

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

As Engrossed: S3/21/97

A Bill

HOUSE BILL 1929

4
5 By: Representative Ingram
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For An Act To Be Entitled

8
9 "AN ACT TO AMEND VARIOUS SECTIONS OF ARKANSAS CODE
10 ANNOTATED § 20-78-601 ET SEQ. RELATIVE TO BACKGROUND CHECKS
11 FOR CHILD CARE FACILITY OWNERS, OPERATORS, AND EMPLOYEES;
12 TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES."
13

Subtitle

14
15 "TO AMEND VARIOUS SECTIONS OF A.C.A.
16 § 20-78-601 ET SEQ. RELATIVE TO
17 BACKGROUND CHECKS FOR CHILD CARE
18 FACILITY OWNERS, OPERATORS, AND
19 EMPLOYEES."
20

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

22
23 SECTION 1. Arkansas Code Annotated § 20-78-601 is amended to read as
24 follows:

25 "20-78-601. Child Abuse Central Registry check - Owners, operators, and
26 prospective employees in licensed or church-operated exempt facilities.

27 (a)(1) All applicants for a church-operated exemption or a license to
28 own or operate a child care facility shall be checked with the Arkansas Child
29 Abuse Central Registry for reports of child maltreatment upon application for
30 the license or church-operated exemption and ~~during every child care facility~~
31 ~~license renewal~~ every two (2) years thereafter.

32 (2) All employees or conditional employees in licensed child
33 care facilities or facilities operating with a church-operated exemption shall
34 be checked with the Arkansas Child Abuse Central Registry for reports of child
35 maltreatment prior to hire and every two (2) years thereafter. ~~All employees~~
36 ~~in a child care facility shall further be checked with the registry for~~

1 ~~reports of child maltreatment during every child care facility license~~
2 ~~renewal.~~

3 (b) The Child Care Facility Review Board shall have the authority to
4 deny a license or church-operated exemption to any applicant found to have any
5 record of founded child maltreatment in the official record of the Arkansas
6 Child Abuse Central Registry.

7 (c) Any person employed in a licensed child care facility found to have
8 any record of child maltreatment in the official record of the Arkansas Child
9 Abuse Central Registry shall be reviewed by the owner or operator of the
10 facility in consultation with the board to determine appropriate corrective
11 action measures, which would include but are not limited to training,
12 probationary employment, or nonselection for employment. The Child Care
13 Facility Review Board shall also have the authority to deny a license or
14 church-operated exemption to an applicant who continues to employ a person
15 with any record of founded child maltreatment."
16

17 SECTION 2. Arkansas Code Annotated § 20-78-602 is amended to read as
18 follows:

19 "20-78-602. Criminal records check.

20 (a) Criminal Records Check - Owners and Operators.

21 (1) Each applicant for a license to own or operate a child care
22 facility shall be required to apply to the Identification Bureau of the
23 Department of Arkansas State Police for a statewide criminal records check and
24 a nationwide criminal records check, the latter to be conducted by the Federal
25 Bureau of Investigation. The nationwide criminal records check shall conform
26 to the applicable federal standards and shall include the taking of
27 fingerprints. Such applicant shall sign a release of information and shall be
28 responsible for the payment of any fee associated with the nationwide criminal
29 records check. The applicant shall not be assessed a fee for the statewide
30 criminal records check.

31 (2) In the event a legible set of fingerprints, as determined by
32 the Identification Bureau of the Arkansas State Police and the Federal Bureau
33 of Investigation, cannot be obtained after a minimum of three (3) attempts,
34 the Child Care Facilities Review Board shall determine eligibility based upon
35 a name check by the Identification Bureau of the Arkansas State Police and the
36 Federal Bureau of Investigation.

1 _____~~(2)~~(3) Upon completion of the criminal records checks, the
2 Identification Bureau of the Department of Arkansas State Police shall forward
3 all information obtained concerning the applicant for a license to the Child
4 Care Facility Review Board.

5 (b) Criminal Records Check - Employees.

6 (1)(A) Any employee or conditional employee, if that employment
7 involves supervisory or disciplinary power over a child or children, or
8 involves contact with a child or children, in any child care facility which is
9 required to be licensed by the board, who has not been a resident of the state
10 of Arkansas for the preceding six (6) years, shall apply to the Identification
11 Bureau of the Department of Arkansas State Police for a statewide criminal
12 records check, and a nationwide criminal records check to be conducted through
13 the Federal Bureau of Investigation. The nationwide criminal records check
14 shall conform to the applicable federal standards and shall include the taking
15 of fingerprints. Upon applying for a criminal records check, such person shall
16 sign a release of information and shall be responsible for the payment of any
17 fee associated with the nationwide criminal records check. The applicant shall
18 not be assessed a fee for the statewide criminal records check.

19 (B) In the event a legible set of fingerprints, as
20 determined by the Identification Bureau of the Department of Arkansas State
21 Police and the Federal Bureau of Investigation, cannot be obtained after a
22 minimum of three (3) attempts, the Child Care Facilities Review Board will
23 determine eligibility for employment based upon a name check by the
24 Identification Bureau of the Department of Arkansas State Police and the
25 Federal Bureau of Investigation.

26 _____~~(B)~~(C) Any employee, if that employment involves
27 supervisory or disciplinary power over a child or children, or involves
28 contact with a child or children, in any child care facility which is required
29 to be licensed by the board, who has been a resident of the State of Arkansas
30 for the preceding six (6) years, shall only be required to apply to the
31 Identification Bureau of the Department of Arkansas State Police for a
32 statewide criminal records check. The applicant shall not be assessed a fee
33 for the statewide criminal records check.

34 (2) Upon completion of a criminal records check, the
35 Identification Bureau of the Department of Arkansas State Police shall forward
36 all information obtained concerning the employee or conditional employee in a

1 child care facility to the Child Care Facility Review Board.

2 (3) The owner or operator of a child care facility shall maintain
3 on file, subject to inspection by the board, evidence that criminal records
4 checks have been initiated on all current employees hired on or after
5 September 1, 1993, and the results of the checks. Failure to maintain that
6 evidence on file will be prima facie grounds to revoke the license of the
7 owner or operator of the child care facility.

8 (c) Procedures Generally.

9 (1) Each applicant for a license to own or operate a child care
10 facility, and each employee in any child care facility required to be licensed
11 by the board, shall complete a criminal records check form developed by the
12 Department of Human Services and shall sign such form under oath before a
13 notary public.

14 (2) The owner or operator of the child care facility shall submit
15 the criminal records check form to the department for processing within ten
16 (10) days of hiring the employee, who shall remain under conditional
17 employment until the Arkansas Child Abuse Central Registry check and criminal
18 records checks required under this subchapter are completed.

19 (3) Nothing in this section shall be construed to prevent the
20 board from denying a license to an owner or preventing an operator or employee
21 in a child care facility from having unsupervised access to children by reason
22 of the pending status of a criminal prosecution or pending appeal of a child
23 maltreatment determination.

24 (d)(1) An owner or operator of a child care facility shall not be
25 liable during a conditional period of employment for hiring an employee who
26 may be subject to a charge of false swearing upon completion of central
27 registry and criminal records checks.

28 (2)(A) Pursuant to this subchapter, false swearing shall occur
29 when a person, while under oath, provides false information or omits
30 information that the person knew or should reasonably have known was material.

31 (B) Lack of knowledge that information is material is not a
32 defense to a charge of false swearing.

33 (3) For purposes of this subchapter, false swearing is a Class A
34 misdemeanor.

35 (e) Repeat Checks.

36 (1) After the initial checks, licensed owners or operators of

1 child care facilities and all child care facility employees shall reapply
2 every five (5) years to the Identification Bureau of the Department of
3 Arkansas State Police for a statewide criminal records check, which, upon
4 completion, shall be forwarded to the Child Care Facility Review Board.

5 (2) The applicants shall not be assessed a fee for the statewide
6 criminal records check required under this subsection.

7 (f) All applicants for a church-operated exemption and their employees
8 shall comply with this section, in addition to applicants for a license to own
9 or operate a child care facility and their employees."

10

11 SECTION 3. Arkansas Code Annotated § 20-78-604 is amended to read as
12 follows:

13 "20-78-604. Qualifications for child care ownership, operation, or
14 employment.

15 (a) Without proof of rehabilitation, as provided in subsection (b) of
16 this section, no person shall be eligible to be a child care facility owner,
17 operator, or employee in a licensed or church-operated exempt facility if that
18 person has pleaded guilty or nolo contendere or has been found guilty of any
19 of the following offenses by any court in the State of Arkansas or of any
20 similar offense by a court in another state or of any similar offense by a
21 federal court:

22 (1) Capital murder as prohibited in § 5-10-101;

23 (2) Murder in the first and second degrees as prohibited in
24 §§ 5-10-102 and 5-10-103;

25 (3) Manslaughter as prohibited in § 5-10-104;

26 (4) Battery in the first and second degrees as prohibited in
27 §§ 5-13-201 and 5-13-202;

28 (5) Aggravated assault as prohibited in § 5-13-204;

29 (6) Terroristic threatening in the first degree as prohibited in
30 § 5-13-301;

31 (7) Kidnapping as prohibited in § 5-11-102;

32 (8) False imprisonment in the first degree as prohibited in
33 § 5-11-103;

34 (9) Permanent detention or restraint as prohibited in § 5-11-106;

35 (10) Rape and carnal abuse in the first and second degrees as
36 prohibited in §§ 5-14-103 - 5-14-105;

- 1 (11) Sexual abuse in the first and second degrees as prohibited
- 2 in §§ 5-14-108 and 5-14-109;
- 3 (12) Violation of a minor in the first and second degrees as
- 4 prohibited in §§ 5-14-120 and 5-14-121;
- 5 (13) Incest as prohibited in § 5-26-202;
- 6 (14) Endangering the welfare of a minor in the first degree as
- 7 prohibited in § 5-27-203;
- 8 (15) Permitting child abuse as prohibited in subdivisions (a)(1)
- 9 and (a)(3) of § 5-27-221;
- 10 (16) Engaging children in sexually explicit conduct for use in
- 11 visual or print media, transportation of minors for prohibited sexual conduct,
- 12 or use of a child or consent to use of a child in a sexual performance by
- 13 producing, directing, or promoting a sexual performance by a child as
- 14 prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;
- 15 (17) Criminal attempt, criminal solicitation, or criminal
- 16 conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401 to
- 17 commit any of the offenses listed in this section;
- 18 (18) Distribution to minors as prohibited in § 5-64-406;
- 19 (19) Manufacture, delivery, or possession with intent to
- 20 manufacture or deliver any controlled substance as prohibited in § 5-64-401;
- 21 ~~and~~
- 22 (20) ~~Any felony or any misdemeanor involving violence or moral~~
- 23 ~~turpitude.~~ Carnal abuse in the third degree as prohibited in § 5-14-106;
- 24 (21) Sexual solicitation of a child as prohibited in § 5-14-110;
- 25 (22) Pandering or possessing visual or print medium depicting
- 26 sexually explicit conduct involving a child as prohibited by § 5-27-304;
- 27 (23) Negligent homicide as prohibited by § 5-10-105;
- 28 (24) Assault in the first degree as prohibited by § 5-13-205;
- 29 (25) Coercion as prohibited by § 5-13-208;
- 30 (26) Sexual misconduct as prohibited by § 5-14-107;
- 31 (27) Public sexual indecency as prohibited by § 5-14-111;
- 32 (28) Indecent exposure as prohibited by § 5-14-112;
- 33 (29) Endangering the welfare of a minor in the second degree as
- 34 prohibited by § 5-27-204; and
- 35 (30) Any felony or any misdemeanor involving violence or sexual
- 36 misconduct.

1 (b)(1) Any person pleading guilty or nolo contendere or found guilty of
 2 any of the offenses listed in subsection (a) of this section ~~who can~~
 3 ~~demonstrate rehabilitation, where more than five (5) years have passed since~~
 4 ~~the person was released from confinement, probation, or parole, may appear~~
 5 ~~before the Child Care Facility Review Board to present his case that he is~~
 6 ~~qualified to be a child care facility owner, operator, or employee. The board~~
 7 ~~is authorized to determine when a petitioner has been rehabilitated~~
 8 ~~sufficiently to be a child care facility owner, operator, or employee shall be~~
 9 absolutely disqualified to be an owner, operator, or employee in a child care
 10 facility, licensed or church-operated exempt, during the period of their
 11 confinement, probation, or parole.

12 (2) Any person pleading guilty or nolo contendere or found guilty
 13 of any of the offenses listed in subsection (a) of this section shall be
 14 presumed to be disqualified to be an owner, operator, or employee in a child
 15 care facility, licensed or church-operated exempt, after the completion of
 16 their term of confinement, probation, or parole.

17 (A) The applicant to own, operate, or be an employee in a
 18 licensed or church-operated exempt facility must petition the Child Care
 19 Facility Review Board to make a determination that five (5) years have passed
 20 since the date of conviction, plea of guilty or nolo contendere and that the
 21 applicant does not pose a risk of harm to any person served by the facility.
 22 The applicant shall bear the burden of making such showing.

23 (B) The board, in its discretion, may permit the applicant
 24 to own, operate, or be an employee in a child care facility, licensed or
 25 church-operated exempt, upon making a determination that five (5) years have
 26 passed since the date of conviction, plea of guilty or nolo contendere and
 27 that the applicant does not pose a risk of harm to any person served by the
 28 facility."

29

30 SECTION 4. Arkansas Code Annotated § 20-78-605 is amended to read as
 31 follows:

32 "20-78-605. Definitions - Volunteers records check.

33 ~~(a)~~ As used in this subchapter, unless the context otherwise requires:

34 (1) Employee means a person in the service of a child care facility,
 35 other than a person providing auxiliary services under a professional license,
 36 whether full-time or part-time and whether employed by contract or at-will, in

1 which the employer has authority to control the person in the material details
2 of how work will be performed and when compensation will be provided; and

3 (A) Compensation will be provided; or

4 (B) The person is a volunteer who has supervisory or disciplinary
5 control over children or who is left alone with children.

6 (2) Volunteer means a person who provides his services without any
7 express or implied promise of compensation.

8 ~~—————(b)(1)(A)~~ Volunteers who are not left alone with children or who
9 do not have disciplinary control over children in child care facilities shall
10 not be required to have criminal records checks.

11 ~~—————(2)(B)~~ All volunteers shall be checked with the Arkansas Child
12 Abuse Central Registry for reports of child maltreatment.

13 (3) Owner means any person who assumes the legal responsibility for
14 operation of a child care facility by signing the application for a license or
15 for an exemption.

16 (4) Operator means any person who is responsible for managing
17 day-to-day operation of a child care facility."

18

19 SECTION 5. All provisions of this act of a general and permanent nature
20 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
21 Revision Commission shall incorporate the same in the Code.

22

23 SECTION 6. If any provision of this act or the application thereof to
24 any person or circumstance is held invalid, such invalidity shall not affect
25 other provisions or applications of the act which can be given effect without
26 the invalid provision or application, and to this end the provisions of this
27 act are declared to be severable.

28

29 SECTION 7. All laws and parts of laws in conflict with this act are
30 hereby repealed.

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32 SECTION 8. EMERGENCY. It is found and determined by the General
33 Assembly of the State of Arkansas that the immediate effectiveness of this Act
34 is essential to the safety and well-being of Arkansas children who are cared
35 for in child care facilities. Therefore an emergency is declared to exist and
36 this act being immediately necessary for the preservation of the public peace,

1 health and safety shall become effective on the date of its approval by the
2 Governor. If the bill is neither approved nor vetoed by the Governor, it
3 shall become effective on the expiration of the period of time during which
4 the Governor may veto the bill. If the bill is vetoed by the Governor and the
5 veto is overridden, it shall become effective on the date the last house
6 overrides the veto.

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/s/Ingram