



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

## BILL ANALYSIS



Telephone: (517) 373-5383  
Fax: (517) 373-1986

Senate Bills 180 through 183 (as introduced 2-23-17)  
Sponsor: Senator Tonya Schuitmaker (S.B. 180 & 183)  
Senator Dave Hildenbrand (S.B. 181)  
Senator Hoon-Yung Hopgood (S.B. 182)  
Committee: Families, Seniors and Human Services

Date Completed: 3-22-17

**CONTENT**

**Senate Bills 180, 181, and 182 would amend the child care licensing Act to revise various requirements concerning the regulation of child care organizations. The bills would establish a separate set of licensure and application requirements, including criminal history checks, for child care centers, family child care homes, and group child care homes.**

**Senate Bill 181 redefine "department" as the Department of Health and Human Services (DHHS) and the Department of Licensing and Regulatory Affairs (LARA) or a successor agency or department responsible for licensure under the Act. The DHHS would be responsible for child caring institutions, child placing agencies, children's therapeutic group homes, foster family homes, and foster family group homes, while LARA would oversee child care centers, family and group child care homes, children's camps, and children's campsites. (As used in the bills and in this summary, "Department" could mean the DHHS or LARA, depending on the type of facility licensed and regulated.)**

**Senate Bill 180 would do the following:**

- **Revise requirements for criminal history checks of applicants for licensure as a child care organization, foster family home, or foster family group home.**
- **Revise requirements for licensees to report when they are arraigned for certain crimes, and extend the requirement to child care staff members.**
- **Establish new provisions, specifically applying to child care centers, group child care homes, and family child care homes, regarding criminal background checks of licensees, applicants for licensure, child care staff members, and members of a licensee's household.**
- **Prohibit a child care center, group child care home, or family child care home licensee, child care staff member, or adult member of the household from having contact with a child in the care of one of those facilities, until he or she was documented as not having been named as the perpetrator of child abuse or neglect in the DHHS's central registry.**
- **Provide that a person would be ineligible to be licensed as a child care center, group child care home, or family child care home or be a child care staff member or adult member of the household if he or she had certain criminal convictions, refused to consent to a criminal history or central registry check, or made a false statement or omission in connection with those checks.**
- **Allow LARA to find a person who otherwise was ineligible to receive a license, be a member of the household, or be eligible to be a child care staff member, to be**

eligible, if the Department had previously reviewed and approved the person as a licensee or registrant, and he or she met other specified criteria.

**Senate Bill 181** would do the following:

- Define "family child care home" as a private home in which three to six children, rather than one to six children, are received for care and supervision for compensation.
- Specify that Section 5 of the Act, which deals with licensure of child care organizations, would not apply to a child care center, group child care home, or family child care home (which would be subject to a separate licensure and application process under Senate Bill 182).
- Revise provisions regarding license revocation, refusal, or denial.
- Allow the Department to obtain an injunction to restrain or prevent a person from continuing to violate the Act or rules promulgated under it, after the Department informed the person of violations.
- Allow the Department to obtain an injunction to restrain or prevent a person from acting in a manner that threatened the public health, safety or welfare or to compel a person to take corrective action, if the Department had conducted an investigation that disclosed an imminent threat.
- Specify that the Department would be entitled to actual costs and attorney fees if it were successful in obtaining an injunction.
- Extend from two to five years the period during which the Department may refuse a license, or prohibit a person from being connected with a licensee, after the revocation, denial, or refusal to renew a license.
- Revise provisions dealing with the evaluation and examination of child care organizations, and include inspection of those facilities in those provisions.
- Revise requirements for certain child care organizations regarding first aid and CPR certification, personal restraint restrictions, parental visits, and smoking prohibitions.
- Require an annual inspection of a child care organization to be unannounced unless the Department considered it necessary to schedule an appointment.
- Allow the temporary operation of a child care center, group child care home, or family child care home at an unlicensed location, in the case of a disaster, under certain circumstances.

**Senate Bill 182** would do the following:

- Enact a new section to regulate licensure and application for licensure as a child care center, family child care home, or group child care home.
- Prohibit a person or other entity from establishing or maintaining a child care center, group child care home, or family child care home unless licensed by LARA.
- Establish fees that LARA would be required to assess for original and renewal licensure as a child care center, family child care home, or group child care home.
- Revise provisions concerning the issuance of a provisional license to a child care organization.
- Authorize the Department to modify the license of a child care organization to a provisional license when the licensee violated the Act, rules promulgated under it, or the terms of the license.
- Revise provisions addressing the effectiveness and renewal of a license.
- Revise the information that must be included in a database of child care centers, family child care homes, and group child care homes, and require certain information in the database to be made available to people seeking information on child care options.

