

SUBSTITUTE FOR
HOUSE BILL NO. 6174

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, 5c, and 5f (MCL 722.115, 722.115c, and 722.115f), section 5 as amended by 2006 PA 51, section 5c as added by 2005 PA 133, and section 5f as added by 2005 PA 128.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5. (1) A person, partnership, firm, corporation,
2 association, or nongovernmental organization shall not establish or
3 maintain a child care organization unless licensed or registered by
4 the department. Application for a license or certificate of
5 registration shall be made on forms provided, and in the manner

1 prescribed, by the department. Before issuing or renewing a
2 license, the department shall investigate the applicant's
3 activities and proposed standards of care and shall make an on-site
4 visit of the proposed or established organization. If the
5 department is satisfied as to the need for a child care
6 organization, its financial stability, the applicant's good moral
7 character, and that the services and facilities are conducive to
8 the welfare of the children, the department shall issue or renew
9 the license. If a county juvenile agency as defined in section 2 of
10 the county juvenile agency act, 1998 PA 518, MCL 45.622, certifies
11 to the department that it intends to contract with an applicant for
12 a new license, the department shall issue or deny the license
13 within 60 days after it receives a complete application as provided
14 in section 5b.

15 (2) The department shall issue a certificate of registration
16 to a person who has successfully completed an orientation session
17 offered by the department and who certifies to the department that
18 the family day care home has complied with and will continue to
19 comply with the rules promulgated under this act and will provide
20 services and facilities, as determined by the department, conducive
21 to the welfare of children. The department shall make available to
22 applicants for registration an orientation session to applicants
23 for registration regarding this act, the rules promulgated under
24 this act, and the needs of children in family day care before
25 issuing a certificate of registration. The department shall issue a
26 certificate of registration to a specific person at a specific
27 location. A certificate of registration is nontransferable and

1 remains the property of the department. Within 90 days after
2 initial registration, the department shall make an on-site visit of
3 the family day care home.

4 (3) The department may authorize a licensed child placing
5 agency or an approved governmental unit to investigate a foster
6 family home or a foster family group home according to subsection
7 (1) and to certify that the foster family home or foster family
8 group home meets the licensing requirements prescribed by this act.
9 Before certifying to the department that a foster family home or
10 foster family group home meets the licensing requirements
11 prescribed by this act, the licensed child placing agency or
12 approved governmental unit shall receive and review a medical
13 statement for each member of the household indicating that he or
14 she does not have a known condition that would affect the care of a
15 foster child. The medical statement required under this section
16 shall be signed and dated by a physician licensed under article 15
17 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838,
18 a physician's assistant licensed under article 15 of the public
19 health code, 1978 PA 368, MCL 333.16101 to 333.18838, or a
20 certified nurse practitioner licensed as a registered professional
21 nurse under part 172 of the public health code, 1978 PA 368, MCL
22 333.17201 to 333.17242, who has been issued a specialty
23 certification as a nurse practitioner by the board of nursing under
24 section 17210 of the public health code, 1978 PA 368, MCL
25 333.17210, within the 12 months immediately preceding the date of
26 the initial evaluation. This subsection does not require new or
27 additional third party reimbursement or worker's compensation

1 benefits for services rendered. A foster family home or a foster
2 family group home shall be certified for licensing by the
3 department by only 1 child placing agency or approved governmental
4 unit. Other child placing agencies may place children in a foster
5 family home or foster family group home only upon the approval of
6 the certifying agency or governmental unit.

7 (4) The department may authorize a licensed child placing
8 agency or an approved governmental unit to place a child who is 16
9 or 17 years of age in his or her own unlicensed residence, or in
10 the unlicensed residence of an adult who has no supervisory
11 responsibility for the child, if a child placing agency or
12 governmental unit retains supervisory responsibility for the child.

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

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

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

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

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

5 (d) The child placing agency or approved governmental unit
6 will periodically reevaluate the placement of a child under this
7 subsection to determine that the criteria for placement in
8 subdivisions (a) through (c) continue to be met.

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

14 (a) The adult is a person with a developmental disability as
15 defined by section 100a of the mental health code, 1974 PA 258, MCL
16 330.1100a, or a person who is otherwise neurologically disabled and
17 is also physically limited to a degree that requires complete
18 physical assistance with mobility and activities of daily living.

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

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

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

26 (e) The child placing agency or approved governmental unit
27 will periodically reevaluate the placement of an adult under this

1 subsection to determine that the criteria for placement in
2 subdivisions (a) through (d) continue to be met and document that
3 the adult is receiving care consistent with the administrative
4 rules for a child placing agency.

