

CHAPTER 237

CHILDREN AND DOMESTIC MATTERS

SENATE BILL 06-045

BY SENATOR(S) Williams, Jones, Boyd, Fitz-Gerald, Tupa, and Windels;
 also REPRESENTATIVE(S) Solano, Hefley, Merrifield, Benefield, Berens, Borodkin, Hodge, Madden, McGihon, Paccione,
 Romanoff, and Todd.

AN ACT

CONCERNING THE INVESTIGATION OF CHILD CARE PROVIDERS, AND MAKING AN APPROPRIATION THEREFOR.

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 - repeal. As used in this article, unless the context otherwise requires:

(3.7) "EXEMPT FAMILY CHILD CARE HOME PROVIDER" MEANS A FAMILY CHILD CARE HOME PROVIDER WHO IS EXEMPT FROM CERTAIN PROVISIONS OF THIS PART 1 PURSUANT TO SECTION 26-6-103 (1) (g).

SECTION 2. 26-6-103 (1) (g), Colorado Revised Statutes, is amended to read:

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

(g) A family child care home receiving one child for less than twenty-four-hour care or receiving two or more children who are related to each other as brother or sister from the same family household for less than twenty-four-hour care or such additional number of children as may be specified by ~~regulations~~ RULES promulgated by the state board of human services. The department shall conduct a study on whether rules should be modified to allow an additional number of children to be cared for in a family home that is exempt from licensing and shall present options and recommendations to the state board on or before October 1, 1996. The department shall consult with individuals and organizations who express

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

to the department an interest in participating in the development of such recommendations, and the department shall notify such individuals and organizations of the date and location of the board hearing. The department shall examine the relationship between the licensing regulations governing larger family care homes and child care centers and shall present options and recommendations to the state board on or before October 1, 1996. In making such recommendations, the department shall consult with individuals and organizations who express to the department an interest in participating in the development of such recommendations, and the department shall notify such individuals and organizations of the date and location of the board hearing. NOTWITHSTANDING ANY PROVISION OF THIS PARAGRAPH (g) TO THE CONTRARY, AN EXEMPT FAMILY CHILD CARE HOME PROVIDER SHALL COMPLY WITH THE PROVISIONS OF SECTION 26-6-120 IF HE OR SHE PROVIDES CARE FOR A CHILD WHOSE CARE IS FUNDED IN WHOLE OR IN PART WITH MONEYS RECEIVED ON THE CHILD'S BEHALF PURSUANT TO THE COLORADO CHILD CARE ASSISTANCE PROGRAM CREATED IN PART 8 OF ARTICLE 2 OF THIS TITLE.

SECTION 3. Part 1 of article 6 of title 26, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

26-6-120. Exempt family child care home providers - fingerprint-based criminal history records check - child care assistance program moneys - temporary care - definitions. (1) (a) (I) AN EXEMPT FAMILY CHILD CARE HOME PROVIDER WHO PROVIDES CARE FOR A CHILD, WHOSE CARE IS FUNDED IN WHOLE OR IN PART WITH MONEYS RECEIVED ON THE CHILD'S BEHALF PURSUANT TO THE COLORADO CHILD CARE ASSISTANCE PROGRAM CREATED IN PART 8 OF ARTICLE 2 OF THIS TITLE, SHALL BE SUBJECT TO A FINGERPRINT-BASED CRIMINAL HISTORY RECORDS CHECK, REFERRED TO IN THIS SECTION AS AN "FCC", AS PROVIDED IN THIS SECTION AND THE RULES AUTHORIZED IN SECTION 26-6-107 (1) (a) (I) AND (1) (a) (I.5). THE PROVISIONS OF THIS SECTION SHALL APPLY TO CONTRACTS FOR FUNDING UNDER THE COLORADO CHILD CARE ASSISTANCE PROGRAM ENTERED INTO OR RENEWED ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION.

(II) EACH ADULT EIGHTEEN YEARS OF AGE OR OLDER WHO RESIDES WITH AN EXEMPT FAMILY CHILD CARE HOME PROVIDER, REFERRED TO IN THIS SECTION AS A "QUALIFIED ADULT", SHALL BE SUBJECT TO THE FCC REQUIRED PURSUANT TO THIS SECTION.

(III) THE FCC REQUIRED FOR AN EXEMPT FAMILY CHILD CARE HOME PROVIDER OR QUALIFIED ADULT PURSUANT TO THIS SECTION SHALL BE CONDUCTED THROUGH THE COLORADO BUREAU OF INVESTIGATION FOR AN EXEMPT FAMILY CHILD CARE HOME PROVIDER OR QUALIFIED ADULT WHO HAS RESIDED IN COLORADO FOR MORE THAN TWO YEARS. AN EXEMPT FAMILY CHILD CARE HOME PROVIDER OR QUALIFIED ADULT WHO HAS RESIDED IN COLORADO FOR LESS THAN TWO YEARS SHALL BE REQUIRED TO ADDITIONALLY HAVE A FEDERAL BUREAU OF INVESTIGATION FINGERPRINT CHECK CONDUCTED THROUGH THE COLORADO BUREAU OF INVESTIGATION. AS PART OF SAID FCC, THE RECORDS AND REPORTS OF CHILD ABUSE OR NEGLECT MAINTAINED BY THE STATE DEPARTMENT SHALL BE ACCESSED TO DETERMINE WHETHER THE SUBJECT OF THE FCC HAS BEEN FOUND TO BE RESPONSIBLE IN A CONFIRMED REPORT OF CHILD ABUSE OR NEGLECT. INFORMATION SHALL BE MADE AVAILABLE PURSUANT TO SECTION 19-1-307 (2) (j), C.R.S., AND RULES PROMULGATED BY THE STATE BOARD PURSUANT TO SECTION 19-3-313.5 (4),

C.R.S.

(IV) THE FCC REQUIRED PURSUANT TO THIS SECTION SHALL BE A PREREQUISITE TO THE ISSUANCE OR RENEWAL OF A CONTRACT FOR RECEIPT OF MONEYS UNDER THE COLORADO CHILD CARE ASSISTANCE PROGRAM AS PROVIDED IN PART 8 OF ARTICLE 2 OF THIS TITLE. THE STATE DEPARTMENT SHALL NOT ISSUE OR RENEW A CONTRACT FOR PAYMENT OF MONEYS UNDER THE COLORADO CHILD CARE ASSISTANCE PROGRAM TO AN EXEMPT FAMILY CHILD CARE HOME PROVIDER WHO FAILS TO SUBMIT TO THE FCC OR FAILS TO SUBMIT FINGERPRINTS FOR A QUALIFIED ADULT WHO RESIDES WITH THE EXEMPT FAMILY CHILD CARE HOME PROVIDER.

(b) AN EXEMPT FAMILY CHILD CARE HOME PROVIDER SHALL NOTIFY THE COUNTY WITH WHOM HE OR SHE HAS CONTRACTED PURSUANT TO THE COLORADO CHILD CARE ASSISTANCE PROGRAM UPON ANY CHANGE OF CIRCUMSTANCES THAT RESULTS IN THE PRESENCE OF A NEW QUALIFIED ADULT IN THE RESIDENCE. A NEW QUALIFIED ADULT IN THE RESIDENCE OF AN EXEMPT FAMILY CHILD CARE HOME PROVIDER IS REQUIRED TO UNDERGO AN FCC AS PROVIDED IN THIS SECTION, EVEN IF THE COLORADO CHILD CARE ASSISTANCE PROGRAM CONTRACT IS NOT SUBJECT TO RENEWAL WHEN THE QUALIFIED ADULT MOVES INTO THE RESIDENCE.

(c) AN EXEMPT FAMILY CHILD CARE HOME PROVIDER OR QUALIFIED ADULT WHO UNDERGOES AN FCC SHALL, WITH SUBMITTAL OF HIS OR HER FINGERPRINTS, PAY TO THE STATE DEPARTMENT A FEE ESTABLISHED BY RULE OF THE STATE BOARD PURSUANT TO SUBSECTION (5) OF THIS SECTION TO OFFSET THE COSTS ASSOCIATED WITH PROCESSING THE FCC THROUGH THE COLORADO BUREAU OF INVESTIGATION AND THE FEDERAL BUREAU OF INVESTIGATION.

(2) A CONTRACT TO PROVIDE MONEYS UNDER THE COLORADO CHILD CARE ASSISTANCE PROGRAM PURSUANT TO PART 8 OF ARTICLE 2 OF THIS TITLE SHALL NOT BE ISSUED OR RENEWED BY THE STATE DEPARTMENT OR A COUNTY DEPARTMENT TO AN EXEMPT FAMILY CHILD CARE HOME PROVIDER IF THE PROVIDER OR A QUALIFIED ADULT WHO RESIDES WITH THE PROVIDER HAS BEEN CONVICTED OF:

(a) CHILD ABUSE, AS DESCRIBED 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 OFFENSE 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.;

(e) ANY FELONY INVOLVING PHYSICAL ASSAULT, BATTERY, OR A DRUG-RELATED OFFENSE WITHIN THE FIVE YEARS PRECEDING THE DATE OF THE FCC; OR

(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 PARAGRAPHS (a) TO (e) OF THIS SUBSECTION (2).

(3) A CONTRACT TO PROVIDE MONEYS UNDER THE COLORADO CHILD CARE ASSISTANCE PROGRAM PURSUANT TO PART 8 OF ARTICLE 2 OF THIS TITLE SHALL NOT BE ISSUED OR RENEWED BY THE STATE DEPARTMENT OR A COUNTY DEPARTMENT TO AN EXEMPT FAMILY CHILD CARE HOME PROVIDER IF THE PROVIDER OR A QUALIFIED ADULT WHO RESIDES WITH THE PROVIDER:

(a) HAS A PATTERN OF MISDEMEANOR CONVICTIONS OCCURRING WITHIN THE TEN YEARS PRECEDING SUBMISSION OF THE APPLICATION. A PATTERN OF MISDEMEANOR CONVICTIONS SHALL BE DEFINED BY RULE OF THE STATE BOARD; OR

(b) HAS BEEN DETERMINED TO BE INSANE OR MENTALLY INCOMPETENT BY A COURT OF COMPETENT JURISDICTION AND A COURT HAS ENTERED, PURSUANT TO PART 3 OR 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 PROVIDER CANNOT SAFELY OPERATE AN EXEMPT FAMILY CHILD CARE HOME. THE RECORD OF SUCH DETERMINATION AND ENTRY OF SUCH ORDER SHALL BE CONCLUSIVE EVIDENCE THEREOF. AN EXEMPT FAMILY CHILD CARE HOME PROVIDER SHALL SIGN AN ATTESTATION AFFIRMING THE LACK OF SUCH A FINDING PRIOR TO ENTERING INTO OR RENEWING A CONTRACT FOR MONEYS UNDER THE COLORADO CHILD CARE ASSISTANCE PROGRAM, PURSUANT TO SECTION 26-2-805.5 (2).

(4) AN EXEMPT FAMILY CHILD CARE HOME PROVIDER WHO HAS SUBMITTED TO AN FCC BY THE COLORADO BUREAU OF INVESTIGATION AND THE FEDERAL BUREAU OF INVESTIGATION MAY BE ELIGIBLE, PENDING THE RECEIPT OF THE RESULTS OF THE FCC, TO RECEIVE MONEYS UNDER THE COLORADO CHILD CARE ASSISTANCE PROGRAM FOR UP TO SIXTY DAYS OR UNTIL THE FCC IS COMPLETE, WHICHEVER OCCURS FIRST. UPON RECEIPT OF THE FCC RESULTS, THE EXEMPT FAMILY CHILD CARE HOME PROVIDER MAY CONTINUE RECEIVING MONEYS UNDER THE COLORADO CHILD CARE ASSISTANCE PROGRAM, SO LONG AS THE EXEMPT FAMILY CHILD CARE HOME PROVIDER OR A QUALIFIED ADULT RESIDING WITH THE PROVIDER IS NOT INELIGIBLE UNDER SUBSECTION (2) OR (3) OF THIS SECTION.

(5) THE STATE BOARD SHALL PROMULGATE RULES TO ESTABLISH THE AMOUNT OF THE FEE TO COLLECT FROM AN EXEMPT FAMILY CHILD CARE HOME PROVIDER OR QUALIFIED ADULT WHO IS SUBJECT TO AN FCC PURSUANT TO SUBSECTION (1) OF THIS SECTION. THE STATE DEPARTMENT IS AUTHORIZED TO COLLECT THE FEE AT THE TIME OF THE FCC.