**Senate Bill 183 would amend the Code of Criminal Procedure to make changes to the sentencing guidelines to reflect revisions proposed by Senate Bills 180 and 181.**

Each of the bills would take effect 90 days after its enactment. Senate Bills 180, 181, and 182 are tie-barred. Senate Bill 183 is tie-barred to Senate Bill 180.

**Senate Bill 180**

Criminal History Check

Child Care Organizations. The child care licensing Act provides that, when a person or partnership, or a licensee designee if the applicant is a limited liability corporation, firm, corporation, association, or nongovernmental organization, applies for or applies to renew a license for a child care organization under Section 5, the Department must request the MSP to perform a criminal history check on the person and a criminal records check through the FBI. The bill would include in that provision a licensee designee of an applicant that was a governmental organization, and would delete the requirement of a criminal history check upon application to renew a license.

The bill would require the Department to request the MSP to perform a "criminal history check", which Senate Bill 181 would define as a fingerprint-based criminal history record information background check through the MSP and the FBI.

(Section 5 prohibits a person, partnership, firm, corporation, association, or nongovernmental organization from establishing or maintaining a child care organization unless licensed or registered, and establishes licensure and application requirements. Under Senate Bill 181, Section 5 would not apply to a child care center, group child care home, or family child care home; Senate Bill 182 would add Section 5m to establish separate licensure and application requirements for those facilities.)

The Act defines "child care organization" as a governmental or nongovernmental organization having as its principal function receiving minor children for care, maintenance, training, and supervision, notwithstanding that educational instruction may be given. The term includes organizations commonly described as child caring institutions, child placing agencies, children's camps, children's campsites, children's therapeutic group homes, child care centers, day care centers, nursery schools, parent cooperative preschools, foster homes, group homes, or child care homes.

"Child care center" means a facility, other than a private residence, receiving one or more preschool or school-age children for care for periods of less than 24 hours a day, where the parents or guardians are not immediately available to the child. (Senate Bill 181 would amend the definition to refer to children under 13 years of age, rather than preschool or school-age children.)

"Family child care home" means a private home in which one but fewer than seven minor children are received for care and supervision for compensation for periods of less than 24 hours a day, unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. (Senate Bill 181 would amend the definition to refer to three but fewer than seven children. In the exception, the bill would refer to children related to an adult member of the household, rather than family.)

"Group child care home" means a private home in which more than six but not more than 12 minor children are given care and supervision for periods of less than 24 hours a day unattended by a parent or legal guardian, except children related to an adult member of the

family by blood, marriage, or adoption. (In the exception, Senate Bill 181 would refer to children related to an adult member of the household, rather than family.)

"Related" means in the relationship of parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, aunt, cousin, great aunt, great uncle, or step grandparent by marriage, blood, or adoption. (Under Senate Bill 181, "related" would mean in the relationship by blood, marriage, or adoption, as parent, grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great aunt or great uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of those individuals, even after the marriage has ended by death or divorce.)

Foster Family Homes. Under the Act, when a person applies for or to renew a license to operate a foster family home or foster family group home, the Department must request the MSP to perform both a criminal history check on the person and a criminal records check through the FBI. The bill would require the Department to request the MSP to perform a "criminal history check".

The Act also provides that, when a person applies for or to renew a license to operate a foster family home or foster family group home, the Department must perform a criminal history check with the MSP on all people over the age of 18 residing in the home in which the foster family home or group home is operated. The bill instead would require the Department to perform a criminal history background check on an adult member of the household using the MSP's ICHAT.

"Foster family home" means a private home in which one but not more than four minor children, who are not related to an adult member of the household by blood or marriage, or who are not placed in the household under the Michigan Adoption Code, are given care and supervision for 24 hours a day, for four or more days a week, for two or more consecutive weeks, unattended by a parent, legal guardian, or legal custodian.

A "foster family group home" is a home described above in which more than four but fewer than seven minor children are cared for.

