

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997
4

As Engrossed: H3/20/97 H3/24/97

A Bill

HOUSE BILL 2088

5 By: Representatives Flanagin and McGinnis
6
7

For An Act To Be Entitled

9 "AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS CODE
10 ANNOTATED PERTAINING TO CHILD CARE; AND FOR OTHER
11 PURPOSES."
12

Subtitle

13 "TO AMEND VARIOUS SECTIONS OF THE
14 ARKANSAS CODE ANNOTATED PERTAINING TO
15 CHILD CARE."
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code Annotated § 20-78-202 is amended to read as
21 follows:

22 "20-78-202. Definitions.

23 As used in this subchapter, unless the context otherwise requires:

24 (1) ~~Board means the Child Care Facility Review Board~~ Division means
25 the Division of Child Care and Early Childhood Education, Department of Human
26 Services;

27 (2) Department means the Department of Human Services;

28 (3) Deputy director means the deputy director of the ~~appropriate~~
29 division Division of Child Care and Early Childhood Education of the
30 Department of Human Services;

31 (4)(A) Child care facility means any facility which provides care,
32 training, education, ~~custody,~~ or supervision for any unrelated minor child,
33 whether or not the facility is operated for profit, and whether or not the
34 facility makes a charge for the services offered by it.

35 (B) For the purposes of this subdivision, related minor child
36 means a minor child related by blood, marriage, or adoption to the owner or

1 operator of the facility, or a minor child who is a ward of the owner or
2 operator of the facility pursuant to a guardianship order issued by an
3 Arkansas court of competent jurisdiction.

4 (i) This definition includes, but is not limited to, a
5 nursery, a nursery school, kindergarten, a day care center, or a family day
6 care home, ~~foster home, group home, and custodial institution.~~

7 (ii) In any case where a facility or the owner or operator
8 thereof is appointed guardian of a total of ten (10) or more minors, it shall
9 be presumed that the facility, owner or operator is engaged in child care and
10 shall be subject to child care facility licensure.

11 (iii) However, this definition does not include:

12 (a) Special schools or classes operated solely for
13 religious instruction;

14 (b) Facilities operated in connection with a church,
15 shopping center, business, or establishment where children are cared for
16 during short periods of time while parents or persons in charge of the
17 children are attending church services, shopping, or engaging in other
18 activities during the periods;

19 (c) Any educational facility, whether private or
20 public, which operates solely for educational purposes in grades one (1) or
21 above and does not provide any custodial care;

22 (d) Kindergartens operated as a part of the public
23 schools of this state;

24 (e) Any situation, arrangement, or agreement by which
25 one (1) or more persons care for less than six (6) children from more than one
26 (1) family at the same time;

27 (f) Any educational facility, whether public or
28 private, which operates a kindergarten program in conjunction with grades one
29 (1) and above and provides short-term custodial care prior to or following
30 classes for those students;

31 (g) Any recreational facility or program, whether
32 public or private, which operates solely as a place of recreation for minor
33 children. For purposes of this subdivision, a recreational facility or
34 program is defined as a facility or program which operates with children
35 arriving and leaving voluntarily for scheduled classes, activities, practice,
36 games, and meetings; and

1 (h) Any state operated facility to house juvenile
2 delinquents or any serious offender program facility operated by a state
3 designee to house juvenile delinquents, foster home, group home, or custodial
4 institution. Those facilities shall be subject to program requirements modeled
5 on nationally recognized correctional ~~facility~~ and child welfare standards,
6 which shall be developed, administered, and monitored by the Division of Youth
7 Services and the Division of Children and Family Services of the Department of
8 Human Services."

9

10 SECTION 2. Arkansas Code Annotated § 20-78-203 is amended to read as
11 follows:

12 "20-78-203. Penalties.

13 (a) Any person violating any provisions of this subchapter and any
14 person assisting any partnership, group, corporation, organization, or
15 association in violating any provisions of this subchapter shall be deemed
16 guilty of a misdemeanor and upon conviction shall be fined in any sum not less
17 than twenty-five dollars (\$25.00) and not more than one hundred dollars
18 (\$100). Each day of the violation shall constitute a separate offense.

19 (b) ~~The Child Care Facility Review Board~~ Division of Child Care and
20 Early Childhood Education is authorized to impose monetary fines as civil
21 penalties to be paid for failure to comply with the provisions of this
22 subchapter or the regulations promulgated pursuant thereto. In determining
23 whether a civil penalty is to be imposed, the following factors shall be
24 considered by the ~~board~~ Division:

25 (1) The gravity of the violation, including the probability that
26 death or serious physical harm to a ~~resident-child~~ will result or has
27 resulted; the severity and scope of the actual or potential harm; and the
28 extent to which the provisions of the applicable statutes or regulations were
29 violated;

30 (2) The exercise of good faith. Indications of good faith
31 include, but are not limited to, awareness of the applicable statutes and
32 regulations and reasonable diligence in securing compliance, prior
33 accomplishments manifesting the desire to comply with the requirements,
34 efforts to correct, and any other mitigating factors in favor of the operator;

35 (3) Any relevant previous violations committed;

36 (4) The financial benefit of committing or continuing the

1 violation.

2 (c) Prior to the imposition of monetary fines, the ~~Child Care Facility~~
3 ~~Review Board Division~~ shall provide notice and an opportunity to be heard in
4 accordance with hearing procedures in effect for the revocation or suspension
5 of licenses.

6 (d) The ~~Child Care Facility Review Board Division~~, with the review and
7 advice of the Arkansas Early Childhood Commission, shall publish and
8 promulgate rules and regulations classifying violations as follows:

9 (1) Class A violations involve essential standards which must be
10 met for substantial compliance to licensing requirements. Operation of an
11 unlicensed child care facility shall be considered a Class A violation.
12 However, the definition of unlicensed child care facility shall not be
13 interpreted to include exempt child care facilities as defined in § 20-78-209.
14 These standards address fire, health, safety, nutrition, staff/child ratio,
15 and space. Class A violations are subject to a civil penalty of one hundred
16 dollars (\$100) for each violation;

17 (2) Class B violations involve administrative standards and
18 standards which do not directly threaten the immediate health, safety, or
19 welfare of the children. Class B violations are subject to a civil penalty of
20 fifty dollars (\$50.00) for each violation;

21 (3) Each day of occurrence of a Class A or B violation shall
22 constitute a separate violation. Aggregate fines assessed for violation in
23 any one (1) month shall not exceed five hundred dollars (\$500) for Class A
24 violations or two hundred fifty dollars (\$250) for Class B violations.

25 (e) When a facility has been found by the ~~Child Care Facility Review~~
26 ~~Board Division~~ to have committed Class A or B violations, upon final
27 administrative determination by the ~~board Division~~, notice shall be posted in
28 the facility stating the violations found by the ~~board Division~~ to have
29 occurred, and the current status of the license. This notice shall be posted
30 in the facility, in a conspicuous place, clearly visible to all staff, all
31 other individuals in the facility, and to all visitors to the facility.

32 (f) Failure to post a proper notice as required by this section shall
33 be considered to be a Class B violation for which civil penalties may be
34 imposed as authorized by this section. Each day of noncompliance constitutes
35 a separate offense."

36

1 SECTION 3. Arkansas Code Annotated § 20-78-204 is amended to read as
2 follows:

3 "20-78-204. Injunction.

4 When any person, partnership, group, corporation, organization, or
5 association shall operate or assist in the operation of a child care facility
6 which has not been licensed by the ~~board~~ Division or has had the license
7 denied, suspended, or revoked by the ~~board~~ Division and therefore has been
8 ordered to cease and desist operation, in accordance with the provisions of
9 this subchapter, the ~~board~~ Division shall have the right to go into the
10 chancery court in the jurisdiction in which the child care facility is being
11 operated and, upon affidavit, secure a writ of injunction, without bond,
12 restraining and prohibiting the person, partnership, group, corporation,
13 organization, or association from operating the child care facility.

14

15 SECTION 4. Arkansas Code Annotated 20-78-205 is amended to read as
16 follows:

17 "20-78-205. ~~Child Care Facility Review Board - Members - Proceedings~~
18 Division of Child Care and Early Childhood Education.

19 (a)(1) There is created ~~the Child Care Facility Review Board, which~~
20 ~~shall consist of the following members:~~ the Division of Child Care and Early
21 Childhood Education within the Department of Human Services. In creating the
22 Division, the General Assembly intends for the following to be maintained and
23 enhanced:

24 (A) Coordination of existing early childhood education and
25 child care programs;

26 (B) Placement of children in quality early childhood
27 programs which support their development and readiness for school;

28 (C) Development of new child care services under welfare
29 reform which promote the developmental needs of children receiving TEA
30 benefits or other forms of public assistance;

31 (D) Quality program standards for all early childhood and
32 child care programs;

33 (E) State support for early childhood and child care
34 programs to attain quality program standards;

35 (F) Economic and cultural integration of children in early
36 childhood programs;

1 (G) Access to additional support services for early
2 childhood and child care programs, such as health care and nutrition services;

3 (H) Career development opportunities for early childhood
4 program staff;

5 (I) On-going interagency planning and collaboration in
6 regard to early childhood and child care;

7 (J) Parent support and education in choosing appropriate
8 early childhood programs for their children;

9 (K) State support for local leadership, program innovation
10 and excellence in early childhood and care programs.

11 ~~_____ (A) The director of the appropriate division of the~~
12 ~~Department of Human Services or his designee;~~

13 ~~_____ (B) The Director of the Department of Health or his~~
14 ~~designated alternate;~~

15 ~~_____ (C) Two (2) representatives to be designated by and from~~
16 ~~the membership of the Arkansas Association of Children Under Six and the~~
17 ~~Residential Child Care Providers Association to be appointed by the Governor~~
18 ~~from persons nominated by the associations;~~

19 ~~_____ (D) Five (5) persons engaged in the provision of child~~
20 ~~care, one (1) each from the field of day care, residential, day care family~~
21 ~~home, head start, and foster care to be appointed by the Governor from lists~~
22 ~~of persons nominated by associations or committees of providers of child care;~~

23 ~~_____ (E) One (1) representative from the public to be appointed~~
24 ~~by the Governor;~~

25 ~~_____ (F) The Director of General Education of the Department of~~
26 ~~Education or his designated alternate;~~

27 ~~_____ (G) The Director of the Division of Vocational and~~
28 ~~Technical Education or his designated alternate.~~

29 ~~_____ (2) The eight (8) members of the board appointed by the Governor~~
30 ~~shall, at all times, be from different counties, and at least four (4) of~~
31 ~~these members shall be chosen from an area south of the base line.~~

32 ~~_____ (b) Members shall be appointed for terms of four (4) years expiring on~~
33 ~~March 1 of the appropriate year.~~

34 ~~_____ (c) Members of the board shall serve without compensation, but each~~
35 ~~member of the board shall be entitled to reimbursements for expenses for~~
36 ~~necessary meals, lodging, and mileage in attending board meetings, to be~~

1 ~~payable from funds appropriated for the maintenance and operation of the~~
2 ~~Division of Children and Family Services of the Department of Human Services.~~

3 ~~—— (d) The director of the appropriate division of the Department of Human~~
4 ~~Services or his designee shall be Chairman of the Child Care Facility Review~~
5 ~~Board but shall vote only in case of a tie vote.~~

6 ~~—— (e) The board shall meet and adopt rules and regulations governing its~~
7 ~~procedures, and the rules and regulations shall be published and filed in the~~
8 ~~Office of the Secretary of State.~~

9 ~~—— (f) The Child Care Facility Review Board shall promulgate and establish~~
10 ~~rules and regulations setting standards governing the granting, revocation,~~
11 ~~refusal, and suspension of licenses for a child care facility and the~~
12 ~~operation of child care facilities in this state.~~

13 (b) The Division shall have the following duties:

14 (1) Administration of the Child Care and Development Block Grant
15 and other child care funds, state and federal, which are available to the
16 Department of Human Services;

17 (2) Administration of Arkansas Better Chance Program, under
18 interagency agreement with the Department of Education;

19 (3) Administration of the Special Nutrition Program;

20 (4) Establishment and promulgation of rules and regulations
21 setting standards governing the granting, revocation, refusal, and suspension
22 of licenses for a child care facility and the operation of child care
23 facilities in this state, as defined by A.C.A. § 20-78-202;

24 (5) Staff support for the operation of the Arkansas Early
25 Childhood Commission;

26 (6) Provide consultative resources for the private sector in
27 developing child care programs;

28 (7) Provide consultative resources for the private sector in
29 developing child care facilities; and

30 (8) Solicit grant funds for exemplary early childhood and child
31 care programs.

32 (c) No later than October 1, 1998, an appropriate subcommittee of the
33 Joint Budget Committee shall be designated to perform a comprehensive review
34 of the Division to determine if the creation of the Division within the
35 Department of Human Services has been consistent with legislative intent. The
36 review shall be conducted with advice from, (1) the Senate Committee on

1 Children and Youth, (2) the House Subcommittee on Children and Youth of the
2 House Committee on Aging, Children and Youth, Legislative and Military
3 Affairs, (3) the House Committee on Education, and (4) the Senate Committee on
4 Education. The subcommittee shall forward a recommendation to the Governor and
5 the Joint Budget Committee and a determination of the status of the Division
6 of Child Care and Early Childhood Education shall be made prior to the 1999
7 General Assembly."

8

9 SECTION 5. Arkansas Code Annotated § 20-78-206 is amended to read as
10 follows:

11 "20-78-206. Child Care Facility Review Board - Rules and regulations.

12 (a) The ~~board~~ Division shall promulgate and publish rules and
13 regulations setting minimum standards governing the granting, revocation,
14 refusal, and suspension of licenses for a child care facility and the
15 operation of a child care facility.

16 (1) The ~~Department of Human Services~~ Arkansas Early Childhood
17 Commission shall advise the ~~board~~ Division regarding proposed rules and
18 regulations and, in developing proposed rules and regulations, the Division
19 shall consult with the Director of the Department of Health or his designated
20 representative in regard to rules and regulations relating to health. The
21 ~~board~~ Division shall consult with the Director of the General Education
22 Division of the Department of Education or his designated representative in
23 regard to rules and regulations relating to education.

24 (2) The Director of the Department of Health and the Director of
25 the General Education Division of the Department of Education and their
26 designated representatives are directed to cooperate with and assist the ~~board~~
27 Division in developing rules and regulations in the respective areas of health
28 and education.

29 (3) In developing these rules and regulations, the ~~board may~~
30 Division shall consult with such other agencies, organizations, or individuals
31 as it shall deem appropriate.

32 (4) Rules and regulations promulgated by the ~~board~~ Division
33 pursuant to this section may be amended by the ~~board~~ Division from time to
34 time, provided any amendment to the rules and regulations shall be published
35 and furnished to all licensed child care facilities and applicants for a
36 license at least sixty (60) days prior to the effective date of the amendment.

1 (b) In establishing requirements and standards for the granting,
2 revoking, refusing, and suspending of a license for a child care facility, the
3 ~~board~~ Division shall adopt such rules and regulations as will:

4 (1) Promote the health, safety, and welfare of children attending
5 a child care facility;

6 (2) Promote safe, comfortable, and healthy physical facilities
7 for the children who attend the child care facility;

8 (3) Ensure adequate supervision of the children by capable,
9 qualified, and healthy individuals;

10 (4) Ensure appropriate educational programs and activities within
11 each child care facility; and

12 (5) Ensure adequate and healthy food service where food service
13 is offered by the child care facility.

14 (c) The ~~board~~ Division shall follow the procedures prescribed for
15 adjudication in the Arkansas Administrative Procedure Act, § 25-15-201 et
16 seq., in exercising any power authorized by § 20-78-213.

17 (d) If, upon the filing of a petition for a judicial review, the
18 reviewing court enters a stay prohibiting enforcement of a decision of the
19 ~~Child Care Facility Review Board~~ Division, the court shall complete its review
20 of the record and announce its decision within one hundred twenty (120) days
21 of the entry of the stay. If the court does not issue its findings within one
22 hundred twenty (120) days of the issuance of the stay, the stay shall be
23 considered vacated.

24 (e) All rules and regulations promulgated pursuant to this section
25 shall be reviewed by the ~~Joint Senate~~ Committee on Children and Youth or an
26 appropriate subcommittee thereof and the House Subcommittee on Children and
27 Youth of the House Committee on Aging, Children and Youth, Legislative and
28 Military Affairs.

29 (f)(1) Any person with reasonable cause to suspect that a child care
30 facility has violated any provision of this subchapter, or any rule or
31 regulation of the ~~Child Care Facility Review Board~~ Division, may immediately
32 notify the Department of Human Services.

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

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

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

7

8 SECTION 6. Arkansas Code Annotated § 20-78-207 is amended to read as
9 follows:

10 "20-78-207. Declaratory judgments on licensing rules or regulations.

11 Any rule or regulation promulgated by the ~~board~~ Division under authority
12 of § 20-78-206 or under any other child care facility licensing law shall, at
13 the suit of any interested person instituted in the Chancery Court of Pulaski
14 County, be subject to remedies provided by law for obtaining declaratory
15 judgments. However, the ~~board~~ Division must be named a party defendant and
16 summoned as in an action by ordinary proceedings."

17

18 SECTION 7. Arkansas Code Annotated § 20-78-208 is amended to read as
19 follows:

20 "20-78-208. Unlicensed child care facility unlawful.

21 (a) It shall be unlawful for any person, partnership, group,
22 corporation, organization, or association to operate or assist in the
23 operation of a child care facility which has not been licensed by the ~~board~~
24 Division.

25 (b) It shall be unlawful for any person to falsify an application for
26 licensure, to knowingly circumvent the authority of the Child Care Facility
27 Licensing Act, § 20-78-201 et seq., to knowingly violate the orders issued by
28 the ~~Child Care Facility Review Board~~ Division, or to advertise the provision
29 of child care which is not licensed or approved or exempt by the ~~Child Care~~
30 ~~Facility Review Board~~ Division.

31 (c) A violation of this section shall be a Class C misdemeanor."
32

33 SECTION 8. Arkansas Code Annotated § 20-78-209 is amended to read as
34 follows:

35 "20-78-209. License - Religious exception.

36 (a) Any church or group of churches exempt from the state income tax

1 levied by § 26-51-101 et seq., when operating a child care facility, shall be
2 exempt from obtaining a license to operate the facility by the receipt by the
3 ~~board~~ Division of written request therefor, ~~together with the written~~
4 ~~verifications required in subsection (b) of this section.~~ A written request
5 shall be made by those churches desiring exemption to the ~~board~~ Division,
6 which is mandated under the authority of this subchapter to license all child
7 care facilities.

8 (b)(1) In order to maintain an exempt status, the child care facility
9 ~~shall state every two (2) years, in written form signed by the persons in~~
10 ~~charge, shall maintain in their files verification~~ that their facility has met
11 the required fire, safety, and health inspections on an annual basis and is in
12 substantial compliance with published standards that similar nonexempt child
13 care facilities are required to meet.

14 (2) Visits to review and advise exempt facilities shall be made
15 as deemed necessary by the ~~board~~ Division to verify and maintain substantial
16 compliance with all published standards for nonexempt facilities.

17 (3) Standards for substantial compliance shall not include those
18 of a religious or curriculum nature so long as the health, safety, and welfare
19 of the child is not endangered.

20 (4) Standards for corporal punishment shall be as established by
21 present regulations unless alternative compliance is granted by the ~~board~~
22 Division.

23 (c)(1) Any questions of substantial compliance with the published
24 standards shall be reviewed by the ~~board~~ Division.

25 (2) Final administrative actions of the ~~board~~ Division shall be
26 pursued by either party in the court of competent jurisdiction in the resident
27 county of the facility under review.

28 (3) Challenge to the constitutionality or reasonableness of any
29 regulation or statute may be made prior to any appeal under the Arkansas
30 Administrative Procedure Act, § 25-15-201 et seq.

31 (d) As used in this section, the term substantial compliance and, as
32 used in §§ 20-78-201 - 20-78-206, 20-78-208, 20-78-210 - 20-78-214, and
33 20-78-218, the term is being operated in accordance with this act shall each
34 mean that a church-operated exempt or a nonexempt child care facility is being
35 operated within the minimum requirements for substantial compliance as
36 promulgated by the ~~board~~ Division. It is the intent and purpose of this

1 section that the term substantial compliance be applicable to all child care
2 facilities.

3 (e) This section is cumulative to all other acts heretofore enacted."
4

5 SECTION 9. Arkansas Code Annotated § 20-78-210 is amended to read as
6 follows:

7 "20-78-210. License - Application and issuance.

8 (a) Any person, partnership, group, corporation, organization, or
9 association desiring to operate a child care facility shall first make
10 application for a license for such a facility to the ~~board~~-Division on the
11 application forms furnished for this purpose by the board.

12 (b) The ~~board~~-Division shall act on any application within sixty (60)
13 days after it has been received by the ~~board~~-Division.

14 (c) If an applicant meets the requirements of this subchapter and the
15 published rules and regulations of the ~~board~~-Division regarding minimum
16 standards for a child care facility, then the applicant shall be granted a
17 license by the ~~board~~-Division as a child care facility. This license shall
18 continue in effect ~~for two (2) years or~~ until revoked or suspended as provided
19 in this subchapter.

20 (d) In issuing a license for a child care facility, the ~~board~~-Division
21 may limit the number of children who may be served by that facility.

22 (e) In issuing an initial license or ~~renewing~~-~~reviewing~~ a current
23 license for a child care facility, the ~~board~~-Division shall require that
24 during regular business hours at least one (1) adult member of the staff who
25 is certified in infant and child cardiopulmonary resuscitation shall be
26 present within the physical confines of the child care facility."
27

28 SECTION 10. Arkansas Code Annotated § 20-78-211 is amended to read as
29 follows:

30 "20-78-211. License - Provisional.

31 (a) If the ~~board~~-Division finds that an applicant for a child care
32 facility meets the licensing requirements for a child care facility in the
33 main and has a reasonable expectation of correcting deficiencies in a
34 reasonable time, then the ~~board~~-Division may, in its discretion, issue a
35 provisional license for a child care facility.

36 (b) The provisional license shall be in effect for a reasonable time,

1 which time shall be specified in the provisional license.

2 (c) Issuance of provisional licenses shall be in accordance with the
3 published rules and regulations adopted by the ~~board~~-Division in accordance
4 with this subchapter."

5

6 SECTION 11. Arkansas Code Annotated § 20-78-212 is amended to read as
7 follows:

8 "20-78-212. License - Nontransferability.

9 (a) A license for a child care facility shall apply only to the address
10 and location stated on the application and license issued, and it shall not be
11 transferable from one (1) holder of the license to another or from one (1)
12 place to another.

13 (b) If the location of a child care facility is changed or the ~~operator~~
14 owner of the child care facility is changed, then the license for that child
15 care facility shall automatically be revoked on such a change."

16

17 SECTION 12. Arkansas Code Annotated § 20-78-213 is amended to read as
18 follows:

19 "20-78-213. License - Denial, revocation, or suspension.

20 (a) The ~~board~~-Division shall have the power to deny, revoke, or suspend
21 a license for a child care facility if an applicant or licensee has failed to
22 comply with the provisions of this subchapter or any published rule or
23 regulation of the ~~board~~-Division relating to child care facilities.

24 (b) If a license is denied, revoked, or suspended, the denial,
25 revocation, or suspension shall be effective when made. The ~~board~~-Division
26 shall notify the applicant or licensee of the action in writing and set out
27 the basis for the denial, revocation, or suspension of the license."

28

29 SECTION 13. Arkansas Code Annotated § 20-78-214 is amended to read as
30 follows:

31 "20-78-214. Inspections and investigations of facilities and personnel -
32 Child abuse.

33 (a) The ~~Child Care Facilities Review Board~~-Division or any other agency
34 of the State of Arkansas which the ~~Child Care Facilities Review Board~~-Division
35 asks to assist it is authorized to make an inspection and investigation of any
36 proposed or operating child care facility, and of any personnel connected with

1 that facility to the extent that an inspection and investigation is required
2 to determine if this child care facility will be or is being operated in
3 accordance with this section and the published rules and regulations of the
4 ~~Child Care Facilities Review Board Division~~ for child care facilities.

5 (b) However, the ~~Child Care Facilities Review Board Division~~ or any
6 other public agency having authority or responsibility with respect to child
7 abuse shall have the authority to investigate any alleged or suspected child
8 abuse in any child care facility. Nothing contained in this section shall be
9 construed to limit or restrict that authority."

10

11 SECTION 14. Arkansas Code Annotated § 20-78-215 is amended to read as
12 follows:

13 "20-78-215. Child sexual abuse - Federal funds.

14 (a)(1) By the enactment of this legislation, it is the specific intent
15 of the General Assembly to ensure that the State of Arkansas may qualify for
16 the maximum amount of federal funds made available through Public Law 98-473
17 or any subsequent and related federal legislation enacted for use in reducing
18 the incidence of child sexual abuse.

19 (2) Specifically, regulations promulgated by the Director of the
20 Department of Human Services pursuant to this section may address federally
21 mandated requirements for employment history and background checks and
22 nationwide criminal record checks, as may be necessary in accordance with the
23 provisions of Public Law 92-544, for all operators, staff, or employees, or
24 prospective operators, staff, or employees of the child care facilities or
25 programs as defined in this section.

