SENATE FLOOR VERSION
March 1, 2011

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 674 By: Jolley of the Senate

and

Peters of the House

An Act relating to child care facilities background investigations; amending 10 O.S. 2001, Sections 402, as amended by Section 2, Chapter 230, O.S.L. 2009, 404.1, as last amended by Section 5, Chapter 230, O.S.L. 2009, 405, as last amended by Section 1, Chapter 338, O.S.L. 2009, Section 9, Chapter 296, O.S.L. 2008, and 408 (10 O.S. Supp. 2010, Sections 402, 404.1, 405 and 405.3), which relate to the Oklahoma Child Care Facilities Licensing Act; modifying definitions; renaming certain registry; modifying language; providing for certain background investigations in specified circumstances; making certain exceptions; directing the Commission for Human Services to promulgate certain rules; updating statutory references; deleting language permitting the release of certain information; deleting language providing for certain confidentiality; modifying procedure for sanctioning certain entities on specified registry; modifying procedures for certain appeal; 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, as amended by Section 2, Chapter 230, O.S.L. 2009 (10 O.S. Supp. 2010, Section 402), is amended to read as follows:

Section 402. As used in the Oklahoma Child Care Facilities Licensing Act:

1. “Adult” means an individual eighteen (18) years of age or older;

2. "Child" or "minor" means any person who has not attained the age of eighteen (18) years;

~~2.~~ 3. “Child care center” means a facility which provides care and supervision for children and which operates for more than thirty (30) hours per week;

~~3.~~ 4. "Child care facility" means any public or private child care residential facility, child-placing agency, foster family home, child care center, part-day child care program, school-age program, summer day camp, 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;

~~4.~~ 5. "Child-placing agency" means an agency that arranges for or places a child in a foster family home, adoptive home, or independent living program;

~~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~~ Office of Juvenile Affairs, 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. "Commission" means the Commission for Human Services, the policymaking and general supervisory body of the Department;

~~8.~~ 9. "Department" means the Department of Human Services;

~~9.~~ 10. "Division" means the section within the Department that is assigned responsibilities pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act;

~~10.~~ 11. "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;

~~11.~~ 12. "Full-time care" means continuous care given to a child beyond a minimum period of twenty-four (24) hours;

~~12.~~ 13. "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;

~~13.~~ 14. "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; ~~and~~

~~14.~~ 15. "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; and

16. "Unsupervised access to children" means an individual who is left alone with children without an individual who has completed a background investigation pursuant to the Oklahoma Child Care Facilities Licensing Act.

SECTION 2. AMENDATORY 10 O.S. 2001, Section 404.1, as last amended by Section 5, Chapter 230, O.S.L. 2009 (10 O.S. Supp. 2010, Section 404.1), is amended to read as follows:

Section 404.1.

A. 1. a. Except as otherwise provided by subsection ~~B~~ C of this section, prior to the issuance of a license, the Department of Human Services shall require a criminal history records search, conducted by the Oklahoma State Bureau of Investigation, and a records search of the Oklahoma ~~child care worker registry~~ Child Care Restricted Registry established in Section 405.3 of

this title for any person making application to establish or operate a child care facility.

b. Prior to the issuance of a permit or license, the Department shall conduct a records search of the Oklahoma State Courts Network for any person making application to establish or operate a child care facility.

c. Prior to the issuance of a permit or license, the Department shall conduct a records search of the Oklahoma State Courts Network for all employees and persons eighteen (18) years of age or older residing in a child care center, family child care home, large family child care home, part-day program, school-age program, or summer day camp.

2. a. Prior to the employment of any person in a child care facility, the facility shall submit to the Department of Human Services division responsible for child care licensing:

(1) a criminal history records search conducted by the Oklahoma State Bureau of Investigation,

(2) documentation of a records search of the Oklahoma ~~child care worker registry~~ Child Care Restricted Registry, and

(3) a request for the Department to conduct a records search of the records of the Oklahoma State Courts Network.

b. Hospitals contracting with the Oklahoma Health Care Authority and complying with the records searches required by this section shall be exempt from the requirement to submit such documentation to the Department. Documentation of records searches shall be maintained at the hospital and shall be available for review by the division of the Department responsible for child care licensing.

c. Prior to allowing any person eighteen (18) years of age or older to reside in a child care center, family child care home, large family child care home, part-day program, school-age program, or summer day camp program, the facility shall submit to the Department of Human Services division responsible for child care licensing the following:

(1) a criminal history records search conducted by the Oklahoma State Bureau of Investigation,

(2) documentation of a records search of the Oklahoma ~~child care worker registry~~ Child Care Restricted Registry, and

(3) a request for the Department to conduct a records search of the Oklahoma State Courts Network.

3. Once a facility has submitted an original document from the Oklahoma State Bureau of Investigation to the Department, a copy of that exact document shall be sufficient to satisfy any further request for that document. The ~~Department~~ Commission for Human Services may promulgate rules regarding the electronic submission of required documents.

4. If the following ~~persons~~ individuals have lived in Oklahoma for less than three (3) years, a criminal history records search shall also be obtained from the authorized agency in the previous states of residence for:

a. applicants for a license to operate a child care facility,

b. employees of a child care facility, and

c. ~~persons~~ individuals age eighteen (18) years or older residing in a child care center, family child care home, large family child care home, part-day program, school-age program, or summer day-camp program.

5. The ~~Department of Juvenile Justice~~ Office of Juvenile Affairs 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 three (3) years for which a search is required.

B. On and after November 1, 2013:

1. Prior to the issuance of a permit or license, individuals making application to establish or operate a child care facility shall have:

a. an Oklahoma State Courts Network search conducted by the Department,

b. a Child Care Restricted Registry search conducted by the facility, and

c. a national criminal history records search pursuant to paragraph 10 of this subsection;

2. Prior to employment of personnel:

a. an Oklahoma State Court Network search, conducted by the Department, shall be requested by the facility,

b. a Child Care Restricted Registry search shall be conducted by the facility, and

c. a national criminal history records search pursuant to paragraph 10 of this subsection shall be submitted to the Department;

3. Prior to allowing unsupervised access to children by personnel or individuals, including contract personnel and volunteers:

a. Oklahoma State Courts Network search results, conducted by the Department, shall be received by the facility,

b. a Child Care Restricted Registry search shall be conducted by the facility, and

c. national criminal history records search results shall be received by the facility;

4. Prior to the issuance of a permit or license and prior to the residence of adults who subsequently move into a facility, adults living in the facility shall have:

a. an Oklahoma State Court Network search conducted by the Department and the facility shall be in receipt of the search results,

b. a Child Care Restricted Registry search conducted by the facility, and

c. a national criminal history records search pursuant to paragraph 10 of this subsection,

5. Children who reside in the facility and turn eighteen (18) years of age shall have:

a. an Oklahoma State Court Network search conducted by the Department,

b. a Child Care Restricted Registry search conducted by the facility, and

c. a national criminal history records search pursuant to paragraph 10 of this subsection;

6. Prior to review of and access to fingerprint results, owners, directors, and other personnel who have review of and access to fingerprint results shall have a national criminal history records search conducted pursuant to paragraph 10 of this subsection;

7. Provisions specified in paragraphs 4 and 5 of this subsection shall not apply to residents who are receiving services from a residential child care facility;

8. A national criminal history records search pursuant to paragraph 10 of this subsection shall not be required for parent volunteers who transport children on an irregular basis when a release for each event is signed by the parents noting their understanding that the parent volunteer does not have a completed national criminal history records search. This exemption shall not preclude the Department from requesting a national fingerprint or an Oklahoma State Bureau of Investigation name-based criminal history records search or investigating criminal, abusive, or harmful behavior of such individuals, if warranted;

9. A national criminal history records search pursuant to paragraph 10 of this subsection shall be required on or before November 1, 2016 for existing personnel, individuals with unsupervised access to children, and adults living in the facility;

10. The Department shall require a national criminal history records search based upon submission of fingerprints that shall:

a. be conducted by the Oklahoma State Bureau of Investigation and the Federal Bureau of Investigation pursuant to Section 150.9 of Title 74 of the Oklahoma Statutes and the federal National Child Protection Act and the federal Volunteers for Children Act with the Department as the authorized agency,

b. be submitted and have results received between the Department and the Oklahoma State Bureau of Investigation through secure electronic transmissions,

c. include Oklahoma State Bureau of Investigation rap bac, requiring the Oklahoma State Bureau of Investigation to immediately notify the Department upon receipt of subsequent criminal history activity, and

d. be paid by the individual or the facility; and

11. The Commission for Human Services shall promulgate rules that may authorize an exception to the fingerprinting requirements for individuals who have a severe physical condition which precludes such individuals from being fingerprinted.

C. 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 foster family home,

(4) provided, however, the Director of Human Services or the Director of the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs, 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~~ 2-7-905 and ~~7302-3.8~~ 2-7-308 of ~~this title~~ Title 10A of the Oklahoma Statutes, 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 foster family home. 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~~ Office of Juvenile Affairs 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~~ Office of Juvenile Affairs, 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~~ Office of Juvenile Affairs 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 foster family home.

(4) The Director of Human Services or the Director of the ~~Department of Juvenile Justice~~ Office of Juvenile Affairs 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~~ Office of Juvenile Affairs 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 foster family home.

~~C.~~ D. 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.~~ E. 1. The following ~~persons~~ individuals shall not be required to obtain a criminal history records search or a national criminal history records search based upon submission of fingerprints pursuant to this section:

a. a parent volunteer who transports children on an irregular basis, and

b. a child residing in a child care center, family child care home, or large family child care home 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~~ individuals, if warranted.

~~E.~~ F. Except as otherwise provided by the Oklahoma Children's Code and subsection ~~G~~ H 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.~~ G. ~~1.~~ Information received pursuant to this section by an owner or administrator of a child care facility shall be maintained in a confidential manner pursuant to applicable state ~~or~~ and federal ~~law~~ laws.

~~2. The information, along with any other information relevant to the ability of the individual 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 unless deemed confidential by state or federal law.~~

~~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.~~ H. 1. A criminal history records search conducted by the Oklahoma State Bureau of Investigation and a national criminal history records search based upon submission of fingerprints 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~~ individuals who ~~is~~ are 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~~ individuals who ~~is~~ are required to register pursuant to the Sex Offenders Registration Act. ~~Any person~~ Individuals required to register pursuant to the Sex Offenders Registration Act who ~~violates~~ violate any provision of ~~this act~~ Section 401

et seq. of this title 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. AMENDATORY 10 O.S. 2001, Section 405, as last amended by Section 1, Chapter 338, O.S.L. 2009 (10 O.S. Supp. 2010, Section 405), is amended to read as follows:

Section 405. A. No child care facility may be operated or maintained in this state, unless licensed or temporarily authorized by the Department of Human Services, except for the shelters

certified by the Oklahoma Commission on Children and Youth pursuant to Section 601.3 of this title; provided, that the Department shall not be required to be licensed, but shall be bound by the standards it prescribes. No new child care facility may be established without the prior approval of the Department, which shall be granted only after the Department is satisfied that the facility will meet minimum standards for a license to operate.

B. The Department shall not grant approval for a permit, or a license for a new child care facility to receive and care for children until:

1. All background investigation requirements ~~for searches of criminal history records and the child care worker registry~~ are met pursuant to ~~subsection A of~~ Section 404.1 of this title; and

2. All required training including, but not limited to, cardiopulmonary resuscitation (CPR), first aid, health and safety training, and minimum education requirements pursuant to licensing requirements have been completed for any person left alone with children.

C. The incorporation or domestication of a corporation organized for the purpose of operating a child care facility shall not exempt such corporation from compliance with the provisions of ~~this act~~ Section 401 et seq. of this title.

D. An application for a license shall be made on forms provided by the Department and in the manner prescribed. Temporary

authorization may be granted to allow the Department to investigate the activities and standards of care of the applicant. The Department may issue a license once it is satisfied that the applicant meets the requirements as provided in ~~this act~~ Section 401 et seq. of this title. All licenses shall be in force unless revoked as authorized by Section 407 of this title.

SECTION 4. AMENDATORY Section 9, Chapter 296, O.S.L. 2008 (10 O.S. Supp. 2010, Section 405.3), is amended to read as follows:

Section 405.3. A. On or before July 1, 2010, the Commission for Human Services shall promulgate rules to establish and maintain ~~a child care worker registry~~ the Child Care Restricted Registry, accessible to the public through an ~~on-line~~ online database, to address:

1. A procedure for recording ~~persons in~~ individuals on the restricted registry resulting from:

a. a finding of abuse or neglect, as defined in Section ~~7102~~ 1-1-105 of Title ~~10~~ 10A of the Oklahoma Statutes, by ~~a person~~ an individual when the abuse or neglect occurred to children while in the care of a child care facility,

b. a revocation or denial of a child care facility license, and

c. a specified criminal history of an individual, as defined by rules promulgated by the Oklahoma Commission for Human Services;

2. A procedure to provide notice and an opportunity for review prior to recording ~~a person in~~ an individual on the restricted registry;

3. Disclosure requirements for information ~~in~~ on the restricted registry; and

4. A procedure to ~~restrict~~ prohibit licensure, ownership, ~~or~~ employment, and residence in a licensed child care facility of ~~any person~~ individuals recorded ~~in~~ on the ~~child care worker registry~~ restricted registry.

B. The ~~child care worker registry~~ Child Care Restricted Registry shall include, but not be limited to:

1. The full name of the individual;

2. Information necessary to identify the individual; and

3. The date the individual was recorded ~~in~~ on the restricted registry.

SECTION 5. AMENDATORY 10 O.S. 2001, Section 408, is amended to read as follows:

Section 408. A. Any licensee or applicant aggrieved by the decision of the Department of Human Services under Sections 405 or 407 of this title may, within ten (10) days after the revocation or denial of the license, appeal to the district court of the county in

which the child care facility is maintained and operated by filing with the clerk of the court a verified petition. Notice of such appeal shall be served on the Director of the Department within five (5) days of the date of its filing.

B. The ~~Department~~ licensee or applicant shall, within ~~ten (10)~~ twenty (20) days of the ~~service of such notice~~ filing of the appeal, file with the clerk of such court a transcript of the proceedings ~~had before it~~ held pursuant to Section 407 of this title. The district court shall thereupon be vested with jurisdiction to review the proceedings of the Department; provided that, if the Department prevails, the judgment of the district court shall be that the decision of the Department be affirmed, and if the licensee or applicant prevails, the judgment of the court shall be that the revocation be set aside or the license issued or renewed, as the case may be. Pending the hearing of the appeal, the action of the Department revoking or denying the license or the granting thereof shall be stayed; provided, after the filing of an appeal, the district court, upon application by the Department and after an appropriate hearing, may grant a restraining order to enforce the decision of the Department.

SECTION 6. This act shall become effective November 1, 2011.

COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY, dated 2-24-11 - DO PASS, As Amended.