

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 23-0268.01 Michael Dohr x4347

SENATE BILL 23-040

SENATE SPONSORSHIP

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HOUSE SPONSORSHIP

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A BILL FOR AN ACT

101 **CONCERNING A REQUIREMENT THAT STAFFING AGENCIES PERFORM A**
102 **CAPS CHECK WHEN PROVIDING EMPLOYEES WHO WILL WORK**
103 **WITH AT-RISK ADULTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Under current law, when an employer is going to hire a person to work in a position in which the person has contact with at-risk adults, the employer must perform a check of the system that contains substantiated claims of mistreatment against an at-risk adult (CAPS check). The bill requires a staffing agency that provides employees who will have contact

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

HOUSE
2nd Reading Unamended
February 23, 2023

SENATE
3rd Reading Unamended
February 8, 2023

SENATE
Amended 2nd Reading
February 7, 2023

with at-risk adults to perform a CAPS check and to provide the results to the employer.

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

2 **SECTION 1.** In Colorado Revised Statutes, 26-3.1-111, **amend**
3 (6)(a)(I), (6)(d)(I)(B), (7)(i), and (7)(j); and **add** (2)(c), (6)(a)(V), and
4 (7)(k) as follows:

5 **26-3.1-111. Access to CAPS - employment checks -**
6 **conservatorship and guardianship checks - confidentiality - fees -**
7 **rules - legislative declaration - definitions.** (2) As used in this section,
8 unless the context otherwise requires:

9 (c) "STAFFING AGENCY" MEANS AN INDIVIDUAL OR ORGANIZATION,
10 INCLUDING ANY PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, LIMITED
11 LIABILITY COMPANY, LIMITED LIABILITY LIMITED PARTNERSHIP,
12 ASSOCIATION, TRUST, JOINT STOCK COMPANY, INSURANCE COMPANY, OR
13 CORPORATION, WHETHER DOMESTIC OR FOREIGN, ENGAGED IN THE
14 BUSINESS OF PROVIDING AND ASSIGNING WORKERS TO PLACEMENTS WITH
15 EMPLOYERS DESCRIBED IN SUBSECTION (7) OF THIS SECTION. "STAFFING
16 AGENCY" INCLUDES, BUT IS NOT LIMITED TO, SUPPLEMENTAL
17 HEALTH-CARE STAFFING AGENCIES DEFINED IN SECTION 8-4-125 (1)(e).

18 (6) (a) (I) On and after January 1, 2019, prior to hiring or
19 contracting with an employee who will provide direct care to an at-risk
20 adult, an employer described in subsection (7) of this section shall request
21 a CAPS check by the state department pursuant to this section to
22 determine if the person is substantiated in a case of mistreatment of an
23 at-risk adult; EXCEPT WHEN THE EMPLOYER IS HIRING OR CONTRACTING
24 WITH AN EMPLOYEE PROVIDED BY A STAFFING AGENCY, IF THE STAFFING
25 AGENCY COMPLETED A CAPS CHECK AND PROVIDED THE RESULTS TO THE

1 EMPLOYER PURSUANT TO SUBSECTION (6)(a)(V) OF THIS SECTION. Within
2 ten days after the date of the employer's request, if the employee was
3 substantiated in a case of mistreatment of an at-risk adult, unless the
4 finding was expunged through a successful appeal to the state department,
5 the state department shall provide the employer with information
6 concerning the mistreatment through electronic means, or other means if
7 requested by the employer, including the date of the substantiated finding,
8 the type of mistreatment reported, and the county that investigated the
9 report of mistreatment. If an employer receives a CAPS check on a person
10 and does not initiate the hiring process at the time of receiving the check
11 but wants to hire the person at a subsequent time that is more than thirty
12 days from receipt of the prior CAPS check results, the employer shall
13 request a new CAPS check prior to hiring the person pursuant to state
14 department rules.

15 (V) A STAFFING AGENCY SHALL REQUEST A CAPS CHECK FOR AN
16 EMPLOYEE IT IS PLACING WITH AN EMPLOYER DESCRIBED IN SUBSECTION
17 (7) OF THIS SECTION. THE STAFFING AGENCY SHALL PROVIDE THE
18 EMPLOYER WITH THE RESULTS OF THE CAPS CHECK AND ANY
19 SUBSEQUENT NOTIFICATIONS OF SUBSTANTIATED FINDINGS, AS DESCRIBED
20 IN SUBSECTION (10) OF THIS SECTION, AGAINST THE EMPLOYEE, WITHIN
21 FIVE BUSINESS DAYS AFTER RECEIPT OF THE INFORMATION, FOR THE
22 DURATION OF THE EMPLOYEE'S PLACEMENT WITH THE EMPLOYER.

23 (d) (I) Except as provided in subsection (6)(d)(II) of this section,
24 an employer, or a person or entity conducting employee screening on
25 behalf of the employer, is deemed to have violated subsection (6)(e) of
26 this section if the employer, or a person or entity conducting employee
27 screening on behalf of the employer:

1 (B) Releases information obtained pursuant to the CAPS check OR
2 A SUBSEQUENT NOTIFICATION to any person OR ENTITY other than a person
3 OR ENTITY directly involved in the employer's hiring process, EXCEPT AS
4 REQUIRED BY SUBSECTION (6)(a)(V) OF THIS SECTION.

5 (7) The following employers shall request a CAPS check pursuant
6 to this section:

7 (i) Veterans community living centers operated pursuant to article
8 12 of this title 26; and

9 (j) The office of public guardianship pursuant to section
10 13-94-105 (6); AND

11 (k) STAFFING AGENCIES WHEN THEY ARE PLACING EMPLOYEES
12 WITH AN EMPLOYER AS DESCRIBED IN SUBSECTIONS (7)(a) TO (7)(j) OF
13 THIS SECTION.

14 **SECTION 2. In Colorado Revised Statutes, 26-3.1-102, amend**
15 **(7)(b)(VII) as follows:**

16 **26-3.1-102. Reporting requirements. (7) (b) Disclosure of a**
17 **report of the mistreatment or self-neglect of an at-risk adult and**
18 **information relating to an investigation of such a report and subsequent**
19 **cases resulting from the report is permitted only when authorized by a**
20 **court for good cause. A court order is not required, and such disclosure**
21 **is not prohibited, when:**

22 **(VII) The disclosure is made to the at-risk adult who is the subject**
23 **of the report, or if the at-risk adult is otherwise incompetent at the time**
24 **of the request, to the guardian or guardian ad litem for the at-risk adult**
25 **who is the subject of the report. The information disclosed pursuant to**
26 **this subsection (7)(b)(VII) must not be disclosed until after the**
27 **investigation is complete and must not include any identifying**

1 information related to the reporting party or any other appropriate
2 persons. If the guardian is the substantiated perpetrator in a case of
3 mistreatment of an at-risk adult, the disclosure must not be made without
4 authorization by the A court for good cause UNLESS THE DISCLOSURE IS
5 BEING MADE FOR THE PURPOSES OF THE GUARDIAN'S APPEAL PROCESS
6 DESCRIBED IN SUBSECTION (7)(b)(V) OF THIS SECTION. If the court
7 authorizes the release of information to a substantiated perpetrator, any
8 protected or confidential information pursuant to federal or state law must
9 not be disclosed.

10 **SECTION 3. Effective date.** This act takes effect January 1,
11 2024.

12 **SECTION 4. Safety clause.** The general assembly hereby finds,
13 determines, and declares that this act is necessary for the immediate
14 preservation of the public peace, health, or safety.