

SENATE AMENDMENTS TO RESOLVE CONFLICTS TO A-ENGROSSED HOUSE BILL 3487

By COMMITTEE ON RULES

June 10

1 On page 6 of the printed A-engrossed bill, delete lines 13 through 26 and insert:

2 **“SECTION 7. If House Bill 2987 becomes law, section 1 of this 2009 Act (amending ORS**
3 **657A.250) is repealed and ORS 657A.250, as amended by section 1, chapter __, Oregon Laws**
4 **2009 (Enrolled House Bill 2987), is amended to read:**

5 “657A.250. As used in ORS 657A.030 and 657A.250 to 657A.450, unless the context requires oth-
6 erwise:

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

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

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

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

17 “(a) In the home of the child;

18 “(b) By the child’s parent, guardian, or person acting in loco parentis;

19 “(c) By a person related to the child by blood or marriage within the fourth degree as deter-
20 mined by civil law;

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

22 “(e) By providers of medical services;

23 “(f) By a babysitter;

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

25 “(h) By a person who cares for no more than three children other than the person’s own chil-
26 dren; or

27 “(i) By a person who is a member of the child’s extended family, as determined by the division
28 on a case-by-case basis.

29 “(5) ‘Child care facility’ means any facility that provides child care to children, including a day
30 nursery, nursery school, child care center, certified or registered family child care home or similar
31 unit operating under any name, but not including any:

32 “(a) [*Facility providing care for preschool children that is primarily educational, for four hours*
33 *or less a day*] **Preschool recorded program.**

34 “(b) Facility providing care for school-age children that is primarily a single enrichment activity,
35 for eight hours or less a week.

1 “(c) Facility providing care that is primarily group athletic or social activities sponsored by or
2 under the supervision of an organized club or hobby group.

3 “(d) Facility operated by:

4 “(A) A school district as defined in ORS 332.002;

5 “(B) A political subdivision of this state; or

6 “(C) A governmental agency.

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

8 “(f) Babysitters.

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

10 “(h) Facility providing care while the child’s parent remains on the premises and is engaged in
11 an activity offered by the facility or in other nonwork activity.

12 “(i) Facility operated as a school-age recorded program.

13 “(6) ‘Division’ means the Child Care Division of the Employment Department.

14 “(7) ‘Family’ has the meaning given that term in ORS 329.145.

15 “(8) ‘Occasional’ means that care is provided for no more than 70 days in any calendar year.

16 “(9) ‘Parent cooperative’ means a child care program in which:

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

18 “(b) Membership in the cooperative includes parents;

19 “(c) There are written policies and procedures; and

20 “(d) A board of directors that includes parents of the children cared for by the cooperative
21 controls the policies and procedures of the program.

22 “**(10) ‘Preschool recorded program’ means a facility providing care for preschool children**
23 **that is primarily educational for four hours or less per day and where no child is present at**
24 **the facility for more than four hours per day.**

25 “[10] (11) ‘Record’ means the record that is issued under [section 4 of this 2009 Act] **section 4**
26 **of this 2009 Act to a preschool recorded program or under section 4, chapter __, Oregon**
27 **Laws 2009 (Enrolled House Bill 2987), to a school-age recorded program.**

28 “[11] (12) ‘Registration’ means the registration that is issued under ORS 657A.330 by the Child
29 Care Division to a family child care home where care is provided in the family living quarters of
30 the provider’s home.

31 “[12] (13) ‘School age’ means of an age eligible to be enrolled in the first grade or above and,
32 during the months of summer vacation from school, means of an age eligible to be enrolled in first
33 grade or above in the next school year.

34 “[13] (14) ‘School-age recorded program’ means a program for school-age children:

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

36 “(b) That is not required to be certified under ORS 657A.280 or registered under ORS 657A.330;
37 and

38 “(c) In which youth development activities are provided to children during hours that school is
39 not in session and does not take the place of a parent’s care.

40 “[14] (15) ‘Youth development activities’ means care, supervision or guidance that is intended
41 for enrichment, including but not limited to teaching skills or proficiency in physical, social or ed-
42 ucational activities such as tutoring, music lessons, social activities, sports and recreational activ-
43 ities.

44 “**SECTION 8. If House Bill 2987 becomes law, section 2 of this 2009 Act (amending ORS**
45 **657A.275) is repealed and ORS 657A.275, as amended by section 2, chapter __, Oregon Laws**

1 **2009 (Enrolled House Bill 2987), is amended to read:**

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

4 “(2) Subject to prior approval of the Oregon Department of Administrative Services and a report
5 to the Legislative Assembly prior to adopting the fees and charges, the fees and charges established
6 under ORS 181.534, 657A.030 and 657A.250 to 657A.450 may not exceed the cost of administering the
7 program of the division pertaining to the purpose for which the fee is established, as authorized by
8 the Legislative Assembly within the budget of the division.

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

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

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

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

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

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

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

18 “[*f*] **(g)** For School-Age Recorded Program Recording, \$20;

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

20 “[*h*] **(i)** 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 9. If House Bill 2987 becomes law, section 5 of this 2009 Act (amending ORS**
26 **657A.390) is repealed and ORS 657A.390, as amended by section 5, chapter __, Oregon Laws**
27 **2009 (Enrolled House Bill 2987), is amended to read:**

28 “657A.390. (1) Whenever an authorized representative of the Child Care Division is advised or
29 has reason to believe that child care that is subject to regulation by the division is being provided
30 without a certification, registration or record, the authorized representative may visit and conduct
31 an on-site investigation of the premises of the facility at any reasonable time to determine whether
32 the facility is subject to the requirements of ORS 181.537, 657A.030 and 657A.250 to 657A.450.

33 “(2) At any reasonable time, an authorized representative of the Child Care Division may con-
34 duct an on-site investigation of the premises of any certified or registered child care facility to de-
35 termine whether the child care facility is in conformity with ORS 181.537, 657A.030 and 657A.250
36 to 657A.450 and the rules promulgated pursuant to ORS 181.534, 181.537, 657A.030 and 657A.250 to
37 657A.450.

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

42 “(4) Any state agency that receives a complaint about a certified or registered child care
43 facility, **a preschool recorded program** or a school-age recorded program shall notify the Child
44 Care Division about the complaint and any subsequent action taken by the state agency based on
45 that complaint.

1 “(5) The director and operator of a child care facility, a **preschool recorded program** or a
2 school-age recorded program shall permit an authorized representative of the division to inspect
3 records of the facility or program and shall furnish promptly reports and information required by
4 the division.

5 “**SECTION 10. If House Bill 2987 becomes law, section 6 of this 2009 Act (amending ORS**
6 **419B.005) is repealed and ORS 419B.005, as amended by section 6, chapter __, Oregon Laws**
7 **2009 (Enrolled House Bill 2987), is amended to read:**

8 “419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

9 “(1)(a) ‘Abuse’ means:

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

13 “(B) Any mental injury to a child, which shall include only observable and substantial impair-
14 ment of the child’s mental or psychological ability to function caused by cruelty to the child, with
15 due regard to the culture of the child.

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

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

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

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

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

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

32 “(G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm
33 to the child’s health or welfare.

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

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

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

39 “(b) ‘Abuse’ does not include reasonable discipline unless the discipline results in one of the
40 conditions described in paragraph (a) of this subsection.

41 “(2) ‘Child’ means an unmarried person who is under 18 years of age.

42 “(3) ‘Public or private official’ means:

43 “(a) Physician, including any intern or resident.

44 “(b) Dentist.

45 “(c) School employee.

1 “(d) Licensed practical nurse or registered nurse.

2 “(e) Employee of the Department of Human Services, State Commission on Children and Families, Child Care Division of the Employment Department, the Oregon Youth Authority, a county

3 health department, a community mental health and developmental disabilities program, a county juvenile department, a licensed child-caring agency or an alcohol and drug treatment program.

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6 “(f) Peace officer.

7 “(g) Psychologist.

8 “(h) Member of the clergy.

9 “(i) Licensed clinical social worker.

10 “(j) Optometrist.

11 “(k) Chiropractor.

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

13 “(m) Attorney.

14 “(n) Naturopathic physician.

15 “(o) Licensed professional counselor.

16 “(p) Licensed marriage and family therapist.

17 “(q) Firefighter or emergency medical technician.

18 “(r) A court appointed special advocate, as defined in ORS 419A.004.

19 “(s) A child care provider registered or certified under ORS 657A.030 and 657A.250 to 657A.450.

20 “(t) Member of the Legislative Assembly.

21 “(u) **An operator of a preschool recorded program under section 4 of this 2009 Act.**

22 “[*(u)*] (v) An operator of a school-age recorded program under [*section 4 of this 2009 Act*] **section**

23 **4, chapter __, Oregon Laws 2009 (Enrolled House Bill 2987).**

24 “(4) ‘Law enforcement agency’ means:

25 “(a) Any city or municipal police department.

26 “(b) Any county sheriff’s office.

27 “(c) The Oregon State Police.

28 “(d) A county juvenile department.

29 “**SECTION 11. (1) Section 4 of this 2009 Act and the amendments to ORS 419B.005,**

30 **657A.250 and 657A.275 by sections 1, 2, 6, 7, 8 and 10 of this 2009 Act apply to persons operating a preschool recorded program on or after the operative date specified in section 12 of**

31 **this 2009 Act.**

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33 “**(2) A person who is operating a program that would qualify as a preschool recorded**

34 **program under section 4 of this 2009 Act on the operative date specified in section 12 of this**

35 **2009 Act must record the program not later than 90 days after the operative date specified**

36 **in section 12 of this 2009 Act.**

37 “**SECTION 12. Section 4 of this 2009 Act and the amendments to ORS 419B.005, 657A.250**

38 **and 657A.275 by sections 1, 2, 6, 7, 8 and 10 of this 2009 Act become operative on July 1, 2010.**

39 “**SECTION 13. The Child Care Division of the Employment Department may take any**

40 **action before the operative date specified in section 12 of this 2009 Act necessary to enable**

41 **the division to implement the provisions of section 4 of this 2009 Act and the amendments**

42 **to ORS 419B.005, 657A.250 and 657A.275 by sections 1, 2, 6, 7, 8 and 10 of this 2009 Act on and**

43 **after the operative date specified in section 12 of this 2009 Act.”.**

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