

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2511

By: Williams

AS INTRODUCED

An Act relating to nursing homes; amending 43A O.S. 1991, Section 10-105, as amended by Section 2, Chapter 159, O.S.L. 1993 (43A O.S. Supp. 1993, Section 10-105), which relates to the Protective Services for the Elderly and for Incapacitated Adults Act; modifying investigation authority; modifying procedures; amending 63 O.S. 1991, Sections 1-206 and 1-209, as amended by Sections 303 and 305, Chapter 145, O.S.L. 1993 (63 O.S. Supp. 1993, Sections 1-206 and 1-209), which relate to city ordinances; modifying authority for licensing, regulation and inspection of nursing facilities and specialized facilities; amending 63 O.S. 1991, Section 1-1118, which relates to food establishments; modifying exception; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 43A O.S. 1991, Section 10-105, as amended by Section 2, Chapter 159, O.S.L. 1993 (43A O.S. Supp. 1993, Section 10-105), is amended to read as follows:

Section 10-105. A. Upon receiving a report of alleged abuse, neglect, or exploitation of an elderly person or incapacitated adult pursuant to the provisions of the Protective Services for the Elderly and for Incapacitated Adults Act, ~~Section 10-101 et seq. of this title~~ except as otherwise provided by subsection D of this section, the Department of Human Services shall make a prompt and thorough investigation.

B. The investigation by the Department shall include:

1. Every reasonable effort to notify the next of kin of the person who may be in need of protective services;
2. Diagnostic evaluation to determine whether the person needs protective services;
3. Any photographs necessary to document injuries or conditions which have resulted or may result in an injury or serious harm to the person;
4. What least restrictive services are needed;
5. Whether services are available from the Department or in the community and how the services can be provided;
6. Whether the person would be capable of obtaining services for himself and could bear the cost or would be eligible for services from the Department;
7. Whether a caretaker would be willing to provide services or would agree to their provision;
8. Whether the person desires the services;
9. What followup investigation and monitoring of the services will be needed; and
10. Other relevant data.

C. The Department's investigation shall include a visit to the home or other place of residence of said person, a private interview with said person, and consultation with persons who have knowledge of the circumstances. If, in the course of an investigation of this nature, the Department is denied entrance to the home or other place

of residence of a person believed to be an adult in need of protective services, or is denied a private interview, or documentation, or access to records, or other information relating to said person as provided by paragraph 9 of subsection B of this section, the Department may petition the court for an order allowing entry or access. The petition shall state the name and address of the person and shall allege specific facts sufficient to show that the circumstances of the person are in need of investigation. If it is necessary to forcibly enter the premises, the representative of the Department shall make the entry accompanied by a peace officer.

D. In the case of a report pertaining to an elderly person or incapacitated adult who is a resident of a nursing facility or residential care ~~facility~~ home, the Department shall immediately notify the State Department of Health of such report in writing, ~~and shall forward to the State Department of Health a copy of the Department's final investigative report.~~ Nothing herein shall prevent the State Department of Health from conducting any type of investigation or taking any appropriate. The State Department of Health shall make a prompt and thorough investigation and shall, if necessary, take any appropriate action pursuant to the provisions of the Nursing Home Care Act, ~~Section 1-1901 et seq. of Title 63 of the Oklahoma Statutes, and~~ or the Residential Care Act, ~~Section 1-819 et seq. of Title 63 of the Oklahoma Statutes.~~

SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-206, as amended by Section 303, Chapter 145, O.S.L. 1993 (63 O.S. Supp. 1993, Section 1-206), is amended to read as follows:

Section 1-206. A. A county department of health, a district department of health, a cooperative department of health, and a city-county department of health shall, in their respective jurisdictions, maintain programs for disease prevention and control, health education, guidance, maternal and child health, including school health services, health in the working environment, nutrition

and other matters affecting the public health; provide preventive services to the chronically ill and aged; maintain vital records and statistics; supervise nursing, convalescent and rest homes, and related institutions; assist the State Commissioner of Health in the performance of his official duties, and perform such other acts as may be required by the Commissioner; and may maintain programs for mental health and day care for children.

B. Nothing contained herein relating to pollution shall be in conflict with the existing jurisdiction of any other state environmental agency.

C. Responsibility for the licensing and inspection of nursing facilities and specialized facilities, and for the enforcement of health and safety standards applicable to such facilities, shall be reserved to the State Department of Health and shall be exercised pursuant to the provisions of the Nursing Home Care Act.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 1-209, as amended by Section 305, Chapter 145, O.S.L. 1993 (63 O.S. Supp. 1993, Section 1-209), is amended to read as follows:

Section 1-209. A. 1. Except as may be otherwise provided by city charter, the governing board of each city or incorporated town shall serve, ex officio, as the board of health for such city or town, and shall appoint, and fix the duties and compensation of, a health officer and other personnel to enforce the ordinances of such city or town relating to public health.

2. ~~The~~ Except as otherwise provided by this subsection, the governing board may adopt such ordinances, rules and regulations as it deems necessary for the protection of the public health, as are not inconsistent with state laws or rules ~~and regulations~~ of the State Board of Health, and shall enforce such laws and rules as may be required by the State Commissioner of Health; ~~and it.~~ Such governing board may, by agreement with the medical director of the county or district department of health, delegate to such department

the authority to enforce ordinances of the city or town relating to public health. The responsibility for the licensing, regulation, and inspection of nursing facilities and specialized facilities, and for the enforcement of health and safety standards applicable to such facilities, shall be reserved to the State Department of Health and shall be exercised pursuant to the provisions of the Nursing Home Care Act.

B. The governing board of each city or incorporated town may adopt and enforce such ordinances as it deems necessary for the protection of the environment, provided such ordinances are not inconsistent with state laws or rules of the Environmental Quality Board. Such governing board may, by agreement with the Department of Environmental Quality, delegate to such Department's local representative the authority to investigate ordinances of the city or town relating to the environment and submit such investigative results to the clerk of the city or town.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 1-1118, is amended to read as follows:

Section 1-1118. ~~(a)~~ A. It shall be unlawful for any person to operate or maintain any establishment, stationary or otherwise, where food or drink is offered for sale, or sold, to the public, unless he is the holder of a license issued for such purpose by the State Commissioner of Health.

B. Unless otherwise provided by rule by the State Board of Health, each such license shall expire on the 30th day of June following its issuance, ~~and the~~. The Commissioner shall charge and collect for each such license an annual fee to be fixed by the State Board of Health. A license shall not be required of a nonprofit civic, charitable or religious organization, using nonpaid persons to prepare or serve food on its behalf, for occasional fund-raising events sponsored and conducted by the organization. The Commissioner shall provide guidelines for safeguarding the health of

customers of such events. The Board may by rule provide that a license which is fee-exempt under rules adopted by the Board pursuant to subsection D of Section 1-106.1 of this title shall not expire but shall remain in full force and effect until affirmatively revoked, suspended, annulled or withdrawn by the Commissioner of Health in accordance with applicable law. ~~Notwithstanding any other provision of law, the~~ The Board may by rule also provide that licenses for establishments serving events of limited duration or operating on a seasonal basis shall extend only for the term of the event or season, and may by rule adjust the fees for such licenses accordingly.

~~(b)~~ C. The State Board of Health shall ~~adopt~~ promulgate reasonable standards, and rules ~~and regulations~~ for sanitation of establishments required to be licensed, including the following items: buildings, vehicles, and appurtenances thereto, including plumbing, ventilation and lighting; construction, cleanliness and bactericidal treatment of equipment and utensils; cleanliness, wholesomeness, storage and refrigeration of food and drink sold or served; cleanliness and hygiene of personnel; toilet facilities; disposal of waste; water supply; and other items deemed necessary to safeguard the health, comfort, and safety of customers.

~~(c)~~ D. Day care centers or family day care centers, and all other child care facilities as defined in Section 402 of Title 10 of the Oklahoma Statutes, licensed pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act shall not be deemed to be a food service establishment.

E. Nursing facilities and specialized facilities, as defined in and licensed pursuant to the Nursing Home Care Act, shall not be deemed to be food service establishments.

SECTION 5. This act shall become effective July 1, 1994.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-2-8295

KSM