

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H1/24/05

A Bill

HOUSE BILL 1119

5 By: Representative Adams
6 By: Senator Holt
7
8

For An Act To Be Entitled

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10 AN ACT TO CLARIFY THAT THE DEPARTMENT OF HUMAN
11 SERVICES SHALL NOT PLACE A CHILD WITH AN ADOPTIVE
12 OR FOSTER PARENT WHO IS HOMOSEXUAL OR IN A HOME
13 WHERE AN ADULT HOMOSEXUAL RESIDES; TO CLARIFY
14 THAT THE CHILD WELFARE AGENCY REVIEW BOARD HAS
15 THE POWER TO PROMULGATE RULES RELATED TO PUBLIC
16 MORALITY AS IT APPLIES TO THE FOSTER CARE SYSTEM
17 IN ARKANSAS; TO CLARIFY THAT THE PUBLIC POLICY OF
18 THE STATE OF ARKANSAS PROHIBITS HOMOSEXUALS FROM
19 BEING FOSTER PARENTS; AND FOR OTHER PURPOSES.
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Subtitle

21
22 TO CLARIFY THAT THE DEPARTMENT OF HUMAN
23 SERVICES SHALL NOT PLACE A CHILD WITH AN
24 ADOPTIVE OR FOSTER PARENT WHO IS
25 HOMOSEXUAL OR IN A HOME WHERE AN ADULT
26 HOMOSEXUAL RESIDES.
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29 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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31 SECTION 1. Arkansas Code Title 9, Chapter 9, Subchapter 1 is amended
32 to add an additional section to read as follows:

33 9-9-104. Protection of public morality.

34 (a)(1) For the purposes of this section, "homosexual" is a person who
35 is known to engage in current, voluntary homosexual activity.

36 (2) "Homosexual" does not include a person who appears to be



1 homosexual or has a homosexual orientation.

2 (b) The Department of Human Services and any other agency or entity
3 that receives federal assistance and is involved in adoption or foster care
4 placement shall not place a child with a foster or adoptive parent if the
5 department determines that:

6 (1) The prospective foster or adoptive parent is a homosexual;
7 or

8 (2) An adult who resides in the household of the prospective
9 foster or adoptive parent is a homosexual.

10
11 SECTION 2. Arkansas Code § 9-28-405 is amended to read as follows:
12 9-28-405. Child Welfare Agency Review Board - Duties.

13 (a)(1) The Child Welfare Agency Review Board shall promulgate and
14 publish rules and regulations setting minimum standards governing the
15 granting, revocation, refusal, and suspension of licenses for a child welfare
16 agency and the operation of a child welfare agency.

17 (2) The board may consult with such other agencies,
18 organizations, or individuals as it shall deem proper.

19 (b) The board may amend the rules and regulations promulgated pursuant
20 to this section from time to time, in accordance with the rule promulgation
21 procedures in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

22 (c) The board shall promulgate rules and regulations that:

23 (1) Promote the health, morals, safety, and welfare of children
24 in the care of a child welfare agency;

25 (2) Promote safe and healthy physical facilities;

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

28 (4) Ensure appropriate educational programs and activities for
29 children in the care of a child welfare agency;

30 (5) Ensure adequate and healthy food service;

31 (6) Include procedures for the receipt, recordation, and
32 disposition of complaints regarding allegations of violations of this
33 subchapter, of the rules promulgated thereunder, or of child maltreatment
34 laws;

35 (7) Include procedures for the assessment of child and family
36 needs and for the delivery of services designed to enable each child to grow

1 and develop in a permanent family setting;

2 (8) Ensure that criminal record checks and central registry
3 checks are completed on owners, operators, and employees of a child welfare
4 agency as set forth in this subchapter; and

5 (9) Require the compilation of reports and making those reports
6 available to the division when the board determines it is necessary for
7 compliance determination or data compilation.

8 (d)(1) Provided that the health, morals, safety, and welfare of
9 children in the care of a child welfare agency are not endangered, nothing in
10 this subchapter shall be construed to permit the board to promulgate or
11 enforce any rule that has the effect of:

12 (A) Interfering with the religious teaching or instruction
13 offered by a child welfare agency;

14 (B) Infringing upon the religious beliefs of the holder or
15 holders of a child welfare agency license;

16 (C) Infringing upon the right of an agency operated by a
17 religious organization to consider creed in any decision or action relating
18 to admitting or declining to admit a child or family for services;

19 (D) Infringing upon the parents' right to consent to a
20 child's participating in prayer or other religious practices while in the
21 care of the child welfare agency; or

22 (E) Prohibiting the use of corporal discipline.

