

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

As Engrossed: H3/3/11

A Bill

HOUSE BILL 1543

5 By: Representative Rice
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE CHILD WELFARE AGENCY LICENSING
9 ACT; TO CLARIFY WHOM THE ACT APPLIES TO; TO DECLARE
10 AN EMERGENCY; AND FOR OTHER PURPOSES.
11

Subtitle

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14 TO AMEND THE CHILD WELFARE AGENCY
15 LICENSING ACT; TO CLARIFY WHOM THE ACT
16 APPLIES TO; TO DECLARE AN EMERGENCY.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 9-28-402(2), concerning the definition of
22 "adverse action", is amended to read as follows:

23 (2) "Adverse action" means any petition by the ~~Division of~~
24 ~~Children and Family Services of the~~ Department of Human Services before the
25 Child Welfare Agency Review Board to take any of the following actions
26 against a licensee or applicant for a license:

- 27 (A) Revocation of license;
28 (B) Suspension of license;
29 (C) Conversion of license from regular or provisional
30 status to probationary status;
31 (D) Imposition of a civil penalty;
32 (E) Denial of application; or
33 (F) Reduction of licensed capacity;
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35 SECTION 2. Arkansas Code § 9-28-402(10), concerning the definition of
36 "division", is repealed.



1 ~~(10) “Division” means the division within the Department of~~
2 ~~Human Services that shall be designated by the Director of the Department of~~
3 ~~Human Services to administer this subchapter;~~
4

5 SECTION 3. Arkansas Code § 9-28-403(13), concerning the definition of
6 "foster home", is amended to read as follows:

7 (13) “Foster home” means a private residence of one (1) or more
8 family members that receives from a child placement agency any minor child,
9 juvenile member of a family in need of services, or dependent or dependent-
10 neglected juvenile under § 9-27-303 who is unattended by a parent or guardian
11 in order to provide care, training, education, custody, or supervision on a
12 twenty-four-hour basis, not to include adoptive homes;

13
14 SECTION 4. Arkansas Code § 9-28-402(16), concerning the definition of
15 "provisional foster home", is amended to read as follows:

16 (16) “Provisional foster home” means a foster home opened for no
17 more than six (6) months by the ~~division~~ Division of Children and Family
18 Services of the Department of Human Services for a relative of a child in the
19 custody of the Division of Children and Family Services after it:

20 (A) Conducts a health and safety check, including a
21 central registry check and a criminal background check or a check with local
22 law enforcement, of the relative’s home;

23 (B) Performs a visual inspection of the home of the
24 relative to verify that the relative and the home will meet the standards for
25 opening a regular foster home;

26
27 SECTION 5. Arkansas Code § 9-28-402(20), concerning the definition of
28 "Residential child care facility", is amended to read as follows:

29 (20) “Residential child care facility” means any child welfare
30 agency that provides care, training, education, custody, or supervision on a
31 twenty-four-hour basis for six (6) or more unrelated minors, juvenile members
32 of a family in need of services, or dependent or dependent-neglected
33 juveniles under § 9-27-303, excluding foster homes that have six (6) or more
34 minors, juvenile members of a family in need of services, or dependent or
35 dependent-neglected juveniles under § 9-27-303 who are all related to each
36 other but who are not related to the foster parents;

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SECTION 6. Arkansas Code § 9-28-403(c)(1) and (2), concerning the child welfare agency review board, is amended to read as follows:

(c)(1) The ~~division~~ Department of Human Services is designated as the governmental agency charged with the enforcement of ~~the provisions of~~ this subchapter.

(2) Only the ~~division~~ department, licensees, agencies specifically exempted by this subchapter, and applicants for a license shall have standing to initiate formal proceedings before the board, except when otherwise provided by law.

