

Act No. 10
Public Acts of 2020
Approved by the Governor
January 24, 2020
Filed with the Secretary of State
January 27, 2020
EFFECTIVE DATE: January 27, 2020

**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2020**

Introduced by Senator Bizon

ENROLLED SENATE BILL No. 539

AN ACT 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:

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

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

(3) The department may authorize a child placing agency or governmental unit to investigate a foster family home or a foster family group home according to subsection (2) and to certify that the foster family home or foster family group home meets the licensing requirements prescribed by this act. Before certifying to the department that a foster family home or foster family group home meets the licensing requirements prescribed by this act, the child placing agency or governmental unit shall receive and review a medical statement for each member of the household indicating that he or she does not have a known condition that would affect the care of a foster child. The medical statement required under this section must be signed and dated by a physician licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, a physician’s assistant licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, or a certified nurse practitioner licensed as a registered professional nurse under part 172 of the public health code, 1978 PA 368, MCL 333.17201 to 333.17242, who has been issued a specialty certification as a nurse practitioner by the board of nursing under section 17210 of the public health code, 1978 PA 368, MCL 333.17210, within the 12 months

immediately preceding the date of the initial evaluation. This subsection does not require new or additional third party reimbursement or worker's compensation benefits for services rendered. A foster family home or a foster family group home must be certified for licensing by the department by only 1 child placing agency or governmental unit. Other child placing agencies may place children in a foster family home or foster family group home only upon the approval of the certifying agency or governmental unit.

(4) The department may authorize a child placing agency or governmental unit to place a child who is at least 16 but less than 21 years of age in his or her own unlicensed residence, or in the unlicensed residence of an adult who has no supervisory responsibility for the child, if a child placing agency or governmental unit retains supervisory responsibility for the child. If the child is at least 18 but less than 21 years of age, he or she must meet the requirements of the young adult voluntary foster care act, 2011 PA 225, MCL 400.641 to 400.671.

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

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

- (a) The placement is in the best interests of the child.
- (b) The child's needs can be adequately met by the adult foster care family home or small group home.
- (c) The child will be compatible with other residents of the adult foster care family home or small group home.
- (d) The child placing agency or governmental unit will periodically reevaluate the placement of a child under this subsection to determine that the criteria for placement in subdivisions (a) through (c) continue to be met.

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

(a) The adult is a person with a developmental disability as defined by section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, or a person who is otherwise neurologically disabled and is also physically limited to a degree that requires complete physical assistance with mobility and activities of daily living.

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

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

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

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

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

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

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

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

(d) The child's psychosocial and clinical needs are compatible with those of other residents of the adult foster care family home or small group home.

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

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

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

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

(9) Except as provided in section 5c(6), the department shall not issue to or renew the license of a child care organization under this act without requesting a criminal history check as required by section 5c. If a criminal history check performed under section 5c or information obtained as a result of notification from the department of state police under section 5k reveals that an applicant for a license under this act has been convicted of a listed offense, the department shall not issue a license to that applicant. If a criminal history check performed under section 5c or information obtained as a result of notification from the department of state police under section 5k reveals that an applicant for renewal of a license under this act has been convicted of a listed offense, the department shall not renew that license. If a criminal history check performed under section 5c or information obtained as a result of notification from the department of state police under section 5k reveals that a current licensee has been convicted of a listed offense, the department shall revoke the license of that licensee.

(10) Except as provided in section 5h(6), the department of health and human services shall not issue or renew a license to operate a foster family home or foster family group home under this act without requesting a criminal history check as required by sections 5h and 5j. If a criminal history check performed under section 5h or 5j or information obtained as a result of notification from the department of state police under section 5k reveals that an applicant for a license to operate a foster family home or foster family group home under this act or an adult member of the household has been convicted of a listed offense, the department shall not issue a license to that applicant. If a criminal history check performed under section 5h or 5j or information obtained as a result of notification from the department of state police under section 5k reveals that an applicant for renewal of a license to operate a foster family home or foster family group home under this act or an adult member of the household has been convicted of a listed offense, the department shall not renew a license to that applicant. If a criminal history check performed under section 5h or 5j or information obtained as a result of notification from the department of state police under section 5k reveals that a current licensee under this act of a foster family home or foster family group home or an adult member of the foster family home or foster family group home has been convicted of a listed offense, the department shall revoke that licensee's license.

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

Sec. 5d. (1) Before a child care organization makes a conditional offer of employment to a person, the child care organization shall perform a criminal history background check on that person using the department of state police's internet criminal history access tool (ICHAT) or equivalent check on that person from the state or province of residence.

(2) If a search of the department of state police's ICHAT or equivalent check on the person from the state or province of residence reveals that the person described in subsection (1) has been convicted of a listed offense, the child care organization shall not make an offer of employment to that person. If a search of the department of state police's ICHAT reveals that a current employee has been convicted of a listed offense, the child care organization shall not continue to employ that person. If a search of the department of state police's ICHAT or equivalent check on that person from the state or province of residence reveals that a person who regularly and continuously works under contract at the child care organization has been convicted of a listed offense, the child care organization shall not allow that person to regularly or continuously work under contract at the child care organization.

(3) A child care organization may pass along the actual cost of a search of the department of state police's ICHAT or equivalent check on that person from the state or province of residence to the employee or applicant on whom the search is being performed.

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

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

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

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

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

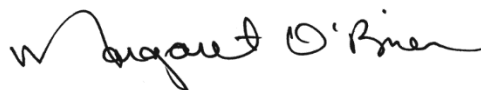
Sec. 5k. (1) The department of state police shall store and retain all fingerprints submitted under this act in an automated fingerprint identification system database that provides for an automatic notification at the time a subsequent criminal arrest fingerprint card submitted into the system matches a set of fingerprints previously submitted in accordance with this act. Upon that notification, the department of state police shall immediately notify the department and the department shall immediately contact the respective child care organization with which that individual is associated. Except for child placing agencies and child caring institutions, the criminal history record information must only be released to the individual to whom the criminal history record information pertains. Information in the database retained under this section is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and must not be disclosed to any person except for purposes of this act or for law enforcement purposes.

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

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

- (a) Senate Bill No. 466.
- (b) Senate Bill No. 467.
- (c) Senate Bill No. 468.
- (d) Senate Bill No. 469.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor