

HOUSE BILL NO. 5537

February 20, 2020, Introduced by Rep. Reilly and referred to the Committee on Health Policy.

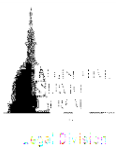
A bill to amend 1973 PA 116, entitled

"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 section 1 (MCL 722.111), as amended by 2018 PA 431.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1. As used in this act:
- 2 (a) "Child care staff member" means an individual who is 18



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1 years of age or older to whom 1 or more of the following applies:

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

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

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

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

13 (b) "Child care organization" means a governmental or
14 nongovernmental organization having as its principal function
15 receiving minor children for care, maintenance, training, and
16 supervision, notwithstanding that educational instruction may be
17 given. Child care organization includes organizations commonly
18 described as child caring institutions, child placing agencies,
19 children's camps, children's campsites, children's therapeutic
20 group homes, child care centers, day care centers, nursery schools,
21 parent cooperative preschools, foster homes, group homes, or child
22 care homes. Child care organization does not include a governmental
23 or nongovernmental organization that does either of the following:

24 (i) Provides care exclusively to minors who have been
25 emancipated by court order under section 4(3) of 1968 PA 293, MCL
26 722.4.

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



(c) "Child caring institution" means a child care facility that is organized for the purpose of receiving minor children for care, maintenance, and supervision, usually on a 24-hour basis, in buildings maintained by the child caring institution for that purpose, and operates throughout the year. An educational program may be provided, but the educational program shall not be the primary purpose of the facility. Child caring institution includes a maternity home for the care of unmarried mothers who are minors and an agency group home, that is described as a small child caring institution, owned, leased, or rented by a licensed agency providing care for more than 4 but less than 13 minor children. Child caring institution also includes institutions for developmentally disabled or emotionally disturbed minor children. Child caring institution does not include a hospital, nursing home, or home for the aged licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to ~~333.22260~~, **333.21925**, a boarding school licensed under section 1335 of the revised school code, 1976 PA 451, MCL 380.1335, a hospital or facility operated by the state or licensed under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, or an adult foster care family home or an adult foster care small group home licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, in which a child has been placed under section 5(6).

(d) "Child placing agency" means a governmental organization or an agency organized under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, for the purpose of receiving children for placement in private family homes for foster care or for adoption. The function of a child placing agency may include investigating applicants for adoption and investigating and



certifying foster family homes and foster family group homes as provided in this act. The function of a child placing agency may also include supervising children who are at least 16 but less than 21 years of age and who are living in unlicensed residences as provided in section 5(4).

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

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

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

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

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

(iii) Is not a private home.

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

(h) "Child care center" means a facility, other than a private



1 residence, receiving 1 or more children under 13 years of age for
2 care for periods of less than 24 hours a day, where the parents or
3 guardians are not immediately available to the child. Child care
4 center includes a facility that provides care for not less than 2
5 consecutive weeks, regardless of the number of hours of care per
6 day. The facility is generally described as a child care center,
7 day care center, day nursery, nursery school, parent cooperative
8 preschool, play group, before- or after-school program, or drop-in
9 center. Child care center does not include any of the following:

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

15 (ii) A facility operated by a religious organization where
16 children are in the religious organization's care for not more than
17 3 hours while persons responsible for the children are attending
18 religious services.

19 (iii) A program that is primarily supervised, school-age-child-
20 focused training in a specific subject, including, but not limited
21 to, dancing, drama, music, or religion. This exclusion applies only
22 to the time a child is involved in supervised, school-age-child-
23 focused training.

24 (iv) A program that is primarily an incident of group athletic
25 or social activities for school-age children sponsored by or under
26 the supervision of an organized club or hobby group, including, but
27 not limited to, youth clubs, scouting, and school-age recreational
28 or supplementary education programs. This exclusion applies only to
29 the time the school-age child is engaged in the group athletic or



1 social activities and if the school-age child can come and go at
2 will.

3 (v) A program that primarily provides therapeutic services to
4 a child.

5 (i) "Conviction" means a final conviction, the payment of a
6 fine, a plea of guilty or nolo contendere if accepted by the court,
7 a finding of guilt for a criminal law violation or a juvenile
8 adjudication or disposition by the juvenile division of probate
9 court or family division of circuit court for a violation that if
10 committed by an adult would be a crime, or a conviction in a tribal
11 court or a military court.

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

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

17 (l) "Department" means the department of health and human
18 services and the department of licensing and regulatory affairs or
19 a successor agency or department responsible for licensure under
20 this act. The department of licensing and regulatory affairs is
21 responsible for licensing and regulatory matters for child care
22 centers, group child care homes, family child care homes,
23 children's camps, and children's campsites. The department of
24 health and human services is responsible for licensing and
25 regulatory matters for child caring institutions, child placing
26 agencies, children's therapeutic group homes, foster family homes,
27 and foster family group homes.

28 (m) "Eligible" means that the individual obtained the checks
29 and clearances described in sections 5n and 5q and is considered



1 appropriate to obtain a license, to be a member of the household of
2 a group child care home or family child care home, or to be a child
3 care staff member.

4 (n) "Ineligible" means that the individual obtained the checks
5 and clearances as described in sections 5n and 5q and is not
6 considered appropriate to obtain a license, to be a member of the
7 household of a group child care home or family child care home, or
8 to be a child care staff member due to violation of section 5n, 5q,
9 or 5r.

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

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

25 (ii) "Foster family group home" means a private home in which
26 more than 4 but fewer than 7 minor children, who are not related to
27 an adult member of the household by blood or marriage, who are not
28 placed in the household under the Michigan adoption code, chapter X
29 of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, or



1 who are not hosted in the private home as provided in the safe
2 families for children act, **2018 PA 434, MCL 722.1551 to 722.1567**,
3 are provided care for 24 hours a day, for 4 or more days a week,
4 for 2 or more consecutive weeks, unattended by a parent, legal
5 guardian, or legal custodian.

6 (iii) "Family child care home" means a private home in which 1
7 but fewer than 7 minor children are received for care and
8 supervision for compensation for periods of less than 24 hours a
9 day, unattended by a parent or legal guardian, except children
10 related to an adult member of the household by blood, marriage, or
11 adoption. Family child care home includes a home in which care is
12 given to an unrelated minor child for more than 4 weeks during a
13 calendar year. A family child care home does not include an
14 individual providing babysitting services for another individual.
15 As used in this subparagraph, "providing babysitting services"
16 means caring for a child on behalf of the child's parent or
17 guardian when the annual compensation for providing those services
18 does not equal or exceed \$600.00 or an amount that would according
19 to the internal revenue code of 1986, **26 USC 1 to 9834**, obligate
20 the child's parent or guardian to provide a form 1099-MISC to the
21 individual for compensation paid during the calendar year for those
22 services.

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



1 (p) "Legal custodian" means an individual who is at least 18
2 years of age in whose care a minor child remains or is placed after
3 a court makes a finding under section 13a(5) of chapter XIIIA of the
4 probate code of 1939, 1939 PA 288, MCL 712A.13a.

5 (q) "Licensee" means a person, partnership, firm, corporation,
6 association, nongovernmental organization, or local or state
7 government organization that has been issued a license under this
8 act to operate a child care organization.

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

11 (s) "Member of the household" means any individual who resides
12 in a family child care home, group child care home, foster family
13 home, or foster family group home on an ongoing basis, or who has a
14 recurrent presence in the home, including, but not limited to,
15 overnight stays. For foster family homes and foster family group
16 homes, a member of the household does not include a foster child.
17 For group child care homes and family child care homes, a member of
18 the household does not include a child to whom child care is being
19 provided.

20 (t) "Original license" means a license issued to a child care
21 organization during the first 6 months of operation indicating that
22 the organization is in compliance with all rules promulgated by the
23 department under this act.

24 (u) "Provisional license" means a license issued to a child
25 care organization that is temporarily unable to conform to the
26 rules promulgated under this act.

27 (v) "Regular license" means a license issued to a child care
28 organization indicating that the organization is in substantial
29 compliance with all rules promulgated under this act and, if there



1 is a deficiency, has entered into a corrective action plan.

2 (w) "Guardian" means the guardian of the person.

3 (x) "Minor child" means any of the following:

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

5 (ii) A person who is a resident in a child caring institution,
6 foster family home, or foster family group home, who is at least 18
7 but less than 21 years of age, and who meets the requirements of
8 the young adult voluntary foster care act, 2011 PA 225, MCL 400.641
9 to 400.671.

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

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

26 (B) Three, if the total number of residents is not less than
27 11 and not more than 14.

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



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

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

5 (y) "Related" means in the relationship by blood, marriage, or
6 adoption, as parent, grandparent, great-grandparent, great-great-
7 grandparent, aunt or uncle, great-aunt or great-uncle, great-great-
8 aunt or great-great-uncle, sibling, stepsibling, nephew or niece,
9 first cousin or first cousin once removed, and the spouse of any of
10 the individuals described in this definition, even after the
11 marriage has ended by death or divorce.

12 (z) "Religious organization" means a church, ecclesiastical
13 corporation, or group, not organized for pecuniary profit, that
14 gathers for mutual support and edification in piety or worship of a
15 supreme deity.

16 (aa) "School-age child" means a child who is eligible to
17 attend a grade of kindergarten or higher, but is less than 13 years
18 of age. A child is considered to be a school-age child on the first
19 day of the school year in which he or she is eligible to attend
20 school.

21 (bb) "Severe physical injury" means that term as defined in
22 section 8 of the child protection law, 1975 PA 238, MCL 722.628.

23 (cc) "Licensee designee" means the individual designated in
24 writing by the board of directors of the corporation or by the
25 owner or person with legal authority to act on behalf of the
26 company or organization on licensing matters. The individual must
27 agree in writing to be designated as the licensee designee. All
28 license applications must be signed by the licensee in the case of
29 the individual or by a member of the corporation, company, or



1 organization.

2 Enacting section 1. This amendatory act takes effect 90 days
3 after the date it is enacted into law.

4 Enacting section 2. This amendatory act does not take effect
5 unless Senate Bill No. ____ or House Bill No. 5510 (request no.
6 04667'19) of the 100th Legislature is enacted into law.

