

CHAPTER 265

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 19-1142

BY REPRESENTATIVE(S) Ransom and Singer, Arndt, Baisley, Beckman, Benavidez, Bird, Bockenfeld, Buck, Buckner, Buentello, Caraveo, Carver, Catlin, Coleman, Cutter, Duran, Esgar, Exum, Froelich, Galindo, Garnett, Geitner, Gonzales-Gutierrez, Gray, Hansen, Herod, Hooton, Humphrey, Jackson, Jaquez Lewis, Kennedy, Kipp, Landgraf, Larson, Lewis, Liston, Lontine, McCluskie, McKean, McLachlan, Melton, Michaelson Jenet, Mullica, Neville, Pelton, Rich, Roberts, Saine, Sandridge, Sirota, Snyder, Sullivan, Tipper, Titone, Valdez A., Valdez D., Van Winkle, Weissman, Will, Williams D., Wilson, Becker;
also SENATOR(S) Moreno and Smallwood, Court, Hill, Lee, Priola, Tate.

AN ACT

CONCERNING CREATING AN OPTION FOR PARENTS WHO SEEK TO VOLUNTARILY DELEGATE CERTAIN PARENTAL RESPONSIBILITIES TO A SAFE FAMILY FOR A LIMITED PERIOD OF TIME WITHOUT RELINQUISHING LEGAL CUSTODY OF THEIR CHILD, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, **add** part 7 to article 6 of title 26 as follows:

PART 7
TEMPORARY CARE ASSISTANCE PROGRAM

26-6-701. Short title. THE SHORT TITLE OF THIS PART 7 IS THE "KYLE FORTI ACT".

26-6-702. Definitions. AS USED IN THIS PART 7, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "APPROVED TEMPORARY CAREGIVER" MEANS A PERSON APPROVED BY A TEMPORARY CARE ASSISTANCE PROGRAM PURSUANT TO THIS PART 7 WHO IS DELEGATED TEMPORARY CARE RESPONSIBILITY OF A MINOR BY A PARENT OR GUARDIAN THROUGH A POWER OF ATTORNEY, AS DESCRIBED IN SECTION 15-14-105.

(2) "TEMPORARY CARE ASSISTANCE PROGRAM" MEANS A PROGRAM OPERATED BY A CHILD PLACEMENT AGENCY THAT ASSISTS A PARENT OR GUARDIAN WITH

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

RECRUITING AND IDENTIFYING AN APPROPRIATE AND SAFE APPROVED TEMPORARY CAREGIVER TO WHOM THE PARENT OR GUARDIAN CAN CHOOSE TO DELEGATE TEMPORARY CARE RESPONSIBILITY OF A MINOR THROUGH A POWER OF ATTORNEY PURSUANT TO SECTION 15-14-105.

26-6-703. Temporary care assistance program permitted. (1) A CHILD PLACEMENT AGENCY MAY OPERATE A TEMPORARY CARE ASSISTANCE PROGRAM; EXCEPT THAT, PRIOR TO JULY 1, 2021, ONLY A CHILD PLACEMENT AGENCY THAT IS A NONPROFIT ORGANIZATION, AND THAT OPERATES A PROGRAM SIMILAR TO A TEMPORARY CARE ASSISTANCE PROGRAM IN THIRTY OR MORE STATES, MAY OPERATE A TEMPORARY CARE ASSISTANCE PROGRAM.

(2) THE ACTIVITIES OF A TEMPORARY CARE ASSISTANCE PROGRAM PERFORMED PURSUANT TO THIS PART 7 DO NOT CONSTITUTE PLACING A CHILD PURSUANT TO THIS ARTICLE 6.

26-6-704. Temporary care assistance program - limitations on duration of delegation - approved temporary caregiver. (1) (a) (I) A PARENT OR GUARDIAN OF A MINOR MAY USE THE ASSISTANCE OF A TEMPORARY CARE ASSISTANCE PROGRAM TO IDENTIFY AN APPROVED TEMPORARY CAREGIVER TO DELEGATE ANY POWER REGARDING CARE, CUSTODY, OR PROPERTY OF THE MINOR, EXCEPT THE POWER TO CONSENT TO MARRIAGE OR ADOPTION, BY A POWER OF ATTORNEY, AS DESCRIBED IN SECTION 15-14-105.

(II) A TEMPORARY CARE ASSISTANCE PROGRAM MUST MAKE DILIGENT EFFORTS TO NOTIFY ANY PARENT OR GUARDIAN IDENTIFIED BY THE DELEGATING PARENT AS HAVING PARENTAL RIGHTS OR LEGAL DECISION-MAKING AUTHORITY REGARDING THE MINOR'S CARE.

(III) A PARENT WHO IS NAMED AS A RESPONDENT IN AN OPEN DEPENDENCY AND NEGLECT CASE MAY NOT USE THE ASSISTANCE OF A TEMPORARY CARE ASSISTANCE PROGRAM, AS DESCRIBED IN THIS PART 7.

(b) (I) NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW, A POWER OF ATTORNEY THAT DELEGATES TEMPORARY CARE RESPONSIBILITY OF A MINOR TO AN APPROVED TEMPORARY CAREGIVER MUST NOT EXCEED SIX MONTHS, EXCEPT AS PROVIDED IN SUBSECTION (1)(b)(II) OF THIS SECTION.

(II) A PERSON WHO IS DEPLOYED BY OR CALLED TO ACTIVE DUTY IN THE UNITED STATES MILITARY MAY EXCEED THE TIME LIMIT DESCRIBED IN SUBSECTION (1)(b)(I) OF THIS SECTION; EXCEPT THAT THE TOTAL LENGTH OF A DELEGATION OF POWER MADE TO AN APPROVED TEMPORARY CAREGIVER BY A PERSON WHO IS DEPLOYED BY OR CALLED TO ACTIVE DUTY IN THE UNITED STATES MILITARY MUST NOT BE LONGER THAN THE END OF THE MEMBER'S DEPLOYMENT OR CALL TO ACTIVE DUTY, PLUS THIRTY DAYS.

(c) THE PARENT OR GUARDIAN OF THE MINOR HAS THE AUTHORITY TO REVOKE A POWER OF ATTORNEY THAT DELEGATES TEMPORARY CARE RESPONSIBILITY OF A MINOR TO AN APPROVED TEMPORARY CAREGIVER AT ANY TIME. UPON EXPIRATION OR REVOCATION OF THE POWER OF ATTORNEY, THE MINOR MUST BE RETURNED TO THE CUSTODY OF THE PARENT OR GUARDIAN AS SOON AS REASONABLY POSSIBLE,

BUT NO LATER THAN FORTY-EIGHT HOURS AFTER SUCH EXPIRATION, REVOCATION, OR OTHER TERMINATION.

(d) A POWER OF ATTORNEY THAT DELEGATES TEMPORARY CARE RESPONSIBILITY OF A MINOR TO AN APPROVED TEMPORARY CAREGIVER DOES NOT:

(I) CHANGE PARENTAL RIGHTS, LEGAL RIGHTS, OBLIGATIONS, OR OTHER AUTHORITY ESTABLISHED BY AN EXISTING COURT ORDER AND DOES NOT DEPRIVE A PARENT OR GUARDIAN OF RIGHTS, OBLIGATIONS, OR OTHER AUTHORITY RELATING TO THE CUSTODY, VISITATION, OR SUPPORT OF A MINOR;

(II) CONSTITUTE CHILD ABUSE OR NEGLECT, AS DEFINED IN SECTION 19-1-103(1); OR

(III) RESULT IN A CHILD BEING NEGLECTED OR DEPENDENT, AS DESCRIBED IN SECTION 19-3-102, UNLESS THE PARENT OR GUARDIAN FAILS TO MAKE CONTACT, EXECUTE A NEW POWER OF ATTORNEY, OR RETAKE CUSTODY WITHIN SEVENTY-TWO HOURS AFTER AN EXPIRED POWER OF ATTORNEY, OR AFTER THE TOTAL TIME LIMIT DESCRIBED IN SUBSECTION (1)(b) OF THIS SECTION HAS ELAPSED.

(2) (a) AN APPROVED TEMPORARY CAREGIVER SHALL EXERCISE PARENTAL OR LEGAL AUTHORITY ON A CONTINUOUS BASIS AND WITHOUT COMPENSATION FOR THE INTENDED DURATION OF THE POWER OF ATTORNEY.

(b) (I) A MINOR SUBJECT TO THE POWER OF ATTORNEY THAT DELEGATES TEMPORARY CARE RESPONSIBILITY OF THE MINOR TO AN APPROVED TEMPORARY CAREGIVER IS NOT DEEMED PLACED IN A FOSTER CARE HOME, AS DEFINED IN SECTION 26-6-102(14), AND THE APPROVED TEMPORARY CAREGIVER IS NOT DEEMED TO BE PROVIDING FOSTER CARE NOR BE SUBJECT TO THE LICENSING REQUIREMENTS OF FOSTER CARE.

(II) NOTHING IN THIS SECTION DISQUALIFIES AN APPROVED TEMPORARY CAREGIVER FROM BEING OR BECOMING A FOSTER CARE HOME CERTIFIED BY A COUNTY DEPARTMENT OR PRIVATE AGENCY PURSUANT TO SECTION 26-6-106.3.

(c) ANY PERIOD OF TIME DURING WHICH A MINOR RESIDES WITH AN APPROVED TEMPORARY CAREGIVER PURSUANT TO AN UNEXPIRED AND VALID POWER OF ATTORNEY IS NOT INCLUDED IN DETERMINING WHETHER THE MINOR HAS RESIDED WITH THE APPROVED TEMPORARY CAREGIVER FOR THE MINIMUM PERIOD REQUIRED FOR A PERSON TO BE CONSIDERED A PERSON OTHER THAN A PARENT WHO HAS HAD THE PHYSICAL CARE OF A CHILD FOR THE PURPOSES OF SECTION 14-10-123.

26-6-705. Approval of temporary caregiver - background check - training.

(1) A CHILD PLACEMENT AGENCY OPERATING A TEMPORARY CARE ASSISTANCE PROGRAM MAY APPROVE AS A TEMPORARY CAREGIVER ANY PERSON WHO MEETS THE STANDARDS PRESCRIBED BY THE TEMPORARY CARE ASSISTANCE PROGRAM AND WHO COMPLIES WITH THE REQUIREMENTS ESTABLISHED PURSUANT TO THIS SECTION.

(2) (a) A CHILD PLACEMENT AGENCY OPERATING A TEMPORARY CARE ASSISTANCE PROGRAM SHALL REQUIRE AN APPLICANT TO BECOME AN APPROVED TEMPORARY CAREGIVER AND ANY OTHER PERSON WHO RESIDES IN THE APPLICANT'S HOME AND

IS EIGHTEEN YEARS OF AGE OR OLDER TO SUBMIT TO THE FOLLOWING BACKGROUND CHECKS:

(I) A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK THROUGH THE COLORADO BUREAU OF INVESTIGATION AND THE FEDERAL BUREAU OF INVESTIGATION IN THE SAME MANNER AS DESCRIBED IN SECTION 26-6-107 (1)(a)(I)(C).

(II) A CHILD ABUSE AND NEGLECT BACKGROUND CHECK PURSUANT TO SECTION 19-1-307; AND

(III) A CHECK AGAINST THE STATE'S SEX OFFENDER REGISTRY AND AGAINST THE NATIONAL SEX OFFENDER PUBLIC WEBSITE OPERATED BY THE UNITED STATES DEPARTMENT OF JUSTICE THAT CHECKS NAMES AND ADDRESSES IN THE REGISTRIES AND THE INTERACTIVE DATABASE SYSTEM FOR COLORADO TO DETERMINE IF A PERSON IS A REGISTERED SEX OFFENDER.

(b) A CHILD PLACEMENT AGENCY OPERATING A TEMPORARY CARE ASSISTANCE PROGRAM IS RESPONSIBLE FOR THE COSTS ARISING FROM ANY BACKGROUND CHECK PERFORMED PURSUANT TO THIS SECTION. THE CHILD PLACEMENT AGENCY MAY COLLECT THE COSTS FROM ANY PERSON SUBJECT TO A BACKGROUND CHECK.

(c) THE CHILD PLACEMENT AGENCY OPERATING A TEMPORARY CARE ASSISTANCE PROGRAM SHALL MAINTAIN RECORDS OF A BACKGROUND CHECK PERFORMED PURSUANT TO THIS SECTION, INCLUDING THE FULL TRANSCRIPTS OF THE BACKGROUND CHECK, FOR A PERIOD OF NOT LESS THAN FIVE YEARS. THE CHILD PLACEMENT AGENCY SHALL MAKE THE RECORDS AVAILABLE TO A PARENT OR GUARDIAN EXECUTING A POWER OF ATTORNEY, AND ANY LOCAL, STATE, OR FEDERAL AUTHORITY CONDUCTING AN INVESTIGATION INVOLVING THE APPROVED TEMPORARY CAREGIVER, THE PARENT OR GUARDIAN, OR THE MINOR.

(d) A CHILD PLACEMENT AGENCY OPERATING A TEMPORARY CARE ASSISTANCE PROGRAM SHALL NOT APPROVE AN APPLICANT AS AN APPROVED TEMPORARY CAREGIVER IF A BACKGROUND CHECK CONDUCTED PURSUANT TO THIS SECTION DISCLOSES A SUBSTANTIATED ALLEGATION OF CHILD ABUSE, NEGLECT, OR EXPLOITATION, OR ANY CRIME THAT WOULD DISQUALIFY THE APPLICANT OR ANY OTHER PERSON WHO RESIDES IN THE APPLICANT'S HOME AND IS EIGHTEEN YEARS OF AGE OR OLDER FROM BECOMING CERTIFIED OR LICENSED TO OPERATE A FOSTER CARE HOME IN THE STATE.

