

CHAPTER 293

HUMAN SERVICES - SOCIAL SERVICES

SENATE BILL 99-152

BY SENATORS Linkhart, Epps, Feeley, Hernandez, Martinez, Nichol, Pascoe, Phillips, Powers, Reeves, Rupert, Tanner, Tebedo, Thiebaut, Wattenberg, Weddig, and Wham;
also REPRESENTATIVES Alexander, Bacon, Berry, Coleman, Hoppe, Kaufman, Larson, Lawrence, Leyba, Mace, Morrison, Swenson, Tochtrop, Veiga, S. Williams, and Zimmerman.

AN ACT

CONCERNING CHILD CARE, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. 26-6-102, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

26-6-102. Definitions. As used in this article, unless the context otherwise requires:

(5.7) (a) "NEGATIVE LICENSING ACTION" MEANS A FINAL AGENCY ACTION RESULTING IN THE DENIAL, SUSPENSION, OR REVOCATION OF A LICENSE ISSUED PURSUANT TO THIS PART 1 OR THE DEMOTION OF SUCH A LICENSE TO A PROBATIONARY LICENSE.

(b) FOR THE PURPOSES OF THIS SUBSECTION (5.7), "FINAL AGENCY ACTION" MEANS THE DETERMINATION MADE BY THE DEPARTMENT, AFTER OPPORTUNITY FOR HEARING, TO DENY, SUSPEND, REVOKE, OR DEMOTE TO PROBATIONARY STATUS A LICENSE ISSUED PURSUANT TO THIS PART 1 OR AN AGREEMENT BETWEEN THE DEPARTMENT AND THE LICENSEE CONCERNING THE DEMOTION OF SUCH A LICENSE TO A PROBATIONARY LICENSE.

SECTION 2. 26-6-104 (1) and (7), Colorado Revised Statutes, are amended to read:

26-6-104. Licenses - out-of-state notices and consent. (1) No person shall operate any agency or facility defined in this part 1 without first being licensed to

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

operate or maintain such agency or facility by the department and paying the fee prescribed therefor. Such license issued by the department shall be permanent unless otherwise revoked or suspended pursuant to section 26-6-108. A person operating a foster care home shall not obtain a license if such person holds a certificate to operate such home from any county department or a child placement agency licensed under the provisions of this part 1. Said certificate shall be in such form as prescribed and provided by the department, shall certify that such person is a suitable person to operate a home, and shall contain such information as the department requires. THE STATE BOARD OF HUMAN SERVICES SHALL PROMULGATE RULES REQUIRING THE RECERTIFICATION OF FOSTER CARE HOMES EVERY THREE YEARS AND THE PROCEDURAL REQUIREMENTS ASSOCIATED WITH SUCH RECERTIFICATION. A placement agency issuing or renewing any such certificate shall transmit a copy or report thereof to the department. No foster care home shall be certified by more than one placement agency or county department. A foster care home, when certified by a placement agency or county department, may receive for care a child from sources other than the certifying agency or county department upon the written consent and approval of the agency or county department as to each such child. All such certificates shall be considered licenses for the purpose of this part 1, INCLUDING BUT NOT LIMITED TO THE INVESTIGATION AND CRIMINAL BACKGROUND CHECKS REQUIRED UNDER SECTION 26-6-107.

(7) (a) (I) No license or certificate to operate a family child care home, a foster care home, a child care center, a residential child care facility, a secure residential child care facility, or a child placement agency shall be issued by the department, a county department, or a child placement agency licensed under the provisions of this part 1 if the person applying for such a license or certificate has been convicted of:

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

(B) A CRIME OF VIOLENCE, AS DEFINED IN SECTION 16-11-309, C.R.S.;

(C) ~~or any unlawful sexual offense, as defined in section 18-3-411(1), C.R.S.~~ ANY FELONY OFFENSES INVOLVING UNLAWFUL SEXUAL BEHAVIOR, AS DEFINED IN SECTION 18-3-412.5, C.R.S.;

(D) 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.;

(E) 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 SUB-SUBPARAGRAPHS (A) TO (D) OF THIS SUBPARAGRAPH (I).

(II) FOR PURPOSES OF THIS PARAGRAPH (a), "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.

(b) THE CONVICTIONS IDENTIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (7) SHALL BE DETERMINED according to the records of the Colorado bureau of

investigation or any other source. ~~or has entered into a deferred judgment agreement or a deferred prosecution agreement to felony child abuse, as specified in section 18-6-401, C.R.S., or any unlawful sexual offense, as defined in section 18-3-411(1), C.R.S.~~ A certified copy of the judgment of a court of competent jurisdiction of such conviction, deferred judgment AND SENTENCE agreement, ~~or~~ deferred prosecution agreement, OR DEFERRED ADJUDICATION AGREEMENT shall be prima facie evidence of such conviction or agreement. No license or certificate to operate a family child care home, a foster care home, a child care center, a residential child care facility, a secure residential child care facility, or a child placement agency shall be issued if the department has a certified court order from another state indicating that the person applying for such a license or certificate has been convicted of felony child abuse or any unlawful sexual offense against a child under a law of any other state or the United States or the department has a certified court order from another state that the person applying for the license or certificate has entered into a deferred judgment or deferred prosecution agreement in another state as to felony child abuse or any sexual offense against a child.

SECTION 3. 26-6-105 (4), Colorado Revised Statutes, is amended to read:

26-6-105. Fees - when original applications and reapplications for licensure are required - creation of child care licensing cash fund. (4) All fees collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the child care licensing cash fund, which is hereby created. The general assembly shall make annual appropriations from the child care licensing cash fund for expenditures incurred by the department in the performance of its duties under this part 1. ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. AT THE END OF ANY FISCAL YEAR, ALL UNEXPENDED AND UNENCUMBERED MONEYS IN THE FUND SHALL REMAIN THEREIN AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND.

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

26-6-105.5. Application forms - criminal sanctions for perjury.
(1) (a) (I) ALL APPLICATIONS FOR THE LICENSURE OF A CHILD CARE FACILITY OR THE CERTIFICATION OF A FOSTER CARE HOME PURSUANT TO THIS PART 1 SHALL INCLUDE THE NOTICE TO THE APPLICANT THAT IS SET FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (1).

(II) EVERY APPLICATION USED IN THE STATE OF COLORADO FOR EMPLOYMENT WITH A CHILD CARE PROVIDER OR FACILITY SHALL INCLUDE THE NOTICE TO THE APPLICANT THAT IS SET FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (1).

(b) EACH APPLICATION DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL CONTAIN THE FOLLOWING NOTICE TO THE APPLICANT:

"ANY APPLICANT WHO KNOWINGLY OR WILLFULLY MAKES A FALSE STATEMENT OF ANY MATERIAL FACT OR THING IN THIS APPLICATION IS GUILTY OF PERJURY IN THE SECOND DEGREE AS DEFINED IN SECTION 18-8-503, COLORADO REVISED STATUTES, AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED

ACCORDINGLY."

(2) ANY PERSON APPLYING FOR THE LICENSURE OF A CHILD CARE FACILITY OR THE CERTIFICATION OF A FOSTER CARE HOME PURSUANT TO THIS PART 1 OR ANY PERSON APPLYING TO WORK AT SUCH A FACILITY AS AN EMPLOYEE WHO KNOWINGLY OR WILLFULLY MAKES A FALSE STATEMENT OF ANY MATERIAL FACT OR THING IN THE APPLICATION IS GUILTY OF PERJURY IN THE SECOND DEGREE AS DEFINED IN SECTION 18-8-503, C.R.S., AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED ACCORDINGLY.

SECTION 5. 26-6-107 (1) (a) (I) and (1) (b), Colorado Revised Statutes, are amended to read:

26-6-107. Investigations and inspections - local authority - reports.