26 (b) In order to enable the State of Arkansas to fully participate and
27 share in federal funds made available to the states through the Social
28 Services Block Grant Act, or otherwise for the purposes of reducing and
29 eliminating the incidence of child sexual abuse in child care facilities, as
30 defined in § 20-78-202(4), ~~including juvenile facilities for detention,~~
31 ~~correction, or treatment, or any facility or program which maintains primary~~
32 ~~custody of children for twenty (20) hours or more per week,~~ the Director of
33 the Department of Human Services is authorized at his discretion to
34 promulgate, pursuant to the Administrative Procedure Act, § 25-15-201 et seq.,
35 rules and regulations implementing such federal requirements as may be placed
36 upon the states to qualify for the funds.

1 (c) Persons, other than the State of Arkansas, shall not acquire
2 actionable right by virtue of this section."

3

4 SECTION 15. Arkansas Code Annotated § 20-78-216 is amended to read as
5 follows:

6 "20-78-216. Records and reports.

7 The ~~board~~ Division may, by published rules and regulations, require that
8 a licensed child care facility keep and make available to the ~~board~~ Division
9 such records and periodic reports as shall be necessary to assist the ~~board~~
10 Division in determining if the requirements of this subchapter and of the
11 ~~board's~~ Divisions rules and regulations regarding child care facilities are
12 being complied with."

13

14 SECTION 16. Arkansas Code Annotated § 20-78-217 is amended to read as
15 follows:

16 "20-78-217. Smoking prohibited.

17 (a) Whereas, health authorities have established that smoking is not
18 conducive to good health and that children exposed to smoking face a potential
19 health hazard; therefore, it is the intent of the Seventy-Fifth General
20 Assembly to ban smoking in the physical confines of the day care centers
21 licensed by the ~~appropriate division~~ Division of Child Care and Early
22 Childhood Education of the Department of Human Services.

23 (b) The ~~appropriate division~~ Division of Child Care and Early Childhood
24 Education of the Department of Human Services is directed to promulgate
25 sufficient regulations to ensure that state licensing requirements for day
26 care center operations contain a stipulation which bans smoking within the
27 physical confines of each day care center."

28

29 SECTION 17. Arkansas Code Annotated § 20-78-218 is amended to read as
30 follows:

31 "20-78-218. Administration of subchapter.

32 The ~~Division of Children and Family Services~~ Division of Child Care and
33 Early Childhood Education of the Department of Human Services shall continue
34 to be the administrative agency to administer the provisions of this
35 subchapter in accordance with the rules, regulations, and standards for the
36 licensing and operation of child care facilities as promulgated by the ~~Child~~

1 ~~Care Facility Review Board~~ Division."

2

3 SECTION 18. Arkansas Code Annotated § 20-78-219 is amended to read as
4 follows:

5 "20-78-219. Fines and penalties - Disposition of funds.

6 (a) If any licensee fails to pay any monetary fine imposed as civil
7 penalty within sixty (60) days of the ~~board's~~ Division's decision imposing the
8 penalty, the amount of the fine shall be considered to be a debt owed the
9 State of Arkansas and may be collected by civil action.

10 (b)(1) All fines and penalties collected under the provisions of this
11 subchapter shall be special revenues to be deposited in the State Treasury to
12 the credit of a special fund to be known as the Child Care ~~Facility~~ Fund to be
13 used by the Division of ~~Children and Family Services~~ Child Care and Early
14 Childhood Education of the Department of Human Services ~~exclusively to meet~~
15 the costs of conducting the statewide criminal records checks required under
16 A.C.A. § 20-78-602, to provide grants to child care facilities for enhancement
17 of the facility or for training of personnel in child care facilities under
18 the direction of the Division of ~~Children and Family Services~~ Child Care and
19 Early Childhood Education.

20 (2) Subject to such rules and regulations as may be implemented
21 by the Chief Fiscal Officer of the State, the disbursing officer for the
22 Department of Human Services is authorized to transfer all unexpended funds
23 relative to the fines and penalties collected from child care facilities as
24 certified by the Chief Fiscal Officer of the State, to be carried forward and
25 made available for expenditures for the same purpose for any following fiscal
26 year."

27

28 SECTION 19. Arkansas Code Annotated § 20-78-220 is amended to read as
29 follows:

30 "20-78-220. Persons or facilities abusing juveniles in their custody.

31 (a) If a juvenile is found to be abused or neglected due to the acts or
32 omissions of a person other than the parent or guardian of the juvenile, the
33 court may enter an order restraining or enjoining the person or facility
34 employing that person from providing care, training, education, ~~custody,~~ or
35 supervision of juveniles of whom the person or facility is not the parent or
36 guardian.

1 (b) If the person or facility restrained or enjoined was not subject to
2 this subchapter, the court may order the person or facility to obtain a
3 license from the ~~Child Care Facility Review Board~~Division as a condition
4 precedent to the person or facility providing care, training, education,
5 ~~custody,~~ or supervision of any juveniles of which the person or facility is
6 not the parent or guardian. If the court so orders, this subchapter shall
7 thereafter apply to the persons or facility subject to the court order.

8 (c)(1) Information pertaining to child maltreatment is confidential
9 under ~~§ 12-12-506 and shall not be disclosed during Child Care Facility Review~~
10 ~~Board meetings.~~

11 (2) The Division of Child Care and Early Childhood Education,
12 Department of Human Services may ~~present to the board information receive~~
13 information from any investigative agency on child maltreatment cases
14 conducted within a child care facility and relative to licensure under this
15 subchapter, ~~but only including~~ specific allegations, a factual description of
16 the investigative findings, and the investigative determination ~~will be~~
17 ~~presented.~~

18 (3) The ~~Child Care Facility Review Board~~Division shall accept
19 the investigative ~~determination~~ determinations of the ~~Department of Human~~
20 ~~Services~~ appropriate investigative agencies for consideration in any action on
21 child care facility licenses."
22

23 SECTION 20. Arkansas Code Annotated § 20-78-221 is amended to read as
24 follows:

25 "20-78-221. Voluntary registration.

26 (a) Registry. There shall be created a voluntary registry of day care
27 family homes that are not required by § 20-78-201 et seq., to be licensed by
28 the ~~Child Care Facility Review Board~~Division. Such registry shall be
29 maintained by the Department of Human Services, Division of ~~Children and~~
30 ~~Family Services~~ Child Care and Early Childhood Education.

31 (b) Procedure for Registration. Day care family homes exempt from
32 licensure may voluntarily register the home with the registry established,
33 operated, and maintained by the Department of Human Services, Division of
34 Child Care and Early Childhood Education. A person wishing to participate in
35 the voluntary registry shall make an application to the ~~department~~Division.
36 Upon receipt of the application, the ~~department~~Division shall review the

1 applicant's written application, qualifications, and proposed operation to
2 determine compliance with registry rules and regulations. The ~~department~~
3 Division shall issue a certificate of registration to the applicant which
4 authorizes the applicant to operate a registered day care family home only
5 upon final determination of an applicant's compliance with the rules and
6 regulations established for registration.

7 (c) Rules and Regulations. The ~~department~~-Division is authorized to
8 establish such rules and regulations that a day care family home shall meet in
9 order to be registered by the Department of Human Services. The ~~department~~
10 Division shall have the right to enter and inspect a registered day care
11 family home if there is reason to believe that the home is in violation of the
12 registry rules and regulations and to ensure compliance with the rules and
13 regulations established by the ~~department~~-Division.

14 (d) Removal or Denial of Registration. If, after review of the
15 submitted application, it is determined that the day care family home is not
16 in compliance with the rules and regulations for registry as established by
17 the ~~department~~-Division, the ~~department~~-Division shall immediately deny or
18 remove the home from the registry. Upon removal from the registry, a day care
19 family home may no longer be considered a registered home.

20 (e) Right to Appeal. A person whose registration has been denied or is
21 removed from the voluntary registry due to violation of rules and regulations
22 may appeal the action to the department in accordance with Arkansas law and
23 state rules and regulations. The appeal does not stay the denial or removal
24 from the registry.

25 (f) Renewal of Registration. The registration of the day care family
26 home shall ~~be renewed every two (2) years~~ continue in effect until removed as
27 provided in this subchapter. The ~~Department of Human Services~~-Division shall
28 have the right to investigate and inspect the premises when there is reason to
29 believe violations exist and to make sure the home is still in compliance with
30 the rules and regulations established for the voluntary registry of day care
31 family homes.

32 (g) Surrender of Registration. At any time, the owner of the registered
33 day care family home may voluntarily surrender his certificate of
34 registration. Upon such surrender, that home shall be removed from the
35 registry of day care family homes operated by the Department of Human
36 Services, Division of Child Care and Early Childhood Education."

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SECTION 21. Arkansas Code Annotated § 20-78-222 is amended to read as follows:

"20-78-222. Continuing education.

(a)(1) All persons employed by a child care facility who work directly with children shall receive at least ten (10) hours per year of continuing early childhood education as approved by the ~~board~~-Division.

(2) Topics appropriate for continuing early childhood education shall include, but not be limited to, the following:

- (A) Child growth and development;
- (B) Nutrition and food service;
- (C) Parent communication and involvement;
- (D) Curriculum and curriculum development;
- (E) Developmentally appropriate practice and learning environments;
- (F) Behavior management;
- (G) Emergency care and first aid; and
- (H) Administration and management of early childhood

programs.

(b) Evidence satisfactory to the ~~board~~-Division of each employee's completion, within the past ~~twenty-four (24)~~ twelve (12) months, of continuing education shall be maintained by the facility as part of the facility's personnel records.

(c) The failure of a child care facility to comply with this requirement shall be grounds for the denial, revocation, or suspension of a license issued pursuant to this subchapter."

SECTION 22. Title 20, Subchapter 78 of the Arkansas Code, Annotated, is amended to add the following new subsections:

"20-78-223. License fees -- Disposition.

(a) The Division shall not issue or maintain a license to a child care facility unless the license fee is paid at the annual licensing or renewal date. The license fee is:

- (1) Fifteen dollars (\$15.00) per year for child care facilities serving less than seventeen (17) children;
- (2) Fifty dollars (\$50.00) for child care facilities serving

1 seventeen (17) to ninety-nine (99) children; and

2 (3) One hundred dollars (\$100.00) per year for child care
3 facilities serving one hundred (100) or more children.

4 (b) The Division shall transmit the fees monthly to the Treasurer of
5 State to be deposited as special revenues in the Child Care Fund.

6

7 20-78-224. Child Care Fund.

8 (a) There is established on the books of the Treasurer of State, the
9 Auditor of State, and the Chief Fiscal Officer of the State, the Child Care
10 Fund, to be administered by the Division of Child Care and Early Childhood
11 Education, Department of Human Services.

12 (b) The Division shall certify each month the amount of fees collected
13 and deposited to the Child Care Fund and shall transmit, from funds
14 appropriated for the maintenance and operation of the Division, an amount of
15 money equal to one-half (1/2) of the fees transmitted to the Treasurer of
16 State."

17

18 SECTION 23. Title 20, Subchapter 4 of the Arkansas Code Annotated is
19 repealed.

20 ~~20-78-401. Creation - Members - Meetings.~~

21 ~~(a) There is created the Child Care Providers' Committee.~~

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

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

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

26 ~~(C) One (1) appointee shall be active in the Head Start~~
27 ~~Program;~~

28 ~~(D) One (1) appointee shall be a member of the Child Care~~
29 ~~Facility Review Board;~~

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

32 ~~(F) One (1) appointee shall be an early childhood education~~
33 ~~professional; and~~

34 ~~(G) One (1) appointee shall be a parent.~~

35 ~~(2) At least one (1) appointee shall reside in the present First~~
36 ~~Congressional District; at least one (1) appointee shall reside in the present~~

1 ~~Second Congressional District; at least one (1) appointee shall reside in the~~
2 ~~present Third Congressional District; and at least one (1) appointee shall~~
3 ~~reside in the present Fourth Congressional District.~~

4 ~~_____ (3) The members of the committee shall serve three-year staggered~~
5 ~~terms.~~

6 ~~_____ (c) The chairman shall be selected annually by a majority vote of the~~
7 ~~entire membership of the committee.~~

8 ~~_____ (d) The committee shall meet at least once annually.~~

9 ~~_____ (e) Members of the Child Care Providers' Committee shall serve without~~
10 ~~compensation or per diem but shall be entitled to reimbursement for expenses~~
11 ~~as prescribed for state employees by state travel regulations."~~

12

13 ~~_____ 20-78-402. Duties and powers.~~

14 ~~_____ The Child Care Providers' Committee, working with the Department of~~
15 ~~Human Services, shall:~~

16 ~~_____ (1) Develop an annual comprehensive training program for child care~~
17 ~~providers;~~

18 ~~_____ (2) Solicit proposals for child care provider training contracts and~~
19 ~~award contracts to those applicants who meet the committee's training~~
20 ~~requirements;~~

21 ~~_____ (3) Purchase materials for loan to child care providers to assist in~~
22 ~~staff training; and~~

23 ~~_____ (4) Exercise such other powers as are necessary to implement this~~
24 ~~subchapter.~~

25

26 ~~_____ 20-78-403. License fees - Disposition.~~

27 ~~_____ (a) The Child Care Facility Review Board shall issue no license to a~~
28 ~~child care facility or renew a license unless the license fee is paid at the~~
29 ~~time of issuing or renewing a license. The license fee is:~~

30 ~~_____ (1) Fifteen dollars (\$15.00) per year for child care facilities~~
31 ~~serving less than seventeen (17) children;~~

32 ~~_____ (2) Fifty dollars (\$50.00) per year for child care facilities~~
33 ~~serving seventeen (17) to ninety-nine (99) children; and~~

34 ~~_____ (3) One hundred dollars (\$100) per year for child care facilities~~
35 ~~serving one hundred (100) or more children.~~

36 ~~_____ (b) The Child Care Facility Review Board shall transmit through the~~

1 ~~Department of Human Services the fees monthly to the Treasurer of State to be~~
2 ~~deposited as special revenues in the Child Care Providers' Fund.~~

3

4 ~~_____ 20-78-404. Child Care Providers' Fund.~~

5 ~~_____ (a) There is established on the books of the Treasurer of State, the~~
6 ~~Auditor of State, and the Chief Fiscal Officer of the State the Child Care~~
7 ~~Providers' Fund, to be administered by the Department of Human Services.~~

8 ~~_____ (b) The Treasurer of State shall certify to the Director of the~~
9 ~~Department of Human Services on a monthly basis the amount of fees transmitted~~
10 ~~by the Child Care Facility Review Board, and the director shall transmit to~~
11 ~~the Treasurer of State for deposit into the Child Care Providers' Fund, from~~
12 ~~funds appropriated for the maintenance and operation of the Department of~~
13 ~~Human Services, an amount of money equal to one-half (1/2) of the fees~~
14 ~~transmitted to the Treasurer of State.~~

15

16 ~~_____ 20-78-405. Purchase of training material.~~

17 ~~_____ The amount of the moneys deposited in the Child Care Providers' Fund~~
18 ~~shall be expended to meet the costs of conducting the statewide criminal~~
19 ~~records checks required under [§] 20-78-602, with the remaining moneys used to~~
20 ~~purchase training or materials for loan to child care providers with~~
21 ~~recommendations from the Child Care Providers' Committee and approval of the~~
22 ~~Department of Human Services. Funds sufficient to cover the costs of the~~
23 ~~statewide criminal records checks, not to exceed total revenues in the Child~~
24 ~~Care Providers' Fund, shall be disbursed on a quarterly basis to the~~
25 ~~Department of Arkansas State Police by the Department of Human Services.~~

26

27 ~~_____ 20-78-406. Facilities and staff - Review of contracts.~~

28 ~~_____ (a) The Department of Human Services, through its Division of Children~~
29 ~~and Family Services, shall provide facilities and staff support for the Child~~
30 ~~Care Providers' Committee.~~

31 ~~_____ (b) All contracts let by the Department of Human Services for child~~
32 ~~care provider training shall be submitted to the committee for review and~~
33 ~~advice so that a coordinated statewide training plan for providers may be~~
34 ~~maintained.~~

35

36 SECTION 24. Arkansas Code Annotated [§] 20-78-501 is amended to read as

1 follows:

2 "20-78-501. Creation - Composition - Meetings.

3 (a) There is hereby established the Arkansas Early Childhood Commission
4 to be composed of ~~seventeen (17)~~ eighteen (18) members appointed by the
5 Governor, subject to confirmation by the Senate. The members of the
6 commission shall serve for three-year terms. The terms of the members of the
7 commission shall begin on July 1. The chairman of the commission shall be
8 selected annually by majority vote of the commission.

