

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1968

By: Coleman

AS INTRODUCED

An Act relating to children; providing procedures for investigations; providing for classifications of complaints; providing for confidentiality of certain complaints; requiring presentation of certain information; authorizing certain reviews; providing for violations; providing for taking complaints; providing for anonymous complaints; providing for certain procedures; providing for certain conditions for determination of evidence; providing for false and frivolous accusations; specifying penalties; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 406.1 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. An investigation of a child care facility initiated by a complaint shall only entail an examination of the condition or situation alleged to exist or to have occurred by the complainant

unless the Department finds that any conditions in the facility would or could put a child in imminent danger.

B. Upon completion of an investigation of a child care facility resulting from a complaint, the Department of Human Services shall determine whether the conditions or situation specified in the complaint are:

1. Ruled out;
2. Uncertain; or
3. Confirmed.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 406.2 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. If the Department of Human Services determines a complaint is frivolous, or makes other absolute determination that the conditions or situations specified in the complaint have not taken place, then said complaint shall be declared "ruled out".

B. If the condition or situation alleged in the complaint is declared "ruled out" or "uncertain", the complaint and investigation report relevant to the complaint shall be maintained in confidential files of the Department and shall not be made available for public inspection or maintained in any open records of the Department.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 406.3 of Title 10, unless there is created a duplication in numbering, reads as follows:

At the time of the investigation conducted pursuant to this act, the Department shall provide to the owner or operator of the child care facility a brief and easily understood summary of:

1. The Department's procedures for conducting an investigation of the child care facility, including a description of the circumstances under which the Department would seek to impose any sanctions against the facility;

2. The owner or operator of a facility's right to request a review of the findings made by the Department in the investigation;

3. The owner or operator's right to review all records of the investigation unless the review would jeopardize an ongoing criminal investigation;

4. The owner or operator's right to seek legal counsel; and

5. References to the statutory and regulatory provisions governing child care facilities and how the owner or operator may obtain copies of those provisions.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 406.4 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. The Department of Human Services shall establish policies and procedures to resolve complaints relating to investigations of child care facilities conducted by the Department. The Department shall adopt the policies and procedures by rule.

B. If an owner or operator of a child care facility which has received an investigation report declared "uncertain" requests clarification of the status of the case, the Department shall conduct an informal review to clarify the facility's status or resolve the complaint. A Department employee in administration who was not involved in or did not directly supervise the investigation or the employee who conducted the investigation shall conduct the informal review as soon as possible but not later than the fourteenth day after the date on which the request is received.

C. If after a departmental investigation the owner or operator of the child care facility has been found to have violated the provisions of the Child Care Licensing Act, the owner or operator may request an administrative review of the findings. The Director shall conduct the review. The review must sustain, alter, or reverse the Department's original findings in the investigation.

D. Unless court proceedings relating to the investigation are pending, the Director shall conduct the review prescribed by subsection C of this section as soon as possible but not later than the forty-fifth day after the date on which the Department receives the request. If court proceedings are pending, the Director may postpone the review until the court proceedings have been completed.

E. A person is not required to exhaust the remedies provided by this section before pursuing a judicial remedy provided by law.

F. This section does not apply to a determination made by a court.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 406.5 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. 1. The Department of Human Services shall request the name, address and telephone number of any person making a complaint involving a child care facility.

2. Anonymous complaints involving a child care facility shall only be investigated if the Department employee receiving the complaint believes that the child in the facility is in imminent danger.

B. If the Department receives an anonymous complaint that any child in a child care facility is in imminent danger, the Department shall immediately conduct an investigation to determine if there is any evidence to corroborate the report.

C. An investigation conducted pursuant to this section may include a visit to the facility, an interview with and examination of any child at the facility and an interview with any child's parents. In addition, the Department may interview any other person the Department believes may have relevant information.

D. Unless the Department determines that there is clear and convincing evidence to corroborate the anonymous complaint or the

Department takes no further action against the child care facility, the complaint shall be deemed "ruled out".

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 406.6 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Any person who knowingly and willfully makes a false report pursuant to the provisions of this act or a report that the person knows lacks factual foundation shall, upon conviction thereof, be guilty of a misdemeanor.

B. If a court determines that a complaint made against a child care facility is frivolous or false and the person making the complaint knew it to be frivolous or false at the time the complaint was made, the court may also impose a fine not to exceed One Thousand Dollars (\$1,000.00) and reasonable attorney fees incurred in recovering the fine, against the person making the complaint. The remedy provided by this paragraph is in addition to subsection A of this section or to any other remedy provided by law.

SECTION 7. This act shall become effective November 1, 1995.

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