

CHAPTER 178

HUMAN SERVICES - SOCIAL SERVICES

SENATE BILL 06-199

BY SENATOR(S) Sandoval, Groff, Tochtrop, and Williams;
also REPRESENTATIVE(S) Rose, and Borodkin.

AN ACT**CONCERNING THE CHILD CARE LICENSING ACT.**

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

SECTION 1. 26-6-102 (4.7), (5.5), and (5.7) (a), Colorado Revised Statutes, are amended, and the said 26-6-102 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

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

(1.1) "APPLICATION" MEANS A DECLARATION OF INTENT TO OBTAIN OR CONTINUE A LICENSE OR CERTIFICATE FOR A CHILD CARE FACILITY OR A CHILD PLACEMENT AGENCY.

(1.2) "CERTIFICATE" MEANS A LEGAL DOCUMENT GRANTING PERMISSION TO OPERATE A FAMILY FOSTER HOME.

(2.2) "CHILDREN'S RESIDENT CAMP" MEANS A FACILITY OPERATING FOR THREE OR MORE CONSECUTIVE TWENTY-FOUR-HOUR DAYS DURING ONE OR MORE SEASONS OF THE YEAR FOR THE CARE OF FIVE OR MORE CHILDREN. THE FACILITY SHALL HAVE AS ITS PURPOSE A GROUP LIVING EXPERIENCE OFFERING EDUCATION AND RECREATIONAL ACTIVITIES IN AN OUTDOOR ENVIRONMENT. A CHILD SHALL BE ELIGIBLE TO ATTEND A CHILDREN'S RESIDENT CAMP IF HE OR SHE HAS COMPLETED KINDERGARTEN OR IS SIX YEARS OF AGE OR OLDER BUT YOUNGER THAN SEVENTEEN YEARS OF AGE. THE RECREATIONAL EXPERIENCES MAY OCCUR AT THE PERMANENT CAMP PREMISES OR ON TRIPS OFF THE PREMISES.

(2.4) "CRADLE CARE HOME" MEANS A FACILITY THAT IS CERTIFIED BY A CHILD

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

PLACEMENT AGENCY FOR THE CARE OF A CHILD, OR CHILDREN IN THE CASE OF MULTIPLE-BIRTH SIBLINGS, WHO IS TWELVE MONTHS OF AGE OR YOUNGER, IN A PLACE OF RESIDENCE FOR THE PURPOSE OF PROVIDING TWENTY-FOUR-HOUR FAMILY CARE FOR SIX MONTHS OR LESS IN ANTICIPATION OF A VOLUNTARY RELINQUISHMENT OF THE CHILD OR CHILDREN PURSUANT TO ARTICLE 5 OF TITLE 19, C.R.S., OR WHILE A COUNTY PREPARES AN EXPEDITED PERMANENCY PLAN FOR AN INFANT IN ITS CUSTODY.

(4.7) "Guardian" means ~~the guardian of the person of a minor~~ A PERSON WHO IS ENTRUSTED BY LAW WITH THE CARE OF A CHILD UNDER EIGHTEEN YEARS OF AGE.

(5.4) "LICENSE" MEANS A LEGAL DOCUMENT ISSUED PURSUANT TO THIS PART 1 GRANTING PERMISSION TO OPERATE A CHILD CARE FACILITY OR CHILD PLACEMENT AGENCY. A LICENSE MAY BE IN THE FORM OF A PROVISIONAL, PROBATIONARY, PERMANENT, OR TIME-LIMITED LICENSE.

(5.5) "Licensing" means, except as otherwise provided in subsection (4.5) of this section, the process by which the department approves a facility ~~except foster care homes~~, OR AGENCY for the purpose of conducting business as a child care facility OR CHILD PLACEMENT AGENCY.

(5.7) (a) "Negative licensing action" means a final agency action resulting in the denial OF AN APPLICATION, THE IMPOSITION OF FINES, OR THE suspension or revocation of a license issued pursuant to this part 1 or the demotion of such a license to a probationary license.

SECTION 2. 26-6-103 (1) (a) and (1) (d), Colorado Revised Statutes, are amended to read:

26-6-103. Application of part - study. (1) This part 1 shall not apply to:

(a) Special schools or classes operated primarily for religious instruction OR FOR A SINGLE SKILL-BUILDING PURPOSE;

(d) Occasional care of children THAT HAS NO APPARENT PATTERN AND OCCURS with or without compensation; ~~therefor~~

SECTION 3. 26-6-104 (1) (b) (I), (3), (7) (a) (I), and (8), Colorado Revised Statutes, are amended, and the said 26-6-104 (1) (b) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

26-6-104. Licenses - out-of-state notices and consent. (1) (b) (I) A person operating a foster care home shall not BE REQUIRED TO obtain a license FROM THE STATE DEPARTMENT TO OPERATE THE FOSTER CARE HOME 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. All such certificates shall be considered licenses for the purpose of this part 1, including but not limited to the investigation and criminal history background checks required under section 26-6-107. Each certificate shall be in such form as prescribed and provided by the state department, shall certify that such person and any other adults residing in the home who are acting as care givers are suitable persons to operate a foster care

home or provide care for a child, and shall contain such information as the state department requires. A child placement agency issuing or renewing any such certificate shall transmit a copy or report thereof to the state department.

(IV) A FACILITY MAY BE CERTIFIED AS A FOSTER CARE HOME AND LICENSED AS A FAMILY CHILD CARE HOME SO LONG AS THE LICENSURE AND CERTIFICATION ARE PROVIDED BY TWO SEPARATE LICENSING ENTITIES. THE STATE BOARD SHALL PROMULGATE RULES GOVERNING THE COMMUNICATION REQUIREMENTS BETWEEN TWO ENTITIES THAT LICENSE AND CERTIFY THE SAME FACILITY.

(3) A provisional license OR CERTIFICATE for a period of six months may be issued once to an applicant for an original license OR CERTIFICATE, permitting the applicant to operate a family child care home, foster care home, or child care center if the applicant is temporarily unable to conform to all standards required under this part 1, upon proof by the applicant that attempts are being made to conform to such standards or to comply with any other requirements. The applicant has the right to appeal any standard that the applicant believes works an undue hardship or has been applied too stringently by the representatives of the department. Upon filing an appeal, the department shall proceed in the manner prescribed for licensee appeals in section 26-6-106 (3).

(7) (a) (I) ~~NO~~ THE STATE DEPARTMENT, A COUNTY DEPARTMENT, OR A CHILD PLACEMENT AGENCY LICENSED UNDER THE PROVISIONS OF THIS PART 1 SHALL NOT ISSUE A license or certificate to operate a family child care home, a foster care home, ~~a dedicated family home,~~ a child care center, a residential child care facility, a secure residential ~~child care facility~~ TREATMENT CENTER, or a child placement agency, ~~shall be issued by the state department, a county department, or a child placement agency licensed under the provisions of this part 1~~ AND ANY LICENSE OR CERTIFICATE ISSUED PRIOR TO THE EFFECTIVE DATE OF SENATE BILL 06-___ SHALL BE REVOKED OR SUSPENDED, ~~if the person applying~~ THE APPLICANT for ~~such a~~ THE license or certificate, AN AFFILIATE OF THE APPLICANT, A PERSON EMPLOYED BY THE APPLICANT, OR A PERSON WHO RESIDES WITH THE APPLICANT AT THE FACILITY has been convicted of:

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

(B) A crime of violence, as defined in section 18-1.3-406, C.R.S.;

(C) Any felony offenses involving unlawful sexual behavior, as defined in section 16-22-102 (9), 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.;

(D.5) Any felony involving physical assault, battery, or a drug-related offense within the five years preceding the date of application for a license or certificate; ~~or~~

(E) A PATTERN OF MISDEMEANOR CONVICTIONS, AS DEFINED BY RULE OF THE STATE BOARD, WITHIN THE TEN YEARS IMMEDIATELY PRECEDING THE DATE OF SUBMISSION OF THE APPLICATION;

~~(E)~~ (F) Any 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.5)~~ (E) of this subparagraph (I).

(8) ~~NO~~ THE STATE DEPARTMENT, A COUNTY DEPARTMENT, OR A CHILD PLACEMENT AGENCY LICENSED UNDER THE PROVISIONS OF THIS PART I SHALL NOT ISSUE A license or certificate to operate any agency or facility defined in this part I ~~shall be issued by the state department, a county department, or a child placement agency licensed under the provisions of this part I~~ if the person applying for such license or certificate or an affiliate of the applicant, a person employed by the applicant, or a person who resides with the applicant at the facility:

(a) Has been determined to be insane or mentally incompetent by a court of competent jurisdiction and, should a court enter, pursuant to part 3 or part 4 of article 14 of title 15, C.R.S., or section 27-10-109 (4) or 27-10-125, C.R.S., an order specifically finding that the mental incompetency or insanity is of such a degree that the applicant is incapable of operating a family child care home, foster care home, child care center, or child placement agency, the record of such determination and entry of such order being conclusive evidence thereof; ~~or~~

(b) ~~Has a pattern of misdemeanor convictions within the ten years immediately preceding submission of the application. Such pattern of misdemeanor convictions shall be defined by rule of the state board.~~

SECTION 4. 26-6-104.5 (2) and (3), Colorado Revised Statutes, are amended to read:

26-6-104.5. Compliance with local government zoning regulations - notice to local governments - provisional licensure. (2) The department shall assure that timely written notice is provided to the municipality, city and county, or county where a child care facility is situated, including the address of the facility and the population and number of persons to be served by the facility, when any of the following occurs:

(a) A person applies for a license to operate a child care facility pursuant to section 26-6-104;

(b) A license is granted to operate a child care facility pursuant to section 26-6-104; OR

(c) A change IS MADE in the license of a RESIDENTIAL child care facility, SPECIALIZED GROUP FACILITY, HOMELESS YOUTH SHELTER, OR SECURE RESIDENTIAL TREATMENT CENTER. ~~occurs; or~~

(d) ~~The license of a child care facility is revoked or otherwise terminated for any reason.~~

(3) Notwithstanding any other provision of law, in the event of a zoning or other delay or dispute between a child care facility and the municipality, city and county, or county where the facility is situated, the department may grant a provisional license to the facility for up to ~~one hundred twenty days~~ SIX MONTHS pending

resolution of the delay or dispute.

SECTION 5. 26-6-105 (1) (a), (1) (b), (2) (a), and (2) (b) (I), Colorado Revised Statutes, are amended to read:

26-6-105. Fees - when original applications, reapplications, and renewals for licensure are required - creation of child care licensing cash fund. (1) (a) The state department is hereby authorized to establish, pursuant to rules promulgated by the state board, ~~full~~ PERMANENT, TIME-LIMITED, and provisional license fees and fees for continuation or renewal, whichever is applicable, of a ~~full~~ license for the following types of child care arrangements:

(I) Family child care homes, including any special type of family child care home designated by rules of the state board pursuant to section 26-6-106 (2) (p), but excluding homes certified by county departments or child placement agencies;

(II) Child care centers;

(III) Secure residential treatment centers;

(IV) Residential child care facilities;

(V) Child placement agencies;

(VI) Repealed.

(VII) Homeless youth shelters;

(VIII) Day treatment centers; ~~and~~

(IX) Specialized group facilities; AND

(X) CHILDREN'S RESIDENT CAMPS.

(b) The state department may also establish fees pursuant to rules promulgated by the state board of human services, for the following situations:

(I) Issuance of a duplicate license;

(II) Change of license due to an increase in licensing capacity or a change in the age of children served;

(III) Obtaining the criminal record of ~~the~~ AN applicant and any person living with or employed by ~~an~~ THE applicant, which may include costs associated with the taking of fingerprints;

(IV) Checking the records and reports of child abuse or neglect maintained by the state department for an owner, employee, or resident of a facility or agency or an applicant for a license to operate a facility or agency;

(V) Filing of appeals;

(VI) Duplication of licensing records for the public;

(VII) Duplication of licensing records in electronic format for the public; ~~and~~

(VIII) Accrediting a child placement agency for purposes of providing adoption services for convention adoptions pursuant to the "Intercountry Adoption Act of 2000", 42 U.S.C. sec. 14901 et seq.;

(IX) INSUFFICIENT FUNDS PAYMENT AND COLLECTION OF OVERDUE FEES AND FINES; AND

(X) COLLECTION OF FEES FOR SCANNING OF ADOPTION RECORDS PURSUANT TO SECTION 19-5-307, C.R.S.

(2) (a) The fees specified in subsection (1) of this section shall be paid when application is made for any license or when renewal of a child placement agency license is sought and shall not be subject to refund. Applications for licenses shall be required in the situations that are set forth in paragraph (b) of this subsection (2) and shall be made on forms prescribed by the state department. Each completed application shall set forth such information as required by the state department. All ~~full~~ licenses shall continue in force until revoked, surrendered, or expired.

(b) (I) An original application AND FEE shall be required:

(A) When an individual, partnership, corporation, or association plans to open a child care center, CHILDREN'S RESIDENT CAMP, secure residential treatment center, residential child care facility, HOMELESS YOUTH SHELTER, DAY TREATMENT CENTER, SPECIALIZED GROUP FACILITY, or child placement agency;

(B) When the child care center, CHILDREN'S RESIDENT CAMP, secure residential treatment center, ~~or~~ residential child care facility, HOMELESS YOUTH SHELTER, DAY TREATMENT CENTER, OR SPECIALIZED GROUP FACILITY plans to move the center or facility to a different building at a different location;

(C) When the management or governing body of a child care center, CHILDREN'S RESIDENT CAMP, secure residential treatment center, residential child care facility, HOMELESS YOUTH SHELTER, DAY TREATMENT CENTER, SPECIALIZED GROUP FACILITY, or child placement agency is acquired by a different individual, association, partnership, or corporation OR A CHANGE OCCURS IN THE OPERATING ENTITY RESULTING IN A NEW FEDERAL EMPLOYEE IDENTIFICATION NUMBER;

(D) When a family or person plans to open a family child care home, including any special type of family child care home designated by rules of the state board pursuant to section 26-6-106 (2) (p), or foster care home;

(E) When a family or person who operates a family child care home, including any special type of family child care home designated by rules of the state board pursuant to section 26-6-106 (2) (p), or foster care home moves to a new residence.

SECTION 6. 26-6-106 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

26-6-106. Standards for facilities and agencies. (2) Standards prescribed by such rules shall be restricted to:

(s) STANDARDS FOR THE TRAINING OF PROVIDERS OF CRADLE CARE HOME SERVICES THAT SHALL BE SUBSTANTIALLY SIMILAR TO THE TRAINING REQUIRED OF ADOPTIVE PARENTS PRIOR TO ADOPTING AN INFANT, INCLUDING ONGOING TRAINING HOURS APPROPRIATE TO THE SERVICES PROVIDED.

SECTION 7. 26-6-107 (1) (a) (I) (A) and (1) (a) (I) (B), Colorado Revised Statutes, are amended to read:

26-6-107. Investigations and inspections - local authority - reports - rules. (1) (a) (I) (A) The state department shall investigate and pass on each original application for a license, each application for a permanent OR TIME-LIMITED license following the issuance of a probationary or provisional license, and on and after July 1, 2002, each application for renewal, to operate a facility or an agency prior to granting such license or renewal. As part of such investigation, the state department shall require each ADULT WHO IS EIGHTEEN YEARS OF AGE AND OLDER, INCLUDING BUT NOT LIMITED TO THE applicant, ANY owner, employee, newly hired employee, licensee, and any adult WHO IS EIGHTEEN YEARS OF AGE AND OLDER who resides in the licensed facility to obtain a fingerprint-based criminal history records check by reviewing any record that shall be used to assist the state department in ascertaining whether the person being investigated has been convicted of any of the criminal offenses specified in section 26-6-104 (7) or any other felony. The state board shall promulgate rules that define and identify what the criminal history records check shall entail.

(B) Rules promulgated by the state board pursuant to this subparagraph (I) shall allow an exemption from the criminal history records investigation and the check of the records and reports of child abuse or neglect maintained by the state department for those out-of-state employees working in Colorado at a children's resident camp OR SCHOOL-AGE CHILD CARE CENTER in a temporary capacity FOR A CAMP OR CENTER THAT IS IN OPERATION for fewer than ninety days. Each person so exempted from fingerprinting and the check of the records and reports of child abuse or neglect maintained by the state department 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.

