

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1322

By: Tibbs

AS INTRODUCED

An Act relating to public health and safety; amending Section 2, Chapter 470, O.S.L. 2002, and Section 4, Chapter 470 O.S.L. 2002 (63 O.S. Supp. 2002, Sections 1-1950.6 and 1-1950.8), which relate to nontechnical services workers; updating language; providing condition; allowing for criminal history checks and fingerprinting searches of certain new employees by certain employers; adding to responsibilities of the Oklahoma State Bureau of Investigation and the Department of Human Services relating to criminal history records search; 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 the 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; providing for confidentiality; specifying penalty; making certain activity unlawful; requiring certain reviews; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY Section 2, Chapter 470, O.S.L. 2002 (63 O.S. Supp. 2002, Section 1-1950.6), is amended to read as follows:

Section 1-1950.6 A. Sections ~~2~~ 1-1950.6 through ~~5~~ 1-1950.9 of this ~~act~~ title shall be effective September 1, 2003, subject to the availability of funds.

B. For the purposes of Sections ~~2~~ 1-1950.6 through ~~5~~ 1-1950.9 of this ~~act~~ title:

1. "Board" means the State Board of Health;

2. "Bureau" means the Oklahoma State Bureau of Investigation;

3. "Department" means the State Department of Health;

4. "Nursing facility" means a nursing facility and specialized facility as such terms are defined in Section 1-1902 of ~~Title 63 of the Oklahoma Statutes~~ this title;

5. "Nontechnical services worker" means a person employed by a nursing facility to provide, for compensation, nontechnical services in or upon the premises of a nursing facility. The term "nontechnical services worker" shall not include a nurse aide, or any person who is exempt from the criminal arrest check provisions of Section 1-1950.1 of ~~Title 63 of the Oklahoma Statutes~~ this title; and

6. "Nontechnical services" means services that:

- a. are performed in or on the premises of a nursing facility and that are predominantly physical or manual in nature, and
- b. involve or may involve patient contact including, but not limited to, housekeeping, janitorial or maintenance services, food preparation and administrative services.

SECTION 2. AMENDATORY Section 4, Chapter 470, O.S.L. 2002 (63 O.S. Supp. 2002, Section 1-1950.8), is amended to read as follows:

Section 1-1950.8 A. The provisions of this section shall be effective through December 31, 2004, if the provisions of Section 3 of this act are implemented.

B. 1. Except as otherwise provided in subsection ~~C~~ D of this section, before any nursing facility makes an offer to employ a nontechnical services worker applicant subject to subsection A of Section ~~3~~ 1-1950.7 of this ~~act~~ title on or after the effective date of Sections ~~2~~ 1-1950.6 through ~~5~~ 1-1950.9 of this ~~act~~ title, to provide nontechnical services, the nursing facility shall:

- a. provide for, prior to a check with the State Department of Health, a criminal history records search to be conducted upon the nontechnical services worker applicant pursuant to the provisions of this section, and
- b. check with the Department to determine whether the name of the applicant seeking employment appears on the nontechnical services worker abuse registry created pursuant to the provisions of Section ~~3~~ 1-1950.7 of this ~~act~~ title. If the name of the applicant seeking employment with the nursing facility is listed on the abuse registry as having a final Department investigative finding or an Administrative Law Judge finding pursuant to the requirements of Section ~~3~~ 1-1950.7 of this ~~act~~ title, and the Department has allowed for notice and opportunity for due process for such applicant, the nursing facility shall not hire the applicant.

2. A nursing facility is authorized to obtain records of any criminal conviction, guilty plea, or plea of nolo contendere maintained by the Oklahoma State Bureau of Investigation which the nursing facility is required or authorized to request pursuant to the provisions of this section.

3. The nursing facility shall request the Bureau to conduct a criminal history records search on a nontechnical services worker desiring employment with the nursing facility and shall provide to the Bureau any relevant information required by the Bureau to conduct the search. The nursing facility shall pay a reasonable fee to the Bureau for each criminal history records search that is conducted pursuant to such a request. The fee shall be determined by the Bureau.

~~B.~~ C. At the request of the nursing facility, the Bureau shall conduct a criminal history records search on any applicant desiring employment pursuant to the provisions of subsection ~~A~~ B of this section or any nontechnical services worker employed by the nursing facility at any time during the period of employment of such worker with the nursing facility.

~~C.~~ D. A nursing facility may make an offer of temporary employment to a nontechnical services worker pending the results of such criminal history records search and the abuse registry review on the applicant. The nursing facility in such instance shall provide to the Bureau the name and relevant information relating to the applicant within seventy-two (72) hours after the date the applicant accepts temporary employment. The nursing facility shall not hire an applicant as a nontechnical services worker on a permanent basis until the results of the criminal history records search and the abuse registry review are received.

~~D.~~ E. Within five (5) days of the receipt of a request to conduct a criminal history records search, the Bureau shall complete the criminal history records search and report the results of the search to the requesting nursing facility.

~~E.~~ F. Every nursing facility shall inform each nontechnical services worker applicant for employment of the requirement to obtain a criminal check and an abuse registry review before making an offer of permanent employment with a nontechnical services worker applicant.

~~F.~~ G. A nursing facility shall not hire or contract with and shall immediately terminate the employment, contract or volunteer arrangement of any applicant, contract worker or employee for whom the results of a criminal history records search from any jurisdiction reveals that such person has been convicted of, or pled guilty or nolo contendere to:

1. Assault, battery, or assault and battery with a dangerous weapon;

2. Aggravated assault and battery;

3. Murder or attempted murder;

4. Manslaughter, except involuntary manslaughter;

5. Rape, incest or sodomy;

6. Abuse, neglect or financial exploitation of any person entrusted to his or her care or possession;

7. Burglary in the first or second degree;

8. Robbery in the first or second degree;

9. Robbery or attempted robbery with a dangerous weapon, or imitation firearm;

10. Arson in the first or second degree;

11. Unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act;

12. Grand larceny; or

13. Petit larceny or shoplifting within the past seven (7) years.

~~G.~~ H. All criminal history records received by the nursing facility are for the exclusive use of the State Department of Health and the nursing facility that requested the information. Except as otherwise provided by Sections ~~2~~ 1-1950.6 through ~~5~~ 1-1950.9 of this ~~act~~ title or upon court order or with the written consent of the person being investigated, the criminal history records shall not be released or otherwise disclosed to any other person or agency.

~~H.~~ I. Any person releasing or disclosing any information in violation of this section, upon conviction thereof, shall be guilty of a misdemeanor.

~~I.~~ J. As part of any inspections required by law, the Department shall review the employment files of the nursing facility

required to conduct a criminal history records search to ensure compliance with the provisions of this section.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1950.8A of Title 63, unless there is created a duplication in numbering, reads as follows:

A. This section shall become effective January 1, 2005, subject to the availability of funds.

B. 1. Except as otherwise provided in subsection D of this section, before any nursing facility makes an offer to employ a nontechnical services worker applicant subject to subsection A of Section 1-1950.7 of Title 63 of the Oklahoma Statutes on or after the effective date of Sections 1-1950.6 through 1-1950.9 of Title 63 of the Oklahoma Statutes, to provide nontechnical services, the nursing facility shall:

- a. provide for, prior to a check with the State Department of Health, a criminal history records search to be conducted upon the nontechnical services worker applicant pursuant to the provisions of this section,
- b. if the applicant has lived in Oklahoma for less than one (1) year, obtain a criminal history records search from the previous state of residence, and
- c. check with the Department to determine whether the name of the applicant seeking employment appears on the nontechnical services worker abuse registry created pursuant to the provisions of Section 1-1950.7 of Title 63 of the Oklahoma Statutes. If the name of the applicant seeking employment with the nursing facility is listed on the abuse registry as having a final Department investigative finding or an Administrative Law Judge finding pursuant to the requirements of Section 1-1950.7 of Title 63 of the

Oklahoma Statutes, and the Department has allowed for notice and opportunity for due process for such applicant, the nursing facility shall not hire the applicant.

2. A nursing facility is authorized to obtain records of any criminal conviction, guilty plea, or plea of nolo contendere maintained by the Oklahoma State Bureau of Investigation which the nursing facility is required or authorized to request pursuant to the provisions of this section.

3. The nursing facility shall request the Bureau to conduct a criminal history records search on a nontechnical services worker desiring employment with the nursing facility and shall provide to the Bureau any relevant information required by the Bureau to conduct the search. The nursing facility shall pay a reasonable fee to the Bureau for each criminal history records search that is conducted pursuant to such a request. The fee shall be determined by the Bureau.

C. 1. In addition to a criminal history records search pursuant to subsection B of this section, except as otherwise provided by subsection E of this section, before any employer makes an offer to employ or to contract with a nontechnical services worker, the employer shall provide for a national criminal history records search based upon submission of fingerprints to be made on the nontechnical services worker pursuant to the provisions of this section.

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.

D. At the request of the nursing facility, the Bureau shall conduct a criminal history records search or a national criminal history records search based upon submission of fingerprints on any applicant desiring employment pursuant to the provisions of subsection B of this section or any nontechnical services worker employed by the nursing facility at any time during the period of employment of such worker with the nursing facility.

E. 1. A nursing facility may make an offer of temporary employment to a nontechnical services worker pending the results of such criminal history records search, a national criminal history records search based upon submission of fingerprints and the abuse registry review on the applicant. The nursing facility in such

instance shall provide to the Bureau the name and relevant information relating to the applicant within seventy-two (72) hours after the date the applicant accepts temporary employment.

2. The nursing facility shall not hire an applicant as a nontechnical services worker on a permanent basis until the results of the criminal history records search, a national criminal history records search based upon submission of fingerprints and the abuse registry review are received.

F. Within five (5) days of the receipt of a request to conduct a criminal history records search, the Bureau shall complete the criminal history records search and report the results of the search to the requesting nursing facility.

G. Every nursing facility shall inform each nontechnical services worker applicant for employment of the requirement to obtain a state criminal history records search, a national criminal history records search based upon submission of fingerprints and an abuse registry review before making an offer of permanent employment with a nontechnical services worker applicant.

H. A nursing facility shall not hire or contract with and shall immediately terminate the employment, contract or volunteer arrangement of any applicant, contract worker or employee for whom the results of a statewide criminal history records search or a national criminal history records search based upon submission of fingerprints from any jurisdiction reveals that such person has been convicted of, or pled guilty or nolo contendere to:

1. Assault, battery, or assault and battery with a dangerous weapon;

2. Aggravated assault and battery;

3. Murder or attempted murder;

4. Manslaughter, except involuntary manslaughter;

5. Rape, incest or sodomy;

6. Abuse, neglect or financial exploitation of any person entrusted to his or her care or possession;

7. Burglary in the first or second degree;

8. Robbery in the first or second degree;

9. Robbery or attempted robbery with a dangerous weapon, or imitation firearm;

10. Arson in the first or second degree;

11. Unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act;

12. Grand larceny; or

13. Petit larceny or shoplifting within the past seven (7) years.

I. All criminal history records received by the nursing facility are for the exclusive use of the State Department of Health and the nursing facility that requested the information. Except as otherwise provided by Sections 1-1950.6 through 1-1950.9 of Title 63 of the Oklahoma Statutes or upon court order or with the written consent of the person being investigated, the criminal history records shall not be released or otherwise disclosed to any other person or agency.

J. Any person releasing or disclosing any information in violation of this section, upon conviction thereof, shall be guilty of a misdemeanor.

K. As part of any inspections required by law, the Department shall review the employment files of the nursing facility required to conduct a criminal history records search to ensure compliance with the provisions of this section.

SECTION 4. This act shall become effective November 1, 2003.

49-1-5544

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