SECTION 4. Part 8 of article 2 of title 26, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

26-2-805.5. Exemptions - requirements. (1) NOTWITHSTANDING ANY PROVISION OF SECTION 26-2-805 TO THE CONTRARY, AN EXEMPT FAMILY CHILD CARE HOME PROVIDER, AS DEFINED IN SECTION 26-6-102 (3.7), SHALL NOT BE ELIGIBLE TO RECEIVE CHILD CARE ASSISTANCE MONEYS THROUGH THE COLORADO CHILD CARE ASSISTANCE PROGRAM IF HE OR SHE FAILS TO MEET THE CRITERIA ESTABLISHED IN SECTION 26-6-120.

(2) AS A PREREQUISITE TO ENTERING INTO A VALID COLORADO CHILD CARE ASSISTANCE PROGRAM CONTRACT WITH A COUNTY OFFICE, AN EXEMPT FAMILY

CHILD CARE HOME PROVIDER SHALL SIGN AN ATTESTATION THAT AFFIRMS HE OR SHE, AND ANY QUALIFIED ADULT RESIDING IN THE EXEMPT FAMILY CHILD CARE HOME, HAS NOT BEEN DETERMINED TO BE INSANE OR MENTALLY INCOMPETENT BY A COURT OF COMPETENT JURISDICTION AND A COURT HAS NOT ENTERED, PURSUANT TO PART 3 OR 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 PROVIDER CANNOT SAFELY OPERATE AN EXEMPT FAMILY CHILD CARE HOME.

SECTION 5. 19-1-307 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

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

(j.5) THE STATE DEPARTMENT OF HUMAN SERVICES OR A COUNTY OR DISTRICT DEPARTMENT OF SOCIAL SERVICES INVESTIGATING AN EXEMPT FAMILY CHILD CARE HOME PROVIDER PURSUANT TO SECTION 26-6-120, C.R.S., AS A PREREQUISITE TO ISSUANCE OR RENEWAL OF A CONTRACT TO RECEIVE MONEYS FOR THE CARE OF A CHILD FROM THE COLORADO CHILD CARE ASSISTANCE PROGRAM CREATED IN PART 8 OF ARTICLE 2 OF TITLE 26, C.R.S. ACCESS TO THE RECORDS AND REPORTS OF CHILD ABUSE OR NEGLECT GRANTED TO THE NAMED DEPARTMENT OR AGENCIES SHALL SERVE ONLY AS THE BASIS FOR FURTHER INVESTIGATION.

SECTION 6. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, to the department of human services, division of child care, for the fiscal year beginning July 1, 2006, out of the child care licensing cash fund created in section 26-6-105 (4), Colorado Revised Statutes, the sum of thirty-seven thousand one hundred thirty-four dollars (\$37,134) cash funds and 1.0 FTE, or so much thereof as may be necessary, for implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, to the department of human services, executive director's office, for allocation to the criminal background check unit of the office of performance improvement, for the fiscal year beginning July 1, 2006, out of the child care licensing cash fund created in section 26-6-105 (4), Colorado Revised Statutes, the sum of thirty-eight thousand eight hundred seventy-three dollars (\$38,873) cash funds and 1.0 FTE, or so much thereof as may be necessary, for implementation of this act.

(3) In addition to any other appropriation, there is hereby appropriated, to the department of public safety, Colorado bureau of investigation, for the Colorado crime information center, for the fiscal year beginning July 1, 2006, the sum of one hundred eighty-two thousand ninety-nine dollars (\$182,099) and 2.0 FTE, or so much thereof as may be necessary, for fingerprint processing services related to the implementation of this act. Of said sum, one hundred thirty-four thousand five hundred seventy-nine dollars (\$134,579) shall be cash funds from fingerprint and name check processing fees collected by the department, and forty-seven thousand five hundred twenty dollars (\$47,520) shall be cash funds exempt from fingerprint

and name check processing fees collected by the department for transmittal to the federal bureau of investigation.

SECTION 7. 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: May 25, 2006