

# HOUSE BILL No. 5123

September 12, 1991, Introduced by Rep. Hertel and referred to the Committee on Social Services and Youth.

A bill to amend sections 1, 2, 11, 11a, and 12 of Act No. 116 of the Public Acts of 1973, 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 provide penalties; and to repeal certain acts and parts of acts,"

section 1 as amended by Act No. 139 of the Public Acts of 1984, section 2 as amended by Act No. 150 of the Public Acts of 1983, and sections 11 and 12 as amended by Act No. 232 of the Public Acts of 1980, being sections 722.111, 722.112, 722.121, 722.121a, and 722.122 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1, 2, 11, 11a, and 12 of Act No. 116 of  
2 the Public Acts of 1973, section 1 as amended by Act No. 139 of  
3 the Public Acts of 1984, section 2 as amended by Act No. 150 of  
4 the Public Acts of 1983, and sections 11 and 12 as amended by Act

1 No. 232 of the Public Acts of 1980, being sections 722.111,  
2 722.112, 722.121, 722.121a, and 722.122 of the Michigan Compiled  
3 Laws, are amended to read as follows:

4 Sec. 1. As used in this act:

5 (a) "Child care organization" means a governmental or non-  
6 governmental organization having as its principal function the  
7 receiving of minor children for care, maintenance, training, and  
8 supervision, notwithstanding that educational instruction may be  
9 given. Child care organization includes organizations commonly  
10 described as child caring institutions, child placing agencies,  
11 children's camps, child care centers, day care centers, nursery  
12 schools, parent cooperative preschools, foster homes, group  
13 homes, or day care homes.

14 (b) "Child caring institution" means a child care facility  
15 which is organized for the purpose of receiving minor children  
16 for care, maintenance, and supervision, usually on a 24-hour  
17 basis, in buildings maintained by the institution for that pur-  
18 pose, and operates throughout the year. An educational program  
19 may be provided, but the educational program shall not be the  
20 primary purpose of the facility. Child caring institution  
21 includes a maternity home for the care of unmarried mothers who  
22 are minors and an agency group home, which is described as a  
23 small child caring institution owned, leased, or rented by a  
24 licensed agency providing care for more than 4 but less than 13  
25 minor children. Child caring institution also includes institu-  
26 tions for mentally retarded or emotionally disturbed minor  
27 children. Child caring institution does not include a hospital,

1 nursing home, or home for the aged licensed under article 17 of  
2 the public health code, Act No. 368 of the Public Acts of 1978,  
3 as amended, being sections 333.20101 to ~~333.22101~~ 333.22260 of  
4 the Michigan Compiled Laws, a boarding school licensed under sec-  
5 tion 1335 of the school code of 1976, Act No. 451 of the Public  
6 Acts of 1976, being section 380.1335 of the Michigan Compiled  
7 Laws, a hospital or facility operated by the state or licensed  
8 under the mental health code, Act No. 258 of the Public Acts of  
9 1974, as amended, being sections 330.1001 to 330.2106 of the  
10 Michigan Compiled Laws, or an adult foster care family home or an  
11 adult foster care small group home licensed under the adult  
12 foster care facility licensing act, Act No. 218 of the Public  
13 Acts of 1979, being sections 400.701 to ~~400.735~~ 400.737 of the  
14 Michigan Compiled Laws in which a child has been placed pursuant  
15 to section 5(6).

16 (c) "Child placing agency" means an agency organized for the  
17 purpose of receiving children for their placement in private  
18 family homes for foster care or for adoption. The function of a  
19 child placing agency may include the investigation and certifica-  
20 tion of foster family homes and foster family group homes as pro-  
21 vided in this act. The function of a child placing agency may  
22 also include the supervision of children who are 16 or 17 years  
23 of age and who are living in unlicensed residences as provided in  
24 section 5(4).

25 (d) "Children's camp" means a residential, day, troop, or  
26 travel camp conducted in a natural environment for more than 4  
27 school age children, apart from their parents, relatives, or

1 legal guardians, for 5 or more days in a 14-day period. A  
2 children's camp provides care and supervision for the same group  
3 of children for usually not more than 12 weeks.

4 (e) "Child care center" or "day care center" means a facili-  
5 ty, other than a private residence, receiving 1 or more preschool  
6 or school age children for care for periods of less than 24 hours  
7 a day, and where the parents or guardians are not immediately  
8 available to the child. Child care center or day care center  
9 includes a facility ~~which~~ THAT provides care for not less than  
10 2 consecutive weeks, regardless of the number of hours of care  
11 per day. The facility is generally described as a child care  
12 center, day care center, day nursery, nursery school, parent  
13 cooperative preschool, play group, or drop-in center. Child care  
14 center or day care center does not include any of the following:

15 (i) A Sunday school, a vacation bible school, or a religious  
16 instructional class that is conducted by a religious organization  
17 where children are in attendance for not greater than 3 hours per  
18 day for an indefinite period, or not greater than 8 hours per day  
19 for a period not to exceed 4 weeks during a 12-month period.

20 (ii) A facility operated by a religious organization where  
21 children are cared for not greater than 3 hours while persons  
22 responsible for the children are attending religious services.

23 (f) "Private home" means a private residence in which the  
24 licensee or registrant permanently resides as a member of the  
25 household, which residency ~~shall not be~~ IS NOT contingent upon  
26 caring for children or employment by a licensed or approved child  
27 placing agency. Private home includes a full-time foster family

1 home, a full-time foster family group home, a group day care  
2 home, or a family day care home, as follows:

3 (i) "Foster family home" is a private home in which AT LEAST  
4 1 but not more than 4 minor children, who are not related to an  
5 adult member of the household by blood, marriage, or adoption,  
6 are given care and supervision for 24 hours a day, for 4 or more  
7 days a week, for 2 or more consecutive weeks, unattended by a  
8 parent or legal guardian.

9 (ii) "Foster family group home" means a private home in  
10 which more than 4 but less than 7 minor children, who are not  
11 related to an adult member of the household by blood, marriage,  
12 or adoption, are provided care for 24 hours a day, for 4 or more  
13 days a week, for 2 or more consecutive weeks, unattended by a  
14 parent or legal guardian.

15 (iii) "Family day care home" means a private home in which  
16 AT LEAST 1 but less than 7 minor children are received for care  
17 and supervision for periods of less than 24 hours a day, unat-  
18 tended by a parent or legal guardian, except children related to  
19 an adult member of the family by blood, marriage, or adoption.  
20 Family day care home includes a home that gives care to an unre-  
21 lated minor child for more than 4 weeks during a calendar year.

22 (iv) "Group day care home" means a private home in which  
23 more than 6 but not more than 12 minor children are given care  
24 and supervision for periods of less than 24 hours a day unat-  
25 tended by a parent or legal guardian, except children related to  
26 an adult member of the family by blood, marriage, or adoption.  
27 Group day care home includes a home that gives care to an

1 unrelated minor child for more than 4 weeks during a calendar  
2 year.

3 (g) "Licensee" means a person, partnership, firm, corpora-  
4 tion, association, nongovernmental, or local or state government  
5 child care organization ~~which~~ THAT has been issued a license to  
6 operate a child care organization.

7 (h) "Provisional license" means a license issued to a child  
8 care organization ~~which~~ THAT is temporarily unable to conform  
9 to all of the rules promulgated under this act.

10 (i) "Regular license" means a license issued to a child care  
11 organization indicating that the organization is in compliance  
12 with all rules promulgated under this act.

13 (j) "Guardian" means the guardian of the person.

14 (k) "Minor child" means either of the following:

15 (i) A person less than 18 years of age.

16 (ii) A person who is a resident in a child caring institu-  
17 tion, children's camp, foster family home, or foster family group  
18 home; who becomes 18 years of age while residing in the child  
19 caring institution, camp, or home; and who continues residing in  
20 the institution, camp, or home to receive care, maintenance,  
21 training, and supervision. This subparagraph shall apply only if  
22 the number of those residents who become 18 years of age does not  
23 exceed the following:

24 (A) Two, if the total number of residents is 10 or fewer.

25 (B) Three, if the total number of residents is not less than  
26 11 and not more than 14.

1 (C) Four, if the total-number of residents is not less than  
2 15 and not more than 20.

3 (D) Five, if the total number of residents is 21 or more.

4 (l) "Registrant" means a person who has been issued a cer-  
5 tificate of registration to operate a family day care home.

6 (m) "Registration" means the process by which the department  
7 ~~of social services~~ regulates family day care homes, which pro-  
8 cess requires that a family day care home certify to the depart-  
9 ment that the family day care home has complied with and will  
10 continue to comply with the rules promulgated under this act.

11 (n) "Certificate of registration" means a written document  
12 issued to a family day care home through registration.

13 (o) "Related" means any of the following relationships, by  
14 marriage, blood, or adoption: parent, grandparent, brother,  
15 sister, stepparent, stepsister, stepbrother, uncle, aunt, cousin,  
16 great aunt, great uncle, or stepgrandparent.

17 (p) "Religious organization" as used in this act, means  
18 church, ecclesiastical corporation, or group, not organized for  
19 pecuniary profit, that gathers for mutual support and edification  
20 in piety or worship of a supreme deity.

21 (Q) "DEPARTMENT" MEANS THE DEPARTMENT OF EDUCATION.

22 Sec. 2. (1) The department ~~of social services, hereinafter~~  
23 ~~referred to as the "department",~~ is responsible for the develop-  
24 ment of rules for the care and protection of children in organi-  
25 zations covered by this act ~~and for the promulgation of these~~  
26 ~~rules~~ pursuant to the administrative procedures act of 1969, Act

1 No. 306 of the Public Acts of 1969, as amended, being sections  
2 24.201 to ~~24.315~~ 24.328 of the Michigan Compiled Laws.

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

8 (a) Department of public health.

9 (b) Department of state police, fire marshal division and  
10 state fire safety board.

11 (c) Department of ~~education~~ SOCIAL SERVICES.

12 (d) Department of mental health.

13 (e) Representatives of organizations affected by this act.

14 (f) Parents of children affected by this act.

15 The representatives of organizations affected by this act  
16 and parents of children affected by this act shall constitute a  
17 majority of ~~the~~ EACH AD HOC committee membership. ~~The~~ EACH  
18 AD HOC committee shall serve during the period of the formulation  
19 of rules, shall have responsibility for making recommendations on  
20 the content of rules, and shall recommend to the department revi-  
21 sions in proposed rules at any time before their promulgation.

22 (3) The rules promulgated under this act shall be restricted  
23 to:

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

1 (b) The character, suitability, training, and qualifications  
2 of applicants and other persons directly responsible for the care  
3 and welfare of children served.

4 (c) The general financial ability and competence of appli-  
5 cants to provide necessary care for children and to maintain pre-  
6 scribed standards.

7 (d) The number of individuals or staff required to insure  
8 adequate supervision and care of the children received.

9 (e) The appropriateness, safety, cleanliness, and general  
10 adequacy of the premises, including maintenance of adequate fire  
11 prevention and health standards to provide for the physical com-  
12 fort, care, and well being of the children received. However,  
13 the rules with respect to fire prevention and fire safety shall  
14 not apply to a child care center established and operated by an  
15 intermediate school board, the board of a local school district,  
16 or by the board or governing body of a state approved nonpublic  
17 school, if the child care center is located in a school building  
18 that is approved by the state fire marshal or other similar  
19 authority as provided in section 3 of Act No. 306 of the Public  
20 Acts of 1937, being section 388.853 of the Michigan Compiled  
21 Laws, for school purposes and is in compliance with the school  
22 fire safety rules, R 29.1 to R 29.298 of the Michigan administra-  
23 tive code, as determined by the state fire marshal or a fire  
24 inspector certified pursuant to section 2b of the fire prevention  
25 code, Act No. 207 of the Public Acts of 1941, being section 29.2b  
26 of the Michigan Compiled Laws.

1 (f) Provisions for food, clothing, educational  
2 opportunities, programs, equipment, and individual supplies to  
3 assure the healthy physical, emotional, and mental development of  
4 children served.

5 (g) Provisions to safeguard the legal rights of children  
6 served.

7 (h) Maintenance of records pertaining to admission,  
8 progress, health, and discharge of children.

9 (i) Filing of reports with the department.

10 (j) Discipline of children.

11 (k) Transportation safety.

12 (4) Rules once promulgated are subject to major review by an  
13 ad hoc committee not less than once every 5 years and shall be  
14 reviewed biennially by the department. ~~The~~ EACH ad hoc commit-  
15 tee PERFORMING A REVIEW UNDER THIS SUBSECTION shall be estab-  
16 lished by the department, shall consist of not less than  
17 12 members, and shall include representatives of the groups and  
18 agencies indicated in subsection (2). ~~The~~ EACH OF THE ad hoc  
19 ~~committee~~ COMMITTEES shall hold at least 2 public hearings  
20 regarding the review of rules and shall report its recommenda-  
21 tions regarding rules to the appropriate committees of the  
22 legislature.

23 Sec. 11. (1) An original license shall not be granted under  
24 this act if the issuance of the license would substantially con-  
25 tribute to an excessive concentration of community residential  
26 facilities within a city, village, township, or county of this  
27 state.

1 (2) The department may deny, revoke, or refuse to renew a  
2 license or certificate of registration of a child care organi-  
3 zation when the licensee, registrant, or applicant falsifies  
4 information on the application or ~~wilfully~~ WILLFULLY and sub-  
5 stantially violates this act, the rules promulgated under this  
6 act, or the terms of the license or certificate of registration.  
7 The department may modify to a provisional status a license of a  
8 child care organization when the licensee ~~wilfully~~ WILLFULLY  
9 and substantially violates this act, the rules promulgated under  
10 this act, or the terms of the license. A license or a certifi-  
11 cate of registration shall not be revoked, a renewal of a license  
12 or certificate of registration shall not be refused, an applica-  
13 tion for a license or a certificate of registration shall not be  
14 denied, or a regular license shall not be modified to a provi-  
15 sional status unless the licensee, registrant, or applicant is  
16 given notice in writing of the grounds of the proposed revoca-  
17 tion, denial, modification, or refusal. If revocation, denial,  
18 modification, or refusal is appealed within 30 days after receipt  
19 of the notice by writing addressed to the ~~director of the~~  
20 ~~department, the director or a~~ SUPERINTENDENT OF PUBLIC INSTRUCC-  
21 TION, THE SUPERINTENDENT OF PUBLIC INSTRUCTION OR HIS OR HER des-  
22 ignated representative ~~of the director~~ shall conduct a hearing  
23 at which the licensee, registrant, or applicant may present tes-  
24 timony and confront witnesses. Notice of the hearing shall be  
25 given to the licensee, registrant, or applicant by personal serv-  
26 ice or delivery to the proper address by certified mail not less  
27 than 2 weeks before the date of the hearing. The decision of the

1 ~~director~~ SUPERINTENDENT OF PUBLIC INSTRUCTION shall be made not  
2 more than 30 days after the hearing, and forwarded to the pro-  
3 testing party by certified mail not more than 10 days  
4 thereafter. If the proposed revocation, denial, modification, or  
5 refusal is not protested, the license or certificate of registra-  
6 tion may be revoked or the application or the renewal of the  
7 license or certificate of registration refused.

8 (3) The department shall deny a license to a child caring  
9 institution or foster family group home ~~which~~ THAT does not  
10 comply with section 16a of THE COUNTY RURAL ZONING ENABLING ACT,  
11 Act No. 183 of the Public Acts of 1943, as amended, being sec-  
12 tion 125.216a of the Michigan Compiled Laws, section 16a of THE  
13 TOWNSHIP RURAL ZONING ACT, Act No. 184 of the Public Acts of  
14 1943, as amended, being section 125.286a of the Michigan Compiled  
15 Laws, and section 3b of Act No. 207 of the Public Acts of 1921,  
16 as amended, being section 125.583b of the Michigan Compiled  
17 Laws.

18 (4) The legislative body of a city, village, or township in  
19 which a child caring institution or foster family group home is  
20 located may file a complaint with the department to have the  
21 organization's license suspended, denied, or revoked pursuant to  
22 the procedures outlined in this act and the rules promulgated  
23 under this act. The ~~director of the department~~ SUPERINTENDENT  
24 OF PUBLIC INSTRUCTION shall resolve the issues of the complaint  
25 within 45 days after the receipt of the complaint. Notice of the  
26 resolution of the issues shall be mailed by certified mail to the  
27 complainant and the licensee. Failure of the ~~director of the~~

1 ~~department~~ SUPERINTENDENT OF PUBLIC INSTRUCTION to resolve the  
2 issues of the complaint within 45 days after receipt of the com-  
3 plaint shall serve as a decision by the ~~director~~ SUPERINTENDENT  
4 OF PUBLIC INSTRUCTION to suspend, deny, or revoke the  
5 organization's license. If the decision to suspend, deny, or  
6 revoke the license or the resolution of the issues is protested  
7 by written objection of the complainant or licensee to the  
8 ~~director of the department~~ SUPERINTENDENT OF PUBLIC INSTRUCTION  
9 within 30 days after the suspension, denial, or revocation of the  
10 license or the receipt of the notice of resolution, the ~~director~~  
11 ~~of the department or a~~ SUPERINTENDENT OF PUBLIC INSTRUCTION OR  
12 HIS OR HER designated representative ~~of the director~~ shall con-  
13 duct a hearing pursuant to Act No. 306 of the Public Acts of  
14 1969, as amended, being sections 24.201 to ~~24.315~~ 24.328 of the  
15 Michigan Compiled Laws, at which the complainant and licensee may  
16 present testimony and cross-examine witnesses. The decision of  
17 the ~~director of the department~~ SUPERINTENDENT OF PUBLIC  
18 INSTRUCTION shall be mailed by certified mail to the complainant  
19 and the licensee. If the resolution of the issues by the  
20 ~~director of the department~~ SUPERINTENDENT OF PUBLIC INSTRUCTION  
21 is not protested within 30 days after receipt of the notice of  
22 the resolution, the resolution by the ~~director of the~~  
23 ~~department~~ SUPERINTENDENT OF PUBLIC INSTRUCTION is final.

24       Sec. 11a. The ~~director of the department~~ SUPERINTENDENT  
25 OF PUBLIC INSTRUCTION shall notify the clerk of the city, vil-  
26 lage, or township and the legislature of the location of new and  
27 existing licensed child caring institution or foster family group

1 home within the boundaries of the cities, villages, and townships  
2 in this state. The notification for existing licensed organi-  
3 zations shall be given ~~within 90 days after the effective date~~  
4 ~~of this amendatory act~~ NOT LATER THAN JUNE 30, 1977 and within  
5 30 days after the licensing of a new organization.

6 Sec. 12. A person aggrieved by the decision of the  
7 ~~director~~ SUPERINTENDENT OF PUBLIC INSTRUCTION following a hear-  
8 ing under section 11 may, within 30 days after receipt of the  
9 decision, take an appeal to the circuit court for the county in  
10 which the person resides by filing with the clerk of the court an  
11 affidavit setting forth the substance of the proceedings before  
12 the department and the errors of law upon which the person  
13 relies, and serving the ~~director of the department~~  
14 SUPERINTENDENT OF PUBLIC INSTRUCTION with a copy of the  
15 affidavit. The circuit court shall have jurisdiction to hear and  
16 determine the questions of law involved in the appeal. If the  
17 department prevails, the circuit court shall affirm the decision  
18 of the department; if the licensee, registrant, or applicant pre-  
19 vails, the circuit court shall set aside the revocation, or order  
20 the issuance or renewal of the license or certificate of  
21 registration.