

HB0146S02 compared with HB0146S01

~~text~~ shows text that was in HB0146S01 but was deleted in HB0146S02.

text shows text that was not in HB0146S01 but was inserted into HB0146S02.

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Representative Ronda Rudd Menlove proposes the following substitute bill:

CHILD CARE AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ronda Rudd Menlove

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Utah Child Care Licensing Act related to child care programs.

Highlighted Provisions:

This bill:

- ▶ requires a child care provider that is exempt from licensure and certification requirements to:
 - submit information to the Department of Health for the purpose of conducting criminal history checks;
 - submit to the Department of Health the ~~names of children receiving care from the provider~~ name of each individual who is between 12 and 17 years of age who resides in a residence where child care is provided;

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-39-102, as last amended by Laws of Utah 2008, Chapter 111

26-39-403, as renumbered and amended by Laws of Utah 2008, Chapter 111

26-39-404, as last amended by Laws of Utah 2013, Chapter 276

26-39-501, as last amended by Laws of Utah 2008, Chapter 382 and renumbered and amended by Laws of Utah 2008, Chapter 111

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

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

26-39-102. Definitions.

As used in this chapter:

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

- (a) in lieu of care ordinarily provided by a parent in the parent's home;
- (b) for less than 24 hours a day; and
- (c) for direct or indirect compensation.

(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.

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

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

~~[(4)]~~ (5) "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)]~~ (6) "Qualifying child" means a person who is:

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

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

(b) a child of:

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

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

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

~~[(6)]~~ (7) "Residential child care" means child care provided in the home of a provider.

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

26-39-403. Exclusions from chapter -- Exclusions from licensure and certification -- Criminal background checks.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(j)~~ (e) care provided by an organization that:

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

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

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

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

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

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

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

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

(a) for each individual who has access to a qualifying child receiving care from the exempt provider, the information necessary to perform a criminal history check under Subsection 26-39-404(1); and

(b) the information required under Subsection 26-39-404(2).

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

(a) states that the facility is exempt from licensure and certification; and

(b) provides the department's contact information for submitting a compliant.

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

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

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

(i) owners;

(ii) directors;

(iii) members of the governing body;

(iv) employees;

(v) providers of care;

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

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

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

(i) the individual has resided in Utah for the last five years and applied for a certificate or license before July 1, 2013;

(ii) the individual has:

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

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

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

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

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

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

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

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

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

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

(A) over the age of 28; and

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

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

(a) provide child care;

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

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

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

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

(i) specific misdemeanors; and

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

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

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

26-39-501. Investigations -- Records.

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

(2) For purposes of this section:

(a) "Anonymous complainant" means a complainant for whom the department does not

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have the minimum personal identifying information necessary, including the complainant's full name, to attempt to communicate with the complainant after a complaint has been made.

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

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

(3) (a) If the department receives a complaint about a child care program or [~~residential child care~~] an exempt provider, the department shall:

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

(ii) as necessary:

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

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

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

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

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

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

(i) shall refer the information in the complaint to the Division of Child and Family

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Services within the Department of Human Services, law enforcement, or any other appropriate agency, if the complaint suggests actions or conditions which could pose a serious risk to the safety or well-being of a child;

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

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

(A) the anonymous complainant; or

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

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

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

(B) indefinitely.

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

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

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

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

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

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

(i) the supervisor determines the complaint is credible;

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

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

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

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

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(c) An investigator is not required to inform the subject of a complaint of the substance of the complaint prior to an investigation if doing so would jeopardize the investigation. However, the investigator shall inform the subject of the complaint of the substance of the complaint as soon as doing so will no longer jeopardize the investigation.

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

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

(i) a private or controlled record if appropriate under Section 63G-2-302 or 63G-2-304;
or

(ii) a protected record under Section 63G-2-305; and

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

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