

Representative Gage Froerer proposes the following substitute bill:

CHILD CARE LICENSING AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lincoln Fillmore

House Sponsor: Susan Pulsipher

LONG TITLE

General Description:

This bill amends provisions related to the Utah Child Care Licensing Act.

Highlighted Provisions:

This bill:

▶ exempts from the licensing and certification requirements of the Utah Child Care Licensing Act certain child care facilities currently exempted from licensure by rule;

▶ requires these facilities to meet existing criminal background check requirements for child care facilities exempted from the Utah Child Care Licensing Act;

▶ 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:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 [26-39-403](#), as last amended by Laws of Utah 2015, Chapter 220

27 [26-39-404](#), as last amended by Laws of Utah 2015, Chapter 220

28

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

30 Section 1. Section [26-39-403](#) is amended to read:

31 **[26-39-403. Exclusions from chapter -- Criminal background checks by an](#)**
32 **[excluded person.](#)**

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

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

36 (b) group counseling provided by a mental health therapist, as defined in Section
37 [58-60-102](#), who is licensed to practice in this state;

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

40 (d) care provided to [~~qualifying children~~] a qualifying child by or in the [~~homes of~~
41 ~~parents, legal guardians, grandparents, brothers, sisters, uncles, or aunts~~] home of a parent,
42 legal guardian, grandparent, brother, sister, uncle, or aunt;

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

46 (f) care provided at a residential support program that is licensed by the Department of
47 Human Services.

48 (2) The licensing and certification requirements of this chapter do not apply to:

49 (a) care provided to [~~qualifying children~~] a qualifying child as part of a course of study
50 at or a program administered by an educational institution that is regulated by the boards of
51 education of this state, a private education institution that provides education in lieu of that
52 provided by the public education system, or by a parochial education institution;

53 (b) care provided to [~~qualifying children~~] a qualifying child by a public or private
54 institution of higher education, if the care is provided in connection with a course of study or
55 program, relating to the education or study of children, that is provided to students of the
56 institution of higher education;

- 57 (c) care provided to ~~[qualifying children]~~ a qualifying child at a public school by an
58 organization other than the public school, if:
- 59 (i) the care is provided under contract with the public school or on school property; or
60 (ii) the public school accepts responsibility and oversight for the care provided by the
61 organization;
- 62 (d) care provided to ~~[qualifying children]~~ a qualifying child as part of a summer camp
63 that operates on federal land pursuant to a federal permit; ~~[or]~~
- 64 (e) care provided by an organization that:
- 65 (i) qualifies for tax exempt status under Section 501(c)(3) of the Internal Revenue
66 Code;
- 67 (ii) ~~[is provided]~~ provides care pursuant to a written agreement with:
- 68 (A) a municipality, as defined in Section 10-1-104, that provides oversight for the
69 program; or
- 70 (B) a county that provides oversight for the program; and
- 71 (iii) ~~[is provided to children who are]~~ provides care to a child who is over the age of
72 four and under the age of 13[-]; or
- 73 (f) care provided to a qualifying child at a facility where:
- 74 (i) the parent or guardian of the qualifying child is at all times physically present in the
75 building where the care is provided and the parent or guardian is near enough to reach the child
76 within five minutes if needed;
- 77 (ii) the duration of the care is less than four hours for an individual qualifying child in
78 any one day;
- 79 (iii) the care is provided on a sporadic basis;
- 80 (iv) the care does not include diapering a qualifying child; and
- 81 (v) the care does not include preparing or serving meals to a qualifying child.
- 82 (3) An exempt provider shall submit to the department:
- 83 (a) the information required under Subsections 26-39-404(1) and (2); and
- 84 (b) of the children receiving care from the exempt provider:
- 85 (i) the number of children who are less than two years old;
- 86 (ii) the number of children who are at least two years old and less than five years old;
- 87 and

88 (iii) the number of children who are five years old or older.

89 (4) An exempt provider shall post, in a conspicuous location near the entrance of the
90 exempt provider's facility, a notice prepared by the department that:

91 (a) states that the facility is exempt from licensure and certification; and

92 (b) provides the department's contact information for submitting a complaint.

93 (5) The department may not release the information it collects under Subsection (3)
94 except in an aggregate count of children receiving care from exempt providers, without
95 identifying a specific provider.

96 Section 2. Section **26-39-404** is amended to read:

97 **26-39-404. Disqualified individuals -- Criminal history checks -- Payment of**
98 **costs.**

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

103 (i) owners;

104 (ii) directors;

105 (iii) members of the governing body;

106 (iv) employees;

107 (v) providers of care;

108 (vi) volunteers, except parents of children enrolled in the programs; and

109 (vii) all adults residing in a residence where child care is provided.

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

113 (i) the individual has resided in Utah for the last five years and applied for a certificate
114 or license before July 1, 2013;

115 (ii) the individual has:

116 (A) previously submitted fingerprints under this section for a national criminal history
117 record check; and

118 (B) resided in Utah continuously since that time; or

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

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

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

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

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

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

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

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

140 (A) over the age of 28; and

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

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

149 (a) provide child care;

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

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

155 Subsection (3):

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

159 (b) In accordance with criteria established by rule, the executive director may consider

160 and exempt individual cases involving misdemeanors, not otherwise exempt under Subsection

161 (4)(a) from the restrictions of Subsection (3).

162 (5) The restrictions of Subsection (3) do not apply to the following:

163 (a) a conviction or plea of no contest to any nonviolent drug offense that occurred on a

164 date 10 years or more before the date of the criminal history check described in this section; or

165 (b) if the provisions of Subsection (2)(b) apply, any nonviolent drug offense

166 adjudicated in juvenile court on a date 10 years or more before the date of the criminal history

167 check described in this section.