

ENROLLED SENATE  
BILL NO. 384

By: Brown of the Senate

and

Boyd (Laura) of the House

An Act relating to children; amending 10 O.S. 1991, Sections 404.1, as last amended by Section 8 of Enrolled House Bill No. 1207 of the 1st Session of the 45th Legislature, and 406, as amended by Section 6, Chapter 122, O.S.L. 1993 (10 O.S. Supp. 1994, Section 406), which relate to criminal history investigation of applicant for employment at a child care facility or a day care center and child care facility investigations; removing exemption of foster family homes from the criminal history investigation requirement; expanding requirement for criminal history investigation to certain persons; requiring certain information to be placed in certain file; providing for release of certain information under certain circumstances; clarifying type of information to be released; extending certain requirements for confidentiality and record keeping; specifying procedures to be followed upon certain determination; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 404.1, as last amended by Section 8 of Enrolled House Bill No. 1207 of the 1st Session of the 45th Legislature, is amended to read as follows:

Section 404.1 A. The owner or administrator of a child care facility, other than a day care center, providing full-time care or

twenty-four-hour supervised care shall arrange, prior to employment, for a criminal history investigation conducted by the Oklahoma State Bureau of Investigation for an applicant for employment.

B. Every owner or administrator of a day care center and a family day care home shall arrange, prior to employment, for a criminal history investigation conducted by the Oklahoma State Bureau of Investigation for an applicant for employment and for any adult residing in a family day care home.

C. A conviction for a crime shall not be an absolute bar to employment, except as provided in subsection F of this section, but shall be considered in relation to specific employment duties and responsibilities.

D. 1. Information received pursuant to this section by an owner or administrator of a child care facility or a day care center shall be maintained in a confidential manner in a file that is separate from employment records, and may be transmitted to the Department of Human Services for child care facility licensing purposes.

2. Whenever an applicant is subsequently employed by the owner or administrator of a child care facility or a day care center, such information received pursuant to a criminal history investigation shall not be made a part of that individual's personnel records; provided, however, such information, along with any other information relevant to the individual's ability to perform tasks that require direct contact with children, may be released to another child care facility or day care center in response to a request from an owner or administrator of a child care facility or day care center who is considering the individual for employment in a position that requires direct contact with children.

3. Requirements for confidentiality and record keeping with regard to such information shall be the same for the owner or administrator receiving such information in response to a request as those provided for in paragraph 1 of this subsection for the owner or administrator releasing such information.

E. 1. A criminal history investigation conducted by the Oklahoma State Bureau of Investigation shall include a search of Department of Corrections' files maintained pursuant to the Sex Offenders Registration Act, Section 581 et seq. of Title 57 of the Oklahoma Statutes.

2. It shall be unlawful for any person who is required to register pursuant to the Sex Offenders Registration Act to work with or provide services to children and for any employer who offers or provides services to children to knowingly and willfully employ or allow continued employment of any person who is required to register pursuant to the Sex Offenders Registration Act. Upon a determination of any violation of the provisions of this section, the violator shall be subject to a civil fine not to exceed One Thousand Dollars (\$1,000.00). In addition, the violator may be liable for civil damages.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 406, as amended by Section 6, Chapter 122, O.S.L. 1993 (10 O.S. Supp. 1994, Section 406), is amended to read as follows:

Section 406. A. The Department of Human Services shall have authority at any reasonable time to investigate and examine the conditions of any child care facility in which a licensee hereunder receives and maintains children, and shall have authority at any time to require the facility to provide information pertaining to children in its care.

B. 1. The State Department of Health may visit any licensee at the request of the Department to advise on matters affecting the health of children and to inspect the sanitation of the buildings used for their care.

2. The State Fire Marshal may visit any licensee at the request of the Department to advise on matters affecting the safety of children and to inspect the condition of the buildings used for their care.

C. 1. Upon receipt of a complaint against any child care facility alleging a violation of the provisions of the Oklahoma Child Care Facilities Licensing Act, Section 401 et seq. of this title, or any licensing standard promulgated by the Department, the Department shall conduct a full investigation. If upon investigation, it is determined that there are reasonable grounds to believe that a facility is in violation of the Oklahoma Child Care Facilities Licensing Act or of any standard or rule promulgated pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act, the Department shall:

- a. document the complaint,
- b. provide a written copy of the complaint to the facility involved, and
- c. document the facility's plan for correcting the alleged violations.

2. When the Department determines that there has been a violation and that the violation has a direct impact on the health, safety or well-being of one or more of the children cared for by the facility, the Department shall require immediate correction of the violation.

3. The notice shall include notice that failure to correct the violation can result in the revocation of the license of the facility or the filing of an injunction pursuant to Section 409 of this title, or both.

4. If the facility refuses to correct the violation or fails to complete the plan of correction, the Department may initiate proceedings to revoke the license of the facility, request an injunction, or both.

D. Upon the completion of the investigation of a complaint against any child care facility alleging a violation of the provisions of the Oklahoma Child Care Facilities Licensing Act or any licensing standard promulgated by the Department, the Department shall clearly designate its findings on the first page of the report of the investigation. The findings shall state whether the complaint was substantiated or unsubstantiated.

E. Information obtained by the Department or the Office of Child Care from any licensee regarding children or their parents or other relatives shall be deemed confidential and privileged communications and shall be properly safeguarded and shall not be accessible to anyone except as herein provided, unless upon order of a court of competent jurisdiction.

SECTION 3. This act shall become effective November 1, 1995.