

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 822

By: Scott

6
7 COMMITTEE SUBSTITUTE

8 An Act relating to child care facilities; amending 10
9 O.S. 2011, Section 404.1, as last amended by Section
10 1, Chapter 307, O.S.L. 2016 (10 O.S. Supp. 2016,
11 Section 404.1), which relates to permits and
12 licenses; providing certain construction; prohibiting
13 certain requirement by Department of Human Services;
14 providing an effective date; and declaring an
15 emergency.

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

17 SECTION 1. AMENDATORY 10 O.S. 2011, Section 404.1, as
18 last amended by Section 1, Chapter 307, O.S.L. 2016 (10 O.S. Supp.
19 2016, Section 404.1), is amended to read as follows:

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

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

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

- 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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- 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 back, 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;

11. The Director of the Department, or designee, 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; and

12. The Office of Juvenile Affairs shall require national criminal history records searches, as defined by Section 150.9 of Title 74 of the Oklahoma Statutes, which shall be provided by the Oklahoma State Bureau of Investigation for the purpose of obtaining

1 the national criminal history records search, including Rap Back
2 notification of and through direct request by the Office of Juvenile
3 Affairs on behalf of any:

- 4 a. operator or responsible entity making a request to
5 establish or operate a secure detention center,
6 municipal juvenile facility, community intervention
7 center or secure facility licensed or certified by the
8 Office of Juvenile Affairs,
- 9 b. employee or applicant of a secure detention center,
10 municipal juvenile facility, community intervention
11 center or secure facility licensed or certified by the
12 Office of Juvenile Affairs, or
- 13 c. persons allowed unsupervised access to children,
14 including contract employees or volunteers, of a
15 secure detention center, municipal juvenile facility,
16 community intervention center or secure facility
17 licensed or certified by the Office of Juvenile
18 Affairs.

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

- 20 (1) any child-placing agency contracting with a
21 person for foster family home services or in any
22 manner for services for the care and supervision
23 of children shall also, prior to executing a
24 contract, complete:

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

5 (b) a national criminal history records search
6 based upon submission of fingerprints for
7 any adult residing in the foster family home
8 through the Department of Human Services
9 pursuant to the provisions of Section 1-7-
10 106 of Title 10A of the Oklahoma Statutes,
11 except as otherwise provided by divisions
12 (2) and (4) of this subparagraph,

13 (2) the child-placing agency may place a child
14 pending completion of the national criminal
15 history records search if the foster care
16 provider and every adult residing in the foster
17 family home has resided in this state for at
18 least five (5) years immediately preceding such
19 placement,

20 (3) a national criminal history records search based
21 upon submission of fingerprints to the Oklahoma
22 State Bureau of Investigation shall also be
23 completed for any adult who subsequently moves
24 into the foster family home,

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

8 (5) any child care facility contracting with any
9 person for foster family home services shall
10 request the Office of Juvenile Affairs to conduct
11 a juvenile justice information system review,
12 pursuant to the provisions of Sections 2-7-905
13 and 2-7-308 of Title 10A of the Oklahoma
14 Statutes, for any child over the age of thirteen
15 (13) years residing in the foster family home,
16 other than a foster child, or who subsequently
17 moves into the foster family home. As a
18 condition of contract, the child care facility
19 shall obtain the consent of the parent or legal
20 guardian of the child for such review.

21 b. The provisions of this paragraph shall not apply to
22 foster care providers having a contract or contracting
23 with a child-placing agency, the Department of Human
24 Services or the Office of Juvenile Affairs prior to

1 September 1, 1998. Such existing foster care
2 providers shall comply with the provisions of this
3 section, until otherwise provided by rules of the
4 Department or by law.

5 2. a. (1) On and after September 1, 1998, except as
6 otherwise provided in divisions (2) and (4) of
7 this subparagraph, prior to contracting with a
8 foster family home for placement of any child who
9 is in the custody of the Department of Human
10 Services or the Office of Juvenile Affairs, each
11 Department shall complete a foster parent
12 eligibility assessment, pursuant to the
13 provisions of the Oklahoma Child Care Facilities
14 Licensing Act, for such foster family applicant.
15 In addition, except as otherwise provided by
16 divisions (2) and (4) of this subparagraph, the
17 Department shall complete a national criminal
18 history records search based upon submission of
19 fingerprints for any adult residing in such
20 foster family home.

21 (2) The Department of Human Services and Office of
22 Juvenile Affairs may place a child pending
23 completion of the national criminal history
24 records search if the foster care provider and

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

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

9 (4) The Director of Human Services or the Director of
10 the Office of Juvenile Affairs or their designee
11 may authorize an exception to the fingerprinting
12 requirement for any person residing in the home
13 who has a severe physical condition which
14 precludes such person's being fingerprinted.

15 b. The provisions of this paragraph shall not apply to
16 foster care providers having a contract or contracting
17 with a child-placing agency, the Department of Human
18 Services or the Office of Juvenile Affairs prior to
19 September 1, 1998. Such existing foster care
20 providers shall comply with the provisions of this
21 section, until otherwise provided by rules of the
22 Department or by law.

23 3. The Department of Human Services or the Office of Juvenile
24 Affairs shall provide for a juvenile justice information system

1 review pursuant to Section 2-7-308 of Title 10A of the Oklahoma
2 Statutes for any child over the age of thirteen (13) years residing
3 in a foster family home, other than the foster child, or who
4 subsequently moves into the foster family home.

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

13 D. Except as otherwise provided by the Oklahoma Children's Code
14 and subsection F of this section, a conviction for a crime shall not
15 be an absolute bar to employment, but shall be considered in
16 relation to specific employment duties and responsibilities.

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

21 2. The information, along with any other information relevant
22 to the ability of the individual to perform tasks that require
23 direct contact with children, may be released to another child care
24 facility in response to a request from the child care facility that

1 is considering employing or contracting with the individual unless
2 deemed confidential by state and federal laws.

3 3. Requirements for confidentiality and recordkeeping with
4 regard to the information shall be the same for the child care
5 facility receiving the information in response to a request as those
6 provided for in paragraph 1 of this subsection for the child care
7 facility releasing such information.

8 4. Information received by any facility certified by the Office
9 of Juvenile Affairs may be released to another facility certified by
10 the Office if an individual is being considered for employment or
11 contract, along with any other relevant information, unless the
12 information is deemed confidential by state or federal law. Any
13 information received by the Office shall be maintained in a
14 confidential manner pursuant to applicable state and federal law.

15 F. 1. It shall be unlawful for individuals who are required to
16 register pursuant to the Sex Offenders Registration Act to work with
17 or provide services to children or to reside in a child care
18 facility and for any employer who offers or provides services to
19 children to knowingly and willfully employ or contract with, or
20 allow continued employment of or contracting with individuals who
21 are required to register pursuant to the Sex Offenders Registration
22 Act. Individuals required to register pursuant to the Sex Offenders
23 Registration Act who violate any provision of Section 401 et seq. of
24 this title shall, upon conviction, be guilty of a felony punishable

1 by incarceration in a correctional facility for a period of not more
2 than five (5) years and a fine of not more than Five Thousand
3 Dollars (\$5,000.00) or both such fine and imprisonment.

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

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

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

15 G. Nothing in this section shall be construed as to require a
16 child care provider, employee, owner or other personnel to pay a fee
17 to be listed on any professional development registry maintained by
18 the Department.

19 H. No child care provider, employee, owner or other personnel
20 shall be required by the Department to join a state or national
21 registry of professional development organizations for the purposes
22 of training or data collection.

23 SECTION 2. This act shall become effective July 1, 2017.
24

1 SECTION 3. It being immediately necessary for the preservation
2 of the public peace, health or safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

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