

CHILD CARE PROVIDERS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen W. Morgan

Senate Sponsor: Mark B. Madsen

Cosponsors:
Bradley M. Daw

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LONG TITLE

General Description:

This bill provides a screening process for the Department of Workforce Services to verify qualifications of certain child care providers by requiring criminal background checks.

Highlighted Provisions:

This bill:

- ▶ provides that criminal backgrounds checks shall be performed on:
 - child care providers who are not required by current law to undergo a check through the Department of Health, Bureau of Child Care Licensing, and are not a license exempt child care center or program; and
 - individuals who reside in the premises where the child care is provided;
- ▶ provides for a waiver of the fingerprint submission requirement under certain circumstances;
- ▶ allows the Utah Division of Criminal Investigation and Technical Services to give the Department of Workforce Services access to the division's data base to determine if a child care provider has been convicted of a crime;
- ▶ provides the department with access to juvenile court records for purposes of a criminal background check of certain child care providers and individuals who reside where the child care is provided;
- ▶ provides that a child care provider may not allow an individual who has been

30 convicted of a felony or certain misdemeanors to:

- 31 • provide subsidized child care; or
- 32 • reside at the premises where subsidized child care is provided;
- 33 ▶ requires the child care provider to pay for any costs of a background check
- 34 ▶ provides that a person who commits a severe type of child abuse or neglect shall be
- 35 disqualified from receiving state funds as a child care provider; and
- 36 ▶ allows individuals designated by the Department of Workforce Services and
- 37 approved by the Department of Human Services to have access to the Division of
- 38 Child and Family Services' Licensing Information System for the purpose of
- 39 checking the background of child care providers.

40 **Monies Appropriated in this Bill:**

41 None

42 **Other Special Clauses:**

43 None

44 **Utah Code Sections Affected:**

45 AMENDS:

46 **62A-4a-1005**, as renumbered and amended by Laws of Utah 2006, Chapter 77

47 **62A-4a-1006**, as renumbered and amended by Laws of Utah 2006, Chapter 77

48 ENACTS:

49 **35A-3-310.5**, Utah Code Annotated 1953



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

52 Section 1. Section **35A-3-310.5** is enacted to read:

53 **35A-3-310.5. Child care providers -- Criminal background checks -- Payment of**
54 **costs -- Prohibitions -- Department rules.**

55 (1) This section applies to a child care provider who:

56 (a) is selected by an applicant for, or a recipient of, a child care assistance payment;

57 (b) is not required to undergo a criminal background check with the Department of

58 Health, Bureau of Child Care Licensing;

59 (c) is not a license exempt child care center or program; and

60 (d) is an eligible child care provider under department rules made in accordance with

61 Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

62 (2) (a) Each child care provider identified under Subsection (1) shall submit to the
63 department the name and other identifying information, which shall include a set of fingerprints,

64 of:

65 (i) existing, new, and proposed providers of child care; and

66 (ii) individuals who are at least 18 years of age and reside in the premises where the
67 child care is provided.

68 (b) The department may waive the fingerprint requirement under Subsection (2)(a) for
69 an individual who has:

70 (i) resided in Utah for five years prior to the required submission; or

71 (ii) (A) previously submitted a set of fingerprints under this section for a national
72 criminal history record check; and

73 (B) resided in Utah continuously since submitting the fingerprints.

74 (c) The Utah Division of Criminal Investigation and Technical Services shall process
75 and conduct background checks on all individuals as requested by the department, including
76 submitting the fingerprints to the U.S. Federal Bureau of Investigation for a national criminal
77 history background check of the individual.

78 (d) If the department waives the fingerprint requirement under Subsection (2)(b), the
79 Utah Division of Criminal Investigation and Technical Services may allow the department or its
80 representative access to the division's data base to determine whether the individual has been
81 convicted of a crime.

82 (e) The child care provider shall pay the cost of the history background check provided
83 under Subsection (2)(c).

84 (3) (a) Each child care provider identified under Subsection (1) shall submit to the
85 department the name and other identifying information of an individual, age 12 through 17, who

86 resides in the premises where the child care is provided.

87 (b) The identifying information referred to in Subsection (3)(a) does not include
88 fingerprints.

89 (c) The department or its representative shall access juvenile court records to determine
90 whether an individual described in Subsection (2) or (3)(a) has been adjudicated in juvenile
91 court of committing an act which, if committed by an adult, would be a felony or misdemeanor
92 if:

93 (i) the individual described in Subsection (2) is under the age of 28; or

94 (ii) the individual described in Subsection (2):

95 (A) is over the age of 28; and

96 (B) has been convicted of, has pleaded no contest to, or is currently subject to a plea in
97 abeyance or diversion agreement for a felony or misdemeanor.

98 (4) Except as provided in Subsection (5), a child care provider under this section may
99 not permit an individual who has been convicted of, has pleaded no contest to, or is currently
100 subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, or if
101 Subsection (3)(b) applies, an individual who has been adjudicated in juvenile court of
102 committing an act which if committed by an adult would be a felony or misdemeanor to:

103 (a) provide subsidized child care; or

104 (b) reside at the premises where subsidized child care is provided.

