

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB2812

By: Gilbert

AS INTRODUCED

An Act relating to public health and safety; amending 63 O.S. 2001, Section 1-1950.1, which relates to criminal arrest checks on nursing home employee candidates; providing termination date; defining terms; allowing for criminal history checks and fingerprinting searches of certain new employees by certain employers; adding to responsibilities of Oklahoma State Bureau of Investigation and the Department of Human Services relating to criminal history records search; defining terms; providing for criminal arrest records; authorizing certain persons to obtain records; providing for payment of fees; providing for process and procedures; specifying time periods; prohibiting permanent employment prior to obtaining certain records; authorizing certain temporary employment; making the Department of Human Services lead agency for disseminating fingerprint cards; providing for fees; providing for certain contracts; providing process and procedures; providing exceptions; providing for release of certain records; requiring information be given to applicants; prohibiting certain applicants; requiring certain termination; providing exceptions; requiring certain employees to complete rehabilitation programs; providing for confidentiality; specifying penalty; making certain activity unlawful; requiring certain reviews; conforming language; amending 63 O.S. 2001, Section 1-1950.3, which relates to nurses aide; adding requirement that nurse aides undergo criminal arrest checks; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1950.1, is amended to read as follows:

Section 1-1950.1 A. The provisions of this section shall be effective through December 31, 2002.

B. For purposes of this section:

1. "Nurses aide" ~~means~~ includes any person who is not a licensed health professional and who provides, for compensation,

nursing care ~~or~~, health-related services or supportive assistance to residents in:

- a. a nursing facility~~r~~ or a specialized facility as such terms are defined by the Nursing Home Care Act,
- b. a residential care home as such term is defined by the Residential Care Act,
- c. an assisted living center as such term is defined by the Continuum of Care and Assisted Living Act,
- d. a continuum of care facility as such term is defined by the Continuum of Care and Assisted Living Act,
- e. a freestanding hospice or program providing hospice services as such terms are defined by the Hospice Licensing Act, or
- f. an adult day care center ~~and who is not a licensed health professional~~ as such term is defined by the Adult Day Care Act.

~~Such~~ The term "nurses aide" also ~~means~~ includes any person who provides ~~such~~ nursing care or health-related services or supportive assistance services to individuals in their own homes as an employee or contract provider of a ~~home health or~~ home care agency, or as a contract provider of the Nontechnical Medical Care Program of the Oklahoma Department of Human Services;

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

- a. a nursing facility~~r~~ or specialized facility~~r or~~ ~~residential care home~~ as such terms are defined ~~in Section 1-1902 of this title~~ by the Nursing Home Care Act,
- b. a residential care home as such term is defined by the Residential Care Act,

- ~~c.~~ c. an adult day care center as such term is defined in ~~Section 1-872 of this title~~ the Adult Day Care Act,
- ~~e.~~ d. an assisted living center as such term is defined by the Continuum of Care and Assisted Living Act,
- e. a continuum of care facility as such term is defined by the Continuum of Care and Assisted Living Act,
- f. a freestanding hospice or program providing hospice services as such terms are defined by the Hospice Licensing Act,
- g. a ~~home health or~~ home care agency as such term is defined by the Home Care Act, and
- ~~d.~~ h. the Department of Human Services, in its capacity as an operator of any hospital or health care institution, or as a contractor with providers of the Nontechnical Medical Care Program; and

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.~~ C. 1. a. Except as otherwise provided by subsection ~~C~~ D of this section, before any employer makes an offer to employ or to contract with a nurses aide or other person to provide nursing care, health-related services or supportive assistance to any resident or other individual except as provided by paragraph 4 of this subsection, the 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.

b. 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~~ E of this section, an employer is authorized to obtain 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 employer shall request the Bureau to conduct a criminal arrest check on the nurses aide or other person and shall provide to the Bureau any relevant information required by the Bureau to conduct the check. The employer shall pay a fee of ~~Ten Dollars (\$10.00)~~ Fifteen Dollars (\$15.00) to the Bureau for 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 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~~†~~†,
- i. an occupational therapist licensed pursuant to the Occupational Therapy Practice Act~~†~~† or
- j. an individual who is to be employed by a nursing service conducted by and for the adherents of any religious denomination, the tenets of which include reliance on spiritual means through prayer alone for healing.

5. At the request of an employer, the Bureau shall conduct a criminal arrest check on any person employed by the employer, including the persons specified in paragraph 4 of this subsection at any time during the period of employment of such person.

~~C. D.~~ D. 1. An employer may make an offer of temporary employment to a nurses aide or other person pending the results of the criminal arrest check on the nurses aide or other person. The employer in such instance shall provide to the Bureau the name and relevant information relating to the nurses aide or other person within seventy-two (72) hours after the date the nurses aide or other person accepts temporary employment. The employer shall not hire or contract with a nurses aide or other person on a permanent basis until the results of the criminal arrest check are received.

2. An employer may accept a criminal arrest report less than one (1) year old of a nurses aide or other person to whom such employer makes an offer of employment or employment contract. The report shall be obtained from the previous employer or contractor of such nurses aide or other person and shall only be obtained upon the written consent of ~~such~~ the nurses aide or other person.

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

- a. any felony or misdemeanor classified as a crime against the nurses aide or other person~~†, 1~~
- b. any felony or misdemeanor classified as a crime against public decency or morality~~†, 1~~
- c. any felony or misdemeanor classified as domestic abuse pursuant to the provisions of the Protection from Domestic Abuse Act~~†, 1~~
- 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~~†, 1~~ and
- e. any felony or misdemeanor classified as a crime against property.

2. Within five (5) days of receiving 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 requesting employer.

~~E.~~ F. 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 employer is required to obtain a criminal arrest record before making an offer of permanent employment or contract to a nurses aide or other person described in subsection ~~B~~ C of this section.

~~F.~~ G. 1. If the results of a criminal arrest check reveal that the ~~subject~~ nurses aide or other person has been convicted of any of the following offenses, the employer shall not hire or contract with the nurses aide or other person:

- a. assault, battery, or assault and battery with a dangerous weapon~~†~~1
- b. aggravated assault and battery~~†~~1
- c. murder or attempted murder~~†~~1
- d. manslaughter, except involuntary manslaughter~~†~~1
- e. rape, incest or sodomy~~†~~1
- f. indecent exposure and indecent exhibition~~†~~1
- g. pandering~~†~~1
- h. child abuse~~†~~1
- i. abuse, neglect or financial exploitation of any person entrusted to his care or possession~~†~~1
- j. burglary in the first or second degree~~†~~1
- k. robbery in the first or second degree~~†~~1
- l. robbery or attempted robbery with a dangerous weapon, or imitation firearm~~†~~1
- m. arson in the first or second degree~~†~~1
- n. unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act~~†~~1
- o. grand larceny~~†~~1 or
- p. petit larceny or shoplifting within the past seven (7) years.

2. If the results of a criminal arrest check reveal that an employee or a nurses aide or other person hired on a temporary basis pursuant to subsection C D 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 employer shall immediately terminate the nurses aide's or other person's employment or contract. The provisions of this paragraph shall not apply to an employee or contract provider of an employer who has completed the requirements for certification and placement on the

nurse aide registry and who has been continuously employed by the employer prior to January 1, 1992.

~~G.~~ H. An employer shall not employ or continue employing a any person addicted to ~~any~~ a 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.~~ I. All criminal records received by the employer are confidential and are for the exclusive use of the State Department of Health and the employer which requested the information. Except on court order or with the written consent of the nurses aide or other person being investigated, the records shall not be released or otherwise disclosed to any other person or agency. These records shall be destroyed after one (1) year from the end of employment of the nurses aide or other person to whom such records relate.

~~I.~~ J. 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.~~ K. As part of the inspections required by the Nursing Home Care Act, the Residential Care Act, the Continuum of Care and Assisted Living Act, the Hospice Licensing 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 section.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1950.1a of Title 63, unless there is created a duplication in numbering, reads as follows:

- A. This section shall be effective January 1, 2003.
- B. For purposes of this section:

1. "Nurses aide" means any person who is not a licensed health professional and who provides, for compensation, nursing care or health-related services or supportive assistance to residents in:

- a. a nursing facility or a specialized facility as such terms are defined by the Nursing Home Care Act,
- b. a residential care home, as such term is defined by the Residential Care Act,
- c. an assisted living center as such term is defined by the Continuum of Care and Assisted Living Act,
- d. a continuum of care facility as such term is defined by the Continuum of Care and Assisted Living Act,
- e. a freestanding hospice or program providing hospice services as such terms are defined by the Hospice Licensing Act, or
- f. an adult day care center as such term is defined by the Adult Day Care Act.

The term "nurses aide" also includes any person who provides nursing care or health-related services or supportive assistance services to individuals in their own homes as an employee or contract provider of a home care agency, or as a contract provider of the Nontechnical Medical Care Program of the Oklahoma Department of Human Services;

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

- a. a nursing facility or specialized facility as such terms are defined by the Nursing Home Care Act,
- b. a residential care home as such term is defined by the Residential Care Act,
- c. an adult day care center as such term is defined by the Adult Day Care Act,
- d. an assisted living center as such term is defined by the Continuum of Care and Assisted Living Act,

- e. a continuum of care facility as such term is defined by the Continuum of Care and Assisted Living Act,
- f. a freestanding hospice or program providing hospice services as such terms are defined by the Hospice Licensing Act,
- g. a home care agency as such term is defined by the Home Care Act, and
- h. the Department of Human Services, in its capacity as an operator of any hospital or health care institution, or as a contractor with providers of the Nontechnical Medical Care Program; and

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

C. 1. a. (1) Except as otherwise provided by subsection G of this section, before any employer makes an offer to employ or to contract with a nurses aide or other person to provide nursing care, health-related services or supportive assistance to any resident or individual, except as provided by subsection E of this section, the 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.

(2) 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.

b. If the applicant has lived in Oklahoma for less than one (1) year, a criminal history records search shall also be obtained from the previous state of residence.

2. Except as otherwise specified by subsection H of this section, an employer is authorized to obtain 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 employer shall request the Bureau to conduct a criminal arrest check on the nurses aide or other person and shall provide to the Bureau any relevant information required by the Bureau to conduct the check. The employer shall pay a fee of Fifteen Dollars (\$15.00) to the Bureau for each criminal arrest check that is conducted pursuant to such a request.

4. Within five (5) days of receiving 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 requesting employer.

D. 1. a. In addition to a criminal arrest check pursuant to subsection C of this section, except as otherwise provided by subsection G of this section, before any employer makes an offer to employ or to contract with a nurses aide or other person to provide nursing care, health-related services or supportive assistance to any resident or individual, except as provided by subsection E of this section, the employer shall provide for a national criminal history records search based upon submission of fingerprints to be made on the nurses aide or other person pursuant to the provisions of this section.

b. If the employer is a facility, home or institution which is part of a larger complex of buildings, the requirement of a national criminal history records search based upon submission of fingerprints 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. The national criminal history records search based upon submission of fingerprints shall be obtained by the employer through the Department of Human Services.

3. a. The Department of Human Services shall be the lead agency for disseminating fingerprint cards for obtaining and requesting a national criminal history records search based upon submission of fingerprints from the Oklahoma State Bureau of Investigation as required by this section.

b. Any fees charged by the Oklahoma State Bureau of Investigation or the Federal Bureau of Investigation for such searches shall be paid by the requesting entity.

c. The Department of Human Services shall contract with the Oklahoma State Bureau of Investigation to obtain national criminal history records searches based upon submission of fingerprints required pursuant to this section.

d. Upon request for a national criminal history records search based upon submission of fingerprints, the Oklahoma State Bureau of Investigation shall forward one set of fingerprints to the Federal Bureau of Investigation for the purpose of conducting such a national criminal history records search.

4. The State Department of Health may authorize an exception to the fingerprinting requirement for a person who has a physical condition which precludes such person from being fingerprinted.

E. The requirements of a criminal arrest check and a national criminal history records search shall not apply to an offer of employment made to:

1. A nursing home administrator licensed pursuant to the provisions of Section 330.53 of Title 63 of the Oklahoma Statutes;

2. 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;

3. A registered nurse or practical nurse licensed pursuant to the Oklahoma Nursing Practice Act;

4. A physical therapist registered pursuant to the Physical Therapy Practice Act;

5. A physical therapist assistant licensed pursuant to the Physical Therapy Practice Act;

6. A social worker licensed pursuant to the provisions of the Social Workers' Licensing Act;

7. A speech pathologist or audiologist licensed pursuant to the Speech Pathology and Audiology Licensing Act;

8. A dietitian licensed pursuant to the provisions of the Licensed Dietitian Act;

9. An occupational therapist licensed pursuant to the Occupational Therapy Practice Act; or

10. An individual who is to be employed by a nursing service conducted by and for the adherents of any religious denomination, the tenets of which include reliance on spiritual means through prayer alone for healing.

F. At the request of an employer, the Bureau shall conduct a criminal arrest check or request a national criminal history records search based upon submission of fingerprints on any person employed by the employer, including the persons specified in subsection E of this section at any time during the period of employment of such person.

G. 1. An employer may make an offer of temporary employment to a nurses aide or other person pending the results of the criminal arrest check on the nurses aide or other person and a national

criminal history records search based upon submission of fingerprints. The employer in such instance shall provide to the Bureau the name and relevant information relating to the nurses aide or other person within seventy-two (72) hours after the date the nurses aide or other person accepts temporary employment.

2. The employer shall not hire or contract with a nurses aide or other person on a permanent basis until the results of the criminal arrest check and a national criminal history records search based upon submission of fingerprints are received.

H. The Bureau shall not provide to the employer the criminal arrest records or a national criminal history record search of a nurses aide or other person being investigated pursuant to this section unless the records relate to:

1. Any felony or misdemeanor classified as a crime against the nurses aide or other person;

2. Any felony or misdemeanor classified as a crime against public decency or morality;

3. Any felony or misdemeanor classified as domestic abuse pursuant to the provisions of the Protection from Domestic Abuse Act;

4. 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

5. Any felony or misdemeanor classified as a crime against property.

If the applicant has lived in Oklahoma for less than one (1) year, a criminal history records search shall also be obtained from the previous state of residence.

I. 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 employer is required to obtain a criminal arrest record and a national criminal

history records search based upon submission of fingerprints before making an offer of permanent employment or contract to a nurses aide or other person described in subsection C of this section.

J. 1. If the results of a criminal arrest check or a national criminal history records search based upon submission of fingerprints reveal that the nurses aide or other person has been convicted of any of the following offenses, the employer shall not hire or contract with the nurses aide or other 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,
- 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,
- o. grand larceny, or
- p. petit larceny or shoplifting within the past seven (7) years.

2. If the results of a criminal arrest check or a national criminal history records search based upon submission of fingerprints reveal that an employee, a nurses aide or other person hired on a temporary basis pursuant to subsection G of this section has been convicted of any of the offenses listed in paragraph 1 of this subsection, the employer shall immediately terminate the nurses aide's or other person's employment or contract. The provisions of this paragraph shall not apply to an employee or contract provider of an employer who has completed the requirements for certification and placement on the nurses aide registry and who has been continuously employed by the employer prior to November 1, 2000.

K. An employer shall not employ or continue employing any person addicted to a 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.

L. All criminal records received by the employer are confidential and are for the exclusive use of the State Department of Health and the employer which requested the information. Except on court order or with the written consent of the nurses aide or other person being investigated, the records shall not be released or otherwise disclosed to any other person or agency. These records shall be destroyed after one (1) year from the end of employment of the nurses aide or other person to whom such records relate.

M. 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.

N. As part of the inspections required by the Nursing Home Care Act, the Residential Care Act, the Continuum of Care and Assisted Living Act, the Hospice Licensing 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 section.

SECTION 3. AMENDATORY 63 O.S. 2001, Section 1-1950.3, is amended to read as follows:

Section 1-1950.3 A. 1. Until November 1, 2004, no employer or contractor who is subject to the provisions of Section 1-1950.1 or 1-1950.2 of this title or Section 2 of this act shall use, on a full-time, temporary, per diem, or other basis, any individual who is not a licensed health professional as a ~~nurse~~ nurses aide for more than one hundred twenty (120) days, unless such individual has satisfied all requirements for certification and placement on the nurse aide registry maintained by the State Department of Health.

2. a. Effective November 1, 2004, no nursing facility, assisted living or other long-term care facility shall employ as a ~~nurse~~ nurses aide, on a full-time, temporary, per diem, or any other basis, any individual who is not certified as a nurse aide in good standing on the ~~nurse~~ nurses aide registry maintained by the State Department of Health.

b. The Department may grant a temporary emergency waiver to the provisions of this paragraph to any nursing facility, assisted living or other long-term care facility which can demonstrate that such facility has been unable to successfully meet its staffing requirements. The Department shall promulgate rules related to eligibility for receipt of such waiver, and the process and the conditions for obtaining the waiver.

B. 1. Until November 1, 2004, no person shall employ an individual as a ~~nurse~~ nurses aide who has not completed the requirements for certification and placement on the ~~nurse~~ nurses aide registry without written documentation of the individual's

current registration in an approved course of study and training for nurse aides.

2. An individual employed as a nurse aide who is enrolled in an approved course of study and training for ~~nurse aides~~ nurses aide shall successfully complete such course of study and training, obtain certification, and be placed on the ~~nurse~~ nurses aide registry within one hundred twenty (120) cumulative days of such completion in order to continue employment as a ~~nurse~~ nurses aide.

3. Any nursing facility, assisted living or other long-term care facility that employs an individual who is in ~~nurse~~ nurses aide training, as provided in this section, shall ensure that such individual is supervised at all times by no less than a licensed practical nurse.

4. No employer may utilize an individual who is in ~~nurse~~ nurses aide training for more than one hundred twenty (120) cumulative days as a nurse aide.

5. For purposes of this subsection, "cumulative days" means the number of days an individual is utilized as a nurse aide by any employer in any nursing facility, assisted living or other long-term care facility.

C. Any person convicted of violating any of the provisions of this section ~~or~~, Section 1-1950.1 of this title or Section 2 of this act shall be guilty of a misdemeanor, punishable by a fine of not less than One Hundred Dollars (\$100.00) nor more than Three Hundred Dollars (\$300.00), imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

SECTION 4. This act shall become effective November 1, 2002.

48-2-7459 KSM 6/12/15