

1 THE STATE SENATE
2 Monday, February 22, 2010

3 Senate Bill No. 1289

4 SENATE BILL NO. 1289 - By: Coates of the Senate and Shelton of the
5 House.

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

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

14 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1950.1, as
15 last amended by Section 12, Chapter 436, O.S.L. 2004 (63 O.S. Supp.
16 2009, Section 1-1950.1), is amended to read as follows:

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

18 1. "Nurse aide" means any person who provides, for
19 compensation, nursing care or health-related services to residents
20 in a nursing facility, a specialized facility, a residential care
21 home, continuum of care facility, assisted living center or an adult
22 day care center and who is not a licensed health professional. Such
23 term also means any person who provides such services to individuals
24 in their own homes as an employee or contract provider of a home
25 health or home care agency, or as a contract provider of the
26 Medicaid State Plan Personal Care Program;

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

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

19 3. "Home health or home care agency" means any person,
20 partnership, association, corporation or other organization which
21 administers, offers or provides health care services or supportive
22 assistance for compensation to three or more ill, disabled, or
23 infirm persons in the temporary or permanent residence of such

1 persons, and includes any subunits or branch offices of a parent
2 home health or home care agency; and

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

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

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

21 3. The employer shall request the Bureau to conduct a criminal
22 history background check on the person and shall provide to the
23 Bureau any relevant information required by the Bureau to conduct

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

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

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

1 an offer of employment or employment contract. The report shall be
2 obtained from the previous employer or contractor of such person and
3 shall only be obtained upon the written consent of such person.

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

- 7 a. any felony or misdemeanor classified as a crime
8 against the person,
- 9 b. any felony or misdemeanor classified as a crime
10 against public decency or morality,
- 11 c. any felony or misdemeanor classified as domestic abuse
12 pursuant to the provisions of the Protection from
13 Domestic Abuse Act,
- 14 d. a felony violation of any state statute intended to
15 control the possession or distribution of a Schedule I
16 through V drug pursuant to the Uniform Controlled
17 Dangerous Substances Act, and
- 18 e. any felony or misdemeanor classified as a crime
19 against property.

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

1 E. Every employer who is subject to the provisions of this
2 section shall inform each applicant for employment, or each
3 prospective contract provider, as applicable, that the employer is
4 required to obtain a criminal history background record before
5 making an offer of permanent employment or contract to a nurse aide
6 or other person described in subsection B of this section.

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

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

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

12 2. If the results of a criminal history background check reveal
13 that an employee or a person hired on a temporary basis pursuant to
14 subsection C of this section or any other person who is an employee
15 or contract provider has been convicted of any of the offenses
16 listed in paragraph 1 of this subsection, the employer shall
17 immediately terminate the person's employment or contract. The
18 provisions of this paragraph shall not apply to an employee or
19 contract provider of an employer who has completed the requirements
20 for certification and placement on the nurse aide registry and who
21 has been continuously employed by the employer prior to January 1,
22 1992.

1 G. An employer shall not employ or continue employing a person
2 addicted to any Schedule I through V drug as specified by the
3 Uniform Controlled Dangerous Substances Act unless the person
4 produces evidence that the person has successfully completed a drug
5 rehabilitation program.

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

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

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

1 SECTION 2. This act shall become effective November 1, 2010.
2 COMMITTEE REPORT BY: COMMITTEE ON HEALTH & HUMAN SERVICES, dated
3 2-18-10 - DO PASS, As Coauthored.