

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Representatives Pollan and Wilkins

A Bill

HOUSE BILL 2150

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."

Subtitle

16 "TO AMEND VARIOUS SECTIONS OF THE
17 ARKANSAS CODE RELATIVE TO THE CHILD CARE
18 FACILITY REVIEW BOARD AND BACKGROUND
19 CHECKS OF CHILD CARE FACILITY OWNERS AND
20 EMPLOYEES."

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

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.

28 (b)(1) The committee shall be composed of seven (7) persons appointed
29 by the Governor as follows:

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

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

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

33 Program;

34 (D) One (1) appointee shall be a member of the Child Care
35 Facilities Review Board;

1 (E) One (1) appointee shall be an employee of the Division
2 of Children and Family Services of the Department of Human Services;

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

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

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

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

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

15 (e) Members of the Child Care Providers' Committee shall serve without
16 compensation or per diem but shall be entitled to reimbursement for expenses
17 as prescribed for state employees by state travel regulations."
18

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

21 "20-78-402. Duties and powers.

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

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

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

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

31 (4) Exercise such other powers as necessary to implement this
32 subchapter."
33

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

1 "20-78-403. License fees - Disposition.

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

10 (b) The Child Care Facility Review Board shall transmit through the
11 Department of Human Services the fees monthly to the State Treasurer to be
12 deposited as special revenues in the Child Care Providers' Fund."
13

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

16 "20-78-404. Child Care Providers' Fund.

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

20 (b) The State Treasurer shall certify to the Director of the
21 Department of Human Services on a monthly basis the amount of fees
22 transmitted by the Child Care Facility Review Board, and the director shall
23 transmit to the State Treasurer for deposit into the Child Care Providers'
24 Fund, from funds appropriated for the maintenance and operation of the
25 Department of Human Services, an amount of money equal to one-half of the
26 fees transmitted to the State Treasurer."
27

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

30 "20-78-405. Purchase of training material.

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

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

5

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

8 "20-78-406. Facilities and staff -- Review of contracts.

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

15

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

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

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

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

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

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

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

7

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

10 "20-78-602. Criminal records check.

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

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

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

26 (b) Criminal Records Check - Employees.

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

1 shall include the taking of fingerprints. Upon applying for a criminal
2 records check, such person shall sign a release of information and shall be
3 responsible for the payment of any fee associated with the nationwide
4 criminal records check. The applicant shall not be assessed a fee for the
5 statewide criminal records check.

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

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

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

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

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

1 (A) Lack of knowledge that information is material is not
2 a defense to a charge of false swearing.

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

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

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

16

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

18

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

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

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

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

30 (2) Murder in the first and second degrees as prohibited in
31 §§ 5-10-102 and 5-10-103;

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

33 (4) Battery in the first and second degrees as prohibited in
34 §§ 5-13-201 and 5-13-202;

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

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

1 the person was released from confinement, probation, or parole, may appear
2 before the Child Care Facility Review Board to present his case that he is
3 qualified to be a child care facility owner, operator, or employee. The
4 board is authorized to determine when a petitioner has been rehabilitated
5 sufficiently to be a child care facility owner, operator, or employee."
6

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

9 "20-78-605.

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

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

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

17 (b) Volunteers who are not left alone with children or who do not have
18 disciplinary control over children in child care facilities shall not be
19 required to have criminal record checks. All volunteers shall be checked
20 with the Arkansas Child Abuse Central Registry for reports of child
21 maltreatment."
22

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

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

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

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

35 (b) The Arkansas Early Childhood Commission shall have responsibility

1 for coordinating the meetings of the committee.

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

3

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

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

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

10

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

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

16

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

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

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

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

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

33

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

1 "(c) Information pertaining to child maltreatment is confidential
2 under § 12-12-506 and shall not be disclosed during Child Care Facility
3 Review Board meetings. The Department of Human Services may present to the
4 Board information on child maltreatment cases conducted within a child care
5 facility and relative to licensure under this subchapter, but only specific
6 allegations, a factual description of the investigative findings, and the
7 investigative determination will be presented. The Child Care Facilities
8 Review Board shall accept the investigative determination of the Department
9 of Human Services for consideration in any action on child care facility
10 licenses."

11

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

15

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

21

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

24

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

32

/s/Rep. Pollan, et al

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