

1 State of Arkansas As Engrossed: H2/14/17 H2/16/17

2 91st General Assembly

# A Bill

3 Regular Session, 2017

HOUSE BILL 1048

4

5 By: Representatives D. Meeks, C. Douglas

6 By: Senator Irvin

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## For An Act To Be Entitled

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

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## Subtitle

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TO PERMIT VOLUNTARY RESPITE CARE; TO

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CREATE A LICENSE EXEMPTION CONCERNING

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VOLUNTARY RESPITE CARE; AND TO DECLARE AN

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EMERGENCY.

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

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

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

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

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



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

3 ~~(20)~~(21) "Residential child care facility" means any child  
4 welfare agency that provides care, training, education, custody, or  
5 supervision on a twenty-four-hour basis for six (6) or more unrelated  
6 children, excluding foster homes that have six (6) or more children who are  
7 all related to each other but who are not related to the foster parents;

8 ~~(21)~~(22) "Special consideration" means approval from the Child  
9 Welfare Agency Review Board to allow a licensee to deviate from the letter of  
10 a rule if the licensee has demonstrated that the deviation is in the best  
11 interest of the children and does not pose a risk to persons served by the  
12 licensee;

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

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

19 ~~(23)~~(24) "Temporary camp" means any facility or program  
20 providing twenty-four-hour care or supervision to children that meets the  
21 following criteria:

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

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

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

29 ~~(24)~~(25) "Unrelated minor" means a child who is not related by  
30 blood, marriage, or adoption to the owner or operator of the child welfare  
31 agency and who is not a ward of the owner or operator of the child welfare  
32 agency pursuant to a guardianship order issued by a court of competent  
33 jurisdiction;

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

1 welfare agency.

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

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

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

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

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

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

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

23 9-28-410. Voluntary respite care agreement- Exemption and penalties.

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

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

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

34 (A) Successfully completes a:

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

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

3 (iii) Child Maltreatment Central Registry check; and

4 (B) Is trained by the qualified nonprofit organization.

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

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

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

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

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

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

35 (c)(1) A qualified nonprofit organization that knowingly fails to  
36 perform or verify the background and Child Maltreatment Central Registry

1 check under subdivision (a)(2) of this section is subject to a civil penalty  
2 not to exceed five thousand dollars (\$5,000), payable to the state and  
3 recoverable in a civil action.

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

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

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

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

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

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

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*/s/D. Meeks*