

**Representative Paul Ray** proposes the following substitute bill:

**CHILD CARE LICENSING EXEMPTIONS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jon J. Greiner**

House Sponsor: Paul Ray

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**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 persons who are exempt from the requirements of the Utah Child Care Licensing Act;
- ▶ requires persons who are expressly exempt from the requirements of the Utah Child Care Licensing Act to conduct criminal background checks on their employees who have access to qualifying children; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **26-39-102**, as last amended by Laws of Utah 2003, Chapter 13

30 **63-2-304**, as last amended by Laws of Utah 2007, Chapters 66 and 352

31 **78A-6-209**, as renumbered and amended by Laws of Utah 2008, Chapter 3

32 **78A-6-323**, as renumbered and amended by Laws of Utah 2008, Chapter 3

33 ENACTS:

34 **26-39-202**, Utah Code Annotated 1953

35 RENUMBERS AND AMENDS:

36 **26-39-201**, (Renumbered from 26-39-103, as last amended by Laws of Utah 1999,  
37 Chapter 77)

38 **26-39-301**, (Renumbered from 26-39-104, as last amended by Laws of Utah 2007,  
39 Chapter 306)

40 **26-39-401**, (Renumbered from 26-39-105, as last amended by Laws of Utah 2006,  
41 Chapter 317)

42 **26-39-402**, (Renumbered from 26-39-105.5, as last amended by Laws of Utah 2006,  
43 Chapters 77, 103, and 317)

44 **26-39-403**, (Renumbered from 26-39-106, as last amended by Laws of Utah 1998,  
45 Chapter 158)

46 **26-39-404**, (Renumbered from 26-39-107, as last amended by Laws of Utah 2007,  
47 Chapter 43)

48 **26-39-501**, (Renumbered from 26-39-109, as last amended by Laws of Utah 2006,  
49 Chapter 37)

50 **26-39-601**, (Renumbered from 26-39-108, as enacted by Laws of Utah 1997, Chapter  
51 196)

52 **26-39-602**, (Renumbered from 26-39-110, as enacted by Laws of Utah 1997, Chapter  
53 196)



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

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

Part 1. General Provisions.

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

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

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

~~(c) for direct or indirect compensation.~~

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

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

~~(4) "Public school" means:~~

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

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

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

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

~~(i) preschool or kindergarten to qualifying children, regardless of whether the preschool or kindergarten is funded at public expense; and~~

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

~~(5) "Qualifying child" means a person who is:~~

- 88 (a) (i) under the age of 13; or
- 89 (ii) under the age of 18, if the person has a disability; and
- 90 (b) a child of:
- 91 (i) a person other than the person providing care to the child;
- 92 (ii) a licensed or certified residential child care provider, if the child is under the age of
- 93 four; or
- 94 (iii) an employee or owner of a licensed child care center, if the child is under the age
- 95 of four.

96 [(+) (6) "Residential child care" means child care provided in the home of a provider.

97 Section 2. Section **26-39-201**, which is renumbered from Section 26-39-103 is

98 renumbered and amended to read:

99 **Part 2. Child Care Licensing Advisory Committee**

100 [~~26-39-103~~]. **26-39-201. Child Care Licensing Advisory Committee.**

101 (1) (a) There is established the Child Care Licensing Advisory Committee to advise the  
102 department on rules [~~promulgated~~] made by the department [~~pursuant to~~] under this chapter.  
103 [It]

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

- 106 [(a)] (i) two child care consumers;
- 107 [(b)] (ii) two licensed residential child care providers;
- 108 [(c)] (iii) one certified residential child care provider;
- 109 [(d)] (iv) five representatives of licensed child care center programs;
- 110 [(e)] (v) one individual with expertise in early childhood development; and
- 111 [(f)] (vi) two health care providers.

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

116 (3) The [~~advisory~~] committee shall meet at least quarterly, or more frequently as  
117 determined by the executive director, the chairman, or three or more members of the  
118 committee. Seven members constitute a quorum and a vote of the majority of the members

119 present constitutes an action of the committee.

