

# HOUSE BILL No. 4936

June 14, 2005, Introduced by Rep. Baxter and referred to the Committee on Judiciary.

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  
7 license, the department shall investigate the applicant's

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

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

1 remains the property of the department. Within 90 days after  
2 initial registration, the department shall make an on-site visit of  
3 the family day care home.

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

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

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

27 (6) The department may authorize a licensed child placing

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

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

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

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

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

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

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

27 (b) The placement is in the best interests of the adult and

1 will not adversely affect the interests of the foster child or  
2 children residing in the foster family home.

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

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

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

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

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

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

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

26 (d) The child's psychosocial and clinical needs are compatible  
27 with those of other residents of the adult foster care family home

1 or small group home.

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

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

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

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

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

1 period within which an on-site visit to a family day care home  
2 shall be made. If the department identifies a deficiency or  
3 requires the fulfillment of a corrective action plan, the 6-month  
4 period is tolled until either of the following occurs:

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

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

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

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

1 or discounted under this subsection.

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

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

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

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

23 (c) The number of applications rejected.

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

26 (e) The average processing time for initial and renewal  
27 licenses and registrations granted after the 6-month period.



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

9 (15) THE DEPARTMENT SHALL NOT ISSUE TO OR RENEW THE LICENSE OF  
10 A CHILD CARE CENTER OR DAY CARE CENTER UNDER THIS ACT WITHOUT  
11 REQUESTING A CRIMINAL HISTORY CHECK AND CRIMINAL RECORDS CHECK AS  
12 REQUIRED BY SECTION 5C.

13 SEC. 5C. (1) WHEN A PERSON, PARTNERSHIP, FIRM, CORPORATION,  
14 ASSOCIATION, OR NONGOVERNMENTAL ORGANIZATION APPLIES FOR OR TO  
15 RENEW A LICENSE FOR A CHILD CARE CENTER OR DAY CARE CENTER UNDER  
16 SECTION 5, THE DEPARTMENT SHALL REQUEST THE DEPARTMENT OF STATE  
17 POLICE TO PERFORM BOTH OF THE FOLLOWING ON THE PERSON OR EACH  
18 PARTNER, OFFICER, OR MANAGER OF THE CHILD CARE CENTER OR DAY CARE  
19 CENTER APPLYING FOR THE LICENSE:

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

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

23 (2) EACH PERSON APPLYING FOR A LICENSE TO OPERATE A CHILD CARE  
24 CENTER OR DAY CARE CENTER SHALL GIVE WRITTEN CONSENT AT THE TIME OF  
25 THE LICENSE APPLICATION FOR THE DEPARTMENT OF STATE POLICE TO  
26 CONDUCT THE CRIMINAL HISTORY CHECK AND CRIMINAL RECORDS CHECK  
27 REQUIRED UNDER THIS SECTION. THE DEPARTMENT SHALL REQUIRE THE

1 PERSON TO SUBMIT HIS OR HER FINGERPRINTS TO THE DEPARTMENT OF STATE  
2 POLICE FOR THE CRIMINAL HISTORY CHECK AND CRIMINAL RECORDS CHECK  
3 DESCRIBED IN SUBSECTION (1).

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

7 (4) WITHIN 30 DAYS AFTER RECEIVING A COMPLETE REQUEST BY THE  
8 DEPARTMENT FOR A CRIMINAL HISTORY CHECK ON A PERSON UNDER THIS  
9 SECTION, THE DEPARTMENT OF STATE POLICE SHALL CONDUCT THE CRIMINAL  
10 HISTORY CHECK AND PROVIDE A REPORT OF THE RESULTS TO THE  
11 DEPARTMENT. THE REPORT SHALL CONTAIN ANY CRIMINAL HISTORY RECORD  
12 INFORMATION ON THE PERSON MAINTAINED BY THE DEPARTMENT OF STATE  
13 POLICE.

14 (5) WITHIN 7 DAYS AFTER RECEIVING A PROPER REQUEST BY THE  
15 DEPARTMENT FOR A CRIMINAL RECORDS CHECK ON A PERSON UNDER THIS  
16 SECTION, THE DEPARTMENT OF STATE POLICE SHALL INITIATE THE CRIMINAL  
17 RECORDS CHECK. AFTER RECEIVING THE RESULTS OF THE CRIMINAL RECORDS  
18 CHECK FROM THE FEDERAL BUREAU OF INVESTIGATION, THE DEPARTMENT OF  
19 STATE POLICE SHALL PROVIDE A REPORT OF THE RESULTS TO THE  
20 DEPARTMENT.

21 (6) AS USED IN THIS SECTION AND SECTIONS 5D AND 5E:

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

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

26 (7) CRIMINAL HISTORY RECORD INFORMATION OR THE RESULTS OF A  
27 CRIMINAL RECORDS CHECK UNDER THIS SECTION SHALL BE USED BY A CHILD

1 CARE CENTER OR DAY CARE CENTER ONLY FOR THE PURPOSE OF EVALUATING  
2 AN APPLICANT'S QUALIFICATIONS FOR EMPLOYMENT IN THE POSITION FOR  
3 WHICH HE OR SHE HAS APPLIED OR WHETHER TO RETAIN AN EMPLOYEE. A  
4 LICENSEE OR ITS OFFICERS, AGENTS, OR EMPLOYEES SHALL NOT DISCLOSE  
5 THE REPORT OR ITS CONTENTS EXCEPT A FELONY CONVICTION OR A  
6 MISDEMEANOR CONVICTION INVOLVING SEXUAL OR PHYSICAL ABUSE TO A  
7 PERSON NOT DIRECTLY INVOLVED IN EVALUATING THE APPLICANT'S  
8 QUALIFICATIONS FOR EMPLOYMENT OR THE ISSUE OF THE EMPLOYEE'S  
9 CONTINUED EMPLOYMENT.

10 (8) THE DEPARTMENT OF STATE POLICE MAY CHARGE A FEE FOR A  
11 CRIMINAL HISTORY CHECK OR A CRIMINAL RECORDS CHECK REQUIRED UNDER  
12 THIS SECTION THAT DOES NOT EXCEED THE ACTUAL AND REASONABLE COST OF  
13 CONDUCTING THE CHECK.

14 SEC. 5D. (1) BEFORE A CHILD CARE CENTER OR DAY CARE CENTER  
15 MAKES AN OFFER OF EMPLOYMENT TO A PERSON OR ALLOWS A PERSON TO  
16 REGULARLY AND CONTINUOUSLY WORK UNDER CONTRACT AT THE CHILD CARE  
17 CENTER OR DAY CARE CENTER, THE CHILD CARE CENTER OR DAY CARE CENTER  
18 SHALL PERFORM A BACKGROUND CHECK ON THAT PERSON USING THE  
19 DEPARTMENT OF STATE POLICE'S INTERNET CRIMINAL HISTORY ACCESS TOOL  
20 (ICHAT).

21 (2) IF A SEARCH OF ICHAT REVEALS THAT THE PERSON DESCRIBED IN  
22 SUBSECTION (1) HAS BEEN CONVICTED OF A LISTED OFFENSE, THE CHILD  
23 CARE CENTER OR DAY CARE CENTER SHALL NOT MAKE AN OFFER OF  
24 EMPLOYMENT TO THAT PERSON OR ALLOW THAT PERSON TO REGULARLY AND  
25 CONTINUOUSLY WORK UNDER CONTRACT AT THE CHILD CARE CENTER OR DAY  
26 CARE CENTER.

27 SEC. 5E. (1) AN EMPLOYEE OF A CHILD CARE CENTER OR DAY CARE

1 CENTER SHALL REPORT TO THAT CHILD CARE CENTER OR DAY CARE CENTER  
2 WITHIN A REASONABLE TIME AFTER HE OR SHE HAS BEEN CHARGED WITH A  
3 CRIME LISTED IN SECTION 1535A OF THE REVISED SCHOOL CODE, 1976 PA  
4 451, MCL 380.1535A.

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

8 (A) IF THE CRIME WITH WHICH THE PERSON IS CHARGED BUT DID NOT  
9 REPORT IS A LISTED OFFENSE, A FELONY PUNISHABLE BY IMPRISONMENT FOR  
10 NOT MORE THAN 2 YEARS OR A FINE PUNISHABLE BY NOT MORE THAN  
11 \$2,000.00.

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