

1 **CHILD CARE AMENDMENTS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ronda Rudd Menlove**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ requires a child care provider that is exempt from licensure and certification
14 requirements to:
- 15 • submit information to the Department of Health for the purpose of conducting
16 criminal history checks;
 - 17 • submit to the Department of Health the names of children receiving care from
18 the provider;
 - 19 • prohibit an individual with a misdemeanor or felony from providing care to a
20 child receiving care from the provider;
 - 21 • post, in a conspicuous location, a notice that is prepared by the Department of
22 Health that states the facility is exempt from licensure and certification and
23 provides the department's contact information for submitting a complaint;
- 24 ▶ allows the Department of Health to investigate license-exempt providers under
25 certain circumstances; and
- 26 ▶ makes technical and conforming amendments.

27 **Money Appropriated in this Bill:**



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **26-39-102**, as last amended by Laws of Utah 2008, Chapter 111

34 **26-39-403**, as renumbered and amended by Laws of Utah 2008, Chapter 111

35 **26-39-404**, as last amended by Laws of Utah 2013, Chapter 276

36 **26-39-501**, as last amended by Laws of Utah 2008, Chapter 382 and renumbered and
37 amended by Laws of Utah 2008, Chapter 111



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

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

41 **26-39-102. Definitions.**

42 As used in this chapter:

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

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

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

47 (c) for direct or indirect compensation.

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

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

52 (4) "Exempt provider" means a person described in Subsection **26-39-403(1)**.

53 ~~(4)~~ (5) "Public school" means:

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

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

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

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

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

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

64 [(5)] (6) "Qualifying child" means a person who is:

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

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

67 (b) a child of:

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

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

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

73 [(6)] (7) "Residential child care" means child care provided in the home of a provider.

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

75 **26-39-403. Exclusions from chapter -- Criminal background checks by an**
76 **excluded person.**

77 (1) The [~~provisions and~~] licensing and certification requirements of this chapter do not
78 apply to:

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

81 (b) group counseling provided by a mental health therapist, as defined in Section
82 58-60-102, who is licensed to practice in this state;

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

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

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

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

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

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

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

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

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

105 (j) care provided by an organization that:

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

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

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

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

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

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

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

118 (2) An exempt provider shall submit to the department:

119 (a) for each individual who has access to a qualifying child receiving care from the
120 exempt provider, the information necessary to perform a criminal history check under

121 Subsection 26-39-404(1); and

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

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

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

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

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

128 **26-39-404. Disqualified individuals -- Criminal history checks -- Payment of**
129 **costs.**

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

134 (i) owners;

135 (ii) directors;

136 (iii) members of the governing body;

137 (iv) employees;

138 (v) providers of care;

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

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

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

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

146 (ii) the individual has:

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

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

150 (iii) as of May 3, 1999, the individual had one of the relationships under Subsection
151 (1)(a) with a child care provider having a residential certificate or licensed under this section

152 and the individual has resided in Utah continuously since that time.

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

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

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

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

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

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

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

172 (A) over the age of 28; and

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

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

180 (a) provide child care;

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

183 provider;

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

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

187 child care program or an exempt provider.

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

190 (i) specific misdemeanors; and

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

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

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

197 **26-39-501. Investigations -- Records.**

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

200 (2) For purposes of this section:

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

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

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

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

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

214 qualifying child;

215 (ii) as necessary:

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

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

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

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

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

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

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

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

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

239 (A) the anonymous complainant; or

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

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

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

245 (B) indefinitely.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

273 or

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

275 (b) if disclosed in accordance with Subsection 63G-2-201(5)(b), may not identify an

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

Legislative Review Note
as of 2-12-14 3:33 PM

Office of Legislative Research and General Counsel