

## CHAPTER 163

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**HUMAN SERVICES - SOCIAL SERVICES**


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**HOUSE BILL 11-1145**

BY REPRESENTATIVE(S) McCann, Labuda, Levy, Pabon, Duran, Fields, Fischer, Hamner, Kerr A., Kerr J., Massey, Peniston, Priola, Schafer S., Solano, Summers, Todd, Tyler, Williams A., Wilson, Court, Lee, Miklosi, Vigil, Waller;  
also SENATOR(S) Tochtrop, Boyd, Foster, Guzman, Hodge, Newell, Nicholson.

**AN ACT**

**CONCERNING REQUIREMENTS SURROUNDING BACKGROUND CHECKS FOR CHILD CARE FACILITIES,  
AND MAKING AN APPROPRIATION THEREFOR.**

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

**SECTION 1.** 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 - public services short-term child care facilities.** (2) No person or entity shall operate a guest child care facility or a public services short-term child care facility unless the following requirements are met:

(f) (I) The guest child care facility or public services short-term child care facility requires all supervisory employees of the guest child care facility or public services short-term child care facility and applicants for supervisory employee positions at the guest child care facility or public services short-term child care facility to obtain a fingerprint-based criminal history check ~~through~~ UTILIZING the Colorado bureau of investigation AND, FOR SUPERVISORY EMPLOYEES HIRED ON OR AFTER AUGUST 10, 2011, THE FEDERAL 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 (7) (a) (I) (E) and the guest child care facility or public services short-term 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;

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

(II) Notwithstanding the provisions of subparagraph (f) of this paragraph (f), the guest child care facility or public services short-term 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 (7) (a) (I) (E) and the guest child care facility or public services short-term 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 or public services short-term child care facility requires all other employees of the guest child care facility or public services short-term child care facility to obtain a fingerprint-based criminal history check ~~through~~ UTILIZING the Colorado bureau of investigation AND, FOR EMPLOYEES HIRED ON OR AFTER AUGUST 10, 2011, THE FEDERAL 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 (7) (a) (I) (E) and the guest child care facility or public services short-term 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 (f) of this paragraph (g), the guest child care facility or public services short-term 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 (7) (a) (I) (E) and the guest child care facility or public services short-term child care facility terminates the employment of any such person as an employee upon confirmation of such a criminal history;

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

**26-6-103.7. Application of part - neighborhood youth organizations - licensing - duties and responsibilities - definitions.** (4) A licensed neighborhood youth organization shall require all employees and volunteers who work directly with or will work directly with youth members five or more days in a calendar month to obtain, prior to employment, and every two years thereafter, one of the following:

(a) a fingerprint-based criminal history ~~record~~ RECORDS check ~~through~~ UTILIZING the Colorado bureau of investigation AND, AS OF AUGUST 10, 2011, FOR ANY NEW APPLICANT OR NEWLY HIRED EMPLOYEE, THE FEDERAL BUREAU OF INVESTIGATION

and request the state department to ascertain whether the person being investigated has been convicted of felony child abuse as specified in section 18-6-401, C.R.S., or a felony offense involving unlawful sexual behavior as defined in section 16-22-102 (9), C.R.S. The neighborhood youth organization shall not hire a person as an employee or approve a person as a volunteer after confirmation of such a criminal history.

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

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

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

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

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

(1) (a) (I) (C) Rules promulgated by the state board pursuant to this subparagraph (I) shall require the fingerprint-based criminal history records check in all circumstances, other than those identified in sub-subparagraph (B) ~~or (C.5)~~ of this subparagraph (I), to include a fingerprint-based criminal history records check ~~through~~ UTILIZING THE RECORDS of the Colorado bureau of investigation AND, AS OF AUGUST 10, 2011, FOR ANY NEW OWNER, NEW APPLICANT, NEWLY HIRED EMPLOYEE, NEW LICENSEE, OR INDIVIDUAL WHO BEGINS RESIDING IN THE LICENSED FACILITY ON OR AFTER AUGUST 11, 2011, THE FEDERAL BUREAU OF INVESTIGATION.

As part of ~~said~~ THE investigation, the records and reports of child abuse or neglect maintained by the state department shall be accessed to determine whether the owner, applicant, employee, newly hired employee, licensee, or individual who resides in the licensed facility being investigated 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. 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.

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

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

**26-6-120. Exempt family child care home providers - fingerprint-based criminal history record check - child care assistance program moneys - temporary care - definitions.** (1) (a) (III) The FCC required for a qualified provider or qualified adult pursuant to this section shall be conducted through the Colorado bureau of investigation for a qualified provider or qualified adult who has resided in Colorado for more than two years. A qualified 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 INCLUDE A FINGERPRINT-BASED CRIMINAL HISTORY RECORDS CHECK UTILIZING THE RECORDS OF THE COLORADO BUREAU OF INVESTIGATION AND, FOR QUALIFIED PROVIDERS OR QUALIFIED ADULTS APPLYING FOR CHILD CARE ASSISTANCE PROGRAM MONEYS ON OR AFTER AUGUST 10, 2011, THE FEDERAL BUREAU OF INVESTIGATION. As part of the FCC, THE STATE DEPARTMENT SHALL ACCESS 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.

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

**19-1-307. Dependency and neglect records and information - access - fee - rules - 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.7) The state department of human services investigating an applicant for an employee or volunteer position with, or an employee or volunteer of, a licensed

neighborhood youth organization pursuant to section 26-6-103.7 (4), ~~(c)~~, C.R.S., when the applicant, employee, or volunteer has given written authorization to the state department of human services to check records or reports of child abuse or neglect;

**SECTION 6. Appropriation.** (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the child care licensing cash fund created in section 26-6-105 (4), Colorado Revised Statutes, not otherwise appropriated, to the department of human services, for allocation to the division of child care, for the fiscal year beginning July 1, 2011, the sum of nineteen thousand three hundred eleven dollars (\$19,311) cash funds and 0.4 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, to the department of public safety, for allocation to the Colorado bureau of investigation, for the fiscal year beginning July 1, 2011, from the Colorado bureau of investigation identification unit fund created in section 24-33.5-426, Colorado Revised Statutes, the sum of one hundred fifty-one thousand eight hundred dollars (\$151,800) cash funds, or so much thereof as may be necessary, for fingerprint and name check processing fees collected by the department for transmittal to the federal bureau of investigation.

**SECTION 7. Act subject to petition - 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 (August 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2012 and shall take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 9, 2011