

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

# A Bill

HOUSE BILL 2676

4  
5 By: Representatives Borhauer, Bright

## For An Act To Be Entitled

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9 AN ACT TO AMEND THE DUTIES OF THE CHILD WELFARE  
10 AGENCY REVIEW BOARD; AND FOR OTHER PURPOSES.

## Subtitle

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13 TO AMEND THE DUTIES OF THE CHILD WELFARE  
14 AGENCY REVIEW BOARD.

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

18  
19 SECTION 1. Arkansas Code § 9-28-405 is amended to read as follows:  
20 9-28-405. Child Welfare Agency Review Board - Duties.

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

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

27 (3) The board shall take any action necessary to prohibit any  
28 person, partnership, group, corporation, organization, or association not  
29 licensed or exempted from licensure pursuant to this chapter from  
30 advertising, placing, planning for, or assisting in the placement of any  
31 unrelated minor for purposes of adoption or for care in a foster home.

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

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

36 (1) Promote the health, safety, and welfare of children in the



1 care of a child welfare agency;

2 (2) Promote safe and healthy physical facilities;

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

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

7 (5) Ensure adequate and healthy food service;

8 (6) Include procedures for the receipt, recordation, and  
9 disposition of complaints regarding allegations of violations of this  
10 subchapter, of the rules promulgated thereunder, or of child maltreatment  
11 laws;

12 (7) Include procedures for the assessment of child and family  
13 needs and for the delivery of services designed to enable each child to grow  
14 and develop in a permanent family setting;

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

18 (9) Require the compilation of reports and making those reports  
19 available to the division when the board determines it is necessary for  
20 compliance determination or data compilation-;

21 (10) Ensure that a child welfare agency:

22 (A) Treats persons seeking services in a professional  
23 manner; and

24 (B) Provides persons seeking or receiving services from  
25 the agency with the phone number and address of the Department of Human  
26 Services where complaints may be lodged against a child welfare agency; and

27 (11) Require that all child welfare agencies fully apprise in  
28 writing all persons seeking to adopt a child of the agency's adoption program  
29 or services, including all possible costs associated with the adoption  
30 program.

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

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

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

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

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

9 (E) Prohibiting the use of corporal discipline.

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

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

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

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

22 (e) The board shall issue all licenses to child welfare agencies upon  
 23 majority vote of board members present during each properly called board  
 24 meeting at which a quorum is present when the meeting is called to order.

25 (f)(1) The board shall have the power to deny an application to  
 26 operate a child welfare agency or revoke or suspend a previously issued  
 27 license to operate a child welfare agency. The board may deny, suspend, or  
 28 revoke a child welfare agency license or issue letters of reprimand or  
 29 caution to a child welfare agency if the board finds by a preponderance of  
 30 the evidence that the applicant or licensee:

31 (A) Fails to comply with the provisions of this subchapter  
 32 or any published rule or regulation of the board relating to child welfare  
 33 agencies;

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

36 (C) Refuses or fails to submit required reports or to make

1 available to the division any records required by it in making an  
 2 investigation of the agency for licensing purposes;

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

5 (E) Retaliates against an employee who in good faith  
 6 reports a suspected violation of the provisions of this subchapter or the  
 7 rules promulgated thereunder;

8 (F) Fails to engage in a course of professional conduct in  
 9 dealing with persons being served by the child welfare agency;

10 (G) Demonstrates gross negligence in carrying out the  
 11 duties at the child welfare agency; and

12 (H) Fails to provide persons seeking to adopt with correct  
 13 and sufficient information pertaining to the adoption process.

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

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

18 (h)(1) The board may grant an agency's request for alternative  
 19 compliance upon a finding that the child welfare agency does not meet the  
 20 letter of a regulation promulgated under this subchapter, but that the child  
 21 welfare agency meets or exceeds the intent of that rule through alternative  
 22 means.

23 (2) If the board grants a request for alternative compliance,  
 24 the child welfare agency's practice as described in the request for  
 25 alternative compliance shall be the compliance terms under which the child  
 26 welfare agency will be held responsible, and violations of those terms shall  
 27 constitute a rule violation.

28 (i)(1)(A) The board shall have the authority to impose a civil penalty  
 29 upon any person violating any provisions of this subchapter and any person  
 30 assisting any partnership, group, corporation, organization, or association  
 31 in violating any provisions of this subchapter, except that the imposition of  
 32 civil penalties shall not apply to agencies who have been granted a church-  
 33 operated exemption pursuant to this subchapter.

34 (B) The board may impose a civil penalty upon any person,  
 35 partnership, group, corporation, organization, or association not licensed or  
 36 exempt from licensure as a child welfare agency in the State of Arkansas

1 pursuant to this subchapter that advertises, places, plans for, or assists in  
 2 the placement of any unrelated minor for purposes of adoption or for care in  
 3 a foster home.

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)~~ five  
 12 hundred dollars (\$500) for each violation, with each day of noncompliance  
 13 constituting a separate violation.

14 (ii) In no event shall the board impose civil  
 15 penalties of more than ~~five hundred dollars (\$500)~~ two thousand five hundred  
 16 dollars (\$2,500) for Class A violations occurring in any one (1) calendar  
 17 month;

18 (B)(i) Class B violations as defined in this subchapter  
 19 shall be subject to a civil penalty of ~~fifty dollars (\$50.00)~~ one hundred  
 20 dollars (\$100) for each violation, with each day of noncompliance  
 21 constituting a separate violation.

22 (ii) In no event shall the board impose civil  
 23 penalties of more than ~~two hundred fifty dollars (\$250)~~ five hundred dollars  
 24 (\$500) for Class B violations occurring in any one (1) calendar month.

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

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

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

36 (2) Nothing in this section shall be construed to prevent the

1 division or the board from closing a child welfare agency on an emergency  
 2 basis if emergency closure is immediately required to protect the health,  
 3 safety, or welfare of children, in which case the licensee shall be entitled  
 4 to a postdeprivation adverse action hearing.

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

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

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

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

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

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

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

33 (n)(1)(A) The validity or application of any rule or regulation  
 34 promulgated by the board under authority of this subchapter shall be subject  
 35 to remedies provided by law for obtaining declaratory judgments at the suit  
 36 of any interested person instituted in the circuit court of any county in

1 which the plaintiff resides or does business or in the Circuit Court of  
2 Pulaski County.

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

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

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

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

19 (o)(1) The Department of Human Services shall maintain a website  
20 accessible to the general public that contains information on child welfare  
21 agencies.

22 (2) The website shall contain:

23 (A) The name and address of all child welfare agencies  
24 licensed by the board;

25 (B) Information on each child welfare agency, specifically  
26 if the license is in good standing, and if the license has ever been revoked  
27 or suspended, or if any letters of caution or reprimand have been issued;

28 (C) The name and contact information for a person at the  
29 Department of Human Services who handles complaints about child welfare  
30 agencies; and

31 (D) The name and contact information on the members of the  
32 Child Welfare Agency Licensing Board.

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