

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: H3/24/99

A Bill

HOUSE BILL 1858

5 By: Representative Cook
6
7

For An Act To Be Entitled

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

Subtitle

11
12 "TO AMEND VARIOUS SECTIONS OF THE
13 ARKANSAS CODE PERTAINING TO CHILD CARE"
14
15
16

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

19 SECTION 1. Arkansas Code 6-18-702(b)(2) is amended to read as follows:

20 "(b)(2) The Child Care Facility Licensing Division of the Arkansas
21 Department of Human Services shall be responsible for enforcing this section
22 with respect to child care facilities. The ~~Child Care Facility Review Board~~
23 Division of Child Care and Early Childhood Education may promulgate
24 appropriate rules and regulations, to be approved by the Arkansas Early
25 Childhood Commission, for the enforcement of this section. The owners or
26 managers of those facilities and any parent or guardian violating such
27 regulations shall be subject to the penalties provided in § 20-78-201, et
28 seq."
29

30 SECTION 2. Arkansas Code 6-18-702(e) is amended to read as follows:

31 "(e) Any person found guilty of violating the provisions of this
32 section or the regulations promulgated by the State Board of Education and/or
33 the ~~Arkansas Child Care Facilities Review Board~~ Division of Child Care and
34 Early Childhood Education for the enforcement hereof shall be guilty of a
35 misdemeanor."
36

1 SECTION 3. Arkansas Code 6-45-103(3) is amended to read as follows:

2 "(3) 'Arkansas Early Childhood Commission' or 'commission' means a
3 ~~twenty-five (25)~~ an eighteen (18) member advisory body appointed by the
4 Governor to perform certain duties and responsibilities relating to the
5 development, expansion, and coordination of early childhood programs
6 including, but not limited to, serving as the advisory body to the General
7 Education Division of the Department of Education on early childhood program
8 issues;"

9

10 SECTION 4. Arkansas Code 12-12-506(a)(2)(A)(ix)(a) is amended to read
11 as follows:

12 "(ix)(a) The ~~Child Care Facility Review Board~~ Division of Child Care and
13 Early Childhood Education and the child care facility owner or operator who
14 requested the registry information through a signed notarized release from an
15 individual who is a volunteer or who has applied for employment or who is
16 currently employed by a child care facility or who is the owner or operator of
17 a child care facility."

18

19 SECTION 5. Arkansas Code 12-12-506(a)(2)(B) is amended to read as
20 follows:

21 "(B) Reports of investigative determinations which are true shall be
22 disclosed to the ~~Child Care Facility Review Board~~ Division of Child Care and
23 Early Childhood Education, by oral report only, for purposes of enforcement of
24 licensing laws and regulations."

25

26 SECTION 6. Arkansas Code 20-78-202 is amended to read as follows:

27 "20-78-202. Definitions.

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

29 (1) 'Division' means the Division of Child Care and Early Childhood
30 Education, Department of Human Services;

31 (2) 'Department' means the Department of Human Services;

32 (3) 'Deputy director' means the deputy director of the Division of
33 Child Care and Early Childhood Education of the Department of Human Services;

34 (4)(A) 'Child care facility' means any facility which provides care,
35 training, education, or supervision for any unrelated minor child, whether or
36 not the facility is operated for profit, and whether or not the facility makes

1 a charge for the services offered by it.

2 (B) For the purposes of this subdivision, 'related minor child'
3 means a minor child related by blood, marriage, or adoption to the owner or
4 operator of the facility, or a minor child who is a ward of the owner or
5 operator of the facility pursuant to a guardianship order issued by an
6 Arkansas court of competent jurisdiction.

7 (i) This definition includes, but is not limited to, a
8 nursery, a nursery school, kindergarten, a day care center, or a family day
9 care home.

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

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

15 (a) Special schools or classes operated solely for
16 religious instruction;

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

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

25 (d) Kindergartens operated as a part of the public
26 schools of this state;

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

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

34 (g) Any recreational facility or program, whether
35 public or private, which operates solely as a place of recreation for minor
36 children. For purposes of this subdivision, a 'recreational facility or

1 program' is defined as a facility or program which operates with children
 2 arriving and leaving voluntarily for scheduled classes, activities, practice,
 3 games, and meetings; and

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

12 (i) The Arkansas School for Mathematics and
 13 Sciences;

14 (5)(A) 'Child Care Appeal Review Panel' or 'Panel' means an eleven (11)
 15 member body under the Department of Human Services which shall serve as a
 16 review and appeal body regarding licensure or registration actions.

17 (B) The Panel shall consists of eleven (11) members including the
 18 following:

19 (1) Three (3) Early Childhood Professional;

20 (2) One (1) Pediatric Health Professional;

21 (3) One (1) Parent of a child in a licensed early childhood
 22 program;

23 (4) Director of the Division of Child Care and Early
 24 Childhood Education or their designee who shall serve as chair of the Panel
 25 and shall not vote;

26 (5) Five (5) Licensed Child Care Providers representing a
 27 diversity of child care settings;

28 (6) Legal Counsel from the Office of the Attorney General
 29 shall serve as a facilitator of the Panel and shall not serve as a voting
 30 member; and

31 (7) Alternates shall be chosen to serve during times of
 32 absence or in cases of conflict of interest. Five (5) alternates shall be
 33 chosen as follows: one (1) Early Childhood Professional, one (1) Pediatric
 34 Health Professional, one (1) Parent of a child in a licensed early childhood
 35 program, and two (2) Licensed Child Care Providers.

36 (C) Members of the Panel shall serve for three (3) year terms,

1 not to exceed six (6) consecutive years of service on the Panel. Members of
 2 the Panel shall not be members of the Arkansas Early Childhood Commission.
 3 Start-up terms would be staggered one (1), two (2), and three (3) years so
 4 that Panel members would not leave their terms during the same year. Start-up
 5 terms to be determined by random selection. Members from the Office of the
 6 Attorney General and the Director of the Division of Child Care and early
 7 Childhood Education shall hold permanent offices.

8 (D) The Arkansas Early Childhood Commission, from applications
 9 submitted, shall make Panel selections from persons meeting the qualifications
 10 for service and exhibiting a willingness and time commitment to serve on the
 11 Panel. Panel members may be replaced under the same guidelines as Commission
 12 members.

13 (E) The Panel shall schedule monthly meetings and may meet more
 14 often as necessary.

15 (F) Members of the Panel shall receive no compensation other than
 16 normal state reimbursement for travel, meals, and lodging when applicable.

17 (G) A majority of the Panel shall constitute a quorum and a
 18 majority of those present may decide any issue before the Panel. In the event
 19 of a tie vote by the Panel, the Division's decision shall stand.

20 (H) Decisions of the Panel shall be the final administrative
 21 appeal. Providers or the Division may appeal the Panel's findings to the
 22 Circuit Court of the licensee's county of residence or to the Pulaski County
 23 Circuit Court.

24 (I) There shall be no monetary liability on the part of, and no
 25 cause of action for damages shall arise against, any member of the Panel for
 26 any act or proceeding undertaken or performed within the scope of the
 27 functions of the Panel if the Panel member acts without malice or fraud."

28
 29 SECTION 7. Arkansas Code 20-78-203(c) through(e) are amended to read as
 30 follows:

31 "(c) Prior to the imposition of monetary fines, the division shall
 32 provide notice and an opportunity to be heard before the Child Care Appeal
 33 Review Panel in accordance with hearing procedures in effect for the
 34 revocation or suspension of licenses.

35 (d) The division, with the review and ~~advice~~ approval of the Arkansas
 36 Early Childhood Commission, shall publish and promulgate rules and regulations

1 classifying violations as follows:

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

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

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

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

26 SECTION 8. Arkansas Code 20-78-204 is amended to read as follows:

27 "20-78-204. Injunction.

28 When any person, partnership, group, corporation, organization, or
29 association shall operate or assist in the operation of a child care facility
30 which has not been licensed by the division or has had the license denied,
31 ~~suspended, or revoked by the division and therefore~~ has been ordered to cease
32 and desist operation, in accordance with the provisions of this subchapter,
33 the division shall have the right to go into the chancery court in the
34 jurisdiction in which the child care facility is being operated and, upon
35 affidavit, secure a writ of injunction, without bond, restraining and
36 prohibiting the person, partnership, group, corporation, organization, or

1 association from operating the child care facility.”

2
3 SECTION 9. Arkansas Code 20-78-205(b)(4) is amended to read as follows:

4 “(4) Establishment and promulgation of rules and regulations to be
5 approved by the Arkansas Early Childhood Commission setting standards
6 governing the granting, revocation, refusal, and suspension of licenses for a
7 child care facility and the operation of child care facilities in this state,
8 as defined by § 20-78-202;”

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

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

12 (a) The division, with approval of the Arkansas Early Childhood
13 Commission, shall promulgate and publish rules and regulations setting minimum
14 standards governing the granting, revocation, refusal, and suspension of
15 licenses for a child care facility and the operation of a child care facility.

16 (1)(A) The Arkansas Early Childhood Commission shall review and
17 ~~advise the division regarding approve proposed rule and regulations and, in~~
18 ~~promulgated by the Division.~~ In developing proposed rules and regulations,
19 the division shall consult with the Director of the Department of Health or
20 his designated representative in regard to rules and regulations relating to
21 health. However, no child care facility shall continue to admit a child who
22 has not been age appropriately immunized from poliomyelitis, diphtheria,
23 tetanus, pertussis, red (rubeola) measles, rubella, and any other diseases as
24 designated by the State Board of Health, within fifteen (15) program days
25 after the child's original admission. The immunization shall be evidenced by a
26 certificate of a licensed physician or a public health department
27 acknowledging the immunization. The division shall consult with the Director
28 of the General Education Division of the Department of Education or his
29 designated representative in regard to rules and regulations relating to
30 education.

31 (B) The provisions of subdivision (a)(1)(A) pertaining to
32 immunizations shall not apply if the parents or legal guardian of that child
33 object thereto on the grounds that such immunization conflicts with the
34 religious tenets and practices of a recognized church or religious
35 denomination of which the parent or guardian is an adherent or member.
36 Furthermore, the provisions of subdivision (a)(1)(A) requiring pertussis

1 vaccination shall not apply to any child with a sibling, either whole blood or
 2 half blood, who has had a serious adverse reaction to the pertussis antigen,
 3 which reaction resulted in a total permanent disability.

4 (2) The Director of the Department of Health and the Director of
 5 the General Education Division of the Department of Education and their
 6 designated representatives are directed to cooperate with and assist the
 7 division in developing rules and regulations in the respective areas of health
 8 and education.

9 (3) In developing these rules and regulations, the division shall
 10 consult with such other agencies, organizations, or individuals as it shall
 11 deem appropriate.

12 (4) Rules and regulations promulgated by the division pursuant to
 13 this section may be amended by the division from time to time, provided any
 14 amendment to the rules and regulations shall be published and furnished to all
 15 licensed child care facilities, and to all applicants for a license approved
 16 by the Arkansas Early Childhood Commission, at least sixty (60) days prior to
 17 the effective date of the amendment.

18 ~~(b) In establishing requirements and standards for the granting,~~
 19 ~~revoking, refusing, and suspending of a license for a child care facility, the~~
 20 ~~division shall adopt such rules and regulations as will:~~

21 ~~(1) Promote the health, safety, and welfare of children attending~~
 22 ~~a child care facility;~~

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

25 ~~(3) Ensure adequate supervision of the children by capable,~~
 26 ~~qualified, and healthy individuals;~~

27 ~~(4) Ensure appropriate educational programs and activities within~~
 28 ~~each child care facility; and~~

29 ~~(5) Ensure adequate and healthy food service where food service~~
 30 ~~is offered by the child care facility.~~

31 (b) In establishing requirements and standards for the granting,
 32 revoking, refusing, and suspending of a license for a child care facility the
 33 Division shall adopt such rules and regulations as will:

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

36 (2) Promote safe, comfortable, and healthy physical facilities

1 for the children who attend the child care facility;

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

4 (4) Ensure appropriate educational programs and activities; and

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

7 (c) Questions between Providers and the Division concerning substantial
8 compliance with the published standards, founded licensing complaints, denials
9 of alternative compliance requests, and adverse actions shall first be
10 appealed through the Division's internal appeal process and then may be
11 appealed through the Child Care Appeal Review Panel for determination. The
12 division shall follow the procedures prescribed for adjudication in the
13 Arkansas Administrative Procedure Act, § 25-15-201 et seq., in exercising any
14 power authorized by § 20-78-213.

15 (d) If, upon the filing of a petition for a judicial review, the
16 reviewing court enters a stay prohibiting enforcement of a decision of the
17 division, the court shall complete its review of the record and announce its
18 decision within one hundred twenty (120) days of the entry of the stay. If the
19 court does not issue its findings within one hundred twenty (120) days of the
20 issuance of the stay, the stay shall be considered vacated.

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

26 (f)(1) Any person with reasonable cause to suspect that a child care
27 facility has violated any provision of this subchapter, or any rule or
28 regulation of the division, may immediately notify the Department of Human
29 Services.

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

34 (3) Following the inspection and investigation of a child care
35 facility as provided under this subsection, the department shall, upon
36 request, provide information to the person or agency reporting the suspected

1 violation as to whether an investigation has been conducted.

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

4
5 SECTION 11. Arkansas Code 20-78-209(c)(1) is amended to read as
6 follows:

7 "(c)(1) Any questions of substantial compliance with the published
8 standards, adverse actions, founded licensing complaints, and denied requests
9 for alternative compliance shall be reviewed by the Division appealed first
10 through the Division's internal appeal process, and then may be appealed to
11 the Child Care Appeal Review Panel for determination."

12
13 SECTION 12. Arkansas Code 20-78-213(a) is amended to read as follows:

14 "(a) The Division shall have the power to deny, revoke, or suspend a
15 license for a child care facility if an applicant or licensee has failed to
16 comply with the provisions of this subchapter or any published rule or
17 regulation of the Division relating to child care facilities, subject to
18 appeal before the Child Care Appeal Review Panel."

19
20 SECTION 13. Arkansas Code 20-78-502(a) is amended to read as follows:

21 "(a) The Arkansas Early Childhood Commission shall have the following
22 duties and responsibilities:

23 (1) Advise the division on the administration of the Arkansas
24 Child Care Facilities Loan Guarantee Trust Fund;

25 (2) Provide technical assistance in design of training programs
26 to enhance the skills of professionals in early childhood programs, including
27 the development of an annual comprehensive training plan for providers;

28 (3) Assist in development of a comprehensive long-range plan for
29 expansion, development, and implementation of early childhood programs in
30 Arkansas including recommending allocation and expenditures of funds
31 appropriated to the Arkansas Better Chance Program;

32 (4) Facilitate coordination and communication among state
33 agencies providing early childhood programs to promote nonduplication and
34 coordination of services in such programs;

35 (5) Advise the General Education Division of the Department of
36 Education and other appropriate state agencies on the development of

1 programmatic standards for early childhood programs to be funded with funds
2 appropriated to the General Education Division or to such other state agencies
3 as may receive appropriations for such purposes;

4 (6) Promote strong local community support for early childhood
5 education programs;

6 (7) Promote public awareness of child care and early childhood
7 programs;

8 (8) From applications submitted, shall make Child Care Appeal
9 Review Panel selections from persons meeting the qualifications for service
10 and exhibiting a willingness and time commitment to serve on the Panel;

11 (9) Approved all rules and regulations promulgated by the
12 Division."

13
14 SECTION 14. Arkansas Code 20-78-602(a)(2) is amended to read as
15 follows:

16 "(2) In the event a legible set of fingerprints, as determined by the
17 Identification Bureau of the Arkansas State Police and the Federal Bureau of
18 Investigation, cannot be obtained after a minimum of three (3) attempts, the
19 ~~Child Care Facilities Review Board~~ Division of Child Care and Early Childhood
20 Education shall determine eligibility for employment based upon a name check
21 by the Identification Bureau of the Arkansas State Police and the Federal
22 Bureau of Investigation."

23
24 SECTION 15. Arkansas Code 20-78-602(b)(1)(B) is amended to read as
25 follows:

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

33
34 SECTION 16. Arkansas Code 25-1-105(d)(8) is amended to read as follows:

35 "(8) ~~Child Care Facility Review Board~~ Early Childhood Education [§ 20-
36 78-205]"

1
2 SECTION 17. Arkansas Code 25-15-202(1)(A) is amended to read as
3 follows:

4 "(A) The word 'agency' shall include the ~~Child Care Facility Review~~
5 ~~Board~~; Division of Child Care and Early Childhood Education and the Child Care
6 Appeal Review Panel for purposes of administrative appeal;
7

8 SECTION 18. All provisions of this Act of a general and permanent
9 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
10 Code Revision Commission shall incorporate the same in the Code.
11

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

18 SECTION 20. All laws and parts of laws in conflict with this Act are
19 hereby repealed.
20

21 SECTION 21. EMERGENCY CLAUSE. It is hereby found and determined by the
22 Eighty-second General Assembly, that it is essential to the effective and
23 efficient administration of the Child Care Licensing program that the
24 responsibility for reviewing appeals be placed in the Child Care Appeal Review
25 Panel under the Department of Human Services, as soon as possible and that
26 this act is designed to accomplish this purpose and should be given effect
27 immediately. Therefore, an emergency is declared to exist and this act being
28 immediately necessary for the preservation of the public peace, health and
29 safety shall become effective on the date of its approval of the Governor. If
30 the bill is neither approved nor vetoed by the Governor, it shall become
31 effective on the expiration of the period of time during which the Governor
32 may veto the bill. If the bill is vetoed by the Governor and the veto is
33 overridden, it shall become effective on the date the last house overrides the
34 veto.

35 /s/ Cook
36