

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 723 of the Regular Session

As Engrossed: S3/10/09 S3/19/09

A Bill

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009

SENATE BILL 515

4
5 By: Senator Madison
6 By: Representative Powers

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9 **For An Act To Be Entitled**

10 AN ACT TO AMEND THE CHILD WELFARE AGENCY
11 LICENSING ACT; AND FOR OTHER PURPOSES.

12
13 **Subtitle**

14 TO AMEND THE CHILD WELFARE AGENCY
15 LICENSING ACT.

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17
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19
20 SECTION 1. Arkansas Code § 9-28-402(2), regarding definitions under
21 the Child Welfare Agency Licensing Act, is amended to read as follows:

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

- 26 (A) Revocation of license;
27 (B) Suspension of license;
28 (C) Conversion of license from regular or provisional
29 status to ~~provisional~~ probationary status;
30 (D) Imposition of a civil penalty;
31 (E) Denial of application; or
32 (F) Reduction of licensed capacity;

33
34 SECTION 2. Arkansas Code § 9-28-403(e), regarding proceedings brought
35 under the Child Welfare Agency Licensing Act, is amended to read as follows:



1 ~~(e)(1)~~ *The Arkansas Administrative Procedure Act, § 25-15-201 et seq.,*
 2 *shall apply to all proceedings brought ~~pursuant to~~ under this subchapter,*
 3 *except that the following provisions shall control during adverse action*
 4 *hearings to the extent that they conflict with the Arkansas Administrative*
 5 *Procedure Act:*

6 (1) All parties to an adverse action shall be entitled to engage
 7 in and use formal discovery as provided for in Rules 26, 28, 29, 30, 31, 32,
 8 33, 34 and 36 of the Arkansas Rules of Civil Procedure including:

9 (A) Requests for admission;

10 (B) Requests for production of documents and things;

11 (C) Written interrogatories; and

12 (D) Oral and written depositions; and

13 (2) All evidentiary rulings in an adverse action hearing shall
 14 be governed by the Arkansas Rules of Evidence with respect to the following
 15 types of evidence:

16 (A) The requirement of personal knowledge of a witness as
 17 required by Rule 602;

18 (B) The admissibility of character evidence as set forth
 19 by Rules 608 and 609;

20 (C) The admissibility of opinion evidence as set forth by
 21 Rules 701, 702, and 703; and

22 (D) The admissibility of hearsay evidence as set forth by
 23 Rules 801, 802, 803, 804, 805, and 806.

24 ~~(2) The Arkansas Rules of Civil Procedure and the Arkansas Rules~~
 25 ~~of Evidence shall also apply to adverse action hearings.~~

26
 27 SECTION 3. Arkansas Code § 9-28-403, regarding proceedings brought
 28 under the Child Welfare Agency Licensing Act, is amended to add an additional
 29 subsection to read as follows:

30 (f)(1) Requests for subpoenas shall be granted by the Chief Counsel of
 31 the Department of Human Services or a designee if the testimony or documents
 32 desired are considered necessary and material without being unduly
 33 repetitious of other available evidence.

34 (2) Subpoenas provided for in this section shall be served in
 35 the manner as now provided by law, returned, and a copy made and kept by the
 36 department.

1 (3) The fees and mileage for officers serving the subpoenas and
2 witnesses answering the subpoenas shall be the same as now provided by law.

3 (4) Witnesses duly served with subpoenas issued under this
4 section who shall refuse to testify or give evidence may be cited on an
5 affidavit through application of the chief counsel of the department to the
6 Pulaski County Circuit Court or any circuit court of the state where the
7 subpoenas were served.

8 (5) Failure to obey the subpoena may be deemed a contempt,
9 punishable accordingly.

10
11 SECTION 4. Arkansas Code § 9-28-405(a)(1), regarding the Child Welfare
12 Agency Review Board, is amended to read as follows:

13 (a)(1) The Child Welfare Agency Review Board shall promulgate and
14 publish rules ~~and regulations~~ setting minimum standards governing the
15 granting, revocation, refusal, conversion, and suspension of licenses for a
16 child welfare agency and the operation of a child welfare agency.

17
18 SECTION 5. Arkansas Code § 9-28-405(c), regarding the Child Welfare
19 Agency Review Board, is amended to read as follows:

20 (c)(1) The board shall have *exclusive* authority to promulgate rules
21 ~~and regulations~~ that:

22 ~~(1)~~(A) Promote the health, safety, and welfare of children
23 in the care of a child welfare agency;

24 ~~(2)~~(B) Promote safe and healthy physical facilities;

25 ~~(3)~~(C) Ensure adequate supervision of the children by
26 capable, qualified, and healthy individuals;

27 ~~(4)~~(D) Ensure appropriate educational programs and
28 activities for children in the care of a child welfare agency;

29 ~~(5)~~(E) Ensure adequate and healthy food service;

30 ~~(6)~~(F) Include procedures for the receipt, recordation,
31 and disposition of complaints regarding allegations of violations of this
32 subchapter, of the rules promulgated under this subchapter, or of child
33 maltreatment laws;

34 ~~(7)~~(G) Include procedures for the assessment of child and
35 family needs and for the delivery of services designed to enable each child
36 to grow and develop in a permanent family setting;

1 ~~(8)~~(H) Ensure that criminal record checks and central
2 registry checks are completed on owners, operators, and employees of a child
3 welfare agency as set forth in this subchapter;

4 ~~(9)~~(I) Require the compilation of reports and making those
5 reports available to the Division of Youth Services of the Department of
6 Human Services when the board determines it is necessary for compliance
7 determination or data compilation;

8 ~~(10)~~(J) Ensure that a child placement agency:

9 ~~(A)~~(i) Treats clients seeking or receiving services
10 in a professional manner, as defined by ~~regulations~~ rules promulgated
11 pursuant to this section; and

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

17 ~~(11)~~(K) Require that all child welfare agencies that
18 provide adoption services fully apprise in writing all clients involved in
19 the process of adopting a child of the agency's adoption program or services,
20 including all possible costs associated with the adoption program; and

21 ~~(12)~~(L) Establish rules governing retention of licensing
22 records maintained by the division.

23 (2) This subchapter shall not be construed to prevent a licensed
24 child welfare agency from adopting and applying internal operating procedures
25 that meet or exceed the minimum standards required by the board.

26
27 SECTION 6. Arkansas Code § 9-28-405(f)(1)(B), regarding the Child
28 Welfare Agency Review Board, is amended to read as follows:

29 (B) The board may deny, suspend, convert, or revoke a
30 child welfare agency license or issue letters of reprimand or caution to a
31 child welfare agency if the board finds by a preponderance of the evidence
32 that the applicant or licensee:

33 (i) Fails to comply with the provisions of this
34 subchapter or any published rule ~~or regulation~~ of the board relating to child
35 welfare agencies;

36 (ii) Furnishes or makes any statement or report to

1 the division that is false or misleading;

2 (iii) Refuses or fails to submit required reports or
3 to make available to the division any records required by it in making an
4 investigation of the agency for licensing purposes;

5 (iv) Refuses or fails to submit to an investigation
6 or to reasonable inspection by the division;

7 (v) Retaliates against an employee who in good faith
8 reports a suspected violation of the provisions of this subchapter or the
9 rules promulgated under this subchapter;

10 (vi) Fails to engage in a course of professional
11 conduct in dealing with clients being served by the child placement agency,
12 as defined by ~~regulations~~ rules promulgated pursuant to this section;

13 (vii) Demonstrates gross negligence in carrying out
14 the duties at the child placement agency; or

15 (viii) Fails to provide clients involved in the
16 process of adoption of a child with correct and sufficient information
17 pertaining to the adoption process, services, and costs.

18
19 SECTION 7. Arkansas Code § 9-28-407(g), regarding licenses required
20 and issued for child welfare agencies, is amended to read as follows:

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;

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

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

32 (6) The status of the license, whether regular, ~~or~~ provisional,
33 or probationary; and

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

35
36 SECTION 8. Arkansas Code § 9-28-409(a)-(c), regarding criminal records

1 and child maltreatment checks for child welfare agencies, is amended to read
2 as follows:

3 (a)(1) Each of the following persons in a child welfare agency shall
4 be checked with the child maltreatment central registry in his or her state
5 of residence and any state of residence in which the person has lived for the
6 past six (6) years and in the person's state of employment, if different, for
7 reports of child maltreatment in compliance with policy and procedures
8 promulgated by the Child Welfare Agency Review Board:

9 (A) An employee having direct and unsupervised contact
10 with children;

11 (B) A volunteer having direct and unsupervised contact
12 with children;

13 (C) A foster parent and all household members ten (10)
14 years of age and older, excluding children in foster care;

15 (D) An adoptive parent and all household members ten (10)
16 years of age and older, excluding children in foster care;

17 (E) An owner having direct and unsupervised contact with
18 children; and

19 (F) A member of the agency's board of directors having
20 direct and unsupervised contact with children.

21 (2) The board shall have the authority to deny a license or
22 church-operated exemption to any applicant found to have any record of
23 founded child maltreatment in the official record of the registry.

24 (3)(A) Any person required to be checked under this section who
25 is found to have any record of child maltreatment in the official record of
26 the registry shall be reviewed by the owner or operator of the facility in
27 consultation with the board to determine appropriate corrective action
28 measures that would indicate, but are not limited to, training, probationary
29 employment, or nonselection for employment.

30 (B) The board shall also have the authority to deny a
31 license or church-operated exemption to an applicant who continues to employ
32 a person with any record of founded child maltreatment.

33 (4) All persons required to be checked with the registry under
34 this subsection shall repeat the check at a minimum of every two (2) years,
35 except that adoptive parents who reside in Arkansas shall repeat the check
36 every year pending court issuance of a final decree of adoption, at which

1 point repeat checks shall no longer be required.

2 (b)(1) Each of the following persons in a child welfare agency who has
3 lived in Arkansas continuously for six (6) years or more shall be checked
4 with the Identification Bureau of the Department of Arkansas State Police for
5 convictions of the offenses listed in this subchapter in compliance with
6 policy and procedures promulgated by the board:

7 (A) An employee having direct and unsupervised contact
8 with children;

9 (B) A volunteer having direct and unsupervised contact
10 with children;

11 (C) An owner having direct and unsupervised contact with
12 children; and

13 (D) A member of the agency's board of directors having
14 direct and unsupervised contact with children.

15 (2) A child in the custody of the Department of Human Services
16 shall not be placed in an approved home of any foster parent or adoptive
17 parent unless all household members eighteen (18) years of age and older,
18 excluding children in foster care, have been checked with the Identification
19 Bureau of the Department of Arkansas State Police for convictions of the
20 offenses listed in this subchapter in compliance with policy and procedures
21 promulgated by the board at a minimum of every two (2) years.

22 ~~(2)(A)~~(3)(A) The owner or operator of a child welfare agency
23 shall maintain on file, subject to inspection by the board, evidence that
24 Department of Arkansas State Police criminal records checks have been
25 initiated on all persons required to be checked and the results of the
26 checks.

27 (B) Failure to maintain that evidence on file will be
28 prima facie grounds to revoke the license or church-operated exemption of the
29 owner or operator of the child welfare agency.

30 ~~(3)~~(4) All persons required to be checked with the Department of
31 Arkansas State Police under this subsection shall repeat the check at a
32 minimum of every five (5) years, except that adoptive parents who reside in
33 Arkansas shall not repeat the check after every year pending court issuance
34 of a final decree of adoption, in the adoption case for which the check was
35 obtained at which point repeat checks shall no longer be required.

36 ~~(4) Adoptive parents shall complete background checks as~~

1 ~~required by law.~~

2 (c)(1) ~~In compliance with federal law and regulations and with policy~~
 3 ~~and procedures promulgated by the board, each~~ Each of the following persons
 4 in a child welfare agency who has not lived in Arkansas continuously for the
 5 past six (6) years ~~and all foster parents and foster home household members~~
 6 ~~sixteen (16) years of age and older, excluding foster children, shall be~~
 7 ~~checked with~~ have a fingerprint-based criminal background check performed by
 8 the Federal Bureau of Investigation in compliance with federal law and
 9 regulation for convictions of the offenses listed in this subchapter:

10 (A) An employee having direct and unsupervised contact
 11 with children;

12 (B) A volunteer having direct and unsupervised contact
 13 with children;

14 (C) An owner having direct and unsupervised contact with
 15 children; and

16 (D) A member of the agency's board of directors having
 17 direct and unsupervised contact with children.

18 (2)(A) A child in the custody of the Department of Human
 19 Services shall not be placed in an approved home of any foster or adoptive
 20 parent unless all household members eighteen (18) years of age and older,
 21 excluding children in foster care, have a fingerprint-based criminal
 22 background check performed by the Federal Bureau of Investigation in
 23 compliance with federal law and regulation for convictions of the offenses
 24 listed in this subchapter.

25 ~~(A)(B)~~ The owner or operator of a child welfare agency
 26 shall maintain on file, subject to inspection by the board, evidence that the
 27 Federal Bureau of Investigation's criminal records checks have been initiated
 28 on all persons required to be checked and the results of the checks.

29 ~~(B)(C)~~ Failure to maintain that evidence on file will be
 30 prima facie grounds to revoke the license or church-operated exemption of the
 31 owner or operator of the child welfare agency.

32
 33 SECTION 9. Arkansas Code § 9-28-409(d)(2), regarding criminal records
 34 and child maltreatment checks for child welfare agencies, is amended to read
 35 as follows:

36 (2) The owner or operator of the child welfare agency shall

1 submit the criminal records check form to the Identification Bureau of the
2 Department of Arkansas State Police for processing within ten (10) days of
3 hiring the employee or volunteer, who shall remain under conditional
4 employment or volunteerism until the registry check and criminal records
5 checks required under this subchapter are completed.

6
7 SECTION 10. Arkansas Code § 9-28-409(d)(4), regarding criminal records
8 and child maltreatment checks for child welfare agencies, is amended to read
9 as follows:

10 (4)~~(A)~~ In the event a legible set of fingerprints as determined
11 by the Department of Arkansas State Police and the Federal Bureau of
12 Investigation cannot be obtained after a minimum of ~~three (3)~~ two (2)
13 attempts by qualified law enforcement personnel, the board shall determine
14 eligibility based upon a name check by the Department of Arkansas State
15 Police and the Federal Bureau of Investigation.

16 ~~(B) Foster parents and adoptive parents shall only be~~
17 ~~determined eligible based on a fingerprint criminal background check.~~

18
19 /s/ Madison

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21 **APPROVED: 3/31/2009**
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