An Act

ENROLLED SENATE
BILL NO. 1289

By: Coates, Gumm, Jolley and Johnson (Constance) of the Senate

and

Morgan, Pittman, Kern and Dank of the House

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

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

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

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

1. "Nurse aide" means any person who provides, for compensation, nursing care or health-related services to residents in a nursing facility, a specialized facility, a residential care home, continuum of care facility, assisted living center or an adult day care center and who is not a licensed health professional. Such term also means any person who provides such services to individuals in their own homes as an employee or contract provider of a home

health or home care agency, or as a contract provider of the Medicaid State Plan Personal Care Program;

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

a. a nursing facility or specialized facility as such terms are defined in the Nursing Home Care Act,

b. a residential care home as such term is defined by the Residential Care Act,

c. an adult day care center as such term is defined in the Adult Day Care Act,

d. an assisted living center as such term is defined by the Continuum of Care and Assisted Living Act,

e. a continuum of care facility as such term is defined by the Continuum of Care and Assisted Living Act,

f. a home health or home care agency, and

g. the Department of Human Services, in its capacity as an operator of any hospital or health care institution or as a contractor with providers under the Medicaid State Plan Personal Care Program;

3. "Home health or home care agency" means any person, partnership, association, corporation or other organization which administers, offers or provides health care services or supportive assistance for compensation to three or more ill, disabled, or infirm persons in the temporary or permanent residence of such persons, and includes any subunits or branch offices of a parent home health or home care agency; and

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

B. 1. Except as otherwise provided by subsection C of this section, before any employer makes an offer to employ or to contract with a nurse aide or other person to provide nursing care, health-

related services or supportive assistance to any individual except as provided by paragraph 4 of this subsection, the employer shall provide for a criminal history background check to be made on the nurse aide or other person pursuant to the provisions of this section. If the employer is a facility, home or institution which is part of a larger complex of buildings, the requirement of a criminal history background check shall apply only to an offer of employment or contract made to a person who will work primarily in the immediate boundaries of the facility, home or institution.

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

3. The employer shall request the Bureau to conduct a criminal history background check on the person and shall provide to the Bureau any relevant information required by the Bureau to conduct the check. The employer shall pay a fee of Fifteen Dollars ($15.00) to the Bureau for each criminal history background check that is conducted pursuant to such a request.

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

a. a nursing home administrator licensed pursuant to the provisions of Section 330.53 of this title,

b. any person who is the holder of a current license or certificate issued pursuant to the laws of this state authorizing such person to practice the healing arts,

c. a registered nurse or practical nurse licensed pursuant to the Oklahoma Nursing Practice Act,

d. a physical therapist registered pursuant to the Physical Therapy Practice Act,

e. a physical therapist assistant licensed pursuant to the Physical Therapy Practice Act,

f. a social worker licensed pursuant to the provisions of the Social Worker's Licensing Act,

g. a speech pathologist or audiologist licensed pursuant to the Speech-Language Pathology and Audiology Licensing Act,

h. a dietitian licensed pursuant to the provisions of the Licensed Dietitian Act,

i. an occupational therapist licensed pursuant to the Occupational Therapy Practice Act, or

j. an individual who is to be employed by a nursing service conducted by and for the adherents of any religious denomination, the tenets of which include reliance on spiritual means through prayer alone for healing.

5. At the request of an employer, the Bureau shall conduct a criminal history background check on any person employed by the employer, including the persons specified in paragraph 4 of this subsection at any time during the period of employment of such person.

C. 1. An employer may make an offer of temporary employment to a nurse aide or other person pending the results of the criminal history background check on the person. The employer in such instance shall provide to the Bureau the name and relevant information relating to the person within seventy-two (72) hours after the date the person accepts temporary employment. The employer shall not hire or contract with a person on a permanent basis until the results of the criminal history background check are received.

2. An employer may accept a criminal history background report less than one (1) year old of a person to whom such employer makes an offer of employment or employment contract. The report shall be obtained from the previous employer or contractor of such person and shall only be obtained upon the written consent of such person.

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

a. any felony or misdemeanor classified as a crime against the person,

b. any felony or misdemeanor classified as a crime against public decency or morality,

c. any felony or misdemeanor classified as domestic abuse pursuant to the provisions of the Protection from Domestic Abuse Act,

d. a felony violation of any state statute intended to control the possession or distribution of a Schedule I through V drug pursuant to the Uniform Controlled Dangerous Substances Act, and

e. any felony or misdemeanor classified as a crime against property.

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

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

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

a. assault, battery, or assault and battery with a dangerous weapon,

b. aggravated assault and battery,

c. murder or attempted murder,

d. manslaughter, except involuntary manslaughter,

e. rape, incest or sodomy,

f. indecent exposure and indecent exhibition,

g. pandering,

h. child abuse,

i. abuse, neglect or financial exploitation of any person entrusted to the care or possession of such person,

j. burglary in the first or second degree,

k. robbery in the first or second degree,

l. robbery or attempted robbery with a dangerous weapon, or imitation firearm,

m. arson in the first or second degree,

n. unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act,

o. grand larceny, or

p. petit larceny or shoplifting within the past seven (7) years.

2. If the results of a criminal history background check reveal that an employee or a person hired on a temporary basis pursuant to subsection C of this section or any other person who is an employee or contract provider has been convicted of any of the offenses listed in paragraph 1 of this subsection, the employer shall

immediately terminate the person's employment or contract. The provisions of this paragraph shall not apply to an employee or contract provider of an employer who has completed the requirements for certification and placement on the nurse aide registry and who has been continuously employed by the employer prior to January 1, 1992.

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

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

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

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

SECTION 2. This act shall become effective November 1, 2010.

Passed the Senate the 1st day of March, 2010.

Presiding Officer of the Senate

Passed the House of Representatives the 22nd day of April, 2010.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 27th **day of** April, 20 10, **at** 2:20 **o'clock** P **M.**

By:

Approved by the Governor of the State of Oklahoma the 28th **day of** April, 20 10, **at** 5:05 **o'clock** P **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 29th **day of** April, 20 10, **at** 2:30 **o'clock** P **M.**

By: Michelle Waddell