

Senate Bill No. 234

CHAPTER 244

An act to amend Sections 1596.72, 1596.73, 1596.78, 1597.30, 1597.45, and 1597.54 of, to add Sections 1597.41, 1597.42, and 1597.455 to, to repeal Section 1597.47 of, and to repeal and add Sections 1597.40, 1597.46, and 1597.543 of, the Health and Safety Code, relating to family daycare homes.

[Approved by Governor September 5, 2019. Filed with Secretary
of State September 5, 2019.]

legislative counsel's digest

SB 234, Skinner. Family daycare homes.

Under existing law, the California Child Day Care Facilities Act, the State Department of Social Services licenses and regulates family daycare homes. Under existing law, a small family daycare home, which may provide care for up to 8 children, is considered a residential use of property for purposes of all local ordinances. Existing law authorizes a city, county, or city and county to either classify a large family daycare home, which may provide care for up to 14 children, as residential use of the property or to provide a process for applying for a permit to use the property as a large family daycare home.

This bill would instead require a large family daycare home to be treated as a residential use of property for purposes of all local ordinances.

Existing law makes void every provision in a written instrument entered into relating to real property that purports to forbid or restrict the conveyance, encumbrance, leasing, or mortgaging of the real property for use or occupancy as a family daycare home for children and every restriction or prohibition in a written instrument as to the use or occupancy of the property as a family daycare home.

This bill would also make void an attempt to deny, restrict, or encumber the conveyance, leasing, or mortgaging of real property for use or occupancy as a family daycare home and a restriction related to the use or occupancy of the property as a family daycare home. The bill would prohibit a property owner or manager from refusing to sell or rent, or refusing to negotiate for the sale or rental of, or otherwise making unavailable or denying, a detached single-family dwelling, a townhouse, a dwelling unit within a dwelling, or a dwelling unit within a covered multifamily dwelling in which the underlying zoning allows for residential use to a person because that person is a family daycare provider. The bill would require the department to notify applicants for family daycare home licenses that specified housing discrimination remedies are available to a family daycare home provider, family daycare home provider applicant, or person who is claiming that any of these protections have been denied.

Existing law prohibits a local jurisdiction from imposing a business license, fee, or tax for the privilege of operating a small family daycare home.

This bill would extend that prohibition to large family daycare homes.

Existing law requires the State Fire Marshal to adopt building standards and regulations relating to the fire and life safety systems in family daycare provider homes.

This bill would require the State Fire Marshal to update those regulations in the next regulation adoption cycle, and every 3 years thereafter to conform to changes in these provisions. The bill would also require the State Fire Marshal to issue guidance on implementing the provisions prior to the publication of regulations, but not later than January 1, 2021, and would authorize guidance to be issued annually thereafter in years when the specified regulations are not updated.

The bill would also make technical and conforming changes.

The people of the State of California do enact as follows:

SECTION 1. Section 1596.72 of the Health and Safety Code is amended to read:

1596.72. The Legislature finds all of the following:

(a) That child daycare facilities can contribute positively to a child's emotional, cognitive, and educational development.

(b) That it is the intent of this state to provide a comprehensive, quality system for licensing child daycare facilities to ensure a quality childcare environment.

(c) That this system of licensure requires a special understanding of the unique characteristics and needs of the children served by child daycare facilities.

(d) That it is the intent of the Legislature to establish within the State Department of Social Services an organizational structure to separate licensing of child daycare facilities from those facility types administered under Chapter 3 (commencing with Section 1500).

(e) That good quality childcare services are an essential service for working parents.

(f) California has a tremendous shortage of regulated childcare, and only a small fraction of families who need childcare have it. Parents should be able to support their families without having to sacrifice their child's well-being.

(g) With childcare, families have more options for jobs and education to improve their prospects. Good, affordable childcare gives children a strong start and creates opportunities for families and communities.

SEC. 2. Section 1596.73 of the Health and Safety Code is amended to read:

1596.73. The purposes of this act are to:

- (a) Streamline the administration of childcare licensing and thereby increase the efficiency and effectiveness of this system.
- (b) Encourage the development of licensing staff with knowledge and understanding of children and childcare needs.
- (c) Provide providers of childcare with technical assistance about licensing requirements.
- (d) Enhance consumer awareness of licensing requirements and the benefits of licensed childcare.
- (e) Recognize that affordable, quality licensed childcare is critical to the well-being of parents and children in this state.
- (f) Promote the development and expansion of regulated childcare.

