

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4188

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,"

(MCL 722.111 to 722.128) by adding sections 14e and 14f.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 14E. (1) THE LEGISLATURE FINDS AND DECLARES ALL OF THE
2 FOLLOWING:

3 (A) WHEN IT IS NECESSARY FOR A CHILD IN THIS STATE TO BE
4 PLACED WITH AN ADOPTIVE OR FOSTER FAMILY, PLACING THE CHILD IN A
5 SAFE, LOVING, AND SUPPORTIVE HOME IS A PARAMOUNT GOAL OF THIS
6 STATE.

7 (B) AS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED

1 THIS SECTION, THERE ARE 105 LICENSED ADOPTION AND FOSTER CARE
2 AGENCIES IN THIS STATE THAT ARE AUTHORIZED TO PARTICIPATE IN AND
3 ASSIST FAMILIES WITH ADOPTION AND FOSTER PARENT PLACEMENTS OF
4 CHILDREN.

5 (C) HAVING AS MANY POSSIBLE QUALIFIED ADOPTION AND FOSTER
6 PARENT AGENCIES IN THIS STATE IS A SUBSTANTIAL BENEFIT TO THE
7 CHILDREN OF THIS STATE WHO ARE IN NEED OF THESE PLACEMENT SERVICES
8 AND TO ALL OF THE CITIZENS OF THIS STATE BECAUSE THE MORE QUALIFIED
9 AGENCIES TAKING PART IN THIS PROCESS, THE GREATER THE LIKELIHOOD
10 THAT PERMANENT CHILD PLACEMENT CAN BE ACHIEVED.

11 (D) AS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
12 THIS SECTION, THE ADOPTION AND FOSTER CARE LICENSEES OF THIS STATE
13 REPRESENT A BROAD SPECTRUM OF ORGANIZATIONS AND GROUPS, SOME OF
14 WHICH ARE FAITH BASED AND SOME OF WHICH ARE NOT FAITH BASED.

15 (E) PRIVATE CHILD PLACING AGENCIES, INCLUDING FAITH-BASED
16 CHILD PLACING AGENCIES, HAVE THE RIGHT TO FREE EXERCISE OF RELIGION
17 UNDER BOTH THE STATE AND FEDERAL CONSTITUTIONS. UNDER WELL-SETTLED
18 PRINCIPLES OF CONSTITUTIONAL LAW, THIS RIGHT INCLUDES THE FREEDOM
19 TO ABSTAIN FROM CONDUCT THAT CONFLICTS WITH AN AGENCY'S SINCERELY
20 HELD RELIGIOUS BELIEFS.

21 (F) FAITH-BASED AND NON-FAITH-BASED CHILD PLACING AGENCIES
22 HAVE A LONG AND DISTINGUISHED HISTORY OF PROVIDING ADOPTION AND
23 FOSTER CARE SERVICES IN THIS STATE.

24 (G) CHILDREN AND FAMILIES BENEFIT GREATLY FROM THE ADOPTION
25 AND FOSTER CARE SERVICES PROVIDED BY FAITH-BASED AND NON-FAITH-
26 BASED CHILD PLACING AGENCIES. ENSURING THAT FAITH-BASED CHILD
27 PLACING AGENCIES CAN CONTINUE TO PROVIDE ADOPTION AND FOSTER CARE

1 SERVICES WILL BENEFIT THE CHILDREN AND FAMILIES WHO RECEIVE
2 PUBLICLY FUNDED SERVICES.

3 (H) UNDER WELL-ESTABLISHED DEPARTMENT CONTRACTING PRACTICES, A
4 PRIVATE CHILD PLACING AGENCY DOES NOT RECEIVE PUBLIC FUNDING WITH
5 RESPECT TO A PARTICULAR CHILD OR PARTICULAR INDIVIDUALS REFERRED BY
6 THE DEPARTMENT UNLESS THAT AGENCY AFFIRMATIVELY ACCEPTS THE
7 REFERRAL.

8 (I) UNDER WELL-SETTLED PRINCIPLES OF CONSTITUTIONAL LAW
9 DISTINGUISHING "PRIVATE ACTION" FROM "STATE ACTION", A PRIVATE
10 CHILD PLACING AGENCY DOES NOT ENGAGE IN STATE ACTION WHEN THE
11 AGENCY PERFORMS PRIVATE-ADOPTION OR DIRECT-PLACEMENT SERVICES.
12 SIMILARLY, A PRIVATE CHILD PLACING AGENCY DOES NOT ENGAGE IN STATE
13 ACTION RELATIVE TO A REFERRAL FOR SERVICES UNDER A CONTRACT WITH
14 THE DEPARTMENT BEFORE THE AGENCY ACCEPTS THE REFERRAL.

15 (2) TO THE FULLEST EXTENT PERMITTED BY STATE AND FEDERAL LAW,
16 A CHILD PLACING AGENCY SHALL NOT BE REQUIRED TO PROVIDE ANY
17 SERVICES IF THOSE SERVICES CONFLICT WITH, OR PROVIDE ANY SERVICES
18 UNDER CIRCUMSTANCES THAT CONFLICT WITH, THE CHILD PLACING AGENCY'S
19 SINCERELY HELD RELIGIOUS BELIEFS CONTAINED IN A WRITTEN POLICY,
20 STATEMENT OF FAITH, OR OTHER DOCUMENT ADHERED TO BY THE CHILD
21 PLACING AGENCY.

22 (3) TO THE FULLEST EXTENT PERMITTED BY STATE AND FEDERAL LAW,
23 THE STATE OR A LOCAL UNIT OF GOVERNMENT SHALL NOT TAKE AN ADVERSE
24 ACTION AGAINST A CHILD PLACING AGENCY ON THE BASIS THAT THE CHILD
25 PLACING AGENCY HAS DECLINED OR WILL DECLINE TO PROVIDE ANY SERVICES
26 THAT CONFLICT WITH, OR PROVIDE ANY SERVICES UNDER CIRCUMSTANCES
27 THAT CONFLICT WITH, THE CHILD PLACING AGENCY'S SINCERELY HELD

1 RELIGIOUS BELIEFS CONTAINED IN A WRITTEN POLICY, STATEMENT OF
2 FAITH, OR OTHER DOCUMENT ADHERED TO BY THE CHILD PLACING AGENCY.

3 (4) IF A CHILD PLACING AGENCY DECLINES TO PROVIDE ANY SERVICES
4 UNDER SUBSECTION (2), THE CHILD PLACING AGENCY SHALL PROVIDE IN
5 WRITING INFORMATION ADVISING THE APPLICANT OF THE DEPARTMENT'S
6 WEBSITE, THE MICHIGAN ADOPTION RESOURCE EXCHANGE OR SIMILAR
7 SUBSEQUENTLY UTILIZED WEBSITES, AND A LIST OF ADOPTION OR FOSTER
8 CARE SERVICE PROVIDERS WITH CONTACT INFORMATION AND SHALL DO AT
9 LEAST 1 OF THE FOLLOWING:

10 (A) PROMPTLY REFER THE APPLICANT TO ANOTHER CHILD PLACING
11 AGENCY THAT IS WILLING AND ABLE TO PROVIDE THE DECLINED SERVICES.

12 (B) PROMPTLY REFER THE APPLICANT TO THE WEBPAGE ON THE
13 DEPARTMENT'S WEBSITE THAT IDENTIFIES OTHER LICENSED CHILD PLACEMENT
14 AGENCIES.

15 (5) A CHILD PLACING AGENCY MAY ASSERT A DEFENSE IN AN
16 ADMINISTRATIVE OR JUDICIAL PROCEEDING BASED ON THIS SECTION.

17 (6) IF A CHILD PLACING AGENCY DECLINES TO PROVIDE ANY SERVICES
18 UNDER SUBSECTION (2), THE CHILD PLACING AGENCY'S DECISION DOES NOT
19 LIMIT THE ABILITY OF ANOTHER CHILD PLACING AGENCY TO PROVIDE THOSE
20 SERVICES.

21 (7) FOR THE PURPOSE OF THIS SECTION:

22 (A) "ADVERSE ACTION" INCLUDES, BUT IS NOT LIMITED TO, DENYING
23 A CHILD PLACING AGENCY'S APPLICATION FOR FUNDING, REFUSING TO RENEW
24 THE CHILD PLACING AGENCY'S FUNDING, CANCELING THE CHILD PLACING
25 AGENCY'S FUNDING, DECLINING TO ENTER INTO A CONTRACT WITH THE CHILD
26 PLACING AGENCY, REFUSING TO RENEW A CONTRACT WITH THE CHILD PLACING
27 AGENCY, CANCELING A CONTRACT WITH THE CHILD PLACING AGENCY,

1 DECLINING TO ISSUE A LICENSE TO THE CHILD PLACING AGENCY, REFUSING
2 TO RENEW THE CHILD PLACING AGENCY'S LICENSE, CANCELING THE CHILD
3 PLACING AGENCY'S LICENSE, TAKING AN ENFORCEMENT ACTION AGAINST A
4 CHILD PLACING AGENCY, DISCRIMINATING AGAINST THE CHILD PLACING
5 AGENCY IN REGARD TO PARTICIPATION IN A GOVERNMENT PROGRAM, AND
6 TAKING ANY ACTION THAT MATERIALLY ALTERS THE TERMS OR CONDITIONS OF
7 THE CHILD PLACING AGENCY'S FUNDING, CONTRACT, OR LICENSE.

8 (B) "SERVICES" INCLUDES ANY SERVICE THAT A CHILD PLACING
9 AGENCY PROVIDES, EXCEPT FOSTER CARE CASE MANAGEMENT AND ADOPTION
10 SERVICES PROVIDED UNDER A CONTRACT WITH THE DEPARTMENT.

11 SEC. 14F. (1) IF THE DEPARTMENT MAKES A REFERRAL TO A CHILD
12 PLACING AGENCY FOR FOSTER CARE CASE MANAGEMENT OR ADOPTION SERVICES
13 UNDER A CONTRACT WITH THE CHILD PLACING AGENCY, THE CHILD PLACING
14 AGENCY MAY DECIDE NOT TO ACCEPT THE REFERRAL IF THE SERVICES WOULD
15 CONFLICT WITH THE CHILD PLACING AGENCY'S SINCERELY HELD RELIGIOUS
16 BELIEFS CONTAINED IN A WRITTEN POLICY, STATEMENT OF FAITH, OR OTHER
17 DOCUMENT ADHERED TO BY THE CHILD PLACING AGENCY. BEFORE ACCEPTING A
18 REFERRAL FOR SERVICES UNDER A CONTRACT WITH THE DEPARTMENT, THE
19 CHILD PLACING AGENCY HAS THE SOLE DISCRETION TO DECIDE WHETHER TO
20 ENGAGE IN ACTIVITIES AND PERFORM SERVICES RELATED TO THAT REFERRAL.
21 THE DEPARTMENT SHALL NOT CONTROL THE CHILD PLACING AGENCY'S
22 DECISION WHETHER TO ENGAGE IN THOSE ACTIVITIES OR PERFORM THOSE
23 SERVICES. FOR PURPOSES OF THIS SUBSECTION, A CHILD PLACING AGENCY
24 ACCEPTS A REFERRAL BY DOING EITHER OF THE FOLLOWING:

25 (A) SUBMITTING TO THE DEPARTMENT A WRITTEN AGREEMENT TO
26 PERFORM THE SERVICES RELATED TO THE PARTICULAR CHILD OR PARTICULAR
27 INDIVIDUALS THAT THE DEPARTMENT REFERRED TO THE CHILD PLACING

1 AGENCY.

2 (B) ENGAGING IN ANY OTHER ACTIVITY THAT RESULTS IN THE
3 DEPARTMENT BEING OBLIGATED TO PAY THE CHILD PLACING AGENCY FOR THE
4 SERVICES RELATED TO THE PARTICULAR CHILD OR PARTICULAR INDIVIDUALS
5 THAT THE DEPARTMENT REFERRED TO THE CHILD PLACING AGENCY.

6 (2) THE STATE OR A LOCAL UNIT OF GOVERNMENT SHALL NOT TAKE AN
7 ADVERSE ACTION AGAINST A CHILD PLACING AGENCY ON THE BASIS THAT THE
8 CHILD PLACING AGENCY HAS DECIDED TO ACCEPT OR NOT ACCEPT A REFERRAL
9 UNDER SUBSECTION (1).

10 (3) IF A CHILD PLACING AGENCY DECIDES NOT TO ACCEPT A REFERRAL
11 UNDER SUBSECTION (1), THAT OCCURRENCE SHALL NOT BE A FACTOR IN
12 DETERMINING WHETHER A PLACEMENT IN CONNECTION WITH THE REFERRAL IS
13 IN THE BEST INTEREST OF THE CHILD.

14 (4) A CHILD PLACING AGENCY MAY ASSERT A DEFENSE IN AN
15 ADMINISTRATIVE OR JUDICIAL PROCEEDING BASED ON THIS SECTION.

16 (5) FOR THE PURPOSE OF THIS SECTION, "ADVERSE ACTION"
17 INCLUDES, BUT IS NOT LIMITED TO, DENYING A CHILD PLACING AGENCY'S
18 APPLICATION FOR FUNDING, REFUSING TO RENEW THE CHILD PLACING
19 AGENCY'S FUNDING, CANCELING THE CHILD PLACING AGENCY'S FUNDING,
20 DECLINING TO ENTER INTO A CONTRACT WITH THE CHILD PLACING AGENCY,
21 REFUSING TO RENEW A CONTRACT WITH THE CHILD PLACING AGENCY,
22 CANCELING A CONTRACT WITH THE CHILD PLACING AGENCY, DECLINING TO
23 ISSUE A LICENSE TO THE CHILD PLACING AGENCY, REFUSING TO RENEW THE
24 CHILD PLACING AGENCY'S LICENSE, CANCELING THE CHILD PLACING
25 AGENCY'S LICENSE, TAKING AN ENFORCEMENT ACTION AGAINST A CHILD
26 PLACING AGENCY, DISCRIMINATING AGAINST THE CHILD PLACING AGENCY IN
27 REGARD TO PARTICIPATION IN A GOVERNMENT PROGRAM, AND TAKING ANY

1 ACTION THAT MATERIALLY ALTERS THE TERMS OR CONDITIONS OF THE CHILD
2 PLACING AGENCY'S FUNDING, CONTRACT, OR LICENSE.

3 Enacting section 1. It is the intent of the legislature to
4 protect child placing agencies' free exercise of religion protected
5 by the United States constitution and the state constitution of
6 1963. This amendatory act is not intended to limit or deny any
7 person's right to adopt a child or participate in foster care.

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

10 Enacting section 3. This amendatory act does not take effect
11 unless all of the following bills of the 98th Legislature are
12 enacted into law:

13 (a) House Bill No. 4189.

14 (b) House Bill No. 4190.