

CHILD CARE AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

This act modifies provisions related to child care in Utah. The act modifies definitions related to providing child care services. It modifies the functions and duties of the Office of Child Care and requires an annual report by the office on the status of child care in the state. The act increases the membership of the Child Care Advisory Committee and provides specific responsibilities for the committee. The act modifies the roles and relationships of individuals and entities who have statutory responsibilities related to the Child Care Expendable Trust Fund and makes certain technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

26-39-102, as last amended by Chapter 77, Laws of Utah 1999

26-39-104, as last amended by Chapter 77, Laws of Utah 1999

35A-3-102, as last amended by Chapter 9, Laws of Utah 2001

35A-3-201, as renumbered and amended by Chapter 375, Laws of Utah 1997

35A-3-203, as last amended by Chapter 143, Laws of Utah 2001

35A-3-205, as last amended by Chapter 1, Laws of Utah 1998

35A-3-206, as last amended by Chapter 256, Laws of Utah 2002

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **26-39-102** is amended to read:

26-39-102. Definitions.

As used in this chapter:

(1) "Child" means:

(a) a child of a person other than the provider of child care;

(b) a child of a licensed or certified residential child care provider who is under the age of four; and

(c) a child of an employee or owner of a licensed child care center who is under the age of four.

(2) "Child care" means continuous care and supervision of five or more children ~~[under 14 years of age]~~ through age 12 and children with disabilities through age 18, in lieu of care ordinarily provided by parents in their own home, for less than 24 hours a day, for direct or

33 indirect compensation.

34 (3) "Child care program" means a child care facility or program operated by a person
35 [~~pursuant to~~] who holds a license issued in accordance with this chapter.

36 (4) "Residential child care" means child care provided in the home of a provider.

37 Section 2. Section **26-39-104** is amended to read:

38 **26-39-104. Duties of the department.**

39 (1) With regard to child care programs licensed [~~pursuant to~~] under this chapter, the
40 department may:

41 (a) make and enforce rules to implement [~~the provisions of~~] this chapter and, as
42 necessary to protect children's common needs for a safe and healthy environment, to provide
43 for:

44 (i) adequate facilities and equipment; and

45 (ii) competent caregivers considering the age of the children and the type of program
46 offered by the licensee;

47 (b) make and enforce rules necessary to carry out the purposes of this chapter, in the
48 following areas:

49 (i) requirements for applications, the application process, and compliance with other
50 applicable statutes and rules;

51 (ii) documentation and policies and procedures that providers shall have in place in
52 order to be licensed, in accordance with Subsection (1)(a);

53 (iii) categories, classifications, and duration of initial and ongoing licenses;

54 (iv) changes of ownership or name, changes in licensure status, and changes in
55 operational status;

56 (v) license expiration and renewal, contents, and posting requirements;

57 (vi) procedures for inspections, complaint resolution, disciplinary actions, and other
58 procedural measures to encourage and assure compliance with statute and rule; and

59 (vii) guidelines necessary to assure consistency and appropriateness in the regulation
60 and discipline of licensees; and

61 (c) set and collect licensing and other fees in accordance with Section 26-1-6.

62 (2) (a) The department may not regulate educational curricula, academic methods, or
63 the educational philosophy or approach of the provider.

64 (b) The department shall allow for a broad range of educational training and academic
65 background in certification or qualification of child day care directors.

66 (3) In licensing and regulating child care programs, the department shall reasonably
67 balance the benefits and burdens of each regulation and, by rule, provide for a range of
68 licensure, depending upon the needs and different levels and types of child care provided.

69 (4) Notwithstanding the definition of "child" in Subsection 26-39-102(1), the
70 department shall count children [~~under the age of 14~~] through age 12 and children with
71 disabilities through age 18 toward the minimum square footage requirement for indoor and
72 outdoor areas, including the child of:

73 (a) a licensed residential child care provider; or

74 (b) an owner or employee of a licensed child care center.

75 Section 3. Section **35A-3-102** is amended to read:

76 **35A-3-102. Definitions.**

77 [~~As~~] Unless otherwise specified, as used in this chapter:

78 (1) "Applicant" means a person who requests assistance under this chapter.

79 (2) "Average monthly number of families" means the average number of families who
80 received cash assistance on a monthly basis during the previous federal fiscal year, starting
81 from October 1, 1998 to September 30, 1999, and continuing each year thereafter.

82 (3) "Cash assistance" means a monthly dollar amount of cash a client is eligible to
83 receive under Section 35A-3-302.

84 (4) "Child care services" means care of a child for a portion of the day that is less than
85 24 hours in a qualified setting, as defined by rule, by a responsible person who is not the child's
86 parent or legal guardian.

87 (5) "Date of enrollment" means the date on which the applicant was approved as
88 eligible for cash assistance.

89 (6) "Director" means the director of the division.

90 (7) "Diversion" means a single payment of cash assistance under Section 35A-3-303 to
91 a client who is eligible for but does not require extended cash assistance under Part 3, Family
92 Employment Program.

93 (8) "Division" means the Division of Employment Development.

94 (9) "Education or training" means:

- 95 (a) basic remedial education;
- 96 (b) adult education;
- 97 (c) high school education;
- 98 (d) education to obtain the equivalent of a high school diploma;
- 99 (e) education to learn English as a second language;
- 100 (f) applied technology training;
- 101 (g) employment skills training; or
- 102 (h) on-the-job training.
- 103 (10) "Full-time education or training" means training on a full-time basis as defined by
- 104 the educational institution attended by the parent client.
- 105 (11) "General assistance" means financial assistance provided to a person who is not
- 106 otherwise eligible for cash assistance under Part 3, Family Employment Program, because that
- 107 person does not live in a family with a related dependent child.
- 108 (12) "Parent client" means a person who enters into an employment plan with the
- 109 division to qualify for cash assistance under Part 3, Family Employment Program.
- 110 (13) (a) "Passenger vehicle" means a self-propelled, two-axle vehicle intended
- 111 primarily for operation on highways and used by an applicant or client to meet basic
- 112 transportation needs and has a fair market value below 40% of the applicable amount of the
- 113 federal luxury passenger automobile tax established in 26 U.S.C. Sec. 4001 and adjusted
- 114 annually for inflation.
- 115 (b) "Passenger vehicle" does not include:
- 116 (i) a commercial vehicle, as defined in Section 41-1a-102;
- 117 (ii) an off-highway vehicle, as defined in Section 41-1a-102; or
- 118 (iii) a motor home, as defined in Section 13-14-102.
- 119 (14) "Plan" or "state plan" means the state plan submitted to the Secretary of the United
- 120 States Department of Health and Human Services to receive funding from the United States
- 121 through the Temporary Assistance for Needy Families Block Grant.
- 122 (15) "Single minor parent" means a person under 18 years of age who is not married
- 123 and has a minor child in [~~his~~] the person's care and custody.
- 124 Section 4. Section **35A-3-201** is amended to read:
- 125 **35A-3-201. Definitions.**

126 As used in this part:

127 (1) "Child care" means the services referred to in Subsection 35A-3-102(4) provided

128 for:

129 (a) children through age 12; and

130 (b) children with disabilities through age 18.

131 (2) "Child care provider association" means an association:

132 (a) that has functioned as a child care provider association in the state for at least three

133 years; and

134 (b) is affiliated with a national child care provider association.

135 ~~[(1)]~~ (3) "Committee" means the Child Care Advisory Committee created in Section

136 35A-3-205.

137 ~~[(2)]~~ (4) "Director" means the director of the Office of Child Care.

138 ~~[(3)]~~ (5) "Office" means the Office of Child Care created in Section 35A-3-202.

139 Section 5. Section **35A-3-203** is amended to read:

140 **35A-3-203. Functions and duties of office -- Annual report.**

141 The office shall:

142 (1) assess child care needs throughout the state on an ongoing basis and focus its
143 activities on helping to meet those needs, with highest identified needs being addressed first;

144 (2) provide child care subsidy services for income-eligible children through age 12 and
145 for income-eligible children with disabilities through age 18;

146 (3) use its resources to encourage the development and enhancement of child care
147 throughout the state;

148 ~~[(1)]~~ (4) provide information:

149 (a) to employers for the development of options for child care in the work place; and

150 (b) for educating the public in obtaining quality child care;

151 ~~[(2)]~~ (5) coordinate services for quality child care training and child care resource and
152 referral core services;

153 ~~[(3)]~~ (6) apply for, accept, or expend gifts or donations from public or private sources;

154 ~~[(4)]~~ (7) provide administrative support services to the committee;

155 ~~[(5)]~~ (8) work collaboratively with the following for the delivery of quality child care

156 and early childhood programs, and school age programs ~~[in]~~ throughout the state:

- 157 (a) the State Board of Education;
- 158 (b) the Department of Community and Economic Development; and
- 159 (c) the Department of Health;
- 160 ~~[(6)]~~ (9) research child care programs and public policy that will improve quality and
- 161 accessibility and that will further the purposes of the office and child care, early childhood
- 162 programs, and school age programs; ~~[and]~~
- 163 ~~[(7)]~~ (10) provide planning and technical assistance for the development and
- 164 implementation of programs in communities that lack child care, early childhood programs,
- 165 and school age programs; ~~[and]~~
- 166 ~~[(8)]~~ (11) provide organizational support for the establishment of nonprofit
- 167 organizations approved by the Child Care Advisory Committee, created in Section
- 168 35A-3-205~~[-]~~; and
- 169 (12) provide a written report on the status of child care in Utah to the Legislature by
- 170 November 1 of each year through the Workforce Services and Community and Economic
- 171 Development Interim Committee.

172 Section 6. Section **35A-3-205** is amended to read:

173 **35A-3-205. Creation of committee.**

- 174 (1) There is created a Child Care Advisory Committee.
- 175 (2) The committee shall counsel and advise the office in fulfilling its statutory
- 176 obligations~~[-]~~ to include:
- 177 (a) a review of and recommendations on the office's annual budget;
- 178 (b) recommendations on how the office might best respond to child care needs
- 179 throughout the state; and
- 180 (c) recommendations on the use of new monies that come into the office, including
- 181 those for the Child Care Fund.
- 182 (3) The committee ~~[shall be]~~ is composed of ~~[13]~~ the following members ~~[as follows]~~,
- 183 with special attention given to insure diversity and representation from both urban and rural
- 184 groups:
- 185 (a) one expert in early childhood development ~~[appointed by the executive director in~~
- 186 ~~accordance with Subsection (4)];~~
- 187 (b) one child care provider who operates a center ~~[appointed by the executive director~~

188 ~~in accordance with Subsection (4)];~~

189 (c) ~~one child care provider who operates a family child care business [appointed by the~~
190 ~~executive director in accordance with Subsection (4)];~~

191 (d) ~~one parent [of preschool or elementary school-aged children appointed by the~~
192 ~~executive director in accordance with Subsection (4)]~~ who receives a child care subsidy from
193 the office and is representative of single-parent households with children through age 12;

194 (e) one representative of two-parent households with children through age 12 using
195 child care;

196 ~~[(f)] (f)~~ one representative from the public at-large [appointed by the director in
197 accordance with Subsection (4)];

198 ~~[(f)] (g)~~ one representative of the State Office of Education;

199 ~~[(g)] (h)~~ one representative of the Department of Health;

200 (i) one representative of the Department of Human Services;

201 (j) one representative of the Department of Community and Economic Development;

202 ~~[(h)] (k)~~ two representatives from the corporate community [appointed by the
203 executive director in accordance with Subsection (4)], one who is a recent "Family Friendly"
204 award winner and who received the award because of efforts in the child care arena;

205 ~~[(i)] (l)~~ two representatives from the small business community [appointed by the
206 executive director in accordance with Subsection (4)];

207 ~~[(j)] (m)~~ one representative from child care advocacy groups [appointed by the
208 executive director in accordance with Subsection (4); and];

209 ~~[(k) one representative from the Division of Employment Development appointed by~~
210 ~~the executive director.]~~

211 (n) one representative of children with disabilities;

212 (o) one representative from the state Head Start Association appointed by the
213 association;

214 (p) one representative from each child care provider association; and

215 (q) one representative of a child care resource and referral center appointed by the
216 organization representing child care resource and referral agencies.

217 ~~[(4) Of those members appointed by the executive director under Subsection (3), with~~
218 ~~the exception of the representative from the Division of Employment Development, no more~~

219 ~~than five may be from the same political party.]~~

220 (4) (a) The executive director shall appoint the members designated in Subsections
221 (3)(a) through (f) and (k) through (n).

222 (b) The head of the respective departments shall appoint the members referred to in
223 Subsections (3)(g) through (j).

224 (c) Each child care provider association shall appoint its respective member referred to
225 in Subsection (3)(p).

226 (5) (a) Except as required by Subsection (5)(b), as terms of current committee members
227 expire, the ~~[executive director]~~ appointing authority shall appoint each new member or
228 reappointed member to a four-year term.

229 (b) Notwithstanding the requirements of Subsection (5)(a), the ~~[executive director]~~
230 appointing authority shall, at the time of appointment or reappointment, adjust the length of
231 terms to ensure that the terms of committee members are staggered so that approximately half
232 of the committee is appointed every two years.

233 (6) When a vacancy occurs in the membership for any reason, including missing three
234 consecutive meetings where the member has not been excused by the chair prior to or during
235 the meeting, the replacement shall be appointed for the unexpired term.

236 (7) A majority of the members constitutes a quorum for the transaction of business.

237 (8) (a) The executive director shall select a chair from the committee membership.

238 ~~[The chair's term of office expires on April 1 of each year and a]~~

239 (b) A chair may serve no more than two one-year terms as chair.

240 (9) (a) ~~[(†)]~~ Members who are not government employees may not receive
241 compensation or benefits for their services, but may receive per diem and expenses incurred in
242 the performance of the member's official duties at the rates established by the Division of
243 Finance under Sections 63A-3-106 and 63A-3-107.

