

HOUSE BILL NO. 6490

November 09, 2022, Introduced by Rep. Steven Johnson 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 section 5n (MCL 722.115n), as added by 2017 PA 256.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 5n. (1) Except as otherwise provided in subsection (13),
- 2 when a person, partnership, firm, corporation, association,

1 governmental organization, or nongovernmental organization applies
2 for or applies to renew a license to operate a child care center,
3 group child care home, or family child care home under section 5m
4 and before a group child care home or family child care home allows
5 an individual to be a member of the household, or, **except as**
6 **provided in subsection (17)**, a child care center, group child care
7 home, or family child care home allows an individual to become a
8 child care staff member, the department ~~shall~~**must** do all of the
9 following:

10 (a) Review its database of individuals with previous
11 disciplinary action within a child care center, group child care
12 home, or family child care home or an adult foster care facility.

13 (b) Conduct a search of the individual through the national
14 sex offender registry.

15 (c) Request a search of the individual through all state
16 criminal registries or repositories for any states of residence in
17 the past 5 years.

18 (d) Request that the department of state police perform a
19 criminal history check on the individual, child care staff member,
20 or adult member of the household.

21 (2) If the individual, child care staff member, or adult
22 member of the household has resided out of the United States within
23 the preceding 5 years, equivalent clearances of those described in
24 subsection (1)(b) and (d) and section 5q from each country must be
25 provided, if available. If the country does not have the equivalent
26 clearance, the individual must sign a self-certifying statement
27 that he or she is not ineligible to receive a license, to be an
28 adult member of the household, or to be a child care staff member
29 as prescribed by sections 5q and 5r. An individual who provides or

1 is determined to have provided false information or knowingly omits
2 information in the self-certification statement is ineligible for
3 that application.

4 (3) ~~Each~~ **Except for an individual described in subsection**
5 **(17), each** individual listed in subsection (1) ~~shall~~ **must** give
6 written consent at the time of the license application and before a
7 group child care home or family child care home allows an
8 individual to be a member of the household, or before becoming a
9 child care staff member to allow the department of state police to
10 conduct the criminal history check required under subsection (1).
11 The department shall require the individual to submit his or her
12 fingerprints to the department of state police and the Federal
13 Bureau of Investigation for the criminal history check as required
14 in subsection (1).

15 (4) The department ~~shall~~ **must** request a criminal history check
16 required under this section on a form and in the manner prescribed
17 by the department of state police.

18 (5) Within a reasonable time after receiving a complete
19 request for a criminal history check on a person under this
20 section, the department of state police ~~shall~~ **must** conduct the
21 criminal history check and provide a report of the results to the
22 department. The report ~~shall~~ **must** contain any criminal history
23 record information on the person maintained by the department of
24 state police and the Federal Bureau of Investigation.

25 (6) The department of state police may charge the department a
26 fee for a criminal history check required under this section that
27 does not exceed the actual and reasonable cost of conducting the
28 check. The department may pass along to the individual
29 fingerprinted the actual cost or fee charged by the department of

1 state police, the Federal Bureau of Investigation, or a vendor
2 approved by the department of state police for performing a
3 criminal history check required under this section.

4 (7) The department ~~shall~~**must** provide whether the individual
5 is eligible or ineligible as provided by sections 5q and 5r within
6 45 days after the date on which the request was submitted.

7 (8) The individual may serve as a child care staff member
8 pending the results of the record and database checks required by
9 this section and section 5q if the individual is supervised at all
10 times.

11 (9) Within 45 days after the date on which the request was
12 submitted, the department ~~shall~~**must** provide a statement to the
13 child care center, group child care home, or family child care home
14 that indicates whether the individual is eligible or ineligible to
15 be, a licensee, an adult member of the household, or a child care
16 staff member as provided under sections 5q and 5r without revealing
17 any disqualifying crime or other related information regarding the
18 individual.

19 (10) If the individual is ineligible due to the records or
20 database checks required under this section ~~and~~**or** section 5q, the
21 department shall provide information related to each disqualifying
22 item in a report to the individual who has been determined
23 ineligible.

24 (11) An individual who has been determined to be ineligible as
25 provided under sections 5q ~~and~~**or** 5r may request a redetermination
26 by the department if he or she believes that the basis for the
27 ineligible determination is inaccurate. The individual shall file
28 the request for redetermination with the department within 30
29 calendar days after receiving the written notice that he or she was

1 determined to be ineligible. If an individual has been determined
2 to be ineligible based ~~upon~~**on** a conviction that has been expunged
3 or set aside or a central registry case that has been expunged, the
4 individual ~~shall~~**must** provide the supporting court, law
5 enforcement, or department of health and human services, or
6 equivalent department from another state, documents along with the
7 request for redetermination. The individual shall not be determined
8 to be ineligible based ~~upon~~**on** a conviction that has been set aside
9 or expunged or a central registry case that has been expunged. The
10 department ~~shall~~**must** review the request and issue a written
11 decision within 30 business days after receiving the request for
12 redetermination. The decision of the department is final.

13 (12) Each ineligible individual shall be given instructions
14 about how to complete the request for redetermination process as
15 provided in subsection (11).

16 (13) Except as otherwise provided in this subsection, not
17 later than September 30, 2017, every child care center licensee,
18 group child care home licensee, family child care home licensee,
19 child care staff member, and adult member of the household shall
20 submit his or her fingerprints to the department of state police
21 and the Federal Bureau of Investigation in order to carry out the
22 records and database checks required under this section and section
23 5q. If the department of education obtains an extension on the
24 implementation of this program from the federal government, the
25 provisions of this section may be implemented no later than
26 September 30, 2018.

27 (14) If a licensee, licensee designee, or program director of
28 a child care center, group child care home, or family child care
29 home applying for a new license or to renew a license to operate a

1 child care center, group child care home, or family child care home
2 has previously undergone a criminal history check required under
3 ~~subsections~~ **subsection** (1) ~~and-or~~ (13) and has remained
4 continuously licensed after the criminal history check has been
5 performed, that licensee, licensee designee, or program director of
6 a child care center, group child care home, or family child care
7 home is not required to submit to another criminal history check
8 upon renewal of, or application for, the license obtained under
9 this act.

10 (15) Upon consent of an applicant as required in subsection
11 (3) and upon request from a child care center, group child care
12 home, or family child care home, the department shall review the
13 information received from the criminal history check, if any, and
14 notify the requesting child care center, group child care home, or
15 family child care home of the information in the manner prescribed
16 in subsection (7). Until the Federal Bureau of Investigation
17 implements an automatic notification system as outlined in section
18 5k, a child care center, group child care home, or family child
19 care home may rely on the criminal history record information
20 provided by the department under this subsection and a new request
21 as provided under this section is not necessary if all of the
22 following requirements are met:

23 (a) The criminal history check was conducted during the
24 immediately preceding 5-year period.

25 (b) The applicant has been continuously employed by a child
26 care center, group child care home, or family child care home since
27 the criminal history check was conducted in compliance with this
28 section.

29 (c) The applicant can provide evidence acceptable to the

1 department that he or she has been a resident of this state for the
2 immediately preceding 5-year period.

3 (16) The checks and clearances required in subsection (1)(a)
4 to (c) and section 5q ~~shall~~**must** be updated at least every 5 years
5 if the individual has been continuously licensed, has continuously
6 been serving as a child care staff member, or has continuously been
7 an adult member of the household.

8 (17) If an individual applying to be a child care staff member
9 at a child care center established and operated by a school has
10 undergone a criminal history check and criminal record check under
11 sections 1230 and 1230a of the revised school code, 1976 PA 451,
12 MCL 380.1230 and 380.1230a, in the past 2 years, the department
13 shall not request a criminal history check on that individual under
14 subsection (1)(d). The department must perform the review and
15 searches of the individual required under subsection (1)(a) to (c).
16 This subsection only applies if the individual has remained
17 employed with any school with no separation from service.

18 (18) As used in this section, "school" means a public school
19 or a nonpublic school as those terms are defined in section 5 of
20 the revised school code, 1976 PA 451, MCL 380.5.