

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 *As Engrossed: H3/16/05 H3/23/05 H3/31/05*

2 85th General Assembly

A Bill

3 Regular Session, 2005

HOUSE BILL 2676

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5 *By: Representatives Bright, Borhauer*

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For An Act To Be Entitled

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AN ACT TO AMEND THE DUTIES OF THE CHILD WELFARE

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AGENCY REVIEW BOARD; AND FOR OTHER PURPOSES.

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Subtitle

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TO AMEND THE DUTIES OF THE CHILD WELFARE

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AGENCY REVIEW BOARD.

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

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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. The
32 prohibition against advertising shall not apply to persons who are seeking to
33 add to their own family by adoption.

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



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

2 (1) Promote the health, safety, and welfare of children in the
3 care of a child welfare agency;

4 (2) Promote safe and healthy physical facilities;

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

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

9 (5) Ensure adequate and healthy food service;

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

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

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

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

23 (10) Ensure that a child placement agency:

24 (A) Treats clients seeking or receiving services in a
25 professional manner, as defined by regulations promulgated pursuant to this
26 act; and

27 (B) Provides clients seeking or receiving services from a
28 child placement agency that provides adoption services with the phone number
29 and address of the Child Welfare Agency Licensing Unit of the Department of
30 Human Services where complaints can be lodged.

31 (11) Require that all child welfare agencies that provide
32 adoption services fully apprise in writing all clients involved in the
33 process of adopting a child of the agency's adoption program or services,
34 including all possible costs associated with the adoption program.

35 (d)(1) Provided that the health, safety, and welfare of children in
36 the care of a child welfare agency are not endangered, nothing in this

1 subchapter shall be construed to permit the board to promulgate or enforce
2 any rule that has the effect of:

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

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

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

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

13 (E) Prohibiting the use of corporal discipline.

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

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

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

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

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

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

35 (A) Fails to comply with the provisions of this subchapter
36 or any published rule or regulation of the board relating to child welfare

1 agencies;

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

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

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

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

12 (F) Fails to engage in a course of professional conduct in
13 dealing with clients being served by the child placement agency, as defined
14 by regulations promulgated pursuant to this act;

15 (G) Demonstrated gross negligence in carrying out the
16 duties at the child placement agency;

17 (H) Fails to provide clients involved in the process of
18 adoption of a child with correct and sufficient information pertaining to the
19 adoption process, services and costs.

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)(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)(A) 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 (B) The board may impose a civil penalty upon any person,
5 partnership, group, corporation, organization, or association not licensed or
6 exempt from licensure as a child welfare agency in the State of Arkansas
7 pursuant to this subchapter that advertises, places, plans for, or assists in
8 the placement of any unrelated minor for purposes of adoption or for care in
9 a foster home. The prohibition against advertising does not apply to persons
10 who are seeking to add to their own family by adoption.

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

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

17 (A)(i) Class A violations as defined in this subchapter
18 shall be subject to a civil penalty of ~~one hundred dollars (\$100)~~ five
19 hundred dollars (\$500) for each violation, with each day of noncompliance
20 constituting a separate violation.

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

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

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

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

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

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

7 (2) Nothing in this section shall be construed to prevent the
8 division or the board from closing a child welfare agency on an emergency
9 basis if emergency closure is immediately required to protect the health,
10 safety, or welfare of children, in which case the licensee shall be entitled
11 to a postdeprivation adverse action hearing.

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

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

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

21 (l)(1) If, upon the filing of a petition for a judicial review, the
22 reviewing court determines that there is a substantial possibility that the
23 board's decision against the licensee or applicant may be reversed, the
24 circuit court may enter a stay prohibiting enforcement of a decision of the
25 board, provided that the circuit court articulates the facts from the adverse
26 action hearing record which constitute a substantial possibility of
27 reversal.

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

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

34 (m) All rules and regulations promulgated pursuant to this section and
35 all public comment received in writing by the division in response shall be
36 made available for review by the Senate Committee on Children and Youth and

1 the Subcommittee on Children and Youth of the House Committee on Aging,
2 Children and Youth, Legislative and Military Affairs, and by the Governor or
3 his or her designee from among the Governor's staff.

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

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

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

18 (3)(A) If the person or facility other than the parent or
19 guardian of the juvenile found to be maltreated was not subject to this
20 subchapter, the court may order the person or facility to obtain a license
21 from the board as a condition precedent to the person or facility providing
22 care, training, education, custody, or supervision of any juveniles of whom
23 the person or facility is not the parent or guardian.

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

26 (o)(1) The Department of Human Services shall maintain a website
27 accessible to the general public that contains information on child placement
28 agencies.

29 (2) The website shall contain:

30 (A) The name, phone number, and address of all child
31 placement agencies licensed by the board;

32 (B) Information on each child placement agency,
33 specifically if the license is in good standing, and if the license has ever
34 been revoked or suspended, or if any letters of caution or reprimand have
35 been issued by the Child Welfare Agency Review Board; and

36 (C) The name and contact information for a person in the

1 Child Welfare Agency Licensing Unit of the Department of Human Services who
2 handles complaints about child placement agencies.

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/s/ Bright, et al