

CHILD CARE LICENSING RESTRICTIONS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: M. Susan Lawrence

Senate Sponsor: Michael G. Waddoups

Cosponsor: Carol Spackman Moss

LONG TITLE

General Description:

This bill amends the Utah Child Care Licensing Act.

Highlighted Provisions:

This bill:

- ▶ amends child care licensing restrictions;
- ▶ amends the authority of the Department of Health and its executive director to create exemptions to those restrictions; and
- ▶ permits limited access to juvenile court records for certain background checks.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-39-105.5, as last amended by Chapter 283, Laws of Utah 2002

26-39-107, as last amended by Chapter 153, Laws of Utah 1999

78-3a-206, as last amended by Chapter 120, Laws of Utah 2001

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

Section 1. Section **26-39-105.5** is amended to read:

26-39-105.5. Residential child care certificate.

30 (1) (a) A residential child care provider of five to eight children shall obtain a
31 Residential Child Care Certificate from the department unless Section 26-39-106 applies.

32 (b) The qualifications for a Residential Child Care Certificate are limited to:

33 (i) the submission of:

34 (A) an application in the form prescribed by the department;

35 (B) a certification and criminal background fee established in accordance with Section
36 26-1-6; and

37 (C) in accordance with Section 26-39-107, identifying information [~~described in~~
38 ~~Subsection 26-39-107(1)~~] for each adult person and each juvenile age 12 through 17 years of
39 age who resides in the provider's home:

40 (I) for processing by the Department of Public Safety to determine whether any such
41 person has been convicted of a crime;

42 (II) to screen for a substantiated finding of child abuse or neglect by a juvenile court;
43 and

44 (III) to discover whether the person is listed in the Licensing Information System
45 described in Section 62A-4a-116.2.

46 (ii) an initial and annual inspection of the provider's home within 90 days of sending an
47 intent to inspect notice to:

48 (A) check the immunization record of each child who receives child care in the
49 provider's home;

50 (B) identify serious sanitation, fire, and health hazards to children; and

51 (C) make appropriate recommendations; and

52 (iii) for new providers, completion of:

53 (A) five hours of department-approved training; and

54 (B) a department-approved CPR and first aid course.

55 (c) If a serious sanitation, fire, or health hazard has been found during an inspection
56 conducted pursuant to Subsection (1)(b)(ii), the department may, at the option of the residential
57 care provider:

58 (i) require corrective action for the serious hazards found and make an unannounced
59 follow up inspection to determine compliance; or

60 (ii) inform the parents of each child in the care of the provider of the results of the
61 department's inspection and the failure of the provider to take corrective action.

62 (d) In addition to an inspection conducted pursuant to Subsection (1)(b)(ii), the
63 department may inspect the home of a residential care provider of five to eight children in
64 response to a complaint of:

65 (i) child abuse or neglect;

66 (ii) serious health hazards in or around the provider's home; or

67 (iii) providing residential child care without the appropriate certificate or license.

68 (2) Notwithstanding this section:

69 (a) a license under Section 26-39-105 is required of a residential child care provider
70 who cares for nine or more children;

71 (b) a certified residential child care provider may not provide care to more than two
72 children under the age of two; and

73 (c) an inspection may be required of a residential child care provider in connection
74 with a federal child care program.

75 (3) With respect to residential child care, the department may only make and enforce
76 rules necessary to implement this section.

77 Section 2. Section **26-39-107** is amended to read:

78 **26-39-107. Disqualified individuals -- Criminal history checks -- Payment of**
79 **costs.**

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

83 (i) owners;

84 (ii) directors;

85 (iii) members of the governing body;

- 86 (iv) employees;
- 87 (v) providers of care;
- 88 (vi) volunteers, except parents of children enrolled in the programs; and
- 89 (vii) all adults residing in a residence where child care is provided.

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

- 93 (i) the individual has resided in Utah for the last five years;
- 94 (ii) the individual has:
 - 95 (A) previously submitted fingerprints under this section for a national criminal history
96 record check; and
 - 97 (B) resided in Utah continuously since that time; or
 - 98 (iii) as of May 3, 1999, the individual had one of the relationships under Subsection
99 (1)(a) with a child care provider having a residential certificate or licensed under this section
100 and the individual has resided in Utah continuously since that time.

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

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

107 (iii) The applicant for the license or residential certificate shall pay the cost of
108 conducting a record check under this Subsection (1)(c).

109 ~~[(2) An owner, director, member of the governing body, employee, provider of care, or
110 volunteer who has a felony conviction may not provide child care or operate a residential
111 certificate or licensed child care program.]~~

112 ~~[(3) An owner, director, member of the governing body, employee, or other provider of
113 care who has been convicted of a misdemeanor may not provide child care or operate a~~

114 ~~residential certificate or licensed child care program, except that:]~~

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

120 (b) The department shall access the juvenile court records to determine whether the
121 juvenile has been adjudicated in juvenile court of committing an act which if committed by an
122 adult would be a felony or misdemeanor.

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

128 (a) provide child care;

129 (b) provide volunteer services for a licensed child care program or a child care program
130 operating under a residential child care certificate;

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

132 (d) function as an owner, director, or member of the governing body of a licensed child
133 care program or a child care program operating under a residential child care certificate.

134 (4) (a) [the] The department may, by rule, [exclude specified] exempt the following
135 from the restrictions of Subsection (3):

136 (i) specific misdemeanors [that do not disqualify an individual under this section]; and

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

139 (b) [the] In accordance with criteria established by rule, the executive director may
140 consider and [approve] exempt individual cases [in accordance with criteria established by
141 rule] involving misdemeanors, not otherwise exempt under Subsection (4)(a) from the

142 restrictions of Subsection (3).

143 Section 3. Section **78-3a-206** is amended to read:

144 **78-3a-206. Court records -- Inspection.**

145 (1) The court and the probation department shall keep records as required by the board
146 and the presiding judge.

147 (2) Court records shall be open to inspection by:

148 (a) the parents or guardian, other parties in the case, the attorneys, and agencies to
149 which custody of a minor has been transferred;

150 (b) for information relating to adult offenders alleged to have committed a sexual
151 offense, a felony or class A misdemeanor drug offense, or an offense against the person under
152 Title 76, Chapter 5, Offenses Against the Person, the State Office of Education for the purpose
153 of evaluating whether an individual should be permitted to obtain or retain a license as an
154 educator or serve as an employee or volunteer in a school, with the understanding that the
155 office must provide the individual with an opportunity to respond to any information gathered
156 from its inspection of the records before it makes a decision concerning licensure or
157 employment;

158 (c) the Division of Criminal Investigations and Technical Services, established in
159 Section 53-10-103, for the purpose of a criminal history background check for the purchase of
160 a firearm and establishing good character for issuance of a concealed firearm permit as
161 provided in Section 53-5-704; ~~and~~

162 (d) the Division of Child and Family Services for the purpose of Child Protective
163 Services Investigations in accordance with Sections 62A-4a-403 and 62A-4a-409 and
164 administrative hearings in accordance with Section 62A-4a-116.5[-]; and

165 (e) for information related to a juvenile offender who has committed a sexual offense, a
166 felony, or an offense which if committed by an adult would be a misdemeanor, the Department
167 of Health, for the purpose of evaluating under the provisions of Subsection 26-39-107(3)
168 whether a licensee should be permitted to obtain or retain a license to provide child care, with
169 the understanding that the department must provide the individual who committed the offense

170 with an opportunity to respond to any information gathered from its inspection of records
171 before it makes a decision concerning licensure.

172 (3) With the consent of the judge, court records may be inspected by the minor, by
173 persons having a legitimate interest in the proceedings, and by persons conducting pertinent
174 research studies.

175 (4) If a petition is filed charging a minor 14 years of age or older with an offense that
176 would be a felony if committed by an adult, the court shall make available to any person upon
177 request the petition, any adjudication or disposition orders, and the delinquency history
178 summary of the minor charged unless the records are closed by the court upon findings on the
179 record for good cause.

180 (5) Probation officers' records and reports of social and clinical studies are not open to
181 inspection, except by consent of the court, given under rules adopted by the board.

182 (6) (a) Any juvenile delinquency adjudication or disposition orders and the delinquency
183 history summary of any person charged as an adult with a felony offense shall be made
184 available to any person upon request.

185 (b) This provision does not apply to records that have been destroyed or expunged in
186 accordance with court rules.

187 (c) The court may charge a reasonable fee to cover the costs associated with retrieving
188 a requested record that has been archived.