

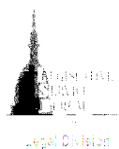
# HOUSE BILL NO. 5105

October 15, 2019, Introduced by Reps. Afendoulis, Neeley and Brann and referred to the Committee on Natural Resources and Outdoor Recreation.

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 the title and section 1 (MCL 722.111), the title as amended by 1997 PA 165 and section 1 as amended by 2018 PA 431, and by adding sections 3i, 3j, and 3k.



TMV



H03794'19 \*

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

## 1 TITLE

2 An act to provide for the protection of children through the  
3 licensing and regulation of child care organizations; to provide  
4 for the establishment of standards of care for child care  
5 organizations; to prescribe powers and duties of certain  
6 departments of this state and adoption facilitators; **to provide for**  
7 **grants**; to provide penalties; and to repeal acts and parts of acts.

8 Sec. 1. As used in this act:

9 (a) "Child care staff member" means an individual who is 18  
10 years of age or older to whom 1 or more of the following applies:

11 (i) The individual is employed by a child care center, group  
12 child care home, or family child care home for compensation,  
13 including a contract employee or a self-employed individual.

14 (ii) An individual whose activities involve the unsupervised  
15 care or supervision of children for a child care center, group  
16 child care home, or family child care home.

17 (iii) An individual who has unsupervised access to children who  
18 are cared for or supervised by a child care center, group child  
19 care home, or family child care home.

20 (iv) An individual who acts in the role of a licensee designee  
21 or program director.

22 (b) "Child care organization" means a governmental or  
23 nongovernmental organization having as its principal function  
24 receiving minor children for care, maintenance, training, and  
25 supervision, notwithstanding that educational instruction may be  
26 given. Child care organization includes organizations commonly  
27 described as child caring institutions, child placing agencies,  
28 children's camps, children's campsites, children's therapeutic



1 group homes, child care centers, day care centers, nursery schools,  
2 parent cooperative preschools, foster homes, group homes, or child  
3 care homes. Child care organization does not include a governmental  
4 or nongovernmental organization that does either of the following:

5 (i) Provides care exclusively to minors who have been  
6 emancipated by court order under section 4(3) of 1968 PA 293, MCL  
7 722.4.

8 (ii) Provides care exclusively to persons who are 18 years of  
9 age or older and to minors who have been emancipated by court order  
10 under section 4(3) of 1968 PA 293, MCL 722.4, at the same location.

11 (c) "Child caring institution" means a child care facility  
12 that is organized for the purpose of receiving minor children for  
13 care, maintenance, and supervision, usually on a 24-hour basis, in  
14 buildings maintained by the child caring institution for that  
15 purpose, and operates throughout the year. An educational program  
16 may be provided, but the educational program shall not be the  
17 primary purpose of the facility. Child caring institution includes  
18 a maternity home for the care of unmarried mothers who are minors  
19 and an agency group home, that is described as a small child caring  
20 institution, owned, leased, or rented by a licensed agency  
21 providing care for more than 4 but less than 13 minor children.  
22 Child caring institution also includes institutions for  
23 developmentally disabled or emotionally disturbed minor children.  
24 Child caring institution does not include a hospital, nursing home,  
25 or home for the aged licensed under article 17 of the public health  
26 code, 1978 PA 368, MCL 333.20101 to 333.22260, a boarding school  
27 licensed under section 1335 of the revised school code, 1976 PA  
28 451, MCL 380.1335, a hospital or facility operated by the state or  
29 licensed under the mental health code, 1974 PA 258, MCL 330.1001 to



1 330.2106, or an adult foster care family home or an adult foster  
2 care small group home licensed under the adult foster care facility  
3 licensing act, 1979 PA 218, MCL 400.701 to 400.737, in which a  
4 child has been placed under section 5(6).

5 (d) "Child placing agency" means a governmental organization  
6 or an agency organized under the nonprofit corporation act, 1982 PA  
7 162, MCL 450.2101 to 450.3192, for the purpose of receiving  
8 children for placement in private family homes for foster care or  
9 for adoption. The function of a child placing agency may include  
10 investigating applicants for adoption and investigating and  
11 certifying foster family homes and foster family group homes as  
12 provided in this act. The function of a child placing agency may  
13 also include supervising children who are at least 16 but less than  
14 21 years of age and who are living in unlicensed residences as  
15 provided in section 5(4).

