

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1690

BY: THOMPSON

AS INTRODUCED

AN ACT RELATING TO PUBLIC HEALTH AND SAFETY; AMENDING SECTION 1, CHAPTER 149, O.S.L. 1990 (63 O.S. SUPP. 1990, SECTION 1-1950.1), WHICH RELATES TO CRIMINAL CHECKS ON CERTAIN APPLICANTS; MODIFYING AND ADDING DEFINITIONS; CLARIFYING LANGUAGE; ADDING TO CERTAIN LIST OF OFFENSES; PROVIDING EXCEPTION; REQUIRING CERTAIN INSPECTIONS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 1, Chapter 149, O.S.L. 1990 (63 O.S. Supp. 1990, Section 1-1950.1), is amended to read as follows:

Section 1-1950.1 A. For purposes of this section:

1. "Nurses aide" means any person who provides, for compensation, nursing care or nursing health-related services to residents in a nursing facility, a specialized facility or, a residential care home, a hospital, or an adult day care center and who is not a licensed health professional, for compensation. Such term also means any person who provides such services to individuals in their own homes as an employee or contract provider of a home health or home care agency, or as an employee or contract provider

of the nontechnical medical care program of the Oklahoma Department of Human Services;

2. ~~"Department" means the State Department of Health;~~

3. ~~"Facility or home" means as applicable, a nursing facility, a specialized facility or a residential care home as such terms are defined in Section 1-1902 of Title 63 of the Oklahoma Statutes~~

"Employer" means any of the following facilities, homes, agencies or programs which are subject to the provision of this section:

- a. a nursing facility, specialized facility, or residential care home as such terms are defined in Section 1-1902 of this title,
- b. a hospital, as such term is defined in Section 1-701 of this title except that such term shall not include a hospital operated by the United States Department of Veterans Affairs,
- c. an adult day care center as such term is defined in Section 1-872 of this title,
- d. a home health or home care agency,
- e. the Department of Human Services, in its capacity as an operator of any hospital or health care institution, or as an employer or contractor with respect to its nontechnical medical care program, home maintenance aide program, and home and community-based waived services program for the mentally retarded or developmentally disabled;

3. "Home health or home care agency" means any person, partnership, association, corporation or other organization which administers, offers or provides health care services or supportive assistance for compensation to three or more ill, disabled, or infirm persons in the temporary or permanent residence of such persons, and includes any subunits or branch offices of a parent home health or home care agency; and

4. "Bureau" means the Oklahoma State Bureau of Investigation.

B. 1. Except as otherwise provided by subsection C of this section, before any ~~facility or home~~ employer makes an offer ~~of employment~~ to employ or to contract with a nurses aide or other person ~~applying for employment at such facility or home,~~ to provide nursing care, health-related services or supportive assistance to any individual except as provided by paragraph 4 of this subsection, the ~~facility or home~~ employer shall provide for a criminal arrest check to be made on the nurses aide or other person pursuant to the provisions of this section. If the employer is a facility, home or institution which is part of a larger complex of buildings, the requirement of a criminal arrest check shall apply only to an offer of employment or contract made to a person who will work primarily in the immediate boundaries of the facility, home or institution.

2. Except as otherwise specified by subsection D of this section, ~~a facility~~ an employer is authorized to obtain ~~the criminal arrest records maintained by the Oklahoma State Bureau of Investigation of a nurses aide, any employee of or a person applying for employment at a facility or a home~~ any criminal arrest records maintained by the Oklahoma State Bureau of Investigation which the employer is required or authorized to request by the provisions of this section.

3. The ~~facility~~ employer shall request the Bureau to conduct a criminal arrest check on the person and shall provide to the Bureau any relevant information required by the Bureau to conduct the check. ~~If the facility or home is part of a larger complex of buildings, the requirement of a check of criminal arrest shall apply only to an offer of employment made to a person who will work primarily in the immediate boundaries of the facility or home.~~ ~~A facility or home~~ The employer shall pay a fee of Ten Dollars (\$10.00) to the Bureau for ~~a search of the Bureau's criminal arrest~~

~~files on an applicant for employment~~ each criminal arrest check that is conducted pursuant to such a request.

4. The requirement of a criminal arrest check shall not apply to an offer of employment made to:

- a. a nursing home administrator licensed pursuant to the provisions of Section 330.53 of Title 63 of ~~the Oklahoma Statutes~~ this title;
- b. any person who is the holder of a current license or certificate issued pursuant to the laws of this state authorizing such person to practice the healing arts;
- c. a registered nurse or practical nurse licensed pursuant to the Oklahoma Nursing Practice Act;
- d. a physical therapist registered pursuant to the Physical Therapy Practice Act;
- e. a physical therapist assistant licensed pursuant to the Physical Therapy Practice Act;
- f. a social worker licensed pursuant to the provisions of the Social Workers' Licensing Act;
- g. a speech pathologist or audiologist licensed pursuant to the Speech Pathology and Audiology Licensing Act;
- h. a dietitian licensed pursuant to the provisions of the Licensed Dietitian Act; or
- i. an occupational therapist licensed pursuant to the Occupational Therapy Practice Act.

5. At the request of ~~a facility or home~~ an employer, the Bureau shall conduct a criminal arrest check on any person employed ~~at the facility or home~~ by the employer, including, ~~but not limited to~~ ~~nurses aides~~ and the persons specified in paragraph 4 of this subsection at any time during the period of employment of such ~~nurses aide or person~~.

C. ~~A facility or home~~ An employer may make an offer of temporary employment to a nurses aide or other person ~~applying for~~

~~employment at the facility or home~~ pending the results of the criminal arrest check on the person. The ~~facility or home~~ employer in such instance shall provide to the Bureau the name and relevant information relating to the person within seventy-two (72) hours after the date the person accepts temporary employment. The ~~facility or home~~ employer shall not hire a person on a permanent basis until the ~~facility or home receives the~~ results of the criminal arrest check are received.

D. 1. The Bureau shall not provide to the ~~facility or home~~ employer the criminal arrest records of a person being investigated pursuant to this section unless the criminal records relate to:

- a. any felony or misdemeanor classified as a crime against the person;
- b. any felony or misdemeanor classified as a crime against public decency or morality;
- c. any felony or misdemeanor classified as domestic abuse pursuant to the provisions of the Protection from Domestic Abuse Act;
- d. a felony violation of any state statute intended to control the possession or distribution of a Schedule I through V drug pursuant to the Uniform Controlled Dangerous Substances Act; and
- e. any felony or misdemeanor classified as a crime against property.

2. Within five (5) days of receiving ~~notification by the facility~~ a request to conduct a criminal arrest check, the Bureau shall complete the criminal arrest check and report the results of the check to the ~~facility or home~~ requesting employer.

E. ~~A facility or home~~ Every employer who is subject to the provisions of this section shall inform each applicant for employment, or each prospective contract provider, as applicable, that the ~~facility or home~~ employer is required to obtain a criminal

arrest record before ~~such facility or home makes~~ making an offer of permanent employment or contract to a nurses aide or other person described in subsection B of this section.

F. 1. If the results of a criminal arrest check reveal that ~~an applicant for employment at a facility or home~~ the subject person has been convicted of any of the following offenses, the ~~facility or home~~ employer shall not hire the person:

- a. assault, battery, or assault and battery with a dangerous weapon;
- b. aggravated assault and battery;
- c. murder or attempted murder;
- d. manslaughter, except involuntary manslaughter;
- e. rape, incest or sodomy;
- f. indecent exposure and indecent exhibition;
- g. pandering;
- h. child abuse;
- i. abuse, neglect or financial exploitation of any person entrusted to his care or possession;
- j. burglary in the first or second degree;
- k. robbery in the first or second degree;
- l. robbery or attempted robbery with a dangerous weapon, or imitation firearm; ~~or~~
- m. arson in the first or second degree;
- n. unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act; or
- o. grand or petit larceny or shoplifting.

2. If the results of a criminal arrest check reveal that an employee or a person hired on a temporary basis pursuant to subsection C of this section or any other person who is an employee or contract provider has been convicted of any of the offenses

listed in paragraph 1 of this subsection, the ~~facility or home employer~~ shall immediately terminate the person's employment unless a period of seven (7) years has elapsed since the last conviction for any such offenses.

G. ~~A facility or home~~ An employer shall not employ or continue employing a person addicted to any Schedule I through V drug as specified by the Uniform Controlled Dangerous Substances Act unless the person produces evidence that the person has successfully completed a drug rehabilitation program.

H. All criminal records received by the ~~facility or home employer~~ are confidential and are for the exclusive use of the State Department of Health and the ~~facility or home employer~~ which requested the information. Except on court order or with the written consent of the person being investigated, the records shall not be released or otherwise disclosed to any other person or agency. These records shall be destroyed upon end of employment of the ~~aide who terminates~~ person to whom such records relate.

I. Any person releasing or disclosing any information received pursuant to this section without the authorization prescribed by this section shall be guilty of a misdemeanor.

J. As part of the inspections required by the Nursing Home Care Act, the Residential Care Act, and the Adult Day Care Act, the State Department of Health shall review the employment files of any facility or home required to obtain criminal records to ensure such facilities or homes are in compliance with the provisions of this ~~act~~ section.

SECTION 2. This act shall become effective January 1, 1992.

43-1-5604

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