

**Senator Parley G. Hellewell** proposes the following substitute bill:

**AMENDMENTS TO CHILD CARE**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Parley G. Hellewell**

House Sponsor: Michael T. Morley

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ changes granting of a variance to granting an exemption from licensure under certain limited circumstances; and
- ▶ amends the department's duty to investigate allegations that are reported for the first time more than six weeks after the event occurred.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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

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

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

28 **26-39-104. Duties of the department.**

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

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

33 (i) adequate facilities and equipment; and

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

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

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

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

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

43 (iv) changes of ownership or name, changes in licensure status, and changes in  
44 operational status;

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

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

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

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

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

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

55 (3) In licensing and regulating child care programs, the department shall reasonably  
56 balance the benefits and burdens of each regulation and, by rule, provide for a range of

57 licensure, depending upon the needs and different levels and types of child care provided.

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

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

64 (5) Notwithstanding Subsection (1)(a)(i), the department may not exclude floor space  
65 used for furniture, fixtures, or equipment from the minimum square footage requirement for  
66 indoor and outdoor areas if the furniture, fixture, or equipment is used:

- 67 (a) by children;
- 68 (b) for the care of children; or
- 69 (c) to store classroom materials.

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

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

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

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

80 Section 2. Section **26-39-109** is amended to read:

81 **26-39-109. Investigations -- Records.**

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

84 (2) For purposes of this section:

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

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

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

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

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

99 (ii) as necessary:

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

103 (B) inform the complainant that the department may not investigate an anonymous  
104 complaint;

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

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

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

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

116 (i) shall refer the information in the complaint to the Division of Child and Family  
117 Services within the Department of Human Services, law enforcement, or any other appropriate  
118 agency, if the complaint suggests actions or conditions which could pose a serious risk to the

119 safety or well-being of a child;

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

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

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

124 (B) the complainant who reported events more than six weeks after the events  
125 occurred.

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

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

129 (B) indefinitely.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**Fiscal Note**  
**Bill Number SB0086S01**

**Amendments to Child Care**

*13-Feb-06*

*11:18 AM*

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**State Impact**

No state or local government fiscal impact.

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**Individual and Business Impact**

This legislation may enable some child care centers to avoid the cost of renovations to bring their facilities into compliance with current group size child care licensing standards.

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**Office of the Legislative Fiscal Analyst**