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

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

125 **26-39-202. Members serve without pay -- Reimbursement for expenses.**

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

128 (a) receive per diem and expenses incurred in the performance of the member's official  
129 duties at the rates established by the Division of Finance under Sections 63A-3-106 and  
130 63A-3-107; or

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

132 (2) A member of the committee who is a state government officer or employee and  
133 who does not receive salary, per diem, or expenses from the member's agency for the member's  
134 service may:

135 (a) receive per diem and expenses incurred in the performance of the member's official  
136 duties at the rates established by the Division of Finance under Sections 63A-3-106 and  
137 63A-3-107; or

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

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

141 **Part 3. Department Duties**

142 ~~[26-39-104].~~ **26-39-301. Duties of the department.**

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

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

147 (i) adequate facilities and equipment; and

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

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

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

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

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

157 (iv) changes of ownership or name, changes in licensure status, and changes in  
158 operational status;

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

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

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

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

165 (2) Rules made under this chapter shall be made in accordance with Title 63, Chapter  
166 46a, Utah Administrative Rulemaking Act.

167 [~~2~~] (3) (a) The department may not regulate educational curricula, academic methods,  
168 or the educational philosophy or approach of the provider.

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

171 [~~3~~] (4) In licensing and regulating child care programs, the department shall  
172 reasonably balance the benefits and burdens of each regulation and, by rule, provide for a range  
173 of licensure, depending upon the needs and different levels and types of child care provided.

174 [~~4~~] (5) Notwithstanding the definition of "qualifying child" in [~~Subsection~~] Section  
175 26-39-102[~~(4)~~], the department shall count children through age 12 and children with  
176 disabilities through age 18 toward the minimum square footage requirement for indoor and  
177 outdoor areas, including the child of:

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

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

180 [~~5~~] (6) Notwithstanding Subsection (1)(a)(i), the department may not exclude floor

181 space used for furniture, fixtures, or equipment from the minimum square footage requirement  
 182 for indoor and outdoor areas if the furniture, fixture, or equipment is used:

- 183 (a) by qualifying children;
- 184 (b) for the care of qualifying children; or
- 185 (c) to store classroom materials.

186 ~~[(6)]~~ (7) (a) A child care center constructed prior to January 1, 2004, and licensed and  
 187 operated as a child care center continuously since January 1, 2004, is exempt from the  
 188 department's group size restrictions, if the child to caregiver ratios are maintained, and  
 189 adequate square footage is maintained for specific classrooms.

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

193 ~~[(7)]~~ (8) The department shall develop, by rule, a five-year phased-in compliance  
 194 schedule for playground equipment safety standards.

195 (9) Nothing in this chapter may be interpreted to grant a municipality or county the  
 196 authority to license or certify a child care program.

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

#### 199 **Part 4. Licensing**

200 ~~[26-39-105].~~ **26-39-401. Licensure requirements -- Expiration -- Renewal.**

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

- 203 (a) provides or offers child care; or
- 204 (b) provides care to qualifying children and requests to be licensed.

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

- 207 (a) this chapter; and
- 208 (b) the department's rules governing child care programs.

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

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

212 ~~[26-39-105.5]~~. 26-39-402. Residential child care certificate.

213 (1) (a) A residential child care provider of five to eight qualifying children shall obtain  
214 a Residential Child Care Certificate from the department, unless Section ~~[26-39-106]~~  
215 26-39-403 applies.

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

217 (i) the submission of:

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

219 (B) a certification and criminal background fee established in accordance with Section  
220 26-1-6; and

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

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

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

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

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

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

234 (B) identify serious sanitation, fire, and health hazards to qualifying children; and

235 (C) make appropriate recommendations; and

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

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

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

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

249 (2) Notwithstanding this section:

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

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

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

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

258 Section 7. Section **26-39-403**, which is renumbered from Section 26-39-106 is  
259 renumbered and amended to read:

260 ~~[26-39-106]~~. **26-39-403. Exclusions from chapter -- Criminal background**  
261 **checks by an excluded person.**

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

263 [~~(1)~~] (a) a facility or program owned or operated by an agency of the United States  
264 government;

265 [~~(2)~~] (b) group counseling provided by a mental health therapist, as defined in Section  
266 58-60-102, who is licensed to practice in this state;

267 [~~(3)~~] (c) a health care facility licensed pursuant to Title 26, Chapter 21, Health Care  
268 Facility [~~Licensure~~] Licensing and Inspection Act;

269 [~~(4)~~] (d) care provided to qualifying children by or in the homes of parents, legal  
270 guardians, grandparents, brothers, sisters, uncles, or aunts;

271 [~~(5)~~] (e) care provided to qualifying children, in the home of the provider, for less than  
272 four hours a day or on a sporadic basis, unless that child care directly affects or is related to a  
273 business licensed in this state; [~~or~~]

274 ~~[(6)]~~ (f) care provided to qualifying children as part of a course of study at or a  
275 program administered by an educational institution that is regulated by the boards of education  
276 of this state, a private education institution that provides education in lieu of that provided by  
277 the public education system, or by a parochial education institution[-];

278 (g) care provided to qualifying children by a public or private institution of higher  
279 education, if the care is provided in connection with a course of study or program, relating to  
280 the education or study of children, that is provided to students of the institution of higher  
281 education;

282 (h) care provided to qualifying children at a public school by an organization other than  
283 the public school, if:

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

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

287 (i) care provided to qualifying children as part of a summer camp that operates on  
288 federal land pursuant to a federal permit;

289 (j) care provided by an organization that:

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

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

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

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

296 (iii) is provided to children who are over the age of four and under the age of 13; or

297 (k) care provided at a residential support program that is licensed by the Department of  
298 Human Services.

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

302 Section 8. Section **26-39-404**, which is renumbered from Section 26-39-107 is  
303 renumbered and amended to read:

304 ~~[26-39-107].~~ **26-39-404. Disqualified individuals -- Criminal history**

305 **checks -- Payment of costs.**

306 (1) (a) Each person requesting a residential certificate or to be licensed or to renew a  
307 license under this chapter shall submit to the department the name and other identifying  
308 information, which shall include fingerprints, of existing, new, and proposed:

309 (i) owners;

310 (ii) directors;

311 (iii) members of the governing body;

312 (iv) employees;

313 (v) providers of care;

314 (vi) volunteers, except parents of children enrolled in the programs; and

315 (vii) all adults residing in a residence where child care is provided.

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

319 (i) the individual has resided in Utah for the last five years;

320 (ii) the individual has:

321 (A) previously submitted fingerprints under this section for a national criminal history  
322 record check; and

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

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

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

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

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

335 (2) (a) Each person requesting a residential certificate or to be licensed or to renew a

336 license under this chapter shall submit to the department the name and other identifying  
337 information of any [~~child~~] person age 12 through 17 who resides in the residence where the  
338 child care is provided. The identifying information required for a [~~child~~] person age 12 through  
339 17 does not include fingerprints.

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

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

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

345 (A) over the age of 28; and

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

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

353 (a) provide child care;

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

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

357 (d) function as an owner, director, or member of the governing body of a licensed child  
358 care program or a child care program operating under a residential child care certificate.

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

361 (i) specific misdemeanors; and

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

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

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

369 **Part 5. Investigations and Records**

370 ~~[26-39-109]~~. **26-39-501. Investigations -- Records.**

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

373 (2) For purposes of this section:

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

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

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

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

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

388 (ii) as necessary:

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

392 (B) inform the complainant that the department may not investigate an anonymous  
393 complaint;

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

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

398 and

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

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

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

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

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

412 (A) the anonymous complainant; or

413 (B) the complainant who reported events more than six weeks after the events  
414 occurred.

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

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

418 (B) indefinitely.

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

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

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

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

428 (4) (a) Prior to conducting an investigation of a child care program or residential child

429 care in response to a complaint, a department investigator shall review the complaint with the  
430 investigator's supervisor.

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

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

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

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

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

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

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

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

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

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

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

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

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

449 (6) Any record of the department related to a complaint by an anonymous complainant  
450 is a protected record under Title 63, Chapter 2, Government Records Access and Management  
451 Act, and, notwithstanding Subsection 63-2-201(5)(b), may not be disclosed in a manner that  
452 identifies an individual child care program, licensee, certificate holder, or complainant.

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

455 **Part 6. Penalties**

456 ~~[26-39-108]~~. **26-39-601. License violations -- Penalties.**

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

459 (a) evidence of committing or of aiding, abetting, or permitting the commission of any

460 illegal act on the premises of the child care facility;

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

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

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

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

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

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

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

476 **[26-39-110]. 26-39-602. Offering or providing care in violation of chapter**  
477 **-- Misdemeanor.**

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

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

482 **63-2-304. Protected records.**

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

484 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret  
485 has provided the governmental entity with the information specified in Section 63-2-308;

486 (2) commercial information or nonindividual financial information obtained from a  
487 person if:

488 (a) disclosure of the information could reasonably be expected to result in unfair  
489 competitive injury to the person submitting the information or would impair the ability of the  
490 governmental entity to obtain necessary information in the future;

491 (b) the person submitting the information has a greater interest in prohibiting access  
492 than the public in obtaining access; and

493 (c) the person submitting the information has provided the governmental entity with  
494 the information specified in Section 63-2-308;

495 (3) commercial or financial information acquired or prepared by a governmental entity  
496 to the extent that disclosure would lead to financial speculations in currencies, securities, or  
497 commodities that will interfere with a planned transaction by the governmental entity or cause  
498 substantial financial injury to the governmental entity or state economy;

499 (4) records the disclosure of which could cause commercial injury to, or confer a  
500 competitive advantage upon a potential or actual competitor of, a commercial project entity as  
501 defined in Subsection 11-13-103(4);

502 (5) test questions and answers to be used in future license, certification, registration,  
503 employment, or academic examinations;

504 (6) records the disclosure of which would impair governmental procurement  
505 proceedings or give an unfair advantage to any person proposing to enter into a contract or  
506 agreement with a governmental entity, except that this Subsection (6) does not restrict the right  
507 of a person to see bids submitted to or by a governmental entity after bidding has closed;

508 (7) records that would identify real property or the appraisal or estimated value of real  
509 or personal property, including intellectual property, under consideration for public acquisition  
510 before any rights to the property are acquired unless:

511 (a) public interest in obtaining access to the information outweighs the governmental  
512 entity's need to acquire the property on the best terms possible;

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

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

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

520 (e) the property under consideration for public acquisition is a single family residence  
521 and the governmental entity seeking to acquire the property has initiated negotiations to acquire

522 the property as required under Section [~~78-34-4.5~~] 78B-6-505;

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

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

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

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

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

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

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

541 (d) reasonably could be expected to disclose the identity of a source who is not  
542 generally known outside of government and, in the case of a record compiled in the course of  
543 an investigation, disclose information furnished by a source not generally known outside of  
544 government if disclosure would compromise the source; or

545 (e) reasonably could be expected to disclose investigative or audit techniques,  
546 procedures, policies, or orders not generally known outside of government if disclosure would  
547 interfere with enforcement or audit efforts;

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

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

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

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

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

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

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

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

571 (18) records of communications between a governmental entity and an attorney  
572 representing, retained, or employed by the governmental entity if the communications would be  
573 privileged as provided in Section [~~78-24-8~~] 78B-1-137;

574 (19) (a) (i) personal files of a state legislator, including personal correspondence to or  
575 from a member of the Legislature; and

576 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of  
577 legislative action or policy may not be classified as protected under this section; and

578 (b) (i) an internal communication that is part of the deliberative process in connection  
579 with the preparation of legislation between:

580 (A) members of a legislative body;

581 (B) a member of a legislative body and a member of the legislative body's staff; or

582 (C) members of a legislative body's staff; and

583 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of

584 legislative action or policy may not be classified as protected under this section;

585 (20) (a) records in the custody or control of the Office of Legislative Research and  
586 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated  
587 legislation or contemplated course of action before the legislator has elected to support the  
588 legislation or course of action, or made the legislation or course of action public; and

589 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the  
590 Office of Legislative Research and General Counsel is a public document unless a legislator  
591 asks that the records requesting the legislation be maintained as protected records until such  
592 time as the legislator elects to make the legislation or course of action public;

593 (21) research requests from legislators to the Office of Legislative Research and  
594 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared  
595 in response to these requests;

596 (22) drafts, unless otherwise classified as public;

597 (23) records concerning a governmental entity's strategy about collective bargaining or  
598 pending litigation;

599 (24) records of investigations of loss occurrences and analyses of loss occurrences that  
600 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the  
601 Uninsured Employers' Fund, or similar divisions in other governmental entities;

602 (25) records, other than personnel evaluations, that contain a personal recommendation  
603 concerning an individual if disclosure would constitute a clearly unwarranted invasion of  
604 personal privacy, or disclosure is not in the public interest;

605 (26) records that reveal the location of historic, prehistoric, paleontological, or  
606 biological resources that if known would jeopardize the security of those resources or of  
607 valuable historic, scientific, educational, or cultural information;

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

610 (28) records of an institution within the state system of higher education defined in  
611 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,  
612 retention decisions, and promotions, which could be properly discussed in a meeting closed in  
613 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of  
614 the final decisions about tenure, appointments, retention, promotions, or those students

615 admitted, may not be classified as protected under this section;

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

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

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

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

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

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

635 (35) records that would reveal negotiations regarding assistance or incentives offered  
636 by or requested from a governmental entity for the purpose of encouraging a person to expand  
637 or locate a business in Utah, but only if disclosure would result in actual economic harm to the  
638 person or place the governmental entity at a competitive disadvantage, but this section may not  
639 be used to restrict access to a record evidencing a final contract;

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

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

646 the donor, provided that:

647 (a) the donor requests anonymity in writing;

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

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

655 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and  
656 73-18-13;

657 (39) a notification of workers' compensation insurance coverage described in Section  
658 34A-2-205;

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

662 (i) unpublished lecture notes;

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

664 (A) relating to research; and

665 (B) of:

666 (I) the institution within the state system of higher education defined in Section  
667 53B-1-102; or

668 (II) a sponsor of sponsored research;

669 (iii) unpublished manuscripts;

670 (iv) creative works in process;

671 (v) scholarly correspondence; and

672 (vi) confidential information contained in research proposals;

673 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public  
674 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

675 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

676 (41) (a) records in the custody or control of the Office of Legislative Auditor General

677 that would reveal the name of a particular legislator who requests a legislative audit prior to the  
678 date that audit is completed and made public; and

679 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the  
680 Office of the Legislative Auditor General is a public document unless the legislator asks that  
681 the records in the custody or control of the Office of Legislative Auditor General that would  
682 reveal the name of a particular legislator who requests a legislative audit be maintained as  
683 protected records until the audit is completed and made public;

684 (42) records that provide detail as to the location of an explosive, including a map or  
685 other document that indicates the location of:

686 (a) a production facility; or

687 (b) a magazine;

688 (43) information contained in the database described in Section 62A-3-311.1;

689 (44) information contained in the Management Information System and Licensing  
690 Information System described in Title 62A, Chapter 4a, Child and Family Services;

691 (45) information regarding National Guard operations or activities in support of the  
692 National Guard's federal mission;

693 (46) records provided by any pawn or secondhand business to a law enforcement  
694 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and  
695 Secondhand Merchandise Transaction Information Act;

696 (47) information regarding food security, risk, and vulnerability assessments performed  
697 by the Department of Agriculture and Food;

698 (48) except to the extent that the record is exempt from this chapter pursuant to Section  
699 63-2-106, records related to an emergency plan or program prepared or maintained by the  
700 Division of Homeland Security the disclosure of which would jeopardize:

701 (a) the safety of the general public; or

702 (b) the security of:

703 (i) governmental property;

704 (ii) governmental programs; or

705 (iii) the property of a private person who provides the Division of Homeland Security  
706 information;

707 (49) records of the Department of Agriculture and Food relating to the National

708 Animal Identification System or any other program that provides for the identification, tracing,  
709 or control of livestock diseases, including any program established under Title 4, Chapter 24,  
710 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and  
711 Quarantine;

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

713 (a) information or records held by the Department of Health related to a complaint  
714 regarding a child care program or residential child care which the department is unable to  
715 substantiate; and

716 (b) information or records related to a complaint received by the Department of Health  
717 from an anonymous complainant regarding a child care program or residential child care; and

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

721 (a) the individual is required to provide the information in order to comply with a law,  
722 ordinance, rule, or order of a government entity; and

723 (b) the subject of the record has a reasonable expectation that this information will be  
724 kept confidential due to:

725 (i) the nature of the law, ordinance, rule, or order; and

726 (ii) the individual complying with the law, ordinance, rule, or order.

727 Section 13. Section **78A-6-209** is amended to read:

728 **78A-6-209. Court records -- Inspection.**

729 (1) The court and the probation department shall keep records as required by the board  
730 and the presiding judge.

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

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

735 (b) for information relating to adult offenders alleged to have committed a sexual  
736 offense, a felony or class A misdemeanor drug offense, or an offense against the person under  
737 Title 76, Chapter 5, Offenses Against the Person, the State Office of Education for the purpose  
738 of evaluating whether an individual should be permitted to obtain or retain a license as an

739 educator or serve as an employee or volunteer in a school, with the understanding that the  
740 office must provide the individual with an opportunity to respond to any information gathered  
741 from its inspection of the records before it makes a decision concerning licensure or  
742 employment;

743 (c) the Criminal Investigations and Technical Services Division, established in Section  
744 53-10-103, for the purpose of a criminal history background check for the purchase of a firearm  
745 and establishing good character for issuance of a concealed firearm permit as provided in  
746 Section 53-5-704;

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

750 (e) for information related to a juvenile offender who has committed a sexual offense, a  
751 felony, or an offense which if committed by an adult would be a misdemeanor, the Department  
752 of Health, for the purpose of evaluating under the provisions of Subsection [~~26-39-107~~]  
753 26-39-404(3) whether a licensee should be permitted to obtain or retain a license to provide  
754 child care, with the understanding that the department must provide the individual who  
755 committed the offense with an opportunity to respond to any information gathered from its  
756 inspection of records before it makes a decision concerning licensure.

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

760 (4) If a petition is filed charging a minor 14 years of age or older with an offense that  
761 would be a felony if committed by an adult, the court shall make available to any person upon  
762 request the petition, any adjudication or disposition orders, and the delinquency history  
763 summary of the minor charged unless the records are closed by the court upon findings on the  
764 record for good cause.

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

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

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

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

774 Section 14. Section **78A-6-323** is amended to read:

775 **78A-6-323. Additional finding at adjudication hearing -- Petition -- Court**  
776 **records.**

777 (1) Upon the filing with the court of a petition under Section 78A-6-304 by the  
778 Division of Child and Family Services or any interested person informing the court, among  
779 other things, that the division has made a supported finding that a person committed a severe  
780 type of child abuse or neglect as defined in Section 62A-4a-1002, the court shall:

- 781 (a) make a finding of substantiated, unsubstantiated, or without merit;
- 782 (b) include the finding described in Subsection (1)(a) in a written order; and
- 783 (c) deliver a certified copy of the order described in Subsection (1)(b) to the division.

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

- 785 (a) as part of the adjudication hearing;
- 786 (b) at the conclusion of the adjudication hearing; or
- 787 (c) as part of a court order entered pursuant to a written stipulation of the parties.

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

- 790 (b) At the conclusion of the hearing on the petition, the court shall:
  - 791 (i) make a finding of substantiated, unsubstantiated, or without merit;
  - 792 (ii) include the finding described in Subsection (1)(a) in a written order; and
  - 793 (iii) deliver a certified copy of the order described in Subsection (1)(b) to the division.

794 (4) A proceeding for adjudication of a supported finding under this section of a type of  
795 abuse or neglect that does not constitute a severe type of child abuse or neglect may be joined  
796 in the juvenile court with an adjudication of a severe type of child abuse or neglect.

797 (5) If a person whose name appears on the Licensing Information system prior to May  
798 6, 2002 files a petition during the time that an alleged perpetrator's application for clearance to  
799 work with children or vulnerable adults is pending, the court shall hear the matter and enter a  
800 final decision no later than 60 days after the filing of the petition.

801 (6) For the purposes of licensing under Sections 26-21-9.5, ~~[26-39-105.5]~~ 26-39-402,  
802 62A-1-118, and for the purposes described in Section 62A-2-121:

803 (a) the court shall make available records of its findings under Subsections (1) and (2)  
804 for licensing purposes, only to those with statutory authority to access also the Licensing  
805 Information System created under Section 62A-4a-1006; and

806 (b) any appellate court shall make available court records of appeals from juvenile  
807 court decisions under Subsections (1), (2), (3), and (4) for licensing purposes, only to those  
808 with statutory authority to access also the Licensing Information System.

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**S.B. 184 3rd Sub. (Ivory) - Child Care Licensing Exemptions**

**Fiscal Note**

2008 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

This Legislation requires child care business exempt from licensing requirements to run background checks on all employees, at a cost of \$10 per employee. This cost could either be paid by the business or passed on to the employee. Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

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