

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

SENATE BILL 1560

By: Pruitt

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Sections 401, as amended by Section 1, Chapter 122, O.S.L. 1993, 402, as last amended by Section 15, Chapter 414, O.S.L. 1998, 403, as last amended by Section 3, Chapter 386, O.S.L. 1998, 404.1, as last amended by Section 16, Chapter 414, O.S.L. 1998, 405, as amended by Section 5, Chapter 122, O.S.L. 1993, and 406, as last amended by Section 2, Chapter 222, O.S.L. 1995 (10 O.S. Supp. 1999, Sections 401, 402, 403, 404.1, 405 and 406), which relate to the Oklahoma Child Care Facilities Licensing Act; clarifying language; expanding procedure for providing care for children in child care facilities; providing for certain accreditation process; stating legislative intent; modifying definitions; establishing additional exemption from act; providing for approval of accreditation organizations; modifying procedures related to criminal history investigations; requiring certain organization to obtain certain information; expanding regulatory; expanding investigation process; providing for suspension of certain certificate; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 401, as amended by Section 1, Chapter 122, O.S.L. 1993 (10 O.S. Supp. 1999, Section 401), is amended to read as follows:

Section 401. A. Sections 401 through 410 of this title shall be known and may be cited as the "Oklahoma Child Care Facilities Licensing Act".

B. ~~It is the declared~~ The purpose and policy of this act, ~~same to be known as the "Oklahoma Child Care Facilities Licensing Act,"~~ shall be to ensure maintenance of minimum standards for the care and protection of children away from their own homes, to encourage and assist the child care facility toward maximum standards, and to work for the development of sufficient and adequate services for child care through joint work of public and voluntary agencies. Whenever

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possible, child care facilities should help to preserve and restore family life for children.

C. In order to provide care for children in child care facilities,

1. A license shall be obtained from the Department of Human Services, which is issued on the basis of meeting minimum standards which are essential for the health and welfare of the child or children placed for care with such agencies and individuals; or

2. An accreditation shall be obtained from an accrediting organization approved by the Department, which shall be issued on the basis of meeting minimum standards which are essential for the health, safety and well-being of the child or children placed for care with such agencies and individuals.

D. It is the intent of the Legislature that freedom of religion of all citizens is inviolate. With respect to a school or child care facility sponsored by a religious organization, nothing in this act shall give a governmental agency authority to regulate, control, supervise, or in any way be involved in the:

1. Form, manner or content of religious instruction, ministry, teaching, or the curriculum offered by the school or facility;

2. Ability of the school or facility to select and supervise qualified personnel, and otherwise control the terms of employment, including the right to employ individuals who share the religious views of the school or facility;

3. Internal self-governance and autonomy of the school or facility; or

4. Religious environment of the school or facility, such as symbols, art, icons and scripture.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 402, as last amended by Section 15, Chapter 414, O.S.L. 1998 (10 O.S. Supp. 1999, Section 402), is amended to read as follows:

Section 402. As used in the Oklahoma Child Care Facilities Licensing Act:

1. "Child" or "minor" means any person who has not attained the age of eighteen (18);

2. "Child care facility" means any public or private residential facility, child placing agency, foster family home, group home, day care center, part-day child care program, or family day care home, providing either full-time or part-time care for children away from their own homes, and which is owned or controlled by a political subdivision, a corporation, an unincorporated organization or association, or an individual;

3. "Child placing agency" means a child welfare agency licensed or accredited to place children in foster family homes, group homes or adoptive homes;

4. "Full-time care" means continuous care given to a child beyond a minimum period of twenty-four (24) hours;

5. "Foster family home" means a family home, other than the home of a parent, stepparent, grandparent, brother, sister, uncle, or aunt, which provides full-time care for five or fewer children;

6. "Foster parent eligibility assessment" includes a criminal background investigation, including, but not limited to, a national criminal history records search based upon the submission of fingerprints, home assessments, and any other assessment required by the Department of Human Services, the Department of Juvenile Justice, or any child-placing agency pursuant to the provisions of the Oklahoma Foster Care and Out-of-Home Placement Act. A foster parent eligibility assessment shall be similar to the procedures used by the Oklahoma Department of Public Safety for determining suitability of an individual for employment as a highway patrol officer;

7. "Group homes" means homes providing full-time care and community-based services for more than five children but less than thirteen;

8. "Day care" means the provision of care and supervision of a child who resides in its own home or with relatives but is in the

care of another person for part of the day who is conducting a family day care home or persons conducting a day care center;

9. "Family day care home" means a licensed or approved family home which provides care and protection for seven or fewer children for part of the twenty-four-hour day. The term "family day care home" shall not include informal arrangements which parents make independently with neighbors, friends, and others, or caretakers in the child's own home;

10. "Day care center" means a licensed ~~or~~, approved or accredited facility which provides care and supervision for eight or more children and which operates for more than thirty (30) hours per week. The term "day care center" shall not include informal arrangements which parents make independently with neighbors, friends, and others, or caretakers in the child's own home;

11. "Part-day child care program" means a licensed or accredited facility which provides care and supervision for eight or more children and which operates for more than fifteen (15) but less than thirty (30) hours per week;

12. "Department" means the Department of Human Services;

13. "Commission" means the Commission for Human Services, the policy-making and general supervisory body of the Department; and

14. "Division" means the division of the Department of Human Services of the State of Oklahoma assigned responsibilities pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 403, as last amended by Section 3, Chapter 386, O.S.L. 1998 (10 O.S. Supp. 1999, Section 403), is amended to read as follows:

Section 403. A. The provisions of the Oklahoma Child Care Facilities Licensing Act shall not apply to:

1. Care provided in the child's own home or by relatives;
2. Informal arrangements which parents make with friends or neighbors for the occasional care of their children;

3. Programs in which school-aged children are participating in home-schooling;

4. Programs operated during typical school hours by a public school district;

5. Programs operated during typical school hours by a private school that offers elementary education in grades kindergarten through third grade;

6. Summer youth camps for children at least five (5) years of age that are accredited by the American Camping Association or other national standard-setting agency or church camp accreditation program;

7. Programs in which children attend on a drop-in basis and parents are on the premises and readily accessible;

8. A program of specialized activity or instruction for children that is not designed or intended for child care purposes including, but not limited to, scouts, 4-H clubs and summer resident youth camps, and single-activity programs such as academics, athletics, gymnastics, hobbies, art, music, dance and craft instruction;

9. Nursery schools, kindergartens or other facilities whose purpose is primarily educational, recreational or medical and which operate part-day child care programs which provide care and supervision for eight (8) or more children for fifteen (15) or less hours per week;

10. Facilities whose primary purpose is medical treatment; or

11. Day treatment programs and maternity homes operated by a licensed hospital.

B. 1. The provisions of the Oklahoma Child Care Facilities Licensing Act, shall be equally incumbent upon all private and public child care facilities.

2. Any institution furnishing full-time care for children for ten (10) years prior to the effective date of this act shall, upon written notification to the Department of Human Services, be exempted from the provisions of the Oklahoma Child Care Facilities

Licensing Act, if it is not receiving any state or federal funds for furnishing food, clothing, shelter, or upkeep for such children.

3. Any institution being operated by a war veterans' organization and furnishing full-time care for children on the effective date of this act shall be exempted from the provisions of the Oklahoma Child Care Facilities Licensing Act, regardless of whether it is receiving state or federal funds.

C. 1. The Department shall establish a streamlined procedure by which the Department authorizes a child care facility or child-placing agency that is otherwise required to obtain a license under this act to operate the facility or agency without a license if the facility or agency is accredited by an accreditation organization approved by the Department.

2. To qualify for approval by the Department under this subsection, an accreditation organization shall:

- a. be a recognized organization that promulgates, publishes and requires compliance with standards and inspection procedures for child care facilities or child-placing agencies that meet or exceed the state's minimum requirements for child care facilities and child-placing agencies, with the exception of standards relating to the internal self-governance of a facility or agency and to the curriculum, teaching, or instruction of the facility or agency,
- b. not have any person serve as a member of the governing body of the accrediting organization who has a proprietary or financial interest in a child care facility or child-placing agency that is accredited by the accrediting organization, and
- c. demonstrate a strong commitment to ensuring the provision of high quality child care services.

3. An accreditation organization must file a copy of its minimum standards and inspection procedures for child care facility

or child-placing agencies with the Department to enable the Department to make its determination.

D. 1. The Department shall approve an accreditation organization if the Department determines that the accreditation organization has satisfied the requirements prescribed by this section.

2. An approval granted by the Department under this section shall be valid for one (1) year.

3. The Department shall prescribe an annual renewal procedure for an approved accreditation organization that ensures continued compliance with this act.

4. If the Department determines that an approved accreditation organization has failed to timely correct an action that endangers the health, safety or well-being of one or more children cared for by a facility or agency, the Department shall require by notice immediate correction of the violation. The notice shall include notice that failure to correct the violation can result in the revocation of the approval of the accreditation organization by the Department, or the filing of an injunction pursuant to the provisions of Section 409 of this title, or both.

SECTION 4. AMENDATORY 10 O.S. 1991, Section 404.1, as last amended by Section 16, Chapter 414, O.S.L. 1998 (10 O.S. Supp. 1999, Section 404.1), is amended to read as follows:

Section 404.1 A. 1. Except as otherwise provided by subsection B of this section, the Department of Human Services shall require a criminal history investigation, conducted by the Oklahoma State Bureau of Investigation, for any person making application to establish or operate a child care facility prior to the issuance of a license or the issuance of a certificate of accreditation to operate such facility.

2. a. Every child care facility shall arrange, prior to employment, for a criminal history investigation to be conducted by the Oklahoma State Bureau of

Investigation for any person to be employed by the child care facility.

- b. In addition, any child care facility, licensed or approved pursuant to the Oklahoma Child Care Facilities Licensing Act, and located in a private residence, shall arrange for a criminal background investigation for any adult residing in the child care facility. A criminal history investigation conducted by the Oklahoma State Bureau of Investigation shall also be completed for any adult who subsequently moves into the private residence.

3. If the adult has lived in Oklahoma for less than one (1) year, a criminal history investigation shall also be obtained from the previous state of residence. If the applicant planning to establish or operate a child care facility, or an employee or contract employee of the child care facility, or the contractor of the child care facility has resided in Oklahoma for less than one (1) year, the criminal history investigation shall also be obtained from such person's previous state of residence.

B. 1. a. On and after September 1, 1998:

- (1) any child-placing agency contracting with a person for foster family home services or in any manner for services for the care and supervision of children shall also, prior to executing a contract, arrange for a foster parent eligibility assessment for the foster care provider,
- (2) any child-placing agency contracting with a person for foster family home services shall arrange for a national criminal history records search based upon submission of fingerprints for any adult residing in the foster family home through the Department of Human Services pursuant to the provisions of the Oklahoma Foster Care and Out-of-Home Placement Act. A national criminal

history records search based upon submission of fingerprints to the Oklahoma State Bureau of Investigation shall also be completed for any adult who subsequently moves into the residence, and

(3) any child care facility contracting with any person for foster family home services shall request the Office of Juvenile Justice to conduct a juvenile justice information system review pursuant to the provisions of Sections 7302-9.6 and 7302-3.8 of this title for any child over the age of thirteen (13) years residing in the foster family home, other than a foster child, or who subsequently moves into the private residence. As a condition of contract, the child care facility shall obtain the consent of the parent or legal guardian of the child for such review.

b. The provisions of this paragraph shall not apply to foster care providers having a contract or contracting with a child-placing agency, the Department of Human Services or the Department of Juvenile Justice prior to September 1, 1998. Such existing foster care providers shall comply with the provisions of 10 O.S. Supp. 1997, Section 404.1, until otherwise provided by rules of the Commission for Human Services or by law.

2. a. On and after September 1, 1998, prior to contracting with a foster family home for placement of any child who is in the custody of the Department of Human Services, the Department shall arrange for a foster parent eligibility assessment pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act, for such foster family applicant and a national criminal history records search based upon submission of fingerprints for any adult residing in

such foster family home. A national criminal history records search based upon submission of fingerprints conducted by the Oklahoma State Bureau of Investigation shall also be completed for any adult who subsequently moves into the residence.

- b. The provisions of this paragraph shall not apply to foster care providers having a contract or contracting with a child-placing agency, the Department of Human Services or the Department of Juvenile Justice prior to September 1, 1998. Such existing foster care providers shall comply with the provisions of 10 O.S. Supp. 1997, Section 404.1, until otherwise provided by rules of the Commission for Human Services or by law.

3. The Department shall provide for a juvenile justice information system review pursuant to Section 7302-3.8 of this title for any child over the age of thirteen (13) years residing in a foster family home, other than the foster child, or who subsequently moves into the private residence.

C. The Commission for Human Services shall promulgate rules to identify circumstances when a criminal history investigation or foster parent eligibility assessment for an applicant or contractor, or any person over the age of thirteen (13) years residing in a private residence in which a child care facility is located, shall be expanded beyond the investigation conducted by the Oklahoma State Bureau of Investigation or as otherwise provided pursuant to this section.

D. 1. The following persons shall not be required to obtain a criminal history investigation or a national criminal history records search based upon submission of fingerprints to the Federal Bureau of Investigation pursuant to this section:

- a. a parent volunteer who transports children on an irregular basis, and

- b. a child of a child care center or family child care home operator who became an adult during continuous residence at the licensed or approved facility.

2. These exemptions shall not preclude the Department from requesting a criminal history investigation or requesting a national criminal history records search based upon submission of fingerprints or investigating criminal, abusive or harmful behavior of such persons, if warranted.

E. Except as otherwise provided by the Oklahoma Children's Code and subsection G of this section, a conviction for a crime shall not be an absolute bar to employment, but shall be considered in relation to specific employment duties and responsibilities.

F. 1. Information received pursuant to this section by an owner or administrator of a child care facility shall be maintained in a confidential manner in a file that is separate from employment records. The information may be transmitted to the Department for child care facility licensing purposes.

2. Whenever an applicant is subsequently employed by or contracts with a child care facility, the information received pursuant to a criminal history investigation, foster parent eligibility assessment, or a national criminal history records search based upon submission of fingerprints shall not be made a part of that individual's personnel or contract records but shall be maintained pursuant to this subsection. The 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 in response to a request from the child care facility that is considering employing or contracting with the individual.

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

G. 1. A criminal history investigation or national criminal history records search based upon submission of fingerprints 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.

2. a. 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 or to reside in a child care facility and for any employer who offers or provides services to children to knowingly and willfully employ or contract with, or allow continued employment of or contracting with any person who is required to register pursuant to the Sex Offenders Registration Act. Any person required to register pursuant to the Sex Offenders Registration Act who violates any provision of this act shall, upon conviction, be guilty of a felony punishable by incarceration in a correctional facility for a period of not more than five (5) years and a fine of not more than Five Thousand Dollars (\$5,000.00) or both such fine and imprisonment.

b. Upon a determination by the Department of any violation of the provisions of this section, the violator shall be subject to and the Department may pursue:

- (1) an emergency order,
- (2) license revocation, denial or nonrenewal,
- (3) injunctive proceedings,
- (4) an administrative penalty not to exceed Ten Thousand Dollars (\$10,000.00), and
- (5) referral for criminal proceedings.

c. In addition to the penalties specified by this section, the violator may be liable for civil damages.

H. 1. In order to protect the health and safety of a child in out-of-home placement, the Department of Human Services shall study the feasibility of implementing a statewide program for a national criminal history records search based upon fingerprints submitted to the Oklahoma State Bureau of Investigation for a foster parent who is currently caring for a child in the custody of the Department of Human Services and the Department of Juvenile Justice on the effective date of this act.

2. The study shall include, but not be limited to, assessing the costs associated with requiring national fingerprint checks on such foster parent, recommending time frames for implementation for such program, and any other consideration for the efficient and effective implementation of such a program.

3. The Department shall issue a report on its findings and any other recommendations to the Governor and the Legislature not later than January 15, 1999.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 404.2 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. An approved accreditation organization shall obtain from the Department of Human Services information from the child abuse registry for purposes of reviewing the general character and fitness of any employee of or applicant for employment by a child care facility or child-placing agency accredited by the organization and seeking to register with the Department or be issued a certificate to operate under that accreditation.

B. 1. The Department shall provide for an annual renewal of a certificate issued to an operator of a child care facility or child-placing agency. The Department shall renew the certificate if the child care facility or child-placing agency maintains accreditation from the approved accreditation organization.

2. Not later than the seventh day after the date on which an approved accreditation organization revokes or withdraws the accreditation of a child care facility or child-placing agency that

is exempt from licensing, the organization shall notify the Department of the revocation or withdrawal.

3. A holder of a certificate issued under this paragraph shall not operate a child care facility or child-placing agency if an accreditation organization has revoked or withdrawn the accreditation of the child care facility of child-placing agency, unless the Department grants the holder a license or a provisional license.

4. The Commission for Human Services may promulgate rules necessary to implement the provisions of this section.

SECTION 6. AMENDATORY 10 O.S. 1991, Section 405, as amended by Section 5, Chapter 122, O.S.L. 1993 (10 O.S. Supp. 1999, Section 405, is amended to read as follows:

Section 405. A. No child care facility may be operated or maintained in this state, unless licensed or issued a certificate to operate under accreditation by the Department of Human Services; provided, that the Department shall not be required to be licensed or accredited, but shall be bound by the standards it prescribes. No new child care facility may be established without the prior approval of the Department, which shall be granted only after the Department is satisfied that such facility will meet minimum standards for a license to operate or a certificate to operate under accreditation. The incorporation or domestication of a corporation organized for the purpose of operating a child care facility shall not exempt such corporation from compliance with the provisions of Section 401 et seq. of Title 10 of this act.

B. 1. An application for a license shall be made on forms provided by the Department and in the manner prescribed. Before issuing such license, the Department shall investigate the activities and standards of care of the applicant and if satisfied that the applicant meets the requirements as provided in this act, a license shall be issued. A provisional license may be issued to any applicant whose services are needed but which is temporarily unable to conform to all the rules ~~and regulations~~ of the Department, as

provided in Section 404 of this title. All licenses shall be in force for two (2) years from the month of issuance unless revoked as authorized by Section 408 of this title, and may be reissued biennially on application, except that a provisional license may be in force for not more than one (1) year from the date of issuance, unless such emergency exists as, in the discretion of the Department, necessitates an extension thereof.

2. a. A child-care facility or child-placing agency that is accredited by an approved accreditation organization may register with the Department to operate under that accreditation by filing:

- (1) a registration in a simple form prescribed by the Department,
- (2) a copy of the document of accreditation from the accreditation body showing that the facility or agency is accredited, and
- (3) a copy of the written accreditation report of the agency or facility from the accreditation body.

b. (1) The Department shall issue a certificate to operate under accreditation to a child care facility or child-placing agency that registers with the Department if:

- (a) the facility or agency submits all of the information required by this act,
- (b) the facility or agency remits any required administrative fee, and
- (c) the Department verifies that the facility or agency is accredited by and in good standing with an approved accreditation organization.

(2) A certificate issued under this act shall not be transferable and shall apply only to the operator named in the registration. A certificate shall be valid for one (1) year.

c. The Department may charge a child care facility or child-placing agency a single administrative fee in a reasonable amount that is sufficient to cover the costs of the Department in processing and acting on the registration.

d. The Department shall process and act on a registration not later than thirty (30) days after the date on which the Department receives all of the required information.

SECTION 7. AMENDATORY 10 O.S. 1991, Section 406, as last amended by Section 2, Chapter 222, O.S.L. 1995 (10 O.S. Supp. 1999, 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 or holder of a certificate 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 or holder of a certificate 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 or holder of a certificate 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~~ Commission for Human Services or accreditation standard or procedure required by an approved accreditation organization, 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 or established accreditation standard or procedure 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 or certificate of accreditation 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 or certificate of accreditation 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~~ Commission or accreditation standard or procedure required by an approved accreditation organization, 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 or registrant 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 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 407.1 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. The Department of Human Services shall suspend a certificate of a child care facility or child-placing agency issued pursuant to this act and, if appropriate, place the children attending or residing in the facility or agency elsewhere if:

1. The Department finds the facility or agency is operating in violation of the standards of its accrediting organization; and

2. The violation creates an immediate threat to the health, safety and well-being of the children attending or residing in the facility or agency.

B. An order suspending the certificate of a child care facility or child-placing agency shall be effective immediately on the date on which the certificate holder receives written notice of on a later date specified in the order.

C. An order shall be valid for ten (10) days after the effective date of the order.

D. The suspension of a certificate and the appeal from that action shall be governed by the provisions of the Administrative Procedures Act.

SECTION 9. This act shall become effective November 1, 2000.