

**SUBSTITUTE FOR
HOUSE BILL NO. 4936**

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 5 (MCL 722.115), as amended by 2004 PA 315, and by adding sections 5c, 5d, and 5e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5. (1) A person, partnership, firm, corporation,
2 association, or nongovernmental organization shall not establish or
3 maintain a child care organization unless licensed or registered by
4 the department. Application for a license or certificate of
5 registration shall be made on forms provided, and in the manner
6 prescribed, by the department. Before issuing or renewing a

1 license, the department shall investigate the applicant's
2 activities and proposed standards of care and shall make an on-site
3 visit of the proposed or established organization. If the
4 department is satisfied as to the need for a child care
5 organization, its financial stability, the applicant's good moral
6 character, and that the services and facilities are conducive to
7 the welfare of the children, the department shall issue or renew
8 the license. As used in this subsection, "good moral character"
9 means that term as defined in and determined under 1974 PA 381, MCL
10 338.41 to 338.47. If a county juvenile agency as defined in section
11 2 of the county juvenile agency act, 1998 PA 518, MCL 45.622,
12 certifies to the department that it intends to contract with an
13 applicant for a new license, the department shall issue or deny the
14 license within 60 days after it receives a complete application as
15 provided in section 5b.

16 (2) The department shall issue a certificate of registration
17 to a person who has successfully completed an orientation session
18 offered by the department and who certifies to the department that
19 the family day care home has complied with and will continue to
20 comply with the rules promulgated under this act and will provide
21 services and facilities, as determined by the department, conducive
22 to the welfare of children. The department shall make available to
23 applicants for registration an orientation session to applicants
24 for registration regarding this act, the rules promulgated under
25 this act, and the needs of children in family day care before
26 issuing a certificate of registration. The department shall issue a
27 certificate of registration to a specific person at a specific

1 location. A certificate of registration is nontransferable and
2 remains the property of the department. Within 90 days after
3 initial registration, the department shall make an on-site visit of
4 the family day care home.

5 (3) The department may authorize a licensed child placing
6 agency or an approved governmental unit to investigate a foster
7 family home or a foster family group home according to subsection
8 (1) and to certify that the foster family home or foster family
9 group home meets the licensing requirements prescribed by this act.
10 A foster family home or a foster family group home shall be
11 certified for licensing by the department by only 1 child placing
12 agency or approved governmental unit. Other child placing agencies
13 may place children in a foster family home or foster family group
14 home only upon the approval of the certifying agency or
15 governmental unit.

16 (4) The department may authorize a licensed child placing
17 agency or an approved governmental unit to place a child who is 16
18 or 17 years of age in his or her own unlicensed residence, or in
19 the unlicensed residence of an adult who has no supervisory
20 responsibility for the child, if a child placing agency or
21 governmental unit retains supervisory responsibility for the child.

22 (5) A licensed child placing agency, child caring institution,
23 and an approved governmental unit shall provide the state court
24 administrative office and a local foster care review board
25 established under 1984 PA 422, MCL 722.131 to 722.139a, those
26 records requested pertaining to children in foster care placement
27 for more than 6 months.

1 (6) The department may authorize a licensed child placing
2 agency or an approved governmental unit to place a child who is 16
3 or 17 years old in an adult foster care family home or an adult
4 foster care small group home licensed under the adult foster care
5 facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, if a
6 licensed child placing agency or approved governmental unit retains
7 supervisory responsibility for the child and certifies to the
8 department all of the following:

9 (a) The placement is in the best interests of the child.

10 (b) The child's needs can be adequately met by the adult
11 foster care family home or small group home.

12 (c) The child will be compatible with other residents of the
13 adult foster care family home or small group home.

14 (d) The child placing agency or approved governmental unit
15 will periodically reevaluate the placement of a child under this
16 subsection to determine that the criteria for placement in
17 subdivisions (a) through (c) continue to be met.

18 (7) On an exception basis, the director of the department, or
19 his or her designee, may authorize a licensed child placing agency
20 or an approved governmental unit to place an adult in a foster
21 family home if a licensed child placing agency or approved
22 governmental unit certifies to the department all of the following:

23 (a) The adult is a person with a developmental disability as
24 defined by section 100a of the mental health code, 1974 PA 258, MCL
25 330.1100a, or a person who is otherwise neurologically disabled and
26 is also physically limited to a degree that requires complete
27 physical assistance with mobility and activities of daily living.

1 (b) The placement is in the best interests of the adult and
2 will not adversely affect the interests of the foster child or
3 children residing in the foster family home.

4 (c) The identified needs of the adult can be met by the foster
5 family home.

6 (d) The adult will be compatible with other residents of the
7 foster family home.

8 (e) The child placing agency or approved governmental unit
9 will periodically reevaluate the placement of an adult under this
10 subsection to determine that the criteria for placement in
11 subdivisions (a) through (d) continue to be met and document that
12 the adult is receiving care consistent with the administrative
13 rules for a child placing agency.

14 (8) On an exception basis, the director of the department, or
15 his or her designee, may authorize a licensed child placing agency
16 or an approved governmental unit to place a child in an adult
17 foster care family home or an adult foster care small group home
18 licensed under the adult foster care licensing act, 1979 PA 218,
19 MCL 400.701 to 400.737, if the licensed child placing agency or
20 approved governmental unit certifies to the department all of the
21 following:

22 (a) The placement is in the best interests of the child.

23 (b) The placement has the concurrence of the parent or
24 guardian of the child.

25 (c) The identified needs of the child can be met adequately by
26 the adult foster care family home or small group home.

27 (d) The child's psychosocial and clinical needs are compatible

1 with those of other residents of the adult foster care family home
2 or small group home.

3 (e) The clinical treatment of the child's condition is similar
4 to that of the other residents of the adult foster care family home
5 or small group home.

6 (f) The child's cognitive level is consistent with the
7 cognitive level of the other residents of the adult foster care
8 family home or small group home.

9 (g) The child is neurologically disabled and is also
10 physically limited to such a degree as to require complete physical
11 assistance with mobility and activities of daily living.

12 (h) The child placing agency or approved governmental unit
13 will periodically reevaluate the placement of a child under this
14 subsection to determine that the criteria for placement in
15 subdivisions (a) to (g) continue to be met.

16 (9) Beginning ~~the effective date of the amendatory act that~~
17 ~~added this subsection~~ **OCTOBER 1, 2007**, except as provided in
18 subsection (1) and section 5b, the department shall issue an
19 initial or renewal license or registration under this act for child
20 care centers, group day care homes, and family day care homes not
21 later than 6 months after the applicant files a completed
22 application. Receipt of the application is considered the date the
23 application is received by any agency or department of this state.
24 If the application is considered incomplete by the department, the
25 department shall notify the applicant in writing or make notice
26 electronically available within 30 days after receipt of the
27 incomplete application, describing the deficiency and requesting

1 additional information. This subsection does not affect the time
2 period within which an on-site visit to a family day care home
3 shall be made. If the department identifies a deficiency or
4 requires the fulfillment of a corrective action plan, the 6-month
5 period is tolled until either of the following occurs:

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

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

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

15 (11) Except as provided in subsection (1) and section 5b, if
16 the department fails to issue or deny a license or registration to
17 a child care center, group day care home, or family day care home
18 within the time required by this section, the department shall
19 return the license or registration fee and shall reduce the license
20 or registration fee for the applicant's next renewal application,
21 if any, by 15%. Failure to issue or deny a license to a child care
22 center, group day care home, or family day care home within the
23 time period required under this section does not allow the
24 department to otherwise delay the processing of the application. A
25 completed application shall be placed in sequence with other
26 completed applications received at that same time. The department
27 shall not discriminate against an applicant in the processing of an

1 application based on the fact that the application fee was refunded
2 or discounted under this subsection.

3 (12) If, on a continual basis, inspections performed by a
4 local health department delay the department in issuing or denying
5 licenses or registrations for child care centers, group day care
6 homes, and family day care homes under this act within the 6-month
7 period, the department may use department staff to complete the
8 inspections instead of the local health department causing the
9 delays.

10 (13) Beginning October 1, 2008, the director of the department
11 shall submit a report by December 1 of each year to the standing
12 committees and appropriations subcommittees of the senate and house
13 of representatives concerned with human services and children's
14 issues. The director shall include all of the following information
15 regarding applications for licenses and registrations only for
16 child care centers, group day care homes, and family day care homes
17 filed under this act in the report concerning the preceding fiscal
18 year:

19 (a) The number of initial and renewal applications the
20 department received and completed within the 6-month time period
21 described in subsection (9).

22 (b) The number of applications requiring a request for
23 additional information.

24 (c) The number of applications rejected.

25 (d) The number of licenses and registrations not issued within
26 the 6-month period.

27 (e) The average processing time for initial and renewal

1 licenses and registrations granted after the 6-month period.

2 (14) As used in this section, "completed application" means an
3 application complete on its face and submitted with any applicable
4 licensing or registration fees as well as any other information,
5 records, approval, security, or similar item required by law or
6 rule from a local unit of government, a federal agency, or a
7 private entity but not from another department or agency of this
8 state. A completed application does not include a health inspection
9 performed by a local health department.

10 (15) THE DEPARTMENT SHALL NOT ISSUE TO OR RENEW THE LICENSE OF
11 A CHILD CARE CENTER OR DAY CARE CENTER UNDER THIS ACT WITHOUT
12 REQUESTING A CRIMINAL HISTORY CHECK AND CRIMINAL RECORDS CHECK AS
13 REQUIRED BY SECTION 5C. IF A CRIMINAL HISTORY CHECK OR CRIMINAL
14 RECORDS CHECK PERFORMED UNDER SECTION 5C REVEALS THAT AN APPLICANT
15 FOR A LICENSE UNDER THIS ACT HAS BEEN CONVICTED OF A LISTED
16 OFFENSE, THE DEPARTMENT SHALL NOT ISSUE A LICENSE TO THAT
17 APPLICANT. IF A CRIMINAL HISTORY CHECK OR CRIMINAL RECORDS CHECK
18 PERFORMED UNDER SECTION 5C REVEALS THAT AN APPLICANT FOR RENEWAL OF
19 A LICENSE UNDER THIS ACT HAS BEEN CONVICTED OF A LISTED OFFENSE,
20 THE DEPARTMENT SHALL NOT RENEW THAT LICENSE. IF A CRIMINAL HISTORY
21 CHECK OR CRIMINAL RECORDS CHECK PERFORMED UNDER SECTION 5C REVEALS
22 THAT A CURRENT LICENSEE HAS BEEN CONVICTED OF A LISTED OFFENSE, THE
23 DEPARTMENT SHALL REVOKE THE LICENSE OF THAT LICENSEE.

24 SEC. 5C. (1) WHEN A PERSON, PARTNERSHIP, FIRM, CORPORATION,
25 ASSOCIATION, OR NONGOVERNMENTAL ORGANIZATION APPLIES FOR OR TO
26 RENEW A LICENSE FOR A CHILD CARE CENTER OR DAY CARE CENTER UNDER
27 SECTION 5, THE DEPARTMENT SHALL REQUEST THE DEPARTMENT OF STATE

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1 POLICE TO PERFORM BOTH OF THE FOLLOWING ON THE PERSON OR EACH
2 PARTNER, OFFICER, OR MANAGER OF THE CHILD CARE CENTER OR DAY CARE
3 CENTER APPLYING FOR THE LICENSE:

4 (A) CONDUCT A CRIMINAL HISTORY CHECK ON THE PERSON.

5 (B) CONDUCT A CRIMINAL RECORDS CHECK THROUGH THE FEDERAL
6 BUREAU OF INVESTIGATION ON THE PERSON.

7 (2) EACH PERSON APPLYING FOR A LICENSE TO OPERATE A CHILD CARE
8 CENTER OR DAY CARE CENTER SHALL GIVE WRITTEN CONSENT AT THE TIME OF
9 THE LICENSE APPLICATION FOR THE DEPARTMENT OF STATE POLICE TO
10 CONDUCT THE CRIMINAL HISTORY CHECK AND CRIMINAL RECORDS CHECK
11 REQUIRED UNDER THIS SECTION. THE DEPARTMENT SHALL REQUIRE THE
12 PERSON TO SUBMIT HIS OR HER FINGERPRINTS TO THE DEPARTMENT OF STATE
13 POLICE FOR THE CRIMINAL HISTORY CHECK AND CRIMINAL RECORDS CHECK
14 DESCRIBED IN SUBSECTION (1).

15 (3) THE DEPARTMENT SHALL REQUEST A CRIMINAL HISTORY CHECK AND
16 CRIMINAL RECORDS CHECK REQUIRED UNDER THIS SECTION ON A FORM AND IN
17 THE MANNER PRESCRIBED BY THE DEPARTMENT OF STATE POLICE.

18 (4) AS USED IN THIS SECTION AND SECTIONS 5D AND 5E:

19 (A) "CRIMINAL HISTORY RECORD INFORMATION" MEANS THAT TERM AS
20 DEFINED IN SECTION 1A OF 1925 PA 289, MCL 28.241A.

21 (B) "LISTED OFFENSE" MEANS THAT TERM AS DEFINED IN SECTION 2
22 OF THE SEX OFFENDERS REGISTRATION ACT, 1994 PA 295, MCL 28.722.

23 (5) THE DEPARTMENT OF STATE POLICE MAY CHARGE A FEE FOR A
24 CRIMINAL HISTORY CHECK OR A CRIMINAL RECORDS CHECK REQUIRED UNDER
25 THIS SECTION THAT DOES NOT EXCEED THE ACTUAL AND REASONABLE COST OF
26 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 FOR PERFORMING A CRIMINAL HISTORY CHECK OR A CRIMINAL RECORDS
CHECK.]

27 SEC. 5D. (1) BEFORE A CHILD CARE CENTER OR DAY CARE CENTER

1 MAKES AN OFFER OF EMPLOYMENT TO A PERSON OR ALLOWS A PERSON TO
2 REGULARLY AND CONTINUOUSLY WORK UNDER CONTRACT AT THE CHILD CARE
3 CENTER OR DAY CARE CENTER, THE CHILD CARE CENTER OR DAY CARE CENTER
4 SHALL PERFORM A CRIMINAL HISTORY CHECK ON THAT PERSON USING THE
5 DEPARTMENT OF STATE POLICE'S INTERNET CRIMINAL HISTORY ACCESS TOOL
6 (ICHAT).

7 (2) IF A SEARCH OF THE DEPARTMENT OF STATE POLICE'S ICHAT
8 REVEALS THAT THE PERSON DESCRIBED IN SUBSECTION (1) HAS BEEN
9 CONVICTED OF A LISTED OFFENSE, THE CHILD CARE CENTER OR DAY CARE
10 CENTER SHALL NOT MAKE AN OFFER OF EMPLOYMENT TO THAT PERSON OR
11 ALLOW THAT PERSON TO REGULARLY AND CONTINUOUSLY WORK UNDER CONTRACT
12 AT THE CHILD CARE CENTER OR DAY CARE CENTER. IF A SEARCH OF THE
13 DEPARTMENT OF STATE POLICE'S ICHAT REVEALS THAT A CURRENT EMPLOYEE
14 HAS BEEN CONVICTED OF A LISTED OFFENSE, THE CHILD CARE CENTER OR
15 DAY CARE CENTER SHALL NOT CONTINUE TO EMPLOY THAT PERSON. IF A
16 SEARCH OF THE DEPARTMENT OF STATE POLICE'S ICHAT REVEALS THAT A
17 PERSON WHO REGULARLY AND CONTINUOUSLY WORKS UNDER CONTRACT AT THE
18 CHILD CARE CENTER OR DAY CARE CENTER HAS BEEN CONVICTED OF A LISTED
19 OFFENSE, THE CHILD CARE CENTER OR DAY CARE CENTER SHALL NOT ALLOW
20 THAT PERSON TO REGULARLY OR CONTINUOUSLY WORK UNDER CONTRACT AT THE
21 CHILD CARE CENTER OR DAY CARE CENTER.

22 (3) NOT LATER THAN 1 YEAR AFTER THE EFFECTIVE DATE OF THE
23 AMENDATORY ACT THAT ADDED THIS SECTION, THE CHILD CARE CENTER OR
24 DAY CARE CENTER SHALL CONDUCT A CRIMINAL HISTORY CHECK ON ALL
25 CURRENT EMPLOYEES USING THE DEPARTMENT OF STATE POLICE'S ICHAT.

26 (4) A CHILD CARE CENTER OR DAY CARE CENTER MAY PASS ALONG THE
27 ACTUAL COST OF A SEARCH OF THE DEPARTMENT OF STATE POLICE'S ICHAT

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1 TO THE EMPLOYEE OR APPLICANT ON WHOM THE SEARCH IS BEING PERFORMED.

2 SEC. 5E. (1) A LICENSEE OF A CHILD CARE CENTER OR DAY CARE
3 CENTER SHALL REPORT TO THE DEPARTMENT WITHIN A REASONABLE TIME THAT
4 HE OR SHE HAS BEEN CHARGED WITH A CRIME LISTED IN SECTION 1535A OF
5 THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1535A. AN EMPLOYEE OF
6 A CHILD CARE CENTER OR DAY CARE CENTER SHALL REPORT TO THAT CHILD
7 CARE CENTER OR DAY CARE CENTER WITHIN A REASONABLE TIME THAT HE OR
8 SHE HAS BEEN CHARGED WITH A CRIME LISTED IN SECTION 1535A OF THE
9 REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1535A.

10 (2) IF A PERSON DESCRIBED IN SUBSECTION (1) DOES NOT REPORT TO
11 THE CHILD CARE CENTER OR DAY CARE CENTER AS REQUIRED IN THIS
12 SECTION, THAT PERSON IS GUILTY OF EITHER OF THE FOLLOWING:

13 (A) IF THE CRIME WITH WHICH THE PERSON IS CHARGED BUT DID NOT
14 REPORT IS A LISTED OFFENSE, A FELONY PUNISHABLE BY IMPRISONMENT FOR
15 NOT MORE THAN 2 YEARS OR A FINE [OF] NOT MORE THAN
16 \$2,000.00.

17 (B) IF THE CRIME WITH WHICH THE PERSON IS CHARGED BUT DID NOT
18 REPORT IS ANY CRIME REQUIRED TO BE REPORTED BY THIS SECTION OTHER
19 THAN A LISTED OFFENSE, A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR
20 NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE THAN \$1,000.00.

21 (3) THE DEPARTMENT SHALL DELETE FROM THE LICENSEE'S RECORDS
22 ALL INFORMATION RELATING TO A CHARGE REQUIRED TO BE REPORTED UNDER
23 SUBSECTION (1) IF THE DEPARTMENT RECEIVES DOCUMENTATION OF EITHER
24 OF THE FOLLOWING:

25 (A) THE LICENSEE HAS BEEN ACQUITTED OF A CHARGE REQUIRED TO BE
26 REPORTED UNDER SUBSECTION (1).

27 (B) A CHARGE REPORTED UNDER SUBSECTION (1) HAS BEEN DISMISSED

1 AGAINST THE LICENSEE REQUIRED UNDER SUBSECTION (1) TO REPORT THAT
2 CHARGE.

3 (4) A CHILD CARE CENTER OR DAY CARE CENTER SHALL DELETE FROM
4 THE EMPLOYEE'S RECORDS ALL INFORMATION RELATING TO A CHARGE
5 REQUIRED TO BE REPORTED UNDER SUBSECTION (1) IF IT RECEIVES
6 DOCUMENTATION OF EITHER OF THE FOLLOWING:

7 (A) THE PERSON HAS BEEN ACQUITTED OF A CHARGE HE OR SHE WAS
8 REQUIRED TO REPORT UNDER SUBSECTION (1).

9 (B) A CHARGE REPORTED UNDER SUBSECTION (1) HAS BEEN DISMISSED
10 AGAINST THE PERSON REQUIRED UNDER SUBSECTION (1) TO REPORT THAT
11 CHARGE.

12 Enacting section 1. This amendatory act takes effect October
13 15, 2005.