

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

A Bill

HOUSE BILL 1017

4 By: Representative Ingram

5
6
7

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED § 20-78-604 BY
9 LISTING ADDITIONAL CRIMINAL OFFENSES AS GROUNDS FOR
10 DENYING A LICENSE TO OWN OR OPERATE A CHILD CARE FACILITY
11 AND FOR DENYING EMPLOYMENT BY A LICENSED CHILD CARE
12 FACILITY; TO AMEND ARKANSAS CODE ANNOTATED § 20-78-603 BY
13 AUTHORIZING CRIMINAL BACKGROUND CHECKS BASED ON NAME IN
14 CERTAIN INSTANCES; TO DECLARE AN EMERGENCY; AND FOR OTHER
15 PURPOSES."

16
17

Subtitle

18 "TO AMEND A.C.A. § 20-78-604 BY LISTING
19 ADDITIONAL CRIMINAL OFFENSES AS GROUNDS
20 FOR DENYING CHILD CARE FACILITY LICENSES
21 AND EMPLOYMENT BY A LICENSED FACILITY."

22

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

24

25 SECTION 1. Arkansas Code Annotated § 20-78-604 is amended to read as
26 follows:

27 "20-78-604. Qualifications for child care ownership, operation, or
28 employment.

29 (a) Without proof of rehabilitation, as provided in subsection (b) of
30 this section, no person shall be eligible to be a child care facility owner,
31 operator, or employee if that person has pleaded guilty or nolo contendere or
32 has been found guilty of any of the following offenses by any court in the
33 State of Arkansas or of any similar offense by a court in another state or of
34 any similar offense by a federal court:

35

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

36

(2) Murder in the first and second degrees as prohibited in §§ 5-

- 1 10-102 and 5-10-103;
- 2 (3) Manslaughter as prohibited in § 5-10-104;
- 3 (4) Battery in the first and second degrees as prohibited in §§
- 4 5-13-201 and 5-13-202;
- 5 (5) Aggravated assault as prohibited in § 5-13-204;
- 6 (6) Terroristic threatening in the first degree as prohibited in
- 7 § 5-13-301;
- 8 (7) Kidnapping as prohibited in § 5-11-102;
- 9 (8) False imprisonment in the first degree as prohibited in § 5-
- 10 11-103;
- 11 (9) Permanent detention or restraint as prohibited in § 5-11-106;
- 12 (10) Rape and carnal abuse in the first and second degrees as
- 13 prohibited in §§ 5-14-103 - 5-14-105;
- 14 (11) Sexual abuse in the first and second degrees as prohibited in
- 15 §§ 5-14-108 and 5-14-109;
- 16 (12) Violation of a minor in the first and second degrees as
- 17 prohibited in §§ 5-14-120 and 5-14-121;
- 18 (13) Incest as prohibited in § 5-26-202;
- 19 (14) Endangering the welfare of a minor in the first degree as
- 20 prohibited in § 5-27-203;
- 21 (15) Permitting child abuse as prohibited in subdivisions (a)(1)
- 22 and (a)(3) of § 5-27-221;
- 23 (16) Engaging children in sexually explicit conduct for use in
- 24 visual or print media, transportation of minors for prohibited sexual conduct,
- 25 or use of a child or consent to use of a child in a sexual performance by
- 26 producing, directing, or promoting a sexual performance by a child as
- 27 prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;
- 28 (17) Criminal attempt, criminal solicitation, or criminal
- 29 conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401 to
- 30 commit any of the offenses listed in this section;
- 31 (18) Distribution to minors as prohibited in § 5-64-406;
- 32 (19) Manufacture, delivery, or possession with intent to
- 33 manufacture or deliver any controlled substance as prohibited in § 5-64-401;
- 34 (20) Carnal abuse in the third degree as prohibited in § 5-14-106;
- 35 (21) Sexual solicitation of a child as prohibited in § 5-14-110;
- 36 (22) Pandering or possessing visual or print medium depicting

1 sexually explicit conduct involving a child as prohibited by § 5-27-304;

2 (23) Negligent homicide as prohibited by § 5-10-105;

3 (24) Assault in the first degree as prohibited by § 5-13-205;

4 (25) Coercion as prohibited by § 5-13-208;

5 (26) Sexual misconduct as prohibited by § 5-14-107;

6 (27) Public sexual indecency as prohibited by § 5-14-111;

7 (28) Indecent exposure as prohibited by § 5-14-112;

8 (29) Endangering the welfare of a minor in the second degree as
9 prohibited by § 5-27-204; and

10 (30) Any felony or any misdemeanor involving violence or moral
11 turpitude.

12 (b) Any person pleading guilty or nolo contendere or found guilty of any
13 of the offenses listed in subsection (a) of this section who can demonstrate
14 rehabilitation, where more than five (5) years have passed since the person
15 was released from confinement, probation, or parole, may appear before the
16 Child Care Facility Review Board to present his case that he is qualified to
17 be a child care facility owner, operator, or employee. The board is authorized
18 to determine when a petitioner has been rehabilitated sufficiently to be a
19 child care facility owner, operator, or employee."

