

Stricken language would be deleted from and underlined language would be added to present law.
Act 990 of the Regular Session

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: H3/25/13 H3/27/13

A Bill

HOUSE BILL 1691

By: Representatives Hobbs, *Steel*

By: Senator *Bledsoe*

For An Act To Be Entitled

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

Subtitle

AMEND THE LAW REGARDING CRIMINAL
BACKGROUND CHECK REQUIREMENTS APPLICABLE
TO A VARIETY OF HEALTH CARE SERVICE
PROVIDERS.

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

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

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

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



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

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

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

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

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

(i) Theft by receiving, § 5-36-106;

(ii) Forgery, § 5-37-201;

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

(iv) Resisting arrest, § 5-54-103;

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

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

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

(viii) Prostitution, § 5-70-102; and

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

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

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

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

(E) The person will be employed by:

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

(ii) An intermediate care or other facility,

developmental day treatment clinic services provider, or group home licensed or certified by the Division of Developmental Disability Services; or

(iii) A child care facility or a church-exempt child care facility licensed by the Division of Child Care and Early Childhood Education.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

/s/Hobbs

APPROVED: 04/08/2013