

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.
11

Subtitle

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13 AMEND THE LAW REGARDING CRIMINAL
14 BACKGROUND CHECK REQUIREMENTS APPLICABLE
15 TO A VARIETY OF HEALTH CARE SERVICE
16 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.

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 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
 37 registered with, the Division of Child Care and Early Childhood Education;

38 (F) Subsequent to employment, the person does not plead
 39 guilty or nolo contendere to or is found guilty of any offense in subsection
 40 (b) of this section; and

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

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 44 SECTION 3. Arkansas Code § 20-38-106 is amended to read as follows:

45 20-38-106. Evidence of records checks.

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

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

9 (1) Maintain documentation that the person met the criteria for
10 the waiver, including the written acknowledgment by the licensing or
11 certifying authority;

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

15 (3) Not employ the applicant or employee until the service
16 provider has received the written acknowledgment from the licensing or
17 certifying authority.

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

22 (c) ~~If~~ With the exception of applicants and employees qualified under
23 § 20-38-105(d)(3), if the service provider can verify that the applicant has
24 maintained employment in the State of Arkansas for the past twelve (12)
25 months and has successfully completed a criminal history records check within
26 the past twelve (12) months, the service provider is not required to conduct
27 a criminal history records check on the applicant.

28 (d) ~~If~~ With the exception of applicants and employees qualified under
29 § 20-38-105(d)(3), if a service provider can verify that an applicant or
30 employee has been the subject of an employment determination described in
31 subsection (e) of this section, the service provider is not required to
32 conduct any further criminal history records check on the applicant or
33 employee to determine eligibility for employment except as required under §
34 20-38-103(d) for continued employment.

35 (e)(1) ~~An~~ With the exception of applicants and employees qualified
36 under § 20-38-105(d)(3), an employment determination and the criminal history

1 records check used to make the determination for an applicant or employee of
2 a service provider shall be fully acceptable and transferrable upon request
3 between the following divisions and offices of the Department of Human
4 Services:

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

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

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

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

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

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

26 (C) The service provider maintains evidence acceptable to
27 the licensing or certifying agency that the service provider types for which
28 employment determinations and criminal records checks are accepted under
29 subsection (e) of this section are operated and administered by the same
30 service provider; and

31 (D) The service provider maintains an original or copy of
32 the determination letter for each employee at the service provider type for
33 which employment determinations and criminal records checks are accepted
34 under subsection (e) of this section and at which the employee who is the
35 subject of the determination letter is employed.

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/s/Hobbs

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