244 ~~[(ii) Members may decline to receive per diem and expenses for their service.]~~

245 (b) ~~[(†)]~~ State government officer and employee members who do not receive salary,
246 per diem, or expenses from their agency for their service may receive per diem and expenses
247 incurred in the performance of their official duties from the committee at the rates established
248 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

249 ~~[(ii)]~~ (c) ~~[State government officer and employee members]~~ Members identified in

250 Subsections (9)(a) and (b) may decline to receive per diem and expenses for their service.

251 Section 7. Section **35A-3-206** is amended to read:

252 **35A-3-206. Restricted special revenue fund -- Use of monies -- Committee and**
253 **director duties -- Restrictions.**

254 (1) There is created a restricted special revenue fund known as the "Child Care Fund."

255 (2) The ~~[executive]~~ director of the office shall administer the fund under the direction
256 of the committee.

257 (3) (a) The office may form nonprofit corporations or foundations controlled by the
258 director of the office and the committee to aid and assist the office in attaining its charitable,
259 research, and educational objectives.

260 (b) The nonprofit corporations or foundations may receive and administer Legislative
261 appropriations, government grants, contracts, and private gifts to carry out their public
262 purposes.

263 ~~[(3)]~~ (4) The fund shall be used to accept monies designated for child care initiatives
264 improving the quality, affordability, or accessibility of child care.

265 ~~[(4)]~~ (5) The monies in the fund that are not restricted to a specific use under federal
266 law or by donors may not be expended without approval of the committee.

267 ~~[(5) There shall be deposited into the fund money from numerous sources including~~
268 ~~grants, private foundations, or individual donors.]~~

269 (6) The state treasurer shall invest the monies in the fund ~~[shall be invested by the state~~
270 ~~treasurer pursuant to]~~ under Title 51, Chapter 7, State Money Management Act, except that all
271 interest or other earnings derived from the fund monies shall be deposited in the fund.

272 (7) The monies in the fund may not be used for administrative expenses of the
273 ~~[department]~~ office normally provided for by legislative appropriation.

274 (8) The committee shall:

275 (a) advise the director of the office on child care needs in the state and on relevant
276 operational aspects of any grant, loan, or revenue collection program established under this
277 part;

278 (b) recommend specific child care projects to the director of the office;

279 (c) recommend policy and procedures for administering the fund;

280 (d) make recommendations on grants, loans, or contracts from the fund for any of the

- 281 child care activities authorized under this part;
- 282 (e) establish the criteria by which loans and grants will be made;
- 283 (f) determine the order in which approved child care projects will be funded;
- 284 (g) make recommendations regarding the distribution of money from the fund in
285 accordance with the procedures, conditions, and restrictions placed upon the monies by the
286 donors; and
- 287 (h) have joint responsibility with the office to solicit public and private funding for the
288 fund.
- 289 (9) Fund monies [~~may~~] shall be used for any of the following activities:
- 290 (a) training of child care providers;
- 291 (b) scholarships and grants for child care providers' professional development;
- 292 (c) child care public awareness and consumer education services;
- 293 (d) child care provider recruitment;
- 294 (e) Office of Child Care sponsored activities;
- 295 (f) matching money for obtaining grants; or
- 296 (g) other activities that will assist in the improvement of child care quality,
297 affordability, or accessibility.
- 298 (10) The [~~executive~~] director of the office, with the consent of the committee and the
299 executive director, may grant, lend, or contract fund money for child care purposes to:
- 300 (a) local governments;
- 301 (b) nonprofit community, charitable, or neighborhood-based organizations;
- 302 (c) regional or statewide nonprofit organizations; or
- 303 (d) child care providers.
- 304 (11) Preference may be given but awards may not be limited to applicants for fund
305 monies that demonstrate any of the following:
- 306 (a) programmatic or financial need;
- 307 (b) diversity of clientele or geographic location; and
- 308 (c) coordination with or enhancement of existing services.
- 309 (12) The executive director or the executive director's designee shall monitor the
310 activities of the recipients of grants, loans, or contracts issued from the fund on an annual basis
311 to ensure compliance with the terms and conditions imposed on the recipient by the fund.

312 (13) The entities receiving grants, loans, or contracts shall provide the [executive]
313 director of the office with an annual accounting of how the monies they received from the fund
314 have been spent.

315 (14) (a) The [executive] director of the office shall make an annual report to the
316 committee regarding the status of the fund and the programs and [the] services funded by the
317 fund.

318 (b) The report shall be included as a component of the report to the Legislature
319 required under Subsection 35A-3-203(2).

Legislative Review Note
as of 11-20-02 4:13 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel