

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1228

6 By: Ownbey

7 COMMITTEE SUBSTITUTE

8 An Act relating to public health and safety; creating  
9 the Sheltered Workshop Act; stating purpose; defining  
10 terms; providing powers and duties of the Department  
11 of Human Services; requiring Department to develop  
12 rules and standards for sheltered workshops;  
13 specifying standard requirements; providing duration  
14 of license; providing for annual renewal of licenses;  
15 providing for form of license; providing license  
16 requirements and restrictions; specifying required  
17 elements of applications; establishing age and  
18 experience requirements for applicants; providing  
19 that certain persons and entities are ineligible for  
20 licensing or certain contracts; authorizing  
21 conditional licenses; specifying information required  
22 for applications; establishing requirements of  
23 conditional license; authorizing Department to  
24 establish certain corrective plans for license  
applicants; requiring written notice for conditional  
licenses; authorizing informal conference in certain  
circumstances; specifying procedure for informal  
conference; authorizing Department to revise  
determination after informal conference; restricting  
transfer of licenses; providing requirements for  
transfer of licenses; specifying transferor shall be  
liable for operation of workshop until transfer is  
completed; requiring inspection of sheltered  
workshops by Department; providing for rules;  
specifying notice shall not be required prior to  
inspections; requiring Department to keep certain log  
for each workshop; specifying details to be recorded  
in log; requiring background checks of workshop  
employees; prohibiting employment of certain persons;  
providing for waivers; specifying conditions of

1 waiver; authorizing criminal background checks under  
2 certain circumstances; specifying criminal background  
3 records shall be confidential; providing exceptions;  
4 requiring destruction of background checks after  
5 certain period; providing for codification; and  
6 providing an effective date.

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

8 SECTION 1. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 1-865.1 of Title 63, unless  
10 there is created a duplication in numbering, reads as follows:

11 A. This act shall be known and may be cited as the "Sheltered  
12 Workshop Act".

13 B. The Sheltered Workshop Act allows individuals with  
14 developmental disabilities opportunities to participate in  
15 meaningful work or training activities. Each workshop will be  
16 licensed and provide a safe environment.

17 SECTION 2. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 1-865.2 of Title 63, unless  
19 there is created a duplication in numbering, reads as follows:

20 As used in the Sheltered Workshop Act:

21 1. "Community services worker" means any person who:

- 22 a. contracts with the Oklahoma Health Care Authority to  
23 provide specialized foster care, habilitation training  
24

1 specialist services, or homemaker services to persons  
2 with developmental disabilities,

3 b. is not a licensed health professional, and

4 c. is employed by or under contract with a community  
5 services provider to provide for compensation or as a  
6 volunteer the following:

7 (1) health-related services,

8 (2) training, or

9 (3) supportive assistance;

10 2. "Contract" means the binding legal agreement to provide  
11 sheltered workshop services, entered into between the provider and  
12 the Developmental Disabilities Services Division of the Department  
13 of Human Services or the Oklahoma Health Care Authority;

14 3. "DDSD" means the Developmental Disabilities Services  
15 Division of the Department of Human Services;

16 4. "Department" means the Department of Human Services;

17 5. "Developmental disability" means a severely chronic  
18 disability of a person which:

19 a. is attributable to a physical or mental impairment or  
20 a combination of physical or mental impairments,

21 b. is manifested before the person attains the age of  
22 twenty-two (22) years,

23 c. is likely to continue indefinitely,  
24

1 d. results in substantial functional limitations in three  
2 or more of the following areas of major life activity:

3 (1) self-care,

4 (2) receptive and expressive language,

5 (3) learning,

6 (4) mobility,

7 (5) self-direction,

8 (6) capacity for independent living, or

9 (7) economic self-sufficiency, and

10 e. reflects the need of the person for a combination and  
11 sequence of special interdisciplinary or generic care,  
12 treatment or other services which are of lifelong or  
13 extended duration and are individually planned and  
14 coordinated;

15 6. "Director" means the Director of Human Services;

16 7. "Licensee" means a person, corporation, partnership, limited  
17 liability company, or association operating a sheltered workshop  
18 which is licensed pursuant to the provisions of the Sheltered  
19 Workshop Act;

20 8. "Provider" means a person, corporation, partnership, limited  
21 liability company, association, or other entity that contracts with  
22 the Developmental Disabilities Services Division of the Department  
23 of Human Services or the Oklahoma Health Care Authority to operate a  
24 sheltered workshop for persons with developmental disabilities;

1 9. "Service recipient" means a person participating in the  
2 sheltered workshop; and

3 10. "Sheltered workshop" means a facility, or any portion  
4 thereof, operated by a nonprofit organization, corporation,  
5 partnership, limited liability company or association whose purpose  
6 is to provide meaningful work or training activities to individuals  
7 with developmental disabilities and holds a current certificate  
8 under Section 14c of the Fair Labor Standards Act by the Wage and  
9 Hour Division, U.S. Department of Labor.

10 SECTION 3. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 1-865.3 of Title 63, unless  
12 there is created a duplication in numbering, reads as follows:

13 A. The Department of Human Services shall have the power and  
14 duty to:

15 1. Enforce any provision of the Sheltered Workshop Act;

16 2. Issue, renew, deny, modify, suspend, and revoke licenses for  
17 sheltered workshops pursuant to the provisions of the Sheltered  
18 Workshop Act; provided, however, providers of sheltered workshop  
19 services that have a contract with the Developmental Disabilities  
20 Services Division of the Department of Human Services or the  
21 Oklahoma Health Care Authority to provide sheltered workshop  
22 services as of November 1, 2011, shall be deemed to be licensed,  
23 subject to the continuing requirements of the Sheltered Workshop  
24 Act;

1           3. Establish and enforce standards and requirements for  
2 licensure and operation of sheltered workshops that are subject to  
3 the provisions of the Sheltered Workshop Act and require the  
4 submission of, and to review, reports from any person establishing  
5 or operating a sheltered workshop;

6           4. Enter upon any public or private property for the purpose of  
7 inspecting and investigating conditions of the sheltered workshop  
8 for compliance with the provisions of the Sheltered Workshop Act, or  
9 the standards and requirements for licensure and operation of  
10 sheltered workshops developed by the Department pursuant to the  
11 provisions of the Sheltered Workshop Act;

12           5. Employ or designate personnel to conduct investigations and  
13 inspections, to make reports of the condition of sheltered  
14 workshops, and to take necessary action pursuant to the provisions  
15 of the Sheltered Workshop Act to protect and safeguard the health,  
16 safety, and welfare of service recipients;

17           6. Advise, consult, and cooperate with other agencies of this  
18 state, the federal government, other states and interstate agencies,  
19 and with affected groups and political subdivisions to further the  
20 purposes of the Sheltered Workshop Act;

21           7. Investigate, request or otherwise obtain the information  
22 necessary to determine the qualifications and background of an  
23 applicant for licensure or contract;

24

1 8. Provide the sheltered workshop thirty (30) days written  
2 notice that its license is to be suspended or revoked, and shall  
3 take action at the end of that time if the sheltered workshop  
4 remains out of compliance. However, if the health and safety of  
5 service recipients is threatened, the suspension or revocation shall  
6 be effective immediately and the sheltered workshop shall be closed;

7 9. Notify holders of suspended or revoked licenses that they  
8 shall be entitled to a hearing before Department licensure officials  
9 if requested within ten (10) days of their notification. The  
10 hearing shall be held at least ten (10) days before final action is  
11 taken and conducted pursuant to the Administrative Procedures Act;  
12 and

13 10. Reinstate suspended licenses if deficiencies are corrected  
14 within a time frame established by the Department.

15 B. The Department of Human Services shall develop rules  
16 establishing minimum standards for sheltered workshops. These  
17 standards, at minimum, shall regulate:

- 18 1. Physical plant expectations to include physical facilities,  
19 ventilation, and accessibility;
- 20 2. Staffing requirements;
- 21 3. Staff training;
- 22 4. Staff qualifications; and
- 23 5. Service recipient records.

1 SECTION 4. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1-865.4 of Title 63, unless  
3 there is created a duplication in numbering, reads as follows:

4 A. A license shall expire twelve (12) months from the date of  
5 issuance, unless revoked, and may be renewed annually by the  
6 Department of Human Services pursuant to the provisions of the  
7 Sheltered Workshop Act. All licenses shall be on a form prescribed  
8 by the Director of Human Services, and shall include, but not be  
9 limited to, the kind of program the licensee is certified to  
10 operate, the date the license was issued, and the expiration date of  
11 the license. The provisions of the license shall require that the  
12 license shall:

13 1. Not be transferable or assignable except as authorized by  
14 the provisions of the Sheltered Workshop Act;

15 2. Be available on the licensed premises; and

16 3. Be issued only for the premises named in the application,  
17 and may be renewed for twelve-month periods upon application and  
18 inspection, pursuant to the provisions of the Sheltered Workshop  
19 Act.

20 B. An application shall be under oath and shall contain, but  
21 not be limited to, the following information:

22 1. The name and address of the applicant or licensee. If the  
23 applicant or licensee is a firm or partnership, the name and address  
24 of each member thereof shall be included in the application. If the

1 applicant or licensee is a firm, partnership, limited liability  
2 company, or corporation, the name and address of the firm,  
3 partnership, limited liability company, or corporation and the name  
4 and address of each member of the firm, major member of the limited  
5 liability company or manager, major partner of the partnership, or  
6 officer, major stockholder and registered agent of the corporation  
7 shall be included in the application;

8       2. The name and address of the applicant or licensee if the  
9 applicant or licensee is not the provider and is acting as agent for  
10 the provider of sheltered workshop services or licensee;

11       3. The name and location of the sheltered workshop for which a  
12 license is sought;

13       4. The name and administrator of the sheltered workshop;

14       5. The number for whom services are to be provided; and

15       6. A description of the program and the staffing pattern for  
16 providing supports. In the case of an application for an initial  
17 license, such description may be shown as the projected program and  
18 staffing pattern.

19       C. 1. An applicant or licensee shall be twenty-one (21) years  
20 of age or older and of reputable and responsible character. In  
21 addition, the applicant or licensee shall have appropriate business  
22 or professional experience.

23       2. No person who is ineligible for employment as a community  
24 services worker in accordance with Section 1025.2 of Title 56 of the

1 Oklahoma Statutes shall be eligible to be licensed or to receive a  
2 contract to become a community services provider. If the applicant  
3 or licensee is a firm, partnership, limited liability company, or  
4 corporation, the applicant shall not be eligible to be licensed or  
5 to receive a contract if any member of the firm, any major member of  
6 the limited liability company or manager, any major partner of the  
7 partnership, or any officer or major stockholder of the corporation  
8 is ineligible for employment as a community services worker in  
9 accordance with Section 1025.2 of Title 56 of the Oklahoma Statutes.

10 D. The application for a license or renewal of a license shall  
11 be accompanied by a statement of ownership which shall include the  
12 following:

13 1. The name, address, telephone number, occupation or business  
14 activity, business address, and business telephone number of the  
15 owner of the sheltered workshop and of every person who owns the  
16 building in which the sheltered workshop is located. If the owner  
17 is a partnership, limited liability company, or corporation, the  
18 name and address of each partner, major member of the limited  
19 liability company, and stockholder with an ownership interest of  
20 five percent (5%) or more shall be included in the statement; and

21 2. The name and address of any other sheltered workshop in  
22 which the owner has a full or partial financial interest or, if the  
23 applicant or licensee is a partnership, limited liability company,  
24 or corporation, any other sheltered workshop in which the

1 partnership, limited liability company, or corporation has a full or  
2 partial financial interest. The statement shall indicate whether  
3 any other sheltered workshop wherein a full or partial financial  
4 interest is held would, if located in this state, be required to be  
5 licensed.

6 E. The Director or designee shall issue and renew licenses for  
7 sheltered workshops which comply with the provisions of the  
8 Sheltered Workshop Act and the standards and rules pursuant thereto.

9 SECTION 5. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 1-865.5 of Title 63, unless  
11 there is created a duplication in numbering, reads as follows:

12 A. The Department of Human Services may issue a conditional  
13 license to any sheltered workshop if the Department finds that a  
14 violation exists in such sheltered workshop. The issuance of a  
15 conditional license shall revoke any license held by the sheltered  
16 workshop issued pursuant to the Sheltered Workshop Act.

17 B. Prior to the issuance of a conditional license, the  
18 Department shall review and approve a written plan of correction.  
19 The Department shall specify the violations which prevent issuance  
20 of a regular license and shall establish a time schedule for  
21 correction of the deficiencies. Retention of the license shall be  
22 conditional on meeting the requirements of the plan of correction.  
23 In the alternative or in addition to a conditional license, the  
24 Director of the Department of Human Services may withhold vendor

1 payments due to a sheltered workshop under its programs until such  
2 time as the corrections are made or a plan of correction for all  
3 deficiencies is approved by the Department.

4 C. Written notice of the decision to issue a conditional  
5 license shall be sent to the sheltered workshop together with the  
6 proposed plan of correction. The notice shall inform the sheltered  
7 workshop of its right to an informal conference prior to issuance of  
8 the conditional license and its right to a full hearing.

9 D. If the sheltered workshop desires to have an informal  
10 conference it shall, within four (4) working days of receipt of  
11 notice, send a written request for an informal conference to the  
12 Department. The Department shall, within four (4) working days from  
13 the receipt of the request, hold an informal conference. Following  
14 the conference, the Department may affirm or overrule its previous  
15 decision, or modify the terms of the conditional license and plan of  
16 correction. The conditional license may be issued after the  
17 informal conference or after the time for requesting an informal  
18 conference has expired, prior to any further hearing.

19 SECTION 6. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 1-865.6 of Title 63, unless  
21 there is created a duplication in numbering, reads as follows:

22 A. Except as provided in this section, a license to operate a  
23 sheltered workshop subject to the provisions of the Sheltered  
24

1 Workshop Act is not transferable. Operation of a sheltered workshop  
2 may only be transferred:

3 1. With the prior written approval of the Director of the  
4 Developmental Disabilities Services Division of the Department of  
5 Human Services or designee; and

6 2. From the provider or licensee named in the application to  
7 another provider who has a current license or is deemed licensed in  
8 accordance with the requirements of the Sheltered Workshop Act.

9 B. The transferor shall remain responsible for the operation of  
10 the sheltered workshop until the transfer is complete. The  
11 transferor shall remain liable for all penalties assessed which are  
12 imposed for violations occurring prior to transfer of operation.  
13 Any citation, problems identified by the Developmental Services  
14 Division prior to the transfer, or outstanding deficiencies  
15 remaining after the transfer are the responsibility of the  
16 transferee to correct.

17 SECTION 7. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 1-865.7 of Title 63, unless  
19 there is created a duplication in numbering, reads as follows:

20 A. Every sheltered workshop shall be inspected at least  
21 annually by a duly appointed representative of the Department of  
22 Human Services pursuant to rules promulgated by the Sheltered  
23 Workshop Act.

24

1 B. The Department shall inspect, survey, and evaluate each  
2 sheltered workshop to determine compliance with applicable licensure  
3 and program requirements and standards no less than annually and at  
4 any time the Department deems necessary.

5 C. Any inspection, investigation, survey, or evaluation may be  
6 conducted without prior notice. Any licensee or applicant for a  
7 license shall be deemed to have given consent to any duly authorized  
8 employee or agent of the Department to enter and inspect the  
9 sheltered workshop in accordance with the provisions of the  
10 Sheltered Workshop Act. Refusal to permit such entry or inspection  
11 shall constitute grounds for the denial, nonrenewal, suspension or  
12 revocation of a license.

13 D. The Department shall maintain a log, updated at least  
14 monthly and available for public inspection, which shall at a  
15 minimum detail:

16 1. The name of the sheltered workshop and date of inspection,  
17 investigation, survey, or evaluation;

18 2. Any deficiencies, lack of compliance, or violation noted at  
19 the inspection, investigation, survey, or evaluation;

20 3. The date a notice of violation, license denial, nonrenewal,  
21 suspension, or revocation was issued or other enforcement action  
22 occurred;

23 4. Proposed dates for the resolution of deficiencies;  
24

1           5. The date corrections were completed, as verified by an  
2 inspection; and

3           6. If the inspection or investigation was made pursuant to the  
4 receipt of a complaint, the date such complaint was received and the  
5 date the sheltered workshop was notified of the results of the  
6 inspection or investigation.

7           SECTION 8.           NEW LAW           A new section of law to be codified  
8 in the Oklahoma Statutes as Section 1-865.8 of Title 63, unless  
9 there is created a duplication in numbering, reads as follows:

10           A. Providers or licensees are required to conduct a search of  
11 criminal history records and the Oklahoma Department of Human  
12 Services Community Services Worker Registry (Registry) prior to  
13 permanent employment of any community services worker. The provider  
14 or licensee shall not hire, contract with, or use as a volunteer, a  
15 person whose name is listed in the Registry or who has a criminal  
16 background if the Oklahoma State Bureau of Investigation search  
17 reveals that the applicant has been convicted, pled guilty, or pled  
18 nolo contendere to misdemeanor assault and battery or any felony.  
19 The provider or licensee shall immediately cancel any temporary  
20 employment arrangement with a person whose name is listed in the  
21 Registry or whose background check reveals disqualifying violations  
22 of law. If a provider or licensee requests a waiver, the community  
23 service worker shall not work directly with service recipients until  
24 the provider receives a written decision by the Department.

1 B. At the request of a provider or licensee, a criminal  
2 background check search may be conducted on any person employed by  
3 the employer, including those persons excluded in subsection A of  
4 this section, at any time during the period of employment of such  
5 person. If the results of a criminal background check reveal the  
6 person has been convicted, pled guilty, or pled nolo contendere to  
7 misdemeanor assault and battery or any felony, the provider or  
8 licensee shall immediately terminate the person's employment or  
9 contract.

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

18 SECTION 9. This act shall become effective November 1, 2011.

19

20 53-1-6886 CJB 02/24/11

21

22

23

24