

1 State of Arkansas As Engrossed: H2/14/17 H2/16/17 H2/23/17

2 91st General Assembly

A Bill

3 Regular Session, 2017

HOUSE BILL 1048

4

5 By: Representatives D. Meeks, C. Douglas

6 By: Senator Irvin

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For An Act To Be Entitled

9 AN ACT TO PERMIT VOLUNTARY RESPITE CARE; TO CREATE A
10 LICENSE EXEMPTION CONCERNING VOLUNTARY RESPITE CARE;
11 TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

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Subtitle

15 TO PERMIT VOLUNTARY RESPITE CARE; TO
16 CREATE A LICENSE EXEMPTION CONCERNING
17 VOLUNTARY RESPITE CARE; AND TO DECLARE AN
18 EMERGENCY.

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

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23 SECTION 1. Arkansas Code § 9-28-402, concerning definitions, is
24 amended to read as follows:

25 (18) "Qualified nonprofit organization" means a charitable or
26 religious institution that is exempt from federal income taxation under
27 Section 501(a), Internal Revenue Code of 1986, as an organization described
28 by Section 501(c)(3), that assists a parent, guardian, or legal custodian of
29 a child with the process of entering into an authorization agreement in the
30 form of a power of attorney for voluntary respite care, including without
31 limitation identifying an appropriate voluntary respite care placement for
32 each child subject to the agreement and assisting a parent, guardian, or
33 legal custodian in locating and contacting a voluntary respite care provider;

34 ~~(18)~~(19) "Relative" means a person within the fifth degree of
35 kinship by virtue of blood or adoption;

36 ~~(19)~~(20) "Religious organization" means a church, synagogue, or



1 mosque or association of same whose purpose is to support and serve the
2 propagation of truly held religious beliefs;

3 ~~(20)~~(21) "Residential child care facility" means any child
4 welfare agency that provides care, training, education, custody, or
5 supervision on a twenty-four-hour basis for six (6) or more unrelated
6 children, excluding foster homes that have six (6) or more children who are
7 all related to each other but who are not related to the foster parents;

8 ~~(21)~~(22) "Special consideration" means approval from the Child
9 Welfare Agency Review Board to allow a licensee to deviate from the letter of
10 a rule if the licensee has demonstrated that the deviation is in the best
11 interest of the children and does not pose a risk to persons served by the
12 licensee;

13 ~~(22)~~(A)(23)(A) "Substantial compliance" means compliance with
14 all essential standards necessary to protect the health, safety, and welfare
15 of the children in the care of the child welfare agency.

16 (B) Essential standards include, but are not limited to,
17 those relating to issues involving fire, health, safety, nutrition,
18 discipline, staff-to-child ratio, and space;

19 ~~(23)~~(24) "Temporary camp" means any facility or program
20 providing twenty-four-hour care or supervision to children that meets the
21 following criteria:

22 (A) The facility or program is operated for recreational,
23 educational, or religious purposes only;

24 (B) No child attends the program more than forty (40) days
25 in a calendar year; and

26 (C) The parents of children placed in the program retain
27 custody and planning and financial responsibility for the children during
28 placement; ~~and~~

29 ~~(24)~~(25) "Unrelated minor" means a child who is not related by
30 blood, marriage, or adoption to the owner or operator of the child welfare
31 agency and who is not a ward of the owner or operator of the child welfare
32 agency pursuant to a guardianship order issued by a court of competent
33 jurisdiction;

34 (26)(A) "Voluntary respite care" means a temporary placement
35 arrangement facilitated by a qualified nonprofit organization that engages in
36 certain placement activities similar to a child placement agency or child

1 welfare agency.

2 (B) Voluntary respite care does not include placements
3 provided by a person or an entity that otherwise qualifies as an exempt child
4 welfare agency as that term is defined in this section; and

5 (27) "Voluntary respite care provider" means a person, approved
6 by a qualified nonprofit organization, who enters into a written agreement
7 with a parent, guardian, or legal custodian of a minor whereby:

8 (A) The parent, guardian, or legal custodian voluntarily
9 decides to place the minor into voluntary respite care and actively
10 participates in the process of placing the minor into voluntary respite care;

11 (B) The placement of a minor into voluntary respite care
12 is made for the purpose of assisting a family in crisis by providing a
13 temporary arrangement for the twenty-four-hour care of the minor;

14 (C) The parent, guardian, or legal custodian of the minor
15 retains the authority to terminate the voluntary respite care at any time and
16 may immediately regain physical custody of the minor; and

17 (D) The voluntary respite care provider does not engage in
18 an activity described in subdivision (8)(A) or subdivision (8)(D) of this
19 section.

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21 SECTION 2. Arkansas Code Title 9, Chapter 28, Subchapter 4, is amended
22 to add an additional section to read as follows:

23 9-28-410. Voluntary respite care agreement- Exemption and penalties.

24 (a)(1)(A) A voluntary respite care provider is exempt from obtaining a
25 license under § 9-28-407 if approved by a qualified nonprofit organization
26 under this section.

27 (B) A voluntary respite care provider shall be approved by
28 a qualified nonprofit organization before it is eligible to enter into a
29 voluntary respite care agreement with a parent, guardian, or legal custodian
30 under this section.

31 (2) In order to approve a voluntary respite care provider, a
32 qualified nonprofit organization shall ensure that a voluntary respite care
33 provider:

34 (A) Successfully completes a:

35 (i) Fingerprint-based criminal background check
36 performed by the Federal Bureau of Investigation;

1 (ii) Criminal records check with the Identification
2 Bureau of the Department of Arkansas State Police; and

3 (iii) Child Maltreatment Central Registry check; and
4 (B) Is trained by the qualified nonprofit organization.

5 (3)(A) The qualified nonprofit organization shall maintain the
6 training, background checks, and Child Maltreatment Central Registry check
7 records under subdivision (a)(2) of this section, including the content and
8 dates of training and full transcripts of the background checks and Child
9 Maltreatment Central Registry check, for a period of not less than five (5)
10 years after the minor attains eighteen (18) years of age.

11 (B) The qualified nonprofit organization shall make the
12 records under subdivision (a)(3)(A) of this section available to a parent,
13 guardian, or legal custodian who executes a voluntary respite care agreement
14 in the form of a power of attorney under this section and any local, state,
15 or federal authority conducting an investigation involving the voluntary
16 respite care provider, parent, guardian, legal custodian, or the minor.

17 (b)(1)(A) A power of attorney concerning voluntary respite care shall
18 be between the parent, guardian, or legal custodian of a minor and the
19 voluntary respite care provider, and the power of attorney shall not include
20 or involve another person, entity, or agency, including without limitation
21 other qualified nonprofit organizations.

22 (B) The power of attorney shall be valid for no longer
23 than one (1) year.

24 (2) The power of attorney in subdivision (b)(1) of this section
25 that details the voluntary respite care arrangement may address physical
26 custody issues, including emergency medical treatment, but it shall not
27 transfer legal custody of the minor to the voluntary respite care provider.

28 (3) The execution of a power of attorney in subdivision (b)(1)
29 of this section between a parent, guardian, or legal custodian, and a
30 voluntary respite care provider shall not alone constitute child maltreatment
31 under the Child Maltreatment Act, § 12-18-101 et seq.

32 (4) This section shall not be interpreted to prevent or
33 otherwise limit the investigation of child maltreatment or a finding of child
34 maltreatment where there is evidence of child maltreatment beyond the
35 voluntary respite agreement between the voluntary respite care provider and
36 the parent, guardian, or legal custodian.

1 (c)(1) A qualified nonprofit organization that knowingly fails to
2 perform or verify the background and Child Maltreatment Central Registry
3 check under subdivision (a)(2) of this section is subject to a civil penalty
4 not to exceed five thousand dollars (\$5,000), payable to the state and
5 recoverable in a civil action.

6 (2) A qualified nonprofit organization or an employee or
7 volunteer of a qualified nonprofit organization that continues to assist a
8 parent, guardian, legal custodian, or voluntary respite care provider in
9 completing a power of attorney under this section when the background checks
10 and Child Maltreatment Central Registry check conducted under subdivision
11 (a)(2)(A) of this section disclose substantiated allegations of child abuse,
12 neglect, exploitation, or similar crime is subject to a civil penalty not to
13 exceed five thousand dollars (\$5,000), payable to the state and recoverable
14 in a civil action.

15 (3) A qualified nonprofit organization or an employee or
16 volunteer of a qualified nonprofit organization that knowingly fails to
17 maintain records as required under subdivision (a)(3)(A) of this section or
18 that knowingly fails to disclose information as required under subdivision
19 (a)(3)(B) of this section is subject to a civil penalty not to exceed five
20 thousand dollars (\$5,000), payable to the state and recoverable in a civil
21 action.

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23 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
24 General Assembly of the State of Arkansas that the ability to place a minor
25 into voluntary respite care provides meaningful assistance to a family in
26 crisis by providing a temporary arrangement for the twenty-four-hour care of
27 the minor; that voluntary respite care provides the least intrusive solution
28 to a family crisis; and that this act is immediately necessary to ensure the
29 stability and unity of families in Arkansas. Therefore, an emergency is
30 declared to exist, and this act being immediately necessary for the
31 preservation of the public peace, health, and safety shall become effective
32 on:

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

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

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

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/s/D. Meeks