

House Bill 2987

Sponsored by Representative KOTEK; Representatives STIEGLER, VANORMAN (at the request of Oregon Commission for Child Care)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates category of exempt tracked programs subject to regulation by Child Care Division of Employment Department. Requires registration of exempt tracked programs. Directs division to create database to track exempt tracked programs. Prohibits inspection of exempt tracked programs except following receipt of serious complaint.

A BILL FOR AN ACT

1
2 Relating to child care programs; creating new provisions; and amending ORS 419B.005, 657A.030,
3 657A.250, 657A.275 and 657A.390.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 657A.030 is amended to read:

6 657A.030. (1) The Child Care Division of the Employment Department shall establish a Criminal
7 History Registry.

8 (2) All subject individuals shall be enrolled in the Criminal History Registry established by the
9 division.

10 (3) Upon receiving an application for enrollment in the Criminal History Registry, the division
11 shall complete a criminal records check under ORS 181.534 and shall complete a child protective
12 services records check with the Department of Human Services. The division shall enroll the indi-
13 vidual in the registry if the individual:

14 (a) Is determined to have no criminal or child protective services history or to have dealt with
15 the issues and provided adequate evidence of suitability for the registry;

16 (b) Has paid the applicable fee established pursuant to ORS 657A.275; and

17 (c) Has complied with the rules of the division adopted pursuant to this section.

18 (4) The division may conditionally enroll an individual in the registry pending the results of a
19 nationwide criminal records check through the Federal Bureau of Investigation if the individual has
20 met other requirements of the division for enrollment in the registry.

21 (5) An enrollment in the Criminal History Registry [*shall expire*] **expires** two years from the
22 date of enrollment and may be renewed upon application to the division, payment of the fee estab-
23 lished pursuant to ORS 657A.275 and compliance with rules adopted by the division pursuant to this
24 section. However, an individual who is determined to be ineligible for enrollment in the registry
25 after the date of initial enrollment shall be removed from the registry by the division.

26 (6)(a) A child care facility [*shall*] **may** not hire or employ an individual if the individual is not
27 enrolled in the Criminal History Registry.

28 (b) Notwithstanding paragraph (a) of this subsection, a child care facility may employ on a
29 probationary basis an individual who is conditionally enrolled in the Criminal History Registry.

30 (7) The division may adopt any rules necessary to carry out the purposes of this section and the

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 criminal records check program.

2 (8) For purposes of this section, "subject individual" means a subject individual as defined by
3 the division by rule or a person who applies to be:

4 (a) The operator or an employee of a child care or treatment program;

5 (b) The operator or an employee of an Oregon prekindergarten program under ORS 329.170 to
6 329.200;

7 (c) The operator or an employee of a federal Head Start program regulated by the United States
8 Department of Health and Human Services;

9 (d) An individual in a child care facility who may have unsupervised contact with children as
10 identified by the division;

11 (e) A contractor or an employee of the contractor who provides early childhood special educa-
12 tion or early intervention services pursuant to ORS 343.455 to 343.534; [or]

13 **(f) The operator or an employee of an exempt tracked program; or**

14 [(f)] **(g) A child care provider who is required to be enrolled in the Criminal History Registry**
15 **by any state agency.**

16 **SECTION 2.** ORS 657A.250 is amended to read:

17 657A.250. As used in ORS 657A.030 and 657A.250 to 657A.450, unless the context requires oth-
18 erwise:

19 (1) "Babysitter" means a person who goes into the home of a child to give care during the
20 temporary absence of the parent or legal guardian or custodian.

21 (2) "Certification" means the certification that is issued under ORS 657A.280 by the Child Care
22 Division to a family child care home, child care center or other child care facility.

23 (3) "Child" means a child under 13 years of age or a child under 18 years of age who has special
24 needs or disabilities and requires a level of care that is above normal for the child's age.

25 (4) Subject to ORS 657A.440, "child care" means the care, supervision and guidance on a regular
26 basis of a child, unaccompanied by a parent, guardian or custodian, provided to a child during a part
27 of the 24 hours of the day, in a place other than the child's home, with or without compensation.
28 "Child care" does not include care provided:

29 (a) In the home of the child;

30 (b) By the child's parent, guardian, or person acting in loco parentis;

31 (c) By a person related to the child by blood or marriage within the fourth degree as determined
32 by civil law;

33 (d) On an occasional basis by a person not ordinarily engaged in providing child care;

34 (e) By providers of medical services;

35 (f) By a babysitter;

36 (g) By a person who cares for children from only one family other than the person's own family;

37 (h) By a person who cares for no more than three children other than the person's own children;

38 or

39 (i) By a person who is a member of the child's extended family, as determined by the division
40 on a case-by-case basis.

41 (5) "Child care facility" means any facility that provides child care to children, including a day
42 nursery, nursery school, child care center, certified or registered family child care home or similar
43 unit operating under any name, but not including any:

44 (a) Facility providing care **for preschool children** that is primarily educational, unless provided
45 to a preschool child for more than four hours a day.

1 (b) Facility providing care that is primarily [*supervised training in a specific subject*] **a single**
2 **activity**, including but not limited to dancing, drama, music, **sports** or religion.

3 (c) Facility providing care that is primarily [*an incident of*] group athletic or social activities
4 sponsored by or under the supervision of an organized club or hobby group.

5 **(d) Facility providing child care to school age children less than eight hours per week.**

6 [(d)] (e) Facility operated by:

7 (A) A school district as defined in ORS 332.002;

8 (B) A political subdivision of this state; or

9 (C) A governmental agency.

10 [(e)] (f) Residential facility licensed under ORS 443.400 to 443.455.

11 [(f)] (g) Babysitters.

12 [(g)] (h) Facility operated as a parent cooperative for no more than four hours a day.

13 [(h)] (i) Facility providing care while the child's parent remains on the premises and is engaged
14 in an activity offered by the facility or in other nonwork activity.

15 **(j) Facility operated as an exempt tracked program.**

16 (6) "Division" means the Child Care Division of the Employment Department.

17 **(7) "Exempt tracked program" means a child care program for school age children:**

18 **(a) That is not operated by a school district as defined in ORS 332.002;**

19 **(b) That is not required to be certified under ORS 657A.280 or registered under ORS**
20 **657A.330; and**

21 **(c) In which youth development activities are provided in addition to child care.**

22 [(7)] (8) "Family" has the meaning given that term in ORS 329.145.

23 [(8)] (9) "Occasional" means that care is provided for no more than 70 days in any calendar
24 year.

25 [(9)] (10) "Parent cooperative" means a child care program in which:

26 (a) Care is provided by parents on a rotating basis;

27 (b) Membership in the cooperative includes parents;

28 (c) There are written policies and procedures; and

29 (d) A board of directors that includes parents of the children cared for by the cooperative con-
30 trols the policies and procedures of the program.

31 [(10)] (11) "Registration" means the registration that is:

32 (a) Issued under ORS 657A.330 by the Child Care Division to a family child care home where
33 care is provided in the family living quarters of the provider's home; or

34 **(b) Issued under section 5 of this 2009 Act to an exempt tracked program.**

35 [(11)] (12) "School age" means of an age eligible to be enrolled in the first grade or above and,
36 during the months of summer vacation from school, means of an age eligible to be enrolled in first
37 grade or above in the next school year.

38 **(13) "Youth development activities" means care, supervision or guidance that:**

39 **(a) Is not child care;**

40 **(b) Is provided to a school age child in an exempt tracked program; and**

41 **(c) Teaches skills, talent, expertise, ability or proficiency in physical, social or educa-**
42 **tional activities, including, but not limited to, tutoring, music lessons, dance, social activ-**
43 **ities, sports and athletic or recreational activities.**

44 **SECTION 3.** ORS 657A.275 is amended to read:

45 **657A.275. (1) The Child Care Division of the Employment Department shall adopt rules**

establishing fees for certification and registration under ORS 657A.250 to 657A.450.

[(1)] (2) Subject to prior approval of the Oregon Department of Administrative Services and a report to the Legislative Assembly prior to adopting the fees and charges, the fees and charges established under ORS 181.534, 657A.030 and 657A.250 to 657A.450 may not exceed the cost of administering the program of the [*Child Care Division of the Employment Department*] **division** pertaining to the purpose for which the fee is established, as authorized by the Legislative Assembly within the budget of the division.

[(2)] (3) Notwithstanding subsection [(1)] (2) of this section and any other provision of this chapter, the following fees established by the division under ORS 657A.030 and 657A.250 to 657A.450 may not exceed:

- (a) For Certified Family Child Care Home Initial Certification, \$25;
- (b) For Certified Family Child Care Home Annual Fee Per Certified Space, \$2;
- (c) For Child Care Center Initial Certification, \$100;
- (d) For Child Care Center Annual Fee Per Certified Space, \$2;
- (e) For Registered Family Child Care Home Registration, \$30;
- (f) For Registered Exempt Tracked Program Registration, \$20;**
- [(f)] (g) For administering a class on child care abuse and neglect issues, \$10; and
- [(g)] (h) For enrollment in the Criminal History Registry, the cost of administering the program,

including fees for:

- (A) Duplicate enrollment in the Criminal History Registry;
- (B) Law Enforcement Data System criminal records check; and
- (C) Federal Bureau of Investigation fingerprint check.

SECTION 4. Section 5 of this 2009 Act is added to and made a part of ORS 657A.250 to 657A.450.

SECTION 5. (1) A person operating an exempt tracked program may not operate the program without registering with the Child Care Division of the Employment Department as provided in this section.

(2) To register, the person must apply to the division by submitting a completed application form and a nonrefundable fee as established by the division. The division shall determine and apply the fee through rules adopted by the division under ORS 657A.275. The division shall deposit fees received under this subsection as provided in ORS 657A.310 (2).

(3) The division shall issue a registration to a person operating an exempt tracked program if the division determines that the applicant meets the requirements of ORS 181.537 and 657A.250 to 657A.450 and the rules adopted pursuant to ORS 181.534, 181.537 and 657A.250 to 657A.045 and subsection (9) of this section, and receives a satisfactory records check, including criminal records and protective services records.

(4) Unless registration is revoked as provided in subsection (8) of this section, the registration is valid for a period of two years from the date of issuance.

(5) A registration authorizes operation of the exempt tracked program only on the premises described in the registration and only by the person named in the registration.

(6) The division shall create and maintain a database of exempt tracked programs registered under this section and shall update the database annually. The database shall include, but need not be limited to, the following information:

- (a) Hours of service;
- (b) Ages of children served;

1 (c) Fees charged by the program and eligibility requirements for services; and

2 (d) Significant program information, as determined by the division by rule.

3 (7) An exempt tracked program registered under this section must post, and provide
4 parents with, a notice that the exempt tracked program is not certified under ORS 657A.280
5 or registered under ORS 657A.330.

6 (8) An initial application or renewal application for registration of an exempt tracked
7 program may be denied, or a temporary or regular registration may be revoked or sus-
8 pended, if the division finds:

9 (a) That the program or its operation does not comply with ORS 181.537 and 657A.250 to
10 657A.450, with applicable rules and with any term or condition imposed under the registra-
11 tion; or

12 (b) That visitation, on-site investigation or inspection of a program or its records au-
13 thorized by ORS 657A.390 has not been permitted.

14 (9) The division shall adopt any rules necessary to carry out the provisions of this sec-
15 tion.

16 (10) A person who violates any provision of this section or any term or condition of a
17 registration is subject to a civil penalty not to exceed \$100.

18 **SECTION 6.** ORS 657A.390 is amended to read:

19 657A.390. (1) Whenever an authorized representative of the Child Care Division is advised or
20 has reason to believe that child care that is subject to regulation by the division is being provided
21 without a certification or registration, the authorized representative may visit and conduct an on-
22 site investigation of the premises of the facility at any reasonable time to determine whether the
23 facility is subject to the requirements of ORS 181.537, 657A.030 and 657A.250 to 657A.450. **This**
24 **subsection does not apply to exempt tracked programs registered under section 5 of this 2009**
25 **Act.**

26 (2) At any reasonable time, an authorized representative of the Child Care Division may conduct
27 an on-site investigation of the premises of any certified or registered child care facility to determine
28 whether the child care facility is in conformity with ORS 181.537, 657A.030 and 657A.250 to 657A.450
29 and the rules promulgated pursuant to ORS 181.534, 181.537, 657A.030 and 657A.250 to 657A.450.

30 (3) An authorized representative of the Child Care Division shall conduct an on-site investi-
31 gation of the premises of any certified or registered child care facility or of any other child care
32 facility **or exempt tracked program** that is subject to regulation by the division if the division
33 receives a serious complaint about the [child care] facility **or program**. The division, by rule, shall
34 adopt a definition for “serious complaint.”

35 (4) Any state agency that receives a complaint about a certified or registered child care facility
36 **or a registered exempt tracked program** shall notify the Child Care Division about the complaint
37 and any subsequent action taken by the state agency based on that complaint.

38 (5) The director and operator of a child care facility **or an exempt tracked program** shall
39 permit an authorized representative of the division to inspect records of the facility **or program** and
40 shall furnish promptly reports and information required by the division.

41 **SECTION 7.** ORS 419B.005 is amended to read:

42 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

43 (1)(a) “Abuse” means:

44 (A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child
45 which has been caused by other than accidental means, including any injury which appears to be

1 at variance with the explanation given of the injury.

2 (B) Any mental injury to a child, which shall include only observable and substantial impairment
3 of the child's mental or psychological ability to function caused by cruelty to the child, with due
4 regard to the culture of the child.

5 (C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual pene-
6 tration and incest, as those acts are defined in ORS chapter 163.

7 (D) Sexual abuse, as defined in ORS chapter 163.

8 (E) Sexual exploitation, including but not limited to:

9 (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any
10 other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage
11 in the performing for people to observe or the photographing, filming, tape recording or other ex-
12 hibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or
13 described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-
14 cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or
15 which is designed to serve educational or other legitimate purposes; and

16 (ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution, as defined in
17 ORS chapter 167.

18 (F) Negligent treatment or maltreatment of a child, including but not limited to the failure to
19 provide adequate food, clothing, shelter or medical care that is likely to endanger the health or
20 welfare of the child.

21 (G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm
22 to the child's health or welfare.

23 (H) Buying or selling a person under 18 years of age as described in ORS 163.537.

24 (I) Permitting a person under 18 years of age to enter or remain in or upon premises where
25 methamphetamines are being manufactured.

26 (J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, that subjects a child
27 to a substantial risk of harm to the child's health or safety.

28 (b) "Abuse" does not include reasonable discipline unless the discipline results in one of the
29 conditions described in paragraph (a) of this subsection.

30 (2) "Child" means an unmarried person who is under 18 years of age.

31 (3) "Public or private official" means:

32 (a) Physician, including any intern or resident.

33 (b) Dentist.

34 (c) School employee.

35 (d) Licensed practical nurse or registered nurse.

36 (e) Employee of the Department of Human Services, State Commission on Children and Families,
37 Child Care Division of the Employment Department, the Oregon Youth Authority, a county health
38 department, a community mental health and developmental disabilities program, a county juvenile
39 department, a licensed child-caring agency or an alcohol and drug treatment program.

40 (f) Peace officer.

41 (g) Psychologist.

42 (h) Member of the clergy.

43 (i) Licensed clinical social worker.

44 (j) Optometrist.

45 (k) Chiropractor.

- 1 (L) Certified provider of foster care, or an employee thereof.
- 2 (m) Attorney.
- 3 (n) Naturopathic physician.
- 4 (o) Licensed professional counselor.
- 5 (p) Licensed marriage and family therapist.
- 6 (q) Firefighter or emergency medical technician.
- 7 (r) A court appointed special advocate, as defined in ORS 419A.004.
- 8 (s) A child care provider registered or certified under ORS 657A.030 and 657A.250 to 657A.450.
- 9 (t) Member of the Legislative Assembly.
- 10 **(u) An operator of a registered exempt tracked program under section 5 of this 2009 Act.**
- 11 (4) "Law enforcement agency" means:
- 12 (a) Any city or municipal police department.
- 13 (b) Any county sheriff's office.
- 14 (c) The Oregon State Police.
- 15 (d) A county juvenile department.

16 **SECTION 8. (1) Section 5 of this 2009 Act and the amendments to ORS 419B.005, 657A.030,**
17 **657A.250 and 657A.275 by sections 1 to 3 and 7 of this 2009 Act apply to persons operating an**
18 **exempt tracked program on or after the operative date specified in section 9 of this 2009 Act.**

19 **(2) A person who is operating a program that would qualify as an exempt tracked pro-**
20 **gram under section 5 of this 2009 Act on the operative date specified in section 9 of this 2009**
21 **Act must register the program not later than 90 days after the operative date specified in**
22 **section 9 of this 2009 Act.**

23 **SECTION 9. Section 5 of this 2009 Act and the amendments to ORS 419B.005, 657A.030,**
24 **657A.250 and 657A.275 by sections 1 to 3 and 7 of this 2009 Act become operative on July 1,**
25 **2010.**

26 **SECTION 10. The Child Care Division of the Employment Department may take any**
27 **action before the operative date specified in section 9 of this 2009 Act necessary to enable**
28 **the division to implement the provisions of section 5 of this 2009 Act and the amendments**
29 **to ORS 419B.005, 657A.030, 657A.250 and 657A.275 by sections 1 to 3 and 7 of this 2009 Act on**
30 **and after the operative date specified in section 9 of this 2009 Act.**

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