

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 312

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO DAYCARE FACILITIES; AMENDING SECTION 39-1104, IDAHO CODE, TO
2 REQUIRE DISASTER AND EMERGENCY PLANS FOR DAYCARE FACILITIES, TO PROVIDE
3 FOR AN ANNUAL UNANNOUNCED HEALTH INSPECTION, AND TO MAKE TECHNICAL COR-
4 RECTIONS; AMENDING SECTION 39-1105, IDAHO CODE, TO REVISE PROVISIONS
5 REGARDING CRIMINAL HISTORY CHECKS; AMENDING SECTION 39-1106, IDAHO
6 CODE, TO REMOVE A PROVISION REGARDING CERTAIN LIMITED CRIMINAL HISTORY
7 CHECKS; AMENDING SECTION 39-1108, IDAHO CODE, TO REVISE PROVISIONS RE-
8 GARDING A LOCAL OPTION FOR REGULATION OR LICENSING OF DAYCARE SERVICES;
9 AMENDING SECTION 39-1109, IDAHO CODE, TO REVISE PROVISIONS REGARDING
10 SAFETY STANDARDS; AMENDING SECTION 39-1110, IDAHO CODE, TO REQUIRE A
11 SAFE SLEEP ENVIRONMENT FOR INFANTS; AMENDING SECTION 39-1112A, IDAHO
12 CODE, TO REVISE PROVISIONS REGARDING ACCESS TO INFORMATION; AMENDING
13 SECTION 39-1113, IDAHO CODE, TO REVISE PROVISIONS REGARDING DENIAL,
14 SUSPENSION, OR REVOCATION OF A LICENSE; AMENDING SECTION 39-1115, IDAHO
15 CODE, TO REMOVE A PROVISION REGARDING CONDUCT CONSTITUTING A MISDE-
16 MEANOR; AND AMENDING SECTION 39-1119, IDAHO CODE, TO REVISE TRAINING
17 REQUIREMENTS.
18

19 Be It Enacted by the Legislature of the State of Idaho:

20 SECTION 1. That Section 39-1104, Idaho Code, be, and the same is hereby
21 amended to read as follows:

22 39-1104. APPLICATION FOR LICENSE -- FIRE SAFETY AND HEALTH INSPEC-
23 TIONS. (1) Application. A person who wishes to operate a daycare facility
24 shall be a minimum of eighteen (18) years of age, shall submit an application
25 on the forms provided by the department, and shall obtain the required cer-
26 tificates of inspection as provided herein.

27 (2) Inspections. A person who wishes to operate a daycare facility
28 shall submit:

29 (a) ~~a~~A certificate of a fire inspection of the proposed center, con-
30 ducted by a fire department or fire district official, establishing
31 compliance with the minimum standards specified in section 39-1109,
32 Idaho Code; ~~and~~

33 (b) ~~a~~A health and safety inspection of the proposed facility, conducted
34 by a qualified inspector as designated by the department, establishing
35 compliance with the minimum standards specified in sections 39-1109 and
36 39-1110, Idaho Code; and

37 (c) A disaster and emergency plan that includes:

38 (i) Evacuation, relocation, shelter-in-place, and lockdown pro-
39 cedures and procedures for communication and reunification with
40 families;

41 (ii) Procedures for staff and volunteer emergency preparedness
42 training and practice drills; and

1 (iii) Guidelines for continuation of daycare services in the pe-
 2 riod following the emergency or disaster.

3 (3) Continued compliance and reinspection. Daycare facilities shall
 4 receive an annual unannounced health inspection and are required at all
 5 times to maintain compliance with the safety and health requirements iden-
 6 tified in this chapter. The department may cause any daycare facility to be
 7 reinspected during the term of a license for safety and health compliance as
 8 determined necessary by the department. No charge for any reinspection af-
 9 ter the initial inspection in any license period shall be made to the daycare
 10 facility.

11 SECTION 2. That Section 39-1105, Idaho Code, be, and the same is hereby
 12 amended to read as follows:

13 39-1105. CRIMINAL HISTORY CHECKS. (1) ~~The department shall obtain~~
 14 ~~from the owner a criminal history check on the~~ All owners, operators, and
 15 employees of a daycare facility who have direct contact with children, and
 16 ~~on~~ all other individuals thirteen (13) years of age or older who ~~have unsu-~~
 17 ~~pervised direct contact with children or~~ are regularly on the premises of a
 18 daycare facility shall complete and pass a criminal history background check
 19 that includes fingerprints in conformance with section 56-1004A, Idaho
 20 Code. The criminal history check shall include the following for all persons
 21 subject to the provisions of this section who are eighteen (18) years of age
 22 or older:

- 23 ~~(a) Statewide criminal identification bureau;~~
- 24 ~~(b) Federal bureau of investigation (FBI) criminal history;~~
- 25 ~~(c) National crime information center; and~~
- 26 ~~(d) Statewide child abuse registry.~~

27 (2) Criminal history checks on those persons under eighteen (18) years
 28 of age shall include a check of the juvenile justice records of adjudications
 29 of the magistrate division of the district court, county probation services
 30 and department records as authorized by the minor and his parent or guardian.

31 (3) Notwithstanding the provisions of section 39-1103, Idaho Code,
 32 which provide for exemption from the provisions of this chapter, any per-
 33 son who owns, operates or is employed by a private school for educational
 34 purposes for children four (4) through six (6) years of age or a private
 35 kindergarten shall comply with the provisions of this section.

36 (4) Criminal history checks must be completed according to 45 CFR
 37 98.43.

38 SECTION 3. That Section 39-1106, Idaho Code, be, and the same is hereby
 39 amended to read as follows:

40 39-1106. ISSUANCE OF LICENSE -- RENEWAL. (1) Upon receipt of the ap-
 41 plication, inspection certificates and the criminal history, the department
 42 shall, upon a finding of compliance with the minimum standards set forth in
 43 this chapter, issue a basic daycare license to the applicant. The license
 44 shall be valid for two (2) years and shall be posted in a conspicuous place at
 45 the daycare facility.

46 (2) The department shall send a renewal application to the owner of the
 47 daycare facility no later than ninety (90) days prior to the expiration of

1 an existing license. The owner shall submit to the department the renewal
 2 application with the required renewal fee and a criminal history check prior
 3 to the expiration of the existing license. A complete criminal history check
 4 shall be provided for any new persons requiring a criminal history check in
 5 accordance with section 39-1105, Idaho Code. ~~A limited criminal history~~
 6 ~~check shall be provided for those persons eighteen (18) years of age or older~~
 7 ~~who where previously checked. The limited criminal history check shall in-~~
 8 ~~clude:~~

9 ~~(a) Statewide criminal identification bureau;~~

10 ~~(b) National crime information center; and~~

11 ~~(c) Statewide child abuse registry.~~

12 (3) Criminal history checks on those persons under eighteen (18) years
 13 of age shall include a check of the juvenile justice records of adjudications
 14 of the magistrate division of the district court, county probation services
 15 and department records as authorized by the minor and his parent or guardian.

16 (4) The department shall maintain a list of all licensees for public
 17 use.

18 (5) Submission of a renewal application, fee and required criminal
 19 history check shall entitle the daycare facility owner to continue daycare
 20 services, subject to action by the department pursuant to section 39-1113,
 21 Idaho Code.

22 SECTION 4. That Section 39-1108, Idaho Code, be, and the same is hereby
 23 amended to read as follows:

24 39-1108. LOCAL OPTION. (1) If a city or county, within its respective
 25 jurisdiction, has adopted an ordinance for regulation and/or licensing of
 26 daycare services, then the provisions of this chapter shall not apply with
 27 such city or county unless the ordinance is subsequently repealed. To qual-
 28 ify for exemption, regulation ~~of centers~~ must include a criminal history
 29 background check at least as stringent as the check required in section
 30 39-1105, Idaho Code, compliance with safety standards at least as stringent
 31 as required in section 39-1109, Idaho Code, compliance with health standards
 32 at least as stringent as required in section 39-1110, Idaho Code, compliance
 33 with immunization requirements at least as stringent as required in section
 34 39-1118, Idaho Code, and compliance with training requirements at least as
 35 stringent as required in section 39-1119, Idaho Code. Cities and counties
 36 are hereby granted authority and may adopt ordinances for regulation and/or
 37 licensing of daycare services.

38 (2) For purposes of determining whether or not local options are more
 39 stringent than as required in section 39-1109, Idaho Code, a city or county
 40 within its respective jurisdiction may, but is not required to, count a child
 41 or children of a provider for purposes of determining child:staff ratios.

42 SECTION 5. That Section 39-1109, Idaho Code, be, and the same is hereby
 43 amended to read as follows:

44 39-1109. SAFETY STANDARDS. (1) Daycare facilities, owners and opera-
 45 tors shall comply with the following safety standards in the area of the day-
 46 care facility in which daycare is provided:

47 (a) Adequate fire and smoke alarms;

1 (b) A functional telephone located on the daycare premises during the
2 hours of operation;

3 (c) Adequate fire extinguishers;

4 (d) Adequate exits;

5 (e) Firearms or other weapons ~~which that~~ are stored on the premises of a
6 daycare facility must be kept in a locked container that is inaccessible
7 to children while daycare attendees are present;

8 (f) Pools, hot tubs, ponds and other bodies of water that are on the day-
9 care facility premises must provide the following safeguards:

10 (i) The area surrounding the body of water must be fenced and
11 locked in a manner that prevents access by children and meets the
12 following requirements:

13 1. The fence must be at least four (4) feet high with no ver-
14 tical opening more than four (4) inches wide, be designed so
15 that a young child cannot climb or squeeze under or through
16 the fence, surround all sides of the pool and have a gate that
17 is self-closing and that has a self-latching mechanism in
18 proper working order out of the reach of young children;

19 2. If the house forms one (1) side of the barrier for the
20 pool, all doors that provide unrestricted access to the pool
21 must have alarms that produce an audible sound when the door
22 is opened;

23 3. Furniture or other large objects must not be left near the
24 fence in a manner that would enable a child to climb on the
25 furniture or other large object and gain access to the pool;
26 ~~and~~

27 (ii) If the area surrounding a pool, hot tub, pond or other body of
28 water is not fenced and locked, there must be a secured protective
29 covering that will not allow access by a child;

30 (iii) Wading pools must be empty when not in use;

31 (iv) Children must be under direct supervision of at least one (1)
32 adult employee while using a pool, hot tub, pond or other body of
33 water; and

34 (v) A minimum of a four (4) foot high fence must be present that
35 prevents access from the daycare facility premises if the daycare
36 premises are adjacent to a body of water; ~~and~~

37 (g) The owner or operator of a daycare facility shall ensure that at all
38 times when a child or children are present, ~~at least one (1) all~~ adult
39 employees on the premises ~~has~~ have current certification in pediatric
40 rescue breathing and ~~first-aid~~ first aid treatment from a certified in-
41 structor; and

42 (h) The owner or operator of a daycare facility who transports children
43 as part of childcare operations must operate any vehicle safely and
44 legally, using child safety restraints and seat belts as required by
45 state law and local ordinance.

46 (2) No fire standards developed pursuant to this chapter shall be more
47 stringent than the standards contained in the International Fire Code, as
48 adopted by Idaho.

49 (3) At least one (1) adult employee must be present at all times when a
50 child or children are in attendance.

1 (4) (a) The maximum allowable child:staff ratio shall be a maximum of
2 twelve (12) points per staff member using the following point system:

3 (i) Each child in attendance under the age of twenty-four (24)
4 months shall equal two (2) points.

