An Act

ENROLLED HOUSE
BILL NO. 1228

By: Ownbey of the House

and

Simpson of the Senate

An Act relating to public health and safety; creating the Sheltered Workshop Act; stating purpose; defining terms; providing powers and duties of the Department of Human Services; requiring Department to develop rules and standards for sheltered workshops; specifying standard requirements; providing duration of license; providing for annual renewal of licenses; providing for form of license; providing license requirements and restrictions; specifying required elements of applications; establishing age and experience requirements for applicants; providing that certain persons and entities are ineligible for licensing or certain contracts; authorizing conditional licenses; specifying information required for applications; establishing requirements of conditional license; authorizing Department to 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 waiver; authorizing criminal background checks under certain circumstances; specifying criminal background records shall be confidential; providing exceptions;

requiring destruction of background checks after certain period; providing for codification; and providing an effective date.

SUBJECT: Creating the Sheltered Workshop Act

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

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

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

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

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

As used in the Sheltered Workshop Act:

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

   a. contracts with the Oklahoma Health Care Authority to provide specialized foster care, habilitation training specialist services, or homemaker services to persons with developmental disabilities,

   b. is not a licensed health professional, and

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

      (1) health-related services,

      (2) training, or

      (3) supportive assistance;

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

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

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

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

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

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

c. is likely to continue indefinitely,

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

(1) self-care,

(2) receptive and expressive language,

(3) learning,

(4) mobility,

(5) self-direction,

(6) capacity for independent living, or

(7) economic self-sufficiency, and

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

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

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

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

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

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

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

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

1. Enforce any provision of the Sheltered Workshop Act;

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

3. Establish and enforce standards and requirements for licensure and operation of sheltered workshops that are subject to

the provisions of the Sheltered Workshop Act and require the submission of, and to review, reports from any person establishing or operating a sheltered workshop;

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

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

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

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

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

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

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

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

1. Physical plant expectations to include physical facilities, ventilation, and accessibility;

2. Staffing requirements;

3. Staff training;

4. Staff qualifications; and

5. Service recipient records.

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

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

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

2. Be available on the licensed premises; and

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

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

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

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

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

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

4. The name and administrator of the sheltered workshop;

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

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

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

2. No person who is ineligible for employment as a community services worker in accordance with Section 1025.2 of Title 56 of the Oklahoma Statues shall be eligible to be licensed or to receive a contract to become a community services provider. If the applicant or licensee is a firm, partnership, limited liability company, or corporation, the applicant shall not be eligible to be licensed or to receive a contract if any member of the firm, any major member of the limited liability company or manager, any major partner of the partnership, or any officer or major stockholder of the corporation is ineligible for employment as a community services worker in accordance with Section 1025.2 of Title 56 of the Oklahoma Statutes.

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

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

2. The name and address of any other sheltered workshop in which the owner has a full or partial financial interest or, if the applicant or licensee is a partnership, limited liability company, or corporation, any other sheltered workshop in which the partnership, limited liability company, or corporation has a full or partial financial interest. The statement shall indicate whether any other sheltered workshop wherein a full or partial financial interest is held would, if located in this state, be required to be licensed.

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

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

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

B. Prior to the issuance of a conditional license, the Department shall review and approve a written plan of correction. The Department shall specify the violations which prevent issuance of a regular license and shall establish a time schedule for correction of the deficiencies. Retention of the license shall be conditional on meeting the requirements of the plan of correction. In the alternative or in addition to a conditional license, the Director of the Department of Human Services may withhold vendor payments due to a sheltered workshop under its programs until such time as the corrections are made or a plan of correction for all deficiencies is approved by the Department.

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

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

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

A. Except as provided in this section, a license to operate a sheltered workshop subject to the provisions of the Sheltered Workshop Act is not transferable. Operation of a sheltered workshop may only be transferred:

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

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

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

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

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

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

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

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

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

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

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

4. Proposed dates for the resolution of deficiencies;

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

6. If the inspection or investigation was made pursuant to the receipt of a complaint, the date such complaint was received and the

date the sheltered workshop was notified of the results of the inspection or investigation.

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

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

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

C. All criminal records received by the employer are confidential and are for the exclusive use of the Department and the employer which requested the information. Except upon 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.

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

Passed the House of Representatives the 15th day of March, 2011.

Presiding Officer of the House of Representatives

Passed the Senate the 11th day of April, 2011.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 12th

day of April, **20** 11,

at 12:01 **o'clock** P **M.**

By: Jessica R. Byers

Approved by the Governor of the State of Oklahoma the 18 **day of** April, **20** 11, **at** 2:36 **o'clock** P **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 18th **day of** April, **20** 11,

at 3:21 **o'clock** P. **M.**

By: Michelle R Day