SECTION 7. Arkansas Code § 9-28-404(a)(1), concerning the Child Welfare Agency Review Board, is amended to read as follows:

(a) The Child Welfare Agency Review Board shall consist of Arkansas residents who shall be qualified as follows:

(1) The director of the division within the Department of Human Services designated by the Director of the Department of Human services to administer this subchapter or his or her designee;

SECTION 8. Arkansas Code § 9-28-404(c), concerning the Child Welfare Agency Review Board, is amended to read as follows:

(c) Members of the board shall serve without compensation, but each member of the board shall be entitled to reimbursement for expenses for necessary meals, lodging, and mileage in attending board meetings, to be payable from funds appropriated for the maintenance and operation of the ~~division~~ department.

SECTION 9. Arkansas Code § 9-28-405(c)(1)(J)(ii), concerning duties of the Child Welfare Agency Review Board, is amended to read as follows:

(ii) Provides clients seeking or receiving services from a child placement agency that provides adoption services with the phone number and address of the Child Welfare Agency Licensing Unit of the ~~Division of Children and Family Services of the~~ Department of Human Services where complaints can be lodged;

SECTION 10. Arkansas Code § 9-28-405(c)(1)(L), concerning duties of

1 the Child Welfare Agency Review Board, is amended to read as follows:

2 (L) Establish rules governing retention of licensing
3 records maintained by the ~~division~~ department.

4
5 SECTION 11. Arkansas Code § 9-28-405(d)(2), concerning the duties of
6 the Child Welfare Agency Review Board, is amended to read as follows:

7 (2)(A)(i) A child welfare agency that articulates a sincerely
8 held religious belief that is violated by a specific rule promulgated by the
9 board shall notify the ~~division~~ department in writing of the belief and the
10 specific rule that violates the belief.

11 (ii) The rule shall be presumptively invalid as
12 applied to that child welfare agency.

13 (B)(i) The ~~division~~ department may then file a petition
14 before the board seeking to enforce the rule.

15 (ii) The ~~division~~ department shall bear the burden
16 of showing that the health, safety, or welfare of children would be
17 endangered by the exemption, and if the board so finds by a preponderance of
18 the evidence, the board shall render a finding of fact so concluding.

19
20 SECTION 12. Arkansas Code § 9-28-405(f)(1)(B)(ii)-(iv), concerning the
21 duties of the Child Welfare Agency Review Board, are amended to read as
22 follows:

23 (ii) Furnishes or makes any statement or report to
24 the ~~division~~ department that is false or misleading;

25 (iii) Refuses or fails to submit required reports or
26 to make available to the ~~division~~ department any records required by it in
27 making an investigation of the agency for licensing purposes;

28 (iv) Refuses or fails to submit to an investigation
29 or to reasonable inspection by the ~~division~~ department;

30
31 SECTION 13. Arkansas Code § 9-28-405(j), concerning the duties of the
32 Child Welfare Agency Review Board, is amended to read as follows:

33 (j)(1)(A) The board shall notify the applicant or licensee of the
34 ~~division's~~ department's petition for adverse action in writing and set forth
35 the facts forming the basis for the request for the adverse action.

36 (B) This notice shall offer the licensee the opportunity

1 for a predeprivation adverse action hearing to determine if the adverse
2 action should be taken against the licensee or applicant.

3 (2) ~~Nothing in this~~ This section ~~shall~~ does not prevent
4 the ~~division~~ department or the board from closing a child welfare agency on
5 an emergency basis if emergency closure is immediately required to protect
6 the health, safety, or welfare of children, in which case the licensee shall
7 be entitled to a postdeprivation adverse action hearing.

8

9 SECTION 14. Arkansas Code § 9-28-405(m), concerning the duties of the
10 Child Welfare Agency Review Board, is amended to read as follows:

11 (m) All rules ~~and regulations~~ promulgated ~~pursuant to~~ under this
12 section and all public comment received in writing by the ~~division~~ department
13 in response shall be made available for review by the Senate Interim
14 Committee on Children and Youth and the Subcommittee on Children and Youth of
15 the House Committee on Aging, Children and Youth, Legislative and Military
16 Affairs, and by the Governor or his or her designee from among the Governor's
17 staff.

18

19 SECTION 15. Arkansas Code § 9-28-406 is amended to read as
20 follows:

21 9-28-406. ~~Division~~ Department enforcement duties.

22 (a)(1) The ~~division~~ Department of Human Services shall advise the
23 Child Welfare Agency Review Board regarding proposed rules and regulations.

24 (2) The ~~division~~ department shall obtain comments from the board
25 prior to initiating the rule promulgation process.

26 (b)(1) The board is authorized to make an inspection and investigation
27 of any proposed or operating child welfare agency and of any personnel
28 connected with that agency to the extent that an inspection and investigation
29 are necessary to determine whether the child welfare agency will be or is
30 being operated in accordance with this subchapter and the rules and
31 regulations promulgated by the board.

32 (2) The board may delegate this authority to any agencies of the
33 State of Arkansas whom the board deems proper.

34 (c)(1) The ~~division~~ department or any other public agency having
35 authority or responsibility with respect to child maltreatment shall have the
36 authority to investigate any alleged or suspected child maltreatment in any

1 child welfare agency, whether licensed or exempt.

2 (2) Nothing contained in this section shall be construed to
3 limit or restrict that authority.

4 (d)(1) The ~~division~~ department shall assist licensees and applicants
5 in complying with published rules and regulations by issuing advisory
6 opinions regarding matters of rule compliance when so requested.

7 (2) The procedure for issuing advisory opinions shall be as
8 follows:

9 (A)(i) Any licensee or applicant for a license may submit
10 a written request for an advisory opinion on whether or not a practice in any
11 planned or existing child welfare agency complies with the rules promulgated
12 pursuant to this subchapter.

13 (ii) The ~~division~~ department must respond to the
14 request in writing within twenty (20) business days of receiving the request.

15 (iii) If the ~~division's~~ department's response is
16 that the subject of the request would not comply with published standards,
17 the ~~division~~ department shall suggest an alternative practice that in its
18 opinion would comply with published standards when it is possible to do so;
19 and

20 (B)(i) A written opinion required in subdivision (d)(2)(A)
21 of this section is binding on the ~~division~~ department as a declaratory order
22 if the applicant or licensee has acted in reliance on the opinion.

23 (ii) Notwithstanding the foregoing, in no event
24 shall the advisory opinion be binding on the board if the compliance issue
25 that is the subject of the advisory opinion is presented to the board for
26 review.

27 (e)(1) The ~~division~~ department shall issue ~~corrective action notices~~ a
28 report following inspections of child welfare agencies as provided in this
29 subsection.

30 (2) If the ~~division~~ department finds that a child welfare agency
31 has failed to comply with an applicable law or rule and this failure does not
32 imminently endanger the health, safety, or welfare of the persons served by
33 the program, the ~~division~~ department shall issue a corrective action notice
34 with the report to the child welfare agency. The corrective action notice
35 must require the licensee to outline a corrective action plan. The ~~division's~~
36 department's corrective action notice shall contain:

1 (A) A factual description of the conditions that
2 constitute a violation of the law or rule;

3 (B) The specific law or rule violated; and

4 (C) A reasonable time frame within which the violation
5 must be corrected.

6 (3)(A)(i) If the child welfare agency believes that the contents
7 of the ~~division's~~ department's corrective action notice are in error, the
8 child welfare agency may ask licensing authorities to reconsider the parts of
9 the corrective action notice that are alleged to be in error.(ii) The
10 request for reconsideration must be in writing, delivered by certified mail,
11 specify the parts of the corrective action notice that are alleged to be in
12 error, explain why they are in error, and include documentation to support
13 the allegation of error.

14 (B)(i) The ~~division~~ department shall render a decision on
15 the request for reconsideration within fifteen (15) working days after the
16 date the request for reconsideration was received.

17 (ii) The licensee's request for reconsideration and
18 supporting documentation shall be retained by the ~~division~~ department and
19 made a part of the licensee's record.

20 (4)(A) If upon reinspection, the ~~division~~ department finds that
21 the licensee has corrected the violation or violations specified in the
22 corrective action notice, the division employee shall indicate this
23 correction and the date the correction was verified in the licensee's file.

24 (B) If upon reinspection, the ~~division~~ department finds
25 that the licensee has not corrected the violations specified in the
26 corrective action order within the required time frame, the ~~division~~
27 department may in its discretion petition the board to impose appropriate
28 adverse action against the licensee.

29 (C) In the case of an applicant for a license, if the
30 applicant has not corrected the violations in a previously issued corrective
31 action notice, the ~~division~~ department may recommend denial of the
32 application for a child welfare agency license.

33
34 SECTION 16. Arkansas Code § 9-28-407(c) and (d), concerning licenses
35 required and issued, are amended to read as follows:

36 (c)(1) Any person, partnership, group, corporation, organization,

1 association, or other entity or identifiable group of entities having a
2 coordinated ownership of controlling interest, desiring to operate a child
3 welfare agency shall first make application for a license or a church-
4 operated exemption for the facility to the board on the application forms
5 furnished for this purpose by the board.

6 (2)(A) The ~~division~~ department shall also furnish to the
7 applicant ~~with~~ upon request a copy of this subchapter and the policies and
8 procedures of the board at the time the person requests an application form.

9 (B) The child welfare agency shall submit a separate
10 application for license for each separate physical location of a child
11 welfare agency.

12 (d)(1) The ~~division~~ department shall review, inspect, and investigate
13 each applicant to operate a child welfare agency and shall present a
14 recommendation to the board whether the board should issue a license and what
15 the terms and conditions of the license should be.

16 (2) The ~~division~~ department shall complete its recommendation
17 within ninety (90) days after receiving a complete application from the
18 applicant. A complete application shall consist of:

19 (A) A completed application form prepared and furnished by
20 the board;

21 (B) A copy of the articles of incorporation, bylaws, and
22 current board roster, if applicable, including names and addresses of the
23 officers;

24 (C) A complete personnel list with verifications of
25 qualifications and experience;

26 (D) Substantiation of the financial soundness of the
27 agency's operation; and

28 (E) A written description of the agency's program of care,
29 including intake policies, types of services offered, and a written plan for
30 providing health care services to children in care.

31
32 SECTION 17. Arkansas Code § 9-28-407(f) and (g), concerning licenses
33 required and issued, are amended to read as follows:

34 (f)(1) A license to operate a child welfare agency shall apply only to
35 the address and location stated on the application and license issued, and it
36 ~~shall~~ may be transferable from one (1) holder of the license to another ~~or~~.

1 along with all capacity and rights of licensure, if permitted under
2 subdivision (f)(2) of this section, from one (1) place to another.

3 (2) Whenever ownership of a controlling interest in the
4 operation of a child welfare agency is sold, the following procedures ~~must~~
5 shall be followed:

6 (A) The seller shall notify the ~~division~~ department of the
7 sale at least thirty (30) days ~~prior to~~ before the completed sale;

8 (B) The seller shall remain responsible for the operation
9 of the child welfare agency until ~~such time as~~ the agency is closed or ~~a~~ an
10 amended license is issued to the buyer;

11 (C) The seller shall remain liable for all penalties
12 assessed against the child welfare agency that are imposed for violations ~~or~~
13 ~~deficiencies~~ occurring before the *transfer* of a license to the buyer;

14 (D) The buyer shall be subject to any corrective action
15 notices to which the seller was subject; and

16 (E) The provisions of subsection (a) of this section,
17 including those provisions regarding obtaining licenses or permits from the
18 office and regarding obtaining any permits from the Health Services Permit
19 Agency or the Health Services Permit Commission, shall apply in their
20 entirety to the new owner of the child welfare agency.

21 (g) If the board votes to issue a license to operate a child welfare
22 agency, the license must be posted in a conspicuous place in the child
23 welfare agency and must state at a minimum:

24 (1) The full legal name of the entity holding the license,
25 including the business name, if different;

26 (2) The address of the child welfare agency;

27 (3) The effective date and expiration date of the license, if
28 applicable;

29 (4) The type of child welfare agency the licensee is authorized
30 to operate;

31 (5) The maximum number and ages of children that may receive
32 services from the agency, if ~~the agency is not a child placement agency~~
33 applicable;

34 (6) The status of the license, whether regular, provisional, or
35 probationary; and

36 (7) Any special conditions or limitations of the license.

1
2 SECTION 18. Arkansas Code § 9-28-407(h)(1)(J), concerning licenses
3 required and issued, is amended to read as follows:

4 (J) To the Division of Children and Family Services of
5 the Department of Human Services and the department, including child welfare
6 agency licensing specialists;

7
8 SECTION 19. Arkansas Code § 9-28-407(h)(1)(W), concerning licenses
9 required and issued, is amended to add an additional subdivision to read as
10 follows:

11 (W)(i) To a person, agency, or organization engaged in a
12 bona fide research or evaluation project that is determined by the Division
13 of Children and Family Services of the Department of Human Services to have
14 value for the evaluation or development of policies and programs within the
15 Division of Children and Family Services of the Department of Human Services.

16 (ii) Any confidential information provided by the
17 Department of Human Services for a research or evaluation project under this
18 subdivision (h)(1)(W) shall not be redisclosed or published.

19
20 SECTION 20. Arkansas Code § 9-28-407(h)(2)(E), concerning licenses
21 required and issued, is amended to read as follows:

22 (E) To the Division of Children and Family Services of the
23 Department of Human Services and the department, including child welfare
24 agency licensing specialists;

25
26 SECTION 21. Arkansas Code § 9-28-409(b)(1), concerning criminal record
27 and child maltreatment checks, is amended to add additional subdivisions to
28 read as follows:

29 (E) Foster parents, house parents, and each member of the
30 household eighteen (18) years of age and older, excluding children in foster
31 care; and

32 (F)(i) Adoptive parents and each member of the household
33 eighteen (18) years of age and older, excluding children in foster care.

34 (ii) Adoptive parents and each member of the
35 household eighteen (18) years of age and older, excluding children in foster
36 care, who are not residents of Arkansas shall provide state-of-residence

1 criminal records checks, if available.

2
3 SECTION 22. Arkansas Code § 9-28-409(c)(1), concerning criminal record
4 and child maltreatment checks, is amended to add additional subdivisions to
5 read as follows:

6 (E) Foster parents, house parents, and each member of the
7 household eighteen (18) years of age and older, excluding children in foster
8 care; and

9 (F)(i) Adoptive parents and each member of the household
10 eighteen (18) years of age and older, excluding children in foster care.

11 (ii) Adoptive parents and each member of the
12 household eighteen (18) years of age and older, excluding children in foster
13 care, shall not be required to have a criminal background check performed by
14 the Federal Bureau of Investigation if:

15 (a) The adoptive parents and each member of
16 the household age eighteen (18) years of age and older, excluding children in
17 foster care, have continuously resided in a state for at least six (6) years
18 before the adoption; and

19 (b) The state-of-residence criminal records
20 check is available.

21
22 SECTION 23. EMERGENCY CLAUSE. It is found and determined by the
23 General Assembly of the State of Arkansas that the current child welfare
24 agency licensing act is in urgent need to updating; that certain provisions
25 of the act are unworkable and unclear, making it difficult of fulfill the
26 purpose of the act; and that this act is immediately necessary for the
27 Department of Human Services to carry out its duties with regard to child
28 welfare agency licensing. Therefore, an emergency is declared to exist and
29 this act being immediately necessary for the preservation of the public
30 peace, health, and safety shall become effective on:

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

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

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

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/s/Rice

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