

1 **AMENDMENTS TO CHILD CARE**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Parley G. Hellewell**

5 House Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provision in the Health Code related to the regulation of child care
10 centers.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ amends the calculation of square footage requirements;
- 14 ▶ changes granting of a variance to granting an exemption from licensure under
15 certain limited circumstances;
- 16 ▶ amends certain requirements regarding a director's duties;
- 17 ▶ amends the department's duty to investigate allegations that are reported for the first
18 time more than six weeks after the event occurred; and
- 19 ▶ prohibits the imposition of penalties when a center exceeds child to care giver ratios
20 by less than 10%.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **26-39-104**, as last amended by Chapter 136, Laws of Utah 2004



28 **26-39-108**, as enacted by Chapter 196, Laws of Utah 1997

29 **26-39-109**, as last amended by Chapter 297, Laws of Utah 2005



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

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

33 **26-39-104. Duties of the department.**

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

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

38 (i) adequate facilities and equipment; and

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

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

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

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

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

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

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

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

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

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

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

58 (b) The department shall allow for a broad range of educational training and academic

59 background in certification or qualification of child day care directors.

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

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

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

69 (5) Notwithstanding Subsection (1)(a)(i), the department:

70 (a) shall establish administrative rules regarding minimum square footage requirements
71 for indoor classroom capacity that are consistent with, and do not exceed standards developed
72 by the International Building Codes for capacity square footage as established by the state fire
73 marshal;

74 (b) may not exclude floor space used for furniture, fixtures, or equipment from the
75 minimum square footage requirement for indoor and outdoor areas if the furniture, fixture, or
76 equipment is used:

- 77 [~~(a)~~] (i) by children;
- 78 [~~(b)~~] (ii) for the care of children; or
- 79 [~~(c)~~] (iii) to store classroom materials[-]; and
- 80 (c) may not prohibit:

81 (i) a director of a facility from appointing a designee who is trained and able to operate
82 as the director in the director's absence;

83 (ii) the director's designee from working in the classroom when an unforeseen event or
84 emergency requires the designee's assistance in the classroom; and

85 (iii) a director of a facility from occasionally helping in a classroom.

86 (6) (a) A child care center constructed prior to January 1, 2004, and licensed and
87 operated as a child care center continuously since January 1, 2004, may apply for [~~a variance~~]
88 an exemption from the department for group size restrictions, if the child to caregiver ratios are
89 maintained, and adequate square footage is maintained for specific classrooms.

90 (b) The department may grant the [~~variance~~] exemption requested in Subsection (6)(a).

91 (c) [~~A variance~~] An exemption granted under Subsection (6)(b) is transferrable to
92 subsequent licensed operators at the center if a licensed child care center is continuously
93 maintained at the center.

94 (7) The department shall develop, by rule, a five-year phased-in compliance schedule
95 for playground equipment safety standards.

96 Section 2. Section **26-39-108** is amended to read:

97 **26-39-108. License violations -- Penalties.**

98 (1) The department may deny or revoke a license and otherwise invoke disciplinary
99 penalties if it finds:

100 (a) evidence of committing or of aiding, abetting, or permitting the commission of any
101 illegal act on the premises of the child care facility;

102 (b) a failure to meet the qualifications for licensure; or

103 (c) conduct adverse to the public health, morals, welfare, and safety of children under
104 its care.

105 (2) The department may also place a department representative as a monitor in a
106 facility, and may assess the cost of that monitoring to the facility, until the licensee has
107 remedied the deficiencies that brought about the department action.

108 (3) The department may impose civil monetary penalties in accordance with Title 63,
109 Chapter 46b, Administrative Procedures Act, if there has been a failure to comply with the
110 provisions of this chapter, or rules promulgated pursuant to this chapter, as follows:

111 (a) if significant problems exist that are likely to lead to the harm of a child, the
112 department may impose a civil penalty of \$50 to \$1,000 per day; and

113 (b) if significant problems exist that result in actual harm to a child, the department
114 may impose a civil penalty of \$1,050 to \$5,000 per day.

115 (4) Notwithstanding the provisions of this section, the department may not impose
116 penalties under Subsection (3) if a child care center is found to be out of compliance by less
117 than 10% with the ratio for child care provider to children as established by the department by
118 administrative rule.

119 Section 3. Section **26-39-109** is amended to read:

120 **26-39-109. Investigations -- Records.**

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

123 (2) For purposes of this section:

124 (a) "Anonymous complainant" means a complainant for whom the department does not
125 have the minimum personal identifying information necessary, including the complainant's full
126 name, to attempt to communicate with the complainant after a complaint has been made[;].

127 (b) "Confidential complainant" means a complainant for whom the department has the
128 minimum personal identifying information necessary, including the complainant's full name, to
129 attempt to communicate with the complainant after a complaint has been made, but who elects
130 under Subsection (3)(c) not to be identified to the subject of the complaint[; ~~and~~].

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

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

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

138 (ii) as necessary:

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

142 (B) inform the complainant that the department may not investigate an anonymous
143 complaint;

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

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

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

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

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

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

160 (iii) may, during a regularly scheduled annual survey, inform the licensee or certificate
161 holder who is the subject of the complaint of allegations or concerns raised by:

162 (A) the anonymous complainant[-]; or

163 (B) the complainant who reported events more than six weeks after the events
164 occurred.

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

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

168 (B) indefinitely.

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

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

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

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

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

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

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

183 (ii) the complaint is not from an anonymous complainant; and
184 (iii) prior to the investigation, the investigator informs the subject of the complaint of:
185 (A) except as provided in Subsection (3)(c), the name of the complainant; and
186 (B) except as provided in Subsection (4)(c), the substance of the complaint.
187 (c) An investigator is not required to inform the subject of a complaint of the substance
188 of the complaint prior to an investigation if doing so would jeopardize the investigation.
189 However, the investigator shall inform the subject of the complaint of the substance of the
190 complaint as soon as doing so will no longer jeopardize the investigation.
191 (5) If the department is unable to substantiate a complaint, any record related to the
192 complaint or the investigation of the complaint:
193 (a) shall be classified under Title 63, Chapter 2, Government Records Access and
194 Management Act, as:
195 (i) a private or controlled record if appropriate under Section 63-2-302 or 63-2-303; or
196 (ii) a protected record under Section 63-2-304; and
197 (b) if disclosed in accordance with Subsection 63-2-201(5)(b), may not identify an
198 individual child care program, licensee, certificate holder, or complainant.
199 (6) Any record of the department related to a complaint by an anonymous complainant
200 is a protected record under Title 63, Chapter 2, Government Records Access and Management
201 Act, and, notwithstanding Subsection 63-2-201(5)(b), may not be disclosed in a manner that
202 identifies an individual child care program, licensee, certificate holder, or complainant.

Legislative Review Note
as of 1-31-06 10:27 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel