis risk assessment and the results of any appropriate follow-up with skin testing or chest X-ray for applicants who are determined to be at risk for developing tuberculosis in accordance with the recommendations of the Centers for Disease Control and Prevention within thirty (30) days of the date of application for certification; and

6. Demonstrate completion of a total of at least six (6) hours of training in the following areas within three (3) months of application for certification:

a. Basic health, safety, and sanitation;

b. Recognizing and reporting child abuse; and

c. Developmentally appropriate child-care practice.

(b) Initial applications for certification shall be made to the department. The cabinet may promulgate administrative regulations to establish fees that shall not exceed costs of the program to the cabinet, for proper administration of the certification. The department shall issue a certificate of operation upon inspecting the family child-care home and determining the provider's compliance with the provisions of this section. The inspection shall be unannounced. A certificate of operation issued pursuant to this section shall not be transferable and shall be renewed every two (2) years for a fee that shall not exceed costs of the program to the cabinet for renewal.

(c) A certified family child-care provider shall display the certificate of operation in a prominent place within the residence in which care is provided. The cabinet shall provide the certified family child-care provider with written information explaining the requirements for a family day-care provider and instructions on the method of reporting violations of the requirements which the provider shall distribute to parents.

(d) Upon request of any person, the cabinet shall provide information regarding the denial, revocation, suspension, or violation of any type of day-care license of the family child-care provider. Identifying information regarding children and their families shall remain confidential.

(e) The cabinet shall provide, upon request, public information regarding the inspections of and the plans of correction for the family child-care home within the past year. All information distributed by the cabinet under this paragraph shall include a statement indicating that the reports as provided under this paragraph from the past five (5) years are available from the family child-care home upon the parent's, custodian's, guardian's, or other interested person's request.

(f) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A which establish standards for the issuance, monitoring, release of information under this section and KRS 199.896 and 199.898, renewal, denial, revocation, and suspension of a certificate of operation for a family child-care home and establish criteria for the denial of certification if criminal records indicate convictions that may impact the safety and security of children in care. A denial, suspension, or revocation of a certificate may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B. If the cabinet has probable cause to believe that there is an immediate threat to the public health, safety, or welfare, the cabinet may take emergency action to suspend a certificate pursuant to KRS 13B.125. The cabinet shall promulgate administrative regulations to impose minimum staff-to-child ratios. The cabinet may promulgate administrative regulations relating to other requirements necessary to ensure minimum safety in family child-care homes. The

cabinet shall develop and provide an "easy-to-read" guide containing the following information to a family child-care provider seeking certification of his home:

1. Certification requirements and procedures;

2. Information about available child-care training; and

3. Child-care food sponsoring organizations.

(2) Family child-care providers shall annually demonstrate to the department completion of at least six (6) hours of training in child development. These hours shall include but are not limited to one and one-half (1.5) hours one (1) time every five (5) years of continuing education in the recognition and prevention of pediatric abusive head trauma, as defined in KRS 620.020. Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric abusive head trauma approved by the secretary of the Cabinet for Health and Family Services. The one and one-half (1.5) hours of continuing education required under this section shall be included in the current number of required continuing education hours.

(3) The cabinet shall, either through the development of or approval of, make available a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection (1)(a)6. of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection (1)(a)6. of this section.

(4) (a) As used in this subsection "local government" means a city, county, charter county, urban-county government, consolidated local government, or unified local government.

(b) The provisions of this section shall supersede all local government ordinances or regulations pertaining to the certification, licensure, and training requirements related to the operation of family child-care homes and no local government shall adopt or enforce any additional licensure, certification, or training requirements specifically applicable to family child-care homes in addition to those provided in this section. This subsection shall not be interpreted or construed to exempt family child-care homes from compliance with local government ordinances and regulations that apply generally within the jurisdiction.

(c) Because the availability of adequate child-care as an essential business is vital to the Commonwealth's state and local economies, by January 1, 2022, a local government that has adopted land use regulations pursuant to KRS Chapter 100 shall specifically name family child-care homes in the text of its zoning regulations to authorize the board of adjustments to separately consider the applications of proposed family child-care homes for conditional use permits within the residential zones of the planning unit where they are not a fully permitted use pursuant to KRS 100.237.

➔Section 3. Whereas the General Assembly realizes that effective child care and a robust child-care industry is essential to sustain critical operations, including emergency and disaster response, and that response to these occurrences is a fundamental responsibility of elected government in the Commonwealth, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Veto overridden March 29, 2021.