

CHILD CARE AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad J. Galvez

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Utah Health Code and Title 53A, Chapter 3, Local School Boards, relating to child care.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies exemptions from child care licensing requirements, as it relates to child care provided at or by a public school, by limiting the exemption to child care offered to a child of an employee of the school district or a child of a student of the school district;
- ▶ modifies exemptions from child care licensing requirements, as it relates to child care provided at or by a public school with students in the 10th through 12th grades, by limiting the exemption to child care offered:
 - to a child of an employee of the school district or a child of a student of the school district; or
 - in connection with a course of study or program, related to the education or study of children, that is provided to students of the school;
- ▶ prohibits the following from operating a child care program or pre-school, unless the school or institution qualifies for an exemption described in the preceding paragraphs:



- 28 • an educational institution that is regulated by the boards of education of this
- 29 state; or
- 30 • a public school;
- 31 ▶ amends provisions of Title 53A, Chapter 3, Local School Boards, to conform with
- 32 the provisions of this bill; and
- 33 ▶ makes technical changes.

34 **Money Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 None

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **26-39-102**, as last amended by Laws of Utah 2008, Chapter 111

41 **26-39-403**, as renumbered and amended by Laws of Utah 2008, Chapter 111

42 **53A-3-417**, as last amended by Laws of Utah 2004, Chapter 171

43 ENACTS:

44 **26-39-405**, Utah Code Annotated 1953



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

47 Section 1. Section **26-39-102** is amended to read:

48 **26-39-102. Definitions.**

49 As used in this chapter:

50 (1) "Child care" means continuous care and supervision of five or more qualifying

51 children, that is:

52 (a) in lieu of care ordinarily provided by a parent in the parent's home;

53 (b) for less than 24 hours a day; and

54 (c) for direct or indirect compensation.

55 (2) "Child care program" means a child care facility or program operated by a person

56 who holds a license or certificate issued in accordance with this chapter.

57 (3) "Committee" means the Child Care Licensing Advisory Committee, created in

58 Section 26-39-201.

59 (4) "Public high school" means a public school that provides education to qualifying
60 children for any grade from 10th grade through 12th grade.

61 ~~[(4)]~~ (5) "Public school" means:

62 (a) a school, including a charter school, that:

63 (i) is directly funded at public expense; and

64 (ii) provides education to qualifying children for any grade from first grade through
65 ~~[twelfth]~~ 12th grade; or

66 (b) a school, including a charter school, that provides:

67 (i) preschool or kindergarten to qualifying children, regardless of whether the preschool
68 or kindergarten is funded at public expense; and

69 (ii) education to qualifying children for any grade from first grade through ~~[twelfth]~~
70 12th grade, if each grade, from first grade to ~~[twelfth]~~ 12th grade, that is provided at the school,
71 is directly funded at public expense.

72 ~~[(5)]~~ (6) "Qualifying child" means a person who is:

73 (a) (i) under the age of 13; or

74 (ii) under the age of 18, if the person has a disability; and

75 (b) a child of:

76 (i) a person other than the person providing care to the child;

77 (ii) a licensed or certified residential child care provider, if the child is under the age of
78 four; or

79 (iii) an employee or owner of a licensed child care center, if the child is under the age
80 of four.

81 ~~[(6)]~~ (7) "Residential child care" means child care provided in the home of a provider.

82 Section 2. Section **26-39-403** is amended to read:

83 **26-39-403. Exclusions from chapter -- Criminal background checks by an**
84 **excluded person.**

85 (1) The provisions and requirements of this chapter do not apply to:

86 (a) a facility or program owned or operated by an agency of the United States
87 government;

88 (b) group counseling provided by a mental health therapist, as defined in Section
89 58-60-102, who is licensed to practice in this state;

90 (c) a health care facility licensed pursuant to Title 26, Chapter 21, Health Care Facility
91 Licensing and Inspection Act;

92 (d) care provided to qualifying children by or in the homes of parents, legal guardians,
93 grandparents, brothers, sisters, uncles, or aunts;

94 (e) care provided to qualifying children, in the home of the provider, for less than four
95 hours a day or on a sporadic basis, unless that child care directly affects or is related to a
96 business licensed in this state;

97 (f) care provided to qualifying children [~~as part of a course of study at or a program~~
98 ~~administered by an educational institution that is regulated by the boards of education of this~~
99 ~~state,];~~

100 (i) by a public school, if the care is offered only to a child of an employee of the school
101 district or a child of a student of the school district;

102 (ii) at a public school, under contract with a person, if:

103 (A) the public school accepts responsibility and oversight for the care provided by the
104 person; and

105 (B) the care is offered only to a child of an employee of the school district or a child of
106 a student of the school district;

107 (iii) by a private education institution that provides education in lieu of that provided
108 by the public education system[-]; or

109 (iv) by a parochial education institution;

110 (g) care provided to qualifying children by a public or private institution of higher
111 education, if the care is provided in connection with a course of study or program, relating to
112 the education or study of children, that is provided to students of the institution of higher
113 education;

114 (h) care provided to qualifying children [~~at a public school by an organization other~~
115 ~~than the public school, if]:~~

116 [~~(i) the care is provided under contract with the public school or on school property; or]~~

117 [~~(ii) the public school accepts responsibility and oversight for the care provided by the~~
118 ~~organization;]~~

119 (i) by a public high school, if:

120 (A) the care is offered only to a child of an employee of the school district or a child of

121 a student of the school district; or

122 (B) the care is provided in connection with a course of study or program, related to the
 123 education or study of children, that is provided to students of the public high school; or

124 (ii) at a public high school, under contract with a person, if:

125 (A) the public high school accepts responsibility and oversight for the care provided by
 126 the person; and

127 (B) the care is offered or provided as described in Subsection (1)(h)(i)(A) or (B);

128 (i) care provided to qualifying children as part of a summer camp that operates on
 129 federal land pursuant to a federal permit;

130 (j) care provided by an organization that:

131 (i) qualifies for tax exempt status under Section 501(c)(3) of the Internal Revenue
 132 Code;

133 (ii) is provided pursuant to a written agreement with:

134 (A) a municipality, as defined in Section 10-1-104, that provides oversight for the
 135 program; or

136 (B) a county that provides oversight for the program; and

137 (iii) is provided to children who are over the age of four and under the age of 13; or

138 (k) care provided at a residential support program that is licensed by the Department of
 139 Human Services.

140 (2) A person who is excluded, under Subsection (1), from the provisions and
 141 requirements of this chapter, shall conduct a criminal background check on all of the person's
 142 employees who have access to a qualifying child to whom care is provided by the person.

143 Section 3. Section **26-39-405** is enacted to read:

144 **26-39-405. Schools prohibited from operating a child care program or pre-school.**

145 (1) Except as provided in Subsection (2), the following may not operate a child care
 146 program or a pre-school:

147 (a) an educational institution that is regulated by the boards of education of this state;

148 or

149 (b) a public school.

150 (2) Subsection (1) does not prohibit:

151 (a) a public school from offering or providing care to qualifying children, as described

152 in Subsection 26-39-403(1)(f);

153 (b) a public high school from offering or providing care to qualifying children as
154 described in Subsection 26-39-403(1)(h); or

155 (c) an institution or public school described in Subsection (1) from providing the
156 online Upstart Program.

157 Section 4. Section **53A-3-417** is amended to read:

158 **53A-3-417. Child care centers in public schools -- Requirements -- Availability --**
159 **Compliance with state and local laws.**

160 (1) As used in this section:

161 (a) "Public high school" is as defined in Section 26-39-102.

162 (b) "Public school" is as defined in Section 26-39-102.

163 [~~(1)~~] (2) (a) Upon receiving a request from a community group [~~such as~~] including a
164 community council, local PTA, or parent/student organization, a local school board may
165 authorize the use of a part of any public high school building in the district to provide child
166 care services for school aged children[-], if the child care services are provided in connection
167 with a course of study or program described in Subsection 26-29-403(1)(h)(i)(B).

168 (b) (i) The school board shall provide written public notice of its intent to authorize a
169 child care center.

170 (ii) The board shall file a copy of the notice with the Office of Child Care within the
171 Department of Workforce Services and the Department of Health.

172 [~~(2)~~] (3) (a) Establishment of a child care center in a public high school building is
173 contingent upon the local school board determining that the center will not interfere with the
174 building's use for regular school purposes.

175 (b) The decision shall be made at the sole discretion of the school board.

176 (c) A school board may withdraw its approval to operate a child care center at any time
177 if it determines that such use interferes with the operation or interest of the public high school.

178 (d) The school district and its employees and agents are immune from any liability that
179 might otherwise result from a withdrawal of approval if the withdrawal was made in good
180 faith.

181 [~~(3)~~] (4) (a) The board shall charge a commercially reasonable fee for the use of a
182 public high school building as a child care center so that the district does not incur an expense.

183 (b) The fee shall include [~~but not be limited to~~] costs for utility, building maintenance,
184 and administrative services supplied by the public high school that are related to the operation
185 of the child care center.

186 [~~(4)~~] (5) (a) Child care service may be provided at a public high school by
187 governmental agencies other than school districts, nonprofit community service groups, or
188 private providers[-], if the child care services are provided in connection with a course of study
189 or program described in Subsection 26-29-403(1)(h)(i)(B).

190 (b) If competitive proposals to provide child care services are submitted by the entities
191 listed in Subsection [~~(4)~~] (5)(a), the board shall give preference to the private provider and
192 nonprofit community service groups so long as their proposals are judged to be at least equal to
193 the proposal of the governmental agency.

194 (c) It is intended that these programs function at the local community level with
195 minimal state and district involvement.

196 [~~(5)~~] (6) It is the intent of the Legislature that providers not be required to go through a
197 complex procedure in order to obtain approval for providing the service.

198 [~~(6)~~] (7) (a) Child care centers within a public high school building shall make their
199 services available to all children regardless of where the children reside.

200 (b) If space and resources are limited, first priority shall be given to those who reside
201 within the school boundaries where the center is located, and to the children of teachers and
202 other employees of the school where the child care center is located.

203 (c) Second priority shall be given to those who reside within the school district
204 boundaries where the center is located.

205 [~~(7)~~] (8) (a) The school board shall require proof of liability insurance which is
206 adequate in the opinion of the school board for use of public high school property as a child
207 care center.

208 (b) A school district participating in the state Risk Management Fund shall require the
209 provider of child care services to comply with the applicable provisions of Title 63A, Chapter
210 4, Risk Management.

211 [~~(8)~~] (9) Child care centers established under this section shall operate in compliance
212 with state and local laws and regulations, including zoning [~~and~~] requirements, any applicable
213 state licensing requirements, and applicable school rules.

214 [~~(9)~~] (10) Except for Subsection [~~(8)~~] (9), this section does not apply to child care
215 centers established by a school district within a public school building if the center offers child
216 care services [~~primarily~~] only to children of employees or children of students of the school
217 district.

Legislative Review Note
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Office of Legislative Research and General Counsel