

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.

State of Arkansas  
87th General Assembly  
Regular Session, 2009

As Engrossed: S3/10/09

# 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.

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

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

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

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

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

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

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

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

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

35 ~~(2)(A)~~(3)(A) The owner or operator of a child welfare agency  
36 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~~ have a fingerprint-based criminal background check performed by  
21 the Federal Bureau of Investigation in compliance with federal law and  
22 regulation for convictions of the offenses listed in this subchapter:

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

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

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

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

31 (2)(A) A child in the custody of the Department of Human  
32 Services shall not be placed in an approved home of any foster or adoptive  
33 parent unless all household members eighteen (18) years of age and older,  
34 excluding children in foster care, have a fingerprint-based criminal  
35 background check performed by the Federal Bureau of Investigation in  
36 compliance with federal law and regulation for convictions of the offenses

listed in this subchapter.

~~(A)~~(B) The owner or operator of a child welfare agency shall maintain on file, subject to inspection by the board, evidence that the Federal Bureau of Investigation's criminal records checks have been initiated on all persons required to be checked and the results of the checks.

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

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

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

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

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

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

/s/ Madison