(Senate Bill 181 would define "member of the household" as any individual who lives in a family child care home, group child care home, foster family home, or foster family group home on an ongoing basis, or who has a recurrent presence in the home, including overnight stays. A member of the household would not include a child to whom child care was being provided or a foster child.)

#### Report of Arraignment

The Act requires a child care center or day care center licensee to report to the Department, and requires an employee of a child care center or day care center to report to that child care center or day care center within three business days after he or she has been arraigned for a felony or any of the misdemeanors listed in the Act.

The bill instead would require a child care center licensee, licensee designee, or program director, group child care home licensee, and family child care home licensee to report to the Department within three business days after he or she was arraigned for or convicted of one or more of the crimes listed in Section 5r (which the bill would add to the Act). A child care staff member would have to report to the child care center, group child care home, or family child care home within three business days after he or she was arraigned for or convicted of one or more of those crimes.

The bill also would require a child care center licensee, licensee designee, or program director, group child care home licensee, and family child care home licensee to report to the Department within three business days after receiving a report from a child care staff member. A group child care home licensee or family child care home licensee would have to report to the Department within three business days after he or she knew or should reasonably have known that an adult member of the household had been arraigned for or convicted of one or more of the crimes listed in Section 5r.

(Section 5r, which is described in greater detail below, lists crimes for which a person required to undergo a criminal history check would be ineligible to receive a license for, or be an adult member of the household or child care staff member of a child care center, group child care home, or family child care home.)

Senate Bill 181 would define "child care staff member" as an individual who is 18 years of age or older and is one or more of the following:

- An individual employed by a child care center, group child care home, or family child care home for compensation, including a contract employee or a self-employed individual.
- An individual whose activities involve the unsupervised care or supervision of children for a child care center, group child care home, or family child care home.
- An individual who has unsupervised access to children who are cared for or supervised by a child care center, group child care home, or family child care home.)

#### MSP Records

The Act requires the MSP to store and maintain all fingerprints submitted under the Act in an automated fingerprint identification system database that provides for an automatic notification at the time a subsequent criminal arrest fingerprint card submitted into the system matches a set of fingerprints previously submitted in accordance with the Act. Upon that notification, the MSP must immediately notify the Department, which must immediately contact the respective child care center, day care center, family child care home, group child care home, licensed child placing agency, or approved governmental unit, foster family home, or foster family group home with which the person is associated. The bill would delete reference to all those entities and instead require the Department to contact the respective child care organization with which the individual was associated. Except for child placing agencies, the criminal history record information could be released only to the individual to whom it pertained.

Under the bill, when the MSP was able to participate with the FBI's automatic notification system similar to the system administered by the MSP, all fingerprints submitted to the FBI could be stored and retained. When a subsequent criminal arrest fingerprint card submitted into the system matched a set of fingerprints for a person retained in accordance with the Act, the MSP would have to immediately notify the Department, which immediately would have to contact the child care organization with which the person was associated if a conviction resulted from the arrest. Except for child placing agencies, the criminal history record information could be released only to the person to whom it pertained.

#### False Report

Under the Act, a person is guilty of a crime if he or she intentionally makes a false report to the Department regarding a child care organization that causes the Department to initiate a special investigation for which the child care organization is required to send notice. Under the bill, this provision would apply if the false report caused the Department to initiate a special investigation that the Department classified as high-risk.

## Reporting Immunity; Confidentiality

Under the bill, a person acting in good faith who made a report, cooperated in an investigation, or assisted in any other requirement of the Act would be immune from civil or criminal liability that otherwise could be incurred by that action. A person making a report or assisting in any other requirement of the Act would be presumed to have acted in good faith. Immunity would extend only to an act performed according the Act for reporting a potential violation or assisting or cooperating with the Department in an investigation it conducted.

The identity of a person making a report and cooperating with or assisting the Department relative to that report would be confidential, subject to disclosure only with the consent of the person or by judicial process. If the Department received a complaint by an individual remaining anonymous, it could take no action on the complaint if it did not include sufficient information to reasonably investigate.

## Child Care Centers, Group Child Care Homes, & Family Child Care Homes

Background Checks. Under Section 5n, proposed by the bill, when a person, partnership, firm, corporation, association, governmental organization, or nongovernmental organization applied for or applied to renew a license to operate a child care center, group child care home, or family child care home under Section 5m (which Senate Bill 182 would add), and before the facility allowed an individual to be a member of the household or allowed an individual to become a child care staff member, LARA would have to do all of the following:

- Review its database of individuals with previous disciplinary action within a child care center, group or family child care home, or an adult foster care facility.
- Conduct a search of the individual through the national sex offender registry.
- Request a search of the person through all state criminal registries or repositories for any states of residence in the past five years.
- Request that the MSP perform a criminal history check on the individual, licensee designee, program director, child care staff member, or adult member of the household.

If the person lived out of the United States within the preceding five years, equivalent clearances from each country would have to be provided, if available. If a country did not have the equivalent clearance, the person would have to sign a self-certifying statement that he or she was not ineligible to receive a license, to be an adult member of the household, or to be a child care staff member. A person who provided or was determined to have provided false information or knowingly omitted information in the self-certification statement would be ineligible for the application.

Each person required to undergo a criminal background check described above would have to give written consent at the time of the license application or before becoming a child care staff member to allow the MSP to conduct the required criminal history check. The Department of Licensing and Regulation would have to require the individual to submit his or her fingerprints to the MSP.

The MSP would have to conduct a criminal history check within a reasonable time after receiving a complete request. The MSP could charge LARA a fee that did not exceed the actual and reasonable cost of conducting the check, and LARA could pass along the actual cost or fee to the individual.

The bill would allow an individual who was fingerprinted to serve as a child care staff member pending the results of the criminal record and DHHS central registry check if he or she were supervised at all times. Within 45 days after the date on which a criminal history check request was submitted, LARA would have to give a statement to the child care center, group child

care home, or family child care home that indicated whether the person was eligible or ineligible to be an adult member of the household or a child care staff member, without revealing any disqualifying crime or other related information regarding the person. The MSP would have to provide information related to each disqualifying item in a report to an individual who was determined ineligible. An individual who was determined to be ineligible could appeal to LARA if he or she believed that the basis for the determination was inaccurate. The bill outlines the appeals process and procedures.

By September 30, 2017, every child care center licensee, licensee designee, or program director, group child care home licensee, family child care home licensee, child care staff member, and adult member of the household would have to provide his or her fingerprints to the MSP in order to carry out the records and central registry checks. If an extension on the implementation of this program were obtained from the Federal government, that requirement could be implemented no later than September 30, 2018.

If a licensee, licensee designee, or program director of a child care center, group child care home, or family child care home applying for a new license or to renew a license to operate a center or home had previously undergone a criminal history check and had remained continuously licensed since then, that licensee, designee, program director, or home would not have to submit to another criminal history check.

The checks and clearances required for a criminal history check and a central registry check would have to be updated at least every five years if an individual had been continuously licensed, serving as a child care staff member, or been an adult member of the household.

Except as otherwise provided, LARA could not issue a license to operate a child care center, group child care home, or family child care home without requesting a criminal history check. If a criminal history check or information obtained as a result of notification from the MSP revealed that an applicant for a license to operate a child care center, group child care home, or family child care home had been convicted of a crime described in Section 5r, LARA could not issue a license to that applicant. If a criminal history check or information obtained from the MSP revealed that an applicant for renewal of a license had been convicted of one of those crimes, LARA could not renew the license. If a criminal history check or information from the MSP revealed that a current licensee had been convicted of one of those crimes, LARA would have to revoke the license.

Except as otherwise provided, a child care center, group child care home, or family child care home could not allow a person to be a child care staff member without requesting a criminal history check. If a criminal history check or information from the MSP revealed that a potential or current child care staff member had been convicted of a crime described in Section 5r, LARA would have to notify the child care center, group child care home, or family child care home. The center or home could not allow the person to be a child care staff member.

DHHS Central Registry. Under the bill, except as otherwise provided, a licensee, licensee designee, program director, child care staff member, or adult member of the household could not have contact with a child who was in the care of a child care center, group child care home, or family child care home, until LARA obtained documentation from the DHHS that he or she had not been named in a central registry case as the perpetrator of child abuse or neglect. If a central registry clearance documented that the person was so named, he or she would be ineligible to receive a license, be an adult member of the household, or be a child care staff member. For a person who had lived outside of Michigan as an adult within the immediately preceding five years, LARA would have to obtain equivalent documentation for the states of previous residence.

Ineligibility. The bill would add Section 5r to specify conditions that would make an individual ineligible to be licensed as a child care center, group child care home, or family child care home.