23 (2)(A)(i) A child welfare agency that articulates a sincerely
24 held religious belief that is violated by a specific rule promulgated by the
25 board shall notify the division in writing of the belief and the specific
26 rule that violates the belief.

27 (ii) The rule shall be presumptively invalid as
28 applied to that child welfare agency.

29 (B)(i) The division may then file a petition before the
30 board seeking to enforce the rule.

31 (ii) The division shall bear the burden of showing
32 that the health, morals, safety, or welfare of children would be endangered
33 by the exemption, and if the board so finds by a preponderance of the
34 evidence, the board shall render a finding of fact so concluding.

35 (e) The board shall issue all licenses to child welfare agencies upon
36 majority vote of board members present during each properly called board

1 meeting at which a quorum is present when the meeting is called to order.

2 (f)(1) The board shall have the power to deny an application to
3 operate a child welfare agency or revoke or suspend a previously issued
4 license to operate a child welfare agency. The board may deny, suspend, or
5 revoke a child welfare agency license if the board finds by a preponderance
6 of the evidence that the applicant or licensee:

7 (A) Fails to comply with the provisions of this subchapter
8 or any published rule or regulation of the board relating to child welfare
9 agencies;

10 (B) Furnishes or makes any statement or report to the
11 division that is false or misleading;

12 (C) Refuses or fails to submit required reports or to make
13 available to the division any records required by it in making an
14 investigation of the agency for licensing purposes;

15 (D) Refuses or fails to submit to an investigation or to
16 reasonable inspection by the division;

17 (E) Retaliates against an employee who in good faith
18 reports a suspected violation of the provisions of this subchapter or the
19 rules promulgated thereunder.

20 (2) Any denial of application or revocation or suspension of a
21 license shall be effective when made.

22 (g) The board shall review the qualifications of persons required to
23 have background checks under this subchapter.

24 (h)~~(i)~~(1) The board may grant an agency's request for alternative
25 compliance upon a finding that the child welfare agency does not meet the
26 letter of a regulation promulgated under this subchapter, but that the child
27 welfare agency meets or exceeds the intent of that rule through alternative
28 means.

29 (2) If the board grants a request for alternative compliance,
30 the child welfare agency's practice as described in the request for
31 alternative compliance shall be the compliance terms under which the child
32 welfare agency will be held responsible, and violations of those terms shall
33 constitute a rule violation.

34 (i)(1) The board shall have the authority to impose a civil penalty
35 upon any person violating any provisions of this subchapter and any person
36 assisting any partnership, group, corporation, organization, or association

1 in violating any provisions of this subchapter, except that the imposition of
2 civil penalties shall not apply to agencies who have been granted a church-
3 operated exemption pursuant to this subchapter.

4 (2) The board shall have the discretion to impose a civil
5 penalty pursuant to this section when the board determines by clear and
6 convincing evidence that the person sought to be charged has violated this
7 subchapter or the rules promulgated thereunder willfully, wantonly, or with
8 conscious disregard for law or regulation.

9 (3) The board may impose civil penalties as follows:

10 (A)(i) Class A violations as defined in this subchapter
11 shall be subject to a civil penalty of one hundred dollars (\$100) for each
12 violation, with each day of noncompliance constituting a separate violation.

13 (ii) In no event shall the board impose more than
14 five hundred dollars (\$500) for Class A violations occurring in any one (1)
15 calendar month.

16 (B)(i) Class B violations as defined in this subchapter
17 shall be subject to a civil penalty of fifty dollars (\$50.00) for each
18 violation, with each day of noncompliance constituting a separate violation.

19 (ii) In no event shall the board impose more than
20 two hundred fifty dollars (\$250) for Class B violations occurring in any one
21 (1) calendar month.

22 (4) If any person upon whom the board has levied a civil penalty
23 fails to pay the civil penalty within sixty (60) days of the board's decision
24 to impose the penalty, the amount of the fine shall be considered to be a
25 debt owed the State of Arkansas and may be collected by civil action by the
26 Attorney General.

27 (j)(1)(A) The board shall notify the applicant or licensee of the
28 division's petition for adverse action in writing and set forth the facts
29 forming the basis for the request for the adverse action.

30 (B) This notice shall offer the licensee the opportunity
31 for a predeprivation adverse action hearing to determine if the adverse
32 action should be taken against the licensee or applicant.

33 (2) Nothing in this section shall be construed to prevent the
34 division or the board from closing a child welfare agency on an emergency
35 basis if emergency closure is immediately required to protect the health,
36 morals, safety, or welfare of children, in which case the licensee shall be

1 entitled to a postdeprivation adverse action hearing.

2 (k)(1) Adverse action hearings shall comply with the Arkansas
3 Administrative Procedure Act, § 25-15-201 et seq.

4 (2)(A) Within ten (10) business days after rendering a decision,
5 the board shall forward to the applicant or licensee a written findings of
6 fact and conclusions of law articulating the board's decision.

7 (B) The board shall also issue an order that the applicant
8 or licensee cease and desist from the unlawful operation of a child welfare
9 agency if the adverse action taken was revocation or suspension of the
10 license or denial of an application.

11 (l)(1) If, upon the filing of a petition for a judicial review, the
12 reviewing court determines that there is a substantial possibility that the
13 board's decision against the licensee or applicant may be reversed, the
14 circuit court may enter a stay prohibiting enforcement of a decision of the
15 board, provided that the circuit court articulates the facts from the adverse
16 action hearing record which constitute a substantial possibility of reversal.

17 (2)(A) Thereafter, the court shall complete its review of the
18 record and announce its decision within one hundred twenty (120) days of the
19 entry of the stay.

20 (B) If the court does not issue its findings within one
21 hundred twenty (120) days of the issuance of the stay, the stay shall be
22 considered vacated.

23 (m) All rules and regulations promulgated pursuant to this section and
24 all public comment received in writing by the division in response shall be
25 made available for review by the Senate Committee on Children and Youth and
26 the Subcommittee on Children and Youth of the House Committee on Aging,
27 Children and Youth, Legislative and Military Affairs, and by the Governor or
28 his or her designee from among the Governor's staff.

29 (n)(1)(A) The validity or application of any rule or regulation
30 promulgated by the board under authority of this subchapter shall be subject
31 to remedies provided by law for obtaining declaratory judgments at the suit
32 of any interested person instituted in the circuit court of any county in
33 which the plaintiff resides or does business or in the Circuit Court of
34 Pulaski County.

35 (B) However, the board must be named a party defendant and
36 the board must be summoned as in an action by ordinary proceedings.

1 (2) If a juvenile is found to be maltreated due to the acts or
2 omissions of a person other than the parent or guardian of the juvenile, the
3 court may enter an order restraining or enjoining the person or facility
4 employing that person from providing care, training, education, custody, or
5 supervision of juveniles of whom the person or facility is not the parent or
6 guardian.

7 (3)(A) If the person or facility other than the parent or
8 guardian of the juvenile found to be maltreated was not subject to this
9 subchapter, the court may order the person or facility to obtain a license
10 from the board as a condition precedent to the person or facility providing
11 care, training, education, custody, or supervision of any juveniles of whom
12 the person or facility is not the parent or guardian.

13 (B) If the court so orders, this subchapter shall
14 thereafter apply to the person or facility subject to the court order.

15
16 *SECTION 3. Arkansas Code Title 9, Chapter 28, Subchapter 4 is amended*
17 *to add an additional section to read as follows:*

18 9-28-411. Public policy.

19 It is declared that the public policy of the State of Arkansas shall be
20 to preserve public morality with respect to the children in the foster care
21 system and the persons who are allowed to participate in the foster care
22 system as foster parents.

23
24 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
25 General Assembly of the State of Arkansas that there is some confusion as to
26 the public policy of the state in regard to placing children in adoptive or
27 foster homes with a homosexual; that there is some confusion as to the
28 authority of the Child Welfare Agency Review Board to promulgate rules
29 related to morality issues for the foster care system in the state; that this
30 act shall clearly establish that the public policy of the State of Arkansas
31 prohibits children in the custody of the Department of Human Services from
32 being placed in an adoptive or foster home with a homosexual; that this act
33 shall clearly delegate to the Child Welfare Agency Review Board the authority
34 to promulgate rules related to morality issues in the foster care system; and
35 that this act is immediately necessary to protect children by clarifying the
36 public policy of the state is to prohibit homosexuals from becoming adoptive

1 or foster parents and the intention of the General Assembly is to delegate to
2 the Child Welfare Agency Review Board the authority to legislate on the issue
3 of public morality in our foster care system. Therefore, an emergency is
4 declared to exist and this act being immediately necessary for the
5 preservation of the public peace, health, and safety shall become effective
6 on:

7 (1) The date of its approval by the Governor;

8 (2) If the bill is neither approved nor vetoed by the Governor,
9 the expiration of the period of time during which the Governor may veto the
10 bill; or

11 (3) If the bill is vetoed by the Governor and the veto is
12 overridden, the date the last house overrides the veto.

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14 /s/ Adams
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