

Luz Escamilla proposes the following substitute bill:

Child Care Revisions

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Luz Escamilla

House Sponsor:

LONG TITLE

General Description:

This bill modifies provisions related to caring for children.

Highlighted Provisions:

This bill:

- requires licensure for a residential child care provider when providing child care for a certain number of qualifying children;
 - requires certification for a residential child care provider when providing child care for a certain number of qualifying children;
 - amends provisions authorizing the Department of Health and Human Services to inspect the home of a certified child care provider under certain circumstances;
 - prohibits a certified residential child care provider from providing child care to more than two qualifying children under certain ages;
 - amends provisions of criminal background check requirements for a child care provider;
- and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 26B-2-402**, as last amended by Laws of Utah 2024, Chapter 235
- 26B-2-403**, as renumbered and amended by Laws of Utah 2023, Chapter 305
- 26B-2-404**, as last amended by Laws of Utah 2024, Chapter 235
- 26B-2-405**, as last amended by Laws of Utah 2024, Chapter 235

29 **26B-2-406**, as last amended by Laws of Utah 2024, Chapter 235

30 **78A-6-209**, as last amended by Laws of Utah 2024, Chapter 235

31

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

33 Section 1. Section **26B-2-402** is amended to read:

34 **26B-2-402 . Duties of the department -- Enforcement of part -- Licensing**
35 **committee requirements.**

36 (1) With regard to residential child care licensed, certified, or subject to criminal
37 background checks under this part, the department may:

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

40 (i) adequate facilities and equipment; and

41 (ii) competent caregivers, considering [~~the age of the children~~] the child's age and the
42 type of program offered by the licensee; and

43 (b) make and enforce rules necessary to carry out the purposes of this part, in the
44 following areas:

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

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

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

50 (iv) changes of ownership or name, changes in licensure status, and changes in
51 operational status;

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

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

55 (vii) guidelines necessary to assure consistency and appropriateness in the regulation
56 and discipline of licensees.

57 (2) The department shall enforce the rules established by the licensing committee, with the
58 concurrence of the department, for center based child care.

59 (3) The department shall make rules that allow a regulated provider to provide after school
60 child care for a reasonable number of qualifying children in excess of the regulated
61 provider's capacity limit, without requiring the regulated provider to obtain a waiver or
62 new license from the department.

- 63 (4) Rules made under this part by the department, or the licensing committee [-]with the
64 concurrence of the department, shall be made in accordance with Title 63G, Chapter 3,
65 Utah Administrative Rulemaking Act.
- 66 (5)(a) The licensing committee and the department may not regulate educational
67 curricula, academic methods, or the educational philosophy or approach of the
68 provider.
- 69 (b) The licensing committee and the department shall allow for a broad range of
70 educational training and academic background in certification or qualification of
71 child day care directors.
- 72 (6) In licensing and regulating child care programs, the licensing committee and the
73 department shall reasonably balance the benefits and burdens of each regulation and, by
74 rule, provide for a range of licensure, depending upon the needs and different levels and
75 types of child care provided.
- 76 (7) Notwithstanding the definition of "qualifying child" in Section 26B-2-401, the licensing
77 committee and the department shall count children [~~through age 12~~] no older than 12
78 years old and children with disabilities [~~through age 18~~] no older than 18 years old
79 toward the minimum square footage requirement for indoor and outdoor areas, including
80 the child of:
- 81 (a) a licensed residential child care provider; or
82 (b) an owner or employee of a licensed child care center.
- 83 (8) Notwithstanding Subsection (1)(a)(i), the licensing committee and the department may
84 not exclude floor space used for furniture, fixtures, or equipment from the minimum
85 square footage requirement for indoor and outdoor areas if the furniture, fixture, or
86 equipment is used:
- 87 (a) by qualifying children;
88 (b) for the care of qualifying children; or
89 (c) to store classroom materials.
- 90 (9)(a) A child care center constructed prior to January 1, 2004, and licensed and
91 operated as a child care center continuously since January 1, 2004, is exempt from
92 the licensing committee's and the department's group size restrictions, if the child to
93 caregiver ratios are maintained, and adequate square footage is maintained for
94 specific classrooms.
- 95 (b) An exemption granted under Subsection (9)(a) is transferrable to subsequent licensed
96 operators at the center if a licensed child care center is continuously maintained at the

97 center.

98 (10) The licensing committee , with the concurrence of the department, shall develop, by
99 rule, a five-year phased-in compliance schedule for playground equipment safety
100 standards.

101 (11) The department shall set and collect licensing and other fees in accordance with
102 Section 26B-1-209.

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

104 **26B-2-403 . Licensure requirements -- Expiration -- Renewal.**

105 (1) Except as provided in Section 26B-2-405, and subject to Subsection (2), a person shall
106 obtain a license from the department if:

107 (a) the person provides center based child care for five or more qualifying children;

108 (b) the person provides residential child care for ~~nine~~ five or more qualifying children;

109 or

110 (c) the person:

111 (i) provides child care for four or fewer qualifying children;

112 (ii) is not required to obtain a license under Subsection (1)(a) or (b); and

113 (iii) requests to be licensed.

114 (2) Notwithstanding Subsection (1), a certified provider may, in accordance with rules
115 made by the department under Subsection 26B-2-402(3), exceed the certified provider's
116 capacity limit to provide after school child care without obtaining a license from the
117 department.

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

120 (a) this part; and

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

122 (4) A license issued under this part is not assignable or transferable.

123 Section 3. Section **26B-2-404** is amended to read:

124 **26B-2-404 . Residential Child Care Certificate.**

125 (1) Except as provided in Section 26B-2-405, ~~[a person may request]~~ a person shall obtain a
126 Residential Child Care Certificate from the department if the person provides residential
127 child care for at least five and no more than eight ~~[or fewer]~~ qualifying children.

128 (2) The minimum qualifications for a Residential Child Care Certificate are:

129 (a) the submission of:

130 (i) an application in the form prescribed by the department;

- 131 (ii) a certification and criminal background fee established in accordance with
132 Section 26B-1-209; and
- 133 (iii) in accordance with Section 26B-2-406, identifying information for each adult
134 person and each juvenile [~~age 12 through 17 years old~~] who is at least 12 years old
135 and no older than 18 years old and who resides in the provider's home:
- 136 (A) for processing by the Department of Public Safety to determine whether any
137 such person has been convicted of a crime;
- 138 (B) to screen for a substantiated finding of child abuse or neglect by a juvenile
139 court; and
- 140 (C) to discover whether the person is listed in the Licensing Information System
141 described in Section 80-2-1002;
- 142 (b) an initial and annual inspection of the provider's home within 90 days of sending an
143 intent to inspect notice to:
- 144 (i) check the immunization record, as defined in Section 53G-9-301, of each
145 qualifying child who receives child care in the provider's home;
- 146 (ii) identify serious sanitation, fire, and health hazards to qualifying children; and
147 (iii) make appropriate recommendations; and
- 148 (c) annual training consisting of 10 hours of department-approved training as specified
149 by the department by administrative rule, including a current department-approved
150 CPR and first aid course.
- 151 (3) If a serious sanitation, fire, or health hazard has been found during an inspection
152 conducted pursuant to Subsection (2)(b), the department shall require corrective action
153 for the serious hazards found and make an unannounced follow up inspection to
154 determine compliance.
- 155 (4) In addition to an inspection conducted pursuant to Subsection (2)(b), the department
156 may inspect the home of a certified provider in response to a complaint of:
- 157 (a) child abuse or neglect;
- 158 (b) serious health hazards in or around the provider's home; or
- 159 (c) providing residential child care without the appropriate certificate or license.
- 160 (5) With respect to residential child care, the department may only make and enforce rules
161 necessary to implement this section.

162 Section 4. Section **26B-2-405** is amended to read:

163 **26B-2-405 . Exclusions from part -- Criminal background checks by an excluded**
164 **person.**

- 165 (1)(a) Except as provided in Subsections (1)(b) and (1)(c), the provisions and
 166 requirements of this part do not apply to:
- 167 (i) a facility or program owned or operated by an agency of the United States
 168 government;
 - 169 (ii) group counseling provided by a mental health therapist, as defined in Section
 170 58-60-102, who is licensed to practice in this state;
 - 171 (iii) a health care facility licensed under Part 2, Health Care Facility Licensing and
 172 Inspection;
 - 173 (iv) care provided to a qualifying child by or in the home of a parent, legal guardian,
 174 grandparent, brother, sister, uncle, or aunt;
 - 175 (v) care provided to a qualifying child, in the home of the provider, for less than four
 176 hours a day or on a sporadic basis, unless that child care directly affects or is
 177 related to a business licensed in this state;
 - 178 (vi) care provided at a residential support program that is licensed by the department;
 179 or
 - 180 (vii) center based child care for four or fewer qualifying children, unless the provider
 181 requests to be licensed under Section 26B-2-403[; ~~or~~].
 - 182 [~~(viii) residential child care for eight or fewer qualifying children, unless the provider~~
 183 ~~requests to be licensed under Section 26B-2-403 or certified under Section~~
 184 ~~26B-2-404.]~~
- 185 (b)[~~(i)~~] A person that does not hold a license or certificate from the department under
 186 this part may not, at any given time, provide child care in the person's home for
 187 more than 10 children in total under [~~the age of 13~~] 13 years old, or under [~~the age~~
 188 ~~of 18~~] 18 years old if a child has a disability, regardless of whether a child is
 189 related to the person providing child care.
- 190 [~~(ii) A person providing care described in Subsection (1)(a)(viii) may not provide, at~~
 191 ~~any given time, child care in the person's home for more than two children who~~
 192 ~~are under three years old.]~~
- 193 [~~(e) A person providing care described in Subsection (1)(a)(viii) that is not a certified~~
 194 ~~provider or a licensed provider under this part is subject to the requirements of~~
 195 ~~Section 26B-2-406.]~~
- 196 (2) The licensing and certification requirements of this part do not apply to:
- 197 (a) care provided to a qualifying child as part of a course of study at or a program
 198 administered by an educational institution that is regulated by the boards of education

- 199 of this state, a private education institution that provides education in lieu of that
200 provided by the public education system, or by a parochial education institution;
- 201 (b) care provided to a qualifying child by a public or private institution of higher
202 education, if the care is provided in connection with a course of study or program,
203 relating to the education or study of children, that is provided to students of the
204 institution of higher education;
- 205 (c) care provided to a qualifying child at a public school by an organization other than
206 the public school, if:
- 207 (i) the care is provided under contract with the public school or on school property; or
208 (ii) the public school accepts responsibility and oversight for the care provided by the
209 organization;
- 210 (d) care provided to a qualifying child as part of a summer camp that operates on federal
211 land pursuant to a federal permit;
- 212 (e) care provided by an organization that:
- 213 (i) qualifies for tax exempt status under Section 501(c)(3) of the Internal Revenue
214 Code;
- 215 (ii) provides care pursuant to a written agreement with:
- 216 (A) a municipality, as defined in Section 10-1-104, that provides oversight for the
217 program; or
218 (B) a county that provides oversight for the program; and
- 219 (iii) provides care to a child who is [~~over the age of four and under the age of 13~~] at
220 least five years old and no older than 13 years old; or
- 221 (f) care provided to a qualifying child at a facility where:
- 222 (i) the parent or guardian of the qualifying child is at all times physically present in
223 the building where the care is provided and the parent or guardian is near enough
224 to reach the child within five minutes if needed;
- 225 (ii) the duration of the care is less than four hours for an individual qualifying child in
226 any one day;
- 227 (iii) the care is provided on a sporadic basis;
- 228 (iv) the care does not include diapering a qualifying child; and
229 (v) the care does not include preparing or serving meals to a qualifying child.
- 230 (3) An exempt provider shall submit to the department:
- 231 (a) the information required under Subsections 26B-2-406(1) and (2); and
232 (b) of the children receiving care from the exempt provider:

- 233 (i) the number of children who are less than two years old;
- 234 (ii) the number of children who are at least two years old and less than five years old;
- 235 and
- 236 (iii) the number of children who are five years old or older.

237 (4) An exempt provider shall post, in a conspicuous location near the entrance of the

238 exempt provider's facility, a notice prepared by the department that:

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

241 (5)(a) Except as provided in Subsection (5)(b), the department may not release the

242 information the department collects from exempt providers under Subsection (3).

243 (b) The department may release an aggregate count of children receiving care from

244 exempt providers, without identifying a specific provider.

245 Section 5. Section **26B-2-406** is amended to read:

246 **26B-2-406 . Disqualified individuals -- Criminal history checks -- Payment of**

247 **costs.**

248 (1)(a) Each exempt provider, except as provided in Subsection (1)(c), each person

249 described in Subsection 26B-2-405(1)(a)(viii) that is not a certified provider or a

250 licensed provider, and each person [~~requesting~~] applying for a residential certificate or

251 to be licensed or to renew a license under this part shall submit to the department the

252 name and other identifying information, which shall include fingerprints, of existing,

253 new, and proposed:

- 254 (i) owners;
- 255 (ii) directors;
- 256 (iii) members of the governing body;
- 257 (iv) employees;
- 258 (v) providers of care;
- 259 (vi) volunteers, except parents of children enrolled in the programs; and
- 260 (vii) all adults residing in a residence where child care is provided.

261 (b)(i) The Utah Division of Criminal Investigation and Technical Services within the

262 Department of Public Safety shall process the information required under

263 Subsection (1)(a) to determine whether the individual has been convicted of any

264 crime.

265 (ii) The Utah Division of Criminal Investigation and Technical Services shall submit

266 fingerprints required under Subsection (1)(a) to the FBI for a national criminal

- 267 history record check.
- 268 (iii) A person required to submit information to the department under Subsection (1)
- 269 shall pay the cost of conducting the record check described in this Subsection
- 270 (1)(b).
- 271 (c) An exempt provider who provides care to a qualifying child as part of a program
- 272 administered by an educational institution that is regulated by the State Board of
- 273 Education is not subject to this Subsection (1), unless required by the Child Care and
- 274 Development Block Grant, 42 U.S.C. Secs. 9857-9858r.
- 275 (2)(a)(i) Each person ~~[requesting]~~ applying for a residential certificate or to be
- 276 licensed or to renew a license under this part and each person described in
- 277 Subsection 26B-2-405(1)(a)(viii) that is not a certified provider or a licensed
- 278 provider shall submit to the department the name and other identifying
- 279 information of any person ~~[age 12 through 17]~~ who is at least 12 years old and no
- 280 older than 18 years old and who resides in the residence where the child care is
- 281 provided.
- 282 (ii) The identifying information required for a person ~~[age 12 through 17]~~ who is at
- 283 least 12 years old and no older than 18 years old does not include fingerprints.
- 284 (b) The department shall access the juvenile court records to determine whether a person
- 285 described in Subsection (1) or (2)(a) has been adjudicated in juvenile court of
- 286 committing an act which if committed by an adult would be a felony or misdemeanor
- 287 if:
- 288 (i) the person described in Subsection (1) is ~~[under the age of 28]~~ less than 28 years
- 289 old; or
- 290 (ii) the person described in Subsection (1) is:
- 291 (A) ~~[over the age of 28]~~ 28 years old or older; and
- 292 (B) has been convicted, has pleaded no contest, or is currently subject to a plea in
- 293 abeyance or diversion agreement for a felony or misdemeanor.
- 294 (3) Except as provided in Subsections (4) and (5), a licensee under this part, a person
- 295 described in Subsection 26B-2-405(1)(a)(viii) that is not a certified provider or a
- 296 licensed provider, or an exempt provider may not permit a person who has been
- 297 convicted, has pleaded no contest, or is currently subject to a plea in abeyance or
- 298 diversion agreement for any felony or misdemeanor, or if the provisions of Subsection
- 299 (2)(b) apply, who has been adjudicated in juvenile court of committing an act which if
- 300 committed by an adult would be a felony or a misdemeanor, to:

- 301 (a) provide child care;
- 302 (b) provide volunteer services for a child care program or an exempt provider;
- 303 (c) reside at the premises where child care is provided; or
- 304 (d) function as an owner, director, or member of the governing body of a child care
- 305 program or an exempt provider.
- 306 (4)(a) The department may, by rule, exempt the following from the restrictions of
- 307 Subsection (3):
- 308 (i) specific misdemeanors; and
- 309 (ii) specific acts adjudicated in juvenile court, which if committed by an adult would
- 310 be misdemeanors.
- 311 (b) In accordance with criteria established by rule, the executive director may consider
- 312 and exempt individual cases not otherwise exempt under Subsection (4)(a) from the
- 313 restrictions of Subsection (3).
- 314 (5) The restrictions of Subsection (3) do not apply to the following:
- 315 (a) a conviction or plea of no contest to any nonviolent drug offense that occurred on a
- 316 date 10 years or more before the date of the criminal history check described in this
- 317 section; or
- 318 (b) if the provisions of Subsection (2)(b) apply, any nonviolent drug offense adjudicated
- 319 in juvenile court on a date 10 years or more before the date of the criminal history
- 320 check described in this section.
- 321 (6) The department may retain background check information submitted to the department
- 322 for up to one year after the day on which the covered individual is no longer associated
- 323 with a Utah child care provider.

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

325 **78A-6-209 . Court records -- Inspection.**

- 326 (1) The juvenile court and the juvenile court's probation department shall keep records as
- 327 required by the board and the presiding judge.
- 328 (2) A court record shall be open to inspection by:
- 329 (a) the parents or guardian of a child, a minor who is at least 18 years old, other parties
- 330 in the case, the attorneys, and agencies to which custody of a minor has been
- 331 transferred;
- 332 (b) for information relating to adult offenders alleged to have committed a sexual
- 333 offense, a felony or class A misdemeanor drug offense, or an offense against the
- 334 person under Title 76, Chapter 5, Offenses Against the Individual, the State Board of

- 335 Education, for the purpose of evaluating whether an individual [~~should be permitted~~
336 ~~to obtain or retain~~] obtains or retains a license as an educator or serve as an employee
337 or volunteer in a school, with the understanding that the State Board of Education [
338 ~~must~~] shall provide the individual with an opportunity to respond to any information
339 gathered from the State Board of Education's inspection of the records before the
340 State Board of Education makes a decision concerning licensure or employment;
- 341 (c) the Criminal Investigations and Technical Services Division, established in Section
342 53-10-103, for the purpose of a criminal history background check for the purchase
343 of a firearm and establishing good character for issuance of a concealed firearm
344 permit as provided in Section 53-5-704;
- 345 (d) the Division of Child and Family Services for the purpose of Child Protective
346 Services Investigations in accordance with Sections 80-2-602 and 80-2-701 and
347 administrative hearings in accordance with Section 80-2-707;
- 348 (e) the Division of Licensing and Background Checks for the purpose of conducting a
349 background check in accordance with Section 26B-2-120;
- 350 (f) for information related to a minor who has committed a sexual offense, a felony, or
351 an offense that if committed by an adult would be a misdemeanor, the Department of
352 Health and Human Services, for the purpose of evaluating under the provisions of
353 Subsection 26B-2-406(3), whether a person [~~should be permitted to operate a~~
354 ~~residential child care without a license or a certificate or to obtain or retain~~] obtains
355 or retains a license to provide child care, with the understanding that the department [
356 ~~must~~] shall provide the individual who committed the offense with an opportunity to
357 respond to any information gathered from the Department of Health and Human
358 Services' inspection of records before the Department of Health and Human Services
359 makes a decision concerning licensure;
- 360 (g) for information related to a minor who has committed a sexual offense, a felony, or
361 an offense that if committed by an adult would be a misdemeanor, the Department of
362 Health and Human Services, to determine whether an individual meets the
363 background screening requirements of Sections 26B-2-238 through 26B-2-241, with
364 the understanding that the department [~~must~~] shall provide the individual who
365 committed the offense an opportunity to respond to any information gathered from
366 the Department of Health and Human Services' inspection of records before the
367 Department of Health and Human Services makes a decision under that part; and
- 368 (h) for information related to a minor who has committed a sexual offense, a felony, or

369 an offense that if committed by an adult would be a misdemeanor, the Bureau of
370 Emergency Medical Services, to determine whether to grant, deny, or revoke
371 background clearance under Section 53-2d-410 for an individual who is seeking or
372 who has obtained an emergency medical service personnel license under Section
373 53-2d-402, with the understanding that the Bureau of Emergency Medical Services [
374 ~~must~~] shall provide the individual who committed the offense an opportunity to
375 respond to any information gathered from the inspection of records before the Bureau
376 of Emergency Medical Services makes a determination.

377 (3) With the consent of the juvenile court, a court record may be inspected by the child, by
378 persons having a legitimate interest in the proceedings, and by persons conducting
379 pertinent research studies.

380 (4)(a) Except as provided in Subsection (4)(b), if a petition is filed charging a minor who
381 is 14 years old or older with an offense that would be a felony if committed by an
382 adult, the juvenile court shall make available to any person upon request the petition,
383 any adjudication or disposition orders, and the delinquency history summary for the
384 minor.

385 (b) A juvenile court may close the records described in Subsection (4)(a) to the public if
386 the juvenile court finds, on the record, that the records are closed for good cause.

387 (5) A juvenile probation officer's records and reports of social and clinical studies are not
388 open to inspection, except by consent of the juvenile court, given under rules adopted by
389 the board.

390 (6) The juvenile court may charge a reasonable fee to cover the costs associated with
391 retrieving a requested record that has been archived.

392 Section 7. **Effective Date.**

393 This bill takes effect on May 7, 2025.