

# SENATE BILL No. 497

September 16, 2015, Introduced by Senator KNEZEK and referred to the Committee on Families, Seniors and Human Services.

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 14e and 14f (MCL 722.124e and 722.124f), as added by 2015 PA 53.

**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, SEPTEMBER 9, 2015,~~ there are 105 licensed adoption  
2 and foster care agencies in this state that are authorized to  
3 participate in and assist families with adoption and foster parent  
4 placements of 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, SEPTEMBER 9, 2015,~~ the adoption and foster care  
13 licensees of this state represent a broad spectrum of organizations  
14 and groups, some of which are faith based and some of which are not  
15 faith based.

16 (e) Private child placing agencies, including faith-based  
17 child placing agencies, have the right to free exercise of religion  
18 under both the state and federal constitutions. Under well-settled  
19 principles of constitutional law, this right includes the freedom  
20 to abstain from conduct that conflicts with ~~an~~ **A CHILD PLACING**  
21 agency's sincerely held religious beliefs.

22 (f) Faith-based and non-faith-based child placing agencies  
23 have a long and distinguished history of providing adoption and  
24 foster care services in this state.

25 (g) Children and families benefit greatly from the adoption  
26 and foster care services provided by faith-based and non-faith-  
27 based child placing agencies. Ensuring that faith-based child

1 placing agencies can continue to provide adoption and foster care  
2 services will benefit the children and families who receive  
3 publicly funded services.

4 (h) Under well-established department contracting practices, a  
5 private child placing agency does not receive public funding with  
6 respect to a particular child or particular individuals referred by  
7 the department unless that **PRIVATE CHILD PLACING** agency  
8 affirmatively accepts the referral.

9 (i) Under well-settled principles of constitutional law  
10 distinguishing "private action" from "state action", a private  
11 child placing agency does not engage in state action when the  
12 agency performs private-adoption or direct-placement services  
13 **UNLESS THE PRIVATE CHILD PLACING AGENCY ACCEPTS PUBLIC FUNDS FROM**  
14 **THE STATE**. Similarly, a private child placing agency does not  
15 engage in state action relative to a referral for services under a  
16 contract with the department before the agency accepts the  
17 referral.

18 (2) ~~To~~**EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (7), TO** the  
19 fullest extent permitted by state and federal law, a child placing  
20 agency ~~shall~~**IS** not ~~be~~ required to provide any services if those  
21 services conflict with, or provide any services under circumstances  
22 that conflict with, the child placing agency's sincerely held  
23 religious beliefs contained in a written policy, statement of  
24 faith, or other document adhered to by the child placing agency.

25 (3) ~~To~~**EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (7), TO** the  
26 fullest extent permitted by state and federal law, the state or a  
27 local unit of government shall not take an adverse action against a

1 child placing agency on the basis that the child placing agency has  
2 declined or will decline to provide any services that conflict  
3 with, or provide any services under circumstances that conflict  
4 with, the child placing agency's sincerely held religious beliefs  
5 contained in a written policy, statement of faith, or other  
6 document adhered to by the child placing agency.

7 (4) If a child placing agency declines to provide any services  
8 under subsection (2), the child placing agency shall provide in  
9 writing information advising the applicant of the department's  
10 website, the Michigan ~~adoption resource exchange~~ **ADOPTION RESOURCE**  
11 **EXCHANGE** or similar subsequently utilized websites, and a list of  
12 adoption or foster care service providers with contact information  
13 and shall do at least 1 of the following:

14 (a) Promptly refer the applicant to another child placing  
15 agency that is willing and able to provide the declined services.

16 (b) Promptly refer the applicant to the webpage on the  
17 department's website that identifies other licensed child ~~placement~~  
18 **PLACING** agencies.

19 (5) A child placing agency may assert a defense in an  
20 administrative or judicial proceeding based on this section.

21 (6) If a child placing agency declines to provide any services  
22 under subsection (2), the child placing agency's decision does not  
23 limit the ability of another child placing agency to provide those  
24 services.

25 (7) **IN ORDER TO RECEIVE PUBLIC FUNDS FROM THIS STATE, A CHILD**  
26 **PLACING AGENCY THAT HAS A CONTRACT WITH THIS STATE SHALL PROVIDE**  
27 **SERVICES TO ALL APPLICANTS THAT OTHERWISE MEET THE REQUIREMENTS FOR**

1 **THOSE SERVICES.**

2 (8) ~~(7)~~—For the purpose of this section:

3 (a) "Adverse action" includes, but is not limited to, ~~denying~~  
4 ~~a child placing agency's application for funding, refusing to renew~~  
5 ~~the child placing agency's funding, canceling the child placing~~  
6 ~~agency's funding, declining to enter into a contract with the child~~  
7 ~~placing agency, refusing to renew a contract with the child placing~~  
8 ~~agency, canceling a contract with the child placing agency,~~  
9 declining to issue a license to the child placing agency, refusing  
10 to renew the child placing agency's license, canceling the child  
11 placing agency's license, taking an enforcement action against a  
12 childplacing agency, discriminating against the child placing  
13 agency in regard to participation in a government program, and  
14 taking any action that materially alters the terms or conditions of  
15 the child placing agency's ~~funding, contract, or license.~~

16 (b) "Services" includes any service that a child placing  
17 agency provides, except foster care case management and adoption  
18 services provided under a contract with the department.

19 Sec. 14f. (1) ~~IF~~ **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION**  
20 **(5), IF** the department makes a referral to a child placing agency  
21 for foster care case management or adoption services under a  
22 contract with the child placing agency, the child placing agency  
23 may decide not to accept the referral if the services would  
24 conflict with the child placing agency's sincerely held religious  
25 beliefs contained in a written policy, statement of faith, or other  
26 document adhered to by the child placing agency. Before accepting a  
27 referral for services under a contract with the department, the

1 child placing agency has the sole discretion to decide whether to  
2 engage in activities and perform services related to that referral.  
3 The department shall not control the child placing agency's  
4 decision whether to engage in those activities or perform those  
5 services. For purposes of this subsection, a child placing agency  
6 accepts a referral by doing either of the following:

7 (a) Submitting to the department a written agreement to  
8 perform the services related to the particular child or particular  
9 individuals that the department referred to the child placing  
10 agency.

11 (b) Engaging in any other activity that results in the  
12 department being obligated to pay the child placing agency for the  
13 services related to the particular child or particular individuals  
14 that the department referred to the child placing agency.

15 (2) ~~The~~ **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5), THE**  
16 state or a local unit of government shall not take an adverse  
17 action against a child placing agency on the basis that the child  
18 placing agency has decided to accept or not accept a referral under  
19 subsection (1).

20 (3) If a child placing agency decides not to accept a referral  
21 under subsection (1), that occurrence ~~shall~~ **IS** not ~~be~~ a factor in  
22 determining whether a placement in connection with the referral is  
23 in the best interest of the child.

24 (4) A child placing agency may assert a defense in an  
25 administrative or judicial proceeding based on this section.

26 **(5) IN ORDER TO RECEIVE FUNDS FROM THIS STATE, A CHILD PLACING**  
27 **AGENCY THAT HAS A CONTRACT WITH THIS STATE SHALL PROVIDE FOSTER**

1 CARE MANAGEMENT OR ADOPTION SERVICES TO ALL APPLICANTS THAT  
2 OTHERWISE MEET THE REQUIREMENTS FOR THOSE SERVICES.

3 (6) ~~(5)~~—For the purpose of this section, "adverse action"  
4 includes, but is not limited to, ~~denying a child placing agency's~~  
5 ~~application for funding, refusing to renew the child placing~~  
6 ~~agency's funding, canceling the child placing agency's funding,~~  
7 ~~declining to enter into a contract with the child placing agency,~~  
8 ~~refusing to renew a contract with the child placing agency,~~  
9 ~~canceling a contract with the child placing agency, declining to~~  
10 issue a license to the child placing agency, refusing to renew the  
11 child placing agency's license, canceling the child placing  
12 agency's license, taking an enforcement action against a child  
13 placing agency, discriminating against the child placing agency in  
14 regard to participation in a government program, and taking any  
15 action that materially alters the terms or conditions of the child  
16 placing agency's ~~funding, contract, or license.~~

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