

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas *As Engrossed: H3/25/13 H3/27/13*

2 89th General Assembly

A Bill

3 Regular Session, 2013

HOUSE BILL 1691

4

5 By: Representatives Hobbs, *Steel*

6 By: *Senator Bledsoe*

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8

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW REGARDING CRIMINAL BACKGROUND

10 CHECK REQUIREMENTS APPLICABLE TO A VARIETY OF HEALTH

11 CARE SERVICE PROVIDERS; AND FOR OTHER PURPOSES.

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13

14

Subtitle

15

AMEND THE LAW REGARDING CRIMINAL

16

BACKGROUND CHECK REQUIREMENTS APPLICABLE

17

TO A VARIETY OF HEALTH CARE SERVICE

18

PROVIDERS.

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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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23 *SECTION 1. Arkansas Code § 20-38-103(e)(3)(A), concerning criminal*
24 *history records checks for applicants and employees of service providers, is*
25 *amended to read as follows:*

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

31 *(ii)(a) If the applicant or employee is disqualified*
32 *from employment based on the criminal history and the service provider wants*
33 *to employ the applicant or continue to employ the employee, the service*
34 *provider shall provide written notice to the licensing or certifying agency*
35 *of the person's identity and that the service provider has determined that*
36 *the person is not disqualified from employment because the person satisfies*



1 the criteria for a waiver under § 20-38-105(d)(3).

2 (b) After receipt of written acknowledgment from the
3 licensing or certifying agency that the service provider has determined that
4 the applicant or employee is not disqualified from employment because the
5 person satisfies the criteria for a waiver under § 20-38-105(d)(3), the
6 service provider may employ the applicant or continue the employment of the
7 employee.

8
9 SECTION 2. Arkansas Code § 20-38-105(d), concerning disqualification
10 from employment with a service provider, is amended to add an additional
11 subdivision to read as follows:

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

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

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

17 (ii) Forgery, § 5-37-201;

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

19 (iv) Resisting arrest, § 5-54-103;

20 (v) Criminal impersonation in the second degree, §
21 5-37-208(b);

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

23 (vii) Interference with court-ordered visitation, §
24 5-26-502;

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

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

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

28 (C) The person remains in employment with the same service
29 provider;

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

33 (E) The person will be employed by:

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

36 (ii) An intermediate care or other facility,

1 developmental day treatment clinic services provider, or group home licensed
2 or certified by the Division of Developmental Disability Services; or
3 (iii) A child care facility or a church-exempt child
4 care facility licensed by the Division of Child Care and Early Childhood
5 Education.

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

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

11
12 SECTION 3. Arkansas Code § 20-38-106 is amended to read as follows:
13 20-38-106. Evidence of records checks.

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

19 (b) If a service provider employs an applicant or continues the
20 employment of an employee who satisfied the criteria for a waiver under § 20-
21 38-105(d)(3), the service provider shall maintain documentation that the
22 person met the criteria for the waiver, including the written acknowledgment
23 by the licensing or certifying authority.

24
25 SECTION 4. Arkansas Code § 20-38-112(c) through (e), concerning
26 exclusions of licensed professionals from completion of criminal history
27 records check, is amended to read as follows:

28 (c) ~~If~~ With the exception of applicants and employees qualified under
29 § 20-38-105(d)(3), if the service provider can verify that the applicant has
30 maintained employment in the State of Arkansas for the past twelve (12)
31 months and has successfully completed a criminal history records check within
32 the past twelve (12) months, the service provider is not required to conduct
33 a criminal history records check on the applicant.

34 (d) ~~If~~ With the exception of applicants and employees qualified under
35 § 20-38-105(d)(3), if a service provider can verify that an applicant or
36 employee has been the subject of an employment determination described in

1 subsection (e) of this section, the service provider is not required to
2 conduct any further criminal history records check on the applicant or
3 employee to determine eligibility for employment except as required under §
4 20-38-103(d) for continued employment.

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

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

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

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

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

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

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

32 (C) The service provider maintains evidence acceptable to
33 the licensing or certifying agency that the service provider types for which
34 employment determinations and criminal records checks are accepted under
35 subsection (e) of this section are operated and administered by the same
36 service provider; and

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

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7 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the
8 General Assembly of the State of Arkansas that the state is experiencing a
9 shortage of personnel who are ready and willing to assist citizens in need of
10 personal services; that this act will increase the availability of personnel
11 ready and willing to provide personal services; that citizens need assistance
12 immediately. Therefore, an emergency is declared to exist, and this act
13 being immediately necessary for the preservation of the public peace, health,
14 and safety shall become effective on:

15 (1) The date of its approval by the Governor;

16 (2) If the bill is neither approved nor vetoed by the Governor,
17 the expiration of the period of time during which the Governor may veto the
18 bill; or

19 (3) If the bill is vetoed by the Governor and the veto is
20 overridden, the date the last house overrides the veto.

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23 /s/Hobbs
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