(1) (a) (I) The department shall investigate and pass on each original application for a license, and each application for a permanent license following the issuance of a probationary or provisional license, to operate a facility or an agency prior to granting such license. As part of such investigation, the department shall require each applicant, owner, employee, newly hired employee, licensee, and any adult who resides in the licensed facility to obtain a criminal record check by reviewing any record that shall be used to assist the department in ascertaining whether the person being investigated has been convicted of any of the following: ~~Child abuse, as specified in section 18-6-401, C.R.S.; an unlawful sexual offense, as defined in section 18-3-411 (1), C.R.S.; or a~~ CRIMINAL OFFENSES SPECIFIED IN SECTION 26-6-104 (7) OR ANY OTHER felony. The state board of human services shall promulgate rules that define and identify what the criminal background check shall entail. ~~including but not limited to identifying those circumstances in which fingerprinting shall be required.~~ SUCH RULES SHALL ALLOW AN EXEMPTION FROM THE CRIMINAL BACKGROUND INVESTIGATION FOR THOSE EMPLOYEES WORKING AT A CHILDREN RESIDENT CAMP IN A TEMPORARY CAPACITY FOR LESS THAN NINETY DAYS. EACH PERSON SO EXEMPTED FROM FINGERPRINTING SHALL SIGN A STATEMENT THAT AFFIRMATIVELY STATES THAT HE OR SHE HAS NOT BEEN CONVICTED OF ANY CHARGE OF CHILD ABUSE, UNLAWFUL SEXUAL OFFENSE, OR ANY FELONY. PROSPECTIVE EMPLOYERS OF SUCH EXEMPTED PERSONS SHALL CONDUCT REFERENCE CHECKS OF THE PROSPECTIVE EMPLOYEES IN ORDER TO VERIFY PREVIOUS WORK HISTORY AND SHALL CONDUCT PERSONAL INTERVIEWS WITH EACH SUCH PROSPECTIVE EMPLOYEE. THE RULES SHALL REQUIRE THE CRIMINAL BACKGROUND CHECK IN ALL OTHER CIRCUMSTANCES TO INCLUDE A FINGERPRINT CHECK THROUGH THE COLORADO BUREAU OF INVESTIGATION. As part of said investigation, the state central registry of child protection shall be accessed to determine whether the owner, applicant, employee, newly hired employee, licensee, or individual who resides in the licensed facility being investigated is the subject of a report of known or suspected child abuse. PURSUANT TO SECTION 19-1-307 (2) (j), C.R.S., INFORMATION SHALL BE MADE AVAILABLE IF A PERSON'S NAME IS ON THE CENTRAL REGISTRY OF CHILD PROTECTION, OR HAS BEEN DESIGNATED AS "STATUS PENDING" PURSUANT TO SECTION 19-3-313, C.R.S. Any change in ownership of a licensed facility or the addition of a new resident adult or newly hired employee to the licensed facility shall require a new investigation as provided for in this section. The state board of human services shall promulgate rules ~~and regulations~~ to implement this subparagraph (I).

(b) (I) When the department, county department, or child placement agency is

satisfied that the applicant or licensee is competent and will operate adequate facilities to care for children under the requirements of this part 1 and that standards are being met and will be complied with, it shall issue the license for which applied. The department shall inspect or cause to be inspected the facilities to be operated by an applicant for an original license before the license is granted and shall thereafter inspect or cause to be inspected the facilities of all licensees that, during the period of licensure, have been found to be the subject of complaints or to be out of compliance with the standards set forth in section 26-6-106 and the rules of the department or that otherwise appear to be placing children at risk. The department may make such other inspections as it deems necessary to ensure that the requirements of this article are being met and that the health, safety, and welfare of the children being placed are protected. The STATE board shall adopt rules CONCERNING THE ON-SITE PUBLIC AVAILABILITY OF THE MOST RECENT INSPECTION REPORT RESULTS OF CHILD CARE CENTER FACILITIES AND FAMILY CHILD CARE HOME FACILITIES, WHEN REQUESTED. THE STATE BOARD SHALL ALSO ADOPT RULES concerning a requirement that child care CENTER FACILITIES AND FAMILY CHILD CARE HOME FACILITIES post the license and the on-site public availability of the results of the most recent inspection report THEIR LICENSES, WHICH RULES SHALL REQUIRE THAT EACH SUCH FACILITY DISPLAY ITS LICENSE IN A PROMINENT AND CONSPICUOUS LOCATION AT ALL TIMES DURING OPERATIONAL HOURS OF THE FACILITY.

(II) IF, AS A RESULT OF AN INSPECTION OF A LICENSED CHILD CARE CENTER FACILITY OR FAMILY CHILD CARE HOME FACILITY, THE DEPARTMENT DETERMINES THAT THERE WERE NO SERIOUS VIOLATIONS OF ANY OF THE STANDARDS PRESCRIBED AND PUBLISHED BY THE DEPARTMENT OR ANY OF THE PROVISIONS OF THIS PART 1, WITHIN TWENTY DAYS AFTER COMPLETING THE INSPECTION THE DEPARTMENT SHALL SEND A WRITTEN NOTICE TO SUCH FACILITY INDICATING SUCH FACT. WITHIN TEN DAYS AFTER RECEIPT OF SUCH WRITTEN NOTICE, THE LICENSEE SHALL PROVIDE A COPY OF THE WRITTEN NOTICE TO THE PARENTS AND LEGAL GUARDIANS OF THE CHILDREN CARED FOR AT THE CHILD CARE CENTER FACILITY OR FAMILY CHILD CARE HOME FACILITY.

SECTION 6. 26-6-107 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

26-6-107. Investigations and inspections - local authority - reports.

(1) (a.5) AN APPLICANT FOR CERTIFICATION AS A FOSTER CARE HOME SHALL PROVIDE THE CHILD PLACEMENT AGENCY OR THE DEPARTMENT OF SOCIAL SERVICES FROM WHOM THE CERTIFICATION IS SOUGHT WITH A LIST OF ALL THE PRIOR CHILD PLACEMENT AGENCIES AND COUNTY DEPARTMENTS OF SOCIAL SERVICES THAT HAD PREVIOUSLY CERTIFIED THE APPLICANT. A CHILD PLACEMENT AGENCY OR COUNTY DEPARTMENT OF SOCIAL SERVICES FROM WHOM THE CERTIFICATION IS SOUGHT SHALL CONDUCT A REFERENCE CHECK OF THE APPLICANT BY CONTACTING ALL OF THE CHILD PLACEMENT AGENCIES AND COUNTY DEPARTMENTS OF SOCIAL SERVICES IDENTIFIED BY THE APPLICANT BEFORE ISSUING THE CERTIFICATION FOR THAT FOSTER CARE HOME.

SECTION 7. The introductory portion to 26-6-108 (2) and 26-6-108 (2) (c) and (2.5), Colorado Revised Statutes, are amended, and the said 26-6-108 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

26-6-108. Denial of original license - suspension - revocation - probation - refusal to renew license - fines. (2) The department may deny, suspend, revoke, or make probationary the license of any facility regulated and licensed under this part 1 OR ASSESS A FINE AGAINST THE LICENSEE PURSUANT TO SECTION 26-6-114 should the licensee, person employed by the licensee, or person who resides with the licensee AT THE FACILITY:

(c) Use any controlled substance, as defined in section 12-22-303 (7), C.R.S., or CONSUME any alcoholic beverage ~~to an extent or in a manner that such use impairs his ability to properly care for children~~ DURING THE OPERATING HOURS OF THE FACILITY OR BE UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE OR ALCOHOLIC BEVERAGE DURING THE OPERATING HOURS OF THE FACILITY; or

(2.5) (a) The department shall deny a license under the circumstances described in section 26-6-104 (7). The department shall revoke a license previously issued if:

(I) The licensee, person employed by the licensee, or person residing with the licensee is thereafter convicted or if it is later discovered that the licensee, person employed by the licensee, or person residing with the licensee had previously been convicted of ~~felony child abuse, as defined in section 18-6-401, C.R.S., or any unlawful sexual offense against a child, as defined in section 18-3-411 (1), C.R.S.~~ OF ANY OF THE CRIMINAL OFFENSES SET FORTH IN SECTION 26-6-104 (7); or