SECTION 8. 26-6-108 (1), the introductory portion to 26-6-108 (2), and the introductory portion to 26-6-108 (2.5) (a) (I), Colorado Revised Statutes, are amended, and the said 26-6-108 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

26-6-108. Denial of license - suspension - revocation - probation - refusal to renew license - fines. (1) When an application for ~~an original~~ A license has been denied by the department, the department shall notify the applicant in writing of ~~such~~ THE denial by mailing a notice to him OR HER at the address shown on ~~his~~ THE application. Any applicant believing himself OR HERSELF aggrieved by ~~such~~ THE

denial may pursue the remedy for review as provided in subsection (3) of this section if he OR SHE, within thirty days after receiving ~~such~~ THE notice, petitions the department to set a date and place for hearing, affording him OR HER an opportunity to be heard in person or by counsel. All hearings on the denial of ~~original~~ licenses shall be conducted in conformity with the provisions and procedures specified in article 4 of title 24, C.R.S., as in the case of the suspension and revocation of licenses.

(2) The department may deny AN APPLICATION, OR 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, an affiliate of the licensee, a person employed by the licensee, or a person who resides with the licensee at the facility:

(2.2) THE STATE DEPARTMENT MAY DENY AN APPLICATION TO RENEW A LICENSE BASED ON THE GROUNDS SET FORTH IN SUBSECTION (2) OF THIS SECTION. THE DENIAL IS EFFECTIVE UPON THE EXPIRATION OF THE EXISTING LICENSE. THE EXISTING LICENSE SHALL NOT CONTINUE IN EFFECT EVEN THOUGH THE APPLICANT FOR RENEWAL FILES A REQUEST FOR HEARING OR APPEAL.

(2.5) (a) (I) The state department shall deny AN APPLICATION FOR a license under the circumstances described in section 26-6-104 (7). The state department shall revoke OR SUSPEND a license previously issued if:

SECTION 9. 26-6-103.5 (2) (f) (I), (2) (f) (II), (2) (g) (I), and (2) (g) (II), Colorado Revised Statutes, are amended to read:

26-6-103.5. Application of part - guest child care facilities. (2) No person or entity shall operate a guest child care facility unless the following requirements are met:

(f) (I) The guest child care facility requires all supervisory employees of the guest child care facility and applicants for supervisory employee positions at the guest child care facility to obtain a fingerprint-based criminal history check through the Colorado bureau of investigation and requests the state department to ascertain whether the person being investigated has been convicted of any of the criminal offenses specified in section 26-6-104 (7) (a) (I) or whether the person has been determined to have a pattern of misdemeanor convictions as described in ~~section 26-6-104 (8) (b)~~ SECTION 26-6-104 (7) (a) (I) (E) and the guest child care facility prohibits the hiring of any such person as a supervisory employee or terminates the employment of any such person as a supervisory employee upon confirmation of such a criminal history;

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (f), the guest child care facility requires all supervisory employees and applicants for supervisory employee positions who have resided in the state of Colorado for fewer than two years to have a federal bureau of investigation fingerprint-based criminal history background check through the Colorado bureau of investigation and requests the state department to ascertain whether the person being investigated has been convicted of any of the criminal offenses specified in section 26-6-104 (7) (a) (I) or whether the person has been determined to have a pattern of misdemeanor

convictions as described in ~~section 26-6-104(8)(b)~~ SECTION 26-6-104 (7) (a) (I) (E) and the guest child care facility prohibits the hiring of any such person as a supervisory employee or terminates the employment of any such person as a supervisory employee upon confirmation of such a criminal history;

(g) (I) The guest child care facility requires all other employees of the guest child care facility to obtain a fingerprint-based criminal history check through the Colorado bureau of investigation and requests the state department to ascertain whether the person being investigated has been convicted of any of the criminal offenses specified in section 26-6-104 (7) (a) (I) or whether the person has been determined to have a pattern of misdemeanor convictions as described in ~~section 26-6-104(8)(b)~~ SECTION 26-6-104 (7) (a) (I) (E) and the guest child care facility terminates the employment of any such person as an employee upon confirmation of such a criminal history;

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

SECTION 10. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 9, 2006, if adjournment sine die is on May 10, 2006); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: May 1, 2006