

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 1718

By: Bass

AS INTRODUCED

An Act relating to children; amending 10 O.S. 2001, Section 402 and 10 O.S. 2001, Section 404.1, as amended by Section 1, Chapter 213, O.S.L. 2003 (10 O.S. Supp. 2005, Section 404.1), which relate to child care; adding definition; deleting certain requirement for child care facilities; adding certain requirement for the Department of Human Services; requiring the Department of Human Services to provide certain licensure; authorizing certain fees; requiring certain disclosure; providing for certain consequences; requiring the Department of Human Services to establish and maintain a certain database; authorizing the Department of Human Services to enter into certain contracts; 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. 2001, 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) years;

2. "Child care facility" means any public or private child care residential facility, child placing agency, foster family home, group home, child care center, part-day child care program, family child care home, or large family child care home providing either full-time or part-time care for children away from their own homes;

3. "Child care worker" means a person licensed under this act to be responsible for the direct care of a child or children;

~~3.~~ 4. "Child placing agency" means a child welfare agency licensed to place children in foster family homes, group homes or adoptive homes;

~~4.~~ 5. "Full-time care" means continuous care given to a child beyond a minimum period of twenty-four (24) hours;

~~5.~~ 6. "Foster family home" means the private residence of a family which provides foster care services to a child, and includes a specialized foster home, a therapeutic foster family home, or a kinship care home;

~~6.~~ 7. "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, a home assessment, 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 Department of Public Safety for determining suitability of an individual for employment as a highway patrol officer;

~~7.~~ 8. "Group home" means a home providing full-time care and community-based services for more than five, but fewer than thirteen children;

~~8.~~ 9. "Family child care home" means a family home which provides care and supervision for seven or fewer children for part of the twenty-four-hour day. The term "family child care home" shall not include informal arrangements which parents make independently with neighbors, friends, and others, or with caretakers in the child's own home;

~~9.~~ 10. "Large family child care home" means a residential family home which provides care and supervision for eight to twelve children for part of the twenty-four-hour day;

~~10.~~ 11. "Child care center" means a facility which provides care and supervision for children and which operates for more than thirty (30) hours per week. The term "child care center" shall not include informal arrangements which parents make independently with neighbors, friends, and others, or with caretakers in the child's own home;

~~11.~~ 12. "Part-day child care program" means a facility that provides care and supervision for children and that operates for more than fifteen (15) and up to thirty (30) hours per week;

~~12.~~ 13. "Residential child care facility" means a twenty-four-hour residential facility where children live together with or are supervised by adults who are not their parents or relatives;

~~13.~~ 14. "Department" means the Department of Human Services;

~~14.~~ 15. "Commission" means the Commission for Human Services, the policy-making and general supervisory body of the Department; and

~~15.~~ 16. "Division" means the section within the Department that is assigned responsibilities pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act.

SECTION 2. AMENDATORY 10 O.S. 2001, Section 404.1, as amended by Section 1, Chapter 213, O.S.L. 2003 (10 O.S. Supp. 2005, 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 records search, conducted by the Oklahoma State Bureau of Investigation, for any person making application to establish or operate a child care facility, l prior to the issuance of a license to operate such facility, ~~l~~.

~~2. a. Every child care facility shall arrange, prior to employment, for a criminal history records search to be conducted by the Oklahoma State Bureau of Investigation and for any person to be employed by the child care facility.~~

~~b.~~ 2. 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 history records search for any adult residing in the child care facility. A criminal history records search 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 records search 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 records search shall also be obtained from such person's previous state of residence.

4. The Department of Juvenile Justice may directly request national criminal history records searches as defined by Section 150.9 of Title 74 of the Oklahoma Statutes from the Oklahoma State Bureau of Investigation for the purpose of obtaining the national criminal history of any employee or applicant who has resided in Oklahoma for less than one (1) year for which a search is required.

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, complete:

(a) a foster parent eligibility assessment for the foster care provider except as otherwise provided by divisions 2 and 4 of this subparagraph, and

- (b) 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, except as otherwise provided by divisions 2 and 4 of this subparagraph,
- (2) the child-placing agency may place a child pending completion of the national criminal history records search if the foster care provider and every adult residing in the foster family home has resided in this state for at least five (5) years immediately preceding such placement,
- (3) 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,
- (4) provided, however, the Director of Human Services or the Director of the Department of Juvenile Justice, or a designee, may authorize an exception to the fingerprinting requirement for a person residing in the home who has a severe physical condition which precludes such person's being fingerprinted, and
- (5) any child care facility contracting with any person for foster family home services shall request the Office of Juvenile Affairs 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 this section, until otherwise provided by rules of the Commission for Human Services or by law.

2. a. (1) On and after September 1, 1998, except as otherwise provided in divisions 2 and 4 of this subparagraph, prior to contracting with a foster family home for placement of any child who is in the custody of the Department of Human Services or the Department of Juvenile Justice, each Department shall complete a foster parent eligibility assessment, pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act, for such foster family applicant. In addition, except as otherwise provided by divisions 2 and 4 of this subparagraph, the Department shall complete a national criminal history records search based upon submission of fingerprints for any adult residing in such foster family home.

- (2) The Department of Human Services and Department of Juvenile Justice may place a child pending completion of the national criminal history records search if the foster care provider and every adult residing in the foster family home has resided in this state for at least (5) years immediately preceding such placement.
- (3) 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.
- (4) The Director of Human Services or the Director of the Department of Juvenile Justice or designee may authorize an exception to the fingerprinting requirement for any person residing in the home who has a severe physical condition which precludes such person's being fingerprinted.

- 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 this section, until otherwise provided by rules of the Commission for Human Services or by law.

3. Each 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 or the Board of Juvenile Affairs shall promulgate rules to identify circumstances when a criminal history records search 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 records search 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 records search 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 records search 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 records search, 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 or denial,
- (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.

SECTION 3. 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. The Department of Human Services shall have the power and duty to license all child care workers in the state. Procedures for licensing shall, at a minimum, require a criminal history records search pursuant to Section 404.1 of Title 10 of the Oklahoma Statutes. The Department of Human Services shall promulgate rules establishing further minimum requirements and desirable standards as may be deemed necessary or advisable to carry out the provisions of this section. The Department of Human Services is authorized to assess necessary licensing fees in an amount be set by the Department. The Department shall disclose the status of a child care worker's license to a licensed child care facility upon request

if the child care facility employs or is interested in offering employment to such child care worker.

B. The Department of Human Services is authorized to suspend, revoke or refuse to renew the license of any child care worker for violation of state law or failure to meet minimum requirements for licensure.

C. The Department of Human Services shall establish and maintain a database of verified child care worker complaints reported to the Department. Records of such complaints shall be kept for a minimum number of years to be determined by the Department. The Department shall disclose child care worker complaints to a licensed child care facility upon request if the child care facility employs or is interested in offering employment to such child care worker.

D. The Department of Human Services is authorized to enter into contracts in order to carry out the provisions of this act.

SECTION 4. This act shall become effective November 1, 2006.

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