(3) A CHILD PLACEMENT AGENCY OPERATING A TEMPORARY CARE ASSISTANCE PROGRAM SHALL TRAIN AN APPROVED TEMPORARY CAREGIVER IN THE RIGHTS, DUTIES, AND LIMITATIONS ASSOCIATED WITH PROVIDING CARE FOR A MINOR PURSUANT TO THIS PART 7.

26-6-706. Rules. (1) A TEMPORARY CARE ASSISTANCE PROGRAM AND A TEMPORARY CARE PROVIDER ARE SUBJECT TO ANY RULE PROMULGATED BY THE DEPARTMENT THAT IS APPLICABLE TO NONCERTIFIED KINSHIP CARE, DEFINED IN SECTION 19-1-103 (78.7); EXCEPT THAT A TEMPORARY CARE ASSISTANCE PROGRAM AND A TEMPORARY CARE PROVIDER ARE NOT SUBJECT TO SUCH A RULE THAT IS INCONSISTENT WITH THIS PART 7.

(2) EXCEPT AS PROVIDED IN SUBSECTION (1) OF THIS SECTION, A TEMPORARY CARE ASSISTANCE PROGRAM AND A TEMPORARY CAREGIVER ARE NOT SUBJECT TO ANY RULE PROMULGATED BY THE DEPARTMENT FOR AN ACTIVITY PERFORMED PURSUANT TO THIS PART 7.

26-6-707. Application of part. (1) THIS PART 7 APPLIES ONLY WHEN A PARENT OR GUARDIAN OF A MINOR DELEGATES ANY POWER REGARDING CARE, CUSTODY, OR PROPERTY OF THE MINOR TO AN APPROVED TEMPORARY CAREGIVER WITH THE ASSISTANCE OF A TEMPORARY CARE ASSISTANCE PROGRAM PURSUANT TO THIS PART 7. NOTHING IN THIS PART 7 RESTRICTS, ABRIDGES, OR ALTERS THE RIGHT OF A MINOR'S PARENT OR GUARDIAN TO PROVIDE FOR THE CARE OF THE MINOR BY POWER OF ATTORNEY PURSUANT TO ANY OTHER PROVISION OF LAW.

(2) NOTHING IN THIS PART 7:

(a) RELIEVES THE PARENT OF ANY OBLIGATION TO SUPPORT THE MINOR AS OTHERWISE PROVIDED BY LAW;

(b) LIMITS THE AUTHORITY OF THE COURT TO ORDER A PARENT TO MAKE SUPPORT PAYMENTS OR REIMBURSEMENTS FOR MEDICAL, BEHAVIORAL, HEALTH, OR OTHER CARE OR TREATMENT;

(c) ABROGATES THE RIGHT OF THE MINOR TO ANY BENEFITS PROVIDED THROUGH PUBLIC FUNDS FOR WHICH THE MINOR IS OTHERWISE ENTITLED; OR

(d) LIMITS OR PREVENTS THE ABILITY OF LAW ENFORCEMENT OR COUNTY CHILD WELFARE AGENCIES TO INVESTIGATE A REPORT OF SUSPECTED ABUSE OR NEGLECT OF A CHILD PURSUANT TO SECTION 19-3-308.

SECTION 2. In Colorado Revised Statutes, 19-1-307, **add** (2)(j.8) as follows:

19-1-307. Dependency and neglect records and information - access - fee - rules - records and reports fund - misuse of information - penalty - adult protective services data system check. (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 have access to child abuse or neglect records and reports:

(j.8) THE STATE DEPARTMENT OF HUMAN SERVICES INVESTIGATING ANY PERSON REQUIRED TO SUBMIT TO A BACKGROUND CHECK PURSUANT TO SECTION 26-6-705 (2), WHEN THE PERSON HAS GIVEN WRITTEN AUTHORIZATION TO THE STATE DEPARTMENT OF HUMAN SERVICES TO CHECK RECORDS OR REPORTS OF CHILD ABUSE OR NEGLECT;

SECTION 3. Appropriation. For the 2019-20 state fiscal year, \$14,093 is appropriated to the department of human services for use by the division of child welfare. This appropriation is from the general fund and is based on an assumption that the division will require an additional 0.3 FTE. To implement this act, the division may use this appropriation for administration.

SECTION 4. Act subject to petition - effective date. This act takes 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 2, 2019, if adjournment sine die is on May 3, 2019); 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 will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 23, 2019