

1 **CHILD CARE CENTERS REGULATIONS**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Parley G. Hellewell**

5

LONG TITLE

6 **General Description:**

7
8 This bill amends the Department of Health's authority to impose certain regulations on
9 day care providers and amends the Government Records Access and Management Act
10 to classify certain records of the department as protected records.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ amends the way in which the department calculates the minimum square footage
14 required for a day care provider;
- 15 ▶ limits the department's authority to impose playground equipment safety standards
16 to the minimum standards imposed by the state, a municipality, or the public school
17 district in which the facility is located;
- 18 ▶ prohibits the department from imposing group size limitations at a day care center
19 as long as the center meets caregiver to child ratios imposed by the department; and
- 20 ▶ requires the department to classify records concerning an unsubstantiated license
21 complaint as a protected record under the Government Records Access and
22 Management Act.

23 **Monies Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**



28 AMENDS:

29 **26-39-104**, as last amended by Chapter 13, Laws of Utah 2003

30 **63-2-304**, as last amended by Chapters 60 and 131, Laws of Utah 2003

31

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

33 Section 1. Section **26-39-104** is amended to read:

34 **26-39-104. Duties of the department.**

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

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

39 (i) adequate facilities and equipment; and

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

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

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

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

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

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

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

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

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

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

57 (2) (a) The department may not regulate educational curricula, academic methods, or
58 the educational philosophy or approach of the provider.

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

61 (3) In licensing and regulating child care programs, the department shall reasonably
62 balance the benefits and burdens of each regulation and, by rule, provide for a range of
63 licensure, depending upon the needs and different levels and types of child care provided.

64 (4) Notwithstanding the definition of "child" in Subsection 26-39-102(1), the
65 department shall count children through age 12 and children with disabilities through age 18
66 toward the minimum square footage requirement for indoor and outdoor areas, including the
67 child of:

- 68 (a) a licensed residential child care provider; or
- 69 (b) an owner or employee of a licensed child care center.

70 (5) Notwithstanding Subsection (1)(a)(i), the department may not:

71 (a) exclude floor space used for furniture, fixtures or equipment from the minimum
72 square footage requirement for indoor and outdoor areas if the furniture, fixture, or equipment
73 is used:

- 74 (i) by children;
- 75 (ii) for the care of children; or
- 76 (iii) to store classroom materials;

77 (b) impose playground equipment safety standards that are stricter than the minimum
78 playground equipment safety standards imposed by:

- 79 (i) the state;
- 80 (ii) the municipality in which the facility is located; or
- 81 (iii) the school district in which the facility is located; and

82 (c) impose group size restrictions so long as the facility complies with the minimum
83 caregiver to child ratios established by the department.

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

85 **63-2-304. Protected records.**

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

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

89 (2) commercial information or nonindividual financial information obtained from a

90 person if:

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

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

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

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

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

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

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

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

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

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

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

120 (d) in the case of records that would identify the appraisal or estimated value of

121 property, the potential sellers have already learned of the governmental entity's estimated value
122 of the property;

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

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

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

132 (9) records created or maintained for civil, criminal, or administrative enforcement
133 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes[;];

134 (a) if release of the records:

135 [~~(a)~~] (i) reasonably could be expected to interfere with investigations undertaken for
136 enforcement, discipline, licensing, certification, or registration purposes;

137 [~~(b)~~] (ii) reasonably could be expected to interfere with audits, disciplinary, or
138 enforcement proceedings;

139 [~~(c)~~] (iii) would create a danger of depriving a person of a right to a fair trial or
140 impartial hearing;

141 [~~(d)~~] (iv) reasonably could be expected to disclose the identity of a source who is not
142 generally known outside of government and, in the case of a record compiled in the course of
143 an investigation, disclose information furnished by a source not generally known outside of
144 government if disclosure would compromise the source; or

145 [~~(e)~~] (v) reasonably could be expected to disclose investigative or audit techniques,
146 procedures, policies, or orders not generally known outside of government if disclosure would
147 interfere with enforcement or audit efforts; or

148 (b) if the records are created or maintained by the Department of Health as a result of
149 an investigation of a complaint regarding a child care center licensing violation and the
150 complaint cannot be substantiated by the department;

151 (10) records the disclosure of which would jeopardize the life or safety of an

152 individual;

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

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

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

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

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

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

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

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

177 (19) personal files of a legislator, including personal correspondence to or from a
178 member of the Legislature, provided that correspondence that gives notice of legislative action
179 or policy may not be classified as protected under this section;

180 (20) (a) records in the custody or control of the Office of Legislative Research and
181 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
182 legislation or contemplated course of action before the legislator has elected to support the

183 legislation or course of action, or made the legislation or course of action public; and

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

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

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

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

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

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

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

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

205 (28) records of a public institution of higher education regarding tenure evaluations,
206 appointments, applications for admissions, retention decisions, and promotions, which could be
207 properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public
208 Meetings, provided that records of the final decisions about tenure, appointments, retention,
209 promotions, or those students admitted, may not be classified as protected under this section;

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

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

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

221 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
222 except as provided in Section 52-4-7;

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

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

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

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

237 (37) the name of a donor or a prospective donor to a governmental entity, including a
238 public institution of higher education, and other information concerning the donation that could
239 reasonably be expected to reveal the identity of the donor, provided that:

240 (a) the donor requests anonymity in writing;

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

243 (c) except for public institutions of higher education, the governmental unit to which
244 the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and

245 has no regulatory or legislative authority over the donor, a member of his immediate family, or
246 any entity owned or controlled by the donor or his immediate family;

247 (38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and
248 73-18-13;

249 (39) a notification of workers' compensation insurance coverage described in Section
250 34A-2-205;

251 (40) (a) the following records of a public institution of education, which have been
252 developed, discovered, or received by or on behalf of faculty, staff, employees, or students of
253 the institution:

254 (i) unpublished lecture notes;

255 (ii) unpublished research notes and data;

256 (iii) unpublished manuscripts;

257 (iv) creative works in process;

258 (v) scholarly correspondence; and

259 (vi) confidential information contained in research proposals; and

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

261 (41) (a) records in the custody or control of the Office of Legislative Auditor General
262 that would reveal the name of a particular legislator who requests a legislative audit prior to the
263 date that audit is completed and made public; and

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

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

271 (a) a production facility; or

272 (b) a magazine;

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

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

276 (45) information regarding National Guard operations or activities in support of the
277 National Guard's federal mission.

Legislative Review Note
as of 1-5-04 7:25 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0044

Child Care Centers Regulations

26-Jan-04

4:34 PM

State Impact

Costs associated with this bill are expected to be minimal and can be handled within existing budgets.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst