

HOUSE BILL NO. 4086

February 14, 2023, Introduced by Reps. Roth, Stone, O'Neal, Price, Tsernoglou, Byrnes, McFall, Haadsma, Hood, Rheingans, Young, Scott, Wilson, Morse, Edwards, Breen, MacDonell, Brixie, Brenda Carter, Miller and Glanville 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 1 (MCL 722.111), as amended by 2022 PA 208.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1** Sec. 1. (1) As used in this act:
- 2** (a) "Child care staff member" means an individual who is 16
- 3** years of age or older to whom 1 or more of the following apply:

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

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

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

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

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

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

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

29 (c) "Child caring institution" means a child care facility

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

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

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

29 (ii) The individual is a contract employee or self-employed

1 individual with a child caring institution.

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

5 (e) "Child placing agency" means a governmental organization
6 or an agency organized under the nonprofit corporation act, 1982 PA
7 162, MCL 450.2101 to 450.3192, for the purpose of receiving
8 children for placement in private family homes for foster care or
9 for adoption. The function of a child placing agency may include
10 investigating applicants for adoption and investigating and
11 certifying foster family homes and foster family group homes as
12 provided in this act. The function of a child placing agency may
13 also include supervising children who are at least 16 but less than
14 21 years of age and who are living in unlicensed residences as
15 provided in section 5(4).

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

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

23 (h) "Children's therapeutic group home" means a child caring
24 institution receiving not more than 6 minor children who are
25 diagnosed with a developmental disability as defined in section
26 100a of the mental health code, 1974 PA 258, MCL 330.1100a, or a
27 serious emotional disturbance as defined in section 100d of the
28 mental health code, 1974 PA 258, MCL 330.1100d, and that meets all
29 of the following requirements:

1 (i) Provides care, maintenance, and supervision, usually on a
2 24-hour basis.

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

8 (iii) Is not a private home.

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

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

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

25 (ii) A facility operated by a religious organization where
26 children are in the religious organization's care for not more than
27 3 hours while persons responsible for the children are attending
28 religious services.

29 (iii) A program that is primarily supervised, school-age-child-

1 focused training in a specific subject, including, but not limited
2 to, dancing, drama, music, or religion. This exclusion applies only
3 to the time a child is involved in supervised, school-age-child-
4 focused training.

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

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

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

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

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

27 (m) "Department" means the department of health and human
28 services and the department of licensing and regulatory affairs or
29 a successor agency or department responsible for licensure under

1 this act. The department of licensing and regulatory affairs is
2 responsible for licensing and regulatory matters for child care
3 centers, group child care homes, family child care homes,
4 children's camps, and children's campsites. The department of
5 health and human services is responsible for licensing and
6 regulatory matters for child caring institutions, child placing
7 agencies, children's therapeutic group homes, foster family homes,
8 and foster family group homes.

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

14 (o) "Homeless youth" means an individual for whom it is not
15 possible to live in a safe environment with a relative, who has no
16 other safe alternative living arrangement, and who is either of the
17 following:

18 (i) Seeking shelter in a basic center as described in 34 USC
19 11212(a).

20 (ii) Seeking enrollment in a transitional living program as
21 described in 34 USC 11222(a), is not less than 16 years of age, and
22 is either of the following:

23 (A) Less than 22 years of age.

24 (B) Not less than 22 years of age as of the expiration of the
25 maximum period of stay permitted under 34 USC 11222(a)(2) if the
26 individual commences the stay before reaching 22 years of age.

27 (p) ~~(e)~~ "Ineligible" means that the individual obtained the
28 checks and clearances as described in sections 5n and 5q and is not
29 considered appropriate to obtain a license, to be a member of the

1 household of a group child care home or family child care home, or
2 to be a child care staff member due to violation of section 5n, 5q,
3 or 5r.

4 **(q)** ~~(p)~~—"Increased capacity" means 1 additional child added to
5 the total number of minor children received for care and
6 supervision in a family child care home or 2 additional children
7 added to the total number of minor children received for care and
8 supervision in a group child care home.

9 **(r)** ~~(q)~~—"Private home" means a private residence in which the
10 licensee permanently resides, which residency is not contingent
11 upon caring for children or employment by a child placing agency.
12 Private home includes a full-time foster family home, a full-time
13 foster family group home, a group child care home, or a family
14 child care home, as follows:

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

22 **(ii)** "Foster family group home" means the private home of an
23 individual who has been licensed by the department to provide 24-
24 hour care for more than 4 but fewer than 7 minor children who are
25 placed away from their parent, legal guardian, or legal custodian
26 in foster care. The licensed individual providing care is required
27 to comply with the reasonable and prudent parenting standard as
28 defined in section 1 of chapter XIIIA of the probate code of 1939,
29 1939 PA 288, MCL 712A.1.

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

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

26 (s) ~~(r)~~—"Legal custodian" means an individual who is at least
27 18 years of age in whose care a minor child remains or is placed
28 after a court makes a finding under section 13a(5) of chapter XIIA
29 of the probate code of 1939, 1939 PA 288, MCL 712A.13a.

1 **(t)** ~~(s)~~—"Legal entity" means a sole proprietorship,
2 partnership, corporation, limited liability company, or any other
3 entity.

4 **(u)** ~~(t)~~—"Licensee" means a person, legal entity organized
5 under a law of this state, state or local government, or trust that
6 has been issued a license under this act to operate a child care
7 organization.

8 **(v)** ~~(u)~~—"Listed offense" means that term as defined in section
9 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

10 **(w)** ~~(v)~~—"Member of the household" means any individual who
11 resides in a family child care home, group child care home, foster
12 family home, or foster family group home on an ongoing basis, or
13 who has a recurrent presence in the home, including, but not
14 limited to, overnight stays. For foster family homes and foster
15 family group homes, a member of the household does not include a
16 foster child. For group child care homes and family child care
17 homes, a member of the household does not include a child to whom
18 child care is being provided.

19 **(x)** ~~(w)~~—"Original license" means a license issued to a child
20 care organization during the first 6 months of operation indicating
21 that the organization is in compliance with all rules promulgated
22 by the department under this act.

23 **(y)** ~~(x)~~—"Provisional license" means a license issued to a
24 child care organization that is temporarily unable to conform to
25 the rules promulgated under this act.

26 **(z)** ~~(y)~~—"Qualified residential treatment program" or "QRTP"
27 means a program within a child caring institution to which all of
28 the following apply:

29 (i) The program has a trauma-informed treatment model,

1 evidenced by the inclusion of trauma awareness, knowledge, and
2 skills into the program's culture, practices, and policies.

3 (ii) The program has registered or licensed nursing and other
4 licensed clinical staff on-site or available 24 hours a day, 7 days
5 a week, who provide care in the scope of their practice as provided
6 in parts 170, 172, 181, 182, 182A, and 185 of the public health
7 code, 1978 PA 368, MCL 333.17001 to 333.17097, 333.17201 to
8 333.17242, 333.18101 to 333.18117, 333.18201 to 333.18237,
9 333.18251 to 333.18267, and 333.18501 to 333.18518.

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

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

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

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

20 (aa) ~~(z)~~ "Regular license" means a license issued to a child
21 care organization indicating that the organization is in
22 substantial compliance with all rules promulgated under this act
23 and, if there is a deficiency, has entered into a corrective action
24 plan.

25 (bb) ~~(aa)~~ "Guardian" means the **individual's** guardian. ~~of the~~
26 ~~person.~~

27 (cc) ~~(bb)~~ "Minor child" means any of the following:

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

29 (ii) ~~A person~~ **An individual** who is a resident in a child caring

1 institution, foster family home, or foster family group home, who
 2 is at least 18 but less than 21 years of age, and who ~~meets-is~~
 3 **either of the following:**

4 (A) **An individual who meets the** requirements of the young
 5 adult voluntary foster care act, 2011 PA 225, MCL 400.641 to
 6 400.671.

7 (B) **An individual who is homeless.**

8 (iii) ~~A person~~**An individual** who is a resident in a child caring
 9 institution, children's camp, foster family home, or foster family
 10 group home; who becomes 18 years of age while residing in a child
 11 caring institution, children's camp, foster family home, or foster
 12 family group home; and who continues residing in a child caring
 13 institution, children's camp, foster family home, or foster family
 14 group home to receive care, maintenance, training, and supervision.
 15 A minor child under this subparagraph does not include ~~a person-an~~
 16 **individual** 18 years of age or older who is placed in a child caring
 17 institution, foster family home, or foster family group home under
 18 an adjudication under section 2(a) of chapter XIIA of the probate
 19 code of 1939, 1939 PA 288, MCL 712A.2, or under section 1 of
 20 chapter IX of the code of criminal procedure, 1927 PA 175, MCL
 21 769.1. This subparagraph applies only if the number of those
 22 residents who become 18 years of age does not exceed the following:

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

24 (B) Three, if the total number of residents is not less than
 25 11 and not more than 14.

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

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

29 (iv) ~~A person~~**An individual** 18 years of age or older who is

1 placed in an unlicensed residence under section 5(4) or a foster
2 family home under section 5(7).

3 **(dd)** ~~(ee)~~—"Related" means 1 of the following:

4 (i) Except as provided in subparagraph (ii), a relative as
5 defined in section 13a of chapter XIIA of the probate code of 1939,
6 1939 PA 288, MCL 712A.13a.

7 (ii) For licensing by the department related to a child care
8 center, children's camp, children's campsite, family child care
9 home, foster family home, foster family group home, or group child
10 care home, in the relationship by blood, marriage, or adoption, as
11 parent, grandparent, great-grandparent, great-great-grandparent,
12 aunt or uncle, great-aunt or great-uncle, great-great-aunt or
13 great-great-uncle, sibling, stepsibling, nephew or niece, first
14 cousin or first cousin once removed, and the spouse of any of the
15 individuals described in this definition, even after the marriage
16 has ended by death or divorce.

17 **(ee)** ~~(dd)~~—"Religious organization" means a church,
18 ecclesiastical corporation, or group, not organized for pecuniary
19 profit, that gathers for mutual support and edification in piety or
20 worship of a supreme deity.

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

26 **(gg)** ~~(ff)~~—"Severe physical injury" means serious physical harm
27 as that term is defined in section 136b of the Michigan penal code,
28 1931 PA 328, MCL 750.136b.

29 **(hh)** ~~(gg)~~—"Licensee designee" means the individual designated

1 in writing by the board of directors of the corporation or by the
2 owner or person with legal authority to act on behalf of the
3 company or organization on licensing matters. The individual must
4 agree in writing to be designated as the licensee designee. All
5 license applications must be signed by the licensee in the case of
6 the individual or by a member of the corporation, company, or
7 organization.

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

11 (a) Holds a current license.

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

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

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

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

20 (a) Corrective action.

21 (b) Licensing action.

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

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

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