SEC. 3. Section 1596.78 of the Health and Safety Code is amended to read:

1596.78. (a) “Family daycare home” means a facility that regularly provides care, protection, and supervision for 14 or fewer children, in the provider’s own home, for periods of less than 24 hours per day, while the parents or guardians are away, and is either a large family daycare home or a small family daycare home.

(b) “Large family daycare home” means a facility that provides care, protection, and supervision for 7 to 14 children, inclusive, including children under 10 years of age who reside at the home, as set forth in Section 1597.465 and as defined in regulations.

(c) “Small family daycare home” means a facility that provides care, protection, and supervision for eight or fewer children, including children under 10 years of age who reside at the home, as set forth in Section 1597.44 and as defined in regulations.

(d) A small family daycare home or large family daycare home includes a detached single-family dwelling, a townhouse, a dwelling unit within a dwelling, or a dwelling unit within a covered multifamily dwelling in which the underlying zoning allows for residential uses. A small family daycare home or large family daycare home is where the daycare provider resides, and includes a dwelling or a dwelling unit that is rented, leased, or owned.

SEC. 4. Section 1597.30 of the Health and Safety Code is amended to read:

1597.30. The Legislature finds and declares all of the following:

- (a) The Legislature has a responsibility to ensure the health and safety of children in family homes that provide daycare.
- (b) There is an extreme shortage of regulated family daycare homes in California, and the number has decreased significantly since 2008.
- (c) There continues to be a growing need for child daycare facilities due to the increased number of working parents. Parents need childcare so they can work and attend school, and so their children can thrive.
- (d) Many parents prefer childcare located in their neighborhoods in family homes.
- (e) There should be a variety of childcare settings, including regulated family daycare homes, as suitable choices for parents.

(f) The licensing program to be operated by the state should be cost effective, streamlined, and simple to administer in order to ensure adequate care for children placed in family daycare homes, while not placing undue burdens on the providers.

(g) The state should maintain an efficient program of regulating family daycare homes that ensures the provision of adequate protection, supervision, and guidance to children in their homes.

(h) The state has a responsibility to promote the development and expansion of regulated family daycare homes to care for children in residential settings.

SEC. 5. Section 1597.40 of the Health and Safety Code is repealed.

SEC. 6. Section 1597.40 is added to the Health and Safety Code, to read:

1597.40. (a) It is the intent of the Legislature that family daycare homes for children should be situated in normal residential surroundings so as to give children the home environment that is conducive to healthy and safe development. It is the public policy of this state to provide children in a family daycare home the same home environment as provided in a traditional home setting.

(b) The Legislature declares this policy to be of statewide concern with the purpose of occupying the field. This act, the state building code, and the fire code, and regulations promulgated pursuant to those provisions, shall preempt local laws, regulations, and rules governing the use and occupancy of family daycare homes. Local laws, regulations, or rules shall not directly or indirectly prohibit or restrict the use of a facility as a family daycare home, including, but not limited to, precluding the operation of a family daycare home.

SEC. 7. Section 1597.41 is added to the Health and Safety Code, to read:

1597.41. (a) Every provision in a written instrument relating to real property that purports to restrict the conveyance, encumbrance, leasing, or mortgaging of the real property for use or occupancy as a family daycare home is void, and every restriction in that written instrument as to the use or occupancy of the property as a family daycare home is void.

(b) An attempt to deny, restrict, or encumber the conveyance, leasing, or mortgaging of real property for use or occupancy as a family daycare home is void. A restriction related to the use or occupancy of the property as a family daycare home is void. A property owner or manager shall not refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a detached single-family dwelling, a townhouse, a dwelling unit within a dwelling, or a dwelling unit within a covered multifamily dwelling in which the underlying zoning allows for residential use to a person because that person is a family daycare provider.

(c) Except as provided in subdivision (d), a restriction, whether by way of covenant, contract, condition upon use or occupancy, or by transfer of title to real property, that restricts directly or indirectly limits the acquisition, use, or occupancy of a detached single-family dwelling, a townhouse, a dwelling unit within a dwelling, or a dwelling unit within a covered

multifamily dwelling in which the underlying zoning allows for residential use as a family daycare home is void.

(d) (1) A prospective family daycare home provider who resides in a rental property shall provide 30 days' written notice to the landlord or owner of the rental property prior to the commencement of operation of the family daycare home.

(2) A family daycare home provider who has relocated an existing licensed family daycare home program to a rental property on or after January 1, 1997, may provide less than 30 days' written notice when the department approves the operation of the new location of the family daycare home in less than 30 days, or the home is licensed in less than 30 days, so that service to the children served in the former location not be interrupted.

(3) A family daycare home provider in operation on rental or leased property as of January 1, 1997, shall notify the landlord or property owner in writing at the time of the annual license fee renewal, or by March 31, 1997, whichever occurs later.

(4) Notwithstanding any other law, upon commencement of, or knowledge of, the operation of a family daycare home on an individual's property, the landlord or property owner may require the family daycare home provider to pay an increased security deposit for operation of the family daycare home. The increase in deposit may be required notwithstanding that a lesser amount is required of tenants who do not operate family daycare homes. The total security deposit charged shall not exceed the maximum allowable under existing law.

(5) Section 1596.890 does not apply to this subdivision.

(e) During the license application process for a small or large family daycare home, the department shall notify the applicant that the remedies and procedures in Article 2 (commencing with Section 12980) of Chapter 7 of Part 2.8 of Division 3 of Title 2 of the Government Code relating to fair housing are available to family daycare home providers, family daycare home provider applicants, and individuals who claim that any of the protections provided by this section or Section 1597.40, 1597.42, 1597.43, 1597.45, 1597.455, or 1597.46 have been denied.

(f) For the purpose of this section, "restriction" means a restriction imposed orally, in writing, or by conduct and includes prohibition.

(g) This section does not alter the existing rights of landlords and tenants with respect to addressing and resolving issues related to noise, lease violations, nuisances, or conflicts between landlords and tenants.

SEC. 8. Section 1597.42 is added to the Health and Safety Code, to read: 1597.42. The use of a home as a family daycare home, operated under the standards of state law, in a residentially zoned area shall be considered a residential use of property for the purposes of all local ordinances, regulations, and rules, and shall not fundamentally alter the nature of the underlying residential use.

SEC. 9. Section 1597.45 of the Health and Safety Code is amended to read:

1597.45. (a) The use of a home as a small or large family daycare home shall be considered a residential use of property and a use by right for the purposes of all local ordinances, including, but not limited to, zoning ordinances.

(b) A local jurisdiction shall not impose a business license, fee, or tax for the privilege of operating a small or large family daycare home.

(c) Use of a home as a small or large family daycare home shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 (State Housing Law) or for purposes of local building codes.

(d) A small or large family daycare home shall not be subject to the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code.

(e) The provisions of this chapter do not preclude a city, county, or other local public entity from placing restrictions on building heights, setback, or lot dimensions of a family daycare home, as long as those restrictions are identical to those applied to all other residences with the same zoning designation as the family daycare home. This chapter does not preclude a local ordinance that deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity, as long as the local ordinance is identical to those applied to all other residences with the same zoning designation as the family daycare home. This chapter also does not prohibit or restrict the abatement of nuisances by a city, county, or city and county. However, the ordinance or nuisance abatement shall not distinguish family daycare homes from other homes with the same zoning designation, except as otherwise provided in this chapter.

(f) For purposes of this chapter, “small family daycare home or large family daycare home” includes a detached single-family dwelling, a townhouse, a dwelling unit within a dwelling, or a dwelling unit within a covered multifamily dwelling in which the underlying zoning allows for residential uses. A small family daycare home or large family daycare home is where the family daycare provider resides, and includes a dwelling or dwelling unit that is rented, leased, or owned.

SEC. 10. Section 1597.455 is added to the Health and Safety Code, to read:

1597.455. (a) A small family daycare home shall not be subject to Article 1 (commencing with Section 13100) or Article 2 (commencing with Section 13140) of Chapter 1 of Part 2 of Division 12, except that a small family daycare home shall contain a fire extinguisher and smoke detector device that meet standards established by the State Fire Marshal.

(b) A small family daycare home for children shall have one or more carbon monoxide detectors in the facility that meet the standards established in Chapter 8 (commencing with Section 13260) of Part 2 of Division 12. The department shall account for the presence of these detectors during inspections.

SEC. 11. Section 1597.46 of the Health and Safety Code is repealed.

SEC. 12. Section 1597.46 is added to the Health and Safety Code, to read:

1597.46. (a) A large family daycare home shall abide by all standards, in addition to the requirements of the State Uniform Building Standards Code, that are specifically designed to promote fire and life safety in large family daycare homes. The State Fire Marshal shall adopt separate building standards specifically relating to the subject of fire and life safety in family daycare homes, which shall be published in Title 24 of the California Code of Regulations. These standards shall apply uniformly throughout the state and shall include, but not be limited to, all of the following:

(1) The requirement that a large family daycare home contain a fire extinguisher or smoke detector device, or both, that meets childcare standards established by the State Fire Marshal.