(II) The department has a certified court order from another state indicating that the licensee, person employed by the licensee, or person residing with the licensee is thereafter convicted of, or if it is later discovered that the licensee, person employed by the licensee, or person residing with the licensee had previously been convicted of, ~~felony child abuse or any unlawful sexual offense against a child~~ A CRIMINAL OFFENSE under a law of any other state or of the United States THAT IS SIMILAR TO ANY OF THE CRIMINAL OFFENSES SET FORTH IN SECTION 26-6-104 (7); or

(III) ~~The licensee, person employed by the licensee, or person residing with the licensee has entered into a deferred judgment agreement or a deferred prosecution agreement as to felony child abuse, as defined in section 18-6-401, C.R.S., or any unlawful sexual offense against a child, as defined in section 18-3-411 (1), C.R.S., or if the department has a certified court order from another state indicating such an agreement from another state~~ FOR PURPOSES OF THIS PARAGRAPH (a), "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.

(b) A certified copy of the judgment of a court of competent jurisdiction of such conviction or deferred judgment AND SENTENCE agreement, ~~or~~ deferred prosecution agreement, DEFERRED ADJUDICATION AGREEMENT, OR A CERTIFIED COURT ORDER FROM ANOTHER STATE INDICATING SUCH AN AGREEMENT FROM ANOTHER STATE shall be prima facie evidence of such conviction or agreement.

(2.7) THE DEPARTMENT MAY ASSESS FINES, PURSUANT TO THE PROVISIONS OF SECTION 26-6-114, AGAINST A LICENSEE OR A PERSON EMPLOYED BY THE LICENSEE WHO WILLFULLY AND DELIBERATELY OR CONSISTENTLY VIOLATES THE STANDARDS

PRESCRIBED AND PUBLISHED BY THE DEPARTMENT OR THE PROVISIONS OF THIS PART 1.

(4) THE PROVISIONS OF PARAGRAPH (c) OF SUBSECTION (2) OF THIS SECTION SHALL NOT APPLY TO FOSTER CARE HOMES, UNLESS SUCH USE OR CONSUMPTION IMPAIRS THE LICENSEE'S ABILITY TO PROPERLY CARE FOR CHILDREN.

SECTION 8. 26-6-108 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

26-6-108. Denial of original license - suspension - revocation - probation - refusal to renew license. (2) The department may deny, suspend, revoke, or make probationary the license of any facility regulated and licensed under this part 1 OR ASSESS A FINE AGAINST THE LICENSEE PURSUANT TO SECTION 26-6-114 should the licensee, person employed by the licensee, or person who resides with the licensee:

(a.5) BE CONVICTED OF THIRD DEGREE ASSAULT, AS DESCRIBED IN SECTION 18-3-204, C.R.S., ANY MISDEMEANOR, 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., THE VIOLATION OF A RESTRAINING ORDER, AS DESCRIBED IN SECTION 18-6-803.5, C.R.S., ANY MISDEMEANOR OFFENSE OF CHILD ABUSE AS DEFINED IN SECTION 18-6-401, C.R.S., OR ANY MISDEMEANOR OFFENSE IN ANY OTHER STATE, THE ELEMENTS OF WHICH ARE SUBSTANTIALLY SIMILAR TO THE ELEMENTS OF ANY ONE OF THE OFFENSES DESCRIBED IN THIS PARAGRAPH (a.5). FOR PURPOSES OF THIS PARAGRAPH (a.5), "CONVICTED" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 26-6-104 (7) (a) (II).

SECTION 9. 26-6-114, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

26-6-114. Civil penalties - fines - child care cash fund - created. (5) THE FINES COLLECTED PURSUANT TO THIS SECTION, SECTION 26-6-108 (2) AND (2.7), AND SECTION 26-6-108.5 (1) (c) SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE CHILD CARE CASH FUND, WHICH FUND IS HEREBY CREATED IN THE STATE TREASURY. ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. AT THE END OF ANY FISCAL YEAR, ALL UNEXPENDED AND UNENCUMBERED MONEYS IN THE FUND SHALL REMAIN THEREIN AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND. MONEYS IN THE CHILD CARE CASH FUND ARE HEREBY CONTINUOUSLY APPROPRIATED TO THE DEPARTMENT TO FUND ACTIVITIES RELATED TO THE IMPROVEMENT OF THE QUALITY OF CHILD CARE IN THE STATE OF COLORADO.

SECTION 10. Part 1 of article 6 of title 26, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

26-6-108.5. Notice of negative licensing action - filing of complaints. (1) (a) WHEN A CHILD CARE CENTER FACILITY OR FAMILY CHILD CARE HOME FACILITY LICENSED PURSUANT TO THIS PART 1 HAS BEEN NOTIFIED BY THE DEPARTMENT OF A NEGATIVE LICENSING ACTION OR THE IMPOSITION OF A FINE PURSUANT TO SECTION 26-6-108 (2) AND (2.7), IT SHALL, WITHIN TEN DAYS AFTER

RECEIPT OF THE NOTICE, PROVIDE THE DEPARTMENT WITH THE NAMES AND MAILING ADDRESSES OF THE PARENTS OR LEGAL GUARDIANS OF EACH CHILD CARED FOR AT THE CHILD CARE CENTER FACILITY OR FAMILY CHILD CARE HOME FACILITY. THE DEPARTMENT SHALL MAINTAIN THE CONFIDENTIALITY OF THE NAMES AND MAILING ADDRESSES PROVIDED TO IT PURSUANT TO THIS SUBSECTION (1).

(b) WITHIN TWENTY DAYS AFTER RECEIPT OF THE NAMES AND ADDRESSES OF PARENTS AND LEGAL GUARDIANS PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1), THE DEPARTMENT SHALL SEND A WRITTEN NOTICE TO EACH SUCH PARENT OR LEGAL GUARDIAN IDENTIFYING THE NEGATIVE LICENSING ACTION OR THE FINE IMPOSED AND PROVIDING A DESCRIPTION OF THE BASIS FOR THE ACTION AS IT RELATES TO THE IMPACT ON THE HEALTH, SAFETY, AND WELFARE OF THE CHILDREN IN THE CARE OF THE FACILITY. SUCH NOTICE SHALL BE SENT TO THE PARENTS AND LEGAL GUARDIANS BY FIRST-CLASS MAIL.

(c) THE STATE BOARD SHALL PROMULGATE RULES CONCERNING THE ASSESSMENT OF A FINE AGAINST A LICENSEE THAT IS EQUAL TO THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH THE MAILING OF THE NOTICE DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (1) AGAINST THE FACILITY.

(d) NOTHING IN THIS SUBSECTION (1) SHALL BE CONSTRUED TO PRECLUDE THE DEPARTMENT OR A COUNTY DEPARTMENT OF SOCIAL SERVICES FROM NOTIFYING PARENTS OF SERIOUS VIOLATIONS OF ANY OF THE STANDARDS PRESCRIBED AND PUBLISHED BY THE DEPARTMENT OR ANY OF THE PROVISIONS OF THIS PART 1 THAT COULD IMPACT THE HEALTH, SAFETY, OR WELFARE OF A CHILD CARED FOR AT THE FACILITY OR HOME.

(2) THE STATE BOARD SHALL PROMULGATE RULES REQUIRING CHILD CARE CENTER FACILITIES AND FAMILY CHILD CARE HOME FACILITIES TO PROVIDE WRITTEN NOTICE TO THE PARENTS AND LEGAL GUARDIANS OF THE CHILDREN CARED FOR IN SUCH FACILITIES OF THE PROCEDURES BY WHICH TO FILE A COMPLAINT AGAINST THE FACILITY OR AN EMPLOYEE OF THE FACILITY WITH THE DIVISION OF CHILD CARE IN THE DEPARTMENT. SUCH RULES SHALL SPECIFY WHAT INFORMATION THE NOTICE SHALL CONTAIN, BUT SHALL REQUIRE THAT THE NOTICE INCLUDE THE CURRENT MAILING ADDRESS AND TELEPHONE NUMBER OF THE DIVISION OF CHILD CARE IN THE DEPARTMENT.

26-6-115. Criminal background checks - pilot program. (1) THROUGH POLICY AND RULE OF THE STATE BOARD, THE DEPARTMENT SHALL DEVELOP A NINE-MONTH PILOT PROGRAM IN THREE COUNTIES OR CITIES AND COUNTIES, AT LEAST ONE OF WHICH SHALL BE AN URBAN COUNTY OR CITY AND COUNTY AND AT LEAST ONE OF WHICH SHALL BE A RURAL COUNTY OR CITY AND COUNTY, FOR THE PURPOSE OF DETERMINING THE MOST THOROUGH, TIMELY, AND AFFORDABLE METHOD BY WHICH TO CONDUCT CRIMINAL BACKGROUND CHECKS OF CHILD CARE FACILITY LICENSE APPLICANTS, PERSONS EMPLOYED BY LICENSEES, AND ADULTS RESIDING IN FAMILY CHILD CARE HOMES. THE PILOT PROGRAM SHALL ALSO ADDRESS CHILD CARE PROVIDERS THAT ARE LEGALLY EXEMPT FROM LICENSURE REQUIREMENTS. THE PILOT PROGRAM SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, THE FOLLOWING FEATURES:

(a) CONTINUED FINGERPRINT CHECK REQUIREMENTS THROUGH THE COLORADO

BUREAU OF INVESTIGATION (CBI) FOR ALL CHILD CARE FACILITIES;

(b) A COMPARISON SEARCH ON THE ICON SYSTEM AT THE STATE JUDICIAL DEPARTMENT WITH NAME AND DATE OF BIRTH INFORMATION AND ANY OTHER AVAILABLE SOURCE OF CRIMINAL HISTORY INFORMATION THAT THE STATE DEPARTMENT DETERMINES IS APPROPRIATE FOR EACH CIRCUMSTANCE IN WHICH THE CBI FINGERPRINT CHECK CONFIRMS A CRIMINAL HISTORY, IN ORDER TO DETERMINE THE CRIME OR CRIMES FOR WHICH THE PERSON WAS ARRESTED OR CONVICTED AND THE DISPOSITION THEREOF;

(c) A SEARCH ON THE ICON SYSTEM AT THE STATE JUDICIAL DEPARTMENT WITH NAME AND DATE OF BIRTH INFORMATION AND ANY OTHER AVAILABLE SOURCE OF CRIMINAL HISTORY INFORMATION THAT THE STATE DEPARTMENT DETERMINES IS APPROPRIATE FOR EACH CIRCUMSTANCE IN WHICH THE CBI FINGERPRINT CHECK DOES NOT CONFIRM A CRIMINAL HISTORY, THE PURPOSE OF WHICH WILL BE TO DETERMINE WHETHER THE ICON DATABASE CONTAINS INFORMATION THAT IS NOT AVAILABLE THROUGH THE CBI; AND

(d) AS PART OF THE COMPARISON OF THE ICON DATABASE AND ANY OTHER CRIMINAL HISTORY INFORMATION SOURCE THAT THE STATE DEPARTMENT DETERMINES IS APPROPRIATE AS DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (1), AN ANALYSIS OF THE LEVEL AND TYPE OF CRIMES IDENTIFIED THROUGH SUCH SYSTEMS;

(e) AN ANALYSIS OF THE ADDED COST-BENEFIT OF CONDUCTING ICON OR OTHER SUCH CRIMINAL HISTORY INFORMATION CHECKS DETERMINED APPROPRIATE BY THE STATE DEPARTMENT IN ADDITION TO THE CBI CHECK.

(2) WITHIN EXISTING APPROPRIATIONS, THE DEPARTMENT MAY CONTRACT WITH ANY PUBLIC OR PRIVATE ENTITY IN ORDER TO CONDUCT THE PILOT PROJECT DESCRIBED IN THIS SECTION AND THROUGH WHICH TO ANALYZE THE VALIDITY, ACCURACY, THOROUGHNESS, AND TIMELINESS OF THE DIFFERENT CRIMINAL HISTORY INFORMATION SOURCES.

