

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 HOUSE BILL 3135

By: Cockroft

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5  
6 AS INTRODUCED

7 An Act relating to children; amending 10 O.S. 2011,  
8 Section 406, as amended by Section 9, Chapter 308,  
9 O.S.L. 2013 (10 O.S. Supp. 2015, Section 406), which  
10 relates to the Oklahoma Child Care Facilities  
11 Licensing Act; directing Department of Human Services  
12 to investigate child care facility complaints in  
13 manner prescribed; defining terms; setting  
14 requirements for Department to follow when taking  
15 complaints; specifying information to be taken and  
16 included in the complaint; mandating Department  
17 provide certain information to complainant; allowing  
18 complainant to remain anonymous; directing Department  
19 to take specified action; differentiating between  
20 temporary and indefinite confidential complainant;  
21 requiring disclosure of complainant upon completion  
22 of investigation if temporary; barring disclosure if  
23 indefinite; prohibiting using confidential  
24 information to substantiate allegation; providing  
exception; mandating supervisor review of complaint  
prior to investigation; listing criteria for  
proceeding with investigation; delaying notification  
of complaint; specifying when notification is  
required; requiring removal and confidentiality of  
unsubstantiated complaint; prescribing telephone and  
online complaint gathering; mandating recording and  
storing calls for specified time; excluding  
Department authority over listed activities; limiting  
investigative visits; providing exception; requiring  
completion of Notice to Comply form; construing  
provisions; providing penalty for giving false  
information; prescribing punishment and fine;  
providing for codification; and providing an  
effective date.

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

2 SECTION 1. AMENDATORY 10 O.S. 2011, Section 406, as  
3 amended by Section 9, Chapter 308, O.S.L. 2013 (10 O.S. Supp. 2015,  
4 Section 406), is amended to read as follows:

5 Section 406. A. The Department of Human Services shall have  
6 authority at any reasonable time to investigate and examine the  
7 conditions of any child care facility in which a licensee or  
8 applicant hereunder receives and maintains children, and shall have  
9 authority at any time to require the facility to provide information  
10 pertaining to children in its care.

11 B. 1. The State Department of Health may visit any licensee or  
12 applicant at the request of the Department to advise on matters  
13 affecting the health of children and to inspect the sanitation of  
14 the buildings used for their care.

15 2. The State Fire Marshal may visit any licensee or applicant  
16 at the request of the Department to advise on matters affecting the  
17 safety of children and to inspect the condition of the buildings  
18 used for their care.

19 C. 1. Upon receipt of a complaint against any child care  
20 facility alleging a violation of the provisions of the Oklahoma  
21 Child Care Facilities Licensing Act, or any licensing standard  
22 promulgated by the Department, the Department shall conduct a full  
23 investigation in accordance with the procedures outlined in Section  
24 2 of this act. If upon investigation, it is determined that there

1 are reasonable grounds to believe that a facility is in violation of  
2 the Oklahoma Child Care Facilities Licensing Act or of any standard  
3 or rule promulgated pursuant thereto, the Department shall:

- 4 a. document the complaint,
- 5 b. provide the complaint allegations in writing to the  
6 facility involved and, upon written request by the  
7 child care facility, provide a summary of the facts  
8 used to evaluate the completed complaint, and
- 9 c. document the facility's plan for correcting any  
10 substantiated violations.

11 2. If the Department determines there has been a violation and  
12 the violation has a direct impact on the health, safety or well-  
13 being of one or more of the children cared for by the facility, the  
14 Department shall notify the facility and require correction of the  
15 violation.

16 3. The Department shall notify the facility that failure to  
17 correct the confirmed violation can result in the revocation of the  
18 license, the denial of an application for a license, the issuance of  
19 an emergency order or the filing of an injunction pursuant to the  
20 provisions of Section 409 of this title.

21 4. If the facility refuses to correct a violation or fails to  
22 complete the plan of correction, the Department may issue an  
23 emergency order, revoke the license, or deny the application for a  
24 license. Nothing in this section or Section 407 of this title shall

1 be construed as preventing the Department from denying an  
2 application, revoking a license, or issuing an emergency order for a  
3 single violation of this act, or the rules of the Department as  
4 provided in Section 404 of this title.

5 D. Upon the completion of the investigation of a complaint  
6 against any child care facility alleging a violation of the  
7 provisions of the Oklahoma Child Care Facilities Licensing Act or  
8 any licensing standard promulgated thereto by the Department, the  
9 Department shall clearly designate its findings on the first page of  
10 the report of the investigation. The findings shall state whether  
11 the complaint was substantiated or unsubstantiated.

