

Senator Parley G. Hellewell proposes the following substitute bill:

CHILD CARE INVESTIGATIONS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Parley G. Hellewell

LONG TITLE

General Description:

This bill amends the Utah Child Care Licensing Act and the Government Records Access and Management Act.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ creates a process for the Department of Health to follow when responding to a complaint about child care;
- ▶ limits disclosure of the name of a confidential complainant;
- ▶ limits the disclosure of identifying information related to a child care complaint that the department is unable to substantiate;
- ▶ specifies the classification of child care investigation records under the Government Records Access and Management Act in the case where the department is unable to substantiate a complaint, and limits the manner in which those records may be disclosed;
- ▶ specifies that any record related to a complaint by an anonymous complainant is a protected record and limits the manner in which it may be disclosed; and
- ▶ amends the list of items in the Government Records Access and Management Act designated as protected records.



26 **Monies Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 This bill provides a coordination clause.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **26-39-109**, as enacted by Chapter 196, Laws of Utah 1997

33 **63-2-304**, as last amended by Chapters 223, 299 and 358, Laws of Utah 2004



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

36 Section 1. Section **26-39-109** is amended to read:

37 **26-39-109. Investigations -- Records.**

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

40 (2) For purposes of this section:

41 (a) "anonymous complainant" means a complainant for whom the department does not
42 have the minimum personal identifying information necessary, including the complainant's full
43 name, to attempt to communicate with the complainant after a complaint has been made;

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

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

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

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

55 (ii) as necessary:

56 (A) encourage the complainant to disclose the minimum personal identifying

57 information necessary, including the complainant's full name, for the department to attempt to
58 subsequently communicate with the complainant;

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

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

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

66 (iii) inform the complainant that a person is guilty of a class B misdemeanor under
67 Section ~~H~~→ [78-8-506] 76-8-506 ←~~H~~ if the person gives false information to the department
67a with a purpose of

68 inducing a change in that person's or another person's licensing or certification status.

69 (b) If the complainant elects to be an anonymous complainant, the department:

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

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

75 (iii) may, during a regularly scheduled annual survey, inform the licensee or certificate
76 holder who is the subject of the complaint of allegations or concerns raised by the anonymous
77 complainant.

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

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

81 (B) indefinitely.

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

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

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

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

91 (4) (a) Prior to conducting an investigation of a child care program or residential child
 92 care in response to a complaint, a department investigator shall review the complaint with the
 93 investigator's supervisor.

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

95 (i) the supervisor determines the complaint is ~~§~~→ [legitimate] credible ←~~§~~ ;

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

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

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

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

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

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

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

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

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

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

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

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

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

117 **63-2-304. Protected records.**

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

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

121 (2) commercial information or nonindividual financial information obtained from a
122 person if:

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

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

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

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

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

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

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

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

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

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

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

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

155 (e) the property under consideration for public acquisition is a single family residence
156 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
157 the property as required under Section 78-34-4.5;

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

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

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

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

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

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

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

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

180 (e) reasonably could be expected to disclose investigative or audit techniques,

181 procedures, policies, or orders not generally known outside of government if disclosure would
182 interfere with enforcement or audit efforts;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

242 (29) records of the governor's office, including budget recommendations, legislative

243 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
244 policies or contemplated courses of action before the governor has implemented or rejected
245 those policies or courses of action or made them public;

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

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

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

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

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

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

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

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

272 (a) the donor requests anonymity in writing;

273 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be

274 classified protected by the governmental entity under this Subsection (37); and

275 (c) except for public institutions of higher education, the governmental unit to which
276 the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and
277 has no regulatory or legislative authority over the donor, a member of his immediate family, or
278 any entity owned or controlled by the donor or his immediate family;

279 (38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and
280 73-18-13;

281 (39) a notification of workers' compensation insurance coverage described in Section
282 34A-2-205;

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

286 (i) unpublished lecture notes;

287 (ii) unpublished research notes and data;

288 (iii) unpublished manuscripts;

289 (iv) creative works in process;

290 (v) scholarly correspondence; and

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

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

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

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

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

303 (a) a production facility; or

304 (b) a magazine;

305 (43) information contained in the database described in Section 62A-3-311.1;
306 (44) information contained in the Management Information System and Licensing
307 Information System described in Title 62A, Chapter 4a, Child and Family Services;
308 (45) information regarding National Guard operations or activities in support of the
309 National Guard's federal mission;
310 (46) records provided by any pawnbroker or pawnshop to a law enforcement agency in
311 compliance with Title 13, Chapter 32a, Pawnshop Transaction Information Act; ~~and~~
312 (47) information regarding food security, risk, and vulnerability assessments performed
313 by the Department of Agriculture and Food[-]; and
314 (48) as provided in Section 26-39-109:
315 (a) information or records held by the Department of Health related to a complaint
316 regarding a child care program or residential child care which the department is unable to
317 substantiate; and
318 (b) information or records related to a complaint received by the Department of Health
319 from an anonymous complainant regarding a child care program or residential child care.
320 Section 3. **Coordinating S.B. 212 with S.B. 43.**
321 If this S.B. 212 passes and S.B. 43, Penalty for Providing False Information to State
322 Agency, does not pass, it is the intent of the Legislature that the Office of Legislative Research
323 and General Counsel shall prepare the Utah Code database for publication as follows:
324 (1) Subsection 26-39-109(3)(a)(i) be replaced with "(i) solicit information from the
325 complainant to determine whether the complaint suggests actions or conditions which could
326 pose a serious risk to the safety or well-being of a child; and";
327 (2) Subsection 26-39-109(3)(a)(ii)(D) be replaced with "(D) inform the complainant
328 that the department may be limited in its use of information provided by a confidential
329 complainant, as provided in Subsection (3)(c)(ii)(B)."; and
330 (3) Subsection 26-39-109(3)(a)(iii) be deleted.