

HOUSE BILL No. 5739

January 13, 2010, Introduced by Reps. Spade and Polidori and referred to the Committee on Families and Children's Services.

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 2009 PA 155.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

2 (a) "Child care organization" means a governmental or
3 nongovernmental organization having as its principal function
4 receiving minor children for care, maintenance, training, and
5 supervision, notwithstanding that educational instruction may be
6 given. Child care organization includes organizations commonly
7 described as child caring institutions, child placing agencies,
8 children's camps, children's campsites, children's therapeutic

1 group homes, child care centers, day care centers, nursery schools,
2 parent cooperative preschools, foster homes, group homes, or child
3 care homes. Child care organization does not include a governmental
4 or nongovernmental organization that does either of the following:

5 (i) Provides care exclusively to minors who have been
6 emancipated by court order under section 4(3) of 1968 PA 293, MCL
7 722.4.

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

11 (b) "Child caring institution" means a child care facility
12 that is organized for the purpose of receiving minor children for
13 care, maintenance, and supervision, usually on a 24-hour basis, in
14 buildings maintained by the child caring institution for that
15 purpose, and operates throughout the year. An educational program
16 may be provided, but the educational program shall not be the
17 primary purpose of the facility. Child caring institution includes
18 a maternity home for the care of unmarried mothers who are minors
19 and an agency group home, that is described as a small child caring
20 institution owned, leased, or rented by a licensed agency providing
21 care for more than 4 but less than 13 minor children. Child caring
22 institution also includes institutions for mentally retarded or
23 emotionally disturbed minor children. Child caring institution does
24 not include a hospital, nursing home, or home for the aged licensed
25 under article 17 of the public health code, 1978 PA 368, MCL
26 333.20101 to 333.22260, a boarding school licensed under section
27 1335 of the revised school code, 1976 PA 451, MCL 380.1335, a

1 hospital or facility operated by the state or licensed under the
2 mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, or an
3 adult foster care family home or an adult foster care small group
4 home licensed under the adult foster care facility licensing act,
5 1979 PA 218, MCL 400.701 to 400.737, in which a child has been
6 placed under section 5(6).

7 (c) "Child placing agency" means a governmental organization
8 or an agency organized under the nonprofit corporation act, 1982 PA
9 162, MCL 450.2101 to 450.3192, for the purpose of receiving
10 children for placement in private family homes, **INCLUDING RELATIVE**
11 **CARE HOMES**, for foster care or for adoption. The function of a
12 child placing agency may include investigating applicants for
13 adoption and investigating and certifying foster family homes and
14 foster family group homes as provided in this act **AND REVIEWING**
15 **RELATIVE CARE PROVIDERS FOR SUITABILITY**. The function of a child
16 placing agency may also include supervising children who are 16 or
17 17 years of age and who are living in unlicensed residences as
18 provided in section 5(4).

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

24 (e) "Children's campsite" means the outdoor setting where a
25 children's residential or day camp is located.

26 (f) "Children's therapeutic group home" means a child caring
27 institution receiving not more than 6 minor children who are

1 diagnosed with a developmental disability as defined in section
2 100a of the mental health code, 1974 PA 258, MCL 330.1100a, or a
3 serious emotional disturbance as defined in section 100d of the
4 mental health code, 1974 PA 258, MCL 330.1100d. A children's
5 therapeutic group home meets all of the following requirements:

6 (i) Provides care, maintenance, and supervision, usually on a
7 24-hour basis.

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

13 (iii) Is not a private home.

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

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

26 (i) A Sunday school, a vacation bible school, or a religious
27 instructional class that is conducted by a religious organization

1 where children are attending for not more than 3 hours per day for
2 an indefinite period or for not more than 8 hours per day for a
3 period not to exceed 4 weeks during a 12-month period.

4 (ii) A facility operated by a religious organization where
5 children are in the religious organization's care for not more than
6 3 hours while persons responsible for the children are attending
7 religious services.

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

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

21 (h) "Department" means the department of human services or a
22 successor agency or department responsible for licensure and
23 registration under this act.

24 (i) "Private home" means a private residence in which the
25 licensee or registrant permanently resides as a member of the
26 household, which residency is not contingent upon caring for
27 children or employment by a licensed or approved child placing

1 agency. Private home includes a full-time foster family home, a
2 full-time foster family group home, a group child care home, or a
3 family child care home, as follows:

4 (i) "Foster family home" is a private home in which 1 but not
5 more than 4 minor children, who are not related to an adult member
6 of the household by blood or marriage, or who are not placed in the
7 household under the Michigan adoption code, chapter X of the
8 probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, are given
9 care and supervision for 24 hours a day, for 4 or more days a week,
10 for 2 or more consecutive weeks, unattended by a parent, legal
11 guardian, or legal custodian.

12 (ii) "Foster family group home" means a private home in which
13 more than 4 but fewer than 7 minor children, who are not related to
14 an adult member of the household by blood or marriage, or who are
15 not placed in the household under the Michigan adoption code,
16 chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to
17 710.70, are provided care for 24 hours a day, for 4 or more days a
18 week, for 2 or more consecutive weeks, unattended by a parent,
19 legal guardian, or legal custodian.

20 (iii) "Family child care home" means a private home in which 1
21 but fewer than 7 minor children are received for care and
22 supervision for compensation for periods of less than 24 hours a
23 day, unattended by a parent or legal guardian, except children
24 related to an adult member of the family by blood, marriage, or
25 adoption. Family child care home includes a home in which care is
26 given to an unrelated minor child for more than 4 weeks during a
27 calendar year. A family child care home does not include an

1 individual providing babysitting services for another individual.
2 As used in this subparagraph, "providing babysitting services"
3 means caring for a child on behalf of the child's parent or
4 guardian when the annual compensation for providing those services
5 does not equal or exceed \$600.00 or an amount that would according
6 to the internal revenue code of 1986 obligate the child's parent or
7 guardian to provide a form 1099-MISC to the individual for
8 compensation paid during the calendar year for those services.

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

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

20 (k) "Licensee" means a person, partnership, firm, corporation,
21 association, nongovernmental organization, or local or state
22 government child care organization that has been issued a license
23 under this act to operate a child care organization.

24 (l) "Provisional license" means a license issued to a child
25 care organization that is temporarily unable to conform to all of
26 the rules promulgated under this act.

27 (m) "Regular license" means a license issued to a child care

1 organization indicating that the organization is in compliance with
2 all rules promulgated under this act.

3 (n) "Guardian" means the guardian of the person.

4 (o) "Minor child" means any of the following:

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

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

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

22 (B) Three, if the total number of residents is not less than
23 11 and not more than 14.

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

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

27 (iii) A person 18 years of age or older who is placed in a

1 foster family home under section 5(7).

2 (p) "Registrant" means a person who has been issued a
3 certificate of registration under this act to operate a family
4 child care home.

5 (q) "Registration" means the process by which the department
6 regulates family child care homes, and includes the requirement
7 that a family child care home certify to the department that the
8 family child care home has complied with and will continue to
9 comply with the rules promulgated under this act.

10 (r) "Certificate of registration" means a written document
11 issued under this act to a family child care home through
12 registration.

13 (s) "Related" means a parent, grandparent, brother, sister,
14 stepparent, stepsister, stepbrother, uncle, aunt, cousin, great
15 aunt, great uncle, or stepgrandparent related by marriage, blood,
16 or adoption.

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

21 (u) "School-age child" means a child who is eligible to be
22 enrolled in a grade of kindergarten or above, but is less than 13
23 years of age.

24 (2) A facility or program for school-age children that is
25 currently operated and has been in operation and licensed or
26 approved as provided in this act for a minimum of 2 years may apply
27 to the department to be exempt from inspections and on-site visits

1 required under section 5. The department shall respond to a
2 facility or program requesting exemption from inspections and on-
3 site visits required under section 5 as provided under this
4 subsection within 45 days from the date the completed application
5 is received. The department may grant exemption from inspections
6 and on-site visits required under section 5 to a facility or
7 program that meets all of the following criteria:

8 (a) The facility or program has been in operation and licensed
9 or approved under this act for a minimum of 2 years immediately
10 preceding the application date.

11 (b) During the 2 years immediately preceding the application
12 date, the facility or program has not had a substantial violation
13 of this act, rules promulgated under this act, or the terms of a
14 licensure or an approval under this act.

15 (c) The school board, board of directors, or governing body
16 adopts a resolution supporting the application for exemption from
17 inspections and on-site visits required under section 5 as provided
18 for in this subsection.

19 (3) A facility or program granted exemption from inspections
20 and on-site visits required under section 5 as provided under
21 subsection (2) is required to maintain status as a licensed or
22 approved program under this act and must continue to meet the
23 requirements of this act, the rules promulgated under this act, or
24 the terms of a license or approval under this act. A facility or
25 program granted exemption from inspections and on-site visits
26 required under section 5 as provided under subsection (2) is
27 subject to an investigation by the department if a violation of

1 this act or a violation of a rule promulgated under this act is
2 alleged.

3 (4) A facility or program granted exemption from inspections
4 and on-site visits required under section 5 as provided under
5 subsection (2) is not subject to interim or annual licensing
6 reviews. A facility or program granted exemption from inspections
7 and on-site visits required under section 5 as provided under
8 subsection (2) is required to submit documentation annually
9 demonstrating compliance with the requirements of this act, the
10 rules promulgated under this act, or the terms of a license or
11 approval under this act.

12 (5) An exemption provided under subsection (2) may be
13 rescinded by the department if the facility or program willfully
14 and substantially violates this act, the rules promulgated under
15 this act, or the terms of a license or approval granted under this
16 act.