

CHILD CARE PROVIDERS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen W. Morgan

Senate Sponsor: Mark B. Madsen

Cosponsors:

Julie Fisher

Steven R. Mascaro

Janice M. Fisher

LONG TITLE

Committee Note:

The Workforce Services and Community and Economic Development Interim Committee recommended this bill.

General Description:

This bill provides a screening process for the Department of Workforce Services to verify qualifications of certain child care providers by requiring criminal background checks.

Highlighted Provisions:

This bill:

- ▶ provides that criminal backgrounds checks shall be performed on:
 - child care providers who are not required by current law to undergo a check through the Department of Health, Bureau of Licensing, and are not a license exempt child care center or program; and
 - individuals who reside in the premises where the child care is provided;
- ▶ provides for a waiver of the fingerprint submission requirement under certain circumstances;
- ▶ allows the Utah Division of Criminal Investigation and Technical Services to give the Department of Workforce Services access to the division's data base to



28 determine if a child care provider has been convicted of a crime;

29 ▶ provides the department with access to juvenile court records for purposes of a

30 criminal background check of certain child care providers and individuals who

31 reside where the child care is provided;

32 ▶ provides that a child care provider may not allow an individual who has been

33 convicted of a felony or certain misdemeanors to:

34 • provide subsidized child care; or

35 • reside at the premises where subsidized child care is provided;

36 ▶ requires the child care provider to pay for any costs of a background check

37 ▶ provides that a person who commits a severe type of child abuse or neglect shall be

38 disqualified from receiving state funds as a child care provider; and

39 ▶ allows three designated individuals within the Department of Workforce Services to

40 have access to the Division of Family and Child Services' Licensing Information

41 System for the purpose of checking the background of child care providers.

42 **Monies Appropriated in this Bill:**

43 None

44 **Other Special Clauses:**

45 None

46 **Utah Code Sections Affected:**

47 AMENDS:

48 **62A-4a-1005**, as renumbered and amended by Laws of Utah 2006, Chapter 77

49 **62A-4a-1006**, as renumbered and amended by Laws of Utah 2006, Chapter 77

50 ENACTS:

51 **35A-3-310.5**, Utah Code Annotated 1953



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

54 Section 1. Section **35A-3-310.5** is enacted to read:

55 **35A-3-310.5. Child care providers -- Criminal background checks -- Payment of**

56 **costs -- Prohibitions -- Department rules.**

57 (1) This section applies to a child care provider who:

58 (a) is selected by an applicant for, or a recipient of, a child care assistance payment;

59 (b) is not required to undergo a criminal background check with the Department of
60 Health, Bureau of Licensing;

61 (c) is not a license exempt child care center or program; and

62 (d) is an eligible child care provider under department rules made in accordance with
63 Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

64 (2) (a) Each child care provider identified under Subsection (1) shall submit to the
65 department the name and other identifying information, which shall include a set of
66 fingerprints, of:

67 (i) existing, new, and proposed providers of child care; and

68 (ii) individuals who are at least 18 years of age and reside in the premises where the
69 child care is provided.

70 (b) The department may waive the fingerprint requirement under Subsection (2)(a) for
71 an individual who has:

72 (i) resided in Utah for five years prior to the required submission; or

73 (ii) (A) previously submitted a set of fingerprints under this section for a national
74 criminal history record check; and

75 (B) resided in Utah continuously since submitting the fingerprints.

76 (c) The Utah Division of Criminal Investigation and Technical Services shall:

77 (i) (A) process the information required under Subsection (2)(a); or

78 (B) allow the department or its representative access to the division's data base to
79 determine whether the individual has been convicted of a crime; and

80 (ii) submit an individual's set of fingerprints required under Subsection (2)(a) to the
81 U.S. Federal Bureau of Investigation for a national criminal history background check of the
82 individual.

83 (d) The child care provider shall pay the cost of the history background check provided
84 under Subsection (2)(c).

85 (3) (a) Each child care provider identified under Subsection (1) shall submit to the
86 department the name and other identifying information of an individual, age 12 through 17,
87 who resides in the premises where the child care is provided.

88 (b) The identifying information referred to in Subsection (3)(a) does not include
89 fingerprints.

90 (c) The department shall access juvenile court records to determine whether an
91 individual described in Subsection (2) or (3)(a) has been adjudicated in juvenile court of
92 committing an act which, if committed by an adult, would be a felony or misdemeanor if:

93 (i) the individual described in Subsection (2) is under the age of 28; or

94 (ii) the individual described in Subsection (2):

95 (A) is over the age of 28; and

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

98 (4) Except as provided in Subsection (5), a child care provider under this section may
99 not permit an individual who has been convicted of, has pleaded no contest to, or is currently
100 subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, or if
101 Subsection (3)(b) applies, an individual who has been adjudicated in juvenile court of
102 committing an act which if committed by an adult would be a felony or misdemeanor to:

103 (a) provide subsidized child care; or

104 (b) reside at the premises where subsidized child care is provided.

105 (5) (a) The department may make a rule in accordance with Title 63, Chapter 46a, Utah
106 Administrative Rulemaking Act, to exempt the following from the restrictions of Subsection
107 (4):

108 (i) a specific misdemeanor;

109 (ii) a specific act adjudicated in juvenile court, which if committed by an adult would
110 be a misdemeanor; and

111 (iii) background checks of individuals other than the provider who are residing at the
112 premises where subsidized child care is provided if that child care is provided in the child's
113 home.

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

117 (6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
118 department shall establish by rule:

119 (a) whether a child care subsidy payment should be made prior to the completion of a
120 background check, particularly in the case of a delay in making or completing the background

121 check; and

122 (b) if, and how often, a child care provider must resubmit the information required
123 under Subsections (2) and (3).

124 Section 2. Section **62A-4a-1005** is amended to read:

125 **62A-4a-1005. Supported finding of a severe type of child abuse or neglect --**
126 **Notation in Licensing Information System -- Juvenile court petition or notice to alleged**
127 **perpetrator -- Rights of alleged perpetrator -- Juvenile court finding.**

128 (1) If the division makes a supported finding that a person committed a severe type of
129 child abuse or neglect, the division shall:

130 (a) serve notice of the finding on the alleged perpetrator;

131 (b) enter the following information into the Licensing Information System created in
132 Section 62A-4a-1006:

133 (i) the name and other identifying information of the perpetrator with the supported
134 finding, without identifying the person as a perpetrator or alleged perpetrator; and

135 (ii) a notation to the effect that an investigation regarding the person is pending; and

136 (c) if the division considers it advisable, file a petition for substantiation within one
137 year of the supported finding.

138 (2) The notice referred to in Subsection (1)(a):

139 (a) shall state that:

140 (i) the division has conducted an investigation regarding alleged child abuse or neglect;

141 (ii) the division has made a supported finding that the alleged perpetrator described in

142 Subsection (1) committed a severe type of child abuse or neglect;

143 (iii) facts gathered by the division support the supported finding;

144 (iv) as a result of the supported finding, the alleged perpetrator's name and other
145 identifying information have been listed in the Licensing Information System in accordance
146 with Subsection (1)(b);

147 (v) the alleged perpetrator may be disqualified from adopting a child, receiving state
148 funds as a child care provider, or being licensed by:

149 (A) the department;

150 (B) a human services licensee;

151 (C) a child care provider or program; or

152 (D) a covered health care facility;

153 (vi) the alleged perpetrator has the rights described in Subsection (3); and

154 (vii) failure to take either action described in Subsection (3)(a) within one year after

155 service of the notice will result in the action described in Subsection (3)(b);

156 (b) shall include a general statement of the nature of the findings; and

157 (c) may not include:

158 (i) the name of a victim or witness; or

159 (ii) any privacy information related to the victim or a witness.

160 (3) (a) Upon receipt of the notice described in Subsection (2), the alleged perpetrator

161 ~~shall have~~ has the right to:

162 (i) file a written request asking the division to review the findings made under

163 Subsection (1);

164 (ii) except as provided in Subsection (3)(c), immediately petition the juvenile court

165 under Section 78-3a-320; or

166 (iii) sign a written consent to:

167 (A) the supported finding made under Subsection (1); and

168 (B) entry into the Licensing Information System of:

169 (I) the alleged perpetrator's name; and

170 (II) other information regarding the supported finding made under Subsection (1).

171 (b) Except as provided in Subsection (3)(e), the alleged perpetrator's name and the

172 information described in Subsection (1)(b) shall remain in the Licensing Information System:

173 (i) if the alleged perpetrator fails to take the action described in Subsection (3)(a)

174 within one year after service of the notice described in Subsections (1)(a) and (2);

175 (ii) during the time that the division awaits a response from the alleged perpetrator

176 pursuant to Subsection (3)(a); and

177 (iii) until a court determines that the severe type of child abuse or neglect upon which

178 the Licensing Information System entry was based is unsubstantiated or without merit.

179 (c) The alleged perpetrator has no right to petition the juvenile court under Subsection

180 (3)(a)(ii) if the court previously held a hearing on the same alleged incident of abuse or neglect

181 pursuant to the filing of a petition under Section 78-3a-305 by some other party.

182 (d) Consent under Subsection (3)(a)(iii) by a child shall be given by the child's parent

183 or guardian.

184 (e) Regardless of whether an appeal on the matter is pending:

185 (i) the division shall remove an alleged perpetrator's name and the information
 186 described in Subsection (1)(b) [~~shall be removed~~] from the Licensing Information System if the
 187 severe type of child abuse or neglect upon which the Licensing Information System entry was
 188 based:

189 (A) is found to be unsubstantiated or without merit by the juvenile court under Section
 190 78-3a-320; or

191 (B) is found to be substantiated, but is subsequently reversed on appeal; and

192 (ii) the division shall place back on the Licensing Information System an alleged
 193 perpetrator's name and information that is removed from the Licensing Information System
 194 under Subsection (3)(e)(i) [~~shall be placed back on the Licensing Information System~~] if the
 195 court action that was the basis for removing the alleged perpetrator's name and information is
 196 subsequently reversed on appeal.

197 (4) Upon the filing of a petition under Subsection (1)(c), the juvenile court shall make
 198 a finding of substantiated, unsubstantiated, or without merit as provided in Subsections
 199 78-3a-320(1) and (2).

200 (5) Service of the notice described in Subsections (1)(a) and (2):

201 (a) shall be personal service in accordance with Utah Rules of Civil Procedure, Rule 4;
 202 and

203 (b) does not preclude civil or criminal action against the alleged perpetrator.

204 Section 3. Section **62A-4a-1006** is amended to read:

205 **62A-4a-1006. Licensing Information System -- Contents -- Juvenile court finding**
 206 **-- Protected record -- Access -- Criminal penalty.**

207 (1) (a) The division shall maintain a sub-part of the Management Information System
 208 established pursuant to Section 62A-4a-1003, to be known as the Licensing Information
 209 System, to be used:

210 (i) for licensing purposes; or

211 (ii) as otherwise specifically provided for by law.

212 (b) The Licensing Information System shall include only the following information:

213 (i) the information described in Subsections 62A-4a-1005(1)(b) and (3)(b);

214 (ii) consented-to supported findings by alleged perpetrators under Subsection
215 62A-4a-1005(3)(a)(iii); and

216 (iii) the information in the licensing part of the division's Management Information
217 System as of May 6, 2002.

218 (2) Notwithstanding Subsection (1), the department's access to information in the
219 Management Information System for the licensure and monitoring of foster parents is governed
220 by Sections 62A-4a-1003 and 62A-2-121.

221 (3) Subject to Subsection 62A-4a-1005(3)(e), upon receipt of a finding from the
222 juvenile court under Section 78-3a-320, the division shall:

223 (a) promptly amend the Licensing Information System; and

224 (b) enter the information in the Management Information System.

225 (4) (a) Information contained in the Licensing Information System is classified as a
226 protected record under Title 63, Chapter 2, Government Records Access and Management Act.

227 (b) Notwithstanding the disclosure provisions of Title 63, Chapter 2, Government
228 Records Access and Management Act, the information contained in the Licensing Information
229 System may only be used or disclosed as specifically provided in this chapter and Section
230 62A-2-121.

231 (c) The information described in Subsection (4)(b) is accessible only to:

232 (i) the Office of Licensing within the department:

233 (A) for licensing purposes; or

234 (B) as otherwise specifically provided for by law;

235 (ii) the division to:

236 (A) screen a person at the request of the Office of the Guardian Ad Litem Director:

237 (I) at the time that person seeks a paid or voluntary position with the Office of the
238 Guardian Ad Litem Director; and

239 (II) on an annual basis, throughout the time that the person remains with the Office of
240 Guardian Ad Litem Director; and

241 (B) respond to a request for information from a person whose name is listed in the
242 Licensing Information System;

243 (iii) two persons designated by and within the Department of Health, only for the
244 following purposes:

- 245 (A) licensing a child care program or provider; or
- 246 (B) determining whether a person associated with a covered health care facility, as
- 247 defined by the Department of Health by rule, who provides direct care to a child, has a
- 248 supported finding of a severe type of child abuse or neglect; ~~and~~
- 249 (iv) three persons designated by and within the Department of Workforce Services for
- 250 the purpose of qualifying child care providers under Section 35A-3-310.5; and
- 251 ~~[(iv)]~~ (v) the department, as specifically provided in this chapter.
- 252 (5) The two persons designated by the Department of Health under Subsection
- 253 (4)(c)(iii) and the three persons designated by the Department of Workforce Services under
- 254 Subsection (4)(c)(iv) shall adopt measures to:
- 255 (a) protect the security of the Licensing Information System; and
- 256 (b) strictly limit access to the Licensing Information System to those persons
- 257 designated by statute.
- 258 (6) All persons designated by statute as having access to information contained in the
- 259 Licensing Information System shall receive training from the department with respect to:
- 260 (a) accessing the Licensing Information System;
- 261 (b) maintaining strict security; and
- 262 (c) the criminal provisions of Sections 62A-4a-412 and 63-2-801 pertaining to the
- 263 improper release of information.
- 264 (7) (a) A person, except those authorized by this chapter, may not request another
- 265 person to obtain or release any other information in the Licensing Information System to screen
- 266 for potential perpetrators of child abuse or neglect.
- 267 (b) A person who requests information knowing that it is a violation of this Subsection
- 268 (7) to do so is subject to the criminal penalty described in Sections 62A-4a-412 and 63-2-801.

Legislative Review Note
as of 11-20-07 9:27 AM

Office of Legislative Research and General Counsel