

*As Engrossed: 3/21/95*

1 **State of Arkansas**  
2 **80th General Assembly**  
3 **Regular Session, 1995**

# **A Bill**

**ACT 1280 OF 1995**  
**HOUSE BILL 2150**

4 **By: Representatives Pollan and Wilkins**

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## **For An Act To Be Entitled**

8 "AN ACT TO AMEND VARIOUS SECTIONS OF TITLE 20, CHAPTER 78  
9 OF THE ARKANSAS CODE RELATIVE TO DUTIES AND  
10 RESPONSIBILITIES OF THE CHILD CARE FACILITY REVIEW BOARD  
11 AND BACKGROUND CHECKS OF CHILD CARE FACILITY OWNERS,  
12 OPERATORS, AND EMPLOYEES; TO DECLARE AN EMERGENCY; AND FOR  
13 OTHER PURPOSES."

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15

## **Subtitle**

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

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24 SECTION 1. Arkansas Code Annotated § 20-78-401 is hereby amended to  
25 read as follows:

26

"20-78-401. Creation - Members - Meetings.

27

(a) There is created the Child Care Providers' Committee.

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(b)(1) The committee shall be composed of seven (7) persons appointed

29 by the Governor as follows:

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(A) One (1) appointee shall be a family day care provider;

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(B) One (1) appointee shall be a day care center provider;

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(C) One (1) appointee shall be active in the Head Start

33 Program;

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(D) One (1) appointee shall be a member of the Child Care

35 Facilities Review Board;

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(E) One (1) appointee shall be an employee of the Division

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1 of Children and Family Services of the Department of Human Services;

2 (F) One (1) appointee shall be an early childhood education  
3 professional; and

4 (G) One (1) appointee shall be a parent.

5 (2) At least one (1) appointee shall reside in the present First  
6 Congressional District, at least one (1) appointee shall reside in the present  
7 Second Congressional District, at least one (1) appointee shall reside in the  
8 present Third Congressional District, and at least one (1) appointee shall  
9 reside in the present Fourth Congressional District. The members of the  
10 committee shall serve three-year staggered terms.

11 (c) The chairman shall be selected annually by a majority vote of the  
12 entire membership of the committee.

13 (d) The committee shall meet at least once annually.

14 (e) Members of the Child Care Providers' Committee shall serve without  
15 compensation or per diem but shall be entitled to reimbursement for expenses  
16 as prescribed for state employees by state travel regulations."

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18 SECTION 2. Arkansas Code Annotated § 20-78-402 is hereby amended to  
19 read as follows:

20 "20-78-402. Duties and powers.

21 The Child Care Providers' Committee, working with the Department of  
22 Human Services, shall:

23 (1) Develop an annual comprehensive training program for child care  
24 providers;

25 (2) Solicit proposals for child care provider training contracts and  
26 award contracts to those applicants who meet the committee's training  
27 requirements;

28 (3) Purchase materials for loan to child care providers to assist in  
29 staff training; and

30 (4) Exercise such other powers as necessary to implement this  
31 subchapter."

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33 SECTION 3. Arkansas Code Annotated § 20-78-403 is hereby amended to  
34 read as follows:

35 "20-78-403. License fees - Disposition.

1 (a) The Child Care Facility Review Board shall issue no license to a  
2 child care facility or renew a license unless the license fee is paid at the  
3 time of issuing or renewing a license. The license fee is fifteen dollars  
4 (\$15.00) per year for child care facilities serving less than seventeen (17)  
5 children. The license fee is fifty dollars (\$50.00) per year for child care  
6 facilities serving seventeen (17) to ninety-nine (99) children and one hundred  
7 dollars (\$100.00) per year for child care facilities serving one hundred (100)  
8 or more children.

9 (b) The Child Care Facility Review Board shall transmit through the  
10 Department of Human Services the fees monthly to the State Treasurer to be  
11 deposited as special revenues in the Child Care Providers' Fund."  
12

13 SECTION 4. Arkansas Code Annotated § 20-78-404 is hereby amended to  
14 read as follows:

15 "20-78-404. Child Care Providers' Fund.

16 (a) There is established on the books of the State Treasurer, the State  
17 Auditor, and the Chief Fiscal Officer of the State the Child Care Providers'  
18 Fund, to be administered by the Department of Human Services.

19 (b) The State Treasurer shall certify to the Director of the Department  
20 of Human Services on a monthly basis the amount of fees transmitted by the  
21 Child Care Facility Review Board, and the director shall transmit to the State  
22 Treasurer for deposit into the Child Care Providers' Fund, from funds  
23 appropriated for the maintenance and operation of the Department of Human  
24 Services, an amount of money equal to one-half of the fees transmitted to the  
25 State Treasurer."  
26

27 SECTION 5. Arkansas Code Annotated § 20-78-405 is hereby amended to  
28 read as follows:

29 "20-78-405. Purchase of training material.

30 The amount of the moneys deposited in the Child Care Providers' Fund  
31 shall be expended to meet the costs of conducting the statewide criminal  
32 record checks required under § 20-78-602, with the remaining moneys used to  
33 purchase training or materials for loan to child care providers *with*  
34 *recommendations from the Child Care Providers' Committee and approval of the*  
35 Department of Human Services. Funds sufficient to cover the costs of the

1 statewide criminal records checks, not to exceed total revenues in the Child  
2 Care Providers' Fund, shall be disbursed on a quarterly basis to the Arkansas  
3 State Police by the Department of Human Services."

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5       SECTION 6. Arkansas Code Annotated § 20-78-406 is hereby amended to  
6 read as follows:

7       "20-78-406. Facilities and staff -- Review of contracts.

8       The Department of Human Services, through its Division of Children and  
9 Family Services, shall provide facilities and staff support for the Child Care  
10 Providers' committee. Furthermore, all contracts let by the Department of  
11 Human Services for child care provider training shall be submitted to the  
12 committee for review and advice so that a coordinated statewide training plan  
13 for providers may be maintained."

14

15       SECTION 7. Arkansas Code Annotated § 20-78-601 is hereby amended to  
16 read as follows:

17       "20-78-601. Child abuse central registry check - Owners, operators, and  
18 prospective employees.

19       (a)(1) All applicants for a license to own or operate a child care  
20 facility shall be checked with the Arkansas Child Abuse Central Registry for  
21 reports of child maltreatment upon application for the license and during  
22 every child care facility license renewal.

23       (2) All employees or conditional employees shall be checked with  
24 the Arkansas Child Abuse Central Registry for reports of child maltreatment.  
25 All employees in a child care facility shall further be checked with the  
26 registry for reports of child maltreatment during every child care facility  
27 license renewal.

28       (b) The Child Care Facility Review Board shall have the authority to  
29 deny a license to any applicant found to have any record of founded child  
30 maltreatment in the official record of the Arkansas Child Abuse Central  
31 Registry.

32       (c) Any person employed in a licensed child care facility found to have  
33 any record of child maltreatment in the official record of the Arkansas Child  
34 Abuse Central Registry shall be reviewed by the owner or operator of the  
35 facility in consultation with the board to determine appropriate corrective

1 action measures, which would include but are not limited to training,  
2 probationary employment, or nonselection for employment. The Child Care  
3 Facility Review Board shall also have the authority to deny a license to an  
4 applicant who continues to employ a person with any record of founded child  
5 maltreatment."

6

7 SECTION 8. Arkansas Code Annotated § 20-78-602 is hereby amended to  
8 read as follows:

9 "20-78-602. Criminal records check.

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

11 (1) Each applicant for a license to own or operate a child care  
12 facility shall be required to apply to the Identification Bureau of the  
13 Department of Arkansas State Police for a statewide criminal records check and  
14 a nationwide criminal records check, the latter to be conducted by the Federal  
15 Bureau of Investigation. The nationwide criminal records check shall conform  
16 to the applicable federal standards and shall include the taking of  
17 fingerprints. Such applicant shall sign a release of information and shall be  
18 responsible for the payment of any fee associated with the nationwide criminal  
19 records check. The applicant shall not be assessed a fee for the statewide  
20 criminal records check.

21 (2) Upon completion of the criminal records checks, the  
22 Identification Bureau of the Department of Arkansas State Police shall forward  
23 all information obtained concerning the applicant for a license to the Child  
24 Care Facility Review Board.

25 (b) Criminal Records Check - Employees.

26 (1)(A) Any employee or conditional employee, if that employment  
27 involves supervisory or disciplinary power over a child or children, or  
28 involves contact with a child or children, in any child care facility which is  
29 required to be licensed by the board, who has not been a resident of the state  
30 of Arkansas for the preceding six (6) years shall apply to the Identification  
31 Bureau of the Department of Arkansas State Police for a statewide criminal  
32 records check and nationwide criminal records check, to be conducted through  
33 the Federal Bureau of Investigation. The nationwide criminal records check  
34 shall conform to the applicable federal standards and shall include the taking  
35 of fingerprints. Upon applying for a criminal records check, such person

1 shall sign a release of information and shall be responsible for the payment  
2 of any fee associated with the nationwide criminal records check. The  
3 applicant shall not be assessed a fee for the statewide criminal records  
4 check.

5 (B) Any employee, if that employment involves supervisory  
6 or disciplinary power over a child or children, or involves contact with a  
7 child or children, in any child care facility which is required to be licensed  
8 by the board, who has been a resident of the state of Arkansas for the  
9 preceding six (6) years shall only be required to apply to the Identification  
10 Bureau of the Department of Arkansas State Police for a statewide criminal  
11 record check. The applicant shall not be assessed a fee for the statewide  
12 criminal records check.

13 (2) Upon completion of a criminal records check, the  
14 Identification Bureau of the Department of Arkansas State Police shall forward  
15 all information obtained concerning the employee or conditional employee in a  
16 child care facility to the Child Care Facility Review Board.

17 (3) The owner or operator of a child care facility shall maintain  
18 on file, subject to inspection by the board, evidence that criminal records  
19 checks have been initiated on all current employees hired on or after  
20 September 1, 1993, and the results of the checks. Failure to maintain that  
21 evidence on file will be prima facia grounds to revoke the license of the  
22 owner or operator of the child care facility.

23 (c)(1) Each applicant for a license to own or operate a child care  
24 facility, and each employee in any child care facility required to be licensed  
25 by the board, shall complete a criminal records check form developed by the  
26 Department of Human Services and shall sign such form under oath before a  
27 notary public. The owner or operator of the child care facility shall submit  
28 the criminal records check form to the department for processing within ten  
29 (10) days of hiring the employee, who shall remain under conditional  
30 employment until the Arkansas Child Abuse Central Registry check and criminal  
31 records check required under this subchapter are completed.

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

35 (A) Lack of knowledge that information is material is not a

1 defense to a charge of false swearing.

2 (B) For purposes of this subchapter, false swearing is a  
3 *Class A misdemeanor*.

4 (C) An owner or operator of a child care facility shall not  
5 be liable during a conditional period of employment for hiring an employee who  
6 may be subject to a charge of false swearing upon completion of a central  
7 registry and criminal records check.

8 (d) After the initial check, licensed owners or operators of child care  
9 facilities and all child care facility employees shall reapply every five (5)  
10 years to the Identification Bureau of the Department of Arkansas State Police  
11 for a statewide criminal records check, which, upon completion, shall be  
12 forwarded to the Child Care Facility Review Board. The applicants shall not  
13 be assessed a fee for the statewide criminal records check required under this  
14 subsection."

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16 SECTION 9. Arkansas Code Annotated § 20-78-603 is hereby repealed.

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18 SECTION 10. Arkansas Code Annotated § 20-78-604 is hereby amended to  
19 read as follows:

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

22 (a) Without proof of rehabilitation, as provided in subsection (b) of  
23 this section, no person shall be eligible to be a child care facility owner,  
24 operator, or employee if that person has pleaded guilty, nolo contendere, or  
25 been found guilty of any of the following offenses by any court in the state  
26 of Arkansas or of any similar offense by a court in another state or of any  
27 similar offense by a federal court:

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

29 (2) Murder in the first and second degrees as prohibited in  
30 §§ 5-10-102 and 5-10-103;

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

32 (4) Battery in the first and second degrees as prohibited in  
33 §§ 5-13-201 and 5-13-202;

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

35 (6) Terroristic threatening in the first degree as prohibited in

- 1 § 5-13-301;
- 2 (7) Kidnapping as prohibited in § 5-11-102;
- 3 (8) False imprisonment in the first degree as prohibited in
- 4 § 5-11-103;
- 5 (9) Permanent detention or restraint as prohibited in § 5-11-106;
- 6 (10) Rape and carnal abuse in the first and second degrees as
- 7 prohibited in §§ 5-14-103 - 5-14-105;
- 8 (11) Sexual abuse in the first and second degrees as prohibited
- 9 in §§ 5-14-108 and 5-14-109;
- 10 (12) Violation of a minor in the first and second degrees as
- 11 prohibited in §§ 5-14-120 and 5-14-121;
- 12 (13) Incest as prohibited in § 5-26-202;
- 13 (14) Endangering the welfare of a minor in the first degree as
- 14 prohibited in § 5-27-203;
- 15 (15) Permitting child abuse as prohibited in subdivisions (a) (1)
- 16 and (a) (3) of § 5-27-221;
- 17 (16) Engaging children in sexually explicit conduct for use in
- 18 visual or print media, transportation of minors for prohibited sexual conduct,
- 19 or use of a child or consent to use of a child in a sexual performance by
- 20 producing, directing, or promoting a sexual performance by a child as
- 21 prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;
- 22 (17) Criminal attempt, criminal solicitation, or criminal
- 23 conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301 and 5-3-401 to commit
- 24 any of the offenses listed in this section;
- 25 (18) Distribution to minors as prohibited in § 5-54-406;
- 26 (19) Manufacture, deliver or possession with intent to
- 27 manufacture or deliver any controlled substance as prohibited in § 5-64-401;
- 28 and
- 29 (20) Any felony or any misdemeanor involving violence or moral
- 30 turpitude.
- 31 (b) Any person pleading guilty, nolo contendere, or found guilty of any
- 32 of the offenses listed in subsection (a) of this section who can demonstrate
- 33 rehabilitation, and more than five (5) years have passed since the person was
- 34 released from confinement, probation, or parole, may appear before the Child
- 35 Care Facility Review Board to present his case that he is qualified to be a



1 child care facility owner, operator, or employee. The board is authorized to  
2 determine when a petitioner has been rehabilitated sufficiently to be a child  
3 care facility owner, operator, or employee."

4

5 SECTION 11. Title 20, Chapter 78, Subchapter 2 of the Arkansas Code  
6 Annotated is hereby amended by adding a new section to read as follows:

7 "20-78-605.

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

9 (1) Employee means a person in the service of a child care  
10 facility in which the employer has authority to control the person in the  
11 material details of how work will be performed and when compensation will be  
12 provided;

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

15 (b) Volunteers who are not left alone with children or who do not have  
16 disciplinary control over children in child care facilities shall not be  
17 required to have criminal record checks. All volunteers shall be checked with  
18 the Arkansas Child Abuse Central Registry for reports of child maltreatment."

19

20 SECTION 12. (a) There is hereby established a committee composed of a  
21 representative of the Department of Human Services, the Arkansas State  
22 Police, the Arkansas Early Childhood Commission, and the Child Care Facility  
23 Review Board which shall meet quarterly, in consultation with the Arkansas  
24 Child Care Providers Association, for purposes including, but not limited to,  
25 the following:

26 (1) To review the implementation of a statewide criminal records  
27 check system for child care facility owners, operators, or employees;

28 (2) To review funding for such system and certify quarterly  
29 reimbursement of funds; and

30 (3) To report all findings and make recommendations to the Joint  
31 Committee on Children and Youth.

32 (b) The Arkansas Early Childhood Commission shall have responsibility  
33 for coordinating the meetings of the committee.

34 (c) *All provisions of this section shall expire on July 1, 1996.*

35

1           SECTION 13. Arkansas Code Annotated § 20-78-205(a)(1)(A) is hereby  
2 amended to read as follows:

3           "(a)(1) There is created the Child Care Facility Review Board which  
4 shall consist of the following Members:

5                         (A) The director of the appropriate division of the  
6 Department of Human Services or his designee;"

7

8           SECTION 14. Arkansas Code Annotated § 20-78-205(d) is hereby amended to  
9 read as follows:

10           "(d) The director of the appropriate division of the Department of  
11 Human Services or his designee shall be Chairman of the Child Care Facility  
12 Review Board, but shall vote only in case of a tie vote."

13

14           SECTION 15. Arkansas Code Annotated § 20-78-206 is hereby amended by  
15 adding an additional subsection to read as follows:

16           "(f)(1) Any person with reasonable cause to suspect that a child care  
17 facility has violated any provision of this subchapter, or any rule or  
18 regulation of the Child Care Facility Review Board, may immediately notify the  
19 Department of Human Services.

20                         (2) The department shall not release data that would identify the  
21 person who made the report or who cooperated in a subsequent investigation of  
22 a child care facility unless a court of competent jurisdiction orders the  
23 release of information for good cause shown.

24                         (3) Following the inspection and investigation of a child care  
25 facility as provided under this subsection, the department shall, upon  
26 request, provide information to the person or agency reporting the suspected  
27 violation as to whether an investigation has been conducted.

28                         (4) Willfully making false notification pursuant to this  
29 subsection shall be a Class C misdemeanor."

30

31           SECTION 16. Arkansas Code Annotated § 20-78-220 is hereby amended by  
32 adding an additional subsection to read as follows:

33           "(c) Information pertaining to child maltreatment is confidential under  
34 § 12-12-506 and shall not be disclosed during Child Care Facility Review Board  
35 meetings. The Department of Human Services may present to the Board

1 information on child maltreatment cases conducted within a child care facility  
2 and relative to licensure under this subchapter, but only specific  
3 allegations, a factual description of the investigative findings, and the  
4 investigative determination will be presented. The Child Care Facilities  
5 Review Board shall accept the investigative determination of the Department of  
6 Human Services for consideration in any action on child care facility  
7 licenses."

8

9 SECTION 17. All provisions of this act of a general and permanent  
10 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
11 Code Revision Commission shall incorporate the same in the Code.

12

13 SECTION 18. If any provision of this act or the application thereof to  
14 any person or circumstance is held invalid, such invalidity shall not affect  
15 other provisions or applications of the act which can be given effect without  
16 the invalid provision or application, and to this end the provisions of this  
17 act are declared to be severable.

18

19 SECTION 19. All laws and parts of laws in conflict with this act are  
20 hereby repealed.

21

22 SECTION 20. EMERGENCY. It is hereby found and determined by the  
23 General Assembly of the State of Arkansas that the immediate effectiveness of  
24 this act is essential to the safety and well-being of Arkansas children who  
25 are cared for in child care facilities. Therefore, an emergency is hereby  
26 declared to exist and this act being necessary for the immediate preservation  
27 of the public peace, health, and safety, shall be in full force and effect  
28 from and after its passage and approval.

29

*/s/Rep. Pollan, et al*

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APPROVED: 4-13-95

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