16 (e) "Children's camp" means a residential, day, troop, or  
17 travel camp that provides care and supervision and is conducted in  
18 a natural environment for more than 4 children, apart from the  
19 children's parents, relatives, or legal guardians, for 5 or more  
20 days in a 14-day period.

21 (f) "Children's campsite" means the outdoor setting where a  
22 children's residential or day camp is located.

23 (g) "Children's therapeutic group home" means a child caring  
24 institution receiving not more than 6 minor children who are  
25 diagnosed with a developmental disability as defined in section  
26 100a of the mental health code, 1974 PA 258, MCL 330.1100a, or a  
27 serious emotional disturbance as defined in section 100d of the  
28 mental health code, 1974 PA 258, MCL 330.1100d, and that meets all  
29 of the following requirements:



1 (i) Provides care, maintenance, and supervision, usually on a  
2 24-hour basis.

3 (ii) Complies with the rules for child caring institutions,  
4 except that behavior management rooms, personal restraint,  
5 mechanical restraint, or seclusion, which is allowed in certain  
6 circumstances under licensing rules, are prohibited in a children's  
7 therapeutic group home.

8 (iii) Is not a private home.

9 (iv) Is not located on a campus with other licensed facilities.

10 (h) "Child care center" means a facility, other than a private  
11 residence, receiving 1 or more children under 13 years of age for  
12 care for periods of less than 24 hours a day, where the parents or  
13 guardians are not immediately available to the child. Child care  
14 center includes a facility that provides care for not less than 2  
15 consecutive weeks, regardless of the number of hours of care per  
16 day. The facility is generally described as a child care center,  
17 day care center, day nursery, nursery school, parent cooperative  
18 preschool, play group, before- or after-school program, or drop-in  
19 center. Child care center does not include any of the following:

20 (i) A Sunday school, a vacation bible school, or a religious  
21 instructional class that is conducted by a religious organization  
22 where children are attending for not more than 3 hours per day for  
23 an indefinite period or for not more than 8 hours per day for a  
24 period not to exceed 4 weeks during a 12-month period.

25 (ii) A facility operated by a religious organization where  
26 children are in the religious organization's care for not more than  
27 3 hours while persons responsible for the children are attending  
28 religious services.

29 (iii) A program that is primarily supervised, school-age-child-



1 focused training in a specific subject, including, but not limited  
2 to, dancing, drama, music, or religion. This exclusion applies only  
3 to the time a child is involved in supervised, school-age-child-  
4 focused training.

5 (iv) A program that is primarily an incident of group athletic  
6 or social activities for school-age children sponsored by or under  
7 the supervision of an organized club or hobby group, including, but  
8 not limited to, youth clubs, scouting, and school-age recreational  
9 or supplementary education programs. This exclusion applies only to  
10 the time the school-age child is engaged in the group athletic or  
11 social activities and if the school-age child can come and go at  
12 will.

13 (v) A program that primarily provides therapeutic services to  
14 a child.

15 (i) "Conviction" means a final conviction, the payment of a  
16 fine, a plea of guilty or nolo contendere if accepted by the court,  
17 a finding of guilt for a criminal law violation or a juvenile  
18 adjudication or disposition by the juvenile division of probate  
19 court or family division of circuit court for a violation that if  
20 committed by an adult would be a crime, or a conviction in a tribal  
21 court or a military court.

22 (j) "Criminal history check" means a fingerprint-based  
23 criminal history record information background check through the  
24 department of state police and the Federal Bureau of Investigation.

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

27 (l) "Department" means the department of health and human  
28 services and the department of licensing and regulatory affairs or  
29 a successor agency or department responsible for licensure under



1 this act. The department of licensing and regulatory affairs is  
 2 responsible for licensing and regulatory matters for child care  
 3 centers, group child care homes, family child care homes,  
 4 children's camps, and children's campsites. The department of  
 5 health and human services is responsible for licensing and  
 6 regulatory matters for child caring institutions, child placing  
 7 agencies, children's therapeutic group homes, foster family homes,  
 8 and foster family group homes. **However, as used in sections 3i to**  
 9 **3k, "department" means the department of environment, Great Lakes,**  
 10 **and energy.**

11 (m) "Eligible" means that the individual obtained the checks  
 12 and clearances described in sections 5n and 5q and is considered  
 13 appropriate to obtain a license, to be a member of the household of  
 14 a group child care home or family child care home, or to be a child  
 15 care staff member.

16 (n) "Filtered bottle-filling station" or "station" means an  
 17 apparatus that meets all of the following requirements:

18 (i) Is connected to customer site piping.

19 (ii) Filters water.

20 (iii) Has a light or other device to indicate filter  
 21 performance.

22 (iv) Is designed to fill drinking bottles or other containers  
 23 used for personal water consumption.

24 (o) "Filtered faucet" means a faucet that includes a filter at  
 25 the point of use.

26 (p) ~~(n)~~—"Ineligible" means that the individual obtained the  
 27 checks and clearances as described in sections 5n and 5q and, **under**  
 28 **section 5n, 5q, or 5r**, is not considered appropriate to obtain a  
 29 license, to be a member of the household of a group child care home



or family child care home, or to be a child care staff member. ~~due to violation of section 5n, 5q, or 5r.~~

(q) ~~(e)~~ "Private home" means a private residence in which the licensee permanently resides, which residency is not contingent upon caring for children or employment by a child placing agency. Private home includes a full-time foster family home, a full-time foster family group home, a group child care home, or a family child care home, as follows:

(i) "Foster family home" means a private home in which 1 but not more than 4 minor children, who are not related to an adult member of the household by blood or marriage, who are not placed in the household under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, or who are not hosted in the private home as provided in the safe families for children act, **2018 PA 434, MCL 722.1551 to 722.1567**, are given care and supervision for 24 hours a day, for 4 or more days a week, for 2 or more consecutive weeks, unattended by a parent, legal guardian, or legal custodian.

(ii) "Foster family group home" means a private home in which more than 4 but fewer than 7 minor children, who are not related to an adult member of the household by blood or marriage, who are not placed in the household under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, or who are not hosted in the private home as provided in the safe families for children act, **2018 PA 434, MCL 722.1551 to 722.1567**, are provided care for 24 hours a day, for 4 or more days a week, for 2 or more consecutive weeks, unattended by a parent, legal guardian, or legal custodian.

(iii) "Family child care home" means a private home in which 1





1 but fewer than 7 minor children are received for care and  
 2 supervision for compensation for periods of less than 24 hours a  
 3 day, unattended by a parent or legal guardian, except children  
 4 related to an adult member of the household by blood, marriage, or  
 5 adoption. Family child care home includes a home in which care is  
 6 given to an unrelated minor child for more than 4 weeks during a  
 7 calendar year. A family child care home does not include an  
 8 individual providing babysitting services for another individual.  
 9 As used in this subparagraph, "providing babysitting services"  
 10 means caring for a child on behalf of the child's parent or  
 11 guardian when the annual compensation for providing those services  
 12 does not equal or exceed \$600.00 or an amount that would according  
 13 to the internal revenue code of 1986 obligate the child's parent or  
 14 guardian to provide a form 1099-MISC to the individual for  
 15 compensation paid during the calendar year for those services.

16 (iv) "Group child care home" means a private home in which more  
 17 than 6 but not more than 12 minor children are given care and  
 18 supervision for periods of less than 24 hours a day unattended by a  
 19 parent or legal guardian, except children related to an adult  
 20 member of the household by blood, marriage, or adoption. Group  
 21 child care home includes a home in which care is given to an  
 22 unrelated minor child for more than 4 weeks during a calendar year.

23 (r) ~~(p)~~ "Legal custodian" means an individual who is at least  
 24 18 years of age in whose care a minor child remains or is placed  
 25 after a court makes a finding under section 13a(5) of chapter XIIA  
 26 of the probate code of 1939, 1939 PA 288, MCL 712A.13a.

27 (s) ~~(q)~~ "Licensee" means a person, partnership, firm,  
 28 corporation, association, nongovernmental organization, or local or  
 29 state government organization that has been issued a license under



1 this act to operate a child care organization.

2 (t) ~~(r)~~—"Listed offense" means that term as defined in section  
3 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

4 (u) ~~(s)~~—"Member of the household" means any individual who  
5 resides in a family child care home, group child care home, foster  
6 family home, or foster family group home on an ongoing basis, or  
7 who has a recurrent presence in the home, including, but not  
8 limited to, overnight stays. For foster family homes and foster  
9 family group homes, a member of the household does not include a  
10 foster child. For group child care homes and family child care  
11 homes, a member of the household does not include a child to whom  
12 child care is being provided.

13 (v) ~~(t)~~—"Original license" means a license issued to a child  
14 care organization during the first 6 months of operation indicating  
15 that the organization is in compliance with all rules promulgated  
16 by the department under this act.

17 (w) ~~(u)~~—"Provisional license" means a license issued to a  
18 child care organization that is temporarily unable to conform to  
19 the rules promulgated under this act.

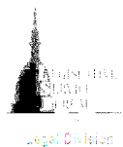
20 (x) ~~(v)~~—"Regular license" means a license issued to a child  
21 care organization indicating that the organization is in  
22 substantial compliance with all rules promulgated under this act  
23 and, if there is a deficiency, has entered into a corrective action  
24 plan.

25 (y) ~~(w)~~—"Guardian" means the guardian of the person.

26 (z) ~~(x)~~—"Minor child" means any of the following:

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

28 (ii) A person who is a resident in a child caring institution,  
29 foster family home, or foster family group home, who is at least 18



1 but less than 21 years of age, and who meets the requirements of  
2 the young adult voluntary foster care act, 2011 PA 225, MCL 400.641  
3 to 400.671.

4 (iii) A person who is a resident in a child caring institution,  
5 children's camp, foster family home, or foster family group home;  
6 who becomes 18 years of age while residing in a child caring  
7 institution, children's camp, foster family home, or foster family  
8 group home; and who continues residing in a child caring  
9 institution, children's camp, foster family home, or foster family  
10 group home to receive care, maintenance, training, and supervision.  
11 A minor child under this subparagraph does not include a person 18  
12 years of age or older who is placed in a child caring institution,  
13 foster family home, or foster family group home under an  
14 adjudication under section 2(a) of chapter XIIIA of the probate code  
15 of 1939, 1939 PA 288, MCL 712A.2, or under section 1 of chapter IX  
16 of the code of criminal procedure, 1927 PA 175, MCL 769.1. This  
17 subparagraph applies only if the number of those residents who  
18 become 18 years of age does not exceed the following:

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

20 (B) Three, if the total number of residents is not less than  
21 11 and not more than 14.

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

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

25 (iv) A person 18 years of age or older who is placed in an  
26 unlicensed residence under section 5(4) or a foster family home  
27 under section 5(7).

28 (aa) ~~(y)~~ "Related" means in the relationship by blood,  
29 marriage, or adoption, as parent, grandparent, great-grandparent,



1 great-great-grandparent, aunt or uncle, great-aunt or great-uncle,  
 2 great-great-aunt or great-great-uncle, sibling, stepsibling, nephew  
 3 or niece, first cousin or first cousin once removed, and the spouse  
 4 of any of the individuals described in this definition, even after  
 5 the marriage has ended by death or divorce.

6 **(bb)** ~~(z)~~ "Religious organization" means a church,  
 7 ecclesiastical corporation, or group, not organized for pecuniary  
 8 profit, that gathers for mutual support and edification in piety or  
 9 worship of a supreme deity.

10 **(cc)** ~~(aa)~~ "School-age child" means a child who is eligible to  
 11 attend a grade of kindergarten or higher, but is less than 13 years  
 12 of age. A child is considered to be a school-age child on the first  
 13 day of the school year in which he or she is eligible to attend  
 14 school.

15 **(dd)** ~~(bb)~~ "Severe physical injury" means that term as defined  
 16 in section 8 of the child protection law, 1975 PA 238, MCL 722.628.

17 **(ee)** ~~(cc)~~ "Licensee designee" means the individual designated  
 18 in writing by the board of directors of the corporation or by the  
 19 owner or person with legal authority to act on behalf of the  
 20 company or organization on licensing matters. The individual must  
 21 agree in writing to be designated as the licensee designee. All  
 22 license applications must be signed by the licensee in the case of  
 23 the individual or by a member of the corporation, company, or  
 24 organization.

25 **(ff)** "State drinking water standards" means quality standards  
 26 setting limits for contaminant levels or establishing treatment  
 27 techniques to meet standards necessary to protect the public  
 28 health.

29 **Sec. 3i. (1)** By August 1, 2020, each child care center shall



1 develop a drinking water safety plan. The child care center shall  
2 make the plan available to the department, staff, and parents upon  
3 request. The plan shall do all of the following:

4 (a) Specify all of the following, by category:

5 (i) Locations where water outlets will be maintained to deliver  
6 water for human consumption, whether as drinking water or a  
7 component of a food or beverage, using the following categories:

8 (A) Locations where filtered bottle-filling stations will be  
9 maintained. The plan shall provide for the maintenance of at least  
10 1 station for every 100 occupants of the child care center, not  
11 including visitors or those attending special events.

12 (B) Locations where filtered faucets will be maintained.

13 (ii) Locations where water outlets will be maintained for  
14 purposes other than as described in subparagraph (i).

15 (iii) Locations of water outlets that will be taken out of  
16 service.

17 (b) Establish schedules for each of the following:

18 (i) Annual water sampling and testing for each filtered bottle-  
19 filling station and filtered faucet in the child care center to  
20 ensure that filters are properly installed and comply with ANSI/NSF  
21 standard 53 for lead removal, ANSI/NSF standard 42 for particulate  
22 removal, and any other standards for contaminant removal that the  
23 department recommends.

24 (ii) Regular replacement of the filter cartridge for each  
25 filtered bottle-filling station and filtered faucet in compliance  
26 with manufacturer instructions or recommendations of the  
27 department.

28 (2) Each child care center shall review and update its  
29 drinking water safety plan every 5 years and make changes as needed



1 or as directed by the department to comply with this section.

2 (3) A child care center shall comply with the schedules under  
3 subsection (1) (b) .

4 (4) Within 20 days after receiving the results of any testing  
5 performed as part of its drinking water safety plan, a child care  
6 center shall report the results to the department. Within 30 days  
7 after receiving the test results, the child care center shall do  
8 both of the following:

9 (a) If the child care center maintains a website, post the  
10 test results on its website.

11 (b) Post the test results, as well as information on the  
12 health effects of lead exposure and ways to reduce child lead  
13 exposure, in a location in its administrative office readily  
14 visible to staff and parents.

15 (5) If test results described in subsection (4) indicate the  
16 presence of lead at 1 part per billion or more or of any other  
17 contaminant at a level exceeding state drinking water standards in  
18 a sample from a filtered bottle-filling station or filtered faucet,  
19 the child care center shall do all of the following:

20 (a) Immediately shut off or render inoperable the water  
21 outlet.

22 (b) Not return the water outlet to service until resampling  
23 indicates no exceedance as described in this subsection of lead or  
24 any other contaminant.

25 (c) Post a conspicuous sign near the water outlet stating that  
26 it is inoperable because of contamination and maintain the posting  
27 until the water outlet is returned to service under subdivision  
28 (b) .

29 (d) Send a copy of the test results to the department of



1 health and human services and each parent or guardian of a child  
2 enrolled in the child care center.

3 (e) Replace the filter or filters for the filtered bottle-  
4 filling station or filtered faucet and resample and retest the  
5 water.

6 (f) Develop a remediation plan in consultation with the  
7 department if an exceedance as described in this subsection of lead  
8 or any other contaminant continues after replacement of the filter  
9 or filters. The child care center shall incorporate the remediation  
10 plan into its drinking water safety plan.

11 Sec. 3j. By August 1, 2021, each child care center shall do  
12 all of the following:

13 (a) Install all filtered bottle-filling stations and  
14 filtration devices for filtered faucets as indicated in the  
15 drinking water safety plan under section 3i and not already in  
16 existence.

17 (b) Shut off or render permanently inoperable any outlet for  
18 water for human consumption that has not been converted to a  
19 filtered bottle-filling station or filtered faucet.

20 (c) Post a conspicuous sign near each water outlet indicating  
21 whether or not the outlet is intended to provide water for human  
22 consumption.

23 Sec. 3k. The department shall assist each child care center in  
24 maintaining compliance with this act. The department shall do all  
25 of the following:

26 (a) Provide a template for drinking water safety plans  
27 required under section 3i.

28 (b) Provide and maintain a list of approved filtered bottle-  
29 filling stations, faucet filtration devices for filtered faucets,



1 and filters and of filter manufacturers, installers, and  
2 maintenance providers.

3 (c) Provide guidance on all of the following:

4 (i) Factors that a child care center should consider when  
5 selecting filtered bottle-filling stations, filtration devices for  
6 filtered faucets, and filters. The department shall give preference  
7 to models that minimize plumbing between the filter and the  
8 dispensing outlet.

9 (ii) The installation, operation, and maintenance of filtered  
10 bottle-filling stations and filtered faucets. The guidance shall  
11 include annual training for child care center staff on proper  
12 maintenance of filtered bottle-filling stations and filtered  
13 faucets.

14 (iii) The proper storage and disposal of a filter for a filtered  
15 bottle-filling station or filtered faucet.

16 (iv) How to sample water from a filtered bottle-filling station  
17 or filtered faucet for testing for lead or other contaminants.