12 E. Information obtained by the Department or Oklahoma Child  
13 Care Services concerning a report of a violation of a licensing  
14 requirement, or from any licensee regarding children or their  
15 parents or other relatives shall be deemed confidential and  
16 privileged communications, shall be properly safeguarded, and shall  
17 not be accessible to anyone except as herein provided, unless upon  
18 order of a court of competent jurisdiction. Provided, however, this  
19 provision shall not prohibit the Department from providing a summary  
20 of allegations and findings of an investigation involving a child  
21 care facility that does not disclose identities but that permits  
22 parents to evaluate the facility.

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1           SECTION 2.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 406.2 of Title 10, unless there  
3 is created a duplication in numbering, reads as follows:

4           A. As used in this section:

5           1. "Anonymous complainant" means a complainant for whom the  
6 Department of Human Services does not have the minimum personal  
7 identifying information necessary, including the complainant's full  
8 name and verifiable contact phone number, to attempt to communicate  
9 with the complainant after a complaint has been made;

10          2. "Confidential complainant" means a complainant for whom the  
11 Department has the minimum personal identifying information  
12 necessary, including the complainant's full name and verifiable  
13 contact phone number, to attempt to communicate with the complainant  
14 after a complaint has been made but who elects under paragraph 3 of  
15 subsection F of this act not to be identified to the subject of the  
16 complaint;

17          3. "Serious risk of harm to a child" means:

- 18           a. presence or use of illegal drugs while children are in  
19           care,  
20           b. distribution of drugs,  
21           c. children left alone in a facility or in a vehicle,  
22           d. extreme facility temperatures,  
23           e. an infant placed on stomach for sleeping,  
24           f. threatening or impaired behavior of a caregiver,

- 1 g. severe understaffing or over licensed capacity,
- 2 h. unlicensed facility,
- 3 i. violating an emergency order,
- 4 j. required staff without current cardiopulmonary
- 5 resuscitation and first-aid training,
- 6 k. failure to obtain background investigations, or
- 7 l. knowingly permitting access to children by persons
- 8 identified as restricted on the Child Care Restricted
- 9 Registry or subject to registration pursuant to the
- 10 Sex Offenders Registration Act; and

11 4. "Subject of the complaint" means the licensed child care  
12 provider that the complaint is being made against.

13 B. If the Department receives a complaint about a child care  
14 facility, the Department shall:

15 1. Solicit information from the complainant to determine  
16 whether the complaint suggests actions or conditions that could pose  
17 a serious risk to the safety or well-being of a child; and

18 2. As necessary:

- 19 a. encourage the complainant to disclose the minimum
- 20 personal identifying information, including the
- 21 complainant's full name and a verifiable contact phone
- 22 number, for the Department to attempt to subsequently
- 23 communicate with the complainant, and

1           b.    inform the complainant that the Department shall not  
2                   investigate an anonymous complaint.

3           C.    Information collected on a complaint shall include:

4           1.    Date and time the complaint was received;

5           2.    Name, address and telephone number of the child care  
6 facility;

7           3.    The complainant's name, address, telephone number and  
8 relationship to the facility, such as an employee, parent of a child  
9 in care or neighbor;

10          4.    The complainant's source of information; for example,  
11 personal observation or information from another person; and

12          5.    Specific information regarding the allegations, including:

13           a.    a description of the circumstances,

14           b.    name or identity of staff involved,

15           c.    child or children involved or affected by the alleged  
16 noncompliance and their ages if known,

17           d.    dates and times the alleged noncompliance took place,

18           e.    names of other persons with relevant information, and

19           f.    whether the complaint has been discussed with the  
20 child care facility director or administrator.

21          D.    The Department shall inform the complainant that:

22          1.    The identity of a confidential complainant may be withheld  
23 from the subject of a complaint only as provided in subparagraph a  
24 of paragraph 3 of subsection F of this section;

1           2. The Department may be limited in its use of information  
2 provided by a confidential complainant, as provided in subparagraph  
3 b of paragraph 3 of subsection F of this section; and

4           3. A person is guilty of a misdemeanor under Section 410 of  
5 Title 10 of the Oklahoma Statutes if the person gives false  
6 information to the Department with the purpose of inducing a change  
7 in that person's or another person's licensing or certification  
8 status.

9           E. If the complainant elects to be an anonymous complainant, or  
10 if the complaint concerns events which occurred more than six (6)  
11 weeks before the complainant contacted the Department, the  
12 Department:

13           1. Shall refer the information in the complaint to Child  
14 Welfare Services, law enforcement or any other appropriate agency,  
15 if the complaint suggests actions or conditions which could pose a  
16 serious risk to the safety or well-being of a child;

17           2. Shall not investigate or substantiate the complaint except  
18 as provided in subparagraph b of paragraph 3 of subsection F of this  
19 section; and

20           3. May, during a regularly scheduled licensing visit and for  
21 informational purposes only, inform the child care facility that it  
22 is the subject of the complaint of allegations or concerns raised  
23 by:

24           a. the anonymous complainant, or



1           b.    the complainant who reported events more than six (6)  
2                   weeks after the events occurred.

3           F.  1.  If the complainant elects to be a confidential  
4 complainant, the Department shall determine whether the complainant  
5 wishes to remain confidential:

6           a.    only until the investigation of the complaint has been  
7                   completed, or

8           b.    indefinitely.

9           2.  If the complainant elects to remain confidential only until  
10 the investigation of the complaint has been completed, the  
11 Department shall disclose the name of the complainant to the subject  
12 of the complaint at the completion of the investigation, but no  
13 sooner.

14          3.  If the complainant elects to remain confidential  
15 indefinitely, the Department:

16          a.    notwithstanding Section 2004.1 of Title 12 of the  
17                   Oklahoma Statutes, shall not disclose the name of the  
18                   complainant, including to the subject of the  
19                   complaint, and

20          b.    shall not use information provided by the complainant  
21                   to substantiate an alleged violation of state law or  
22                   Department rule unless the Department independently  
23                   corroborates the information.

1 G. 1. Prior to conducting an investigation of a child care  
2 facility in response to a complaint, a Department investigator shall  
3 review the complaint with the investigator's supervisor.

4 2. The investigator may proceed with the investigation only if:

5 a. the supervisor determines the complaint is credible,

6 b. the complaint is not from an anonymous complainant,

7 and

8 c. prior to the investigation, the investigator informs  
9 the subject of the complaint of:

10 (1) except as provided in paragraph 2 or subparagraph  
11 a of paragraph 3 of subsection F of this section,  
12 the name of the complainant, and

13 (2) except as provided in paragraph 3 of this  
14 subsection, the substance of the complaint.

15 3. An investigator is not required to inform the subject of a  
16 complaint of the substance of the complaint prior to an  
17 investigation if doing so would jeopardize the investigation and  
18 would involve a serious risk of harm to a child. However, the  
19 investigator shall inform the subject of the complaint of the  
20 substance of the complaint as soon as doing so will no longer  
21 jeopardize the investigation.

22 H. If the Department is unable to substantiate a complaint, any  
23 record related to the complaint or the investigation of the  
24 complaint:

1 1. Shall be kept as a confidential and protected record; and

2 2. Shall be removed from the public online database.

3 I. All complaint calls shall be made to a centralized statewide  
4 number or entered through an online complaint submission process.

5 All calls shall be recorded and kept for ninety (90) days.

6 J. The Department has no authority:

7 1. Over areas such as the operational policies of a child care  
8 facility about payment, hours or days of operation, educational  
9 curriculum, whether a facility chooses not to administer medication,  
10 or enrollment or termination policies; and

11 2. To contact enrolled parents of children for interview unless  
12 the complaint involves a serious risk of harm to a child, or the  
13 child was named specifically as a witness or a victim in the  
14 complaint or revealed in an investigation.

15 K. Visits to the child care facility to investigate a complaint  
16 are limited to one visit unless there is serious risk of harm to a  
17 child.

18 L. Upon the substantiation of a complaint involving a serious  
19 risk of harm to a child, a Notice to Comply form is required to be  
20 completed by the facility.

21 M. Nothing in this section modifies or removes the mandate for  
22 reporting child abuse or neglect through the statewide child abuse  
23 hotline.

1 N. A person is guilty of a misdemeanor under Section 410 of  
2 Title 10 of the Oklahoma Statutes if the person gives false  
3 information to the Department with the purpose of inducing a change  
4 in that person's or another person's licensing or certification  
5 status and shall be subject to a fine not to exceed Two Hundred  
6 Dollars (\$200.00).

7 SECTION 3. This act shall become effective November 1, 2016.

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9 55-2-8056 EK 12/29/15

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