

Act No. 133
Public Acts of 2005
Approved by the Governor
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**STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2005**

Introduced by Rep. Baxter

ENROLLED HOUSE BILL No. 4936

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 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:

Sec. 5. (1) A person, partnership, firm, corporation, association, or nongovernmental organization shall not establish or maintain a child care organization unless licensed or registered by the department. Application for a license or certificate of registration shall be made on forms provided, and in the manner prescribed, by the department. Before issuing or renewing a license, the department shall investigate the applicant's activities and proposed standards of care and shall make an on-site visit of the proposed or established organization. If the department is satisfied as to the need for a child care organization, its financial stability, the applicant's good moral character, and that the services and facilities are conducive to the welfare of the children, the department shall issue or renew the license. As used in this subsection, "good moral character" means that term as defined in and determined under 1974 PA 381, MCL 338.41 to 338.47. If a county juvenile agency as defined in section 2 of the county juvenile agency act, 1998 PA 518, MCL 45.622, certifies to the department that it intends to contract with an applicant for a new license, the department shall issue or deny the license within 60 days after it receives a complete application as provided in section 5b.

(2) The department shall issue a certificate of registration to a person who has successfully completed an orientation session offered by the department and who certifies to the department that the family day care home has complied with and will continue to comply with the rules promulgated under this act and will provide services and facilities, as determined by the department, conducive to the welfare of children. The department shall make available to applicants for registration an orientation session to applicants for registration regarding this act, the rules promulgated under this act, and the needs of children in family day care before issuing a certificate of registration. The department shall issue a certificate of registration to a specific person at a specific location. A certificate of registration is nontransferable and remains the property of the department. Within 90 days after initial registration, the department shall make an on-site visit of the family day care home.

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

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

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

(6) The department may authorize a licensed child placing agency or an approved governmental unit to place a child who is 16 or 17 years old in 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, if a licensed child placing agency or approved governmental unit retains supervisory responsibility for the child and certifies to the department all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Beginning October 1, 2007, except as provided in subsection (1) and section 5b, the department shall issue an initial or renewal license or registration under this act for child care centers, group day care homes, and family day care homes 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 any agency or department of this state. If the application is considered incomplete by the department, the department shall 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. This subsection does not affect the time period within which an on-site visit to a family day care home shall

be made. 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.

(10) 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.

(11) Except as provided in subsection (1) and section 5b, if the department fails to issue or deny a license or registration to a child care center, group day care home, or family day care home within the time required by this section, the department shall return the license or registration fee and shall reduce the license or registration fee for the applicant's next renewal application, if any, by 15%. Failure to issue or deny a license to a child care center, group day care home, or family day 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 the processing of an application based on the fact that the application fee was refunded or discounted under this subsection.

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

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

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

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

(c) The number of applications rejected.

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

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

(14) As used in this section, "completed application" means an application complete on its face and submitted with any applicable licensing or registration 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, 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.

(15) The department shall not issue to or renew the license of a child care center or day care center under this act without requesting a criminal history check and criminal records check as required by section 5c. If a criminal history check or criminal records check performed under section 5c reveals that an applicant for a license under this act has been convicted of a listed offense, the department shall not issue a license to that applicant. If a criminal history check or criminal records check performed under section 5c reveals that an applicant for renewal of a license under this act has been convicted of a listed offense, the department shall not renew that license. If a criminal history check or criminal records check performed under section 5c reveals that a current licensee has been convicted of a listed offense, the department shall revoke the license of that licensee.

(16) The department shall not issue or renew a certificate of registration to a family day care home or a license to a group day care home under this act without requesting a criminal history check and criminal records check as required by section 5f and a department of state police ICHAT check required by section 5g. If a criminal history check or criminal records check performed under section 5f or an ICHAT check performed under section 5g reveals that an applicant for a certificate of registration or license under this act or a person over 18 years of age residing in that applicant's home has been convicted of a listed offense, the department shall not issue a certificate of registration or license to that applicant. If a criminal history check or criminal records check performed under section 5f or an ICHAT check performed under section 5g reveals that an applicant for renewal of a certificate of registration or license under this act or a person over 18 years of age residing in that applicant's home has been convicted of a listed offense, the department shall not renew a certificate of registration or license to that applicant. If a criminal history check or criminal records check performed under section 5f or an ICHAT check performed under section 5g reveals that a current registrant or licensee under this act or a person over 18 years of age residing in that registrant's or licensee's home has been convicted of a listed offense, the department shall revoke that registrant's certificate of registration or licensee's license.

Sec. 5c. (1) When a person, partnership, firm, corporation, association, or nongovernmental organization applies for or to renew a license for a child care center or day care center under section 5, the department shall request the department of state police to perform both of the following on the person or each partner, officer, or manager of the child care center or day care center applying for the license:

(a) Conduct a criminal history check on the person.

(b) Conduct a criminal records check through the federal bureau of investigation on the person.

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

(3) The department shall request a criminal history check and criminal records 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 shall 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.

(5) Within a reasonable time after receiving a proper request by the department for a criminal records check on a person under this section, the department of state police shall initiate the criminal records check. After receiving the results of the criminal records check from the federal bureau of investigation, the department of state police shall provide a report of the results to the department.

(6) The department of state police may charge the department a fee for a criminal history check or a criminal records 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 for performing a criminal history check or a criminal records check required under this section.

(7) As used in this section and sections 5, 5d, 5e, 5f, and 5g:

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

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

Sec. 5d. (1) Before a child care center or day care center makes an offer of employment to a person or allows a person to regularly and continuously work under contract at the child care center or day care center, the child care center or day care center shall perform a criminal history check on that person using the department of state police's internet criminal history access tool (ICHAT).

(2) If a search of the department of state police's ICHAT reveals that the person described in subsection (1) has been convicted of a listed offense, the child care center or day care center shall not make an offer of employment to that person or allow that person to regularly and continuously work under contract at the child care center or day care center. If a search of the department of state police's ICHAT reveals that a current employee has been convicted of a listed offense, the child care center or day care center shall not continue to employ that person. If a search of the department of state police's ICHAT reveals that a person who regularly and continuously works under contract at the child care center or day care center has been convicted of a listed offense, the child care center or day care center shall not allow that person to regularly or continuously work under contract at the child care center or day care center.

(3) Not later than 1 year after the effective date of the amendatory act that added this section, the child care center or day care center shall conduct a criminal history check on all current employees using the department of state police's ICHAT.

(4) A child care center or day care center may pass along the actual cost of a search of the department of state police's ICHAT to the employee or applicant on whom the search is being performed.

Sec. 5e. (1) A child care center or day care center licensee shall report to the department and an employee of a child care center or day care center shall report to that child care center or day care center within 3 business days after he or she has been arraigned for 1 or more of the following crimes:

(a) Any felony.

(b) Any of the following misdemeanors:

(i) Criminal sexual conduct in the fourth degree or an attempt to commit criminal sexual conduct in the fourth degree.

(ii) Child abuse in the third or fourth degree or an attempt to commit child abuse in the third or fourth degree.

(iii) A misdemeanor involving cruelty, torture, or indecent exposure involving a child.

(iv) A misdemeanor violation of section 7410 of the public health code, 1978 PA 368, MCL 333.7410.

(v) A violation of section 115, 141a, 145a, 335a, or 359 of the Michigan penal code, 1931 PA 328, MCL 750.115, 750.141a, 750.145a, 750.335a, and 750.359, or a misdemeanor violation of section 81, 81a, or 145d of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, and 750.145d.

(vi) A misdemeanor violation of section 701 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1701.

(vii) Any misdemeanor that is a listed offense.

(c) A violation of a substantially similar law of another state, of a political subdivision of this state or another state, or of the United States.

(2) A person who violates subsection (1) is guilty of a crime as follows:

(a) If the person violates subsection (1) and the crime involved in the violation is a misdemeanor that is a listed offense or is a felony, the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(b) If the person violates subsection (1) and the crime involved in the violation is a misdemeanor that is not a listed offense, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(3) The department shall delete from the licensee's records all information relating to an arraignment required to be reported under subsection (1) if the department receives documentation that the licensee is subsequently not convicted of any crime after the completion of judicial proceedings resulting from that arraignment.

(4) A child care center or day care center shall delete from the employee's records all information relating to an arraignment required to be reported under subsection (1) if it receives documentation that the employee is subsequently not convicted of any crime after the completion of judicial proceedings resulting from that arraignment.

(5) Not later than 30 days after the effective date of the amendatory act that added this section, the department shall inform all licensees and applicants for licenses of the requirement under this section to report when he or she is arraigned for certain crimes and the penalty for not reporting.

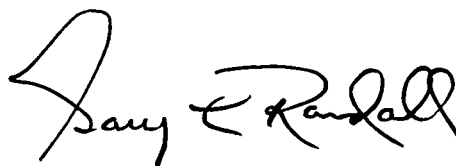
(6) Not later than 30 days after the effective date of the amendatory act that added this section, a child care center or day care center shall inform all current employees and all persons who work regularly and continuously under contract at the child care center or day care center of the requirement under this section to report when he or she is arraigned for certain crimes and the penalty for not reporting.

(7) At the time a child care center or day care center makes an offer of employment to a person or allows a person to regularly and continuously work under contract at the child care center or day care center, the child care center or day care center shall notify that person of the requirement under this section to report when he or she is arraigned for certain crimes and the penalty for not reporting.

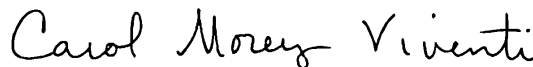
Enacting section 1. This amendatory act takes effect January 1, 2006.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 615 of the 93rd Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

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Governor