

1 ENGROSSED SENATE
2 BILL NO. 1289

By: Coates, Gumm, Jolley and
Johnson (Constance) of the
Senate

3
4 and

Shelton of the House
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8 An Act relating to public health and safety; amending
9 63 O.S. 2001, Section 1-1950.1, as last amended by
10 Section 12, Chapter 436, O.S.L. 2004 (63 O.S. Supp.
11 2009, Section 1-1950.1), which relates to criminal
12 history background checks for long-term care facility
13 employees; expanding list of persons who may not be
14 hired or contracted by certain employers; and
15 providing an effective date.

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

17 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1950.1, as
18 last amended by Section 12, Chapter 436, O.S.L. 2004 (63 O.S. Supp.
19 2009, Section 1-1950.1), is amended to read as follows:

20 Section 1-1950.1 A. For purposes of this section:

21 1. "Nurse aide" means any person who provides, for
22 compensation, nursing care or health-related services to residents
23 in a nursing facility, a specialized facility, a residential care
24 home, continuum of care facility, assisted living center or an adult
day care center and who is not a licensed health professional. Such
term also means any person who provides such services to individuals

1 in their own homes as an employee or contract provider of a home
2 health or home care agency, or as a contract provider of the
3 Medicaid State Plan Personal Care Program;

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

- 7 a. a nursing facility or specialized facility as such
8 terms are defined in the Nursing Home Care Act,
- 9 b. a residential care home as such term is defined by the
10 Residential Care Act,
- 11 c. an adult day care center as such term is defined in
12 the Adult Day Care Act,
- 13 d. an assisted living center as such term is defined by
14 the Continuum of Care and Assisted Living Act,
- 15 e. a continuum of care facility as such term is defined
16 by the Continuum of Care and Assisted Living Act,
- 17 f. a home health or home care agency, and
- 18 g. the Department of Human Services, in its capacity as
19 an operator of any hospital or health care institution
20 or as a contractor with providers under the Medicaid
21 State Plan Personal Care Program;

22 3. "Home health or home care agency" means any person,
23 partnership, association, corporation or other organization which
24 administers, offers or provides health care services or supportive

1 assistance for compensation to three or more ill, disabled, or
2 infirm persons in the temporary or permanent residence of such
3 persons, and includes any subunits or branch offices of a parent
4 home health or home care agency; and

5 4. "Bureau" means the Oklahoma State Bureau of Investigation.

6 B. 1. Except as otherwise provided by subsection C of this
7 section, before any employer makes an offer to employ or to contract
8 with a nurse aide or other person to provide nursing care, health-
9 related services or supportive assistance to any individual except
10 as provided by paragraph 4 of this subsection, the employer shall
11 provide for a criminal history background check to be made on the
12 nurse aide or other person pursuant to the provisions of this
13 section. If the employer is a facility, home or institution which
14 is part of a larger complex of buildings, the requirement of a
15 criminal history background check shall apply only to an offer of
16 employment or contract made to a person who will work primarily in
17 the immediate boundaries of the facility, home or institution.

18 2. Except as otherwise specified by subsection D of this
19 section, an employer is authorized to obtain any criminal history
20 background records maintained by the Oklahoma State Bureau of
21 Investigation which the employer is required or authorized to
22 request by the provisions of this section.

23 3. The employer shall request the Bureau to conduct a criminal
24 history background check on the person and shall provide to the

1 Bureau any relevant information required by the Bureau to conduct
2 the check. The employer shall pay a fee of Fifteen Dollars (\$15.00)
3 to the Bureau for each criminal history background check that is
4 conducted pursuant to such a request.

5 4. The requirement of a criminal history background check shall
6 not apply to an offer of employment made to:

- 7 a. a nursing home administrator licensed pursuant to the
8 provisions of Section 330.53 of this title,
- 9 b. any person who is the holder of a current license or
10 certificate issued pursuant to the laws of this state
11 authorizing such person to practice the healing arts,
- 12 c. a registered nurse or practical nurse licensed
13 pursuant to the Oklahoma Nursing Practice Act,
- 14 d. a physical therapist registered pursuant to the
15 Physical Therapy Practice Act,
- 16 e. a physical therapist assistant licensed pursuant to
17 the Physical Therapy Practice Act,
- 18 f. a social worker licensed pursuant to the provisions of
19 the Social Worker's Licensing Act,
- 20 g. a speech pathologist or audiologist licensed pursuant
21 to the Speech-Language Pathology and Audiology
22 Licensing Act,
- 23 h. a dietitian licensed pursuant to the provisions of the
24 Licensed Dietitian Act,

- 1 i. an occupational therapist licensed pursuant to the
2 Occupational Therapy Practice Act, or
3 j. an individual who is to be employed by a nursing
4 service conducted by and for the adherents of any
5 religious denomination, the tenets of which include
6 reliance on spiritual means through prayer alone for
7 healing.

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

13 C. 1. An employer may make an offer of temporary employment to
14 a nurse aide or other person pending the results of the criminal
15 history background check on the person. The employer in such
16 instance shall provide to the Bureau the name and relevant
17 information relating to the person within seventy-two (72) hours
18 after the date the person accepts temporary employment. The
19 employer shall not hire or contract with a person on a permanent
20 basis until the results of the criminal history background check are
21 received.

22 2. An employer may accept a criminal history background report
23 less than one (1) year old of a person to whom such employer makes
24 an offer of employment or employment contract. The report shall be

1 obtained from the previous employer or contractor of such person and
2 shall only be obtained upon the written consent of such person.

3 D. 1. The Bureau shall not provide to the employer the
4 criminal history background records of a person being investigated
5 pursuant to this section unless the criminal records relate to:

6 a. any felony or misdemeanor classified as a crime
7 against the person,

8 b. any felony or misdemeanor classified as a crime
9 against public decency or morality,

10 c. any felony or misdemeanor classified as domestic abuse
11 pursuant to the provisions of the Protection from
12 Domestic Abuse Act,

13 d. a felony violation of any state statute intended to
14 control the possession or distribution of a Schedule I
15 through V drug pursuant to the Uniform Controlled
16 Dangerous Substances Act, and

17 e. any felony or misdemeanor classified as a crime
18 against property.

19 2. Within five (5) days of receiving a request to conduct a
20 criminal history background check, the Bureau shall complete the
21 criminal history background check and report the results of the
22 check to the requesting employer.

23 E. Every employer who is subject to the provisions of this
24 section shall inform each applicant for employment, or each

1 prospective contract provider, as applicable, that the employer is
2 required to obtain a criminal history background record before
3 making an offer of permanent employment or contract to a nurse aide
4 or other person described in subsection B of this section.

5 F. 1. If the results of a criminal history background check
6 reveal that the subject person has been convicted of, pled guilty or
7 no contest to, or received a deferred sentence for any of the
8 following offenses, the employer shall not hire or contract with the
9 person:

- 10 a. assault, battery, or assault and battery with a
11 dangerous weapon,
- 12 b. aggravated assault and battery,
- 13 c. murder or attempted murder,
- 14 d. manslaughter, except involuntary manslaughter,
- 15 e. rape, incest or sodomy,
- 16 f. indecent exposure and indecent exhibition,
- 17 g. pandering,
- 18 h. child abuse,
- 19 i. abuse, neglect or financial exploitation of any person
20 entrusted to the care or possession of such person,
- 21 j. burglary in the first or second degree,
- 22 k. robbery in the first or second degree,
- 23 l. robbery or attempted robbery with a dangerous weapon,
24 or imitation firearm,

- 1 m. arson in the first or second degree,
- 2 n. unlawful possession or distribution, or intent to
- 3 distribute unlawfully, Schedule I through V drugs as
- 4 defined by the Uniform Controlled Dangerous Substances
- 5 Act,
- 6 o. grand larceny, or
- 7 p. petit larceny or shoplifting within the past seven (7)
- 8 years.

9 2. If the results of a criminal history background check reveal
10 that an employee or a person hired on a temporary basis pursuant to
11 subsection C of this section or any other person who is an employee
12 or contract provider has been convicted of any of the offenses
13 listed in paragraph 1 of this subsection, the employer shall
14 immediately terminate the person's employment or contract. The
15 provisions of this paragraph shall not apply to an employee or
16 contract provider of an employer who has completed the requirements
17 for certification and placement on the nurse aide registry and who
18 has been continuously employed by the employer prior to January 1,
19 1992.

20 G. An employer shall not employ or continue employing a person
21 addicted to any Schedule I through V drug as specified by the
22 Uniform Controlled Dangerous Substances Act unless the person
23 produces evidence that the person has successfully completed a drug
24 rehabilitation program.

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

9 I. Any person releasing or disclosing any information received
10 pursuant to this section without the authorization prescribed by
11 this section shall be guilty of a misdemeanor.

12 J. As part of the inspections required by the Nursing Home Care
13 Act, Continuum of Care and Assisted Living Act, the Residential Care
14 Act, and the Adult Day Care Act, the State Department of Health
15 shall review the employment files of any facility, home or
16 institution required to obtain criminal history background records
17 to ensure such facilities, homes or institutions are in compliance
18 with the provisions of this section.

19 SECTION 2. This act shall become effective November 1, 2010.
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