A person required to undergo a criminal history check under Section 5n (described above) would be ineligible, for that application only, to receive a license, be an adult member of the household, or be a child care staff member if he or she did either of the following:

- Refused to consent to a criminal history check or central registry check.
- Knowingly made a materially false statement or knowingly omitted information in connection with a criminal history check or central registry check.

An individual required to undergo a database check of previous disciplinary actions could be considered ineligible to receive a license, be an adult member of the household, or be a child care staff member if he or she had a confirmed history of disciplinary action or a violation of the Act, rules promulgated under it, or the terms of a license that resulted in severe physical injury or death of a child or the child's being sexually abused.

An individual required to undergo a criminal history check would be ineligible to receive a license, be an adult member of the household, or be a child care staff member if he or she met one or more of the following:

- Was registered, or was required to be registered, on a state sex offender registry or repository or the national sex offender registry.
- Had been convicted of murder or homicide; child abuse or child neglect; a crime against children, including child pornography; spousal abuse or domestic violence; a crime involving rape or sexual assault; kidnapping; arson, physical assault or battery; or human trafficking or involuntary servitude.
- Had been convicted of a violent misdemeanor against a child, including child abuse, child endangerment, or sexual assault.
- Had been convicted of a misdemeanor involving child pornography.

(Subsequent provisions refer to individuals meeting the conditions listed above as "permanently ineligible".)

An individual required to undergo a criminal history check would be ineligible to receive a license, be an adult member of the household, or be a child care staff member if he or she had been convicted a felony involving one or more of the following, unless 10 years had lapsed since the conviction:

- Harm or threatened harm to an individual.
- Use of a firearm or dangerous weapon.
- Cruelty or torture of any person.
- Substantial misrepresentation of any material fact, bribery, fraud, larceny, embezzlement, theft, home invasion, breaking and entering, receiving and concealing stolen property, or a crime of similar statute.
- Operating a motor vehicle while intoxicated or impaired causing serious injury or death.
- Use of a computer or the internet to commit a crime.
- Cruelty to animals, including fighting, killing, torturing, and abandoning.
- Aggravated stalking, aggravated indecent exposure, indecent exposure by a sexually delinquent person, pandering, transporting an individual for prostitution, and keeping, maintaining, or operating a house of ill fame.
- Being a habitual offender.



An individual required to undergo a criminal history check would be ineligible to receive a license, be an adult member of the household, or be a child care staff member if he or she had been convicted of a felony drug offense, or an attempt or conspiracy to commit a felony drug offense, unless seven years had lapsed since the conviction.

An individual required to undergo a criminal history check would be ineligible to receive a license, be an adult member of the household, or be a child care staff member if he or she had been convicted of one or more of the following or an attempt or conspiracy to commit one or more of the following, unless five years had lapsed since the conviction:

- A misdemeanor involving operating under the presence of a controlled substance, use or possession of a controlled substance, and selling or furnishing a controlled substance to a minor.
- A misdemeanor involving using computers to commit a crime, a substantial misrepresentation of a material fact, embezzlement, breaking and entering, and any other fraudulent crime except third-degree retail fraud, petty theft, or shoplifting.
- A misdemeanor involving stalking, assault, spousal abuse, domestic violence, weapons offense, harboring runaways, aiding and abetting, and arson.

If a person had been previously reviewed and approved by LARA as a licensee of a child care center or group child care home, as a registrant of a family child care home, as a licensee designee or program director for a child care center, or as an adult member of the household before the bill's effective date, LARA could find him or her to be eligible to receive a license, be a member of the household, or be eligible to be a child care staff member, if all of the following applied:

- The offense was previously known and approved by the Department before the bill's effective date.
- The offense was not a felony for which a person would be permanently ineligible under Section 5r.
- The person had remained continuously licensed under the Act or continuously employed with an active child care center license, group child care home license, or family child care home registration since the date of approval.

Except for a person convicted of a felony that would require permanent ineligibility, a person determined to be ineligible under Section 5r who was a licensee, licensee designee, program director, child care staff member, or adult member of the household at the time the record and database checks were completed, could request a redetermination of his or her eligibility. A redetermination would have to be requested in writing within 30 days after receipt of the determination of ineligibility. The request would have to include all evidence of rehabilitation that the individual wished LARA to consider. The Department would have 60 days, after it received all requested information, to respond in writing with the recommendation for the redetermination. The LARA Director's decision would be final.

