

CHILD CARE AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill amends provisions of the Utah Health Code related to child care.

Highlighted Provisions:

This bill:

- ▶ requires a child care provider that is exempt from licensure and certification requirements to:
 - submit information to the Department of Health for the purpose of conducting criminal history checks;
 - prohibit an individual with a misdemeanor or felony from providing care to a child receiving care from the provider, unless exempted by the Department of Health; and
 - post, in a conspicuous location, a notice that is prepared by the Department of Health that states the facility is exempt from licensure and certification and provides the department's contact information for submitting a complaint;
- ▶ allows the Department of Health to investigate a child care provider that is exempt from licensure and certification requirements under certain circumstances; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 26-39-102**, as last amended by Laws of Utah 2014, Chapter 322
- 26-39-403**, as renumbered and amended by Laws of Utah 2008, Chapter 111
- 26-39-404**, as last amended by Laws of Utah 2013, Chapter 276
- 26-39-501**, as last amended by Laws of Utah 2008, Chapter 382 and renumbered and

33 amended by Laws of Utah 2008, Chapter 111

34

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

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

37 **26-39-102. Definitions.**

38 As used in this chapter:

39 (1) "Advisory committee" means the Residential Child Care Licensing Advisory
40 Committee, created in Section 26-1-7.

41 (2) "Child care" means continuous care and supervision of five or more qualifying
42 children, that is:

43 (a) in lieu of care ordinarily provided by a parent in the parent's home;

44 (b) for less than 24 hours a day; and

45 (c) for direct or indirect compensation.

46 (3) "Child care program" means a child care facility or program operated by a person
47 who holds a license or certificate issued in accordance with this chapter.

48 (4) (a) "Center based child care" means, except as provided in Subsection (4)(b), a
49 child care program licensed under this chapter.

50 (b) "Center based child care" does not include:

51 (i) a residential child care provider certified under Section 26-39-402; or

52 (ii) a facility or program exempt under Section 26-39-403.

53 (5) "Exempt provider" means a person who provides care described in Subsection
54 26-39-403(2).

55 [~~5~~] (6) "Licensing committee" means the Child Care Center Licensing Committee
56 created in Section 26-1-7.

57 [~~6~~] (7) "Public school" means:

58 (a) a school, including a charter school, that:

59 (i) is directly funded at public expense; and

60 (ii) provides education to qualifying children for any grade from first grade through
61 twelfth grade; or

62 (b) a school, including a charter school, that provides:

63 (i) preschool or kindergarten to qualifying children, regardless of whether the preschool

64 or kindergarten is funded at public expense; and

65 (ii) education to qualifying children for any grade from first grade through twelfth
66 grade, if each grade, from first grade to twelfth grade, that is provided at the school, is directly
67 funded at public expense.

68 ~~[(7)]~~ (8) "Qualifying child" means ~~[a person]~~ an individual who is:

69 (a) (i) under the age of 13; or

70 (ii) under the age of 18, if the person has a disability; and

71 (b) a child of:

72 (i) a person other than the person providing care to the child;

73 (ii) a licensed or certified residential child care provider, if the child is under the age of
74 four; or

75 (iii) an employee or owner of a licensed child care center, if the child is under the age
76 of four.

77 (8) "Residential child care" means child care provided in the home of a provider.

78 Section 2. Section **26-39-403** is amended to read:

79 **26-39-403. Exclusions from chapter -- Criminal background checks by an**
80 **excluded person.**

81 (1) The provisions and requirements of this chapter do not apply to:

82 (a) a facility or program owned or operated by an agency of the United States
83 government;

84 (b) group counseling provided by a mental health therapist, as defined in Section
85 58-60-102, who is licensed to practice in this state;

86 (c) a health care facility licensed pursuant to Title 26, Chapter 21, Health Care Facility
87 Licensing and Inspection Act;

88 (d) care provided to qualifying children by or in the homes of parents, legal guardians,
89 grandparents, brothers, sisters, uncles, or aunts;

90 (e) care provided to qualifying children, in the home of the provider, for less than four
91 hours a day or on a sporadic basis, unless that child care directly affects or is related to a
92 business licensed in this state; or

93 (f) care provided at a residential support program that is licensed by the Department of
94 Human Services.

95 (2) The licensing and certification requirements of this chapter do not apply to:

96 [(f)] (a) care provided to qualifying children as part of a course of study at or a program
97 administered by an educational institution that is regulated by the boards of education of this
98 state, a private education institution that provides education in lieu of that provided by the
99 public education system, or by a parochial education institution;

100 [(g)] (b) care provided to qualifying children by a public or private institution of higher
101 education, if the care is provided in connection with a course of study or program, relating to
102 the education or study of children, that is provided to students of the institution of higher
103 education;

104 [(h)] (c) care provided to qualifying children at a public school by an organization
105 other than the public school, if:

106 (i) the care is provided under contract with the public school or on school property; or

107 (ii) the public school accepts responsibility and oversight for the care provided by the
108 organization;

109 [(i)] (d) care provided to qualifying children as part of a summer camp that operates on
110 federal land pursuant to a federal permit;

111 [(j)] (e) care provided by an organization that:

112 (i) qualifies for tax exempt status under Section 501(c)(3) of the Internal Revenue
113 Code;

114 (ii) is provided pursuant to a written agreement with:

115 (A) a municipality, as defined in Section 10-1-104, that provides oversight for the
116 program; or

117 (B) a county that provides oversight for the program; and

118 (iii) is provided to children who are over the age of four and under the age of 13[; or].

119 [~~(k) care provided at a residential support program that is licensed by the Department
120 of Human Services.~~]

121 [~~(2) A person who is excluded, under Subsection (1), from the provisions and
122 requirements of this chapter, shall conduct a criminal background check on all of the person's
123 employees who have access to a qualifying child to whom care is provided by the person.~~]

124 (3) An exempt provider shall submit to the department:

125 (a) the information required under Subsections 26-39-404(1) and (2); and

- 126 (b) of the children receiving care from the exempt provider:
 127 (i) the number of children that are less than two years old;
 128 (ii) the number of children that are at least two years old and less than five years old;
 129 and
 130 (iii) the number of children that are five years old or older.

131 (4) An exempt provider shall post, in a conspicuous location near the entrance of the
 132 exempt provider's facility, a notice prepared by the department that:

- 133 (a) states that the facility is exempt from licensure and certification; and
 134 (b) provides the department's contact information for submitting a complaint.

135 Section 3. Section **26-39-404** is amended to read:

136 **26-39-404. Disqualified individuals -- Criminal history checks -- Payment of**
 137 **costs.**

138 (1) (a) Each exempt provider and each person requesting a residential certificate or to
 139 be licensed or to renew a license under this chapter shall submit to the department the name
 140 and other identifying information, which shall include fingerprints, of existing, new, and
 141 proposed:

- 142 (i) owners;
 143 (ii) directors;
 144 (iii) members of the governing body;
 145 (iv) employees;
 146 (v) providers of care;
 147 (vi) volunteers, except parents of children enrolled in the programs; and
 148 (vii) all adults residing in a residence where child care is provided.

149 (b) A person seeking renewal of a residential certificate or license under this section is
 150 not required to submit fingerprints of an individual referred to in Subsections (1)(a)(i) through
 151 (vi), if:

- 152 (i) the individual has resided in Utah for the last five years and applied for a certificate
 153 or license before July 1, 2013;
 154 (ii) the individual has:
 155 (A) previously submitted fingerprints under this section for a national criminal history
 156 record check; and

157 (B) resided in Utah continuously since that time; or

158 (iii) as of May 3, 1999, the individual had one of the relationships under Subsection
159 (1)(a) with a child care provider having a residential certificate or licensed under this section
160 and the individual has resided in Utah continuously since that time.

161 (c) (i) The Utah Division of Criminal Investigation and Technical Services within the
162 Department of Public Safety shall process the information required under Subsection (1)(a) to
163 determine whether the individual has been convicted of any crime.

164 (ii) The Utah Division of Criminal Investigation and Technical Services shall submit
165 fingerprints required under Subsection (1)(a) to the FBI for a national criminal history record
166 check.

167 (iii) ~~[The applicant for the license or residential certificate]~~ A person required to submit
168 information to the department under Subsection (1) shall pay the cost of conducting [a] the
169 record check ~~[under this]~~ described in this Subsection (1)(c).

170 (2) (a) Each person requesting a residential certificate or to be licensed or to renew a
171 license under this chapter shall submit to the department the name and other identifying
172 information of any person age 12 through 17 who resides in the residence where the child care
173 is provided. The identifying information required for a person age 12 through 17 does not
174 include fingerprints.

175 (b) The department shall access the juvenile court records to determine whether a
176 person described in Subsection (1) or (2)(a) has been adjudicated in juvenile court of
177 committing an act which if committed by an adult would be a felony or misdemeanor if:

178 (i) the person described in Subsection (1) is under the age of 28; or

179 (ii) the person described in Subsection (1) is:

180 (A) over the age of 28; and

181 (B) has been convicted, has pleaded no contest, or is currently subject to a plea in
182 abeyance or diversion agreement for a felony or misdemeanor.

183 (3) Except as provided in Subsection (4), a licensee under this chapter or an exempt
184 provider may not permit a person who has been convicted, has pleaded no contest, or is
185 currently subject to a plea in abeyance or diversion agreement for any felony or misdemeanor,
186 or if the provisions of Subsection (2)(b) apply, who has been adjudicated in juvenile court of
187 committing an act which if committed by an adult would be a felony or a misdemeanor, to:

188 (a) provide child care;
 189 (b) provide volunteer services for [~~a licensed child care program or a child care~~
 190 ~~program operating under a residential child care certificate~~] a child care program or an exempt
 191 provider;

192 (c) reside at the premises where child care is provided; or

193 (d) function as an owner, director, or member of the governing body of a [~~licensed~~
 194 ~~child care program or a child care program operating under a residential child care certificate~~]
 195 child care program or an exempt provider.

196 (4) (a) The department may, by rule, exempt the following from the restrictions of
 197 Subsection (3):

198 (i) specific misdemeanors; and

199 (ii) specific acts adjudicated in juvenile court, which if committed by an adult would be
 200 misdemeanors.

201 (b) In accordance with criteria established by rule, the executive director may consider
 202 and exempt individual cases involving misdemeanors, not otherwise exempt under Subsection
 203 (4)(a) from the restrictions of Subsection (3).

204 Section 4. Section **26-39-501** is amended to read:

205 **26-39-501. Investigations -- Records.**

206 (1) The department may conduct investigations necessary to enforce the provisions of
 207 this chapter.

208 (2) For purposes of this section:

209 (a) "Anonymous complainant" means a complainant for whom the department does not
 210 have the minimum personal identifying information necessary, including the complainant's full
 211 name, to attempt to communicate with the complainant after a complaint has been made.

212 (b) "Confidential complainant" means a complainant for whom the department has the
 213 minimum personal identifying information necessary, including the complainant's full name, to
 214 attempt to communicate with the complainant after a complaint has been made, but who elects
 215 under Subsection (3)(c) not to be identified to the subject of the complaint.

216 (c) "Subject of the complaint" means the licensee or certificate holder about whom the
 217 complainant is informing the department.

218 (3) (a) If the department receives a complaint about a child care program or [~~residential~~

219 ~~child care]~~ an exempt provider, the department shall:

220 (i) solicit information from the complainant to determine whether the complaint
221 suggests actions or conditions that could pose a serious risk to the safety or well-being of a
222 qualifying child;

223 (ii) as necessary:

224 (A) encourage the complainant to disclose the minimum personal identifying
225 information necessary, including the complainant's full name, for the department to attempt to
226 subsequently communicate with the complainant;

227 (B) inform the complainant that the department may not investigate an anonymous
228 complaint;

229 (C) inform the complainant that the identity of a confidential complainant may be
230 withheld from the subject of a complaint only as provided in Subsection (3)(c)(ii); and

231 (D) inform the complainant that the department may be limited in its use of
232 information provided by a confidential complainant, as provided in Subsection (3)(c)(ii)(B);
233 and

234 (iii) inform the complainant that a person is guilty of a class B misdemeanor under
235 Section 76-8-506 if the person gives false information to the department with the purpose of
236 inducing a change in that person's or another person's licensing or certification status.

237 (b) If the complainant elects to be an anonymous complainant, or if the complaint
238 concerns events which occurred more than six weeks before the complainant contacted the
239 department:

240 (i) shall refer the information in the complaint to the Division of Child and Family
241 Services within the Department of Human Services, law enforcement, or any other appropriate
242 agency, if the complaint suggests actions or conditions which could pose a serious risk to the
243 safety or well-being of a child;

244 (ii) may not investigate or substantiate the complaint; and

245 (iii) may, during a regularly scheduled annual survey, inform the exempt provider,
246 licensee or certificate holder [~~who~~] that is the subject of the complaint of allegations or
247 concerns raised by:

248 (A) the anonymous complainant; or

249 (B) the complainant who reported events more than six weeks after the events

250 occurred.

251 (c) (i) If the complainant elects to be a confidential complainant, the department shall
252 determine whether the complainant wishes to remain confidential:

253 (A) only until the investigation of the complaint has been completed; or

254 (B) indefinitely.

255 (ii) (A) If the complainant elects to remain confidential only until the investigation of
256 the complaint has been completed, the department shall disclose the name of the complainant
257 to the subject of the complaint at the completion of the investigation, but no sooner.

258 (B) If the complainant elects to remain confidential indefinitely, the department:

259 (I) notwithstanding Subsection 63G-2-201(5)(b), may not disclose the name of the
260 complainant, including to the subject of the complaint; and

261 (II) may not use information provided by the complainant to substantiate an alleged
262 violation of state law or department rule unless the department independently corroborates the
263 information.

264 (4) (a) Prior to conducting an investigation of a child care program or [~~residential child~~
265 ~~care~~] an exempt provider in response to a complaint, a department investigator shall review the
266 complaint with the investigator's supervisor.

267 (b) The investigator may proceed with the investigation only if:

268 (i) the supervisor determines the complaint is credible;

269 (ii) the complaint is not from an anonymous complainant; and

270 (iii) prior to the investigation, the investigator informs the subject of the complaint of:

271 (A) except as provided in Subsection (3)(c), the name of the complainant; and

272 (B) except as provided in Subsection (4)(c), the substance of the complaint.

273 (c) An investigator is not required to inform the subject of a complaint of the substance
274 of the complaint prior to an investigation if doing so would jeopardize the investigation.

275 However, the investigator shall inform the subject of the complaint of the substance of the
276 complaint as soon as doing so will no longer jeopardize the investigation.

277 (5) If the department is unable to substantiate a complaint, any record related to the
278 complaint or the investigation of the complaint:

279 (a) shall be classified under Title 63G, Chapter 2, Government Records Access and
280 Management Act, as:

281 (i) a private or controlled record if appropriate under Section 63G-2-302 or 63G-2-304;
282 or
283 (ii) a protected record under Section 63G-2-305; and
284 (b) if disclosed in accordance with Subsection 63G-2-201(5)(b), may not identify an
285 individual child care program, exempt provider, licensee, certificate holder, or complainant.
286 (6) Any record of the department related to a complaint by an anonymous complainant
287 is a protected record under Title 63G, Chapter 2, Government Records Access and
288 Management Act, and, notwithstanding Subsection 63G-2-201(5)(b), may not be disclosed in a
289 manner that identifies an individual child care program, exempt provider, licensee, certificate
290 holder, or complainant.