

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed: H3/25/13

A Bill

HOUSE BILL 1691

5 By: Representative Hobbs
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For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW REGARDING CRIMINAL BACKGROUND
9 CHECK REQUIREMENTS APPLICABLE TO A VARIETY OF HEALTH
10 CARE SERVICE PROVIDERS; AND FOR OTHER PURPOSES.
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Subtitle

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14 AMEND THE LAW REGARDING CRIMINAL
15 BACKGROUND CHECK REQUIREMENTS APPLICABLE
16 TO A VARIETY OF HEALTH CARE SERVICE
17 PROVIDERS.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 *SECTION 1. Arkansas Code § 20-38-103(e)(3)(A), concerning criminal*
23 *history records checks for applicants and employees of service providers, is*
24 *amended to read as follows:*

25 *(3)(A)(i) If the licensing or certifying agency determines that*
26 *an applicant or employee is disqualified from employment based on the*
27 *criminal history of the applicant or employee, the service provider shall*
28 *deny employment to the applicant or shall terminate the employment of the*
29 *employee.*

30 *(ii) If the applicant or employee is disqualified*
31 *from employment based on the criminal history, the service provider shall*
32 *provide written notice to the licensing or certifying agency that the service*
33 *provider has determined that the person meets the criteria for a waiver under*
34 *§ 20-38-105(d)(3) and that the service provider intends to employ the*
35 *applicant or employee.*

36 *(iii) The licensing or certifying agency shall*



1 provide the service provider written acknowledgment that the service provider
2 has determined that the applicant or employee is not disqualified from
3 employment.

4
5 SECTION 2. Arkansas Code § 20-38-105(d), concerning disqualification
6 from employment with a service provider, is amended to add an additional
7 subdivision to read as follows:

8 (3) This section does not disqualify a person from employment
9 with a service provider if:

10 (A) The conviction or plea of guilty or nolo contendere
11 was for any of the non-violent offenses listed below:

12 (i) Theft by receiving, § 5-36-106;

13 (ii) Forgery, § 5-37-201;

14 (iii) Financial identity fraud, § 5-37-227;

15 (iv) Resisting arrest, § 5-54-103;

16 (v) Criminal impersonation in the second degree, §
17 5-37-208(b);

18 (vi) Interference with visitation, § 5-26-501;

19 (vii) Interference with court-ordered visitation, §
20 5-26-502;

21 (viii) Prostitution, § 5-70-102; and

22 (ix) Patronizing a prostitute, § 5-70-103;

23 (B) The service provider wants to employ the person;

24 (C) The person remains in employment with the same service
25 provider;

26 (D) The person has completed probation or parole
27 supervision, paid all court ordered fees or fines, including restitution, and
28 fully complied with all court orders pertaining to the conviction or plea;

29 (E) The person will be employed by:

30 (i) A long-term care facility licensed by the
31 Office of Long Term Care;

32 (ii) An intermediate care or other facility,
33 developmental day treatment clinic services provider, or group home licensed
34 or certified by the Division of Developmental Disability Services; or

35 (iii) A child care facility, a church-exempt child
36 care facility, or a family child care home licensed or certified by, or

1 registered with, the Division of Child Care and Early Childhood Education;
2 (F) Subsequent to employment, the person does not plead
3 guilty or nolo contendere to or is found guilty of any offense in subsection
4 (b) of this section; and

5 (G) The person does not have a true or founded report of
6 child maltreatment or adult maltreatment in a central registry.

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8 SECTION 3. Arkansas Code § 20-38-106 is amended to read as follows:
9 20-38-106. Evidence of records checks.

10 (a) A service provider shall maintain on file, subject to inspection
11 by the Arkansas Crime Information Center, the Identification Bureau of the
12 Department of Arkansas State Police, or the licensing or certifying agency
13 evidence that criminal history records checks have been completed on all
14 operators, applicants for employment, and employees of the service provider.

15 (b) If a service provider chooses to employ an applicant or employee
16 who meets the criteria for a waiver under § 20-38-105(d)(3), the service
17 provider shall:

18 (1) Maintain documentation that the person met the criteria for
19 the waiver, including the written acknowledgment by the licensing or
20 certifying authority;

21 (2) Provide written notice to the licensing or certifying
22 authority of the applicant's or employee's identity and of the service
23 provider's intent to employ the applicant or employee; and

24 (3) Not employ the applicant or employee until the service
25 provider has received the written acknowledgment from the licensing or
26 certifying authority.

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28 SECTION 4. Arkansas Code § 20-38-112(c) through (e), concerning
29 exclusions of licensed professionals from completion of criminal history
30 records check, is amended to read as follows:

31 (c) ~~If~~ With the exception of applicants and employees qualified under
32 § 20-38-105(d)(3), if the service provider can verify that the applicant has
33 maintained employment in the State of Arkansas for the past twelve (12)
34 months and has successfully completed a criminal history records check within
35 the past twelve (12) months, the service provider is not required to conduct
36 a criminal history records check on the applicant.

1 (d) ~~If~~ With the exception of applicants and employees qualified under
2 § 20-38-105(d)(3), if a service provider can verify that an applicant or
3 employee has been the subject of an employment determination described in
4 subsection (e) of this section, the service provider is not required to
5 conduct any further criminal history records check on the applicant or
6 employee to determine eligibility for employment except as required under §
7 20-38-103(d) for continued employment.

8 (e)(1) ~~An~~ With the exception of applicants and employees qualified
9 under § 20-38-105(d)(3), an employment determination and the criminal history
10 records check used to make the determination for an applicant or employee of
11 a service provider shall be fully acceptable and transferrable upon request
12 between the following divisions and offices of the Department of Human
13 Services:

14 (A) The Division of Child Care and Early Childhood
15 Education for a child care facility or church-exempt child care facility;

16 (B) The Division of Developmental Disabilities Services
17 for an Alternative Community Services Waiver Program provider, an early
18 intervention provider, or a nonprofit community program; and

19 (C) The Office of Long-Term Care for a long-term care
20 facility licensed as an intermediate care facility for the mentally retarded
21 or developmentally disabled.

22 (2) ~~The~~ With the exception of applicants and employees qualified
23 under § 20-38-105(d)(3), the divisions and office listed in subdivision
24 (e)(1) of this section shall accept from any other division or office listed
25 in subdivision (e)(1) of this section an employment determination and the
26 criminal history records check used to make the determination for an
27 applicant or employee of a service provider in each instance that the
28 following conditions are met:

29 (A) The employee is or applicant will be continuously
30 employed by the service provider in one (1) or more of the service provider
31 types described in subdivision (e)(1) of this section;

32 (B) The applicable service provider types in which an
33 employee is employed or an applicant will be employed are operated and
34 administered by the same service provider;

35 (C) The service provider maintains evidence acceptable to
36 the licensing or certifying agency that the service provider types for which

1 *employment determinations and criminal records checks are accepted under*
2 *subsection (e) of this section are operated and administered by the same*
3 *service provider; and*

4 *(D) The service provider maintains an original or copy of*
5 *the determination letter for each employee at the service provider type for*
6 *which employment determinations and criminal records checks are accepted*
7 *under subsection (e) of this section and at which the employee who is the*
8 *subject of the determination letter is employed.*

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/s/Hobbs