9 (b) The membership of the commission shall be as follows:

10 (1) ~~Two (2)~~ Three (3) members affiliated with child care provider
11 agencies, organizations, or programs;

12 (2) ~~One (1)~~ One (1) member affiliated with a Head Start program;

13 (3) ~~One (1)~~ One (1) member affiliated with a HIPPIY program;

14 (4) ~~One (1)~~ One (1) member employed as an administrator by a public
15 school district;

16 (5) ~~One (1)~~ One (1) member employed by a public school district as a
17 teacher with early childhood responsibilities;

18 (6) ~~One (1) member representing the Department of Health who~~
19 ~~shall be an employee of the Department of Health~~ The Director of the
20 Department of Health or her designee;

21 ~~One (1) member representing the Division of Children and~~
22 ~~Family Services of the Department of Human Services who shall be an employee~~
23 ~~of the Division of Children and Family Services;~~

24 ~~One (1) member trained as an early childhood education~~
25 ~~professional~~ professionals;

26 ~~One (1) member who is the parent of a child under age six (6)~~

27 (8) One (1) member who are parents of a child who attends a child
28 care program;

29 ~~One (1) member representing the Division of Vocational and~~
30 ~~Technical Education of the Department of Education who shall be an employee of~~
31 ~~the Division of Vocational and Technical Education~~ (9) The Director of the
32 Vocational and Technical Division of the Department of Education, or its
33 successor, or his designee;

34 ~~One (1) member representing the General Education Division~~
35 ~~of the Department of Education who shall be an employee of the General~~

36 ~~Education Division~~ (10) The Director of the General Education Division of the

1 Department of Education or his designee;

2 ~~_____ (12)(11) Three (3) Two (2)~~ members representing the business
3 community who have an interest in early childhood education;

4 ~~_____ (13) Two (2) members representing the general public.~~

5 (13) The chair of the House Subcommittee on Children and Youth of
6 the House Committee on Aging, Children and Youth, Legislative and Military
7 Affairs or the chair's designee;

8 (14) The chair of the Senate Committee on Children and Youth or
9 the chair's designee;

10 (15) The chair of the House Committee on Education or the chair's
11 designee; and

12 (16) The chair of the Senate Committee on Education or the
13 chair's designee.

14 (c) The commission shall meet at least quarterly and at such other
15 times as may be deemed necessary for the performance of the duties of the
16 commission. Special meetings of the commission may be called by the chairman
17 or by agreement of a majority of the members of the commission.

18 (d) The members of the commission shall serve without compensation or
19 per diem but shall be entitled to reimbursement for actual expenses incurred
20 in the performance of duties as members of the commission. Expense
21 reimbursement shall be in accordance with state travel and official business
22 expense reimbursement procedures and regulations. Expense reimbursement shall
23 be paid from funds appropriated to the ~~General Education Division of the~~
24 Department of Education Division of Child Care and Early Childhood Education
25 for such purposes.

26 (e) Members of the commission serving on the effective date of this
27 act, except those members whose positions have been eliminated by this act,
28 shall continue to serve out their terms."

29

30 SECTION 25. Arkansas Code Annotated § 20-78-502 is amended to read as
31 follows:

32 "20-78-502. Duties - Assistance.

33 (a) The Arkansas Early Childhood Commission shall have the following
34 duties and responsibilities:

35 (1) ~~Administer~~ Advise the Division on the administration of the
36 Arkansas Child Care Facilities Loan Guarantee Trust Fund;

1 (2) Provide technical assistance in ~~brokering design~~ of training
2 programs to enhance the skills of professionals in early childhood programs,
3 including the development of an annual comprehensive training plan for
4 providers;

5 (3) ~~Develop Assist~~ in development of a comprehensive long-range
6 plan for expansion, development, and implementation of early childhood
7 programs in Arkansas including recommending allocation and expenditures of
8 funds appropriated to the Arkansas Better Chance Program;

9 (4) Facilitate coordination and communication among state
10 agencies providing early childhood programs to promote nonduplication and
11 coordination of services in such programs;

12 (5) Advise the General Education Division of the Department of
13 Education and other appropriate state agencies on the development of
14 programmatic standards for early childhood programs to be funded with funds
15 appropriated to the General Education Division or to such other state agencies
16 as may receive appropriations for such purposes;

17 (6) Promote strong local community support for early childhood
18 education programs;

19 (7) Promote public awareness of child care and early childhood
20 programs;.

21 ~~_____ (8) Provide consultative resources for the private sector in~~
22 ~~developing child care programs;~~

23 ~~_____ (9) Solicit grant funds for exemplary early childhood and child~~
24 ~~care programs.~~

25 ~~(b)(1) The Director of the General Education Division of the Department~~
26 ~~of Education shall assign staff of the General Education Division to The~~
27 Division of Child Care and Early Childhood Education shall assist the
28 commission in carrying out its duties and responsibilities.

29 ~~_____ (2) The chairman of the commission may request staff support and~~
30 ~~assistance from other appropriate state agencies. Any director of a state~~
31 ~~agency receiving a request for assistance and support for the commission~~
32 ~~shall, within the limits of available resources, provide such assistance to~~
33 ~~the commission."~~

34

35 SECTION 26. Arkansas Code Annotate § 20-78-503 is amended to read as
36 follows:

1 "20-78-503. Arkansas Child Care Facilities Loan Guarantee Trust Fund.

2 (a) There is established a cash fund account of the ~~Arkansas Early~~
3 ~~Childhood Commission~~ Division of Child Care and Early Childhood Education to
4 be known as the Arkansas Child Care Facilities Loan Guarantee Trust Fund .
5 This cash fund account is to be maintained in one (1) or more financial
6 institutions of the state and shall be administered in accordance with this
7 subchapter.

8 (b) The ~~commission~~ Division is hereby authorized to accept moneys for
9 the Arkansas Child Care Facilities Loan Guarantee Trust Fund from any source
10 including, but not limited to, allocations from the State Treasurer as
11 provided in § 20-78-504.

12 (c) The fund shall be a continuing fund, not subject to fiscal year
13 limitations, and shall be used to guarantee loans for the expansion or
14 development of child care facilities in this state and as provided in
15 subsection (d) of this section.

16 (d) Any interest at the end of the fiscal year which exceeds the amount
17 necessary to cover loan defaults occurring during that fiscal year, shall be
18 made available for nonrefundable grants to child care facilities for start-up,
19 development, training scholarships, or expansion.

20 (e) This fund shall be administered by the ~~Arkansas Early Childhood~~
21 ~~Commission~~ Division of Child Care and Early Childhood Education with technical
22 assistance from the ~~Small Business Development Division of the Arkansas~~
23 ~~Industrial Development Commission~~ Arkansas Early Childhood Commission and the
24 Arkansas Development Finance Authority."

25

26 SECTION 27. Arkansas Code Annotated § 20-78-504 is amended to read as
27 follows:

28 "20-78-504. Moneys for Arkansas Child Care Facilities Loan Guarantee
29 Trust Fund.

30 (a) After providing for the exclusion of the interest income classified
31 as special revenues as authorized by § 15-41-110 and § 27-70-204, and the
32 first two million dollars (\$2,000,000) of interest income received each fiscal
33 year by the State Treasurer as authorized in § 15-5-422, the next one hundred
34 thousand dollars (\$100,000) of interest income received each fiscal year in
35 the State Treasury, beginning with the fiscal year commencing July 1, 1989,
36 and continuing as set forth in subsection (b) of this section, from the

1 investment of state funds as authorized by the State Treasury Management Law,
2 § 19-3-201 et seq., are declared to be cash funds restricted in their use and
3 dedicated to be used solely as authorized in § 20-78-503. Such cash funds as
4 received by the State Treasurer shall not be deposited or deemed to be a part
5 of the State Treasury, for purposes of Arkansas Constitution Article 5, § 29;
6 Arkansas Constitution, Article 16, § 12; Arkansas Constitution, Amendment 20;
7 or any other constitutional or statutory provision. The State Treasurer shall
8 pay such cash funds to the ~~Arkansas Early Childhood Commission~~ Division of
9 Child Care and Early Childhood Education for depositing those amounts in the
10 Arkansas Child Care Facilities Loan Guarantee Trust Fund for the purposes
11 authorized by § 20-78-503. The interest earnings transferred directly to the
12 ~~commission~~ Division are declared to be cash funds restricted in their use and
13 dedicated to be used solely as authorized in § 20-78-503.

14 (b) The State Treasurer shall continue to pay the cash funds as
15 authorized in subsection (a) of this section until the balance of the fund
16 reaches three hundred fifty thousand dollars (\$350,000). After that time, the
17 ~~Arkansas Early Childhood Commission~~ Division shall review the fund balance at
18 least quarterly and report to the State Treasurer when the balance reaches or
19 falls below one hundred thousand dollars (\$100,000). At that time the State
20 Treasurer shall again pay cash funds as authorized in subsection (a) of this
21 section until the balance of the fund reaches three hundred fifty thousand
22 dollars (\$350,000)."

23
24 SECTION 28. Arkansas Code Annotated § 20-78-505 is amended to read as
25 follows:

26 "20-78-505. Loan guarantees - Annual report.

27 (a) The ~~Arkansas Early Childhood Commission~~ Division is authorized to
28 develop and implement, with the technical assistance of the ~~Small Business~~
29 ~~Development Division of the Arkansas Industrial Development Commission~~
30 Arkansas Early Childhood Commission, necessary rules and regulations to
31 receive, review, and approve applications for loan deficiency guarantee
32 assistance for expansion or development of child care facilities in this
33 state.

34 (b) The maximum loan guarantee amount approved by the ~~commission~~
35 Division shall be ~~established annually by the commission~~ modified as necessary
36 to ensure adequate child care financing availability.

1 (c) In guaranteeing loans under this subchapter, considerations shall
2 be given to:

3 (1) Geographic distribution;

4 (2) Community need;

5 (3) Community income, with priority given to those communities
6 with the lowest median family income;

7 (4) Proof of viable administrative and financial management;

8 (5) Intended licensure of the facility; ~~and.~~

9 ~~_____ (6) Attainment of the goal that twenty-five percent (25%) of the
10 potential market for the facility will be comprised of families at or below
11 the median income for the state.~~

12 (d) The ~~commission~~ Division shall report each October to the
13 Legislative Council on the status of the Arkansas Child Care Facilities Loan
14 Guarantee Trust Fund."

15

16 SECTION 29. Arkansas Code Annotated § 20-78-506 is amended to read as
17 follows:

18 "20-78-506. Criteria for grant approval.

19 The ~~Arkansas Early Childhood Commission~~ Division is authorized to
20 develop and implement criteria for grant approval of interest moneys to be
21 used as authorized in § 20-78-503(d)."

22

23 SECTION 30. Arkansas Code Annotated § 20-78-601 is amended to read as
24 follows:

25 "20-78-601. Child Abuse Central Registry check - Owners, operators, and
26 prospective employees.

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

31 (2) All employees or conditional employees shall be checked with
32 the Arkansas Child Abuse Central Registry for reports of child maltreatment.
33 All employees in a child care facility shall further be checked with the
34 registry for reports of child maltreatment during every child care facility
35 license renewal.

36 (b) The ~~Child Care Facility Review Board~~ Division shall have the

1 authority to deny a license to any applicant found to have any record of
2 founded child maltreatment in the official record of the Arkansas Child Abuse
3 Central Registry.

4 (c) Any person employed in a licensed child care facility found to have
5 any record of child maltreatment in the official record of the Arkansas Child
6 Abuse Central Registry shall be reviewed by the owner or operator of the
7 facility in consultation with the ~~board~~ Division to determine appropriate
8 corrective action measures, which would include but are not limited to
9 training, probationary employment, or nonselection for employment. The ~~Child~~
10 ~~Care Facility Review Board~~ Division shall also have the authority to deny a
11 license to an applicant who continues to employ a person with any record of
12 founded child maltreatment."

13

14 SECTION 31. Arkansas Code Annotated § 20-78-602 is amended to read as
15 follows:

16 "20-78-602. Criminal records check.

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

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

28 (2) Upon completion of the criminal records checks, the
29 Identification Bureau of the Department of Arkansas State Police shall forward
30 all information obtained concerning the applicant for a license to the ~~Child~~
31 ~~Care Facility Review Board~~ Division.

32 (b) Criminal Records Check - Employees.

33 (1)(A) Any employee or conditional employee, if that employment
34 involves supervisory or disciplinary power over a child or children, or
35 involves contact with a child or children, in any child care facility which is
36 required to be licensed by the ~~board~~ Division, who has not been a resident of

1 the state of Arkansas for the preceding six (6) years, shall apply to the
2 Identification Bureau of the Department of Arkansas State Police for a
3 statewide criminal records check, and a nationwide criminal records check to
4 be conducted through the Federal Bureau of Investigation. The nationwide
5 criminal records check shall conform to the applicable federal standards and
6 shall include the taking of fingerprints. Upon applying for a criminal records
7 check, such person shall sign a release of information and shall be
8 responsible for the payment of any fee associated with the nationwide criminal
9 records check. The applicant shall not be assessed a fee for the statewide
10 criminal records check.

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

19 (2) Upon completion of a criminal records check, the
20 Identification Bureau of the Department of Arkansas State Police shall forward
21 all information obtained concerning the employee or conditional employee in a
22 child care facility to the ~~Child Care Facility Review Board~~-Division.

23 (3) The owner or operator of a child care facility shall maintain
24 on file, subject to inspection by the ~~board~~-Division, evidence that criminal
25 records checks have been initiated on all current employees hired on or after
26 September 1, 1993, and the results of the checks. Failure to maintain that
27 evidence on file will be prima facie grounds to revoke the license of the
28 owner or operator of the child care facility.

29 (c)(1) Each applicant for a license to own or operate a child care
30 facility, and each employee in any child care facility required to be licensed
31 by the ~~board~~-Division, shall complete a criminal records check form developed
32 by the Department of Human Services and shall sign such form under oath before
33 a notary public.

34 (2) The owner or operator of the child care facility shall submit
35 the criminal records check form to the ~~department~~-Division for processing
36 within ten (10) days of hiring the employee, who shall remain under

1 conditional employment until the Arkansas Child Abuse Central Registry check
2 and criminal records checks required under this subchapter are completed.

3 (d)(1) An owner or operator of a child care facility shall not be
4 liable during a conditional period of employment for hiring an employee who
5 may be subject to a charge of false swearing upon completion of central
6 registry and criminal records checks.

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

10 (B) Lack of knowledge that information is material is not a
11 defense to a charge of false swearing.

12 (3) For purposes of this subchapter, false swearing is a Class A
13 misdemeanor.

14 (e)(1) After the initial checks, licensed owners or operators of child
15 care facilities and all child care facility employees shall reapply every five
16 (5) years to the Identification Bureau of the Department of Arkansas State
17 Police for a statewide criminal records check, which, upon completion, shall
18 be forwarded to the ~~Child Care Facility Review Board~~ Division.

19 (2) The applicants shall not be assessed a fee for the statewide
20 criminal records check required under this subsection."

21

22 SECTION 32. Arkansas Code Annotated § 20-78-604 is amended to read as
23 follows:

24 "20-78-604. Qualifications for child care ownership, operation, or
25 employment.

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

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

33 (2) Murder in the first and second degrees as prohibited in §§
34 5-10-102 and 5-10-103;

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

36 (4) Battery in the first and second degrees as prohibited in §§

- 1 5-13-201 and 5-13-202;
- 2 (5) Aggravated assault as prohibited in § 5-13-204;
- 3 (6) Terroristic threatening in the first degree as prohibited in
- 4 § 5-13-301;
- 5 (7) Kidnapping as prohibited in § 5-11-102;
- 6 (8) False imprisonment in the first degree as prohibited in §
- 7 5-11-103;
- 8 (9) Permanent detention or restraint as prohibited in § 5-11-106;
- 9 (10) Rape and carnal abuse in the first and second degrees as
- 10 prohibited in §§ 5-14-103 - 5-14-105;
- 11 (11) Sexual abuse in the first and second degrees as prohibited
- 12 in §§ 5-14-108 and 5-14-109;
- 13 (12) Violation of a minor in the first and second degrees as
- 14 prohibited in §§ 5-14-120 and 5-14-121;
- 15 (13) Incest as prohibited in § 5-26-202;
- 16 (14) Endangering the welfare of a minor in the first degree as
- 17 prohibited in § 5-27-203;
- 18 (15) Permitting child abuse as prohibited in subdivisions (a)(1)
- 19 and (a)(3) of § 5-27-221;
- 20 (16) Engaging children in sexually explicit conduct for use in
- 21 visual or print media, transportation of minors for prohibited sexual conduct,
- 22 or use of a child or consent to use of a child in a sexual performance by
- 23 producing, directing, or promoting a sexual performance by a child as
- 24 prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403;
- 25 (17) Criminal attempt, criminal solicitation, or criminal
- 26 conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401 to
- 27 commit any of the offenses listed in this section;
- 28 (18) Distribution to minors as prohibited in § 5-64-406;
- 29 (19) Manufacture, delivery, or possession with intent to
- 30 manufacture or deliver any controlled substance as prohibited in § 5-64-401;
- 31 and
- 32 (20) Any felony or any misdemeanor involving violence or moral
- 33 turpitude.
- 34 (b) Any person pleading guilty or nolo contendere or found guilty of
- 35 any of the offenses listed in subsection (a) of this section who can
- 36 demonstrate rehabilitation, where 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~~ may petition
3 the Division that he is qualified to be a child care facility owner, operator,
4 or employee. The ~~board~~ Division is authorized to determine when a petitioner
5 has been rehabilitated sufficiently to be a child care facility owner,
6 operator, or employee."

7

8 SECTION 33. Arkansas Code Annotated § 6-16-311 is amended to read as
9 follows:

10 "6-16-311. Early childhood education - Approval of private programs.

11 ~~— (a) —~~ In the event a privately controlled and operated program for
12 children of less than six (6) years of age is conducted in the state, the
13 program ~~may secure approval by the Department of Education by meeting the~~
14 ~~standards and regulations adopted by the board~~ shall be licensed as set forth
15 in § 20-78-202 through 20-78-605.

16 ~~— (b) —~~ In any event, ~~these programs may operate as private institutions~~
17 ~~but may not receive state approval without having met minimum standards,~~
18 ~~criteria, and regulations adopted by the board and shall not receive tax~~
19 ~~moneys."~~

20

21 SECTION 34. Arkansas Code Annotated § 6-16-312 is amended to read as
22 follows:

23 "6-16-312. Early childhood and kindergarten programs - Tuition, etc.,
24 prohibited.

25 (a) The State Board of Education and school district boards of
26 directors are prohibited from initiating new or additional programs, studies,
27 research, or demonstrations with revenue derived from fees, tuition, or other
28 contributions charged or received from students participating in ~~early~~
29 ~~childhood education or public school~~ kindergarten programs.

30 (b) The specific intention of this section is to prohibit the charging
31 of fees or tuition in order to pay for the operation of ~~early childhood~~
32 ~~education or public school~~ kindergarten programs, and no other interpretation
33 shall be given to it."

34

35 SECTION 35. Arkansas Code Annotated § 6-16-313 is amended to read as
36 follows:

1 "6-16-313. Early childhood and kindergarten programs - Minimum
2 standards.

3 (a) The State Board of Education shall promulgate and adopt such rules
4 and regulations as it deems appropriate providing minimum standards, including
5 program standards and teacher certification standards, for the conduct of
6 public school kindergarten programs ~~and early childhood education programs~~.

7 (b) Program standards shall include, but shall not necessarily be
8 restricted to, facilities, staffing, articulation with the elementary program
9 other than the kindergarten, and finance.

10 (c) Parent participation in program planning, development, and
11 evaluation shall be encouraged."

12

13 SECTION 36. Arkansas Code Annotated § 6-45-103 is amended to read as
14 follows:

15 "6-45-103. Definitions.

16 For the purposes of this chapter, the following definitions shall apply:

17 (1) Department means the General Education Division of the Department
18 of Education or its authorized agents;

19 (2) Appropriate early childhood program means a developmentally
20 appropriate program for young children, ages ~~three through five (3-5)~~ birth
21 through five (5), approved by the Department of Education, as complying with
22 regulatory guidelines to be issued by the department pursuant to this chapter;

23 (3) Arkansas Early Childhood Commission or commission means a
24 ~~seventeen (17)~~ twenty-five (25) member advisory body appointed by the Governor
25 to perform certain duties and responsibilities relating to the development,
26 expansion, and coordination of early childhood programs including, but not
27 limited to, serving as the advisory body to the General Education Division of
28 the Department of Education on early childhood program issues;

29 (4) Arkansas HIPPY Advisory Board means a citizen board appointed
30 through the ~~Head Start and~~ Home Instruction Program for Preschool Youngsters
31 (HIPPY) Regional Technical Assistance and Training Center to develop public
32 awareness, to promote program expansion, and to encourage local development of
33 Home Instruction Program for Preschool Youngsters (HIPPY) and to provide
34 consultation and guidance to the Home Instruction Program for Preschool
35 Youngsters (HIPPY) Regional Technical Assistance and Training Center."

36

1 SECTION 37. Arkansas Code Annotate § 6-45-104 is amended to read as
2 follows:

3 "6-45-104. Construction.

4 (a) Nothing in this chapter shall be construed so as to require any
5 school district to participate.

6 (b) Further, nothing herein shall be construed so as to require parents
7 or legal guardians to enroll their ~~three (3) or four (4) year old children~~
8 under five (5) years of age in any program established pursuant to this
9 chapter."

10

11 SECTION 38. Arkansas Code Annotated § 6-45-105 is amended to read as
12 follows:

13 "6-45-105. Establishment of the Arkansas Better Chance Program.

14 (a) The department shall establish the Arkansas Better Chance Program
15 to assist in the establishment and funding of the appropriate early childhood
16 programs for children ages ~~three through five (3-5)~~ birth through five (5).
17 Beginning with the 1991-92 school year, the department shall award grants or
18 contracts to appropriate early childhood programs selected by the department
19 in accordance with specified programmatic standards. These standards will be
20 developed by the department, with the advice and assistance of the Arkansas
21 Early Childhood Commission. Standards for funding the Home Instruction Program
22 for Preschool Youngsters will be developed in conjunction with the Arkansas
23 HIPPIY Advisory Board. The Home Instruction Program for Preschool Youngsters
24 Regional Technical Assistance and Training Center shall be defined and funded
25 as an integral part of the Home Instruction Program for Preschool Youngsters
26 to provide necessary training, technical assistance, and program support to
27 program sites in Arkansas. The programmatic standards and other rules and
28 regulations necessary for the implementation of this program shall be adopted
29 by the State Board of Education in accordance with the provisions of the
30 Arkansas Administrative Procedure Act, § 25-15-201 et seq.

31 (b) The department is hereby authorized to expend a maximum of two
32 percent (2%) of available funds to administer the Arkansas Better Chance
33 Program and to monitor Arkansas Better Chance Program grantees to insure
34 compliance with programmatic standards. The department may contract with the
35 Division of Child Care and Early Childhood Education, Arkansas Department of
36 Human Services to administer the Arkansas Better Chance Program."

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SECTION 39. Arkansas Code Annotated § 6-45-106 is amended to read as follows:

"6-45-106. Application process - Allocation of funding.

(a) Any not-for-profit, nonsectarian early childhood program may apply for funding, regardless of the sponsorship of the program. Local school districts may apply for funding to operate early childhood programs, not including public school kindergarten, but an appropriate early childhood program need not be affiliated with a school district in order to receive funding. A local-to-state match will be required in the ratio of forty-sixty (40-60). Local match may consist of cash or appropriate in-kind services.

(b) To be considered, an application must contain all information required by the department's regulatory guidelines.

(c) The department, with the advice of the commission, shall fund those applications which comply with the programmatic standards and other relevant criteria. If the department receives more applications that qualify for funding than can be fully funded with the funds available for this program, the department, after seeking the advice of the commission, shall determine whether to prorate the available funds among all qualified applications or to allocate the available funds among less than all applications which qualify for funding.

(d) In allocating funding, priority consideration shall be given to programs which have demonstrated their capacity to identify and serve young children ages ~~three through five (3-5)~~birth through five (5) whose family circumstances suggest significant educational deprivation."

SECTION 40. Arkansas Code Annotated § 6-45-109 is amended to read as follows:

"6-45-109. Certification by the Department of Education.

(a) ~~The Department of Education~~Division of Child Care and Early Childhood Education shall certify child care facilities which have an appropriate early childhood program, as defined in § 6-45-103(2). Certification numbers shall be issued to those child care facilities which meet the applicable qualifications.

(b) Upon certification of the child care facilities, the ~~department~~Division of Child Care and Early Childhood Education shall provide a listing

1 of all certified facilities and their certification numbers to the Director of
2 the Department of Finance and Administration for the purpose of the income tax
3 credit or refund provided for in § 26-51-507."

4

5 SECTION 41. That part of the General Education Division of the
6 Department of Education pertaining to operations of the Early Childhood
7 Commission, including only the two percent (2%) administrative component of
8 the Better Chance Program, is hereby transferred by a Type 2 transfer as
9 provided in A.C.A. § 25-2-105 to the Department of Human Services, Division of
10 Child Care and Early Childhood Education.

11

12 SECTION 42. 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 43. 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 44. All laws and parts of laws in conflict with this act are
23 hereby repealed.

24

/s/Rep. Flanagan, et al

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