

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 539**

A bill to amend 1973 PA 116, entitled

"An act to provide for the protection of children through the licensing and regulation of child care organizations; to provide for the establishment of standards of care for child care organizations; to prescribe powers and duties of certain departments of this state and adoption facilitators; to provide penalties; and to repeal acts and parts of acts,"

by amending sections 5, 5d, and 5k (MCL 722.115, 722.115d, and 722.115k), section 5 as amended by 2017 PA 257 and sections 5d and 5k as amended by 2017 PA 256.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 5. (1) This section and sections 5c, 5d, ~~5e~~ and 9 do not
- 2 apply to a child care center, group child care home, or family
- 3 child care home.



1 (2) A person, partnership, firm, corporation, association,
2 nongovernmental organization, or governmental organization, except
3 for the department of health and human services or a local county
4 department of health and human services office, shall not establish
5 or maintain a child care organization unless licensed by the
6 department. Application for a license ~~shall~~**must** be made on forms
7 provided, and in the manner prescribed, by the department. Before
8 issuing or renewing a license, the department shall investigate the
9 applicant's activities and proposed standards of care and shall
10 make an on-site visit of the proposed or established organization.
11 Except as otherwise provided in this subsection, if the department
12 is satisfied as to the need for a child care organization, its
13 financial stability, the applicant's good moral character, and that
14 the services and facilities are conducive to the welfare of the
15 children, the department shall issue or renew the license. If a
16 county juvenile agency as defined in section 2 of the county
17 juvenile agency act, 1998 PA 518, MCL 45.622, certifies to the
18 department that it intends to contract with an applicant for a new
19 license, the department shall issue or deny the license within 60
20 days after it receives a complete application as provided in
21 section 5b.

22 (3) The department may authorize a child placing agency or
23 governmental unit to investigate a foster family home or a foster
24 family group home according to subsection (2) and to certify that
25 the foster family home or foster family group home meets the
26 licensing requirements prescribed by this act. Before certifying to
27 the department that a foster family home or foster family group
28 home meets the licensing requirements prescribed by this act, the
29 child placing agency or governmental unit shall receive and review



1 a medical statement for each member of the household indicating
2 that he or she does not have a known condition that would affect
3 the care of a foster child. The medical statement required under
4 this section ~~shall~~**must** be signed and dated by a physician licensed
5 under article 15 of the public health code, 1978 PA 368, MCL
6 333.16101 to 333.18838, a physician's assistant licensed under
7 article 15 of the public health code, 1978 PA 368, MCL 333.16101 to
8 333.18838, or a certified nurse practitioner licensed as a
9 registered professional nurse under part 172 of the public health
10 code, 1978 PA 368, MCL 333.17201 to 333.17242, who has been issued
11 a specialty certification as a nurse practitioner by the board of
12 nursing under section 17210 of the public health code, 1978 PA 368,
13 MCL 333.17210, within the 12 months immediately preceding the date
14 of the initial evaluation. This subsection does not require new or
15 additional third party reimbursement or worker's compensation
16 benefits for services rendered. A foster family home or a foster
17 family group home ~~shall~~**must** be certified for licensing by the
18 department by only 1 child placing agency or governmental unit.
19 Other child placing agencies may place children in a foster family
20 home or foster family group home only upon the approval of the
21 certifying agency or governmental unit.

22 (4) The department may authorize a child placing agency or
23 governmental unit to place a child who is at least 16 but less than
24 21 years of age in his or her own unlicensed residence, or in the
25 unlicensed residence of an adult who has no supervisory
26 responsibility for the child, if a child placing agency or
27 governmental unit retains supervisory responsibility for the child.
28 If the child is at least 18 but less than 21 years of age, he or
29 she must meet the requirements of the young adult voluntary foster



1 care act, 2011 PA 225, MCL 400.641 to 400.671.

2 (5) A child placing agency, child caring institution, and
3 governmental unit shall provide the state court administrative
4 office and a local foster care review board established under 1984
5 PA 422, MCL 722.131 to 722.139a, those records requested pertaining
6 to children in foster care placement for more than 6 months.

7 (6) The department may authorize a child placing agency or
8 governmental unit to place a child who is 16 or 17 years old in an
9 adult foster care family home or an adult foster care small group
10 home licensed under the adult foster care facility licensing act,
11 1979 PA 218, MCL 400.701 to 400.737, if a child placing agency or
12 governmental unit retains supervisory responsibility for the child
13 and certifies to the department all of the following:

14 (a) The placement is in the best interests of the child.

15 (b) The child's needs can be adequately met by the adult
16 foster care family home or small group home.

17 (c) The child will be compatible with other residents of the
18 adult foster care family home or small group home.

19 (d) The child placing agency or governmental unit will
20 periodically reevaluate the placement of a child under this
21 subsection to determine that the criteria for placement in
22 subdivisions (a) through (c) continue to be met.

23 (7) On an exception basis, the director of the department, or
24 his or her designee, may authorize a child placing agency or
25 governmental unit to place an adult in a foster family home if a
26 child placing agency or governmental unit certifies to the
27 department all of the following:

28 (a) The adult is a person with a developmental disability as
29 defined by section 100a of the mental health code, 1974 PA 258, MCL



1 330.1100a, or a person who is otherwise neurologically disabled and
2 is also physically limited to a degree that requires complete
3 physical assistance with mobility and activities of daily living.

4 (b) The placement is in the best interests of the adult and
5 will not adversely affect the interests of the foster child or
6 children residing in the foster family home.

7 (c) The identified needs of the adult can be met by the foster
8 family home.

9 (d) The adult will be compatible with other residents of the
10 foster family home.

11 (e) The child placing agency or governmental unit will
12 periodically reevaluate the placement of an adult under this
13 subsection to determine that the criteria for placement in
14 subdivisions (a) through (d) continue to be met and document that
15 the adult is receiving care consistent with the administrative
16 rules for a child placing agency.

17 (8) On an exception basis, the director of the department, or
18 his or her designee, may authorize a child placing agency or
19 governmental unit to place a child in an adult foster care family
20 home or an adult foster care small group home licensed under the
21 adult foster care facility licensing act, 1979 PA 218, MCL 400.701
22 to 400.737, if the child placing agency or governmental unit
23 certifies to the department all of the following:

24 (a) The placement is in the best interests of the child.

25 (b) The placement has the concurrence of the parent or
26 guardian of the child.

27 (c) The identified needs of the child can be met adequately by
28 the adult foster care family home or small group home.

29 (d) The child's psychosocial and clinical needs are compatible



1 with those of other residents of the adult foster care family home
2 or small group home.

3 (e) The clinical treatment of the child's condition is similar
4 to that of the other residents of the adult foster care family home
5 or small group home.

6 (f) The child's cognitive level is consistent with the
7 cognitive level of the other residents of the adult foster care
8 family home or small group home.

9 (g) The child is neurologically disabled and is also
10 physically limited to a degree that requires complete physical
11 assistance with mobility and activities of daily living.

12 (h) The child placing agency or governmental unit will
13 periodically reevaluate the placement of a child under this
14 subsection to determine that the criteria for placement in
15 subdivisions (a) to (g) continue to be met.

16 (9) Except as provided in section ~~5c(7)~~, **5c(6)**, the department
17 shall not issue to or renew the license of a child care
18 organization under this act without requesting a criminal history
19 check as required by section 5c. If a criminal history check
20 performed under section 5c or information obtained as a result of
21 notification from the department of state police under section 5k
22 reveals that an applicant for a license under this act has been
23 convicted of a listed offense, the department shall not issue a
24 license to that applicant. If a criminal history check performed
25 under section 5c or information obtained as a result of
26 notification from the department of state police under section 5k
27 reveals that an applicant for renewal of a license under this act
28 has been convicted of a listed offense, the department shall not
29 renew that license. If a criminal history check performed under



1 section 5c or information obtained as a result of notification from
2 the department of state police under section 5k reveals that a
3 current licensee has been convicted of a listed offense, the
4 department shall revoke the license of that licensee.

5 (10) Except as provided in section 5h(6), the department of
6 health and human services shall not issue or renew a license to
7 operate a foster family home or foster family group home under this
8 act without requesting a criminal history check as required by
9 sections 5h and 5j. If a criminal history check performed under
10 section 5h or 5j or information obtained as a result of
11 notification from the department of state police under section 5k
12 reveals that an applicant for a license to operate a foster family
13 home or foster family group home under this act or an adult member
14 of the household has been convicted of a listed offense, the
15 department shall not issue a license to that applicant. If a
16 criminal history check performed under section 5h or 5j or
17 information obtained as a result of notification from the
18 department of state police under section 5k reveals that an
19 applicant for renewal of a license to operate a foster family home
20 or foster family group home under this act or an adult member of
21 the household has been convicted of a listed offense, the
22 department shall not renew a license to that applicant. If a
23 criminal history check performed under section 5h or 5j or
24 information obtained as a result of notification from the
25 department of state police under section 5k reveals that a current
26 licensee under this act of a foster family home or foster family
27 group home or an adult member of the foster family home or foster
28 family group home has been convicted of a listed offense, the
29 department shall revoke that licensee's license.



1 (11) As used in this section, "good moral character" means
2 that term as defined in and determined under 1974 PA 381, MCL
3 338.41 to 338.47, and the rules promulgated under this act.

4 Sec. 5d. (1) Before a child care organization makes ~~an a~~
5 **conditional** offer of employment to a person, ~~or allows a person to~~
6 ~~regularly and continuously work under contract at the child care~~
7 ~~organization,~~ the child care organization shall perform a criminal
8 history background check on that person using the department of
9 state police's internet criminal history access tool (ICHAT) or
10 equivalent check on that person from the state or province of
11 residence.

12 (2) If a search of the department of state police's ICHAT or
13 equivalent check on the person from the state or province of
14 residence reveals that the person described in subsection (1) has
15 been convicted of a listed offense, the child care organization
16 shall not make an offer of employment to that person. ~~or allow that~~
17 ~~person to regularly and continuously work under contract at the~~
18 ~~child care organization.~~ If a search of the department of state
19 police's ICHAT reveals that a current employee has been convicted
20 of a listed offense, the child care organization shall not continue
21 to employ that person. If a search of the department of state
22 police's ICHAT or equivalent check on that person from the state or
23 province of residence reveals that a person who regularly and
24 continuously works under contract at the child care organization
25 has been convicted of a listed offense, the child care organization
26 shall not allow that person to regularly or continuously work under
27 contract at the child care organization.

28 (3) A child care organization may pass along the actual cost
29 of a search of the department of state police's ICHAT or equivalent



1 check on that person from the state or province of residence to the
2 employee or applicant on whom the search is being performed.

3 (4) A child caring institution subject to section 671 of title
4 IV-E of the social security act, 42 USC 671, shall not permit a
5 child caring institution staff member to begin working unless all
6 of the following have been completed:

7 (a) The department receives written consent from the child
8 caring institution staff member to conduct a criminal history
9 check. The department shall require the person to submit his or her
10 fingerprints to the department of state police and the Federal
11 Bureau of Investigation for the criminal history check.

12 (b) The child caring institution receives the results of the
13 criminal history check from the department.

14 (c) If the employee has a criminal conviction, the child
15 caring institution shall complete a written evaluation that
16 addresses the nature of the conviction, the length of time since
17 the conviction was entered, and the relationship between the
18 conviction and regulated activity in the child caring institution
19 for the purpose of determining suitability for employment in the
20 child caring institution.

21 (5) If a child caring institution is applying to renew its
22 license, a staff member, who has previously undergone a criminal
23 history check required under subsection (4)(a) and has remained
24 continuously employed with the child caring institution that is
25 seeking renewal, is not required to submit to another criminal
26 history check upon renewal of the child caring institution's
27 license.

28 Sec. 5k. (1) The department of state police shall store and
29 retain all fingerprints submitted under this act in an automated



1 fingerprint identification system database that provides for an
 2 automatic notification at the time a subsequent criminal arrest
 3 fingerprint card submitted into the system matches a set of
 4 fingerprints previously submitted in accordance with this act. Upon
 5 that notification, the department of state police shall immediately
 6 notify the department and the department shall immediately contact
 7 the respective child care organization with which that individual
 8 is associated. Except for child placing agencies **and child caring**
 9 **institutions**, the criminal history record information ~~shall~~**must**
 10 only be released to the individual to whom the criminal history
 11 record information pertains. Information in the database retained
 12 under this section is confidential, is not subject to disclosure
 13 under the freedom of information act, 1976 PA 442, MCL 15.231 to
 14 15.246, and ~~shall~~**must** not be disclosed to any person except for
 15 purposes of this act or for law enforcement purposes.

16 (2) When the department of state police is able to participate
 17 with the Federal Bureau of Investigation's automatic notification
 18 system similar to the system administered by the department of
 19 state police under subsection (1), all fingerprints submitted to
 20 the Federal Bureau of Investigation may be stored and retained.
 21 When a subsequent criminal arrest fingerprint card submitted into
 22 the system matches a set of fingerprints for an individual retained
 23 in accordance with this act, the department of state police shall
 24 immediately notify the department. The department shall immediately
 25 contact the child care organization with which the individual is
 26 associated if a conviction results from the arrest. Except for
 27 child placing agencies **and child caring institutions**, the criminal
 28 history record information ~~shall~~**must** only be released to the
 29 individual to whom the criminal history record information



1 pertains.

2 Enacting section 1. This amendatory act does not take effect
3 unless all of the following bills of the 100th Legislature are
4 enacted into law:

5 (a) House Bill No. 466.

6 (b) House Bill No. 467.

7 (c) House Bill No. 468.

8 (d) House Bill No. 469.

