

CHILD CARE LICENSING EXEMPTIONS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jon J. Greiner

House Sponsor: _____

LONG TITLE

General Description:

This bill recodifies the Utah Child Care Licensing Act and provides exemptions from the act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ recodifies the Utah Child Care Licensing Act;
- ▶ amends provisions relating to the reimbursement for expenses of members of the Child Care Licensing Advisory Committee;
- ▶ describes entities that are exempt from the requirements of the Utah Child Care Licensing Act; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-39-102, as last amended by Laws of Utah 2003, Chapter 13

63-2-304, as last amended by Laws of Utah 2007, Chapters 66 and 352



28 **78-3a-206**, as last amended by Laws of Utah 2006, Chapters 77, 103, and 281

29 **78-3a-320**, as last amended by Laws of Utah 2006, Chapter 77

30 ENACTS:

31 **26-39-202**, Utah Code Annotated 1953

32 RENUMBERS AND AMENDS:

33 **26-39-201**, (Renumbered from 26-39-103, as last amended by Laws of Utah 1999,
34 Chapter 77)

35 **26-39-301**, (Renumbered from 26-39-104, as last amended by Laws of Utah 2007,
36 Chapter 306)

37 **26-39-401**, (Renumbered from 26-39-105, as last amended by Laws of Utah 2006,
38 Chapter 317)

39 **26-39-402**, (Renumbered from 26-39-105.5, as last amended by Laws of Utah 2006,
40 Chapters 77, 103, and 317)

41 **26-39-403**, (Renumbered from 26-39-106, as last amended by Laws of Utah 1998,
42 Chapter 158)

43 **26-39-404**, (Renumbered from 26-39-107, as last amended by Laws of Utah 2007,
44 Chapter 43)

45 **26-39-501**, (Renumbered from 26-39-109, as last amended by Laws of Utah 2006,
46 Chapter 37)

47 **26-39-601**, (Renumbered from 26-39-108, as enacted by Laws of Utah 1997, Chapter
48 196)

49 **26-39-602**, (Renumbered from 26-39-110, as enacted by Laws of Utah 1997, Chapter
50 196)

51

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

53 **Part 1. General Provisions.**

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

55 **26-39-102. Definitions.**

56 As used in this chapter:

57 [~~(1) "Child" means:~~]

58 [~~(a) a child of a person other than the provider of child care;~~]

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

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

63 ~~[(2)]~~ (1) "Child care" means continuous care and supervision of five or more qualifying
64 children [through age 12 and children with disabilities through age 18], that is:

65 (a) in lieu of care ordinarily provided by [parents in their own] a parent in the parent's
66 home[;];

67 (b) for less than 24 hours a day[;]; and

68 (c) for direct or indirect compensation.

69 ~~[(3)]~~ (2) "Child care program" means a child care facility or program operated by a
70 person who holds a license ~~§~~ **→ or certificate ←§** issued in accordance with this chapter.

71 (3) "Committee" means the Child Care Licensing Advisory Committee, created in
72 Section 26-39-201.

73 (4) "Qualifying child" means a person who is:

74 (a) (i) under the age of ~~§~~ [12] 13 ←§ ; or

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

76 (b) a child of:

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

78 (ii) a licensed or certified residential child care provider ~~§~~ [who] , if the child ←§ is
78a under the age of four;

79 or

80 (iii) an employee or owner of a licensed child care center ~~§~~ [who] , if the child ←§ is
80a under the age of four.

81 ~~[(4)]~~ (5) "Residential child care" means child care provided in the home of a provider.

82 ~~§~~ **→ [(6) "School" means a public or private:**

83 ~~—— (a) elementary school; or~~

84 ~~—— (b) secondary school.]~~

84a **(6) "Public school" means a school that is:**

84b **(a) except as provided in Subsection (6)(b)(ii), directly funded at public**
84c **expense, including charter schools;**

84d **(b) provides:**

84e **(i) education to qualifying children for any grade from first**
84f **grade through twelfth grade; or ←§**

90 department on rules [~~promulgated~~] made by the department [~~pursuant to~~] under this chapter.
 91 [~~It~~]

92 (b) The committee shall be composed of the following 13 members who shall be
 93 appointed by the executive director:

94 [~~(a)~~] (i) two child care consumers;

95 [~~(b)~~] (ii) two licensed residential child care providers;

96 [~~(c)~~] (iii) one certified residential child care provider;

97 [~~(d)~~] (iv) five representatives of licensed child care center programs;

98 [~~(e)~~] (v) one individual with expertise in early childhood development; and

99 [~~(f)~~] (vi) two health care providers.

100 (2) [~~Appointments shall be for~~] Members shall be appointed for four-year terms, except
 101 for those members who have been appointed to complete an unexpired term. Appointments
 102 and reappointments may be staggered so that 1/4 of the committee changes each year. The
 103 committee shall annually elect a chairman from its membership.

104 (3) The [~~advisory~~] committee shall meet at least quarterly, or more frequently as
 105 determined by the executive director, the chairman, or three or more members of the
 106 committee. Seven members constitute a quorum and a vote of the majority of the members
 107 present constitutes an action of the committee.

108 [~~(4) Advisory committee members shall be reimbursed for their actual and necessary~~
 109 ~~expenses incurred in the performance of their duties as established by the director of the~~
 110 ~~Division of Finance, pursuant to Section 63A-3-107. Advisory committee members may~~
 111 ~~decline reimbursement.]~~

112 Section 3. Section **26-39-202** is enacted to read:

113 **26-39-202. Members serve without pay -- Reimbursement for expenses.**

114 (1) A member of the committee who is not a government employee shall receive no
 115 compensation or benefits for the member's services, but may:

116 (a) receive per diem and expenses incurred in the performance of the member's official
 117 duties at the rates established by the Division of Finance under Sections 63A-3-106 and
 118 63A-3-107; or

119 (b) decline to receive per diem and expenses for the member's service.

120 (2) A member of the committee who is a state government officer or employee and

121 who does not receive salary, per diem, or expenses from the member's agency for the member's
122 service may:

123 (a) receive per diem and expenses incurred in the performance of the member's official
124 duties at the rates established by the Division of Finance under Sections 63A-3-106 and
125 63A-3-107; or

126 (b) decline to receive per diem and expenses for the member's service.

127 Section 4. Section **26-39-301**, which is renumbered from Section 26-39-104 is
128 renumbered and amended to read:

129 **Part 3. Department Duties**

130 **~~[26-39-104].~~ 26-39-301. Duties of the department.**

131 (1) With regard to child care programs licensed under this chapter, the department
132 may:

133 (a) make and enforce rules to implement this chapter and, as necessary to protect
134 qualifying children's common needs for a safe and healthy environment, to provide for:

135 (i) adequate facilities and equipment; and

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

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

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

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

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

145 (iv) changes of ownership or name, changes in licensure status, and changes in
146 operational status;

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

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

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

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

153 (2) Rules made under this chapter shall be made in accordance with Title 63, Chapter
 154 46a, Utah Administrative Rulemaking Act.

155 [~~2~~] (3) (a) The department may not regulate educational curricula, academic methods,
 156 or the educational philosophy or approach of the provider.

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

159 [~~3~~] (4) In licensing and regulating child care programs, the department shall
 160 reasonably balance the benefits and burdens of each regulation and, by rule, provide for a range
 161 of licensure, depending upon the needs and different levels and types of child care provided.

162 [~~4~~] (5) Notwithstanding the definition of "qualifying child" in [~~Subsection~~] Section
 163 26-39-102[~~(4)~~], the department shall count children through age 12 and children with
 164 disabilities through age 18 toward the minimum square footage requirement for indoor and
 165 outdoor areas, including the child of:

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

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

168 [~~5~~] (6) Notwithstanding Subsection (1)(a)(i), the department may not exclude floor
 169 space used for furniture, fixtures, or equipment from the minimum square footage requirement
 170 for indoor and outdoor areas if the furniture, fixture, or equipment is used:

171 (a) by qualifying children;

172 (b) for the care of qualifying children; or

173 (c) to store classroom materials.

174 [~~6~~] (7) (a) A child care center constructed prior to January 1, 2004, and licensed and
 175 operated as a child care center continuously since January 1, 2004, is exempt from the
 176 department's group size restrictions, if the child to caregiver ratios are maintained, and
 177 adequate square footage is maintained for specific classrooms.

178 (b) An exemption granted under Subsection [~~6~~] (7)(a) is transferrable to subsequent
 179 licensed operators at the center if a licensed child care center is continuously maintained at the
 180 center.

181 [~~7~~] (8) The department shall develop, by rule, a five-year phased-in compliance
 182 schedule for playground equipment safety standards.

182a **§→ (9) Nothing in this chapter may be interpreted to grant a municipality or county the**
 182b **authority to license or certify a child care program. ←§**

183 Section 5. Section **26-39-401**, which is renumbered from Section 26-39-105 is
184 renumbered and amended to read:

185 **Part 4. Licensing**

186 ~~[26-39-105].~~ **26-39-401. Licensure requirements -- Expiration -- Renewal.**

187 (1) Except as provided in Section ~~[26-39-106]~~ 26-39-403, a person shall be licensed or
188 certified in accordance with this chapter if ~~[he]~~ the person:

189 (a) provides or offers child care; or

190 (b) provides care to qualifying children and requests to be licensed.

191 (2) The department may issue licenses for a period not exceeding 24 months to child
192 care providers who meet the requirements of:

193 (a) this chapter; and

194 (b) the department's rules governing child care programs.

195 (3) A license issued under this chapter is not assignable or transferable.

196 Section 6. Section **26-39-402**, which is renumbered from Section 26-39-105.5 is
197 renumbered and amended to read:

198 ~~[26-39-105.5].~~ **26-39-402. Residential child care certificate.**

199 (1) (a) A residential child care provider of five to eight qualifying children shall obtain
200 a Residential Child Care Certificate from the department, unless Section ~~[26-39-106]~~
201 26-39-403 applies.

202 (b) The minimum qualifications for a Residential Child Care Certificate are:

203 (i) the submission of:

204 (A) an application in the form prescribed by the department;

205 (B) a certification and criminal background fee established in accordance with Section
206 26-1-6; and

207 (C) in accordance with Section ~~[26-39-107]~~ 26-39-404, identifying information for
208 each adult person and each juvenile age 12 through 17 years of age who resides in the
209 provider's home:

210 (I) for processing by the Department of Public Safety to determine whether any such
211 person has been convicted of a crime;

212 (II) to screen for a substantiated finding of child abuse or neglect by a juvenile court;

213 and

214 (III) to discover whether the person is listed in the Licensing Information System
215 described in Section 62A-4a-1006;

216 (ii) an initial and annual inspection of the provider's home within 90 days of sending an
217 intent to inspect notice to:

218 (A) check the immunization record of each qualifying child who receives child care in
219 the provider's home;

220 (B) identify serious sanitation, fire, and health hazards to qualifying children; and
221 (C) make appropriate recommendations; and

222 (iii) annual training consisting of ten hours of department-approved training as
223 specified by the department by administrative rule, including a current department-approved
224 CPR and first aid course.

225 (c) If a serious sanitation, fire, or health hazard has been found during an inspection
226 conducted pursuant to Subsection (1)(b)(ii), the department shall require corrective action for
227 the serious hazards found and make an unannounced follow up inspection to determine
228 compliance.

229 (d) In addition to an inspection conducted pursuant to Subsection (1)(b)(ii), the
230 department may inspect the home of a residential care provider of five to eight qualifying
231 children in response to a complaint of:

232 (i) child abuse or neglect;
233 (ii) serious health hazards in or around the provider's home; or
234 (iii) providing residential child care without the appropriate certificate or license.

235 (2) Notwithstanding this section:

236 (a) a license under Section [~~26-39-105~~] 26-39-401 is required of a residential child care
237 provider who cares for nine or more qualifying children;

238 (b) a certified residential child care provider may not provide care to more than two
239 qualifying children under the age of two; and

240 (c) an inspection may be required of a residential child care provider in connection
241 with a federal child care program.

242 (3) With respect to residential child care, the department may only make and enforce
243 rules necessary to implement this section.

244 Section 7. Section **26-39-403**, which is renumbered from Section 26-39-106 is

245 renumbered and amended to read:

246 ~~[26-39-106].~~ **26-39-403. Exclusions from chapter.**

247 The provisions and requirements of this chapter do not apply to:

248 (1) a facility or program owned or operated by an agency of the United States

249 government;

250 (2) group counseling provided by a mental health therapist, as defined in Section

251 58-60-102, who is licensed to practice in this state;

252 (3) a health care facility licensed pursuant to Title 26, Chapter 21, Health Care Facility

253 ~~[Licensure]~~ Licensing and Inspection Act;

254 (4) care provided to qualifying children by or in the homes of parents, legal guardians,

255 grandparents, brothers, sisters, uncles, or aunts;

256 (5) care provided to qualifying children, in the home of the provider, for less than four

257 hours a day or on a sporadic basis, unless that child care directly affects or is related to a

258 business licensed in this state; ~~[or]~~

259 ~~§~~ **→ [f] (6) care provided to qualifying children as part of a course of study at or a**

259a **program administered by an**

260 **educational institution that is regulated by the boards of education of this state, a private**

261 **education institution that provides education in lieu of that provided by the public education**

262 **system, or by a parochial education institution. [;]**

263 ~~[(6) care provided to qualifying children by a school, including pre-school programs~~

264 ~~operated by a school;] ←§~~

265 (7) care provided to qualifying children by a public or private institution of higher

266 education, if the care is provided in connection with a course of study or program, relating to

267 the education or study of children, that is provided to students of the institution of higher

268 education;

269 (8) care provided to qualifying children at a ~~§~~ **→ public ←§** school by an organization other

269a than the ~~§~~ **→ public ←§**

270 school, if:

271 (a) the care is provided under contract with the ~~§~~ **→ public ←§** school ~~§~~ **→ or on school**

271a **property ←§ ; or**

272 (b) the ~~§~~ **→ public ←§** school accepts responsibility and oversight for the care provided by the

273 organization;

274 (9) care provided to qualifying children ~~§~~ **→ [that is:**

275 ~~— (a) under federal oversight; or] ←§~~

276 ~~§→ [(b) provided under a federal permit; or]~~ as part of a summer camp that operates on
 276a federal land pursuant to a federal permit; ~~←§~~
 277 (10) care provided by an organization that:
 278 (a) qualifies for tax exempt status under Section 501(c)(3) of the Internal Revenue
 279 Code; and
 280 (b) is provided pursuant to a written agreement with ~~§→ [a local or state government entity]~~ :
 280a (i) a municipality, as defined in Section 10-1-104, that provides oversight for the
 280b program; or
 280c (ii) a county ~~←§~~
 281 that provides oversight for the program ~~§→~~ or
 281a (11) care provided at a residential support program that is licensed by the
 281b Department of Human Services ~~←§~~ .
 282 Section 8. Section ~~26-39-404~~, which is renumbered from Section 26-39-107 is
 283 renumbered and amended to read:
 284 ~~[26-39-107].~~ 26-39-404. Disqualified individuals -- Criminal history
 285 checks -- Payment of costs.
 286 (1) (a) Each person requesting a residential certificate or to be licensed or to renew a
 287 license under this chapter shall submit to the department the name and other identifying
 288 information, which shall include fingerprints, of existing, new, and proposed:
 289 (i) owners;
 290 (ii) directors;
 291 (iii) members of the governing body;
 292 (iv) employees;
 293 (v) providers of care;
 294 (vi) volunteers, except parents of children enrolled in the programs; and
 295 (vii) all adults residing in a residence where child care is provided.
 296 (b) A person seeking renewal of a residential certificate or license under this section is
 297 not required to submit fingerprints of an individual referred to in Subsections (1)(a)(i) through
 298 (vi), if:
 299 (i) the individual has resided in Utah for the last five years;
 300 (ii) the individual has:
 301 (A) previously submitted fingerprints under this section for a national criminal history
 302 record check; and
 303 (B) resided in Utah continuously since that time; or
 304 (iii) as of May 3, 1999, the individual had one of the relationships under Subsection
 305 (1)(a) with a child care provider having a residential certificate or licensed under this section
 306 and the individual has resided in Utah continuously since that time.

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

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

313 (iii) The applicant for the license or residential certificate shall pay the cost of
314 conducting a record check under this Subsection (1)(c).

315 (2) (a) Each person requesting a residential certificate or to be licensed or to renew a
316 license under this chapter shall submit to the department the name and other identifying
317 information of any [~~child~~] person age 12 through 17 who resides in the residence where the
318 child care is provided. The identifying information required for a [~~child~~] person age 12 through
319 17 does not include fingerprints.

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

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

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

325 (A) over the age of 28; and

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

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

333 (a) provide child care;

334 (b) provide volunteer services for a licensed child care program or a child care program
335 operating under a residential child care certificate;

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

337 (d) function as an owner, director, or member of the governing body of a licensed child

338 care program or a child care program operating under a residential child care certificate.

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

341 (i) specific misdemeanors; and

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

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

347 Section 9. Section **26-39-501**, which is renumbered from Section 26-39-109 is
348 renumbered and amended to read:

349 **Part 5. Investigations and Records**

350 ~~[26-39-109].~~ **26-39-501. Investigations -- Records.**

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

353 (2) For purposes of this section:

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

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

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

363 (3) (a) If the department receives a complaint about a child care program or residential
364 child care, the department shall:

365 (i) solicit information from the complainant to determine whether the complaint
366 suggests actions or conditions [~~which~~] that could pose a serious risk to the safety or well-being
367 of a qualifying child;

368 (ii) as necessary:

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

372 (B) inform the complainant that the department may not investigate an anonymous
373 complaint;

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

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

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

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

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

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

390 (iii) may, during a regularly scheduled annual survey, inform the licensee or certificate
391 holder who is the subject of the complaint of allegations or concerns raised by:

392 (A) the anonymous complainant; or

393 (B) the complainant who reported events more than six weeks after the events
394 occurred.

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

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

398 (B) indefinitely.

399 (ii) (A) If the complainant elects to remain confidential only until the investigation of

400 the complaint has been completed, the department shall disclose the name of the complainant
401 to the subject of the complaint at the completion of the investigation, but no sooner.

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

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

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

408 (4) (a) Prior to conducting an investigation of a child care program or residential child
409 care in response to a complaint, a department investigator shall review the complaint with the
410 investigator's supervisor.

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

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

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

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

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

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

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

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

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

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

425 (i) a private or controlled record if appropriate under Section 63-2-302 or 63-2-303; or

426 (ii) a protected record under Section 63-2-304; and

427 (b) if disclosed in accordance with Subsection 63-2-201(5)(b), may not identify an
428 individual child care program, licensee, certificate holder, or complainant.

429 (6) Any record of the department related to a complaint by an anonymous complainant
430 is a protected record under Title 63, Chapter 2, Government Records Access and Management

431 Act, and, notwithstanding Subsection 63-2-201(5)(b), may not be disclosed in a manner that
432 identifies an individual child care program, licensee, certificate holder, or complainant.

