

HB0123S01 compared with HB0123

~~{deleted text}~~ shows text that was in HB0123 but was deleted in HB0123S01.

Inserted text shows text that was not in HB0123 but was inserted into HB0123S01.

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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

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:

~~{None}~~ This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

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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

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

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

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

- (1) As used in this section "CMV" means cytomegalovirus.
- (2) The department shall establish and conduct a public education program to inform pregnant women and women who may become pregnant regarding:
 - (a) the incidence of CMV;
 - (b) the transmission of CMV to pregnant women and women who may become pregnant;
 - (c) birth defects caused by congenital CMV;
 - (d) methods of diagnosing congenital CMV; and
 - (e) available preventative measures.
- (3) The department shall provide the information described in Subsection (2) to:
 - (a) child care programs licensed under Title 26, Chapter 39, Utah Child Care Licensing Act, and their employees;
 - (b) a person described in Subsection 26-39-403(1)(c)[~~-, (f), (g), (h), (j), or (k)~~] and Subsections 26-39-403(2)(a), (b), (c), (e), and (f);
 - (c) a person serving as a school nurse under Section 53A-11-204;
 - (d) a person offering health education in a school district;
 - (e) health care providers offering care to pregnant women and infants; and
 - (f) religious, ecclesiastical, or denominational organizations offering children's programs as a part of worship services.
- (4) If a newborn infant fails the newborn hearing screening test(s) under Subsection 26-10-6(1), a medical practitioner shall:
 - (a) test the newborn infant for CMV before the newborn is 21 days of age, unless a

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parent of the newborn infant objects; and

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

(i) birth defects caused by congenital CMV; and

(ii) available methods of treatment.

(5) The department shall provide to the family and the medical practitioner, if known, information regarding the testing requirements under Subsection (4) when providing results indicating that an infant has failed the newborn hearing screening test(s) under Subsection 26-10-6(1).

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

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

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

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

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

(i) adequate facilities and equipment; and

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

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

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

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

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

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

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

(vi) procedures for inspections, complaint resolution, disciplinary actions, and other

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procedural measures to encourage and assure compliance with statute and rule; and

(vii) guidelines necessary to assure consistency and appropriateness in the regulation and discipline of licensees ~~and~~.

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

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

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

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

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

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

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

- (a) a licensed residential child care provider; or
- (b) an owner or employee of a licensed child care center.

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

- (a) by qualifying children;
- (b) for the care of qualifying children; or
- (c) to store classroom materials.

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

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

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

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

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

Section 3. 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~~

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~~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]~~

~~[(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)]~~ (b) (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)]~~(b).

(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 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

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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;
- (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).

(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 Subsection (2)(b) apply, 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.

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Legislative Review Note

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

If this H.B. 123 and S.B. 116, Revisor's Technical Corrections to Utah Code, both pass and become law, it is the intent of the Legislature that the amendments to Subsection 26-10-10(3)(b) in this bill supersede the amendments to Subsection 26-10-10(3)(b) in S.B. 116

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when the Office of Legislative Research and General Counsel prepares the Utah Code database
for publication.