(3) THE DEPARTMENT SHALL REPORT ITS FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS CONCERNING THE MOST THOROUGH, TIMELY, AND COST-EFFICIENT MEANS OF CONDUCTING CRIMINAL BACKGROUND CHECKS TO THE MEMBERS OF THE HEALTH, ENVIRONMENT, WELFARE, AND INSTITUTIONS COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES NO LATER THAN AUGUST 1, 2000.

(4) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT ANY COSTS ASSOCIATED WITH THE PILOT PROGRAM TO BE ESTABLISHED PURSUANT TO THIS SECTION SHALL BE PAID FOR FROM THE CHILD CARE DEVELOPMENT FUNDS.

SECTION 11. 19-3-313 (5.5) (a) and (5.5) (b) (I), Colorado Revised Statutes, are amended, and the said 19-3-313 (5.5) (b) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

19-3-313. Central registry - repeal. (5.5) (a) Except as provided in paragraph (c) of this subsection (5.5), effective April 1, 1997, the director of the central registry shall send a written notice to each subject whose name the director receives for

placement on the central registry AS A PERPETRATOR. The notice shall include the name of the child, type of abuse, date of the incident, county department that filed a report with the registry, information concerning persons or agencies that have access to the report, and information concerning the subject's right to have an administrative review pursuant to the provisions of this subsection (5.5) before having his or her name placed on the central registry AS A PERPETRATOR.

(b) (I) The subject of the report may request the director of the central registry to review the investigation made by the county department or local law enforcement agency. The request shall be in writing and shall be made within fourteen days after the date of the mailing of the notice sent to the subject in accordance with paragraph (a) of this subsection (5.5). Upon receipt of written notice of the decision of the director, the subject shall have thirty days to request a fair hearing as provided under the "State Administrative Procedure Act", article 4 of title 24, C.R.S., to determine whether the record of the report is accurate and there is a preponderance of evidence to support a finding of child abuse or neglect so that the subject's name should be placed on the registry AS A PERPETRATOR. The burden of proof in such a hearing shall be on the department.

(III) FOLLOWING THE CENTRAL REGISTRY REVIEW OF THE INVESTIGATION MADE BY THE COUNTY DEPARTMENT OR LOCAL LAW ENFORCEMENT AGENCY, IF THE DIRECTOR OF THE CENTRAL REGISTRY DETERMINES BY A PREPONDERANCE OF THE EVIDENCE THAT THE NAME OF THE SUBJECT INVESTIGATED WARRANTS PLACEMENT ON THE CENTRAL REGISTRY AS A PERPETRATOR, THEN THE SUBJECT'S NAME SHALL BE DESIGNATED "STATUS PENDING", PENDING THE OUTCOME OF THE SUBSEQUENT REVIEWS AND HEARINGS DESCRIBED IN THIS SECTION. ONLY THOSE ENTITIES THAT ARE AUTHORIZED PURSUANT TO SECTION 19-1-307 TO RECEIVE INFORMATION CONCERNING THE CENTRAL REGISTRY OF CHILD PROTECTION MAY OBTAIN INFORMATION CONCERNING THOSE SUBJECTS WHOSE STATUS IS DESIGNATED AS "STATUS PENDING".

SECTION 12. Appropriation. In addition to any other appropriation, there is hereby appropriated, to the department of human services, division of children, youth and families, for the fiscal year beginning July 1, 1999, the sum of thirty-five thousand nine hundred sixty dollars (\$35,960), or so much thereof as may be necessary, for the implementation of this act. Of said sum, ten thousand nine hundred sixty dollars (\$10,960) shall be from the child care licensing cash fund created in section 26-6-105, Colorado Revised Statutes, and twenty-five thousand dollars (\$25,000) shall be from federal child care development funds.

SECTION 13. 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.

Approved: June 2, 1999