### **Senate Bill 181**

#### Departments & Rules

Under the Act, the Department of Health and Human Services is responsible for developing and promulgating rules for the care and protection of children in organizations covered by the Act. The bill instead specifies that the DHHS and LARA would have that responsibility.

Under the Act, "department" means the DHHS or a successor agency or department responsible for licensure and registration under the Act. The bill instead would define "department" as the DHHS and LARA or a successor agency or department responsible for

licensure under the Act. The bill specifies that LARA would be responsible for licensing and regulatory matters for child care centers, group child care homes, family child care homes, children's camps, and children's campsites. The DHHS would be responsible for licensing and regulatory matters for child caring institutions, child placing agencies, children's therapeutic group homes, foster family homes, and foster family group homes.

The bill would prohibit a group child care home or a family child care home from being concurrently licensed as an adult foster care family home or an adult foster care small group home.

The Act restricts rules promulgated under it to certain matters. The bill would include in those matters the health of applicants and other people directly responsible for the care and welfare of children served. It also would include the character and health of household members.

### Licensure

Section 5 of the Act prohibits a person, partnership, firm, corporation, association, or nongovernmental organization from establishing or maintaining a child care organization unless licensed or registered, and establishes licensure and application requirements. Under the bill, Section 5 would prohibit a person, partnership, firm, corporation, association, nongovernmental organization, or governmental organization from establishing or maintaining a child care organization unless licensed by the Department.

The bill states that Section 5 would not apply to a child care center, group child care home, or family child care home. (Senate Bill 182 would add Section 5m to establish separate licensure and application requirements for those facilities.)

The bill also states that Sections 5c, 5d, 5g, and 9 would not apply to a child care center, group child care home, or family child care center. (Sections 5c, 5d, and 5g are among those that Senate Bill 180 would amend. Section 5c pertains to criminal history checks for licensure of child care organizations. Section 5d requires criminal history background checks of potential employees of child care organizations. Under Senate Bill 180, Section 5g would prohibit the Department from issuing or renewing a license, and would require the Department to revoke a license, if it became aware that a member of the household of a group child care home or family child care home had been convicted of a listed offense. Section 9, which Senate Bill 181 would amend, prohibits certain people from being present in a child care organization or having contact with children in a child care organization, if they have been convicted of particular offenses or until they provide documentation that they have not been named in a central registry case as the perpetrator of child abuse or neglect.)

The bill would delete several provisions of Section 5 that deal with licensure and application for licensure of child care centers, family child care homes, and group child care homes.

### License Revocation, Refusal, or Denial

The Act allows the Department to deny, revoke, or refuse to renew a license or certificate of registration of a child care organization when the licensee or applicant falsifies information on the application or willfully and substantially violates the Act, rules promulgated under it, or the terms of the license. The bill would delete references to a certificate of registration.

A license may not be revoked, refused, or denied unless the licensee or applicant is given written notice of the grounds for the proposed action. If revocation, denial, or refusal is appealed within 30 days after receipt of the notice, the Department Director or his or her designee must conduct a hearing at which the licensee or applicant may present testimony and confront witnesses.

The bill specifies that, if the proposed action were not appealed, the license would have to be revoked or refused renewal, or the application would have to be denied. The proposed action would have to be appealed within 30 days after receipt, in writing to the Department Director or his or her designee. Upon receipt of the written appeal, the Director or his or her designee would have to initiate contested case hearing provisions of the Administrative Procedures Act. Currently, the decision of the Director must be made within 30 days after the hearing. The bill would require the decision to be made as soon as practicable after the hearing.

In addition, the bill would prohibit the Department from issuing a license to an individual who worked in a child care center, group child care home, or family child care home at the time of a violation of the child care licensing Act, rules promulgated under it, or the terms of a license that resulted in the severe physical injury or death of a child or resulted in a child's being sexually abused if that individual had direct care and supervision of the child at the time of the violation.

The Department could immediately revoke or refuse to renew a license or deny an application for a license without providing written notice of the grounds of the proposed action or giving the licensee or applicant 30 days to appeal, if the licensee or applicant did all of the following in writing:

- Waived the requirement that the Department provide written notice of the grounds for the proposed action.
- Waived the 30-day time frame in which to submit a written appeal of the proposed action.
- Waived the right to implement a contested case hearing under the Administrative Procedures Act.

