

State of Arkansas

76th General Assembly

Regular Session, 1987

AS ENGROSSED 3/4/87

HOUSE BILL 1684

By: Representatives Pollan and Cabe

"AN ACT TO AMEND SECTION 12 OF ACT 434 OF 1969, AS AMENDED,
[ARK. STAT. 83-911] THE CHILD CARE FACILITY LICENSING ACT, TO
ESTABLISH CIVIL PENALTIES FOR NON-COMPLIANCE; AND FOR OTHER
PURPOSES."

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

SECTION 1. Section 12 of Act 434 of 1969, as amended, the same being Arkansas Statute 83-911, is hereby amended to read as follows:

"Section 12. (A) There is hereby created the Child Care Facility Review Board which shall consist of: The Deputy Director of the Division of Children and Family Services of the Department of Human Services; the State Health Officer or his designated alternate; one (1) representative to be designated by, and from the membership of, the Family and Children's Service State Advisory Committee; three (3) persons engaged in the provision of child care, one (1) each from the field of Day Care, Institutions, and foster care, to be appointed by the Governor from lists of persons nominated by associations or committees of providers of child care; one (1) representative from the public to be appointed by the Governor; and the State Commissioner of Education, or his designated alternate. The four (4) members of the Board appointed by the Governor shall, at all times, be from different counties and at least two (2) of these members shall be chosen from an area south of the base line; they shall, at the first organization meeting of the Board, determine by lot their respective terms in order that the term of one (1) member shall expire on March 1, 1974, and the term of one (1) member shall expire on March 1 of each year thereafter. Successor members shall be appointed for four (4) year terms. Members of the Board shall serve without compensation, but each member of the Board shall be entitled to reimbursements for expenses for necessary meals, lodging, and mileage in attending Board meetings, to be payable from

funds appropriated for the maintenance and operation of the Division of Children and Family Services of the Department of Human Services.

(B) The Deputy Director of the Division of Children and Family Services shall be Chairman of the Child Care Facility Review Board, but shall vote only in case of a tie vote. Within sixty (60) days following the passage of this Act, the Child Care Facility Review Board shall meet and adopt rules and regulations governing its procedures, and such rules and regulations shall be published and filed in the office of the Secretary of State.

(C) The Child Care Facility Review Board shall promulgate and establish rules and regulations setting standards governing the granting, revocation, refusal and suspension of licenses for a child care facility, and the operation of child care facilities in this State.

(D) The Division of Children and Family Services of the Department of Human Services shall continue to be the administrative agency to administer the provisions of Act 434 of 1969 and any amendatory acts thereto, in accordance with the rules, regulations, and standards for the licensing and operation of child care facilities as promulgated by the Child Care Facility Review Board.

(E) The Child Care Facility Review Board is hereby authorized to impose monetary fines as civil penalties to be paid by a licensee for failure to comply with the provisions of the Child Care Facility Licensing Act or the regulations promulgated pursuant thereto. In determining whether a civil penalty is to be imposed, the following factors shall be considered by the Board:

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

2. The "good faith" exercised by the licensee. Indications of good faith include, but are not limited to: awareness of the applicable statutes and regulations and reasonable diligence in securing compliance, prior accomplishments manifesting the licensee's desire to comply with the requirements; efforts to correct; and any other mitigating factors in favor of the licensee.

3. Any relevant previous violations committed by the licensee.

4. The financial benefit to the licensee of committing or continuing the violation.

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

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

(1) Class A violations involve essential standards which must be met for substantial compliance to licensing requirements. These standards address fire, health, safety, nutrition, staff/child ratio and space.

(2) Class B violations involve administrative standards and standards which do not directly threaten the immediate health, safety or welfare of the children.

(H) (1) (a) Class A violations are subject to a civil penalty of \$100.00 for each violation.

(b) Class B violations are subject to a civil penalty of \$50.00 for each violation.

(2) Each day of occurrence of a Class A or B violation shall constitute a separate violation. Aggregate fines assessed for violation in any one month shall not exceed \$500.00 for Class A violations or \$250.00 for Class B violations.

(I) If any licensee fails to pay any monetary fine imposed as civil penalty within sixty (60) days of the Board's decision imposing such penalty the amount of the fine shall be considered to be a debt owed the State of Arkansas and may be collected by civil action.

(J) (1) All fines and penalties collected under the provisions of this Act shall be "special revenues" to be deposited in the State Treasury to the credit of a "special fund" to be known as the "Child Care Facility Fund" to be used by the Division of Children and Family Services of the Department of Human Services exclusively to provide grants to child care facilities for enhancement of the facility or for training of personnel in child care facilities under the direction of the Division of Children and Family Services.

(2) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the Disbursing Officer for the Department of Human Services is hereby authorized to transfer all unexpended funds relative to the fines and penalties collected from Child Care Facilities, as certified by the Chief Fiscal Officer of the State, to be

carried forward and made available for expenditures for the same purpose for any following fiscal year.

SECTION 2. This Act shall be liberally construed to assure quality child care to the children of the State of Arkansas and shall be considered cumulatively with respect to any other authority of the Child Care Facility Review Board to regulate child care facilities.

SECTION 3. All laws and parts of laws in conflict herewith are hereby repealed.

/s/ Carolyn Pollan et al