105 (5) (a) The department may make a rule in accordance with Title 63, Chapter 46a, Utah
106 Administrative Rulemaking Act, to exempt the following from the restrictions of Subsection (4):

107 (i) a specific misdemeanor;

108 (ii) a specific act adjudicated in juvenile court, which if committed by an adult would be
109 a misdemeanor; and

110 (iii) background checks of individuals other than the provider who are residing at the
111 premises where subsidized child care is provided if that child care is provided in the child's
112 home.

113 (b) In accordance with criteria established by rule, the executive director or the

114 director's designee may consider and exempt individual cases, not otherwise exempt under
115 Subsection (5)(a), from the restrictions of Subsection (4).

116 (6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
117 department shall establish by rule:

118 (a) whether a child care subsidy payment should be made prior to the completion of a
119 background check, particularly in the case of a delay in making or completing the background
120 check; and

121 (b) if, and how often, a child care provider must resubmit the information required
122 under Subsections (2) and (3).

123 Section 2. Section **62A-4a-1005** is amended to read:

124 **62A-4a-1005. Supported finding of a severe type of child abuse or neglect --**
125 **Notation in Licensing Information System -- Juvenile court petition or notice to alleged**
126 **perpetrator -- Rights of alleged perpetrator -- Juvenile court finding.**

127 (1) If the division makes a supported finding that a person committed a severe type of
128 child abuse or neglect, the division shall:

129 (a) serve notice of the finding on the alleged perpetrator;

130 (b) enter the following information into the Licensing Information System created in
131 Section 62A-4a-1006:

132 (i) the name and other identifying information of the perpetrator with the supported
133 finding, without identifying the person as a perpetrator or alleged perpetrator; and

134 (ii) a notation to the effect that an investigation regarding the person is pending; and

135 (c) if the division considers it advisable, file a petition for substantiation within one year
136 of the supported finding.

137 (2) The notice referred to in Subsection (1)(a):

138 (a) shall state that:

139 (i) the division has conducted an investigation regarding alleged child abuse or neglect;

140 (ii) the division has made a supported finding that the alleged perpetrator described in
141 Subsection (1) committed a severe type of child abuse or neglect;

- 142 (iii) facts gathered by the division support the supported finding;
- 143 (iv) as a result of the supported finding, the alleged perpetrator's name and other
- 144 identifying information have been listed in the Licensing Information System in accordance with
- 145 Subsection (1)(b);
- 146 (v) the alleged perpetrator may be disqualified from adopting a child, receiving state
- 147 funds as a child care provider, or being licensed by:
 - 148 (A) the department;
 - 149 (B) a human services licensee;
 - 150 (C) a child care provider or program; or
 - 151 (D) a covered health care facility;
- 152 (vi) the alleged perpetrator has the rights described in Subsection (3); and
- 153 (vii) failure to take either action described in Subsection (3)(a) within one year after
- 154 service of the notice will result in the action described in Subsection (3)(b);
- 155 (b) shall include a general statement of the nature of the findings; and
- 156 (c) may not include:
 - 157 (i) the name of a victim or witness; or
 - 158 (ii) any privacy information related to the victim or a witness.
- 159 (3) (a) Upon receipt of the notice described in Subsection (2), the alleged perpetrator
- 160 [~~shall have~~] has the right to:
 - 161 (i) file a written request asking the division to review the findings made under
 - 162 Subsection (1);
 - 163 (ii) except as provided in Subsection (3)(c), immediately petition the juvenile court
 - 164 under Section 78-3a-320; or
 - 165 (iii) sign a written consent to:
 - 166 (A) the supported finding made under Subsection (1); and
 - 167 (B) entry into the Licensing Information System of:
 - 168 (I) the alleged perpetrator's name; and
 - 169 (II) other information regarding the supported finding made under Subsection (1).

170 (b) Except as provided in Subsection (3)(e), the alleged perpetrator's name and the
171 information described in Subsection (1)(b) shall remain in the Licensing Information System:

172 (i) if the alleged perpetrator fails to take the action described in Subsection (3)(a) within
173 one year after service of the notice described in Subsections (1)(a) and (2);

174 (ii) during the time that the division awaits a response from the alleged perpetrator
175 pursuant to Subsection (3)(a); and

176 (iii) until a court determines that the severe type of child abuse or neglect upon which
177 the Licensing Information System entry was based is unsubstantiated or without merit.

178 (c) The alleged perpetrator has no right to petition the juvenile court under Subsection
179 (3)(a)(ii) if the court previously held a hearing on the same alleged incident of abuse or neglect
180 pursuant to the filing of a petition under Section 78-3a-305 by some other party.

181 (d) Consent under Subsection (3)(a)(iii) by a child shall be given by the child's parent or
182 guardian.

183 (e) Regardless of whether an appeal on the matter is pending:

184 (i) the division shall remove an alleged perpetrator's name and the information described
185 in Subsection (1)(b) [~~shall be removed~~] from the Licensing Information System if the severe
186 type of child abuse or neglect upon which the Licensing Information System entry was based:

187 (A) is found to be unsubstantiated or without merit by the juvenile court under Section
188 78-3a-320; or

189 (B) is found to be substantiated, but is subsequently reversed on appeal; and

190 (ii) the division shall place back on the Licensing Information System an alleged
191 perpetrator's name and information that is removed from the Licensing Information System
192 under Subsection (3)(e)(i) [~~shall be placed back on the Licensing Information System~~] if the
193 court action that was the basis for removing the alleged perpetrator's name and information is
194 subsequently reversed on appeal.

195 (4) Upon the filing of a petition under Subsection (1)(c), the juvenile court shall make a
196 finding of substantiated, unsubstantiated, or without merit as provided in Subsections
197 78-3a-320(1) and (2).

198 (5) Service of the notice described in Subsections (1)(a) and (2):
199 (a) shall be personal service in accordance with Utah Rules of Civil Procedure, Rule 4;
200 and
201 (b) does not preclude civil or criminal action against the alleged perpetrator.

202 Section 3. Section **62A-4a-1006** is amended to read:

203 **62A-4a-1006. Licensing Information System -- Contents -- Juvenile court finding**
204 **-- Protected record -- Access -- Criminal penalty.**

205 (1) (a) The division shall maintain a sub-part of the Management Information System
206 established pursuant to Section 62A-4a-1003, to be known as the Licensing Information
207 System, to be used:

- 208 (i) for licensing purposes; or
- 209 (ii) as otherwise specifically provided for by law.
- 210 (b) The Licensing Information System shall include only the following information:
 - 211 (i) the information described in Subsections 62A-4a-1005(1)(b) and (3)(b);
 - 212 (ii) consented-to supported findings by alleged perpetrators under Subsection
213 62A-4a-1005(3)(a)(iii); and
 - 214 (iii) the information in the licensing part of the division's Management Information
215 System as of May 6, 2002.

216 (2) Notwithstanding Subsection (1), the department's access to information in the
217 Management Information System for the licensure and monitoring of foster parents is governed
218 by Sections 62A-4a-1003 and 62A-2-121.

219 (3) Subject to Subsection 62A-4a-1005(3)(e), upon receipt of a finding from the
220 juvenile court under Section 78-3a-320, the division shall:

- 221 (a) promptly amend the Licensing Information System; and
- 222 (b) enter the information in the Management Information System.
- 223 (4) (a) Information contained in the Licensing Information System is classified as a
224 protected record under Title 63, Chapter 2, Government Records Access and Management Act.
225 (b) Notwithstanding the disclosure provisions of Title 63, Chapter 2, Government

226 Records Access and Management Act, the information contained in the Licensing Information
227 System may only be used or disclosed as specifically provided in this chapter and Section
228 62A-2-121.

229 (c) The information described in Subsection (4)(b) is accessible only to:

230 (i) the Office of Licensing within the department:

231 (A) for licensing purposes; or

232 (B) as otherwise specifically provided for by law;

233 (ii) the division to:

234 (A) screen a person at the request of the Office of the Guardian Ad Litem Director:

235 (I) at the time that person seeks a paid or voluntary position with the Office of the
236 Guardian Ad Litem Director; and

237 (II) on an annual basis, throughout the time that the person remains with the Office of
238 Guardian Ad Litem Director; and

239 (B) respond to a request for information from a person whose name is listed in the
240 Licensing Information System;

241 (iii) ~~two~~ persons designated by ~~and within~~ the Department of Health and approved
242 by the Department of Human Services, only for the following purposes:

243 (A) licensing a child care program or provider; or

244 (B) determining whether a person associated with a covered health care facility, as
245 defined by the Department of Health by rule, who provides direct care to a child, has a
246 supported finding of a severe type of child abuse or neglect; ~~and~~

247 (iv) persons designated by the Department of Workforce Services and approved by the
248 Department of Human Services for the purpose of qualifying child care providers under Section
249 35A-3-310.5; and

250 ~~(iv)~~ (v) the department, as specifically provided in this chapter.

251 (5) The ~~two~~ persons designated by the Department of Health under Subsection
252 (4)(c)(iii) and the persons designated by the Department of Workforce Services under
253 Subsection (4)(c)(iv) shall adopt measures to:

- 254 (a) protect the security of the Licensing Information System; and
255 (b) strictly limit access to the Licensing Information System to those persons designated
256 by statute.
- 257 (6) All persons designated by statute as having access to information contained in the
258 Licensing Information System shall be approved by the Department of Human Services and
259 receive training from the department with respect to:
- 260 (a) accessing the Licensing Information System;
261 (b) maintaining strict security; and
262 (c) the criminal provisions of Sections 62A-4a-412 and 63-2-801 pertaining to the
263 improper release of information.
- 264 (7) (a) A person, except those authorized by this chapter, may not request another
265 person to obtain or release any other information in the Licensing Information System to screen
266 for potential perpetrators of child abuse or neglect.
- 267 (b) A person who requests information knowing that it is a violation of this Subsection
268 (7) to do so is subject to the criminal penalty described in Sections 62A-4a-412 and 63-2-801.