

A-Engrossed
House Bill 3487

Ordered by the House May 19
Including House Amendments dated May 19

Sponsored by Representative BOONE; Representatives BAILEY, BARKER, BARNHART, BARTON, BUCKLEY, DEMBROW, D EDWARDS, GALIZIO, GARRETT, GELSER, GREENLICK, HARKER, HOLVEY, HUFFMAN, HUNT, KAHL, MATTHEWS, NATHANSON, NOLAN, OLSON, READ, ROBLAN, SCHAUFLE, TOMEI, WHISNANT, WITT, Senators BONAMICI, BOQUIST, DINGFELDER, JOHNSON, MONNES ANDERSON, MONROE, MORRISSETTE, MORSE, ROSENBAUM, SCHRADER, VERGER, WINTERS

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.

Modifies definition of "child care facility" [*to include preschool facility and delete provision regarding number of hours of care provided per day.*] **and creates definitions for "preschool recorded program" and "record" for purposes related to regulation of child care facilities.**

Creates provisions relating to operation and regulation of preschool recorded programs, including procedure by which preschool recorded program may obtain recording. Imposes maximum civil penalty of \$100 on person who violates specified provision.

A BILL FOR AN ACT

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

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

5 **SECTION 1.** ORS 657A.250 is amended to read:

6 657A.250. As used in ORS 657A.030 and 657A.250 to 657A.450, unless the context requires oth-
7 erwise:

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

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

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

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

18 (a) In the home of the child;

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

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

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

23 (e) By providers of medical services;

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 (f) By a babysitter;

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

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

4 or

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

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

10 (a) [*Facility providing care that is primarily educational, unless provided to a preschool child for*
11 *more than four hours a day*] **Preschool recorded program.**

12 (b) Facility providing care **for school-age children** that is primarily [*supervised training in a*
13 *specific subject, including but not limited to dancing, drama, music or religion.*] **a single enrichment**
14 **activity, for eight hours or less a week.**

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

17 (d) Facility operated by:

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

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

20 (C) A governmental agency.

21 (e) Residential facility licensed under ORS 443.400 to 443.455.

22 (f) Babysitters.

23 (g) Facility operated as a parent cooperative for no more than four hours a day.

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

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

27 (7) "Family" has the meaning given that term in ORS 329.145.

28 (8) "Occasional" means that care is provided for no more than 70 days in any calendar year.

29 (9) "Parent cooperative" means a child care program in which:

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

31 (b) Membership in the cooperative includes parents;

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

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

35 **(10) "Preschool recorded program" means a facility providing care for preschool children**
36 **that is primarily educational for four hours or less per day and where no child is present at**
37 **the facility for more than four hours per day.**

38 **(11) "Record" means the record that is issued under section 4 of this 2009 Act to a pre-**
39 **school recorded program.**

40 [(10)] **(12) "Registration" means the registration that is issued under ORS 657A.330 by the Child**
41 **Care Division to a family child care home where care is provided in the family living quarters of**
42 **the provider's home.**

43 [(11)] **(13) "School age" means of an age eligible to be enrolled in the first grade or above and,**
44 **during the months of summer vacation from school, means of an age eligible to be enrolled in first**
45 **grade or above in the next school year.**

1 **SECTION 2.** ORS 657A.275 is amended to read:

2 657A.275. (1) **The Child Care Division of the Employment Department shall adopt rules**
3 **establishing fees for certification, registration and recording under ORS 657A.250 to 657A.450.**

4 [(1)] (2) Subject to prior approval of the Oregon Department of Administrative Services and a
5 report to the Legislative Assembly prior to adopting the fees and charges, the fees and charges es-
6 tablished under ORS 181.534, 657A.030 and 657A.250 to 657A.450 may not exceed the cost of ad-
7 ministering the program of the [*Child Care Division of the Employment Department*] **division**
8 pertaining to the purpose for which the fee is established, as authorized by the Legislative Assembly
9 within the budget of the division.

10 [(2)] (3) Notwithstanding subsection [(1)] (2) of this section and any other provision of this
11 chapter, the following fees established by the division under ORS 657A.030 and 657A.250 to 657A.450
12 may not exceed:

13 (a) For Certified Family Child Care Home Initial Certification, \$25;

14 (b) For Certified Family Child Care Home Annual Fee Per Certified Space, \$2;

15 (c) For Child Care Center Initial Certification, \$100;

16 (d) For Child Care Center Annual Fee Per Certified Space, \$2;

17 (e) For Registered Family Child Care Home Registration, \$30;

18 **(f) For Preschool Recorded Program Recording, \$20;**

19 [(f)] (g) For administering a class on child care abuse and neglect issues, \$10; and

20 [(g)] (h) For enrollment in the Criminal History Registry, the cost of administering the program,
21 including fees for:

22 (A) Duplicate enrollment in the Criminal History Registry;

23 (B) Law Enforcement Data System criminal records check; and

24 (C) Federal Bureau of Investigation fingerprint check.

25 **SECTION 3. Section 4 of this 2009 Act is added to and made a part of ORS 657A.250 to**
26 **657A.450.**

27 **SECTION 4. (1) A person operating a preschool recorded program may not operate the**
28 **program without performing criminal background checks for all staff and volunteers and**
29 **becoming recorded with the Child Care Division of the Employment Department as provided**
30 **in this section.**

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

35 (3) **The division shall issue a record to a person operating a preschool recorded program**
36 **if the division determines that the applicant meets the requirements of ORS 657A.250 to**
37 **657A.450 and the rules adopted pursuant to ORS 657A.250 to 657A.450 and subsection (9) of**
38 **this section.**

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

41 (5) **A record authorizes operation of the preschool recorded program only on the prem-**
42 **ises described in the record and only by the person named in the record.**

43 (6) **The division shall create and maintain a database of preschool recorded programs**
44 **recorded under this section and shall update the database annually. The database shall in-**
45 **clude, but need not be limited to, the following information:**

1 (a) Name and address of the program;

2 (b) Name of operator; and

3 (c) Significant program information, as determined by the division by rule.

4 (7) A preschool recorded program recorded under this section must post, and provide
5 parents with, a notice that the preschool recorded program is not certified under ORS
6 657A.280 or registered under ORS 657A.330.

7 (8) An initial application or renewal application for recording of a preschool recorded
8 program may be denied, revoked or suspended, if the division finds:

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

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

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

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

17 **SECTION 5.** ORS 657A.390 is amended to read:

18 657A.390. (1) Whenever an authorized representative of the Child Care Division is advised or
19 has reason to believe that child care that is subject to regulation by the division is being provided
20 without a certification, [*or*] registration **or record**, the authorized representative may visit and
21 conduct an on-site investigation of the premises of the facility at any reasonable time to determine
22 whether the facility is subject to the requirements of ORS 181.537, 657A.030 and 657A.250 to
23 657A.450.

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

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

32 (4) Any state agency that receives a complaint about a certified or registered child care facility
33 **or a preschool recorded program** shall notify the Child Care Division about the complaint and any
34 subsequent action taken by the state agency based on that complaint.

35 (5) The director and operator of a child care facility **or a preschool recorded program** shall
36 permit an authorized representative of the division to inspect records of the facility **or program** and
37 shall furnish promptly reports and information required by the division.

38 **SECTION 6.** ORS 419B.005 is amended to read:

39 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

40 (1)(a) “Abuse” means:

41 (A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child
42 which has been caused by other than accidental means, including any injury which appears to be
43 at variance with the explanation given of the injury.

44 (B) Any mental injury to a child, which shall include only observable and substantial impairment
45 of the child’s mental or psychological ability to function caused by cruelty to the child, with due

1 regard to the culture of the child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (b) Dentist.

31 (c) School employee.

32 (d) Licensed practical nurse or registered nurse.

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

37 (f) Peace officer.

38 (g) Psychologist.

39 (h) Member of the clergy.

40 (i) Licensed clinical social worker.

41 (j) Optometrist.

42 (k) Chiropractor.

43 (L) Certified provider of foster care, or an employee thereof.

44 (m) Attorney.

45 (n) Naturopathic physician.

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

13 **SECTION 7. (1) Section 4 of this 2009 Act and the amendments to ORS 419B.005, 657A.250**
14 **and 657A.275 by sections 1, 2 and 6 of this 2009 Act apply to persons operating a preschool**
15 **recorded program on or after the operative date specified in section 8 of this 2009 Act.**

16 **(2) A person who is operating a program that would qualify as a preschool recorded**
17 **program under section 4 of this 2009 Act on the operative date specified in section 8 of this**
18 **2009 Act must record the program not later than 90 days after the operative date specified**
19 **in section 8 of this 2009 Act.**

20 **SECTION 8. Section 4 of this 2009 Act and the amendments to ORS 419B.005, 657A.250**
21 **and 657A.275 by sections 1, 2 and 6 of this 2009 Act become operative on July 1, 2010.**

22 **SECTION 9. The Child Care Division of the Employment Department may take any action**
23 **before the operative date specified in section 8 of this 2009 Act necessary to enable the divi-**
24 **sion to implement the provisions of section 4 of this 2009 Act and the amendments to ORS**
25 **419B.005, 657A.250 and 657A.275 by sections 1, 2 and 6 of this 2009 Act on and after the op-**
26 **erative date specified in section 8 of this 2009 Act.**

27