

1 ENGROSSED HOUSE
2 BILL NO. 1274

By: Walker of the House

and

Boggs of the Senate

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7 An Act relating to children; amending 10 O.S. 2011,
8 Section 404.1, as amended by Section 4, Chapter 308,
9 O.S.L. 2013 (10 O.S. Supp. 2014, Section 404.1),
10 which relates to child care facility background
11 checks; authorizing facility to release relevant
information about potential employee; providing
exception; applying same confidentiality standards
for released information; and providing an effective
date.

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

15 SECTION 1. AMENDATORY 10 O.S. 2011, Section 404.1, as
16 amended by Section 4, Chapter 308, O.S.L. 2013 (10 O.S. Supp. 2014,
17 Section 404.1), is amended to read as follows:

18 Section 404.1 A. On and after November 1, 2013:

19 1. Prior to the issuance of a permit or license, owners and
20 responsible entities making a request to establish or operate a
21 child care facility shall have:

22 a. an Oklahoma State Courts Network search conducted by
23 the Department,
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- b. a Child Care Restricted Registry search conducted by the facility,
- c. a national criminal history records search conducted pursuant to paragraph 10 of this subsection,
- d. a criminal history records search conducted by an authorized source, when the individual has lived outside the United States within the last three (3) years, and
- e. a search of the Department of Corrections' files maintained pursuant to the Sex Offenders Registration Act and conducted by the Department of Human Services;

2. Prior to the employment of an individual:

- a. an Oklahoma State Courts Network search, conducted by the Department, shall be requested and received by the facility; provided however, if twenty-four (24) hours has passed from the time the request to the Department was made, the facility may initiate employment, notwithstanding the provisions of this paragraph,
- b. a Child Care Restricted Registry search shall be conducted by the facility with notification of the search submitted to the Department,
- c. a national criminal history records search pursuant to paragraph 10 of this subsection shall be submitted,

- 1 d. a criminal history records search conducted by an
2 authorized source, when the individual has lived
3 outside the United States within the last three (3)
4 years, shall be submitted to the Department, and
5 e. a search of the Department of Corrections' files
6 maintained pursuant to the Sex Offenders Registration
7 Act shall be conducted by the Department and received
8 by the facility;

9 3. Prior to allowing unsupervised access to children by
10 employees or individuals, including contract employees and
11 volunteers and excluding the exceptions in paragraph 8 of this
12 subsection:

- 13 a. Oklahoma State Courts Network search results,
14 conducted by the Department, shall be received by the
15 facility,
16 b. a Child Care Restricted Registry search shall be
17 conducted by the facility with notification of the
18 search submitted to the Department,
19 c. national criminal history records search results
20 pursuant to paragraph 10 of this subsection shall be
21 received by the facility,
22 d. a criminal history records search conducted by an
23 authorized source, when the individual has lived
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1 outside the United States within the last three (3)
2 years shall be submitted to the Department, and

- 3 e. a search of the Department of Corrections' files
4 maintained pursuant to the Sex Offenders Registration
5 Act shall be conducted by the Department and received
6 by the facility;

7 4. Prior to the issuance of a permit or license and prior to
8 the residence of adults who subsequently move into a facility,
9 adults living in the facility excluding the exception in paragraph 7
10 of this subsection shall have:

- 11 a. an Oklahoma State Courts Network search conducted by
12 the Department and the facility shall be in receipt of
13 the search results,
14 b. a Child Care Restricted Registry search conducted by
15 the facility with notification of the search submitted
16 to the Department,
17 c. a national criminal history records search conducted
18 pursuant to paragraph 10 of this subsection,
19 d. a criminal history records search conducted by an
20 authorized source, when the individual has lived
21 outside the United States within the last three (3)
22 years, and
23 e. a search of the Department of Corrections' files
24 maintained pursuant to the Sex Offenders Registration

1 Act conducted by the Department and received by the
2 facility;

3 5. Children who reside in the facility and turn eighteen (18)
4 years of age excluding the exception in paragraph 7 of this
5 subsection shall have:

- 6 a. an Oklahoma State Courts Network search conducted by
7 the Department,
- 8 b. a Child Care Restricted Registry search conducted by
9 the facility with notification of the search submitted
10 to the Department,
- 11 c. a national criminal history records search conducted
12 pursuant to paragraph 10 of this subsection, and
- 13 d. a search of the Department of Corrections' files
14 pursuant to the Sex Offenders Registration Act
15 conducted by the Department and received by the
16 facility;

17 6. Prior to review of or access to fingerprint results, owners,
18 responsible entities, directors, and other individuals who have
19 review of or access to fingerprint results shall have a national
20 criminal history records search pursuant to paragraph 10 of this
21 subsection;

