

1 HOUSE BILL NO. 227

2 INTRODUCED BY B. WAGNER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO EXEMPTIONS FOR
5 IMMUNIZATIONS; ALLOWING RELIGIOUS AND MEDICAL EXEMPTIONS TO IMMUNIZATION
6 REQUIREMENTS FOR CHILDREN IN DAY-CARE FACILITIES; REMOVING THE CRIMINAL SANCTION FOR
7 FALSELY CLAIMING A RELIGIOUS EXEMPTION; AMENDING SECTIONS 20-5-405 AND 52-2-735, MCA; AND
8 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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10 WHEREAS, the First Amendment of the United States Constitution and Article II, section 5, of the
11 Montana Constitution protect the unalienable right to the free exercise of religion; and

12 WHEREAS, Montana law allows a religious or medical exemption to the requirement that children be
13 immunized before attending school or preschool but is silent on providing a religious exemption or medical
14 exemption to requirements that children attending day care be immunized, except for an exemption for the
15 Haemophilus influenza type "b" immunization; and

16 WHEREAS, the Department of Public Health and Human Services allows a religious exemption for only
17 one type of immunization in day-care facilities while section 20-5-405, MCA, allows a religious exemption for all
18 mandated immunizations for children attending school; and

19 WHEREAS, 48 of the 50 states allow for a religious exemption to vaccinations in a day-care setting,
20 making clear the validity of offering religious exemptions in the day-care and preschool settings as both equitable
21 and safe; and

22 WHEREAS, the current practice by the Department of Public Health and Human Services to allow a
23 religious exemption for only one type of immunization is contrary to the constitutional protection of religious
24 freedom and in discord with national standards; and

25 WHEREAS, Montana law imposes a false swearing penalty relating to religious exemptions for
26 immunizations for school-aged children but contains no similar penalty for medical exemptions.

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

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30 **Section 1.** Section 20-5-405, MCA, is amended to read:

1 **"20-5-405. Medical or religious exemption.** (1) When a parent, guardian, or adult who has the
 2 responsibility for the care and custody of a minor seeking to attend school or the person seeking to attend school,
 3 if an adult, signs and files with the governing authority, prior to the commencement of attendance each school
 4 year, ~~a notarized an affidavit on a form prescribed by the department~~ stating that immunization in whole or in part
 5 is contrary to the religious tenets and practices of the signer, immunization of the person seeking to attend the
 6 school may not be required prior to attendance at the school. The statement must be maintained as part of the
 7 person's immunization records. ~~A person who falsely claims a religious exemption is subject to the penalty for~~
 8 ~~false swearing provided in 45-7-202.~~

9 (2) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor
 10 seeking to attend school or the person seeking to attend school, if an adult, files with the governing authority a
 11 written statement signed by a physician licensed to practice medicine in any jurisdiction of the United States or
 12 Canada stating that the physical condition of the person seeking to attend school or medical circumstances
 13 relating to the person indicate that some or all of the required immunizations are not considered safe and
 14 indicating the specific nature and probable duration of the medical condition or circumstances that contraindicate
 15 immunization, the person is exempt from the requirements of this part to the extent indicated by the physician's
 16 statement. The statement must be maintained as part of the person's immunization records.

17 (3) Whenever there is good cause to believe that a person for whom an exemption has been filed under
 18 this section has a disease or has been exposed to a disease listed in 20-5-403 or will as the result of school
 19 attendance be exposed to the disease, the person may be excluded from the school by the local health officer
 20 or the department until the excluding authority is satisfied that the person no longer risks contracting or
 21 transmitting that disease."

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

24 **"52-2-735. Health protection -- certification required.** (1) The department shall adopt rules for the
 25 protection of children in day-care ~~centers~~ facilities from the health hazards of inadequate food preparation, poor
 26 nutrition, and communicable diseases. Rules adopted by the department must include rules requiring children
 27 under 5 years of age to be immunized against Haemophilus influenza type "b" before being admitted for care in
 28 the facility ~~unless an exemption has been claimed as provided in 20-5-405.~~

29 (2) (a) The department shall allow for an exemption to the requirement for the Haemophilus influenza
 30 type "b" immunization or any other immunization required by rule when a parent, guardian, or adult who has the

1 responsibility for the care and custody of a child seeking to attend a day-care facility signs and files with the
 2 day-care facility prior to the child's initial enrollment:

3 (i) an affidavit that immunization in whole or in part is contrary to the religious tenets and practices of the
 4 parent, guardian, or adult who has the responsibility for the care and custody of the child; or

5 (ii) a written statement signed by a physician licensed to practice medicine in any jurisdiction of the United
 6 States or Canada stating that the physical condition of the child or the medical circumstances relating to the child
 7 indicate that some or all of the required immunizations are not considered safe and indicating the specific nature
 8 and probable duration of the medical condition or circumstances that contraindicate immunization. The exemption
 9 under this subsection (2)(a)(ii) is limited to the extent indicated by the physician's statement.

10 (b) An affidavit or statement filed under this section must be:

11 (i) filed on an annual basis; and

12 (ii) maintained as part of the child's immunization records.

13 (3) Whenever there is good cause to believe that a child for whom an exemption has been filed under
 14 this section has a disease or has been exposed to a disease listed in 20-5-403 or will as the result of attendance
 15 at a day-care facility be exposed to the disease, the child may be excluded from the day-care facility by the local
 16 health officer or the department until the excluding authority is satisfied that the child no longer risks contracting
 17 or transmitting the disease.

18 ~~(2)(4)~~ Local public health authorities shall arrange to provide training to day-care center providers and
 19 employees regarding health hazards. Upon successful completion of the training the local public health authorities
 20 shall issue certificates to the providers and employees.

21 ~~(3)(5)~~ In lieu of training, local public health authorities may elect to inspect facilities and issue certificates
 22 of approval to child-care center providers.

23 ~~(4)(6)~~ Each applicant for a license to operate a day-care center shall submit to the department a
 24 certificate issued pursuant to subsection ~~(2)~~ (4) or ~~(3)~~ (5) before the department will issue a license.

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

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

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