

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

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, AND MAKING AN APPROPRIATION**
103 **THEREFOR.**

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

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.

HOUSE
Am ended 2nd Reading
March 21, 2011

resided in Colorado.

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

1 employee or terminates the employment of any such person as a
2 supervisory employee upon confirmation of such a criminal history;

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

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

1 short-term child care facility terminates the employment of any such
2 person as an employee upon confirmation of such a criminal history;

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

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

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

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

24 (a) a fingerprint-based criminal history ~~record~~ RECORDS check
25 ~~through~~ UTILIZING the Colorado bureau of investigation AND THE
26 FEDERAL BUREAU OF INVESTIGATION and request the state department to
27 ascertain whether the person being investigated has been convicted of

1 felony child abuse as specified in section 18-6-401, C.R.S., or a felony
2 offense involving unlawful sexual behavior as defined in section
3 16-22-102 (9), C.R.S. The neighborhood youth organization shall not
4 hire a person as an employee or approve a person as a volunteer after
5 confirmation of such a criminal history.

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

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

27 ~~(d) A separate background check by a private entity regulated as~~

1 a consumer reporting agency pursuant to ~~15 U.S.C. sec. 1681 et seq.~~ that
2 shall disclose, at a minimum, sexual offenders and felony convictions and
3 include a social security number trace, a national criminal file check, and
4 a state or county criminal file search. The separate background check
5 shall ascertain whether the person being investigated has been convicted
6 of felony child abuse as specified in section 18-6-401, C.R.S., or a felony
7 offense involving unlawful sexual behavior as defined in section
8 16-22-102 (9), C.R.S. The neighborhood youth organization shall not
9 hire a person as an employee or approve a person as a volunteer after
10 confirmation of such a criminal history.

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

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

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

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



13
14 **SECTION 4.** 26-6-120 (1) (a) (III), Colorado Revised Statutes,
15 is amended to read:

16 **26-6-120. Exempt family child care home providers -**
17 **fingerprint-based criminal history record check - child care**
18 **assistance program moneys - temporary care - definitions.**

19 (1) (a) (III) The FCC required for a qualified provider or qualified adult
20 pursuant to this section shall ~~be conducted through the Colorado bureau~~
21 ~~of investigation for a qualified provider or qualified adult who has resided~~
22 ~~in Colorado for more than two years. A qualified provider or qualified~~
23 ~~adult who has resided in Colorado for less than two years shall be~~
24 ~~required to additionally have a federal bureau of investigation fingerprint~~
25 ~~check conducted through the Colorado bureau of investigation~~ INCLUDE
26 A FINGERPRINT-BASED CRIMINAL HISTORY RECORDS CHECK UTILIZING THE
27 RECORDS OF THE COLORADO BUREAU OF INVESTIGATION AND THE

1 FEDERAL BUREAU OF INVESTIGATION. As part of the FCC, THE STATE
2 DEPARTMENT SHALL ACCESS the records and reports of child abuse or
3 neglect maintained by the state department ~~shall be accessed~~ to determine
4 whether the subject of the FCC has been found to be responsible in a
5 confirmed report of child abuse or neglect. Information shall be made
6 available pursuant to section 19-1-307 (2) (j), C.R.S., and rules
7 promulgated by the state board pursuant to section 19-3-313.5 (4), C.R.S.

8 **SECTION 5.** 19-1-307 (2) (j.7), Colorado Revised Statutes, is
9 amended to read:

10 **19-1-307. Dependency and neglect records and information -**
11 **access - fee - rules - records and reports fund - misuse of information**
12 **- penalty. (2) Records and reports - access to certain persons -**
13 **agencies.** Except as otherwise provided in section 19-1-303, only the
14 following persons or agencies shall be given access to child abuse or
15 neglect records and reports:

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

22 **SECTION 6. Appropriation.** (1) In addition to any other
23 appropriation, there is hereby appropriated, out of any moneys in the child
24 care licensing cash fund created in section 26-6-105 (4), Colorado
25 Revised Statutes, not otherwise appropriated, to the department of human
26 services, for allocation to the division of child care, for the fiscal year
27 beginning July 1, 2011, the sum of nineteen thousand three hundred

1 eleven dollars (\$19,311) cash funds and 0.4 FTE, or so much thereof as
2 may be necessary, for the implementation of this act.

3 (2) In addition to any other appropriation, there is hereby
4 appropriated, to the department of public safety, for allocation to the
5 Colorado bureau of investigation, for the fiscal year beginning July 1,
6 2011, from the Colorado bureau of investigation identification unit fund
7 created in section 24-33.5-426, Colorado Revised Statutes, the sum of one
8 hundred seventy-two thousand five hundred dollars (\$172,500) cash
9 funds, or so much thereof as may be necessary, for fingerprint and name
10 check processing fees collected by the department for transmittal to the
11 federal bureau of investigation.

12 **SECTION 7. Act subject to petition - effective date.** This act
13 shall take effect at 12:01 a.m. on the day following the expiration of the
14 ninety-day period after final adjournment of the general assembly (August
15 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a
16 referendum petition is filed pursuant to section 1 (3) of article V of the
17 state constitution against this act or an item, section, or part of this act
18 within such period, then the act, item, section, or part shall not take effect
19 unless approved by the people at the general election to be held in
20 November 2012 and shall take effect on the date of the official
21 declaration of the vote thereon by the governor.