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

1 8. A national criminal history records search pursuant to
2 paragraph 10 of this subsection shall not be required for volunteers
3 who transport children on an irregular basis when a release is
4 signed by the parent or legal guardian noting their understanding
5 that the volunteer does not have a completed national criminal
6 history records search. The provisions in paragraph 3 of this
7 subsection shall not be required for specialized service
8 professionals who are not employed by the program and have
9 unsupervised access to a child when a release is signed by the
10 parent or legal guardian noting his or her understanding of this
11 exception. These exceptions shall not preclude the Department from
12 requesting a national fingerprint or an Oklahoma State Bureau of
13 Investigation name-based criminal history records search or
14 investigating criminal, abusive, or harmful behavior of such
15 individuals, if warranted;

16 9. A national criminal history records search pursuant to
17 paragraph 10 of this subsection shall be required on or before
18 November 1, 2016, for existing owners, responsible entities,
19 employees, individuals with unsupervised access to children, and
20 adults living in the facility, as of November 1, 2013 unless
21 paragraph 6 of this subsection applies;

22 10. The Department shall require a national criminal history
23 records search based upon submission of fingerprints that shall:
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- 1 a. be conducted by the Oklahoma State Bureau of
2 Investigation and the Federal Bureau of Investigation
3 pursuant to Section 150.9 of Title 74 of the Oklahoma
4 Statutes and the federal National Child Protection Act
5 and the federal Volunteers for Children Act with the
6 Department as the authorized agency,
- 7 b. be submitted and have results received between the
8 Department and the Oklahoma State Bureau of
9 Investigation through secure electronic transmissions,
- 10 c. include Oklahoma State Bureau of Investigation rap
11 back, requiring the Oklahoma State Bureau of
12 Investigation to immediately notify the Department
13 upon receipt of subsequent criminal history activity,
14 and
- 15 d. be paid by the individual or the facility;

16 11. The director of the Department, or designee, shall
17 promulgate rules that may authorize an exception to the
18 fingerprinting requirements for individuals who have a severe
19 physical condition which precludes such individuals from being
20 fingerprinted; and

21 12. The Office of Juvenile Affairs may directly request
22 national criminal history records searches as defined by Section
23 150.9 of Title 74 of the Oklahoma Statutes from the Oklahoma State
24 Bureau of Investigation for the purpose of obtaining the national

1 criminal history of any employee or applicant who has resided in
2 Oklahoma for less than three (3) years for which a search is
3 required.

4 B. 1. a. On and after September 1, 1998:

5 (1) any child-placing agency contracting with a
6 person for foster family home services or in any
7 manner for services for the care and supervision
8 of children shall also, prior to executing a
9 contract, complete:

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

14 (b) a national criminal history records search
15 based upon submission of fingerprints for
16 any adult residing in the foster family home
17 through the Department of Human Services
18 pursuant to the provisions of Section 1-7-
19 106 of Title 10A of the Oklahoma Statutes,
20 except as otherwise provided by divisions
21 (2) and (4) of this subparagraph,

22 (2) the child-placing agency may place a child
23 pending completion of the national criminal
24 history records search if the foster care

1 provider and every adult residing in the foster
2 family home has resided in this state for at
3 least five (5) years immediately preceding such
4 placement,

5 (3) a national criminal history records search based
6 upon submission of fingerprints to the Oklahoma
7 State Bureau of Investigation shall also be
8 completed for any adult who subsequently moves
9 into the foster family home,

1 0 (4) provided, however, the Director of Human Services
1 1 or the Director of the Office of Juvenile
1 2 Affairs, or a designee, may authorize an
1 3 exception to the fingerprinting requirement for a
1 4 person residing in the home who has a severe
1 5 physical condition which precludes such person's
1 6 being fingerprinted, and

1 7 (5) any child care facility contracting with any
1 8 person for foster family home services shall
1 9 request the Office of Juvenile Affairs to conduct
2 0 a juvenile justice information system review,
2 1 pursuant to the provisions of Sections 2-7-905
2 2 and 2-7-308 of Title 10A of the Oklahoma
2 3 Statutes, for any child over the age of thirteen
2 4 (13) years residing in the foster family home,

1 other than a foster child, or who subsequently
2 moves into the foster family home. As a
3 condition of contract, the child care facility
4 shall obtain the consent of the parent or legal
5 guardian of the child for such review.

6 b. The provisions of this paragraph shall not apply to
7 foster care providers having a contract or contracting
8 with a child-placing agency, the Department of Human
9 Services or the Office of Juvenile Affairs prior to
10 September 1, 1998. Such existing foster care
11 providers shall comply with the provisions of this
12 section, until otherwise provided by rules of the
13 Department or by law.

14 2. a. (1) On and after September 1, 1998, except as
15 otherwise provided in divisions (2) and (4) of
16 this subparagraph, prior to contracting with a
17 foster family home for placement of any child who
18 is in the custody of the Department of Human
19 Services or the Office of Juvenile Affairs, each
20 Department shall complete a foster parent
21 eligibility assessment, pursuant to the
22 provisions of the Oklahoma Child Care Facilities
23 Licensing Act, for such foster family applicant.
24 In addition, except as otherwise provided by

1 divisions (2) and (4) of this subparagraph, the
2 Department shall complete a national criminal
3 history records search based upon submission of
4 fingerprints for any adult residing in such
5 foster family home.

6 (2) The Department of Human Services and Office of
7 Juvenile Affairs may place a child pending
8 completion of the national criminal history
9 records search if the foster care provider and
10 every adult residing in the foster family home
11 has resided in this state for at least five (5)
12 years immediately preceding such placement.

13 (3) A national criminal history records search based
14 upon submission of fingerprints conducted by the
15 Oklahoma State Bureau of Investigation shall also
16 be completed for any adult who subsequently moves
17 into the foster family home.

18 (4) The Director of Human Services or the Director of
19 the Office of Juvenile Affairs or their designee
20 may authorize an exception to the fingerprinting
21 requirement for any person residing in the home
22 who has a severe physical condition which
23 precludes such person's being fingerprinted.
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1 b. The provisions of this paragraph shall not apply to
2 foster care providers having a contract or contracting
3 with a child-placing agency, the Department of Human
4 Services or the Office of Juvenile Affairs prior to
5 September 1, 1998. Such existing foster care
6 providers shall comply with the provisions of this
7 section, until otherwise provided by rules of the
8 Department or by law.

9 3. The Department of Human Services or the Office of Juvenile
10 Affairs shall provide for a juvenile justice information system
11 review pursuant to Section 2-7-308 of Title 10A of the Oklahoma
12 Statutes for any child over the age of thirteen (13) years residing
13 in a foster family home, other than the foster child, or who
14 subsequently moves into the foster family home.

15 C. The Department or the Board of Juvenile Affairs shall
16 promulgate rules to identify circumstances when a criminal history
17 records search or foster parent eligibility assessment for an
18 applicant or contractor, or any person over the age of thirteen (13)
19 years residing in a private residence in which a child care facility
20 is located, shall be expanded beyond the records search conducted by
21 the Oklahoma State Bureau of Investigation or as otherwise provided
22 pursuant to this section.

23 D. Except as otherwise provided by the Oklahoma Children's Code
24 and subsection F of this section, a conviction for a crime shall not

1 be an absolute bar to employment, but shall be considered in
2 relation to specific employment duties and responsibilities.

3 E. 1. Information received pursuant to this section by an
4 owner, administrator, or responsible entity of a child care
5 facility, shall be maintained in a confidential manner pursuant to
6 applicable state and federal laws.

7 2. The information, along with any other information relevant
8 to the ability of the individual to perform tasks that require
9 direct contact with children, may be released to another child care
10 facility in response to a request from the child care facility that
11 is considering employing or contracting with the individual unless
12 deemed confidential by state and federal laws.

13 3. Requirements for confidentiality and recordkeeping with
14 regard to the information shall be the same for the child care
15 facility receiving the information in response to a request as those
16 provided for in paragraph 1 of this subsection for the child care
17 facility releasing such information.

18 F. 1. It shall be unlawful for individuals who are required to
19 register pursuant to the Sex Offenders Registration Act to work with
20 or provide services to children or to reside in a child care
21 facility and for any employer who offers or provides services to
22 children to knowingly and willfully employ or contract with, or
23 allow continued employment of or contracting with individuals who
24 are required to register pursuant to the Sex Offenders Registration

1 Act. Individuals required to register pursuant to the Sex Offenders
2 Registration Act who violate any provision of Section 401 et seq. of
3 this title shall, upon conviction, be guilty of a felony punishable
4 by incarceration in a correctional facility for a period of not more
5 than five (5) years and a fine of not more than Five Thousand
6 Dollars (\$5,000.00) or both such fine and imprisonment.

7 2. Upon a determination by the Department of any violation of
8 the provisions of this section, the violator shall be subject to and
9 the Department may pursue:

- 10 a. an emergency order,
- 11 b. license revocation or denial,
- 12 c. injunctive proceedings,
- 13 d. an administrative penalty not to exceed Ten Thousand
14 Dollars (\$10,000.00), and
- 15 e. referral for criminal proceedings.

16 3. In addition to the penalties specified by this section, the
17 violator may be liable for civil damages.

18 SECTION 2. This act shall become effective November 1, 2015.

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1 Passed the House of Representatives the 17th day of February,
2015.

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Presiding Officer of the House
of Representatives

6 Passed the Senate the ___ day of _____, 2015.

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Presiding Officer of the Senate