(2) Specification as to the number of required exits from the home.

(3) Specification as to the floor or floors on which childcare may be provided and the number of required exits on each floor.

(b) A large family daycare home for children shall have one or more carbon monoxide detectors in the facility that meet the standards established in Chapter 8 (commencing with Section 13260) of Part 2 of Division 12. The department shall account for the presence of these detectors during inspections.

(c) Enforcement of this section shall be in accordance with Sections 13145 and 13146. A city, county, city and county, or district shall not adopt or enforce a building ordinance or local rule or regulation relating to the subject of fire and life safety in large family daycare homes that is inconsistent with those standards adopted by the State Fire Marshal, except to the extent the building ordinance or local rule or regulation applies to all residences with the same zoning designation in which childcare is provided.

SEC. 13. Section 1597.47 of the Health and Safety Code is repealed.

SEC. 14. Section 1597.54 of the Health and Safety Code is amended to read:

1597.54. (a) All family daycare homes for children, shall apply for a license under this chapter, except that any home that, on June 28, 1981, had a valid and unexpired license to operate as a family daycare home for children under other provisions of law shall be deemed to have a license under this chapter for the unexpired term of the license, at which time a new license may be issued upon fulfilling the requirements of this chapter.

(b) An applicant for licensure as a family daycare home for children shall file with the department, pursuant to its regulations, an application on forms furnished by the department, which shall include, but not be limited to, all of the following:

(1) A brief statement confirming that the applicant is financially secure to operate a family daycare home for children. The department shall not require any other specific or detailed financial disclosure.

(2) (A) Evidence that the small family daycare home contains a fire extinguisher or smoke detector device, or both, that meets standards established by the State Fire Marshal under Section 1597.455, or evidence

that the large family daycare home meets the standards established by the State Fire Marshal under subdivision (a) of Section 1597.46.

(B) Evidence satisfactory to the department that there is a fire escape and disaster plan for the facility and that fire drills and disaster drills will be conducted at least once every six months. The documentation of these drills shall be maintained at the facility on a form prepared by the department and shall include the date and time of the drills.

(3) The fingerprints of any applicant of a family daycare home license, and any other adult, as required under subdivision (b) of Section 1596.871.

(4) Evidence of a current tuberculosis clearance, as defined in regulations that the department shall adopt, for any adult in the home during the time that children are under care. This requirement may be satisfied by a current certificate, as defined in subdivision (f) of Section 121525, that indicates freedom from infectious tuberculosis as set forth in Section 121525.

(5) Commencing September 1, 2016, evidence of current immunity or exemption from immunity, as described in Section 1597.622, for the applicant and any other person who provides care and supervision to the children.

(6) Evidence satisfactory to the department of the ability of the applicant to comply with this chapter and Chapter 3.4 (commencing with Section 1596.70) and the regulations adopted pursuant to those chapters.

(7) Evidence satisfactory to the department that the applicant and all other persons residing in the home are of reputable and responsible character. The evidence shall include, but not be limited to, a criminal record clearance pursuant to Section 1596.871, employment history, and character references.

(8) Other information as required by the department for the proper administration and enforcement of the act.

(c) Failure of the applicant to cooperate with the licensing agency in the completion of the application shall result in the denial of the application. Failure to cooperate means that the information described in this section and in regulations of the department has not been provided, or not provided in the form requested by the licensing agency, or both.

SEC. 15. Section 1597.543 of the Health and Safety Code is repealed.

SEC. 16. Section 1597.543 is added to the Health and Safety Code, to read:

1597.543. (a) The State Fire Marshal shall update the building and fire standards necessary to implement the sections of this chapter relating to life and fire safety, including, but not limited to, Sections 1597.455 and 1597.46, and shall publish the updates in the California Code of Regulations (CCR) in the next Title 19 and Title 24 CCR adoption cycle.

(b) Prior to the publication of the updates required by subdivision (a), but not later than January 1, 2021, the State Fire Marshal shall issue guidance on implementing the sections listed in subdivision (a).

(c) The State Fire Marshal shall update the regulations at least every three years to conform to changes in this chapter. The State Fire Marshal

may issue guidance on implementing this chapter annually in the years in which the regulations are not updated in Title 19 and Title 24 of the CCR.

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