

HOUSE BILL NO. 5638

April 18, 2024, Introduced by Reps. Farhat, Churches, Wilson, Fitzgerald, Mentzer and McFall and referred to the Committee on Tax Policy.

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 2, 3, 5n, 10, and 11c (MCL 722.112, 722.113, 722.115n, 722.120, and 722.121c), section 2 as amended by 2022 PA 111, section 3 as amended and section 11c as added by 2017 PA 257,

section 5n as added by 2017 PA 256, and section 10 as amended by 2023 PA 304.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. (1) The departments of health and human services and
2 licensing and regulatory affairs are responsible for developing
3 rules for the care and protection of children in organizations
4 covered by this act and for promulgating these rules according to
5 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
6 to 24.328.

7 (2) The department shall establish an ad hoc committee for
8 each type of child care organization as defined in this act when it
9 is formulating or amending rules under this act. The committee
10 shall consist of not less than 12 members, and must include
11 representatives of the following groups and agencies:

12 (a) Department of health and human services.

13 (b) Department of licensing and regulatory affairs, bureau of
14 fire services, and state fire safety board.

15 (c) Department of education.

16 (d) Representatives of organizations affected by this act.

17 (e) Parents of children affected by this act.

18 (3) A majority of the members appointed to the committee
19 established by subsection (2) must be representatives of
20 organizations affected by this act and parents of children affected
21 by this act. The committee shall serve during the period of the
22 formulation of rules, shall have responsibility for making
23 recommendations on the content of rules, and shall recommend to the
24 department revisions in proposed rules at any time before the rules
25 are promulgated.

26 (4) The rules promulgated under this act shall be restricted

1 to the following:

2 (a) The operation and conduct of child care organizations and
3 the responsibility the organizations assume for child care.

4 (b) The character, suitability, health, training, and
5 qualifications of applicants and other persons directly responsible
6 for the care and welfare of children served.

7 (c) The character and health of household members.

8 (d) The general financial ability and competence of applicants
9 to provide necessary care for children and to maintain prescribed
10 standards.

11 (e) The number of individuals or staff required to ensure
12 adequate supervision and care of the children received.

13 (f) The appropriateness, safety, cleanliness, and general
14 adequacy of the premises, including maintenance of adequate fire
15 prevention and health standards to provide for the physical
16 comfort, care, and well-being of the children received. The rules
17 with respect to fire prevention and fire safety do not apply to a
18 child care center established and operated by an intermediate
19 school board, the board of a local school district, or by the board
20 or governing body of a state approved nonpublic school, if ~~the~~
21 **either of the following apply:**

22 (i) **The** child care center is located in a school building that
23 is approved by the bureau of fire services created in section 1b of
24 the fire prevention code, 1941 PA 207, MCL 29.1b, or other similar
25 authority as provided in section 3 of 1937 PA 306, MCL 388.853, for
26 school purposes and is in compliance with the school fire safety
27 rules, R 29.1901 to R 29.1934 of the Michigan Administrative Code,
28 as determined by the bureau of fire services or a fire inspector
29 certified under section 2b of the fire prevention code, 1941 PA

1 207, MCL 29.2b.

2 **(ii) The superintendent of the intermediate school district or**
3 **local school district certifies that the school building has the**
4 **approval described under subparagraph (i) .**

5 (g) Provisions for food, clothing, educational opportunities,
6 programs, equipment, and individual supplies to assure the healthy
7 physical, emotional, and mental development of children served.

8 (h) Provisions to safeguard the legal rights of children
9 served.

10 (i) Maintenance of records pertaining to admission, progress,
11 health, and discharge of children.

12 (j) Filing of reports with the department.

13 (k) Discipline of children.

14 (l) Transportation safety.

15 (5) Rules once promulgated are subject to major review by an
16 ad hoc committee not less than once every 5 years and must be
17 reviewed biennially by the department. The ad hoc committee shall
18 be established by the department, shall consist of not less than 12
19 members, and shall include representatives of the groups and
20 agencies indicated in subsection (2). The ad hoc committee shall
21 hold at least 2 public hearings regarding the review of rules and
22 shall report its recommendations regarding rules to the appropriate
23 committees of the legislature.

24 (6) Unless there is an immediate federal obligation or an
25 immediate risk to health and safety as determined by the
26 department, a child care center, group child care home, or family
27 child care home that is controlled by a rule promulgated under this
28 act has not less than 90 days after a rule is promulgated to become
29 compliant with the rule.

1 Sec. 3. (1) The rules promulgated by the department under this
 2 act ~~shall~~**must** be used by the department, the bureau of fire
 3 services, and local authorities in the inspection of and reporting
 4 on child care organizations covered by this act. The inspection of
 5 the health and fire safety of child care organizations ~~shall~~**must**
 6 be completed by department staff, the bureau of fire services, or
 7 local authorities upon request of the department, or according to
 8 subsection (2).

9 (2) If an inspection is not conducted according to subsection
 10 (1), a person owning or operating or ~~who~~**that** proposes to own or
 11 operate a child care organization **must comply with either of the**
 12 **following:**

13 **(a) The person** may enter **into** a contract with a local
 14 authority or other person qualified by the department to conduct an
 15 inspection according to subsection (1) and pay for that inspection
 16 after an inspection is completed according to this subsection.

17 **(b) If the child care organization is a child care center in a**
 18 **school building, the person provides the department with**
 19 **certification from the superintendent of the intermediate school**
 20 **district or local school district that the health and fire safety**
 21 **described under subsection (1) is sufficient in the school**
 22 **building.**

23 (3) The rules promulgated by the department for foster family
 24 homes and foster family group homes ~~shall~~**must** be used by a child
 25 placing agency or governmental unit when investigating and
 26 certifying a foster family home or a foster family group home.

27 (4) Inspection reports completed by state agencies, local
 28 authorities, and child placing agencies ~~shall~~**must** be furnished to
 29 the department and ~~shall~~**will** become a part of its evaluation for

1 licensing of organizations covered by this act. After careful
2 consideration of the reports and consultation where necessary, the
3 department shall assume responsibility for the final determination
4 of the issuance, denial, revocation, or provisional nature of
5 licenses issued under this act. A report of findings ~~shall~~**must** be
6 furnished to the applicant or licensee.

7 Sec. 5n. (1) Except as otherwise provided in subsection (13),
8 when a person, partnership, firm, corporation, association,
9 governmental organization, or nongovernmental organization applies
10 for or applies to renew a license to operate a child care center,
11 group child care home, or family child care home under section 5m
12 and before a group child care home or family child care home allows
13 an individual to be a member of the household, or a child care
14 center, group child care home, or family child care home allows an
15 individual to become a child care staff member, the department
16 shall do all of the following:

17 (a) Review its database of individuals with previous
18 disciplinary action within a child care center, group child care
19 home, or family child care home or an adult foster care facility.

20 (b) Conduct a search of the individual through the national
21 sex offender registry.

22 (c) Request a search of the individual through all state
23 criminal registries or repositories for any states of residence in
24 the past 5 years.

25 (d) Request that the department of state police perform a
26 criminal history check on the individual, child care staff member,
27 or adult member of the household.

28 (2) If the individual, child care staff member, or adult
29 member of the household has resided out of the United States within

1 the preceding 5 years, equivalent clearances of those described in
2 subsection (1)(b) and (d) and section 5q from each country must be
3 provided, if available. If the country does not have the equivalent
4 clearance, the individual must sign a self-certifying statement
5 that ~~he or she~~ **the individual** is not ineligible to receive a
6 license, to be an adult member of the household, or to be a child
7 care staff member as prescribed by sections 5q and 5r. An
8 individual who provides or is determined to have provided false
9 information or knowingly omits information in the self-
10 certification statement is ineligible for that application.

11 (3) Each individual listed in subsection (1) shall give
12 written consent at the time of the license application and before a
13 group child care home or family child care home allows an
14 individual to be a member of the household, or before becoming a
15 child care staff member to allow the department of state police to
16 conduct the criminal history check required under subsection (1).
17 The department shall require the individual to submit ~~his or her~~
18 **the individual's** fingerprints to the department of state police and
19 the Federal Bureau of Investigation for the criminal history check
20 as required in subsection (1).

21 (4) The department shall request a criminal history check
22 required under this section on a form and in the manner prescribed
23 by the department of state police.

24 (5) Within a reasonable time after receiving a complete
25 request for a criminal history check on a person under this
26 section, the department of state police shall conduct the criminal
27 history check and provide a report of the results to the
28 department. The report ~~shall~~ **must** contain any criminal history
29 record information on the person maintained by the department of

1 state police and the Federal Bureau of Investigation.

2 (6) The department of state police may charge the department a
3 fee for a criminal history check required under this section that
4 does not exceed the actual and reasonable cost of conducting the
5 check. ~~The~~ **If the department does not receive a sufficient**
6 **appropriation in a fiscal year to cover the cost of conducting each**
7 **check required under this section, the department** may pass along to
8 the individual fingerprinted the actual cost or fee charged by the
9 department of state police, the Federal Bureau of Investigation, or
10 a vendor approved by the department of state police for performing
11 a criminal history check **during that fiscal year** required under
12 this section.

13 (7) The department shall provide whether the individual is
14 eligible or ineligible as provided by sections 5q and 5r within 45
15 days after the date on which the request was submitted.

16 (8) The individual may serve as a child care staff member
17 pending the results of the record and database checks required by
18 this section and section 5q if the individual is supervised at all
19 times.

20 (9) Within 45 days after the date on which the request was
21 submitted, the department shall provide a statement to the child
22 care center, group child care home, or family child care home that
23 indicates whether the individual is eligible or ineligible to be, a
24 licensee, an adult member of the household, or a child care staff
25 member as provided under sections 5q and 5r without revealing any
26 disqualifying crime or other related information regarding the
27 individual.

28 (10) If the individual is ineligible due to the records or
29 database checks required under this section and section 5q, the

1 department shall provide information related to each disqualifying
2 item in a report to the individual who has been determined
3 ineligible.

4 (11) An individual who has been determined to be ineligible as
5 provided under sections 5q and 5r may request a redetermination by
6 the department if ~~he or she~~ **the individual** believes that the basis
7 for the ineligible determination is inaccurate. The individual
8 shall file the request for redetermination with the department
9 within 30 calendar days after receiving the written notice that he
10 or she was determined to be ineligible. If an individual has been
11 determined to be ineligible based upon a conviction that has been
12 expunged or set aside or a central registry case that has been
13 expunged, the individual shall provide the supporting court, law
14 enforcement, or department of health and human services, or
15 equivalent department from another state, documents along with the
16 request for redetermination. The individual shall not be determined
17 to be ineligible based upon a conviction that has been set aside or
18 expunged or a central registry case that has been expunged. The
19 department shall review the request and issue a written decision
20 within 30 business days after receiving the request for
21 redetermination. The decision of the department is final.

22 (12) Each ineligible individual shall be given instructions
23 about how to complete the request for redetermination process as
24 provided in subsection (11).

25 (13) Except as otherwise provided in this subsection, not
26 later than September 30, 2017, every child care center licensee,
27 group child care home licensee, family child care home licensee,
28 child care staff member, and adult member of the household shall
29 submit ~~his or her~~ **the individual's** fingerprints to the department

1 of state police and the Federal Bureau of Investigation in order to
2 carry out the records and database checks required under this
3 section and section 5q. If the department of education obtains an
4 extension on the implementation of this program from the federal
5 government, the provisions of this section may be implemented no
6 later than September 30, 2018.

7 (14) If a licensee, licensee designee, or program director of
8 a child care center, group child care home, or family child care
9 home applying for a new license or to renew a license to operate a
10 child care center, group child care home, or family child care home
11 has previously undergone a criminal history check required under
12 subsections (1) and (13) and has remained continuously licensed
13 after the criminal history check has been performed, that licensee,
14 licensee designee, or program director of a child care center,
15 group child care home, or family child care home is not required to
16 submit to another criminal history check upon renewal of, or
17 application for, the license obtained under this act.

18 (15) Upon consent of an applicant as required in subsection
19 (3) and upon request from a child care center, group child care
20 home, or family child care home, the department shall review the
21 information received from the criminal history check, if any, and
22 notify the requesting child care center, group child care home, or
23 family child care home of the information in the manner prescribed
24 in subsection (7). Until the Federal Bureau of Investigation
25 implements an automatic notification system as outlined in section
26 5k, a child care center, group child care home, or family child
27 care home may rely on the criminal history record information
28 provided by the department under this subsection and a new request
29 as provided under this section is not necessary if all of the

1 following requirements are met:

2 (a) The criminal history check was conducted during the
3 immediately preceding 5-year period.

4 (b) The applicant has been continuously employed by a child
5 care center, group child care home, or family child care home since
6 the criminal history check was conducted in compliance with this
7 section.

8 (c) The applicant can provide evidence acceptable to the
9 department that ~~he or she~~ **the applicant** has been a resident of this
10 state for the immediately preceding 5-year period.

11 (16) The checks and clearances required in subsection (1)(a)
12 to (c) and section 5q ~~shall~~ **must** be updated at least every 5 years
13 if the individual has been continuously licensed, has continuously
14 been serving as a child care staff member, or has continuously been
15 an adult member of the household.

16 Sec. 10. (1) The department may investigate, inspect, and
17 examine conditions of a child care organization and may investigate
18 and examine the licensee's books and records. The licensee must
19 cooperate with the department's investigation, inspection, and
20 examination by doing all of the following:

21 (a) Admitting members of the department into the child care
22 organization and furnishing all reasonable facilities for thorough
23 examination of its books, records, and reports.

24 (b) Allowing the department to perform routine investigative
25 functions during the course of an investigation, inspection, or
26 examination. Routine investigative functions include, but are not
27 limited to, interviewing potential witnesses, such as staff and
28 household members, and taking photographs to assess and document
29 the conditions of the child care organization and its compliance

1 with this act and the rules promulgated under this act.

2 (c) Providing accurate and truthful information to the
3 department, and encouraging witnesses, such as staff and household
4 members, to provide accurate and truthful information to the
5 department.

6 (2) ~~The~~ **Except for a child care center for which a**
7 **superintendent provides certification that a health or fire**
8 **protection requirement under this act is met, a** licensee shall
9 allow the department, the bureau of fire services, or local
10 authorities access to the child care organization to carry out the
11 provisions of this act and rules promulgated under this act related
12 to the health or fire protection of children.

13 (3) A licensee shall keep the records the department
14 prescribes regarding each child in its control and care and shall
15 report to the department, if requested, the facts the department
16 requires with reference to the children upon forms furnished by the
17 department. Except as otherwise provided in this subsection and
18 subsection (4), records regarding children and facts compiled about
19 children and their parents and relatives are confidential and
20 disclosure of this information must be properly safeguarded by the
21 child care organization, the department, and any other entity in
22 possession of the information. Records that are confidential under
23 this section are available to 1 or more of the following:

24 (a) A standing or select committee or appropriations
25 subcommittee of either house of the legislature having jurisdiction
26 over protective services matters for children, according to section
27 7 of the child protection law, 1975 PA 238, MCL 722.627.

28 (b) The child advocate established in section 3 of the office
29 of the child advocate act, 1994 PA 204, MCL 722.923.

1 (c) An employee of an agency, bureau, division, or other
2 entity within the department, or an employee of a child caring
3 institution, or a child placing agency contracted with the
4 department, but only to the extent necessary for the administration
5 of child welfare services in each case. The director of the agency
6 responsible for child welfare services, or the director's designee,
7 is responsible for authorizing an employee to have access to the
8 records according to this subdivision and for ensuring that access
9 is given only to the extent necessary.

10 (d) A national accreditation program, only while on-site, for
11 the purpose of review and accreditation of a child welfare program,
12 agency, or organization.

13 (4) Notwithstanding subsection (3) and sections 5 and 7(2) of
14 the child protection law, 1975 PA 238, MCL 722.625 and 722.627,
15 information or records in the possession of the department or the
16 department of licensing and regulatory affairs may be shared to the
17 extent necessary for the proper functioning of the department or
18 the department of licensing and regulatory affairs in administering
19 child welfare or child care licensing under this act or in an
20 investigation conducted under section 43b of the social welfare
21 act, 1939 PA 280, MCL 400.43b. Information or records shared under
22 this subsection ~~shall~~**must** not be released by the department or the
23 department of licensing and regulatory affairs unless otherwise
24 permitted under this act or other state or federal law. Neither the
25 department nor the department of licensing and regulatory affairs
26 shall release or open for inspection any document, report, or
27 record authored by or obtained from another agency or organization
28 unless 1 of the conditions of section 7(5) of the child protection
29 law, 1975 PA 238, MCL 722.627, applies.

1 (5) A child care center, group child care home, or family
2 child care home licensee shall provide the department with child
3 information cards for all children presently enrolled for care, as
4 requested by the department, whenever the department initiates or
5 conducts an investigation, inspection, or assessment. If the
6 investigation, inspection, or assessment results in the department
7 pursuing disciplinary action as provided by section 11, the child
8 care center, group child care home, or family child care home
9 licensee must provide the department with child information cards
10 for newly enrolled children for the pendency of the proposed
11 disciplinary action.

12 (6) The department may suspend, deny, revoke, or refuse to
13 renew a license of the child care organization if the licensee does
14 not cooperate with an investigation, inspection, or examination
15 under this section.

16 **(7) An audio or video recording provided to the department by**
17 **a licensee under this section is exempt from disclosure under the**
18 **freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.**

19 Sec. 11c. (1) In the case of a disaster, a child care center,
20 group child care home, or family child care home may temporarily
21 operate at an unlicensed location under this section. The
22 requirements to temporarily operate at an unlicensed location under
23 this section are as follows:

24 (a) The child care center, group child care home, or family
25 child care home cannot operate in a new location until after the
26 department has conducted an inspection and approved the new
27 location.

28 (b) ~~For~~ **Except as provided in this subdivision, for** a child
29 care center, a fire safety inspection, an environmental health

1 inspection, and, if necessary, a lead hazard risk assessment, and,
2 for a group child care home or family child care home, an
3 environmental health inspection, if necessary, are conducted within
4 45 days of the proposal of the new location. **A fire safety**
5 **inspection and an environmental health inspection under this**
6 **subdivision is not required for a child care center located in a**
7 **school building if the superintendent of the intermediate school**
8 **district or local school district certifies that the location is**
9 **safe.** ~~If any of the inspections find an inspection required under~~
10 **this subdivision finds** the new location to be unsafe, the child
11 care center, group child care home, or family child care home must
12 discontinue operation in that new location.

13 (2) If the child care center, group child care home, or family
14 child care home will remain at the new location, the licensee must
15 apply for and obtain a new license within 1 year of moving to the
16 new location.

17 (3) The department shall determine what constitutes a disaster
18 under this section.