The Department Director or his or her designee could issue a subpoena to do either of the following:

- Compel the attendance of a witness to testify at a contested case hearing.
- Produce books, papers, documents, or other items relevant to the investigation or hearing.

If a subpoena were disobeyed, the Director or his or her designee could petition the circuit court to require the attendance of a witness or the production of books, papers, documents, or other items. The court could issue an order requiring a person to appear and give testimony or produce books, papers, documents, or other items. Failure to obey the court order could be punished as contempt of court.

### Injunctive Action

Currently, when there is a violation of the Act or a rule promulgated under it, and the unlawful activity or condition of the child care organization is likely to result in serious harm to the children under care, the Department may seek injunctive action against the child care organization in circuit court through proceedings instituted by the Attorney General on behalf of the Department. The bill would delete that provision.

Under the bill, if a person continued to violate a provision of the Act or a rule promulgated under it after being informed by the Department, the Department could obtain an injunction to restrain or prevent a person from committing further violations.

If the Department had conducted an investigation that disclosed an imminent threat to the public health, safety, or welfare, or the well-being of a child was endangered, the Department could obtain an injunction to restrain or prevent a person from acting in a manner that threatened the public health, safety, or welfare or to compel a person to affirmatively take

reasonable corrective action. Before obtaining an injunction, the Department would have to obtain an affidavit by a person familiar with the facts set forth in the affidavit, or, if appropriate, based upon an affidavit, that an imminent threat to the public health, safety, or welfare existed or the well-being of a child was endangered. The appropriate department would not be required to provide prior warning to the person before obtaining an injunction. The appropriate department also would not be required to demonstrate an imminent threat to the public health, safety, or welfare or child endangerment if the person were operating a child care organization without a license in violation of the Director's final order to revoke, refuse, or deny a license.

If the Department were successful in obtaining an injunction, it would be entitled to actual costs and attorney fees for maintaining the action.

#### Extended Denial of License

Under the Act, a person, child care organization, agency, or representative or officer of a firm, a corporation, an association, or an organization who has a license or certificate of registration revoked, application denied, or renewal refused, may be refused a license or be prohibited from being connected, directly or indirectly, with a licensee or registrant for not less than two years after the revocation, denial, or refusal to renew. Under the bill, that period would be not less than five years. The bill specifies that the Department, in its discretion, would not be required to accept an application from a person, child care organization, agency, or representative or officer of a firm, a corporation, an association, or an organization that was refused a license during that period. The Department could reject the application on its face without taking further action after notifying the applicant of the rejection and the reason for rejection.

#### Examination/Inspection of Child Care Organization

The Act authorizes the Department to investigate and examine conditions of a child care organization and the books and records of the licensee. The bill would permit the Department to investigate, inspect, and examine conditions and investigate and examine a licensee's books.

The Act requires a licensee to admit members of the Department and furnish all reasonable facilities for thorough examination of books, records, and reports. The bill instead would require a licensee to cooperate with the Department's investigation, inspection, and examination by doing all of the following:

- Admitting members of the Department into the child care organization and furnishing all reasonable facilities for thorough examination of books, records, and reports.
- Allowing the Department to perform routine investigative functions during the course of an investigation, inspection, or examination.
- Providing accurate and truthful information to the Department, and encouraging witnesses, such as staff and household members, to provide accurate and truthful information.

Routine investigative functions would include interviewing potential witnesses, such as staff and household members, and taking photographs to assess and document the conditions of the child care organization and its compliance with the Act and rules promulgated under it.

The bill would require a child care center, group child care home, or family child care home licensee to give LARA child information cards for all children presently enrolled for care, as requested by the Department, whenever it initiated or conducted an investigation, inspection, or assessment. If the investigation, inspection, or assessment resulted in the Department's

pursuing disciplinary action, the center or home licensee would have to give the Department the child information cards for newly enrolled children for the pendency of the proposed disciplinary action.

The Department could suspend, deny, revoke, or refuse to renew a license of the child care organization if the licensee did not cooperate with an investigation, inspection, or examination.

#### Evaluation of Governmental Child Care Organizations

Currently, local and State government child care organizations similar to those nongovernmental organizations required to be licensed under the Act must be evaluated and approved at least once every two years, using the Act and rules promulgated for similar nongovernmental organizations licensed under the Act. The bill would delete that provision.

The Act requires a report of the evaluation to be furnished to the funding body for each child care organization. Under the bill, that provision would apply to a report or inspection for each governmental child care organization.

#### Temporary Operation at Unlicensed Location

Under the bill, in the case of a disaster, a child care center, group child care home, or family child care home could temporarily operate at an unlicensed location. The Department would have to determine what constituted a disaster under this provision.

The child care center, group child care home or family child care home could not operate in a new location until after the Department had conducted an inspection and approved the new location. For a child care center, a fire safety inspection, and environmental health inspection, and, if necessary, a lead hazard risk assessment, and, for a group or family child care home, an environmental health inspection, if necessary, would have to be conducted within 45 days of the proposal of the new location. If any of the inspections found the new location to be unsafe, the center or home would have to discontinue operation in that new location.

If the child care center, group child care home, or family child care home would remain at the new location, the licensee would have to apply for and obtain a new license within one year of moving to the new location.

#### First Aid & CPR

The Act requires a child caring institution, child care center, or group child care home to have on duty, at all times while the facility is providing care to one or more children, at least one person who has been certified within the preceding 36 months in first aid and within the preceding 12 months in CPR by the American Red Cross, the American Heart Association, or an equivalent organization or institution approved by the Department.

The bill instead would require a child caring institution, foster family home, foster family group home, child care center, group child care home, and family child care home to have individuals present, as prescribed in the appropriate administrative rules, who have current certification in first aid and CPR obtained through the Red Cross, Heart Association, or an equivalent entity approved by the Department.

#### Personal Restraint/Seclusion

The Act provides that personal restraint or seclusion must not result in harm or injury to the minor child and may be used only to ensure the child's safety or the safety of others during

an emergency safety situation. The bill would require that personal restraint or seclusion not result in serious injury, rather than harm or injury.

#### Parental Visit

The Act specifies that a parent or legal guardian of a child at a child care center or day care center may visit the child at the facility at any time. Under the bill, that provision would apply to a child at a child care center, group child care home, or family child care home.

In addition, a parent or legal guardian who wishes to enroll a child at a child care center or day care center may visit the center before the child's enrollment at the times the center establishes. Under the bill, a parent or guardian who wished to enroll a child at a child care center, group child care home, or family child care home could visit the center or home before the child's enrollment during the facility's hours of operation.

#### Smoking Prohibited Signs

The Act prohibits smoking in a child caring institution or child care center or on real property that is under the control of the institution or center and upon which it is located, including other related buildings. The bill would require the operator of a child care center to conspicuously post on the premises a notice specifying that smoking on the premises is prohibited.

The Act also prohibits smoking on the premises of a group child care home or a family child care home during the home's hours of operation. The operator of the home may permit smoking on the premises during other periods, if he or she has notified a parent or legal guardian of each child participating in a home activity that smoking on the premises occurs or may occur when the home is not in operation. The bill would require the operator of a group child care home or family child care home to conspicuously post on the premises a notice specifying that smoking on the premises is prohibited during the home's hours of operation.

#### Annual Inspection

The bill provides that an annual inspection of a child care organization licensed under the Act would have to be unannounced, unless the Department, in its discretion, considered it necessary to schedule an appointment for an inspection.

### **Senate Bill 182**

#### Child Care Center & Group or Family Child Care Home Licensure

The bill would add Section 5m to regulate licensure and application for licensure as a child care center, family child care home, or group child care home.

The bill would prohibit a person, partnership, firm, corporation, association, nongovernmental organization, or governmental organization from establishing or maintaining a child care center, group child care home, or family child care home unless licensed by LARA. Application for a license would have to be made on forms provided, and in the manner prescribed, by the Department, including required fees. Before issuing or renewing a license, LARA would have to investigate the applicant's activities and proposed standards of care and make an on-site visit.

Except as otherwise provided, if LARA were satisfied as to the need for a child care center, group child care home, or family child care home, as to its financial stability, and that the service, facility, applicant, licensee, licensee designee, program director, child care staff member, or adult member of the household was conducive to the welfare of the children, the Department would have to issue or renew the license. If LARA determined that that was not the case, it would have to deny the application or revoke the licensee's license. To assess whether those conditions existed, LARA could use available information, including any of the following:

- Investigative report, such as a law enforcement report and a children's protective services report.
- Medical report.
- Public record.
- