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2001



SENATE BILL 01-088

BY SENATOR(S) Tupa, Linkhart, Arnold, Hernandez, Nichol, Dyer (Arapahoe), Epps, Entz, Evans, Gordon, Perlmutter, Windels; also REPRESENTATIVE(S) Mitchell, Alexander, Hefley, Lee, Bacon, Borodkin, Boyd, Chavez, Coleman, Garcia, Groff, Jahn, Larson, Lawrence, Mace, Madden, Plant, Romanoff, Tochtrop, Vigil, Weddig, and Williams, S.

CONCERNING CRIMINAL HISTORY RECORD CHECKS ON BEHALF OF ENTITIES ENGAGED IN CARE FOR VULNERABLE PERSONS.

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

SECTION 1. 24-72-305.3, Colorado Revised Statutes, is amended to read:

24-72-305.3. Private access to criminal history records of volunteers and employees of charitable organizations. (1) ~~For the purpose of complying with federal requirements, any public or private nonprofit, not-for-profit, or volunteer organization may use fingerprints to access through the Colorado bureau of investigation, for comparison purposes, arrest history records of any person who seeks employment with, is currently employed by, or volunteers or seeks to volunteer with the organization and has or may have unsupervised access to any child for~~

Capital letters indicate new material added to existing statute; dashes through the words indicate deletions from existing statutes and such material not part of act.

~~whom the organization provides care. Under this section, the organization may access records that are maintained by or within this state and any other state or territory of the United States, any other nation, or any agency or subdivision of the United States including, but not limited to, the federal bureau of investigation in the United States department of justice. For the purposes of this section, the Colorado bureau of investigation is the authorized agency for access to arrest history records as required by the "National Child Protection Act of 1993", 42 U.S.C. sec. 5119a.~~

(2) (a) As used in this subsection (2):

(I) ~~"Authorized agency" shall have the same meaning as set forth in 42 U.S.C. sec. 5119c~~ MEANS A DIVISION OR OFFICE OF A STATE DESIGNATED BY A STATE TO REPORT, RECEIVE, OR DISSEMINATE INFORMATION UNDER THE "VOLUNTEERS FOR CHILDREN ACT", CONTAINED IN PUBLIC LAW 105-251, AS AMENDED.

(II) "Bureau" means the Colorado bureau of investigation created in section 24-33.5-401.

(III) "Care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, THE ELDERLY, OR INDIVIDUALS WITH DISABILITIES.

(IV) "Convicted" means a conviction by a jury or by a court and shall also include a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, an adjudication, and a plea of guilty or nolo contendere.

(V) ~~"Department" means the department of human services created in section 24-1-120.~~

(V.2) "THE ELDERLY" MEANS PERSONS SIXTY YEARS OF AGE OR OLDER RECEIVING CARE.

(V.5) "INDIVIDUALS WITH DISABILITIES" MEANS PERSONS WITH A MENTAL OR PHYSICAL IMPAIRMENT WHO REQUIRE ASSISTANCE TO PERFORM ONE OR MORE DAILY LIVING TASKS.

(VI) "Provider" shall have the same meaning as set forth in 42 U.S.C. sec. 5119c and includes an owner of, an employee of, an applicant

seeking employment with, or a volunteer with a qualified entity.

(VII) "Qualified entity" means a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides ~~child~~ care or ~~child~~ care placement services, including a business or organization that licenses or certifies others to provide ~~child~~ care or ~~child~~ care placement services.

(b) For the purpose of implementing the provisions of the "Volunteers for Children Act", contained in Public Law 105-251, as amended, on and after July 1, 2000, each qualified entity in the state may contact an authorized agency for the purpose of determining whether a provider has been convicted of, or is under pending indictment for, a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, THE ELDERLY, OR INDIVIDUALS WITH DISABILITIES. Such crimes shall include, but need not be limited to:

(I) Felony child abuse, as specified in section 18-6-401, C.R.S.;

(II) A crime of violence, as defined in section 16-11-309, C.R.S.;

(III) Any felony offenses involving unlawful sexual behavior, as defined in section 18-3-412.5, C.R.S.;

(IV) Any felony, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3, C.R.S.;

(V) Any felony offense in any other state, the elements of which are substantially similar to the elements of any one of the offenses described in subparagraphs (I) to (IV) of this paragraph (b).

(c) (I) For purposes of this subsection (2), the bureau shall be designated an authorized agency. ~~and may permit a local law enforcement agency to serve as an authorized agency.~~ The executive director of the department of public safety shall identify by rule, consistent with applicable federal and state law, those entities that may serve as qualified entities. In addition, the director of the department of public safety may promulgate all reasonable and necessary rules to implement this subsection (2).

(II) For purposes of this subsection (2):

(A) The department OF HUMAN SERVICES, CREATED IN SECTION 24-1-120, may serve as an authorized agency for those qualified entities that are regulated by the said department. The state board of human services shall identify by rule, consistent with applicable federal and state law, those entities that may serve as qualified entities. In addition, the state board of human services may promulgate all reasonable and necessary rules to implement this subsection (2).

(B) THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, CREATED IN SECTION 24-1-119, MAY SERVE AS AN AUTHORIZED AGENCY FOR THOSE QUALIFIED ENTITIES THAT ARE REGULATED BY SAID DEPARTMENT. THE STATE BOARD OF HEALTH SHALL IDENTIFY BY RULE, CONSISTENT WITH APPLICABLE FEDERAL AND STATE LAW, THOSE ENTITIES THAT MAY SERVE AS QUALIFIED ENTITIES. IN ADDITION, THE STATE BOARD OF HEALTH MAY PROMULGATE ALL REASONABLE AND NECESSARY RULES TO IMPLEMENT THIS SUBSECTION (2).

(C) THE DEPARTMENT OF EDUCATION, CREATED IN SECTION 24-1-115, MAY SERVE AS AN AUTHORIZED AGENCY FOR THOSE QUALIFIED ENTITIES THAT ARE REGULATED BY SAID DEPARTMENT. THE STATE BOARD OF EDUCATION SHALL IDENTIFY BY RULE, CONSISTENT WITH APPLICABLE FEDERAL AND STATE LAW, THOSE ENTITIES THAT MAY SERVE AS QUALIFIED ENTITIES. IN ADDITION, THE STATE BOARD OF EDUCATION MAY PROMULGATE ALL REASONABLE AND NECESSARY RULES TO IMPLEMENT THIS SUBSECTION (2).

(d) ANY AUTHORIZED AGENCY REPORTING, RECEIVING, OR DISSEMINATING CRIMINAL HISTORY RECORD INFORMATION PURSUANT TO THIS SUBSECTION (2) SHALL REQUEST SUCH INFORMATION ONLY THROUGH THE BUREAU. THE BUREAU, IN RESPONDING TO SUCH REQUEST, SHALL ACCESS RECORDS THAT ARE MAINTAINED BY OR WITHIN THIS STATE AND ANY OTHER STATE OR TERRITORY OF THE UNITED STATES, ANY OTHER NATION, OR ANY AGENCY OR SUBDIVISION OF THE UNITED STATES INCLUDING, BUT NOT LIMITED TO, THE FEDERAL BUREAU OF INVESTIGATION IN THE UNITED STATES DEPARTMENT OF JUSTICE.

SECTION 2. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Stan Matsunaka
PRESIDENT OF
THE SENATE

Doug Dean
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

Judith Rodrigue
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO