

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 11-0320.01 Jane Ritter

HOUSE BILL 11-1145

HOUSE SPONSORSHIP

McCann, Labuda, Levy, Pabon

SENATE SPONSORSHIP

Tochtrop,

House Committees

Education
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING REQUIREMENTS SURROUNDING BACKGROUND CHECKS**
102 **FOR CHILD CARE FACILITIES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The requirements for background checks for any licensed facility, agency, or licensee (facility) are changed to include Colorado bureau of investigation and federal bureau of investigation checks for all potential employees, regardless of the length of time a potential employee has resided in Colorado.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

The bill requires the state department of human services (department) to study the feasibility of a policy to provide to a parent or prospective parent (parent) of a child attending or applying to attend a facility, upon request and for a fee, the results of the fingerprint-based criminal history records check (background check) performed on an employee of a facility. A facility is required to provide to a parent, upon request, access to the clearance letter provided by the department to the facility concerning a facility employee's background check.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 26-6-103.5 (2) (f) (I), (2) (f) (II), (2) (g) (I), and (2)
3 (g) (II), Colorado Revised Statutes, are amended to read:

4 **26-6-103.5. Application of part - guest child care facilities -**
5 **public services short-term child care facilities.** (2) No person or entity
6 shall operate a guest child care facility or a public services short-term
7 child care facility unless the following requirements are met:

8 (f) (I) The guest child care facility or public services short-term
9 child care facility requires all supervisory employees of the guest child
10 care facility or public services short-term child care facility and applicants
11 for supervisory employee positions at the guest child care facility or
12 public services short-term child care facility to obtain a fingerprint-based
13 criminal history check ~~through~~ UTILIZING the Colorado bureau of
14 investigation AND THE FEDERAL BUREAU OF INVESTIGATION and requests
15 the state department to ascertain whether the person being investigated
16 has been convicted of any of the criminal offenses specified in section
17 26-6-104 (7) (a) (I) or whether the person has been determined to have a
18 pattern of misdemeanor convictions as described in section 26-6-104 (7)
19 (a) (I) (E) and the guest child care facility or public services short-term
20 child care facility prohibits the hiring of any such person as a supervisory
21 employee or terminates the employment of any such person as a

1 supervisory employee upon confirmation of such a criminal history;

2 (II) ~~Notwithstanding the provisions of subparagraph (I) of this~~
3 ~~paragraph (f), the guest child care facility or public services short-term~~
4 ~~child care facility requires all supervisory employees and applicants for~~
5 ~~supervisory employee positions who have resided in the state of Colorado~~
6 ~~for fewer than two years to have a federal bureau of investigation~~
7 ~~fingerprint-based criminal history background check through the~~
8 ~~Colorado bureau of investigation and requests the state department to~~
9 ~~ascertain whether the person being investigated has been convicted of any~~
10 ~~of the criminal offenses specified in section 26-6-104 (7) (a) (I) or~~
11 ~~whether the person has been determined to have a pattern of misdemeanor~~
12 ~~convictions as described in section 26-6-104 (7) (a) (I) (E) and the guest~~
13 ~~child care facility or public services short-term child care facility~~
14 ~~prohibits the hiring of any such person as a supervisory employee or~~
15 ~~terminates the employment of any such person as a supervisory employee~~
16 ~~upon confirmation of such a criminal history;~~

17 (g) (I) The guest child care facility or public services short-term
18 child care facility requires all other employees of the guest child care
19 facility or public services short-term child care facility to obtain a
20 fingerprint-based criminal history check ~~through~~ UTILIZING the Colorado
21 bureau of investigation AND THE FEDERAL BUREAU OF INVESTIGATION and
22 requests the state department to ascertain whether the person being
23 investigated has been convicted of any of the criminal offenses specified
24 in section 26-6-104 (7) (a) (I) or whether the person has been determined
25 to have a pattern of misdemeanor convictions as described in section
26 26-6-104 (7) (a) (I) (E) and the guest child care facility or public services
27 short-term child care facility terminates the employment of any such

1 person as an employee upon confirmation of such a criminal history;
2 (II) ~~Notwithstanding the provisions of subparagraph (I) of this~~
3 ~~paragraph (g), the guest child care facility or public services short-term~~
4 ~~child care facility requires all employees, other than supervisory~~
5 ~~employees, who have resided in the state of Colorado for fewer than two~~
6 ~~years to have a federal bureau of investigation fingerprint-based criminal~~
7 ~~history background check through the Colorado bureau of investigation~~
8 ~~and requests the state department to ascertain whether the person being~~
9 ~~investigated has been convicted of any of the criminal offenses specified~~
10 ~~in section 26-6-104 (7) (a) (I) or whether the person has been determined~~
11 ~~to have a pattern of misdemeanor convictions as described in section~~
12 ~~26-6-104 (7) (a) (I) (E) and the guest child care facility or public services~~
13 ~~short-term child care facility terminates the employment of any such~~
14 ~~person as an employee upon confirmation of such a criminal history;~~

15 **SECTION 2.** 26-6-103.7 (4), Colorado Revised Statutes, are
16 amended to read:

17 **26-6-103.7. Application of part - neighborhood youth**
18 **organizations - licensing - duties and responsibilities - definitions.**

19 (4) A licensed neighborhood youth organization shall require all
20 employees and volunteers who work directly with or will work directly
21 with youth members five or more days in a calendar month to obtain,
22 prior to employment and every two years thereafter, ~~one of the following:~~

23 (a) a fingerprint-based criminal history ~~record~~ RECORDS check
24 ~~through~~ UTILIZING the Colorado bureau of investigation AND THE
25 FEDERAL BUREAU OF INVESTIGATION and request the state department to
26 ascertain whether the person being investigated has been convicted of
27 felony child abuse as specified in section 18-6-401, C.R.S., or a felony

1 offense involving unlawful sexual behavior as defined in section
2 16-22-102 (9), C.R.S. The neighborhood youth organization shall not
3 hire a person as an employee or approve a person as a volunteer after
4 confirmation of such a criminal history.

5 ~~(b) A federal bureau of investigation fingerprint-based criminal~~
6 ~~history record check through the Colorado bureau of investigation if the~~
7 ~~employee, volunteer, or applicant has resided in the state of Colorado less~~
8 ~~than two years. The neighborhood youth organization shall request the~~
9 ~~state department to ascertain whether the person being investigated has~~
10 ~~been convicted of felony child abuse as specified in section 18-6-401,~~
11 ~~C.R.S., or a felony offense involving unlawful sexual behavior as defined~~
12 ~~in section 16-22-102 (9), C.R.S. The neighborhood youth organization~~
13 ~~shall not hire a person as an employee or approve a person as a volunteer~~
14 ~~after confirmation of such a criminal history.~~

15 ~~(c) A comparison search by the state department on the ICON~~
16 ~~system of the state judicial department or a comparison search on any~~
17 ~~other database that is recognized on a statewide basis by using the name,~~
18 ~~date of birth, and social security number information and any other~~
19 ~~available source of criminal history information that the state department~~
20 ~~determines is appropriate to determine whether the employee or volunteer~~
21 ~~has been convicted of felony child abuse as specified in section 18-6-401,~~
22 ~~C.R.S., or a felony offense involving unlawful sexual behavior as defined~~
23 ~~in section 16-22-102 (9), C.R.S. The neighborhood youth organization~~
24 ~~shall not hire a person as an employee or approve a person as a volunteer~~
25 ~~after confirmation of such a criminal history.~~

26 ~~(d) A separate background check by a private entity regulated as~~
27 ~~a consumer reporting agency pursuant to 15 U.S.C. sec. 1681 et seq. that~~

1 shall disclose, at a minimum, sexual offenders and felony convictions and
2 include a social security number trace, a national criminal file check, and
3 a state or county criminal file search. The separate background check
4 shall ascertain whether the person being investigated has been convicted
5 of felony child abuse as specified in section 18-6-401, C.R.S., or a felony
6 offense involving unlawful sexual behavior as defined in section
7 16-22-102 (9), C.R.S. The neighborhood youth organization shall not
8 hire a person as an employee or approve a person as a volunteer after
9 confirmation of such a criminal history.

10 **SECTION 3.** 26-6-107 (1) (a) (I) (C) and (1) (a) (I) (C.5),
11 Colorado Revised Statutes, are amended to read: ■■■

12 **26-6-107. Investigations and inspections - local authority -**
13 **reports - rules.** (1) (a) (I) (C) Rules promulgated by the state board
14 pursuant to this subparagraph (I) shall require the fingerprint-based
15 criminal history records check in all circumstances, other than those
16 identified in sub-subparagraph (B) or (C.5) of this subparagraph (I), to
17 include a fingerprint-based criminal history records check through
18 UTILIZING THE RECORDS OF the Colorado bureau of investigation AND THE
19 FEDERAL BUREAU OF INVESTIGATION. As part of said THE investigation,
20 the records and reports of child abuse or neglect maintained by the state
21 department shall be accessed to determine whether the owner, applicant,
22 employee, newly hired employee, licensee, or individual who resides in
23 the licensed facility being investigated has been found to be responsible
24 in a confirmed report of child abuse or neglect. Information shall be
25 made available pursuant to section 19-1-307 (2) (j), C.R.S., and rules
26 promulgated by the state board pursuant to section 19-3-313.5 (4), C.R.S.
27 Any change in ownership of a licensed facility or the addition of a new

1 resident adult or newly hired employee to the licensed facility shall
2 require a new investigation as provided for in this section.

3 ~~(C.5) For persons residing in this state less than two years,~~
4 ~~specialized group home parents, or any person working in a~~
5 ~~twenty-four-hour child care facility, the rules promulgated by the state~~
6 ~~board pursuant to this subparagraph (I) shall require, in addition to the~~
7 ~~fingerprint-based criminal history records check through the Colorado~~
8 ~~bureau of investigation described in sub-subparagraph (C) of this~~
9 ~~subparagraph (I), a federal bureau of investigation fingerprint-based~~
10 ~~criminal history records check through the Colorado bureau of~~
11 ~~investigation.~~

12

13 **SECTION 4.** Part 1 of article 6 of title 26, Colorado Revised
14 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
15 read:

16 **26-6-107.3. Investigations registry - creation - fee - advisory**
17 **committee - report - fund.** (1) THERE IS HEREBY CREATED BY THE
18 STATE DEPARTMENT THE INVESTIGATIONS REGISTRY, REFERRED TO IN THIS
19 SECTION AS THE "REGISTRY". THE REGISTRY SHALL INCLUDE THE RESULTS
20 OF FINGERPRINT-BASED CRIMINAL HISTORY RECORDS CHECKS REQUIRED
21 FOR EACH EMPLOYEE OF A CHILD CARE PROVIDER LICENSED PURSUANT TO
22 THIS PART 1. AN EMPLOYEE SHALL HAVE HIS OR HER FINGERPRINT-BASED
23 CRIMINAL HISTORY RECORDS CHECK SUBMITTED TO THE REGISTRY AT THE
24 TIME HE OR SHE IS FIRST HIRED AS A CHILD CARE EMPLOYEE. IF THE
25 EMPLOYEE MOVES TO A DIFFERENT LICENSED FACILITY, HE OR SHE SHALL
26 BE REQUIRED TO OBTAIN A NEW FINGERPRINT-BASED CRIMINAL HISTORY
27 RECORDS CHECK FOR ANY NON-FLAGGED SYSTEM. THE REGISTRY SHALL

1 BE ACCESSIBLE TO CHILD CARE PROVIDERS WITH RESPECT TO THEIR OWN
2 EMPLOYEES OR PROSPECTIVE EMPLOYEES AND THE STATE DEPARTMENT,
3 AND PARENTS OR LEGAL GUARDIANS SHALL HAVE ACCESS TO CLEARANCE
4 INFORMATION ONLY, INCLUDING A DESCRIPTION OF WHICH CHECKS WERE
5 RUN, AND NOT THE FULL RESULTS OF THE FINGERPRINT-BASED CRIMINAL
6 HISTORY RECORDS CHECK. THE STATE DEPARTMENT SHALL SET AN
7 ANNUAL FEE, NOT TO EXCEED TWENTY-FIVE DOLLARS, TO BE PAID BY
8 INDIVIDUALS OR FACILITIES THAT USE THE REGISTRY.

9 (2) THERE IS HEREBY CREATED THE INVESTIGATIONS REGISTRY
10 ADVISORY COMMITTEE. THE PURPOSE OF THE ADVISORY COMMITTEE IS TO
11 RECOMMEND THE STRUCTURE FOR THE REGISTRY AND DEVELOP
12 RECOMMENDATIONS FOR ITS IMPLEMENTATION. THE ADVISORY
13 COMMITTEE SHALL CONSIDER, AT A MINIMUM, THE STRUCTURE OF THE
14 REGISTRY, THE POSSIBILITY OF ESTABLISHING A TRACKING SYSTEM FOR
15 CHILD CARE WORKERS AND CHILDREN WHO UTILIZE THE CHILD CARE
16 SYSTEM, AND THE FEASIBILITY OF INCLUDING TRAINING RECORDS IN THE
17 REGISTRY. THE MEMBERSHIP OF THE ADVISORY COMMITTEE SHALL
18 INCLUDE A REPRESENTATIVE FROM THE STATE DEPARTMENT, A
19 REPRESENTATIVE FROM THE OFFICE OF PROFESSIONAL DEVELOPMENT, TWO
20 CHILD CARE PROVIDERS, AND A CHILD CARE EMPLOYEE. THE ADVISORY
21 COMMITTEE SHALL SUBMIT ITS RECOMMENDATIONS TO THE STATE
22 DEPARTMENT NO LATER THAN OCTOBER 1, 2011.

23 (3) ON OR BEFORE JANUARY 30, 2012, THE STATE DEPARTMENT
24 SHALL REPORT ON THE PROGRESS OF THE REGISTRY TO THE EDUCATION
25 COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES, OR
26 ANY SUCCESSOR COMMITTEES.

27 (4) THE STATE DEPARTMENT SHALL NOT BE OBLIGATED TO

1 IMPLEMENT THE PROVISIONS OF THIS SECTION UNTIL MONEYS IN A
2 SUFFICIENT AMOUNT, AS DETERMINED BY THE STATE DEPARTMENT, HAVE
3 BEEN RECEIVED AND CREDITED TO THE FUND CREATED IN SUBSECTION (5)
4 OF THIS SECTION. GENERAL FUND MONEYS SHALL NOT BE APPROPRIATED
5 FOR THE IMPLEMENTATION OF THIS SECTION.

6 (5) (a) THE STATE DEPARTMENT IS AUTHORIZED TO SEEK AND
7 ACCEPT GIFTS, GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES
8 FOR THE PURPOSES OF THIS SECTION; EXCEPT THAT THE STATE
9 DEPARTMENT SHALL NOT ACCEPT A GIFT, GRANT, OR DONATION IF IT IS
10 SUBJECT TO CONDITIONS THAT ARE INCONSISTENT WITH THIS SECTION OR
11 ANY OTHER LAW OF THE STATE. THE STATE DEPARTMENT SHALL
12 TRANSMIT ALL PRIVATE AND PUBLIC MONEYS RECEIVED THROUGH GIFTS,
13 GRANTS, OR DONATIONS TO THE STATE TREASURER, WHO SHALL CREDIT
14 THE SAME TO THE INVESTIGATIONS REGISTRY FUND, WHICH FUND IS
15 HEREBY CREATED AND REFERRED TO IN THIS SUBSECTION (5) AS THE
16 "FUND".

17 (b) THE MONEYS CREDITED TO THE FUND SHALL BE CONTINUOUSLY
18 APPROPRIATED TO THE STATE DEPARTMENT FOR THE DIRECT AND INDIRECT
19 COSTS ASSOCIATED WITH THE IMPLEMENTATION OF THIS SECTION.

20 (c) ANY MONEYS IN THE FUND NOT EXPENDED FOR THE PURPOSES
21 OF THIS SECTION MAY BE INVESTED BY THE STATE TREASURER AS
22 PROVIDED BY LAW. ALL INTEREST AND INCOME DERIVED FROM THE
23 INVESTMENT AND DEPOSIT OF MONEYS IN THE FUND SHALL BE CREDITED
24 TO THE FUND.

25 (d) ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING
26 IN THE FUND AT THE END OF A FISCAL YEAR SHALL REMAIN IN THE FUND
27 AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR

1 ANOTHER FUND.

2 (6) THE STATE DEPARTMENT SHALL NOTIFY THE REVISOR OF
3 STATUTES IN WRITING WHEN SUFFICIENT FUNDS HAVE BEEN RECEIVED TO
4 IMPLEMENT THE PROVISIONS OF THIS SECTION.

5 **SECTION 5.** 26-6-120 (1) (a) (III), Colorado Revised Statutes,
6 is amended to read:

7 **26-6-120. Exempt family child care home providers -**
8 **fingerprint-based criminal history record check - child care**
9 **assistance program moneys - temporary care - definitions.**

10 (1) (a) (III) The FCC required for a qualified provider or qualified adult
11 pursuant to this section shall ~~be conducted through the Colorado bureau~~
12 ~~of investigation for a qualified provider or qualified adult who has resided~~
13 ~~in Colorado for more than two years. A qualified provider or qualified~~
14 ~~adult who has resided in Colorado for less than two years shall be~~
15 ~~required to additionally have a federal bureau of investigation fingerprint~~
16 ~~check conducted through the Colorado bureau of investigation~~ INCLUDE
17 A FINGERPRINT-BASED CRIMINAL HISTORY RECORDS CHECK UTILIZING THE
18 RECORDS OF THE COLORADO BUREAU OF INVESTIGATION AND THE
19 FEDERAL BUREAU OF INVESTIGATION. As part of the FCC, THE STATE
20 DEPARTMENT SHALL ACCESS the records and reports of child abuse or
21 neglect maintained by the state department ~~shall be accessed~~ to determine
22 whether the subject of the FCC has been found to be responsible in a
23 confirmed report of child abuse or neglect. Information shall be made
24 available pursuant to section 19-1-307 (2) (j), C.R.S., and rules
25 promulgated by the state board pursuant to section 19-3-313.5 (4), C.R.S.

26 **SECTION 6.** 19-1-307 (2) (j.7), Colorado Revised Statutes, is
27 amended to read:

1 **19-1-307. Dependency and neglect records and information -**
2 **access - fee - rules - records and reports fund - misuse of information**
3 **- penalty. (2) Records and reports - access to certain persons -**
4 **agencies.** Except as otherwise provided in section 19-1-303, only the
5 following persons or agencies shall be given access to child abuse or
6 neglect records and reports:

7 (j.7) The state department of human services investigating an
8 applicant for an employee or volunteer position with, or an employee or
9 volunteer of, a licensed neighborhood youth organization pursuant to
10 section 26-6-103.7 (4), ~~(e)~~, C.R.S., when the applicant, employee, or
11 volunteer has given written authorization to the state department of
12 human services to check records or reports of child abuse or neglect;

13 **SECTION 7. Effective date.** This act shall take effect upon
14 receipt of written notice to the revisor of statutes as specified in Section
15 4 of this act.

16 **SECTION 8. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, and safety.