

CHAPTER 184

(HB 499)

AN ACT relating to employee child-care assistance and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds and declares that the purpose of this Act is to support Kentucky families by incentivizing employers to contribute to the child-care costs of its employees. In enacting this legislation, it is the intention of the General Assembly to enable the Cabinet for Health and Family Services to facilitate this public and private partnership pilot program, herein known as the Employee Child Care Assistance Partnership, and administer program funds to achieve this purpose.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 8 of this Act:

- (1) *"Cabinet" means the Cabinet for Health and Family Services;*
- (2) *"Child-care provider" means a child-care provider that is rated pursuant to the quality-based graduated early care and education program rating system set forth in KRS 199.8943;*
- (3) *"Contribution" means a direct payment to a child-care provider either directly by an employer or through a third party vendor to subsidize an employee's eligible child-care costs;*
- (4) *"Eligible child-care costs" means costs to be incurred by an individual for services rendered by an eligible child-care provider;*
- (5) *"Employee" means an individual who works in Kentucky and is employed by an employer;*
- (6) *"Employer" means a nonprofit or for-profit entity with at least one (1) employee who works in Kentucky in each of twenty (20) or more calendar weeks in the current or preceding calendar year;*
- (7) *"Fund" means the fund administered by the Cabinet as described in Section 5 of this Act;*
- (8) *"Program" means the Employee Child Care Assistance Partnership;*
- (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 the child-care provider by the Cabinet from the fund described in Section 5 of this Act; and*
- (11) *"State median household income" means the most recent estimate available of real median household income for the state, as determined by the United States Census Bureau, and adjusted for family size.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO READ AS FOLLOWS:

- (1) *The Employee Child Care Assistance Partnership program is hereby established under the cabinet. To administer the program, the cabinet may:*
 - (a) *Delegate authority to a subsidiary department;*
 - (b) *Coordinate and share information with other executive branch agencies; and*
 - (c) *Enter into contracts with third parties to administer the program or specific parts of the program.*
- (2) *The cabinet shall be responsible for:*
 - (a) *Creating and making available a standardized contract for participation in the program;*
 - (b) *Processing the contract between an employer, employee, and child-care provider that is submitted to the cabinet;*
 - (c) *Notifying the parties of their enrollment status in the program;*
 - (d) *Managing and administering the program funds;*

- (e) *Securing third-party vendors in accordance with all applicable federal and state procurement regulations, if deemed necessary;*
 - (f) *Verifying the eligibility of the respective employee, employer, and child-care provider as parties to a contract for participation in the program prior to disbursement of a state match;*
 - (g) *Collecting and verifying household income information from eligible employees and determining the amount of the state match for which the employee is eligible; and*
 - (h) *Distributing educational materials about the program's objectives, benefits, and eligibility requirements to employers, employees, and child-care providers.*
- (3) *The cabinet shall review the completed contract after it is submitted by the employer and, if the employee, employer, and the proposed child-care 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.*
- (4) *The cabinet shall only become party to a proposed contract under this program if the fund reflects a positive balance based on both:*
- (a) *The cabinet's existing contractual obligations already accrued under this program; and*
 - (b) *The cabinet's additional financial obligation imposed by the proposed contract.*
- (5) *The cabinet 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.*
- (6) *The cabinet shall maintain a waitlist of contracts submitted after available funds were committed. The cabinet shall become party to a proposed contract from the waitlist as new funds become available and according to the order in which it was received.*
- (7) *The cabinet shall issue a state match directly to the child-care provider or through a third-party vendor for the duration of the contract.*
- (8) *The cabinet shall not disclose an employee's personal information without that individual's express written consent.*
- (9) *In the first fiscal year of the program, the cabinet shall administer the program according to the following:*
- (a) *The cabinet shall begin administering the program after the effective date of this Act, including but not limited to:*
 - 1. *Promulgating the required administrative regulations as described in Section 4 of this Act; and*
 - 2. *Soliciting third-party vendor contracts, if deemed necessary;*
 - (b) *The cabinet shall not begin accepting proposed contracts from employers pursuant to this program prior to ninety (90) calendar days before July 1, 2023; and*
 - (c) *The cabinet shall not disperse state matches from the fund as a party to a contract with an employer, employee, and child-care provider pursuant to this program prior to July 1, 2023.*
- (10) *Beginning in 2024 and every year thereafter, the cabinet shall begin accepting proposed contracts from employers, employees, and child-care providers for the next fiscal year according to the following:*
- (a) *Ninety (90) calendar days before July 1st for employers with existing approved contracts pursuant to the program; and*
 - (b) *Forty-five (45) calendar days before July 1st for all other employers.*
- (11) *Beginning in 2024 and every year thereafter, the cabinet 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 Legislative Research Commission. The report shall include at least the following information about the program:*
- (a) *Any appropriation made in the past fiscal year to the fund;*
 - (b) *The total number of standardized contracts submitted by employers;*
 - (c) *The total amount of state matches paid out of the fund by the cabinet;*
 - (d) *The breakdown of the state matches paid by county;*

- (e) *Information on the size, geographical location, and industry type of employers who participated in the program;*
 - (f) *The number, license type, quality rating, and geographical distribution of participating child-care providers;*
 - (g) *The average cost for services charged by child-care 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;*
 - (h) *The number and total dollar value of contracts not approved by the cabinet; and*
 - (i) *The demographic information of employees participating in the program.*
- (12) *Prior to one hundred twenty (120) calendar days before July 1, 2023, the cabinet shall publish a report detailing implementation plans for the program and submit the report to the Legislative Research Commission.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO READ AS FOLLOWS:

The cabinet, or its designated department, shall promulgate administrative regulations in accordance with KRS Chapter 13A to effectuate the provisions of Sections 1 to 8 of this Act including:

- (1) *Creating 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 child-care provider;*
 - (d) *Name and phone number of the child-care 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 shall not last beyond the end of the state's fiscal year in any given year;*
 - (i) *Frequency of the contribution to be made directly to the child-care provider in accordance with the provider's established billing cycle; and*
 - (j) *Demographic information of the employee.*
- (2) *Establishing eligibility verification procedures for the following parties as a prerequisite for the cabinet entering the agreement as a party and issuing a state match:*
 - (a) *Employer's enrollment in the program;*
 - (b) *Employee's eligibility; and*
 - (c) *Child-care provider's eligibility;*
- (3) *Collecting and verifying household income information from eligible employees and determining the amount of the state match for which the employee is eligible in accordance with Section 5 of this Act;*
- (4) *Creating 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) *Compiling confidentiality protocols for the cabinet and its designated department or departments to safeguard the personal information of participating employees, employers, and child-care providers;*
- (6) *Introducing reporting requirements for an employer or a child-care provider reporting a lapse or nonpayment of contribution towards eligible child-care services;*

- (7) *Creating procedures for issuing and logging a state match to child-care providers pursuant to the respective contract;*
- (8) *Maintaining records of the fund in the fiscal year and all payments;*
- (9) *Creating criteria for participant disqualification from the program;*
- (10) *Establishing procedures for appeals hearings; and*
- (11) *Establishing procedures for recouping state matches or portions of state matches that result in overpayments to participating child-care providers.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby established in the State Treasury a revolving account to be known as the Employee Child Care Assistance Partnership fund. The fund shall consist of moneys appropriated by the General Assembly, contributions, gifts, or grants made available for the purposes of the program.*
- (2) *The fund shall be administered by the cabinet or its designated department.*
- (3) *Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year.*
- (4) *Any interest earnings of the fund shall become a part of the fund and shall not lapse.*
- (5) *Moneys deposited in the fund are hereby appropriated for the purposes set forth in Sections 1 to 8 of this Act and shall not be appropriated or transferred by the General Assembly for any other purpose.*
- (6) *The cabinet shall issue state matches out of the fund to child-care providers in accordance with the provisions of the respective contracts and in the order that the cabinet processed the contracts.*
- (7)
 - (a) *The state match shall 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.*
 - (b) *The state match shall 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.*
 - (c) *The state match shall 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.*
- (8) *In each fiscal year, twenty-five percent (25%) of the total fund shall be distributed to agreements in which an employer is a small business.*
- (9) *In fiscal year 2022-2023, five percent (5%) of the total fund shall be distributed to the cabinet to administer the program. In every fiscal year thereafter, three percent (3%) of the total fund shall be distributed to the cabinet to administer the program.*
- (10) *A state match issued pursuant to this program and administered by the cabinet is for the promotion of the general welfare and shall not be considered compensation for an employee's service.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO READ AS FOLLOWS:

- (1) *If an employer wishes to provide child-care 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 child-care provider using the standardized contract provided by the cabinet.*
- (2) *To participate in the program, an employer shall do the following:*
 - (a) *Obtain the standardized contract created by the cabinet and enter into it with the employee and child-care provider;*
 - (b) *Submit the proposed contract to the cabinet;*
 - (c) *Submit any additional information as deemed necessary by the cabinet pursuant to Section 4 of this Act; and*
 - (d) *Make contributions to the employee's eligible child-care costs directly to the child-care provider or through a third-party vendor in accordance with the amount and frequency agreed to in the final contract.*

- (3) *To participate in the program, an employee shall complete the standardized contract with the employer and the child-care provider and provide any additional information as deemed necessary by the cabinet pursuant to Section 4 of this Act.*
- (4) *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 child-care 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 Sections 1 to 8 of this Act, the employer contribution and state match of 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 7. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO READ AS FOLLOWS:

- (1) *Termination of an active contract between an employer, employee, child-care provider, and the cabinet pursuant to this program shall occur in the following circumstances:*
 - (a) *If the relationship between the employee and employer is severed, the employer shall notify the child-care provider and the cabinet 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 cabinet issues a state match to the provider on behalf of that employer's employee, then the employer shall reimburse the cabinet for the unnecessary state match; or*
 - (b) *If the employer fails to make a contribution or contributions for the eligible child-care costs in accordance to the terms of the contract, the child-care provider shall notify the cabinet within five (5) business days. After receiving notification from the provider, the cabinet 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 cabinet. If the provider fails to make this notification and receives a state match from the cabinet on behalf of that employer's employee, the provider shall reimburse the cabinet for the unnecessary state match.*
- (2) *Termination of an active contract between an employer, employee, child-care provider, and the cabinet pursuant to this program may occur in the following circumstances:*
 - (a) *If the employee fails to pay the child-care provider for costs not covered by the employer contribution and the state match in accordance to the terms of the contract, the child-care provider may give the employee reasonable time to remedy the nonpayment. The child-care provider may notify the cabinet and terminate the contract on the date that the notification was issued. If the child-care provider voluntarily excuses the employee's nonpayment or the child-care provider does not notify the cabinet 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;*
 - (b) *If the child-care provider ceases participation or otherwise loses its rating in the rating system described in KRS 199.8943, it shall notify all parties to the agreement immediately; and*
 - (c) *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 shall occur no sooner than two (2) weeks from the date of notification unless the child-care provider gives its consent to an earlier termination date. All parties to the contract shall be financially obligated, according to the provisions of the contract, up to the termination date.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO READ AS FOLLOWS:

The Cabinet for Economic Development may coordinate with the Cabinet for Health and Family Services to incorporate this program into agreements with employers seeking economic development incentives in Subchapters 31 and 32 of KRS Chapter 154, if the employer agrees to participate in the program.

➔Section 9. KRS 199.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 199.430, 199.470, 199.473, 199.570, 199.572, and 199.590 except subsection (2), or 199.640 to 199.670, or any rule or regulation under such sections the

violation of which is made unlawful shall be fined not less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000) or imprisoned for not more than six (6) months, or both. Each day such violation continues shall constitute a separate offense.

- (2) Any person who willfully violates any other of the provisions of KRS 199.420 to 199.670 or any rule or regulation thereunder, the violation of which is made unlawful under the terms of those sections, and for which no other penalty is prescribed in those sections, or in any other applicable statute, shall be fined not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) or imprisoned for not more than thirty (30) days, or both.
- (3) Any violation of the regulations, standards, or requirements of the cabinet under the provisions of KRS 199.896 that poses an immediate threat to the health, safety, or welfare of any child served by the child-care center shall be subject to a civil penalty of no more than one thousand dollars (\$1,000) for each occurrence. Treble penalties shall be assessed for two (2) or more violations within twelve (12) months. All money collected as a result of civil penalties assessed under the provisions of KRS 199.896 shall be paid into the State Treasury and credited to a special fund for the purpose of the Early Childhood Scholarship Program created in accordance with KRS 164.518. The balance of the fund shall not lapse to the general fund at the end of each biennium.
- (4) A person who commits a violation of the regulations, standards, or requirements of the cabinet under the provisions of KRS 199.896 shall be fined not less than one thousand dollars (\$1,000) or imprisoned for not more than twelve (12) months, or be fined and imprisoned, at the discretion of the court.
- (5) Any person who violates any of the provisions of KRS 199.590(2) shall be guilty of a Class D felony.
- (6) Any person who knowingly or intentionally registers false information under KRS 199.503(4) shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than twelve (12) months, or be fined and imprisoned, at the discretion of the court.
- (7) Any person who knowingly or intentionally releases or requests confidential information in violation of KRS 199.503(8) or (9) or in violation of KRS 199.505 shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than twelve (12) months, or be fined and imprisoned, at the discretion of the court. It is a defense under this subsection if the cabinet releases confidential information while acting in good faith and with reasonable diligence.
- (8) ***Any person who intentionally registers false information under Sections 1 to 8 of this Act with the Cabinet in pursuit of the benefits of this program shall be subject to a civil penalty of no more than five hundred dollars (\$500) per violation. All money collected as a result of penalties assessed under Sections 1 to 8 of this Act shall be paid into the State Treasury and credited to the Employee Child Care Assistance Program fund.***

→Section 10. This Act may be cited as the "Employee Child Care Assistance Partnership".

→Section 11. Whereas it is of the utmost importance to the Commonwealth of Kentucky to support employees struggling to access child-care, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor April 8, 2022.