

Representative Karen Kwan proposes the following substitute bill:

**CHILD CARE LICENSING AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Karen Kwan**

Senate Sponsor: Lincoln Fillmore

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**LONG TITLE**

**General Description:**

This bill amends provisions related to child care licensing.

**Highlighted Provisions:**

This bill:

- ▶ modifies the department's licensing authority related to child care; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a coordination clause.

**Utah Code Sections Affected:**

AMENDS:

**26-10-10**, as enacted by Laws of Utah 2013, Chapter 45

**26-39-301**, as last amended by Laws of Utah 2016, Chapter 74

**26-39-404**, as last amended by Laws of Utah 2017, Chapter 366

**Utah Code Sections Affected by Coordination Clause:**

**26-10-10**, as enacted by Laws of Utah 2013, Chapter 45

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

27 Section 1. Section **26-10-10** is amended to read:

28 **26-10-10. Cytomegalovirus (CMV) public education and testing.**

29 (1) As used in this section "CMV" means cytomegalovirus.

30 (2) The department shall establish and conduct a public education program to inform  
31 pregnant women and women who may become pregnant regarding:

32 (a) the incidence of CMV;

33 (b) the transmission of CMV to pregnant women and women who may become  
34 pregnant;

35 (c) birth defects caused by congenital CMV;

36 (d) methods of diagnosing congenital CMV; and

37 (e) available preventative measures.

38 (3) The department shall provide the information described in Subsection (2) to:

39 (a) child care programs licensed under Title 26, Chapter 39, Utah Child Care Licensing  
40 Act, and their employees;

41 (b) a person described in Subsection ~~26-39-403(1)(c)[, (f), (g), (h), (j), or (k)]~~ and  
42 Subsections 26-39-403(2)(a), (b), (c), (e), and (f);

43 (c) a person serving as a school nurse under Section ~~53A-11-204~~;

44 (d) a person offering health education in a school district;

45 (e) health care providers offering care to pregnant women and infants; and

46 (f) religious, ecclesiastical, or denominational organizations offering children's  
47 programs as a part of worship services.

48 (4) If a newborn infant fails the newborn hearing screening test(s) under Subsection  
49 ~~26-10-6(1)~~, a medical practitioner shall:

50 (a) test the newborn infant for CMV before the newborn is 21 days of age, unless a  
51 parent of the newborn infant objects; and

52 (b) provide to the parents of the newborn infant information regarding:

53 (i) birth defects caused by congenital CMV; and

54 (ii) available methods of treatment.

55 (5) The department shall provide to the family and the medical practitioner, if known,  
56 information regarding the testing requirements under Subsection (4) when providing results

57 indicating that an infant has failed the newborn hearing screening test(s) under Subsection  
58 26-10-6(1).

59 (6) The department may make rules in accordance with Title 63G, Chapter 3, Utah  
60 Administrative Rulemaking Act, as necessary to administer the provisions of this section.

61 Section 2. Section **26-39-301** is amended to read:

62 **26-39-301. Duties of the department -- Enforcement of chapter -- Licensing**  
63 **committee requirements.**

64 (1) With regard to residential child care licensed or certified under this chapter, the  
65 department may:

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

68 (i) adequate facilities and equipment; and

69 (ii) competent caregivers, considering the age of the children and the type of program  
70 offered by the licensee; and

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

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

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

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

78 (iv) changes of ownership or name, changes in licensure status, and changes in  
79 operational status;

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

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

83 (vii) guidelines necessary to assure consistency and appropriateness in the regulation  
84 and discipline of licensees[~~;~~ and].

85 [~~(c) set and collect licensing and other fees in accordance with Section 26-1-6.~~]

86 (2) The department shall enforce the rules established by the licensing committee, with  
87 the concurrence of the department, for center based child care.

88 (3) Rules made under this chapter by the department, or the licensing committee with  
89 the concurrence of the department, shall be made in accordance with Title 63G, Chapter 3,  
90 Utah Administrative Rulemaking Act.

91 (4) (a) The licensing committee and the department may not regulate educational  
92 curricula, academic methods, or the educational philosophy or approach of the provider.

93 (b) The licensing committee and the department shall allow for a broad range of  
94 educational training and academic background in certification or qualification of child day care  
95 directors.

96 (5) In licensing and regulating child care programs, the licensing committee and the  
97 department shall reasonably balance the benefits and burdens of each regulation and, by rule,  
98 provide for a range of licensure, depending upon the needs and different levels and types of  
99 child care provided.

100 (6) Notwithstanding the definition of "qualifying child" in Section 26-39-102, the  
101 licensing committee and the department shall count children through age 12 and children with  
102 disabilities through age 18 toward the minimum square footage requirement for indoor and  
103 outdoor areas, including the child of:

104 (a) a licensed residential child care provider; or

105 (b) an owner or employee of a licensed child care center.

106 (7) Notwithstanding Subsection (1)(a)(i), the licensing committee and the department  
107 may not exclude floor space used for furniture, fixtures, or equipment from the minimum  
108 square footage requirement for indoor and outdoor areas if the furniture, fixture, or equipment  
109 is used:

110 (a) by qualifying children;

111 (b) for the care of qualifying children; or

112 (c) to store classroom materials.

113 (8) (a) A child care center constructed prior to January 1, 2004, and licensed and  
114 operated as a child care center continuously since January 1, 2004, is exempt from the licensing  
115 committee's and the department's group size restrictions, if the child to caregiver ratios are  
116 maintained, and adequate square footage is maintained for specific classrooms.

117 (b) An exemption granted under Subsection (7)(a) is transferrable to subsequent  
118 licensed operators at the center if a licensed child care center is continuously maintained at the

119 center.

120 (9) The licensing committee, with the concurrence of the department, shall develop, by  
121 rule, a five-year phased-in compliance schedule for playground equipment safety standards.

122 (10) The department shall set and collect licensing and other fees in accordance with  
123 Section 26-1-6.

124 ~~[(10)]~~ (11) Nothing in this chapter may be interpreted to grant a municipality or county  
125 the authority to license or certify a child care program.

126 Section 3. Section ~~26-39-404~~ is amended to read:

127 **26-39-404. Disqualified individuals -- Criminal history checks -- Payment of**  
128 **costs.**

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

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

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

143 ~~[(i) the individual has resided in Utah for the last five years and applied for a certificate~~  
144 ~~or license before July 1, 2013;]~~

145 ~~[(ii) the individual has:]~~

146 ~~[(A) previously submitted fingerprints under this section for a national criminal history~~  
147 ~~record check; and]~~

148 ~~[(B) resided in Utah continuously since that time; or]~~

149 ~~[(iii) as of May 3, 1999, the individual had one of the relationships under Subsection~~

150 ~~(1)(a) with a child care provider having a residential certificate or licensed under this section~~  
151 ~~and the individual has resided in Utah continuously since that time.]~~

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

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

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

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

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

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

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

170 (A) over the age of 28; and

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

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

178 (a) provide child care;

179 (b) provide volunteer services for a child care program or an exempt provider;

180 (c) reside at the premises where child care is provided; or

181 (d) function as an owner, director, or member of the governing body of a child care  
182 program or an exempt provider.

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

185 (i) specific misdemeanors; and

186 (ii) specific acts adjudicated in juvenile court, which if committed by an adult would be  
187 misdemeanors.

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

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

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

194 (b) if the provisions of Subsection (2)(b) apply, any nonviolent drug offense  
195 adjudicated in juvenile court on a date 10 years or more before the date of the criminal history  
196 check described in this section.

197 **Section 4. Coordinating H.B. 123 with S.B. 116 -- Technical amendments.**

198 If this H.B. 123 and S.B. 116, Revisor's Technical Corrections to Utah Code, both pass  
199 and become law, it is the intent of the Legislature that the amendments to Subsection  
200 26-10-10(3)(b) in this bill supersede the amendments to Subsection 26-10-10(3)(b) in S.B. 116  
201 when the Office of Legislative Research and General Counsel prepares the Utah Code database  
202 for publication.