5 (ii) Each child in attendance from twenty-four (24) months to
6 under thirty-six (36) months of age shall equal one and one-half
7 (1 1/2) points.

8 (iii) Each child in attendance from thirty-six (36) months to un-
9 der five (5) years of age shall equal one (1) point.

10 (iv) Each child in attendance from five (5) years to under thir-
11 teen (13) years of age shall equal one-half (1/2) point.

12 (b) Each child in attendance shall be counted by the department for pur-
13 poses of calculating maximum allowable points, counting the number of
14 children in attendance and for determining compliance with child:staff
15 ratios.

16 SECTION 6. That Section 39-1110, Idaho Code, be, and the same is hereby
17 amended to read as follows:

18 39-1110. HEALTH STANDARDS. Daycare facilities shall comply with the
19 following health standards:

20 (1) Food for use in daycare facilities shall be prepared and served in
21 a sanitary manner with sanitized utensils and on surfaces that have been
22 cleaned, rinsed and sanitized prior to use to prevent contamination;

23 (2) All food that is to be served in daycare facilities shall be stored
24 in such a manner that it is protected from potential contamination;

25 (3) Diaper changing shall be conducted in such a manner as to prevent
26 the spread of communicable diseases;

27 (4) Sleeping and play areas, restrooms and fixtures shall be maintained
28 in a safe, sanitary condition;

29 (5) Children and facility personnel shall be provided with individ-
30 ual or disposable towels for handwashing and the handwashing area shall be
31 equipped with soap and hot and cold running water;

32 (6) The water supply, where the source is other than a public water sys-
33 tem, must be approved in accordance with the rules adopted by the department;

34 (7) Medicines, cleaning supplies and other hazardous substances must
35 be stored out of reach of children;

36 (8) Smoking or alcohol consumption is prohibited on the premises of a
37 daycare facility during the daycare facility's hours of operation; ~~and~~

38 (9) Representatives of health and safety inspectors shall not be denied
39 access to a daycare facility during hours of operation for purposes of con-
40 trol of communicable disease or inspection; ~~and~~

41 (10) Infants up to age twelve (12) months must be placed in a safe sleep
42 environment consistent with recommendations by the American academy of pe-
43 diatrics.

44 SECTION 7. That Section 39-1112A, Idaho Code, be, and the same is hereby
45 amended to read as follows:

46 39-1112A. ACCESS TO INFORMATION. The department shall make available
47 ~~to daycare consumers an informational pamphlet, created by the department,~~

1 ~~to educate daycare consumers with informational tools useful in identifying~~
 2 ~~quality daycare. The department may deliver pamphlets during direct contact~~
 3 ~~with daycare consumers, or by delivering pamphlets to daycare providers dur-~~
 4 ~~ing the licensing or renewal process, during inspections or through other~~
 5 ~~appropriate means. The pamphlet shall include:~~

6 ~~(1) The importance of parents being vigilant for the safety, emotional~~
 7 ~~health and training of their children that cannot be replaced by any other~~
 8 ~~institution or individual;~~

9 ~~(2) The basic characteristics of a quality daycare;~~

10 ~~(3) A strong suggestion to parents to inquire about criminal history~~
 11 ~~checks for any provider in a family daycare home;~~

12 ~~(4) A link to a department approved website that contains more detailed~~
 13 ~~information; and~~

14 ~~(5) A department or other phone number for parents to report unsafe,~~
 15 ~~dangerous or harmful activities within the daycare parents, the general pub-~~
 16 ~~lic, and providers a hotline or similar reporting process, per 45 CFR 98.32~~
 17 ~~and 98.33, for access to information regarding parental complaints and con-~~
 18 ~~sumer education topics.~~

19 SECTION 8. That Section 39-1113, Idaho Code, be, and the same is hereby
 20 amended to read as follows:

21 39-1113. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (1) A license
 22 may be denied, suspended, or revoked by the department if the department
 23 finds that the applicant or licensee does not comply with the provisions of
 24 45 CFR 98.43 or this chapter.

25 ~~(2) No person who pleads guilty to, has been found guilty of or received~~
 26 ~~a withheld judgment for any offense involving neglect or any physical injury~~
 27 ~~to, or other abuse of a child including the following offenses or a similar~~
 28 ~~provision in another jurisdiction, shall be eligible for a license under the~~
 29 ~~provisions of this chapter:~~

30 ~~(a) Felony injury of a child, section 18-1501, Idaho Code.~~

31 ~~(b) The sexual abuse of a child under sixteen years of age, section~~
 32 ~~18-1506, Idaho Code.~~

33 ~~(c) The ritualized abuse of a child under eighteen years of age, section~~
 34 ~~18-1506A, Idaho Code.~~

35 ~~(d) The sexual exploitation of a child, section 18-1507, Idaho Code.~~

36 ~~(e) Sexual abuse of a child under the age of sixteen years, section~~
 37 ~~18-1506, Idaho Code.~~

38 ~~(f) Lewd conduct with a child under the age of sixteen years, section~~
 39 ~~18-1508, Idaho Code.~~

40 ~~(g) The sale or barter of a child for adoption or other purposes, sec-~~
 41 ~~tion 18-1511, Idaho Code.~~

42 ~~(h) Murder in any degree, section 18-4001 or 18-4003, Idaho Code.~~

43 ~~(i) Assault with intent to murder, section 18-4015, Idaho Code.~~

44 ~~(j) Voluntary manslaughter, section 18-4006, Idaho Code.~~

45 ~~(k) Rape, section 18-6101, Idaho Code.~~

46 ~~(l) Incest, section 18-6602, Idaho Code.~~

47 ~~(m) Forcible sexual penetration by use of foreign object, section~~
 48 ~~18-6608, Idaho Code.~~

- 1 ~~(n) Abuse, neglect or exploitation of a vulnerable adult, section~~
2 ~~18-1505, Idaho Code.~~
- 3 ~~(o) Aggravated, first degree, second degree and third degree arson,~~
4 ~~sections 18-801 through 18-805, Idaho Code.~~
- 5 ~~(p) Crimes against nature, section 18-6605, Idaho Code.~~
- 6 ~~(q) Kidnapping, sections 18-4501 through 18-4503, Idaho Code.~~
- 7 ~~(r) Mayhem, section 18-5001, Idaho Code.~~
- 8 ~~(s) Poisoning, section 18-4014 or 18-5501, Idaho Code.~~
- 9 ~~(t) Robbery, section 18-6501, Idaho Code.~~
- 10 ~~(u) Stalking in the first degree, section 18-7905, Idaho Code.~~
- 11 ~~(v) Video voyeurism, section 18-6609, Idaho Code.~~
- 12 ~~(w) Enticing of children, section 18-1509 or 18-1509A, Idaho Code.~~
- 13 ~~(x) Inducing individuals under eighteen years of age into prostitu-~~
14 ~~tion, section 18-5609, Idaho Code.~~
- 15 ~~(y) Inducing person under eighteen years of age to patronize a prosti-~~
16 ~~tute, section 18-5611, Idaho Code.~~
- 17 ~~(z) Any felony punishable by death or life imprisonment.~~
- 18 ~~(aa) Attempt, section 18-306, Idaho Code, conspiracy, section 18-1701,~~
19 ~~Idaho Code, or accessory after the fact, section 18-205, Idaho Code, to~~
20 ~~commit any of the crimes designated in this subsection.~~
- 21 ~~(3) No person who has pleaded guilty to, been found guilty of or re-~~
22 ~~ceived a withheld judgment for any offense involving neglect or any physi-~~
23 ~~cal injury to, or other abuse of a child, including the following offenses or~~
24 ~~a similar provision in another jurisdiction shall be eligible for a license~~
25 ~~for a period of five (5) years under the provisions of this chapter.~~
- 26 ~~(a) Aggravated assault, section 18-905, Idaho Code.~~
- 27 ~~(b) Aggravated battery, section 18-907(1), Idaho Code.~~
- 28 ~~(c) Burglary, section 18-1401, Idaho Code.~~
- 29 ~~(d) Felony theft, sections 18-2403 and 18-2407(1), Idaho Code.~~
- 30 ~~(e) Forgery of a financial transaction card, section 18-3123, Idaho~~
31 ~~Code.~~
- 32 ~~(f) Fraudulent use of a financial transaction card or number, section~~
33 ~~18-3124, Idaho Code.~~
- 34 ~~(g) Forgery or counterfeiting, chapter 36, title 18, Idaho Code.~~
- 35 ~~(h) Misappropriation of personal identifying information, section~~
36 ~~18-3126, Idaho Code.~~
- 37 ~~(i) Insurance fraud, section 41-293, Idaho Code.~~
- 38 ~~(j) Damage to or destruction of insured property, section 41-294, Idaho~~
39 ~~Code.~~
- 40 ~~(k) Public assistance fraud, section 56-227, Idaho Code.~~
- 41 ~~(l) Provider fraud, section 56-227A, Idaho Code.~~
- 42 ~~(m) Attempted strangulation, section 18-923, Idaho Code.~~
- 43 ~~(n) Attempt, section 18-306, Idaho Code, conspiracy, section 18-1701,~~
44 ~~Idaho Code, or accessory after the fact, section 18-205, Idaho Code, to~~
45 ~~commit any of the crimes designated in this subsection.~~
- 46 ~~(o) Misdemeanor injury to a child, section 18-1501(2), Idaho Code.~~
- 47 (4) A daycare facility license may be denied, suspended, or revoked by
48 the department if the department finds that the daycare facility is not in
49 compliance with the standards provided for in this chapter or criminal ac-
50 tivity that threatens the health or safety of a child.

1 (53) A daycare facility license or privilege to operate a family day-
2 care home shall be denied or revoked if a registered sex offender resides on
3 the premises where daycare services are provided.

4 (64) The denial, suspension, or revocation of a license under this
5 chapter may be administratively appealed ~~to the district court of the county~~
6 ~~in which the affected daycare facility is located and the appeal shall be~~
7 ~~heard de novo in the district court~~ under IDAPA 16.05.03.

8 SECTION 9. That Section 39-1115, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 39-1115. MISDEMEANOR. (1) It shall be a misdemeanor to operate a day-
11 care facility within this state without first obtaining a basic daycare li-
12 cense from the department or to operate a daycare facility without posting a
13 basic daycare license in a conspicuous place. A copy of this chapter shall
14 be available on the premises at all times for staff and parents to read on re-
15 quest.

16 (2) If a daycare facility is found to be operating without a license,
17 the licensing agency may grant a grace period of no more than sixty (60) days
18 to allow the daycare facility to come into compliance with the provisions of
19 this chapter.

20 (3) It shall be a misdemeanor to operate a family daycare home caring
21 for four (4) or more children without obtaining the criminal history check
22 required in section 39-1105, Idaho Code; provided, that in the event of an
23 initial citation for violation of the provisions of this subsection, if a
24 person makes the applications required within twenty (20) days, the com-
25 plaint shall be dismissed. Operation of a family daycare home caring for
26 four (4) or more children after failure to pass a required criminal history
27 check shall be a misdemeanor.

28 ~~(4) It is a misdemeanor for any person to provide daycare services~~
29 ~~if such person has been found guilty in this state's courts, in any other~~
30 ~~state's courts, or in any federal court, of any offense listed under the pro-~~
31 ~~visions of section 39-1113, Idaho Code.~~

32 SECTION 10. That Section 39-1119, Idaho Code, be, and the same is hereby
33 amended to read as follows:

34 39-1119. TRAINING REQUIREMENTS. The owner or operator of a day care
35 center shall ensure that each employee receives ~~four~~ twelve (412) hours of
36 ongoing training every twelve (12) months after the employee's hire date.