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

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

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

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

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

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

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

27 (g) The child is neurologically disabled and is also

1 physically limited to such a degree as to require complete physical
2 assistance with mobility and activities of daily living.

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

7 (9) Beginning October 1, 2007, except as provided in
8 subsection (1) and section 5b, the department shall issue an
9 initial or renewal license or registration under this act for child
10 care centers, group day care homes, and family day care homes not
11 later than 6 months after the applicant files a completed
12 application. Receipt of the application is considered the date the
13 application is received by any agency or department of this state.
14 If the application is considered incomplete by the department, the
15 department shall notify the applicant in writing or make notice
16 electronically available within 30 days after receipt of the
17 incomplete application, describing the deficiency and requesting
18 additional information. This subsection does not affect the time
19 period within which an on-site visit to a family day care home
20 shall be made. If the department identifies a deficiency or
21 requires the fulfillment of a corrective action plan, the 6-month
22 period is tolled until either of the following occurs:

23 (a) Upon notification by the department of a deficiency, until
24 the date the requested information is received by the department.

25 (b) Upon notification by the department that a corrective
26 action plan is required, until the date the department determines
27 the requirements of the corrective action plan have been met.

1 (10) The determination of the completeness of an application
2 is not an approval of the application for the license and does not
3 confer eligibility on an applicant determined otherwise ineligible
4 for issuance of a license.

5 (11) Except as provided in subsection (1) and section 5b, if
6 the department fails to issue or deny a license or registration to
7 a child care center, group day care home, or family day care home
8 within the time required by this section, the department shall
9 return the license or registration fee and shall reduce the license
10 or registration fee for the applicant's next renewal application,
11 if any, by 15%. Failure to issue or deny a license to a child care
12 center, group day care home, or family day care home within the
13 time period required under this section does not allow the
14 department to otherwise delay the processing of the application. A
15 completed application shall be placed in sequence with other
16 completed applications received at that same time. The department
17 shall not discriminate against an applicant in the processing of an
18 application based on the fact that the application fee was refunded
19 or discounted under this subsection.

20 (12) If, on a continual basis, inspections performed by a
21 local health department delay the department in issuing or denying
22 licenses or registrations for child care centers, group day care
23 homes, and family day care homes under this act within the 6-month
24 period, the department may use department staff to complete the
25 inspections instead of the local health department causing the
26 delays.

27 (13) Beginning October 1, 2008, the director of the department

1 shall submit a report by December 1 of each year to the standing
2 committees and appropriations subcommittees of the senate and house
3 of representatives concerned with human services and children's
4 issues. The director shall include all of the following information
5 regarding applications for licenses and registrations only for
6 child care centers, group day care homes, and family day care homes
7 filed under this act in the report concerning the preceding fiscal
8 year:

9 (a) The number of initial and renewal applications the
10 department received and completed within the 6-month time period
11 described in subsection (9).

12 (b) The number of applications requiring a request for
13 additional information.

14 (c) The number of applications rejected.

15 (d) The number of licenses and registrations not issued within
16 the 6-month period.

17 (e) The average processing time for initial and renewal
18 licenses and registrations granted after the 6-month period.

19 (14) ~~The~~ **EXCEPT AS PROVIDED IN SECTION 5C(8), THE** department
20 shall not issue to or renew the license of a child care center or
21 day care center under this act without requesting a criminal
22 history check and criminal records check as required by section 5c.
23 If a criminal history check or criminal records check performed
24 under section 5c reveals that an applicant for a license under this
25 act has been convicted of a listed offense, the department shall
26 not issue a license to that applicant. If a criminal history check
27 or criminal records check performed under section 5c reveals that

1 an applicant for renewal of a license under this act has been
2 convicted of a listed offense, the department shall not renew that
3 license. If a criminal history check or criminal records check
4 performed under section 5c reveals that a current licensee has been
5 convicted of a listed offense, the department shall revoke the
6 license of that licensee.

7 (15) ~~The~~ **EXCEPT AS PROVIDED IN SECTION 5F(13), THE**
8 department shall not issue or renew a certificate of registration
9 to a family day care home or a license to a group day care home
10 under this act without requesting a criminal history check and
11 criminal records check as required by section 5f and a department
12 of state police ICHAT check required by section 5g. If a criminal
13 history check or criminal records check performed under section 5f
14 or an ICHAT check performed under section 5g reveals that an
15 applicant for a certificate of registration or license under this
16 act or a person over 18 years of age residing in that applicant's
17 home has been convicted of a listed offense, the department shall
18 not issue a certificate of registration or license to that
19 applicant. If a criminal history check or criminal records check
20 performed under section 5f or an ICHAT check performed under
21 section 5g reveals that an applicant for renewal of a certificate
22 of registration or license under this act or a person over 18 years
23 of age residing in that applicant's home has been convicted of a
24 listed offense, the department shall not renew a certificate of
25 registration or license to that applicant. If a criminal history
26 check or criminal records check performed under section 5f or an
27 ICHAT check performed under section 5g reveals that a current

1 registrant or licensee under this act or a person over 18 years of
2 age residing in that registrant's or licensee's home has been
3 convicted of a listed offense, the department shall revoke that
4 registrant's certificate of registration or licensee's license.

5 (16) As used in this section:

6 (a) "Completed application" means an application complete on
7 its face and submitted with any applicable licensing or
8 registration fees as well as any other information, records,
9 approval, security, or similar item required by law or rule from a
10 local unit of government, a federal agency, or a private entity but
11 not from another department or agency of this state. A completed
12 application does not include a health inspection performed by a
13 local health department.

14 (b) "Good moral character" means that term as defined in and
15 determined under 1974 PA 381, MCL 338.41 to 338.47.

16 (c) "Member of the household" means any individual, other than
17 a foster child, who resides in a foster family home or foster
18 family group home on an ongoing or recurrent basis.

19 Sec. 5c. (1) ~~When~~ **EXCEPT AS PROVIDED IN SUBSECTION (8), WHEN**
20 a person, partnership, firm, corporation, association, or
21 nongovernmental organization applies for or to renew a license for
22 a child care center or day care center under section 5, the
23 department shall request the department of state police to perform
24 both of the following on the person or each partner, officer, or
25 manager of the child care center or day care center applying for
26 the license:

27 (a) Conduct a criminal history check on the person.

1 (b) Conduct a criminal records check through the federal
2 bureau of investigation on the person.

3 (2) ~~Each~~ **EXCEPT AS PROVIDED IN SUBSECTION (7), EACH** person
4 applying for a license to operate a child care center or day care
5 center shall give written consent at the time of the license
6 application for the department of state police to conduct the
7 criminal history check and criminal records check required under
8 this section. The department shall require the person to submit his
9 or her fingerprints to the department of state police for the
10 criminal history check and criminal records check described in
11 subsection (1).

12 (3) The department shall request a criminal history check and
13 criminal records check required under this section on a form and in
14 the manner prescribed by the department of state police.

15 (4) Within a reasonable time after receiving a complete
16 request by the department for a criminal history check on a person
17 under this section, the department of state police shall conduct
18 the criminal history check and provide a report of the results to
19 the department. The report shall contain any criminal history
20 record information on the person maintained by the department of
21 state police.

22 (5) Within a reasonable time after receiving a proper request
23 by the department for a criminal records check on a person under
24 this section, the department of state police shall initiate the
25 criminal records check. After receiving the results of the criminal
26 records check from the federal bureau of investigation, the
27 department of state police shall provide a report of the results to

1 the department.

2 (6) The department of state police may charge the department a
3 fee for a criminal history check or a criminal records check
4 required under this section that does not exceed the actual and
5 reasonable cost of conducting the check. The department may pass
6 along to the licensee or applicant the actual cost or fee charged
7 by the department of state police for performing a criminal history
8 check or a criminal records check required under this section.

9 (7) WHEN A PERSON, PARTNERSHIP, FIRM, CORPORATION,
10 ASSOCIATION, OR NONGOVERNMENTAL ORGANIZATION APPLIES FOR OR RENEWS
11 A LICENSE UNDER SECTION 5 FOR A CHILD CARE CENTER OR DAY CARE
12 CENTER THAT IS ESTABLISHED AND OPERATED BY AN INTERMEDIATE SCHOOL
13 BOARD, THE BOARD OF A LOCAL SCHOOL DISTRICT, OR BY THE BOARD OR
14 GOVERNING BODY OF A STATE-APPROVED NONPUBLIC SCHOOL, THE CRIMINAL
15 HISTORY CHECK AND CRIMINAL RECORDS CHECK REQUIRED UNDER SUBSECTION
16 (1) SHALL BE PERFORMED IN COMPLIANCE WITH THE PROVISIONS OF
17 SECTIONS 1230 TO 1230H OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL
18 380.1230 TO 380.1230H. BEFORE ISSUING OR RENEWING A LICENSE TO A
19 CHILD CARE CENTER OR DAY CARE CENTER DESCRIBED IN THIS SUBSECTION,
20 THE DEPARTMENT SHALL VERIFY THAT THE INTERMEDIATE SCHOOL BOARD, THE
21 BOARD OF A LOCAL SCHOOL DISTRICT, OR THE BOARD OR GOVERNING BODY OF
22 A STATE-APPROVED NONPUBLIC SCHOOL HAS OBTAINED THE REQUIRED
23 CRIMINAL HISTORY CHECKS AND CRIMINAL RECORDS CHECKS.