20

21 SECTION 2. Arkansas Code Annotated § 20-78-602(a) is amended to read as
22 follows:

23 "(a) Criminal Records Check - Owners and Operators.

24 (1) Each applicant for a license to own or operate a child care
25 facility shall be required to apply to the Identification Bureau of the
26 Department of Arkansas State Police for a statewide criminal records check and
27 a nationwide criminal records check, the latter to be conducted by the Federal
28 Bureau of Investigation. The nationwide criminal records check shall conform
29 to the applicable federal standards and shall include the taking of
30 fingerprints. Such applicant shall sign a release of information and shall be
31 responsible for the payment of any fee associated with the nationwide criminal
32 records check. The applicant shall not be assessed a fee for the statewide
33 criminal records check.

34 (2) In the event a legible set of fingerprints, as determined by
35 the Identification Bureau of the Arkansas State Police and the Federal Bureau
36 of Investigation, cannot be obtained after a minimum of three (3) attempts,

1 the Child Care Facilities Review Board shall determine eligibility based upon
2 a name check by the Identification Bureau of the Arkansas State Police and the
3 Federal Bureau of Investigation.

4 (3) Upon completion of the criminal records checks, the
5 Identification Bureau of the Department of Arkansas State Police shall forward
6 all information obtained concerning the applicant for a license to the Child
7 Care Facility Review Board."

8

9 SECTION 3. Arkansas Code Annotated § 20-78-602(b) is amended to read as
10 follows:

11 "(b) Criminal Records Check - Employees.

12 (1)(A) Any employee or conditional employee, if that employment
13 involves supervisory or disciplinary power over a child or children, or
14 involves contact with a child or children, in any child care facility which is
15 required to be licensed by the board, who has not been a resident of the state
16 of Arkansas for the preceding six (6) years, shall apply to the Identification
17 Bureau of the Department of Arkansas State Police for a statewide criminal
18 records check, and a nationwide criminal records check to be conducted through
19 the Federal Bureau of Investigation. The nationwide criminal records check
20 shall conform to the applicable federal standards and shall include the taking
21 of fingerprints. Upon applying for a criminal records check, such person shall
22 sign a release of information and shall be responsible for the payment of any
23 fee associated with the nationwide criminal records check. The applicant shall
24 not be assessed a fee for the statewide criminal records check.

25 (B) In the event a legible set of fingerprints, as
26 determined by the Identification Bureau of the Department of Arkansas State
27 Police and the Federal Bureau of Investigation, cannot be obtained after a
28 minimum of three (3) attempts, the Child Care Facilities Review Board will
29 determine eligibility for employment based upon a name check by the
30 Identification Bureau of the Department of Arkansas State Police and the
31 Federal Bureau of Investigation.

32 (C) Any employee, if that employment involves supervisory
33 or disciplinary power over a child or children, or involves contact with a
34 child or children, in any child care facility which is required to be licensed
35 by the board, who has been a resident of the State of Arkansas for the
36 preceding six (6) years, shall only be required to apply to the Identification

1 Bureau of the Department of Arkansas State Police for a statewide criminal
2 records check. The applicant shall not be assessed a fee for the statewide
3 criminal records check.

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

8 (3) The owner or operator of a child care facility shall maintain
9 on file, subject to inspection by the board, evidence that criminal records
10 checks have been initiated on all current employees hired on or after
11 September 1, 1993, and the results of the checks. Failure to maintain that
12 evidence on file will be prima facie grounds to revoke the license of the
13 owner or operator of the child care facility."

14

15 SECTION 4. All provisions of this act of a general and permanent nature
16 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
17 Revision Commission shall incorporate the same in the Code.

18

19 SECTION 5. If any provision of this act or the application thereof to
20 any person or circumstance is held invalid, such invalidity shall not affect
21 other provisions or applications of the act which can be given effect without
22 the invalid provision or application, and to this end the provisions of this
23 act are declared to be severable.

24

25 SECTION 6. All laws and parts of laws in conflict with this act are
26 hereby repealed.

27

28 SECTION 7. EMERGENCY. It is found and determined by the General
29 Assembly of the State of Arkansas that the immediate effectiveness of this Act
30 is essential to the safety and well-being of Arkansas children who are cared
31 for in child care facilities. Therefore, an emergency is declared to exist
32 and this act being immediately necessary for the preservation of the public
33 peace, health and safety shall become effective on the date of its approval by
34 the Governor. If the bill is neither approved nor vetoed by the Governor, it
35 shall become effective on the expiration of the period of time during which
36 the Governor may veto the bill. If the bill is vetoed by the Governor and the

1 veto is overridden, it shall become effective on the date the last house
2 overrides the veto.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35