

HOUSE BILL NO. 5041

June 16, 2021, Introduced by Reps. O'Malley, Breen, Markkanen, Roth, Shannon, Puri, Ellison, Aiyash, Wakeman, Hope, Koleszar, Garza, Cavanagh, Tyrone Carter, Manoogian, Tate, Calley, Anthony, Bellino, Yaroach, Hammoud and Witwer and referred to the Committee on Families, Children, and Seniors.

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 1, 3h, and 11 (MCL 722.111, 722.113h, and 722.121), section 1 as amended by 2020 PA 6 and section 3h as added and section 11 as amended by 2017 PA 257.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. **(1)** As used in this act:

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

4 ~~applies:~~**apply:**

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

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

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

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

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

27 (i) Provides care exclusively to minors who have been
28 emancipated by court order under section 4(3) of 1968 PA 293, MCL
29 722.4.

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

4 (c) "Child caring institution" means a child care facility
5 that is organized for the purpose of receiving minor children for
6 care, maintenance, and supervision, usually on a 24-hour basis, in
7 buildings maintained by the child caring institution for that
8 purpose, and operates throughout the year. An educational program
9 may be provided, but the educational program shall not be the
10 primary purpose of the facility. Child caring institution includes
11 a maternity home for the care of unmarried mothers who are minors
12 and an agency group home, that is described as a small child caring
13 institution, owned, leased, or rented by a licensed agency
14 providing care for more than 4 but less than 13 minor children.
15 Child caring institution also includes an institution for
16 developmentally disabled or emotionally disturbed minor children.
17 Child caring institution does not include a hospital, nursing home,
18 or home for the aged licensed under article 17 of the public health
19 code, 1978 PA 368, MCL 333.20101 to 333.22260, a boarding school
20 licensed under section 1335 of the revised school code, 1976 PA
21 451, MCL 380.1335, a hospital or facility operated by the state or
22 licensed under the mental health code, 1974 PA 258, MCL 330.1001 to
23 330.2106, or an adult foster care family home or an adult foster
24 care small group home licensed under the adult foster care facility
25 licensing act, 1979 PA 218, MCL 400.701 to 400.737, in which a
26 child has been placed under section 5(6).

27 (d) "Child caring institution staff member" means an
28 individual who is 18 years of age or older to whom 1 or more of the
29 following ~~applies~~**apply**:

1 (i) The individual is employed by a child caring institution
2 for compensation, including an adult who does not work directly
3 with children.

4 (ii) The individual is a contract employee or self-employed
5 individual with a child caring institution.

6 (iii) The individual is an intern or other individual who
7 provides specific services under the rules promulgated under this
8 act.

9 (e) "Child placing agency" means a governmental organization
10 or an agency organized under the nonprofit corporation act, 1982 PA
11 162, MCL 450.2101 to 450.3192, for the purpose of receiving
12 children for placement in private family homes for foster care or
13 for adoption. The function of a child placing agency may include
14 investigating applicants for adoption and investigating and
15 certifying foster family homes and foster family group homes as
16 provided in this act. The function of a child placing agency may
17 also include supervising children who are at least 16 but less than
18 21 years of age and who are living in unlicensed residences as
19 provided in section 5(4).

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

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

27 (h) "Children's therapeutic group home" means a child caring
28 institution receiving not more than 6 minor children who are
29 diagnosed with a developmental disability as defined in section

1 100a of the mental health code, 1974 PA 258, MCL 330.1100a, or a
2 serious emotional disturbance as defined in section 100d of the
3 mental health code, 1974 PA 258, MCL 330.1100d, and that meets all
4 of the following requirements:

5 (i) Provides care, maintenance, and supervision, usually on a
6 24-hour basis.

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

12 (iii) Is not a private home.

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

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

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

29 (ii) A facility operated by a religious organization where

1 children are in the religious organization's care for not more than
2 3 hours while persons responsible for the children are attending
3 religious services.

4 (iii) A program that is primarily supervised, school-age-child-
5 focused training in a specific subject, including, but not limited
6 to, dancing, drama, music, or religion. This exclusion applies only
7 to the time a child is involved in supervised, school-age-child-
8 focused training.

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

17 (v) A program that primarily provides therapeutic services to
18 a child.

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

26 (k) "Criminal history check" means a fingerprint-based
27 criminal history record information background check through the
28 department of state police and the Federal Bureau of Investigation.

29 (l) "Criminal history record information" means that term as

1 defined in section 1a of 1925 PA 289, MCL 28.241a.

2 (m) "Department" means the department of health and human
3 services and the department of licensing and regulatory affairs or
4 a successor agency or department responsible for licensure under
5 this act. The department of licensing and regulatory affairs is
6 responsible for licensing and regulatory matters for child care
7 centers, group child care homes, family child care homes,
8 children's camps, and children's campsites. The department of
9 health and human services is responsible for licensing and
10 regulatory matters for child caring institutions, child placing
11 agencies, children's therapeutic group homes, foster family homes,
12 and foster family group homes.

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

18 (o) "Ineligible" means that the individual obtained the checks
19 and clearances as described in sections 5n and 5q and is not
20 considered appropriate to obtain a license, to be a member of the
21 household of a group child care home or family child care home, or
22 to be a child care staff member due to violation of section 5n, 5q,
23 or 5r.

24 (p) **"Increased capacity" means 1 additional child added to the**
25 **total number of minor children received for care and supervision in**
26 **a family child care home or 2 additional children added to the**
27 **total number of minor children received for care and supervision in**
28 **a group child care home.**

29 (q) ~~(p)~~ "Private home" means a private residence in which the

1 licensee permanently resides, which residency is not contingent
2 upon caring for children or employment by a child placing agency.
3 Private home includes a full-time foster family home, a full-time
4 foster family group home, a group child care home, or a family
5 child care home, as follows:

6 (i) "Foster family home" means the private home of an
7 individual who is licensed to provide 24-hour care for 1 but not
8 more than 4 minor children who are placed away from their parent,
9 legal guardian, or legal custodian in foster care. The licensed
10 individual providing care is required to comply with the reasonable
11 and prudent parenting standard as defined in section 1 of chapter
12 XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1.

13 (ii) "Foster family group home" means the private home of an
14 individual who has been licensed by the department to provide 24-
15 hour care for more than 4 but fewer than 7 minor children who are
16 placed away from their parent, legal guardian, or legal custodian
17 in foster care. The licensed individual providing care is required
18 to comply with the reasonable and prudent parenting standard as
19 defined in section 1 of chapter XIIIA of the probate code of 1939,
20 1939 PA 288, MCL 712A.1.

21 (iii) "Family child care home" means a private home in which 1
22 but fewer than 7 minor children are received for care and
23 supervision for compensation for periods of less than 24 hours a
24 day, unattended by a parent or legal guardian, except children
25 related to an adult member of the household by blood, marriage, or
26 adoption. Family child care home includes a home in which care is
27 given to an unrelated minor child for more than 4 weeks during a
28 calendar year. A family child care home does not include an
29 individual providing babysitting services for another individual.

1 As used in this subparagraph, "providing babysitting services"
 2 means caring for a child on behalf of the child's parent or
 3 guardian if the annual compensation for providing those services
 4 does not equal or exceed \$600.00 or an amount that would according
 5 to the internal revenue code of 1986 obligate the child's parent or
 6 guardian to provide a form 1099-MISC to the individual for
 7 compensation paid during the calendar year for those services.

8 **Family child care home includes a private home with increased**
 9 **capacity.**

10 (iv) "Group child care home", **except as provided in section 4b,**
 11 means a private home in which more than 6 but not more than 12
 12 minor children are given care and supervision for periods of less
 13 than 24 hours a day unattended by a parent or legal guardian,
 14 except children related to an adult member of the household by
 15 blood, marriage, or adoption. Group child care home includes a home
 16 in which care is given to an unrelated minor child for more than 4
 17 weeks during a calendar year. **Group child care home includes a**
 18 **private home with increased capacity.**

19 (r) ~~(q)~~—"Legal custodian" means an individual who is at least
 20 18 years of age in whose care a minor child remains or is placed
 21 after a court makes a finding under section 13a(5) of chapter XIIA
 22 of the probate code of 1939, 1939 PA 288, MCL 712A.13a.

23 (s) ~~(r)~~—"Licensee" means a person, partnership, firm,
 24 corporation, association, nongovernmental organization, or local or
 25 state government organization that has been issued a license under
 26 this act to operate a child care organization.

27 (t) ~~(s)~~—"Listed offense" means that term as defined in section
 28 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

29 (u) ~~(t)~~—"Member of the household" means any individual who

1 resides in a family child care home, group child care home, foster
 2 family home, or foster family group home on an ongoing basis, or
 3 who has a recurrent presence in the home, including, but not
 4 limited to, overnight stays. For foster family homes and foster
 5 family group homes, a member of the household does not include a
 6 foster child. For group child care homes and family child care
 7 homes, a member of the household does not include a child to whom
 8 child care is being provided.

9 **(v)** ~~(u)~~—"Original license" means a license issued to a child
 10 care organization during the first 6 months of operation indicating
 11 that the organization is in compliance with all rules promulgated
 12 by the department under this act.

13 **(w)** ~~(v)~~—"Provisional license" means a license issued to a
 14 child care organization that is temporarily unable to conform to
 15 the rules promulgated under this act.

16 **(x)** ~~(w)~~—"Qualified residential treatment program" or "QRTP"
 17 means a program within a child caring institution to which all of
 18 the following apply:

19 (i) The program has a trauma-informed treatment model,
 20 evidenced by the inclusion of trauma awareness, knowledge, and
 21 skills into the program's culture, practices, and policies.

22 (ii) The program has registered or licensed nursing and other
 23 licensed clinical staff on-site or available 24 hours a day, 7 days
 24 a week, who provide care in the scope of their practice as provided
 25 in parts 170, 172, 181, 182, 182A, and 185 of the public health
 26 code, 1978 PA 368, MCL 333.17001 to 333.17097, 333.17201 to
 27 333.17242, 333.18101 to 333.18117, 333.18201 to 333.18237,
 28 333.18251 to 333.18267, and 333.18501 to 333.18518.

29 (iii) The program integrates families into treatment, including

1 maintaining sibling connections.

2 (iv) The program provides aftercare services for at least 6
3 months post discharge.

4 (v) The program is accredited by an independent not-for-profit
5 organization as described in 42 USC 672(k)(4)(G).

6 (vi) The program does not include a detention facility,
7 forestry camp, training school, or other facility operated
8 primarily for detaining minor children who are determined to be
9 delinquent.

10 (y) ~~(x)~~ "Regular license" means a license issued to a child
11 care organization indicating that the organization is in
12 substantial compliance with all rules promulgated under this act
13 and, if there is a deficiency, has entered into a corrective action
14 plan.

15 (z) ~~(y)~~ "Guardian" means the guardian of the person.

16 (aa) ~~(z)~~ "Minor child" means any of the following:

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

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

23 (iii) A person who is a resident in a child caring institution,
24 children's camp, foster family home, or foster family group home;
25 who becomes 18 years of age while residing in a child caring
26 institution, children's camp, foster family home, or foster family
27 group home; and who continues residing in a child caring
28 institution, children's camp, foster family home, or foster family
29 group home to receive care, maintenance, training, and supervision.

A minor child under this subparagraph does not include a person 18 years of age or older who is placed in a child caring institution, foster family home, or foster family group home under an adjudication under section 2(a) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, or under section 1 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1. This subparagraph applies only if the number of those residents who become 18 years of age does not exceed the following:

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

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

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

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

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

(bb) ~~(aa)~~—"Related" means in the relationship by blood, marriage, or adoption, as parent, grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the individuals described in this definition, even after the marriage has ended by death or divorce.

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

(dd) ~~(ee)~~—"School-age child" means a child who is eligible to

1 attend a grade of kindergarten or higher, but is less than 13 years
 2 of age. A child is considered to be a school-age child on the first
 3 day of the school year in which he or she is eligible to attend
 4 school.

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

7 **(ff)** ~~(ee)~~ "Licensee designee" means the individual designated
 8 in writing by the board of directors of the corporation or by the
 9 owner or person with legal authority to act on behalf of the
 10 company or organization on licensing matters. The individual must
 11 agree in writing to be designated as the licensee designee. All
 12 license applications must be signed by the licensee in the case of
 13 the individual or by a member of the corporation, company, or
 14 organization.

15 **(2) A family child care home or group child care home is**
 16 **automatically eligible for increased capacity after satisfying all**
 17 **of the following criteria:**

18 **(a) Holds a current license.**

19 **(b) Has been licensed to operate for at least 29 consecutive**
 20 **months.**

21 **(c) Has received 1 or more unrelated minor children for care**
 22 **and supervision during the licensed period under subdivision (b).**

23 **(d) Has received a renewed regular license after at least 29**
 24 **months of licensed operation under subdivision (b).**

25 **(3) The department may rescind increased capacity due to 1 or**
 26 **more of the following:**

27 **(a) Corrective action.**

28 **(b) Licensing action.**

29 **(c) Determination by the department that increased capacity is**

1 not conducive to the welfare of children as that term is defined in
2 section 5m.

3 (4) A family child care home or group child care home may
4 appeal rescission of increased capacity under a hearing held in the
5 manner provided under section 11(2).

6 Sec. 3h. An ~~annual~~ inspection **in accordance with the approved**
7 **state child care plan** of a child care organization licensed under
8 this act ~~shall~~**must** be unannounced, unless the department, in its
9 discretion, considers it necessary to schedule an appointment for
10 an inspection.

11 Sec. 11. (1) An original license shall not be granted under
12 this act if ~~the issuance of~~**issuing** the license would substantially
13 contribute to an excessive concentration of community residential
14 facilities within a city, village, township, or county of this
15 state.

16 (2) The department may deny, revoke, or refuse to renew a
17 license of a child care organization when the licensee or applicant
18 falsifies information on the application or willfully and
19 substantially violates this act, the rules promulgated under this
20 act, or the terms of the license. A license shall not be revoked, a
21 renewal of a license shall not be refused, or an application for a
22 license shall not be denied, unless the licensee or applicant is
23 given notice in writing of the grounds of the proposed revocation,
24 denial, or refusal. If revocation, denial, or refusal is appealed
25 within 30 days after receipt of the notice by writing addressed to
26 the department director, the department director or his or her
27 designee shall conduct a hearing at which the licensee or applicant
28 may present testimony and confront witnesses. If the proposed
29 revocation, refusal, or denial is not appealed, the license shall

1 be revoked, the license shall be refused renewal, or the
2 application shall be denied. The proposed revocation, refusal, or
3 denial must be appealed within 30 days after receipt by writing the
4 department director or his or her designee. Upon receipt of the
5 written appeal, the department director or his or her designee must
6 initiate the provisions of chapters 4 and 5 of the administrative
7 procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.292. Notice
8 of the hearing ~~shall~~**must** be given to the licensee or applicant by
9 personal service or delivery to the proper address by certified
10 mail not less than 2 weeks before the date of the hearing. The
11 **director's** decision ~~of the director shall~~**must** be made as soon as
12 practicable after the hearing, and forwarded to the licensee or
13 applicant by certified mail not more than 10 days after that. The
14 formal notice and hearing requirements in this subsection do not
15 apply if the licensee or applicant and the department comply with
16 the provisions of subsection (7).

17 (3) The department shall deny a license to a child caring
18 institution or foster family group home that does not comply with
19 section 206 of the Michigan zoning enabling act, 2006 PA 110, MCL
20 125.3206.

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

1 director to resolve the issues of the complaint within 45 days
2 after receipt of the complaint shall serve as a decision by the
3 director to suspend, deny, or revoke the organization's license. If
4 the decision to suspend, deny, or revoke the license or the
5 resolution of the issues is protested by written objection of the
6 complainant or licensee to the department director within 30 days
7 after the suspension, denial, or revocation of the license or the
8 receipt of the notice of resolution, the department director or a
9 designated representative of the director shall conduct a hearing
10 according to the administrative procedures act of 1969, 1969 PA
11 306, MCL 24.201 to 24.328, at which the complainant and licensee
12 may present testimony and cross-examine witnesses. The director's
13 decision shall be mailed by certified mail to the complainant and
14 the licensee. If the resolution of the issues by the department
15 director is not protested within 30 days after receipt of the
16 notice of the resolution, the resolution by the department director
17 is final.

18 (5) The department shall not issue a license to or renew a
19 license of a child care center, group child care home, or family
20 child care home if the applicant or licensee has had a previous
21 license or certificate of registration revoked or refused renewal
22 or an application denied due to a violation of this act, the rules
23 promulgated under this act, or the terms of the license or
24 certificate of registration that resulted in the severe physical
25 injury, sexual abuse, or death of a child while under its care.

26 (6) The department shall not issue a license to an individual
27 who worked in a child care center, group child care home, or family
28 child care home at the time of a violation of this act, the rules
29 promulgated under this act, or the terms of a license that resulted

1 in the severe physical injury or death of a child or resulted in a
2 child being sexually abused if the individual had direct care and
3 supervision of that child at the time of the violation.

4 (7) The department may immediately revoke or refuse to renew a
5 licensee or deny an application for a license without providing
6 written notice of the grounds of the proposed action or giving the
7 licensee or applicant 30 days to appeal if the licensee or
8 applicant, in writing, does all of the following:

9 (a) Waives the requirement that the department provide written
10 notice of the grounds for the proposed action.

11 (b) Waives the 30-day time frame in which to submit a written
12 appeal to the proposed action.

13 (c) Waives the right to implement the provisions of chapters 4
14 and 5 of the administrative procedures act of 1969, 1969 PA 306,
15 MCL 24.271 to 24.292.

16 (8) The director or his or her designee may issue a subpoena
17 to do either of the following:

18 (a) Compel the attendance of a witness to testify at a
19 contested case hearing.

20 (b) Produce books, papers, documents, or other items relevant
21 to the investigation or hearing.

22 (9) If a subpoena is disobeyed, the director or his or her
23 designee may petition the circuit court to require the attendance
24 of a witness or the production of books, papers, documents, or
25 other items. The circuit court may issue an order requiring a
26 person to appear and give testimony or produce books, papers,
27 documents, or other items. Failure to obey the order of the circuit
28 court may be punished by the court as a contempt of court.

29 (10) As used in this section:

1 (a) "Substantially violates" means repeated violations **of this**
2 **act** or **repeated instances of** noncompliance ~~of~~ **or a single instance**
3 **of noncompliance with** this act, a rule promulgated under this act,
4 or the terms of a license that jeopardizes the health, safety,
5 care, treatment, maintenance, or supervision of individuals
6 receiving services or, in the case of an applicant, individuals who
7 may receive services.

8 (b) "Willfully violates" means, after receiving a copy of the
9 act, the rules promulgated under the act and, for a license, a copy
10 of the terms of a license, or a previous citation for a violation
11 of this act or a rule promulgated under this act, a licensee or an
12 applicant knew or had reason to know that his or her conduct was a
13 violation of the act, rules promulgated under the act, or the terms
14 of a license.