

HB0169S01 compared with HB0169

~~{deleted text}~~ shows text that was in HB0169 but was deleted in HB0169S01.

Inserted text shows text that was not in HB0169 but was inserted into HB0169S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Gage Froerer proposes the following substitute bill:

CHILD CARE LICENSING MODIFICATIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill ~~{modifies}~~ amends provisions related to ~~{child care licensing}~~ the Utah Child Care Licensing Act.

Highlighted Provisions:

This bill:

- ▶ ~~{extends the time period within which the Department of Health may conduct an investigation of a child care provider based on when the events in the complaint occurred}~~ modifies the criminal background check requirements under the Utah Child Care Licensing Act related to nonviolent drug offenses that occurred 10 or more years before a criminal background check; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

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None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

~~{26-39-501}~~26-39-404, as last amended by Laws of Utah 2015, Chapter 220

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

Section 1. Section 26-39-404 is amended to read:

26-39-404. Disqualified individuals -- Criminal history checks -- Payment of costs.

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

- (i) owners;
- (ii) directors;
- (iii) members of the governing body;
- (iv) employees;
- (v) providers of care;
- (vi) volunteers, except parents of children enrolled in the programs; and
- (vii) all adults residing in a residence where child care is provided.

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

- (i) the individual has resided in Utah for the last five years and applied for a certificate or license before July 1, 2013;
- (ii) the individual has:
 - (A) previously submitted fingerprints under this section for a national criminal history record check; and
 - (B) resided in Utah continuously since that time; or

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(iii) as of May 3, 1999, the individual had one of the relationships under Subsection (1)(a) with a child care provider having a residential certificate or licensed under this section and the individual has resided in Utah continuously since that time.

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

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

(iii) A person required to submit information to the department under Subsection (1) shall pay the cost of conducting the record check described in this Subsection (1)(c).

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

(b) The department shall access the juvenile court records to determine whether a person described in Subsection (1) or (2)(a) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor if:

(i) the person described in Subsection (1) is under the age of 28; or

(ii) the person described in Subsection (1) is:

(A) over the age of 28; and

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

(3) Except as provided in ~~Subsection (4)~~ Subsections (4 and (5)), a licensee under this chapter or an exempt provider may not permit a person who has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for any felony or misdemeanor, or if the provisions of Subsection (2)(b) apply, who has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or a misdemeanor, to:

(a) provide child care;

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- (b) provide volunteer services for a child care program or an exempt provider;
- (c) reside at the premises where child care is provided; or
- (d) function as an owner, director, or member of the governing body of a child care program or an exempt provider.

(4) (a) The department may, by rule, exempt the following from the restrictions of Subsection (3):

- (i) specific misdemeanors; and
- (ii) specific acts adjudicated in juvenile court, which if committed by an adult would be misdemeanors.

(b) In accordance with criteria established by rule, the executive director may consider and exempt individual cases involving misdemeanors, not otherwise exempt under Subsection (4)(a) from the restrictions of Subsection (3).

~~{Section 1. Section 26-39-501 is amended to read:~~

~~26-39-501. Investigations -- Records.~~

~~(1) The department may conduct investigations necessary to enforce;~~ (5) The restrictions of Subsection (3) do not apply to the following:

(a) a conviction or plea of no contest to any nonviolent drug offense that occurred on a date 10 years or more before the date of the criminal history check described in this section; or

(b) if the provisions of {this chapter.

~~(2) For purposes of this section:~~

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

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

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

~~(3) (a) If the department receives a complaint about a child care program or an exempt provider, the department shall:~~

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~~—— (i) solicit information from the complainant to determine whether the complaint suggests actions or conditions that could pose a serious risk to the safety or well-being of a qualifying child;~~

~~—— (ii) as necessary;~~

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

~~—— (B) inform the complainant that the department may not investigate an anonymous complaint;~~

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

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

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

~~—— (b) If the complainant elects to be an anonymous complainant, or if the complaint concerns events which occurred more than [six weeks] one year before the complainant contacted the department, the department:~~

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

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

~~—— (iii) may, during a regularly scheduled annual survey, inform the exempt provider, licensee, or certificate holder that is the subject of the complaint of allegations or concerns raised by:~~

~~—— (A) the anonymous complainant; or~~

~~—— (B) the complainant who reported events more than [six weeks] one year after the events occurred;~~

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

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

~~—— (B) indefinitely.~~

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

~~—— (B) If the complainant elects to remain a confidential complainant indefinitely, the department:~~

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

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

~~—— (4) (a) Prior to conducting an investigation of a child care program or an exempt provider in response to a complaint, a department investigator shall review the complaint with the investigator's supervisor.~~

~~—— (b) The investigator may only proceed with the investigation [only] if:~~

~~—— (i) the supervisor determines the complaint is credible;~~

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

~~—— (iii) prior to the investigation, the investigator [informs] provides the subject of the complaint [of] with:~~

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

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

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

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

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

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

~~_____ (i) a private or controlled record if appropriate under Section 63G-2-302 or 63G-2-304;~~
or

~~_____ (ii) a protected record under Section 63G-2-305; and~~

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

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

Legislative Review Note

~~Office of Legislative Research and General Counsel~~ Subsection (2)(b) apply, to any nonviolent drug offense adjudicated in juvenile court on a date 10 years or more before the date of the criminal history check described in this section.