433 Section 10. Section **26-39-601**, which is renumbered from Section 26-39-108 is
434 renumbered and amended to read:

435 **Part 6. Penalties**

436 ~~[26-39-108].~~ **26-39-601. License violations -- Penalties.**

437 (1) The department may deny or revoke a license and otherwise invoke disciplinary
438 penalties if it finds:

439 (a) evidence of committing or of aiding, abetting, or permitting the commission of any
440 illegal act on the premises of the child care facility;

441 (b) a failure to meet the qualifications for licensure; or

442 (c) conduct adverse to the public health, morals, welfare, and safety of children under
443 its care.

444 (2) The department may also place a department representative as a monitor in a
445 facility, and may assess the cost of that monitoring to the facility, until the licensee has
446 remedied the deficiencies that brought about the department action.

447 (3) The department may impose civil monetary penalties in accordance with Title 63,
448 Chapter 46b, Administrative Procedures Act, if there has been a failure to comply with the
449 provisions of this chapter, or rules ~~[promulgated]~~ made pursuant to this chapter, as follows:

450 (a) if significant problems exist that are likely to lead to the harm of a qualifying child,
451 the department may impose a civil penalty of \$50 to \$1,000 per day; and

452 (b) if significant problems exist that result in actual harm to a qualifying child, the
453 department may impose a civil penalty of \$1,050 to \$5,000 per day.

454 Section 11. Section **26-39-602**, which is renumbered from Section 26-39-110 is
455 renumbered and amended to read:

456 ~~[26-39-110].~~ **26-39-602. Offering or providing care in violation of chapter**
457 **-- Misdemeanor.**

458 Notwithstanding the provisions of Title 26, Chapter 23, Enforcement Provisions and
459 Penalties, a person who provides or offers child care except as provided by this chapter is
460 guilty of a class A misdemeanor.

461 Section 12. Section **63-2-304** is amended to read:

462 **63-2-304. Protected records.**

463 The following records are protected if properly classified by a governmental entity:

464 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
465 has provided the governmental entity with the information specified in Section 63-2-308;466 (2) commercial information or nonindividual financial information obtained from a
467 person if:468 (a) disclosure of the information could reasonably be expected to result in unfair
469 competitive injury to the person submitting the information or would impair the ability of the
470 governmental entity to obtain necessary information in the future;471 (b) the person submitting the information has a greater interest in prohibiting access
472 than the public in obtaining access; and473 (c) the person submitting the information has provided the governmental entity with
474 the information specified in Section 63-2-308;475 (3) commercial or financial information acquired or prepared by a governmental entity
476 to the extent that disclosure would lead to financial speculations in currencies, securities, or
477 commodities that will interfere with a planned transaction by the governmental entity or cause
478 substantial financial injury to the governmental entity or state economy;479 (4) records the disclosure of which could cause commercial injury to, or confer a
480 competitive advantage upon a potential or actual competitor of, a commercial project entity as
481 defined in Subsection 11-13-103(4);482 (5) test questions and answers to be used in future license, certification, registration,
483 employment, or academic examinations;484 (6) records the disclosure of which would impair governmental procurement
485 proceedings or give an unfair advantage to any person proposing to enter into a contract or
486 agreement with a governmental entity, except that this Subsection (6) does not restrict the right
487 of a person to see bids submitted to or by a governmental entity after bidding has closed;488 (7) records that would identify real property or the appraisal or estimated value of real
489 or personal property, including intellectual property, under consideration for public acquisition
490 before any rights to the property are acquired unless:491 (a) public interest in obtaining access to the information outweighs the governmental
492 entity's need to acquire the property on the best terms possible;

493 (b) the information has already been disclosed to persons not employed by or under a
494 duty of confidentiality to the entity;

495 (c) in the case of records that would identify property, potential sellers of the described
496 property have already learned of the governmental entity's plans to acquire the property;

497 (d) in the case of records that would identify the appraisal or estimated value of
498 property, the potential sellers have already learned of the governmental entity's estimated value
499 of the property; or

500 (e) the property under consideration for public acquisition is a single family residence
501 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
502 the property as required under Section 78-34-4.5;

503 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
504 compensated transaction of real or personal property including intellectual property, which, if
505 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
506 of the subject property, unless:

507 (a) the public interest in access outweighs the interests in restricting access, including
508 the governmental entity's interest in maximizing the financial benefit of the transaction; or

509 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
510 the value of the subject property have already been disclosed to persons not employed by or
511 under a duty of confidentiality to the entity;

512 (9) records created or maintained for civil, criminal, or administrative enforcement
513 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
514 release of the records:

515 (a) reasonably could be expected to interfere with investigations undertaken for
516 enforcement, discipline, licensing, certification, or registration purposes;

517 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
518 proceedings;

519 (c) would create a danger of depriving a person of a right to a fair trial or impartial
520 hearing;

521 (d) reasonably could be expected to disclose the identity of a source who is not
522 generally known outside of government and, in the case of a record compiled in the course of
523 an investigation, disclose information furnished by a source not generally known outside of

524 government if disclosure would compromise the source; or
525 (e) reasonably could be expected to disclose investigative or audit techniques,
526 procedures, policies, or orders not generally known outside of government if disclosure would
527 interfere with enforcement or audit efforts;

528 (10) records the disclosure of which would jeopardize the life or safety of an
529 individual;

530 (11) records the disclosure of which would jeopardize the security of governmental
531 property, governmental programs, or governmental recordkeeping systems from damage, theft,
532 or other appropriation or use contrary to law or public policy;

533 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
534 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
535 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

536 (13) records that, if disclosed, would reveal recommendations made to the Board of
537 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
538 Board of Pardons and Parole, or the Department of Human Services that are based on the
539 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
540 jurisdiction;

541 (14) records and audit workpapers that identify audit, collection, and operational
542 procedures and methods used by the State Tax Commission, if disclosure would interfere with
543 audits or collections;

544 (15) records of a governmental audit agency relating to an ongoing or planned audit
545 until the final audit is released;

546 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
547 litigation that are not available under the rules of discovery;

548 (17) records disclosing an attorney's work product, including the mental impressions or
549 legal theories of an attorney or other representative of a governmental entity concerning
550 litigation;

551 (18) records of communications between a governmental entity and an attorney
552 representing, retained, or employed by the governmental entity if the communications would be
553 privileged as provided in Section 78-24-8;

554 (19) (a) (i) personal files of a state legislator, including personal correspondence to or

555 from a member of the Legislature; and
556 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
557 legislative action or policy may not be classified as protected under this section; and
558 (b) (i) an internal communication that is part of the deliberative process in connection
559 with the preparation of legislation between:
560 (A) members of a legislative body;
561 (B) a member of a legislative body and a member of the legislative body's staff; or
562 (C) members of a legislative body's staff; and
563 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
564 legislative action or policy may not be classified as protected under this section;
565 (20) (a) records in the custody or control of the Office of Legislative Research and
566 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
567 legislation or contemplated course of action before the legislator has elected to support the
568 legislation or course of action, or made the legislation or course of action public; and
569 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
570 Office of Legislative Research and General Counsel is a public document unless a legislator
571 asks that the records requesting the legislation be maintained as protected records until such
572 time as the legislator elects to make the legislation or course of action public;
573 (21) research requests from legislators to the Office of Legislative Research and
574 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
575 in response to these requests;
576 (22) drafts, unless otherwise classified as public;
577 (23) records concerning a governmental entity's strategy about collective bargaining or
578 pending litigation;
579 (24) records of investigations of loss occurrences and analyses of loss occurrences that
580 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
581 Uninsured Employers' Fund, or similar divisions in other governmental entities;
582 (25) records, other than personnel evaluations, that contain a personal recommendation
583 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
584 personal privacy, or disclosure is not in the public interest;
585 (26) records that reveal the location of historic, prehistoric, paleontological, or

586 biological resources that if known would jeopardize the security of those resources or of
587 valuable historic, scientific, educational, or cultural information;

588 (27) records of independent state agencies if the disclosure of the records would
589 conflict with the fiduciary obligations of the agency;

590 (28) records of an institution within the state system of higher education defined in
591 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
592 retention decisions, and promotions, which could be properly discussed in a meeting closed in
593 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
594 the final decisions about tenure, appointments, retention, promotions, or those students
595 admitted, may not be classified as protected under this section;

596 (29) records of the governor's office, including budget recommendations, legislative
597 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
598 policies or contemplated courses of action before the governor has implemented or rejected
599 those policies or courses of action or made them public;

600 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
601 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
602 recommendations in these areas;

603 (31) records provided by the United States or by a government entity outside the state
604 that are given to the governmental entity with a requirement that they be managed as protected
605 records if the providing entity certifies that the record would not be subject to public disclosure
606 if retained by it;

607 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
608 except as provided in Section 52-4-206;

609 (33) records that would reveal the contents of settlement negotiations but not including
610 final settlements or empirical data to the extent that they are not otherwise exempt from
611 disclosure;

612 (34) memoranda prepared by staff and used in the decision-making process by an
613 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
614 other body charged by law with performing a quasi-judicial function;

615 (35) records that would reveal negotiations regarding assistance or incentives offered
616 by or requested from a governmental entity for the purpose of encouraging a person to expand

617 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
618 person or place the governmental entity at a competitive disadvantage, but this section may not
619 be used to restrict access to a record evidencing a final contract;

620 (36) materials to which access must be limited for purposes of securing or maintaining
621 the governmental entity's proprietary protection of intellectual property rights including patents,
622 copyrights, and trade secrets;

623 (37) the name of a donor or a prospective donor to a governmental entity, including an
624 institution within the state system of higher education defined in Section 53B-1-102, and other
625 information concerning the donation that could reasonably be expected to reveal the identity of
626 the donor, provided that:

627 (a) the donor requests anonymity in writing;

628 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
629 classified protected by the governmental entity under this Subsection (37); and

630 (c) except for an institution within the state system of higher education defined in
631 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
632 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
633 over the donor, a member of the donor's immediate family, or any entity owned or controlled
634 by the donor or the donor's immediate family;

635 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
636 73-18-13;

637 (39) a notification of workers' compensation insurance coverage described in Section
638 34A-2-205;

639 (40) (a) the following records of an institution within the state system of higher
640 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
641 or received by or on behalf of faculty, staff, employees, or students of the institution:

642 (i) unpublished lecture notes;

643 (ii) unpublished notes, data, and information:

644 (A) relating to research; and

645 (B) of:

646 (I) the institution within the state system of higher education defined in Section
647 53B-1-102; or

- 648 (II) a sponsor of sponsored research;
- 649 (iii) unpublished manuscripts;
- 650 (iv) creative works in process;
- 651 (v) scholarly correspondence; and
- 652 (vi) confidential information contained in research proposals;
- 653 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
- 654 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
- 655 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 656 (41) (a) records in the custody or control of the Office of Legislative Auditor General
- 657 that would reveal the name of a particular legislator who requests a legislative audit prior to the
- 658 date that audit is completed and made public; and
- 659 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
- 660 Office of the Legislative Auditor General is a public document unless the legislator asks that
- 661 the records in the custody or control of the Office of Legislative Auditor General that would
- 662 reveal the name of a particular legislator who requests a legislative audit be maintained as
- 663 protected records until the audit is completed and made public;
- 664 (42) records that provide detail as to the location of an explosive, including a map or
- 665 other document that indicates the location of:
- 666 (a) a production facility; or
- 667 (b) a magazine;
- 668 (43) information contained in the database described in Section 62A-3-311.1;
- 669 (44) information contained in the Management Information System and Licensing
- 670 Information System described in Title 62A, Chapter 4a, Child and Family Services;
- 671 (45) information regarding National Guard operations or activities in support of the
- 672 National Guard's federal mission;
- 673 (46) records provided by any pawn or secondhand business to a law enforcement
- 674 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
- 675 Secondhand Merchandise Transaction Information Act;
- 676 (47) information regarding food security, risk, and vulnerability assessments performed
- 677 by the Department of Agriculture and Food;
- 678 (48) except to the extent that the record is exempt from this chapter pursuant to Section

679 63-2-106, records related to an emergency plan or program prepared or maintained by the
680 Division of Homeland Security the disclosure of which would jeopardize:

- 681 (a) the safety of the general public; or
- 682 (b) the security of:
 - 683 (i) governmental property;
 - 684 (ii) governmental programs; or
 - 685 (iii) the property of a private person who provides the Division of Homeland Security
686 information;

687 (49) records of the Department of Agriculture and Food relating to the National
688 Animal Identification System or any other program that provides for the identification, tracing,
689 or control of livestock diseases, including any program established under Title 4, Chapter 24,
690 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
691 Quarantine;

692 (50) as provided in Section ~~[26-39-109]~~ 26-39-501:

- 693 (a) information or records held by the Department of Health related to a complaint
694 regarding a child care program or residential child care which the department is unable to
695 substantiate; and
- 696 (b) information or records related to a complaint received by the Department of Health
697 from an anonymous complainant regarding a child care program or residential child care; and

698 (51) unless otherwise classified as public under Section 63-2-301 and except as
699 provided under Section 41-1a-116, an individual's home address, home telephone number, or
700 personal mobile phone number, if:

- 701 (a) the individual is required to provide the information in order to comply with a law,
702 ordinance, rule, or order of a government entity; and
- 703 (b) the subject of the record has a reasonable expectation that this information will be
704 kept confidential due to:

- 705 (i) the nature of the law, ordinance, rule, or order; and
- 706 (ii) the individual complying with the law, ordinance, rule, or order.

707 Section 13. Section **78-3a-206** is amended to read:

708 **78-3a-206. Court records -- Inspection.**

- 709 (1) The court and the probation department shall keep records as required by the board

710 and the presiding judge.

711 (2) Court records shall be open to inspection by:

712 (a) the parents or guardian of a child, a minor who is at least 18 years of age, other
713 parties in the case, the attorneys, and agencies to which custody of a minor has been
714 transferred;

715 (b) for information relating to adult offenders alleged to have committed a sexual
716 offense, a felony or class A misdemeanor drug offense, or an offense against the person under
717 Title 76, Chapter 5, Offenses Against the Person, the State Office of Education for the purpose
718 of evaluating whether an individual should be permitted to obtain or retain a license as an
719 educator or serve as an employee or volunteer in a school, with the understanding that the
720 office must provide the individual with an opportunity to respond to any information gathered
721 from its inspection of the records before it makes a decision concerning licensure or
722 employment;

723 (c) the Criminal Investigations and Technical Services Division, established in Section
724 53-10-103, for the purpose of a criminal history background check for the purchase of a firearm
725 and establishing good character for issuance of a concealed firearm permit as provided in
726 Section 53-5-704;

727 (d) the Division of Child and Family Services for the purpose of Child Protective
728 Services Investigations in accordance with Sections 62A-4a-403 and 62A-4a-409 and
729 administrative hearings in accordance with Section 62A-4a-1009; and

730 (e) for information related to a juvenile offender who has committed a sexual offense, a
731 felony, or an offense which if committed by an adult would be a misdemeanor, the Department
732 of Health, for the purpose of evaluating under the provisions of Subsection [~~26-39-107~~
733 26-39-404](3) whether a licensee should be permitted to obtain or retain a license to provide
734 child care, with the understanding that the department must provide the individual who
735 committed the offense with an opportunity to respond to any information gathered from its
736 inspection of records before it makes a decision concerning licensure.

737 (3) With the consent of the judge, court records may be inspected by the child, by
738 persons having a legitimate interest in the proceedings, and by persons conducting pertinent
739 research studies.

740 (4) If a petition is filed charging a minor 14 years of age or older with an offense that

741 would be a felony if committed by an adult, the court shall make available to any person upon
742 request the petition, any adjudication or disposition orders, and the delinquency history
743 summary of the minor charged unless the records are closed by the court upon findings on the
744 record for good cause.

745 (5) Probation officers' records and reports of social and clinical studies are not open to
746 inspection, except by consent of the court, given under rules adopted by the board.

747 (6) (a) Any juvenile delinquency adjudication or disposition orders and the delinquency
748 history summary of any person charged as an adult with a felony offense shall be made
749 available to any person upon request.

750 (b) This provision does not apply to records that have been destroyed or expunged in
751 accordance with court rules.

752 (c) The court may charge a reasonable fee to cover the costs associated with retrieving
753 a requested record that has been archived.

754 Section 14. Section **78-3a-320** is amended to read:

755 **78-3a-320. Additional finding at adjudication hearing -- Petition -- Court records.**

756 (1) Upon the filing with the court of a petition under Section 78-3a-305 by the Division
757 of Child and Family Services or any interested person informing the court, among other things,
758 that the division has made a supported finding that a person committed a severe type of child
759 abuse or neglect as defined in Section 62A-4a-1002, the court shall:

760 (a) make a finding of substantiated, unsubstantiated, or without merit;

761 (b) include the finding described in Subsection (1)(a) in a written order; and

762 (c) deliver a certified copy of the order described in Subsection (1)(b) to the division.

763 (2) The judicial finding under Subsection (1) shall be made:

764 (a) as part of the adjudication hearing;

765 (b) at the conclusion of the adjudication hearing; or

766 (c) as part of a court order entered pursuant to a written stipulation of the parties.

767 (3) (a) Any person described in Subsection 62A-4a-1010(1) may at any time file with
768 the court a petition for removal of the person's name from the Licensing Information System.

769 (b) At the conclusion of the hearing on the petition, the court shall:

770 (i) make a finding of substantiated, unsubstantiated, or without merit;

771 (ii) include the finding described in Subsection (1)(a) in a written order; and

772 (iii) deliver a certified copy of the order described in Subsection (1)(b) to the division.
773 (4) A proceeding for adjudication of a supported finding under this section of a type of
774 abuse or neglect that does not constitute a severe type of child abuse or neglect may be joined
775 in the juvenile court with an adjudication of a severe type of child abuse or neglect.
776 (5) If a person whose name appears on the Licensing Information system prior to May
777 6, 2002 files a petition during the time that an alleged perpetrator's application for clearance to
778 work with children or vulnerable adults is pending, the court shall hear the matter and enter a
779 final decision no later than 60 days after the filing of the petition.
780 (6) For the purposes of licensing under Sections 26-21-9.5, [~~26-39-105.5~~] 26-39-402,
781 62A-1-118, and for the purposes described in Section 62A-2-121:
782 (a) the court shall make available records of its findings under Subsections (1) and (2)
783 for licensing purposes, only to those with statutory authority to access also the Licensing
784 Information System created under Section 62A-4a-1006; and
785 (b) any appellate court shall make available court records of appeals from juvenile
786 court decisions under Subsections (1), (2), (3), and (4) for licensing purposes, only to those
787 with statutory authority to access also the Licensing Information System.

Legislative Review Note
as of 1-29-08 5:23 PM

Office of Legislative Research and General Counsel

S.B. 184 - Child Care Licensing Exemptions

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
