

Act No. 107
Public Acts of 2022
Approved by the Governor
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**STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 2022**

Introduced by Reps. VanWoerkom, Breen, O'Malley, Markkanen, Roth, Puri, Ellison, Wakeman, Aiyash, Hope, Koleszar, Garza, Steckloff, Tyrone Carter, Manoogian, Tate, Calley, Anthony, Bellino, Stone, Witwer, Coleman, Brenda Carter, Hammoud, Neeley, Kuppa, Young, Yaroch and Cynthia Johnson

ENROLLED HOUSE BILL No. 5042

AN ACT 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, 5c, and 5m (MCL 722.111, 722.115c, and 722.115m), section 1 as amended by 2022 PA 70, section 5c as amended by 2017 PA 256, and section 5m as added by 2017 PA 258.

The People of the State of Michigan enact:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) “Children’s campsite” means the outdoor setting where a children’s residential or day camp is located.

(h) “Children’s therapeutic group home” means a child caring institution receiving not more than 6 minor children who are diagnosed with a developmental disability as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, or a serious emotional disturbance as defined in section 100d of the mental health code, 1974 PA 258, MCL 330.1100d, and that meets all of the following requirements:

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

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

(iii) Is not a private home.

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

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

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

(ii) A facility operated by a religious organization where children are in the religious organization’s care for not more than 3 hours while persons responsible for the children are attending religious services.

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

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

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

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

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

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

(m) “Department” means the department of health and human services and the department of licensing and regulatory affairs or a successor agency or department responsible for licensure under this act. The department of licensing and regulatory affairs is responsible for licensing and regulatory matters for child care centers, group child care homes, family child care homes, children’s camps, and children’s campsites. The department of health and human services is responsible for licensing and regulatory matters for child caring institutions, child placing agencies, children’s therapeutic group homes, foster family homes, and foster family group homes.

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

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

(p) “Increased capacity” means 1 additional child added to the total number of minor children received for care and supervision in a family child care home or 2 additional children added to the total number of minor children received for care and supervision in a group child care home.

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

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

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

(iii) “Family child care home” means a private home in which 1 but fewer than 7 minor children are received for care and supervision for compensation for periods of less than 24 hours a day, unattended by a parent or legal guardian, except children related to an adult member of the household by blood, marriage, or adoption. Family child care home includes a home in which care is given to an unrelated minor child for more than 4 weeks during a calendar year. A family child care home does not include an individual providing babysitting services for another individual. As used in this subparagraph, “providing babysitting services” means caring for a child on behalf of the child’s parent or guardian if the annual compensation for providing those services does not equal or exceed \$600.00 or an amount that would according to the internal revenue code of 1986 obligate the child’s parent or guardian to provide a form 1099-MISC to the individual for compensation paid during the calendar year for those services. Family child care home includes a private home with increased capacity.

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

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

(s) “Legal entity” means a sole proprietorship, partnership, corporation, limited liability company, or any other entity.

(t) “Licensee” means a person, legal entity organized under a law of this state, state or local government, or trust that has been issued a license under this act to operate a child care organization.

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

(v) “Member of the household” means any individual who resides in a family child care home, group child care home, foster family home, or foster family group home on an ongoing basis, or who has a recurrent presence in the home, including, but not limited to, overnight stays. For foster family homes and foster family group homes, a member of the household does not include a foster child. For group child care homes and family child care homes, a member of the household does not include a child to whom child care is being provided.

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

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

(y) “Qualified residential treatment program” or “QRTP” means a program within a child caring institution to which all of the following apply:

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

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

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

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

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

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

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

(aa) “Guardian” means the guardian of the person.

(bb) “Minor child” means any of the following:

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

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

(iii) A person who is a resident in a child caring institution, children’s camp, foster family home, or foster family group home; who becomes 18 years of age while residing in a child caring institution, children’s camp, foster family home, or foster family group home; and who continues residing in a child caring institution, children’s camp, foster family home, or foster family 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 XIII 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).

(cc) "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.

(dd) "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.

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

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

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

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

(a) Holds a current license.

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

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

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

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

(a) Corrective action.

(b) Licensing action.

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

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

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

Sec. 5c. (1) Except as provided in subsection (6), when a person or an applicant that is a legal entity, trust, or local or state governmental organization applies for a license for a child care organization under section 5, the department shall request the department of state police to perform a criminal history check on the person, licensee designee, chief administrator, and program director of the child care organization, as applicable.

(2) Each person applying for a license to operate a child care organization must give written consent at the time of the license application for the department of state police to conduct the criminal history check required under this section. The department shall require the person to submit his or her fingerprints to the department of state police and the Federal Bureau of Investigation for the criminal history check described in subsection (1).

(3) The department shall request a criminal history check required under this section on a form and in the manner prescribed by the department of state police.

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

(5) The department of state police may charge the department a fee for a criminal history check required under this section that does not exceed the actual and reasonable cost of conducting the check. The department may

pass along to the licensee or applicant the actual cost or fee charged by the department of state police, the Federal Bureau of Investigation, or a vendor approved by the department of state police for performing a criminal history check required under this section.

(6) If a person, licensee designee, chief administrator, or program director of a child care organization applying to renew a license to operate a child care organization has previously undergone a criminal history check required under subsection (1) and has remained continuously licensed after the criminal history check has been performed and section 5k continues to apply, that person, licensee designee, chief administrator, or program director of a child care organization is not required to submit to another criminal history check upon renewal of the license obtained under section 5.

Sec. 5m. (1) This section and sections 5n to 5s apply only to a child care center, group child care home, or family child care home.

(2) A person, local or state governmental organization, trust, or legal entity shall not establish or maintain a child care center, group child care home, or family child care home unless licensed by the department. Application for a child care center, group child care home, or family child care home license must be made on forms provided, and in the manner prescribed, by the department, including the fees required under subsection (11). Before issuing or renewing a child care center, group child care home, or family child care home license, the department must investigate the applicant's activities and proposed standards of care and must make an on-site visit of the proposed or established child care center, group child care home, or family child care home. Except as otherwise provided in this subsection and sections 5q and 5r, if the department is satisfied as to the need for a child care center, group child care home, or family child care home, as to its financial stability, and that the service, facility, applicant, licensee, child care staff member, or member of the household is conducive to the welfare of the children, the department shall issue or renew the child care center, group child care home, or family child care home license. If the department determines that a service, facility, applicant, licensee, child care staff member, or member of the household is not conducive to the welfare of the children, the department shall deny that application or revoke that licensee's license according to section 11.

(3) An applicant for a child care center license must disclose the ownership interest in the child care center as follows:

(a) If the owner is a trust, the applicant must disclose the names and addresses of all the trustees.

(b) If the owner is a privately held corporation, the applicant must disclose the names and addresses of all shareholders, officers, and directors.

(c) If the owner is a publicly held corporation, the applicant must disclose the names and addresses of the officers and directors and all shareholders holding a direct or indirect interest of greater than 5%.

(d) If the owner is a partnership or limited liability partnership, the applicant must disclose the names and addresses of all the partners.

(e) If the owner is a limited partnership or limited liability limited partnership, the applicant must disclose the names and addresses of all partners, both general and limited.

(f) If the owner is a limited liability company, the applicant must disclose the names and addresses of all members and managers.

(g) If the owner is a legal entity not covered under subdivisions (a) to (f), the applicant must disclose the names and address of all individuals that participate in governance for the legal entity.

(4) To assess whether the service, facility, applicant, licensee, child care staff member, or member of the household is conducive to the welfare of the children, the department may utilize available information, including, but not limited to, any of the following:

(a) Investigative report, such as a law enforcement report and a children's protective services report.

(b) Medical report.

(c) Public record.

(d) Child care center, group child care home, or family child care home record.

(e) Inspection of the child care center, group child care home, or family child care home.

(5) The department may use information obtained under section 5k to obtain reports prepared independently for police, law enforcement, or other purposes to make a determination under this section.

(6) The department shall issue a group child care home or family child care home license to a person who has successfully completed an orientation session offered by the department and who meets the requirements of this act. The department must make available to group child care home or family child care home applicants for licensure an orientation session regarding this act, the rules promulgated under this act, and the needs of children in child care before issuing a group child care home or family child care home license.

(7) Except as provided in subsection (2), the department shall issue an original or renewal license under this act for a child care center, group child care home, or family child care home not later than 6 months after the applicant files a completed application. Receipt of the application is considered the date the application is received by the department. If the application is considered incomplete by the department, the department must notify the applicant in writing or make notice electronically available within 30 days after receipt of the incomplete application, describing the deficiency and requesting additional information. If the department identifies a deficiency or requires the fulfillment of a corrective action plan, the 6-month period is tolled until either of the following occurs:

(a) Upon notification by the department of a deficiency, until the date the requested information is received by the department.

(b) Upon notification by the department that a corrective action plan is required, until the date the department determines the requirements of the corrective action plan have been met.

(8) The determination of the completeness of an application is not an approval of the application for the license and does not confer eligibility on an applicant determined otherwise ineligible for issuance of a license.

(9) Except as provided in subsection (2), if the department fails to issue, deny, or refuse to renew a license to a child care center, group child care home, or family child care home within the time required by this section, the department must return the application fee required under subsection (11) and shall reduce the application fee for the applicant's next renewal application, if any, by 15%. Failure to issue, deny, or refuse to renew a license to a child care center, group child care home, or family child care home within the time period required under this section does not allow the department to otherwise delay the processing of the application. A completed application shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in processing of an application based on the fact that the application fee was refunded or discounted under this subsection.

(10) If, on a continual basis, inspections performed by a local health department delay the department in issuing or denying a license for a child care center, group child care home, or family child care home under this act within the 6-month period, the department may use department staff to complete the inspection instead of the local health department causing the delays.

(11) The department shall assess fees as provided in the following schedule:

(a) Family child care home license, \$50.00 for an original license application and \$25.00 for renewal.

(b) Group child care home license, \$100.00 for an original license application and \$50.00 for renewal.

(c) Child care center license with a capacity of 1 to 20, \$150.00 for an original license application and \$75.00 for renewal.

(d) Child care center license with a capacity of 21 to 50, \$200.00 for an original license application and \$100.00 for renewal.

(e) Child care center license with a capacity of 51 to 100, \$250.00 for an original license application and \$125.00 for renewal.

(f) Child care center license with a capacity of over 100, \$300.00 for an original license application and \$150.00 for renewal.

(12) The department shall use the fees collected under this section only to fund the program licensing child care centers, group child care homes, and family child care homes. Funds remaining at the end of the fiscal year shall not lapse to the general fund but shall remain available to fund the program in subsequent years.

(13) Fees described in this section are payable to the department at the time an application is submitted for original issuance or renewal. If a license is denied, revoked, or refused renewal, or an application is rejected as provided in section 15(4), the department shall not refund fees paid to the department.

(14) As used in this section:

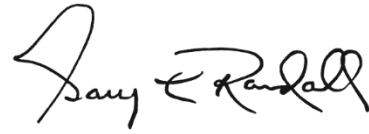
(a) "Completed application" means an application complete on its face and submitted with any applicable fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, a state department or agency of another state, or a private entity but not from another department or agency of this state. A completed application does not include a health inspection performed by a local health department.

(b) "Conducive to the welfare of the children" means:

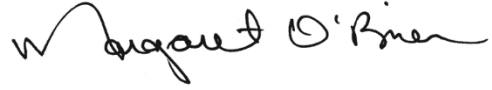
(i) The service and facility comply with this act and the administrative rules promulgated under this act.

(ii) The disposition, temperament, condition, and action of the applicant, licensee, licensee designee, program director, child care staff member, and member of the household promote the safety and well-being of the children served.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor