



Senate Fiscal Agency
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House Bill 4188 (Substitute H-2 as passed by the House)
House Bills 4189 and 4190 (as passed by the House)
Sponsor: Representative Andrea LaFontaine (H.B. 4188)
Representative Harvey Santana (H.B. 4189)
Representative Eric Leutheuser (H.B. 4190)
House Committee: Families, Children, and Seniors
Senate Committee: Families, Seniors and Human Services

Date Completed: 4-22-15

CONTENT

House Bill 4188 (H-2) would add Sections 14e and 14f to Public Act 116 of 1973, which provides for the licensure of child care facilities, to do the following:

- Specify that a child placing agency would not be required to provide any services that would conflict with, or provide any services under circumstances that would conflict with, the agency's sincerely held religious beliefs.
- Allow a child placing agency to decline a referral for foster care case management or adoption services if the services would conflict with the agency's sincerely held religious beliefs.
- Prohibit the State or a local unit of government from taking an adverse action against a child placing agency that declined to provide services or accept a referral under those provisions.
- Require a child placing agency to take certain actions if it declined to provide services.
- Allow a child placing agency to assert a defense in an administrative or judicial proceeding based on proposed Section 14e or 14f.
- State legislative findings and declarations.

House Bill 4189 would amend the Michigan Adoption Code to provide that a child placing agency could not be required to provide adoption services that would conflict with, or to provide adoption services under circumstances that would conflict with, its sincerely held religious beliefs; and prohibit the State or a local unit from taking an adverse action against the child placing agency.

House Bill 4190 would amend the Social Welfare Act to prohibit the Department of Health and Human Services (DHHS) from taking an adverse action against a child placing agency that declined to provide services that would conflict with, or to provide services under circumstances that would conflict with, its sincerely held religious beliefs.

All of the bills would refer to an agency's sincerely held religious beliefs contained in a written policy, statement of faith, or other document adhered to by the agency.

House Bills 4188 (H-2) and 4190 state the following: "It is the intent of the legislature to protect child placing agencies' free exercise of religion protected by the United States

constitution and the state constitution of 1963. This amendatory act is not intended to limit or deny any person's right to adopt a child or participate in foster care." House Bill 4189 contains the same statement, without the reference to foster care.

All of the bills are tie-barred and each would take effect 90 days after the date it was enacted.

House Bill 4188 (H-2)

Proposed Section 14e: Declining to Provide Services

To the fullest extent permitted by State and Federal law, a child placing agency could not be required to provide any services if those services conflicted with, or provide any services under circumstances that conflicted with, the agency's sincerely held religious beliefs contained in a written policy, statement of faith, or other document adhered to by the agency.

To the fullest extent permitted by State and Federal law, the State or a local unit of government would be prohibited from taking an adverse action against a child placing agency on the basis that it had declined or would decline to provide any services that conflicted with, or provide any services under circumstances that conflicted with, the agency's sincerely held religious beliefs contained in a written policy, statement of faith, or other document adhered to by the agency.

If a child placing agency declined to provide any services under these provisions, it would have to do one of the following:

- Promptly refer the applicant to another child placing agency that was willing and able to provide the declined services.
- Promptly refer the applicant to the webpage on the DHHS's website that identified other licensed child placing agencies.

If a child placing agency declined to provide services, that decision would not limit the ability of another child placing agency to provide those services.

"Services" would include any service that a child placing agency provides, except foster care case management and adoption services provided under a contract with the Department.

(Public Act 116 defines "child placing agency" as a governmental organization or an agency organized under the Nonprofit Corporation Act for the purpose of receiving children for placement in private family homes for foster care or adoption. The function of a child placing agency may include investigating and certifying foster family homes and foster family group homes as provided in the Act. The function of an agency also may include supervising children who are at least 16 but less than 21 years old and who are living in unlicensed residences.)

Proposed Section 14f: Declining Referral

If the DHHS made a referral to a child placing agency for foster care case management or adoption services under a contract with the agency, the agency could decide not to accept the referral if the services would conflict with the agency's sincerely held religious beliefs contained in a written policy, statement of faith, or other document adhered to by the agency. Before accepting a referral for services under a contract with the Department, the agency would have the sole discretion to decide whether to engage in activities and perform services related to that referral. The DHHS could not control the agency's decision.

For this purpose, a child placing agency would accept a referral by doing either of the following:

- Submitting to the DHHS a written agreement to perform the services related to the particular child or particular individuals whom the Department referred to the agency.
- Engaging in any other activity that resulted in the Department's being obligated to pay the agency for services related to the particular child or particular individuals whom the DHHS referred to the agency.

The State or a local unit of government could not take an adverse action against a child placing agency on the basis that it had decided to accept or not accept a referral.

A child placing agency's decision not to accept a referral could not be a factor in determining whether a placement in connection with the referral was in the best interest of the child.

Adverse Action

For purposes of Sections 14e and 14f, "adverse action" would include, but not be limited to, denying a child placing agency's application for funding, refusing to renew the agency's funding, canceling the agency's funding, declining to enter into a contract with the agency, refusing to renew a contract with the agency, canceling a contract with the agency, declining to issue a license to the agency, refusing to renew the agency's license, canceling the agency's license, taking an enforcement action against the agency, discriminating against the agency in regard to participation in a government program, and taking any action that materially altered the terms and conditions of the agency's funding, contract, or license.

House Bill 4189

The bill would add Section 23g to the Michigan Adoption Code to provide that, in accordance with Sections 14e and 14f of Public Act 116 of 1973, a child placing agency could not be required to provide adoption services if those services conflicted with, or provide adoption services under circumstances that conflicted with, the agency's sincerely held religious beliefs contained in a written policy, statement of faith, or other document adhered to by the agency.

Also, in accordance with Sections 14e and 14f of Public Act 116, the State or a local unit of government would be prohibited from taking an adverse action against a child placing agency on the basis that it had declined or would decline to provide adoption services that conflicted with, or provide adoption services under circumstances that conflicted with, the agency's sincerely held religious beliefs contained in a written policy, statement of faith, or other document adhered to by the agency.

(The Adoption Code defines "child placing agency" as a private organization licensed under Public Act 116 of 1973 to place children for adoption.)

House Bill 4190

The bill would amend the Social Welfare Act to prohibit the Department of Health and Human Services, in accordance with Section 23g of the Michigan Adoption Code and Sections 14e and 14f of Public Act 116 of 1973, from taking an adverse action against a child placing agency on the basis that it had declined or would decline to provide services that conflicted with, or provide services under circumstances that conflicted with, the agency's sincerely held religious beliefs contained in a written policy, statement of faith, or other document adhered to by the agency.

Proposed MCL 722.124e & 722.124f (H.B. 4188)
Proposed MCL 710.23g (H.B. 4189)
Proposed MCL 400.5a (H.B. 4190)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The Department does not anticipate any fiscal impact on State or local government.

Fiscal Analyst: Frances Carley

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.