

1 State of Arkansas
2 78th General Assembly
3 Regular Session, 1991

A Bill

ACT 888 OF 1991

HOUSE BILL 1655

4 By: Representatives Goodwin, Pollan, and Flanagan

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For An Act To Be Entitled

8 "AN ACT TO AMEND TITLE 20, CHAPTER 78, SUBCHAPTER 2 OF THE
9 ARKANSAS CODE OF 1987 TO ESTABLISH THE OPERATION OF AN
10 UNLICENSED CHILD CARE FACILITY AS A CLASS A VIOLATION; TO
11 LIMIT COURT ORDERED STAYS OF ACTION OF THE BOARD; AND FOR
12 OTHER PURPOSES."

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

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16 SECTION 1. Arkansas Code §20-78-203 is hereby amended to read as
17 follows:

18 "20-78-203. Penalties.

19 (a) Any person violating any provisions of this subchapter and any
20 person assisting any partnership, group, corporation, organization, or
21 association in violating any provisions of this subchapter shall be deemed
22 guilty of a misdemeanor and upon conviction shall be fined in any sum not less
23 than twenty-five dollars (\$25.00) and not more than one hundred dollars
24 (\$100). Each day of the violation shall constitute a separate offense.

25 (b) The Child Care Facility Review Board is authorized to impose
26 monetary fines as civil penalties to be paid for failure to comply with the
27 provisions of this subchapter or the regulations promulgated pursuant thereto.
28 In determining whether a civil penalty is to be imposed, the following
29 factors shall be considered by the board:

30 (1) The gravity of the violation, including the probability that
31 death or serious physical harm to a resident will result or has resulted; the
32 severity and scope of the actual or potential harm; and the extent to which
33 the provisions of the applicable statutes or regulations were violated;

34 (2) The exercise of 'good faith'. Indications of good faith
35 include, but are not limited to, awareness of the applicable statutes and
36 regulations and reasonable diligence in securing compliance, prior

1 accomplishments manifesting the desire to comply with the requirements,
 2 efforts to correct, and any other mitigating factors in favor of the operator;

3 (3) Any relevant previous violations committed;

4 (4) The financial benefit of committing or continuing the
 5 violation.

6 (c) Prior to the imposition of monetary fines, the Child Care Facility
 7 Review Board shall provide notice and an opportunity to be heard in accordance
 8 with hearing procedures in effect for the revocation or suspension of
 9 licenses.

10 (d) The Child Care Facility Review Board shall publish and promulgate
 11 rules and regulations classifying violations as follows:

12 (1) Class A violations involve essential standards which must be
 13 met for substantial compliance to licensing requirements. Operation of an
 14 unlicensed *child care* facility shall be considered a Class A violation.
 15 *However, the definition of unlicensed child care facility shall not be*
 16 *interpreted to include exempt child care facilities as defined in Arkansas*
 17 *Code 20-78-209. These standards address fire, health, safety, nutrition,*
 18 *staff/child ratio, and space. Class A violations are subject to a civil*
 19 *penalty of one hundred dollars (\$100) for each violation;*

20 (2) Class B violations involve administrative standards and
 21 standards which do not directly threaten the immediate health, safety, or
 22 welfare of the children. Class B violations are subject to a civil penalty of
 23 fifty dollars (\$50.00) for each violation;

24 (3) Each day of occurrence of a Class A or B violation shall
 25 constitute a separate violation. Aggregate fines assessed for violation in
 26 any one (1) month shall not exceed five hundred dollars (\$500) for Class A
 27 violations or two hundred fifty dollars (\$250) for Class B violations.

28 (e) *When a facility has been found by the Child Care Facility Review*
 29 *Board to have committed Class A or B violations, upon final administrative*
 30 *determination by the Board, notice shall be posted in the facility stating the*
 31 *violations found by the Board to have occurred, and the current status of the*
 32 *license. This notice shall be posted in the facility, in a conspicuous place,*
 33 *clearly visible to all staff, all other individuals in the facility, and to*
 34 *all visitors to the facility.*

35 (f) *Failure to post a proper notice as required by this section, shall*

1 *be considered to be a Class B violation for which civil penalties may be*
2 *imposed as authorized by this section. Each day of non-compliance constitutes*
3 *a separate offense."*

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5 SECTION 2. Arkansas Code §20-78-206 is hereby amended to read as
6 follows:

7 "20-78-206. Child Care Facility Review Board - Rules and regulations.

8 (a) The board shall promulgate and publish rules and regulations
9 setting minimum standards governing the granting, revocation, refusal, and
10 suspension of licenses for a child care facility and the operation of a child
11 care facility.

12 (1) The Department of Human Services shall advise the board
13 regarding proposed rules and regulations and, in developing proposed rules and
14 regulations, shall consult with the Director of the Department of Health or
15 his designated representative in regard to rules and regulations relating to
16 health. The board shall consult with the Director of General Education
17 Division of the Department of Education or his designated representative in
18 regard to rules and regulations relating to education.

19 (2) The Director of the Department of Health and the Director of
20 the General Education Division of the Department of Education and their
21 designated representatives are directed to cooperate with and assist the board
22 in developing rules and regulations in the respective areas of health and
23 education.

24 (3) In developing these rules and regulations, the board may
25 consult with such other agencies, organizations, or individuals as it shall
26 deem appropriate.

27 (4) Rules and regulations promulgated by the board pursuant to
28 this section may be amended by the board from time to time, provided any
29 amendment to the rules and regulations shall be published and furnished to all
30 licensed child care facilities and applicants for a license at least sixty
31 (60) days prior to the effective date of the amendment.

32 (b) In establishing requirements and standards for the granting,
33 revoking, refusing, and suspending of a license for a child care facility, the
34 board shall adopt such rules and regulations as will:

35 (1) Promote the health, safety, and welfare of children attending

1 a child care facility;

2 (2) Promote safe, comfortable, and healthy physical facilities
3 for the children who attend the child care facility;

4 (3) Ensure adequate supervision of the children by capable,
5 qualified, and healthy individuals;

6 (4) Ensure appropriate educational programs and activities within
7 each child care facility; and

8 (5) Ensure adequate and healthy food service where food service
9 is offered by the child care facility.

10 (c) The board shall follow the procedures prescribed for adjudication
11 in the Arkansas Administrative Procedure Act, 25-15-201 et seq., in exercising
12 any power authorized by 20-78-213.

13 (d) If, upon the filing of a petition for a judicial review, the
14 reviewing court enters a stay prohibiting enforcement of a decision of the
15 Child Care Facility Review Board, the court shall complete its review of the
16 record and announce its decision within one hundred twenty (120) days of the
17 entry of the stay. If the court does not issue its findings within one
18 hundred twenty (120) days of the issuance of the stay, the stay shall be
19 considered vacated."

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21 SECTION 3. Arkansas Code §20-78-208 is hereby amended to read as
22 follows:

23 "20-78-208. Unlicensed child care facility unlawful.

24 (a) It shall be unlawful for any person, partnership, group,
25 corporation, organization, or association to operate or assist in the
26 operation of a child care facility which has not been licensed by the board.

27 (b) It shall be unlawful for any person to falsify an application for
28 licensure, to knowingly circumvent the authority of the Child Care Facility
29 Licensing Act, to knowingly violate the orders issued by the Child Care
30 Facility Review Board or to advertise the provision of child care which is not
31 licensed or approved or exempt by the Child Care Facility Review Board.

32 (c) A violation of this section shall be a Class C misdemeanor."
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34 SECTION 4. All rules and regulations promulgated pursuant to this act
35 shall be reviewed by the Joint Committee on Children and Youth or an

1 *appropriate subcommittee thereof.*

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

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7 SECTION 6. If any provision of this act or the application thereof to
8 any person or circumstance is held invalid, such invalidity shall not affect
9 other provisions or applications of the act which can be given effect without
10 the invalid provision or application, and to this end the provisions of this
11 act are declared to be severable.

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

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16 */s/Larry Goodwin, et al*

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18 APPROVED: 3/29/91

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