

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

# A Bill

HOUSE BILL 2245

4  
5 By: Representatives Choate and Thicksten  
6 By: Senator Mahony

## For An Act To Be Entitled

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10 "AN ACT TO PROMOTE EDUCATIONAL EXCELLENCE IN EARLY  
11 CHILDHOOD EDUCATION; AND FOR OTHER PURPOSES."

## Subtitle

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14 "TO PROMOTE EDUCATIONAL EXCELLENCE IN  
15 EARLY CHILDHOOD EDUCATION."

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

18  
19 SECTION 1. Arkansas Code Annotated § 20-78-202 is amended to read as  
20 follows:

21 "20-78-202. Definitions.

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

23 (1) Board means the Child Care Facility Review Board ;

24 (2) Department means the Department of ~~Human Services~~ Department of  
25 Education;

26 (3) ~~Deputy director~~ Director means the ~~deputy~~ director of the  
27 ~~appropriate division~~ of the Department of ~~Human Services~~ Education;

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

32 (B) For the purposes of this subdivision, related minor child  
33 means a minor child related by blood, marriage, or adoption to the owner or  
34 operator of the facility, or a minor child who is a ward of the owner or  
35 operator of the facility pursuant to a guardianship order issued by an  
36 Arkansas court of competent jurisdiction.

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

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

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

9 (a) Special schools or classes operated solely for  
 10 religious instruction;

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

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

19 (d) Kindergartens operated as a part of the public  
 20 schools of this state;

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

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

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

34 (h) Any state operated facility to house juvenile  
 35 delinquents or any serious offender program facility operated by a state  
 36 designee to house juvenile delinquents, foster home, group home, or custodial

1 institution. Those facilities shall be subject to program requirements modeled  
 2 on nationally recognized correctional ~~facility~~ and child welfare standards,  
 3 which shall be developed, administered, and monitored by the Division of Youth  
 4 Services and the Division of Children and Family Services of the Department of  
 5 Human Services and the Department of Education."

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

9 "20-78-203. Penalties.

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

16 (b) The Child Care Facility Review Board is authorized to impose monetary  
 17 fines as civil penalties to be paid for failure to comply with the provisions  
 18 of this subchapter or the regulations promulgated pursuant thereto. In  
 19 determining whether a civil penalty is to be imposed, the following factors  
 20 shall be considered by the board:

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

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

31 (3) Any relevant previous violations committed;

32 (4) The financial benefit of committing or continuing the  
 33 violation.

34 (c) Prior to the imposition of monetary fines, the Child Care Facility  
 35 Review Board shall provide notice and an opportunity to be heard in accordance  
 36 with hearing procedures in effect for the revocation or suspension of

1 licenses.

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

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

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

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

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

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

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32 SECTION 3. All provisions of this act of a general and permanent nature  
33 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
34 Revision Commission shall incorporate the same in the Code.

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36 SECTION 4. If any provision of this act or the application thereof to

1 any person or circumstance is held invalid, such invalidity shall not affect  
2 other provisions or applications of the act which can be given effect without  
3 the invalid provision or application, and to this end the provisions of this  
4 act are declared to be severable.

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6 SECTION 5. All laws and parts of laws in conflict with this act are  
7 hereby repealed.

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