

SENATE BILL NO. 227

March 22, 2023, Introduced by Senators LAUWERS and HERTEL 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 sections 1 and 2c (MCL 722.111 and 722.112c), section 1 as amended by 2022 PA 208 and section 2c as amended by 2017 PA 257.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

1 (a) "Child care staff member" means an individual who is 16
2 years of age or older to whom 1 or more of the following apply:

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

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

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

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

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

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

28 (ii) Provides care exclusively to ~~persons~~**individuals** who are
29 18 years of age or older and to minors who have been emancipated by

1 court order under section 4(3) of 1968 PA 293, MCL 722.4, at the
2 same location.

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

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

29 (i) The individual is employed by a child caring institution

1 for compensation, including an adult who does not work directly
2 with children.

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

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

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

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

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

26 (h) "Children's therapeutic group home" means a child caring
27 institution receiving ~~not more than 6 minor~~ children who are
28 diagnosed with a developmental disability as defined in section
29 100a of the mental health code, 1974 PA 258, MCL 330.1100a, or a

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

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

6 **(ii) Has a capacity of not more than 6 children.**

7 **(iii) ~~(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.~~**Emergency safety intervention in the form of**
 12 **physical management is allowed but must comply with the mental**
 13 **health code, 1974 PA 258, MCL 330.1001 to 330.2106, and associated**
 14 **administrative rules.**

15 (iv) ~~(iii)~~—Is not a private home.

16 (v) ~~(iv)~~—Is not located on a campus with other licensed
 17 facilities.

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

28 (i) A Sunday school, a vacation bible school, or a religious
 29 instructional class that is conducted by a religious organization

1 where children are attending for not more than 3 hours per day for
2 an indefinite period or for not more than 8 hours per day for a
3 period not to exceed 4 weeks during a 12-month period.

4 (ii) A facility operated by a religious organization where
5 children are in the religious organization's care for not more than
6 3 hours while ~~persons~~**individuals** responsible for the children are
7 attending religious services.

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

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

21 (v) A program that primarily provides therapeutic services to
22 a child.

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

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

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

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

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

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

28 (p) "Increased capacity" means 1 additional child added to the
29 total number of minor children received for care and supervision in

1 a family child care home or 2 additional children added to the
2 total number of minor children received for care and supervision in
3 a group child care home.

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

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

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

25 (iii) "Family child care home" means a private home in which 1
26 but fewer than 7 minor children are received for care and
27 supervision for compensation for periods of less than 24 hours a
28 day, unattended by a parent or legal guardian, except children
29 related to an adult member of the household. Family child care home

1 includes a home in which care is given to an unrelated minor child
2 for more than 4 weeks during a calendar year. A family child care
3 home does not include an individual providing babysitting services
4 for another individual. As used in this subparagraph, "providing
5 babysitting services" means caring for a child on behalf of the
6 child's parent or guardian if the annual compensation for providing
7 those services does not equal or exceed \$600.00 or an amount that
8 would according to the internal revenue code of 1986 obligate the
9 child's parent or guardian to provide a form 1099-MISC to the
10 individual for compensation paid during the calendar year for those
11 services. Family child care home includes a private home with
12 increased capacity.

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

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

25 (s) "Legal entity" means a sole proprietorship, partnership,
26 corporation, limited liability company, or any other entity.

27 (t) "Licensee" means a person, legal entity organized under a
28 law of this state, state or local government, or trust that has
29 been issued a license under this act to operate a child care

1 organization.

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

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

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

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

20 (y) "Qualified residential treatment program" or "QRTP" means
21 a program within a child caring institution to which all of the
22 following apply:

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

26 (ii) The program has registered or licensed nursing and other
27 licensed clinical staff on-site or available 24 hours a day, 7 days
28 a week, who provide care in the scope of their practice as provided
29 in parts 170, 172, 181, 182, 182A, and 185 of the public health

1 code, 1978 PA 368, MCL 333.17001 to 333.17097, 333.17201 to
 2 333.17242, 333.18101 to 333.18117, 333.18201 to 333.18237,
 3 333.18251 to 333.18267, and 333.18501 to 333.18518.

4 (iii) The program integrates families into treatment, including
 5 maintaining sibling connections.

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

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

10 (vi) The program does not include a detention facility,
 11 forestry camp, training school, or other facility operated
 12 primarily for detaining minor children who are determined to be
 13 delinquent.

14 (z) "Regular license" means a license issued to a child care
 15 organization indicating that the organization is in substantial
 16 compliance with all rules promulgated under this act and, if there
 17 is a deficiency, has entered into a corrective action plan.

18 (aa) "Guardian" means the **individual's** guardian. ~~of the~~
 19 ~~person.~~

20 (bb) "Minor child" means any of the following:

21 (i) ~~A person~~ **An individual** less than 18 years of age.

22 (ii) ~~A person~~ **An individual** who is a resident in a child caring
 23 institution, foster family home, or foster family group home, who
 24 is at least 18 but less than 21 years of age, and who meets the
 25 requirements of the young adult voluntary foster care act, 2011 PA
 26 225, MCL 400.641 to 400.671.

27 (iii) ~~A person~~ **An individual** who is a resident in a child caring
 28 institution, children's camp, foster family home, or foster family
 29 group home; who becomes 18 years of age while residing in a child

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

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

14 (B) Three, if the total number of residents is not less than
 15 11 and not more than 14.

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

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

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

22 (cc) "Related" means 1 of the following:

23 (i) Except as provided in subparagraph (ii), a relative as
 24 defined in section 13a of chapter XIIA of the probate code of 1939,
 25 1939 PA 288, MCL 712A.13a.

26 (ii) For licensing by the department related to a child care
 27 center, children's camp, children's campsite, family child care
 28 home, foster family home, foster family group home, or group child
 29 care home, in the relationship by blood, marriage, or adoption, as

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

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

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

16 (ff) "Severe physical injury" means serious physical harm as
17 that term is defined in section 136b of the Michigan penal code,
18 1931 PA 328, MCL 750.136b.

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

27 (2) A family child care home or group child care home is
28 automatically eligible for increased capacity after satisfying all
29 of the following criteria:

1 (a) Holds a current license.

2 (b) Has been licensed to operate for at least 29 consecutive
3 months.

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

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

8 (3) The department may rescind increased capacity due to 1 or
9 more of the following:

10 (a) Corrective action.

11 (b) Licensing action.

12 (c) Determination by the department that increased capacity is
13 not conducive to the welfare of children as that term is defined in
14 section 5m.

15 (4) If the department rescinds increased capacity as outlined
16 in subsection (3), the family child care home or group child care
17 home may be considered for increased capacity not less than 22
18 months after rescinding increased capacity in a form and manner
19 determined by the department.

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

23 Sec. 2c. ~~(1) If a child caring institution contracts with and~~
24 ~~receives payment from a community mental health services program or~~
25 ~~prepaid inpatient health plan for the care, treatment, maintenance,~~
26 ~~and supervision of a minor child in a child caring institution, the~~
27 ~~child caring institution may place a minor child in personal~~
28 ~~restraint or seclusion only as provided in this section and~~
29 ~~sections 2d and 2e but shall not use mechanical restraint or~~

1 ~~chemical restraint must comply with the rules for child caring~~
2 ~~institutions. Emergency safety intervention in the form of physical~~
3 ~~management is allowed but must comply with the mental health code,~~
4 ~~1974 PA 258, MCL 330.1001 to 330.2106, and associated~~
5 ~~administrative rules.~~

6 ~~(2) A child caring institution shall require its staff to have~~
7 ~~ongoing education, training, and demonstrated knowledge of all of~~
8 ~~the following:~~

9 ~~(a) Techniques to identify minor children's behaviors, events,~~
10 ~~and environmental factors that may trigger emergency safety~~
11 ~~situations.~~

12 ~~(b) The use of nonphysical intervention skills, such as de-~~
13 ~~escalation, mediation conflict resolution, active listening, and~~
14 ~~verbal and observational methods to prevent emergency safety~~
15 ~~situations.~~

16 ~~(c) The safe use of personal restraint or seclusion, including~~
17 ~~the ability to recognize and respond to signs of physical distress~~
18 ~~in minor children who are in personal restraint or seclusion or who~~
19 ~~are being placed in personal restraint or seclusion.~~

20 ~~(3) A child caring institution's staff shall be trained in the~~
21 ~~use of personal restraint and seclusion, shall be knowledgeable of~~
22 ~~the risks inherent in the implementation of personal restraint and~~
23 ~~seclusion, and shall demonstrate competency regarding personal~~
24 ~~restraint or seclusion before participating in the implementation~~
25 ~~of personal restraint or seclusion. A child caring institution's~~
26 ~~staff shall demonstrate their competencies in these areas on a~~
27 ~~semiannual basis. The department shall review and determine the~~
28 ~~acceptability of the child caring institutions' staff education,~~
29 ~~training, knowledge, and competency requirements required by this~~

- 1 ~~subsection and the training and knowledge required of a licensed~~
- 2 ~~practitioner in the use of personal restraint and seclusion.~~