24 (8) BEGINNING JANUARY 1, 2006, IF A PERSON, PARTNERSHIP, FIRM,
25 CORPORATION, ASSOCIATION, OR NONGOVERNMENTAL ORGANIZATION APPLYING
26 TO RENEW A LICENSE TO OPERATE A CHILD CARE CENTER OR DAY CARE
27 CENTER HAS PREVIOUSLY UNDERGONE A CRIMINAL HISTORY CHECK AND

1 CRIMINAL RECORDS CHECK REQUIRED UNDER SUBSECTION (1) AND HAS
2 REMAINED CONTINUOUSLY LICENSED AFTER THE CRIMINAL HISTORY CHECK AND
3 CRIMINAL RECORDS CHECK HAVE BEEN PERFORMED, THAT PERSON,
4 PARTNERSHIP, FIRM, CORPORATION, ASSOCIATION, OR NONGOVERNMENTAL
5 ORGANIZATION IS NOT REQUIRED TO SUBMIT TO ANOTHER CRIMINAL HISTORY
6 CHECK OR CRIMINAL RECORDS CHECK UPON RENEWAL OF THE LICENSE
7 OBTAINED UNDER SECTION 5.

8 (9) ~~(7)~~ As used in this section and sections 5, 5d, 5e, 5f,
9 and 5g:

10 (a) "Criminal history record information" means that term as
11 defined in section 1a of 1925 PA 289, MCL 28.241a.

12 (b) "Listed offense" means that term as defined in section 2
13 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

14 Sec. 5f. (1) ~~When~~ **EXCEPT AS PROVIDED IN SUBSECTION (13),**
15 **WHEN** a person applies for or to renew a certificate of registration
16 to operate a family day care home or a license to operate a group
17 day care home under section 5, the department shall request the
18 department of state police to perform both of the following on that
19 person:

20 (a) Conduct a criminal history check on the person.

21 (b) Conduct a criminal records check through the federal
22 bureau of investigation on the person.

23 (2) Each person applying for a certificate of registration to
24 operate a family day care home or a license to operate a group day
25 care home shall give written consent at the time of application for
26 the department of state police to conduct a criminal history check
27 and a criminal records check required under this section. The

1 department shall require the person to submit his or her
2 fingerprints to the department of state police for the criminal
3 history check and criminal records check described in subsection
4 (1).

5 (3) The department shall request a criminal history check and
6 criminal records check required under this section on a form and in
7 the manner prescribed by the department of state police.

8 (4) Within a reasonable time after receiving a complete
9 request by the department for a criminal history check on a person
10 under this section, the department of state police shall conduct
11 the criminal history check and provide a report of the results to
12 the department. The report shall contain any criminal history
13 record information on the person maintained by the department of
14 state police.

15 (5) Within a reasonable time after receiving a proper request
16 by the department for a criminal records check on a person under
17 this section, the department of state police shall initiate the
18 criminal records check. After receiving the results of the criminal
19 records check from the federal bureau of investigation, the
20 department of state police shall provide a report of the results to
21 the department.

22 (6) The department of state police may charge the department a
23 fee for a criminal history check or a criminal records check
24 required under this section that does not exceed the actual and
25 reasonable cost of conducting the check. The department may pass
26 along to the registrant, licensee, or applicant the actual cost or
27 fee charged by the department of state police for performing a

1 criminal history check or a criminal records check required under
2 this section.

3 (7) A person to whom a certificate of registration or license
4 has been issued under this act shall report to the department
5 within 3 business days after he or she has been arraigned for 1 or
6 more of the following crimes and within 3 business days after he or
7 she knows or should reasonably know that an employee or a person
8 over 18 years of age residing in the home has been arraigned for 1
9 or more of the following crimes:

10 (a) Any felony.

11 (b) Any of the following misdemeanors:

12 (i) Criminal sexual conduct in the fourth degree or an attempt
13 to commit criminal sexual conduct in the fourth degree.

14 (ii) Child abuse in the third or fourth degree or an attempt to
15 commit child abuse in the third or fourth degree.

16 (iii) A misdemeanor involving cruelty, torture, or indecent
17 exposure involving a child.

18 (iv) A misdemeanor violation of section 7410 of the public
19 health code, 1978 PA 368, MCL 333.7410.

20 (v) A violation of section 115, 141a, 145a, 335a, or 359 of
21 the Michigan penal code, 1931 PA 328, MCL 750.115, 750.141a,
22 750.145a, 750.335a, and 750.359, or a misdemeanor violation of
23 section 81, 81a, or 145d of the Michigan penal code, 1931 PA 328,
24 MCL 750.81, 750.81a, and 750.145d.

25 (vi) A misdemeanor violation of section 701 of the Michigan
26 liquor control code of 1998, 1998 PA 58, MCL 436.1701.

27 (vii) Any misdemeanor that is a listed offense.

1 (c) A violation of a substantially similar law of another
2 state, of a political subdivision of this state or another state,
3 or of the United States.

4 (8) A person who violates subsection (7) is guilty of a crime
5 as follows:

6 (a) If the person violates subsection (7) and the crime
7 involved in the violation is a misdemeanor that is a listed offense
8 or is a felony, the person is guilty of a felony punishable by
9 imprisonment for not more than 2 years or a fine of not more than
10 \$2,000.00, or both.

11 (b) If the person violates subsection (7) and the crime
12 involved in the violation is a misdemeanor that is not a listed
13 offense, the person is guilty of a misdemeanor punishable by
14 imprisonment for not more than 1 year or a fine of not more than
15 \$1,000.00, or both.

16 (9) The department shall delete from the registrant's or
17 licensee's records all information relating to an arraignment
18 required to be reported under this section if the department
19 receives documentation that the person arraigned for the crime is
20 subsequently not convicted of any crime after the completion of
21 judicial proceedings resulting from that arraignment.

22 (10) Not later than ~~30 days after the effective date of the~~
23 ~~amendatory act that added this section~~ **JANUARY 31, 2006**, the
24 department shall inform all persons currently issued a certificate
25 of registration or license and all applicants for a certificate of
26 registration or license of the requirement to report certain
27 arraignments as required in this section and the penalty for not

1 reporting those arraignments.

2 (11) At the time the department issues a certificate of
3 registration to operate a family day care home or a license to
4 operate a group day care home under this act, the department shall
5 notify the registrant or licensee of the requirement to report
6 certain arraignments as required in this section and the penalty
7 for not reporting those arraignments.

8 (12) Not later than ~~1 year after the effective date of the~~
9 ~~amendatory act that added this section~~ **JANUARY 1, 2007**, the
10 department shall conduct a criminal history check and criminal
11 records check on all persons currently issued a certificate of
12 registration under this act to operate a family day care home or a
13 license under this act to operate a group day care home.

14 **(13) BEGINNING JANUARY 1, 2006, IF A PERSON APPLYING TO RENEW**
15 **A CERTIFICATE OF REGISTRATION TO OPERATE A FAMILY DAY CARE HOME**
16 **UNDER SECTION 5 OR A LICENSE TO OPERATE A GROUP DAY CARE HOME UNDER**
17 **SECTION 5 HAS PREVIOUSLY UNDERGONE A CRIMINAL HISTORY CHECK AND**
18 **CRIMINAL RECORDS CHECK REQUIRED UNDER SUBSECTION (1) AND HAS**
19 **CONTINUOUSLY MAINTAINED A CERTIFICATE OF REGISTRATION TO OPERATE A**
20 **FAMILY DAY CARE HOME OR LICENSE TO OPERATE A GROUP DAY CARE HOME**
21 **AFTER THE CRIMINAL HISTORY CHECK AND CRIMINAL RECORDS CHECK HAVE**
22 **BEEN PERFORMED, THAT PERSON IS NOT REQUIRED TO SUBMIT TO ANOTHER**
23 **CRIMINAL HISTORY CHECK OR CRIMINAL RECORDS CHECK UPON RENEWAL OF**
24 **THE CERTIFICATE OF REGISTRATION OR LICENSE OBTAINED UNDER SECTION**
25 **5.**