

State of Arkansas
87th General Assembly
Regular Session, 2009

A Bill

SENATE BILL 515

By: Senator Madison
By: Representative Powers

For An Act To Be Entitled

AN ACT TO AMEND THE CHILD WELFARE AGENCY
LICENSING ACT; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE CHILD WELFARE AGENCY
LICENSING ACT.

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

SECTION 1. Arkansas Code § 9-28-402(2), regarding definitions under the Child Welfare Agency Licensing Act, is amended to read as follows:

(2) "Adverse action" means any petition by the Division of Children and Family Services of the Department of Human Services before the Child Welfare Agency Review Board to take any of the following actions against a licensee or applicant for a license:

- (A) Revocation of license;
- (B) Suspension of license;
- (C) Conversion of license from regular or provisional status to ~~provisional~~ probationary status;
- (D) Imposition of a civil penalty;
- (E) Denial of application; or
- (F) Reduction of licensed capacity;

SECTION 2. Arkansas Code § 9-28-403(e), regarding proceedings brought under the Child Welfare Agency Licensing Act, is amended to read as follows:

(e)~~(1)~~ The Arkansas Administrative Procedure Act, § 25-15-201 et seq.,



1 shall apply to all proceedings brought ~~pursuant to~~ under this subchapter.

2 ~~(2) The Arkansas Rules of Civil Procedure and the Arkansas Rules~~
3 ~~of Evidence shall also apply to adverse action hearings.~~

4
5 SECTION 3. Arkansas Code § 9-28-403, regarding proceedings brought
6 under the Child Welfare Agency Licensing Act, is amended to add an additional
7 subsection to read as follows:

8 (f)(1) Requests for subpoenas shall be granted by the Chief Counsel of
9 the Department of Human Services or a designee if the testimony or documents
10 desired are considered necessary and material without being unduly
11 repetitious of other available evidence.

12 (2) Subpoenas provided for in this section shall be served in
13 the manner as now provided by law, returned, and a copy made and kept by the
14 department.

15 (3) The fees and mileage for officers serving the subpoenas and
16 witnesses answering the subpoenas shall be the same as now provided by law.

17 (4) Witnesses duly served with subpoenas issued under this
18 section who shall refuse to testify or give evidence may be cited on an
19 affidavit through application of the chief counsel of the department to the
20 Pulaski County Circuit Court or any circuit court of the state where the
21 subpoenas were served.

22 (5) Failure to obey the subpoena may be deemed a contempt,
23 punishable accordingly.

24
25 SECTION 4. Arkansas Code § 9-28-405(a)(1), regarding the Child Welfare
26 Agency Review Board, is amended to read as follows:

27 (a)(1) The Child Welfare Agency Review Board shall promulgate and
28 publish rules ~~and regulations~~ setting minimum standards governing the
29 granting, revocation, refusal, conversion, and suspension of licenses for a
30 child welfare agency and the operation of a child welfare agency.

31
32 SECTION 5. Arkansas Code § 9-28-405(c), regarding the Child Welfare
33 Agency Review Board, is amended to read as follows:

34 (c)(1) The board shall have ~~exclusive~~ the authority to promulgate
35 rules ~~and regulations~~ that:

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

1 in the care of a child welfare agency;

2 ~~(2)~~(B) Promote safe and healthy physical facilities;

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

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

7 ~~(5)~~(E) Ensure adequate and healthy food service;

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

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

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

18 ~~(9)~~(I) Require the compilation of reports and making those
19 reports available to the Division of Youth Services of the Department of
20 Human Services when the board determines it is necessary for compliance
21 determination or data compilation;

22 ~~(10)~~(J) Ensure that a child placement agency:

23 ~~(A)~~(i) Treats clients seeking or receiving services
24 in a professional manner, as defined by ~~regulations~~ rules promulgated
25 pursuant to this section; and

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

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

35 ~~(12)~~(L) Establish rules governing retention of licensing
36 records maintained by the division.

1 (2) Each licensed child welfare agency has the authority to have
 2 operating procedures.

3
 4 SECTION 6. Arkansas Code § 9-28-405(f)(1)(B), regarding the Child
 5 Welfare Agency Review Board, is amended to read as follows:

6 (B) The board may deny, suspend, convert, or revoke a
 7 child welfare agency license or issue letters of reprimand or caution to a
 8 child welfare agency if the board finds by a preponderance of the evidence
 9 that the applicant or licensee:

10 (i) Fails to comply with the provisions of this
 11 subchapter or any published rule ~~or regulation~~ of the board relating to child
 12 welfare agencies;

13 (ii) Furnishes or makes any statement or report to
 14 the division that is false or misleading;

15 (iii) Refuses or fails to submit required reports or
 16 to make available to the division any records required by it in making an
 17 investigation of the agency for licensing purposes;

18 (iv) Refuses or fails to submit to an investigation
 19 or to reasonable inspection by the division;

20 (v) Retaliates against an employee who in good faith
 21 reports a suspected violation of the provisions of this subchapter or the
 22 rules promulgated under this subchapter;

23 (vi) Fails to engage in a course of professional
 24 conduct in dealing with clients being served by the child placement agency,
 25 as defined by ~~regulations~~ rules promulgated pursuant to this section;

26 (vii) Demonstrates gross negligence in carrying out
 27 the duties at the child placement agency; or

28 (viii) Fails to provide clients involved in the
 29 process of adoption of a child with correct and sufficient information
 30 pertaining to the adoption process, services, and costs.

31
 32 SECTION 7. Arkansas Code § 9-28-407(g), regarding licenses required
 33 and issued for child welfare agencies, is amended to read as follows:

34 (g) If the board votes to issue a license to operate a child welfare
 35 agency, the license must be posted in a conspicuous place in the child
 36 welfare agency and must state at a minimum:

- 1 (1) The full legal name of the entity holding the license,
2 including the business name, if different;
- 3 (2) The address of the child welfare agency;
- 4 (3) The effective date and expiration date of the license;
- 5 (4) The type of child welfare agency the licensee is authorized
6 to operate;
- 7 (5) The maximum number and ages of children that may receive
8 services from the agency, if the agency is not a child placement agency;
- 9 (6) The status of the license, whether regular, ~~or~~ provisional,
10 or probationary; and
- 11 (7) Any special conditions or limitations of the license.

12
13 SECTION 8. Arkansas Code § 9-28-409(a)–(c), regarding criminal records
14 and child maltreatment checks for child welfare agencies, is amended to read
15 as follows:

16 (a)(1) Each of the following persons in a child welfare agency shall
17 be checked with the child maltreatment central registry in his or her state
18 of residence and any state of residence in which the person has lived for the
19 past six (6) years and in the person's state of employment, if different, for
20 reports of child maltreatment in compliance with policy and procedures
21 promulgated by the Child Welfare Agency Review Board:

22 (A) An employee having direct and unsupervised contact
23 with children;

24 (B) A volunteer having direct and unsupervised contact
25 with children;

26 (C) A foster parent and all household members ten (10)
27 years of age and older, excluding children in foster care;

28 (D) An adoptive parent and all household members ten (10)
29 years of age and older, excluding children in foster care;

30 (E) An owner having direct and unsupervised contact with
31 children; and

32 (F) A member of the agency's board of directors having
33 direct and unsupervised contact with children.

34 (2) The board shall have the authority to deny a license or
35 church-operated exemption to any applicant found to have any record of
36 founded child maltreatment in the official record of the registry.

(3)(A) Any person required to be checked under this section who is found to have any record of child maltreatment in the official record of the registry shall be reviewed by the owner or operator of the facility in consultation with the board to determine appropriate corrective action measures that would indicate, but are not limited to, training, probationary employment, or nonselection for employment.

(B) The board shall also have the authority to deny a license or church-operated exemption to an applicant who continues to employ a person with any record of founded child maltreatment.

(4) All persons required to be checked with the registry under this subsection shall repeat the check at a minimum of every two (2) years, except that adoptive parents who reside in Arkansas shall repeat the check every year pending court issuance of a final decree of adoption, at which point repeat checks shall no longer be required.

(b)(1) Each of the following persons in a child welfare agency who has lived in Arkansas continuously for six (6) years or more shall be checked with the Identification Bureau of the Department of Arkansas State Police for convictions of the offenses listed in this subchapter in compliance with policy and procedures promulgated by the board:

(A) An employee having direct and unsupervised contact with children;

(B) A volunteer having direct and unsupervised contact with children;

(C) An owner having direct and unsupervised contact with children; and

(D) A member of the agency's board of directors having direct and unsupervised contact with children.

(2) A child in the custody of the Department of Human Services shall not be placed in an approved home of any foster parent or adoptive parent unless all household members eighteen (18) years of age and older, excluding children in foster care, have been checked with the Identification Bureau of the Department of Arkansas State Police for convictions of the offenses listed in this subchapter in compliance with policy and procedures promulgated by the board at a minimum of every two (2) years.

~~(2)(A)~~(3)(A) The owner or operator of a child welfare agency shall maintain on file, subject to inspection by the board, evidence that

1 Department of Arkansas State Police criminal records checks have been
 2 initiated on all persons required to be checked and the results of the
 3 checks.

4 (B) Failure to maintain that evidence on file will be
 5 prima facie grounds to revoke the license or church-operated exemption of the
 6 owner or operator of the child welfare agency.

7 ~~(3)~~(4) All persons required to be checked with the Department of
 8 Arkansas State Police under this subsection shall repeat the check at a
 9 minimum of every five (5) years, except that adoptive parents who reside in
 10 Arkansas shall ~~not~~ repeat the check after every year pending court issuance
 11 of a final decree of adoption, ~~in the adoption case for which the check was~~
 12 ~~obtained at which point repeat checks shall no longer be required.~~

13 ~~(4) Adoptive parents shall complete background checks as~~
 14 ~~required by law.~~

15 (c)(1) ~~In compliance with federal law and regulations and with policy~~
 16 ~~and procedures promulgated by the board, each~~ Each of the following persons
 17 in a child welfare agency who has not lived in Arkansas continuously for the
 18 past six (6) years ~~and all foster parents and foster home household members~~
 19 ~~sixteen (16) years of age and older, excluding foster children,~~ shall be
 20 checked with the Federal Bureau of Investigation for convictions of the
 21 offenses listed in this subchapter:

22 (A) An employee having direct and unsupervised contact
 23 with children;

24 (B) A volunteer having direct and unsupervised contact
 25 with children;

26 (C) An owner having direct and unsupervised contact with
 27 children; and

28 (D) A member of the agency's board of directors having
 29 direct and unsupervised contact with children.

30 (2)(A) A child in the custody of the Department of Human
 31 Services shall not be placed in an approved home of any foster or adoptive
 32 parent unless all household members eighteen (18) years of age and older,
 33 excluding children in foster care, have been checked with the Federal Bureau
 34 of Investigation for convictions of the offenses listed in this subchapter.

35 ~~(A)~~(B) The owner or operator of a child welfare agency
 36 shall maintain on file, subject to inspection by the board, evidence that the

1 Federal Bureau of Investigation's criminal records checks have been initiated
2 on all persons required to be checked and the results of the checks.

3 ~~(B)~~(C) Failure to maintain that evidence on file will be
4 prima facie grounds to revoke the license or church-operated exemption of the
5 owner or operator of the child welfare agency.

6
7 SECTION 9. Arkansas Code § 9-28-409(d)(2), regarding criminal records
8 and child maltreatment checks for child welfare agencies, is amended to read
9 as follows:

10 (2) The owner or operator of the child welfare agency shall
11 submit the criminal records check form to the Identification Bureau of the
12 Department of Arkansas State Police for processing within ten (10) days of
13 hiring the employee or volunteer, who shall remain under conditional
14 employment or volunteerism until the registry check and criminal records
15 checks required under this subchapter are completed.

16
17 SECTION 10. Arkansas Code § 9-28-409(d)(4), regarding criminal records
18 and child maltreatment checks for child welfare agencies, is amended to read
19 as follows:

20 (4)~~(A)~~ In the event a legible set of fingerprints as determined
21 by the Department of Arkansas State Police and the Federal Bureau of
22 Investigation cannot be obtained after a minimum of ~~three (3)~~ two (2)
23 attempts by qualified law enforcement personnel, the board shall determine
24 eligibility based upon a name check by the Department of Arkansas State
25 Police and the Federal Bureau of Investigation.

26 ~~(B) Foster parents and adoptive parents shall only be~~
27 ~~determined eligible based on a fingerprint criminal background check.~~