

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: S2/23/17
A Bill

SENATE BILL 335

By: Senator Irvin
By: Representative D. Meeks

For An Act To Be Entitled

AN ACT TO PERMIT VOLUNTARY RESPITE CARE; TO CREATE A
LICENSE EXEMPTION CONCERNING VOLUNTARY RESPITE CARE;
TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO PERMIT VOLUNTARY RESPITE CARE; TO
CREATE A LICENSE EXEMPTION CONCERNING
VOLUNTARY RESPITE CARE; AND TO DECLARE AN
EMERGENCY.

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

SECTION 1. Arkansas Code § 9-28-402, concerning definitions, is amended to read as follows:

(18) "Qualified nonprofit organization" means a charitable or religious institution that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3), that assists a parent, guardian, or legal custodian of a child with the process of entering into an authorization agreement in the form of a power of attorney for voluntary respite care, including without limitation identifying an appropriate voluntary respite care placement for each child subject to the agreement and assisting a parent, guardian, or legal custodian in locating and contacting a voluntary respite care provider;

~~(18)~~(19) "Relative" means a person within the fifth degree of kinship by virtue of blood or adoption;

~~(19)~~(20) "Religious organization" means a church, synagogue, or



mosque or association of same whose purpose is to support and serve the propagation of truly held religious beliefs;

~~(20)~~(21) “Residential child care facility” means any child welfare agency that provides care, training, education, custody, or supervision on a twenty-four-hour basis for six (6) or more unrelated children, excluding foster homes that have six (6) or more children who are all related to each other but who are not related to the foster parents;

~~(21)~~(22) “Special consideration” means approval from the Child Welfare Agency Review Board to allow a licensee to deviate from the letter of a rule if the licensee has demonstrated that the deviation is in the best interest of the children and does not pose a risk to persons served by the licensee;

~~(22)~~(A)~~(23)~~(A) “Substantial compliance” means compliance with all essential standards necessary to protect the health, safety, and welfare of the children in the care of the child welfare agency.

(B) Essential standards include, but are not limited to, those relating to issues involving fire, health, safety, nutrition, discipline, staff-to-child ratio, and space;

~~(23)~~(24) “Temporary camp” means any facility or program providing twenty-four-hour care or supervision to children that meets the following criteria:

(A) The facility or program is operated for recreational, educational, or religious purposes only;

(B) No child attends the program more than forty (40) days in a calendar year; and

(C) The parents of children placed in the program retain custody and planning and financial responsibility for the children during placement; ~~and~~

~~(24)~~(25) “Unrelated minor” means a child who is not related by blood, marriage, or adoption to the owner or operator of the child welfare agency and who is not a ward of the owner or operator of the child welfare agency pursuant to a guardianship order issued by a court of competent jurisdiction;

(26)(A) “Voluntary respite care” means a temporary placement arrangement facilitated by a qualified nonprofit organization that engages in certain placement activities similar to a child placement agency or child

welfare agency.

(B) Voluntary respite care does not include placements provided by a person or an entity that otherwise qualifies as an exempt child welfare agency as that term is defined in this section; and

(27) "Voluntary respite care provider" means a person, approved by a qualified nonprofit organization, who enters into a written agreement with a parent, guardian, or legal custodian of a minor whereby:

(A) The parent, guardian, or legal custodian voluntarily decides to place the minor into voluntary respite care and actively participates in the process of placing the minor into voluntary respite care;

(B) The placement of a minor into voluntary respite care is made for the purpose of assisting a family in crisis by providing a temporary arrangement for the twenty-four-hour care of the minor;

(C) The parent, guardian, or legal custodian of the minor retains the authority to terminate the voluntary respite care at any time and may immediately regain physical custody of the minor; and

(D) The voluntary respite care provider does not engage in an activity described in subdivision (8)(A) or subdivision (8)(D) of this section.

SECTION 2. Arkansas Code Title 9, Chapter 28, Subchapter 4, is amended to add an additional section to read as follows:

9-28-410. Voluntary respite care agreement- Exemption and penalties.

(a)(1)(A) A voluntary respite care provider is exempt from obtaining a license under § 9-28-407 if approved by a qualified nonprofit organization under this section.

(B) A voluntary respite care provider shall be approved by a qualified nonprofit organization before it is eligible to enter into a voluntary respite care agreement with a parent, guardian, or legal custodian under this section.

(2) In order to approve a voluntary respite care provider, a qualified nonprofit organization shall ensure that a voluntary respite care provider:

(A) Successfully completes a:

(i) Fingerprint-based criminal background check performed by the Federal Bureau of Investigation;

(ii) Criminal records check with the Identification Bureau of the Department of Arkansas State Police; and

(iii) Child Maltreatment Central Registry check; and

(B) Is trained by the qualified nonprofit organization.

(3)(A) The qualified nonprofit organization shall maintain the training, background checks, and Child Maltreatment Central Registry check records under subdivision (a)(2) of this section, including the content and dates of training and full transcripts of the background checks and Child Maltreatment Central Registry check, for a period of not less than five (5) years after the minor attains eighteen (18) years of age.

(B) The qualified nonprofit organization shall make the records under subdivision (a)(3)(A) of this section available to a parent, guardian, or legal custodian who executes a voluntary respite care agreement in the form of a power of attorney under this section and any local, state, or federal authority conducting an investigation involving the voluntary respite care provider, parent, guardian, legal custodian, or the minor.

(b)(1)(A) A power of attorney concerning voluntary respite care shall be between the parent, guardian, or legal custodian of a minor and the voluntary respite care provider, and the power of attorney shall not include or involve another person, entity, or agency, including without limitation other qualified nonprofit organizations.

(B) The power of attorney shall be valid for no longer than one (1) year.

(2) The power of attorney in subdivision (b)(1) of this section that details the voluntary respite care arrangement may address physical custody issues, including emergency medical treatment, but it shall not transfer legal custody of the minor to the voluntary respite care provider.

(3) The execution of a power of attorney in subdivision (b)(1) of this section between a parent, guardian, or legal custodian, and a voluntary respite care provider shall not alone constitute child maltreatment under the Child Maltreatment Act, § 12-18-101 et seq.

(4) This section shall not be interpreted to prevent or otherwise limit the investigation of child maltreatment or a finding of child maltreatment where there is evidence of child maltreatment beyond the voluntary respite agreement between the voluntary respite care provider and the parent, guardian, or legal custodian.

(c)(1) A qualified nonprofit organization that knowingly fails to perform or verify the background and Child Maltreatment Central Registry check under subdivision (a)(2) of this section is subject to a civil penalty not to exceed five thousand dollars (\$5,000), payable to the state and recoverable in a civil action.

(2) A qualified nonprofit organization or an employee or volunteer of a qualified nonprofit organization that continues to assist a parent, guardian, legal custodian, or voluntary respite care provider in completing a power of attorney under this section when the background checks and Child Maltreatment Central Registry check conducted under subdivision (a)(2)(A) of this section disclose substantiated allegations of child abuse, neglect, exploitation, or similar crime is subject to a civil penalty not to exceed five thousand dollars (\$5,000), payable to the state and recoverable in a civil action.

(3) A qualified nonprofit organization or an employee or volunteer of a qualified nonprofit organization that knowingly fails to maintain records as required under subdivision (a)(3)(A) of this section or that knowingly fails to disclose information as required under subdivision (a)(3)(B) of this section is subject to a civil penalty not to exceed five thousand dollars (\$5,000), payable to the state and recoverable in a civil action.

SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the ability to place a minor into voluntary respite care provides meaningful assistance to a family in crisis by providing a temporary arrangement for the twenty-four-hour care of the minor; that voluntary respite care provides the least intrusive solution to a family crisis; and that this act is immediately necessary to ensure the stability and unity of families in Arkansas. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

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

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

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

/s/Irvin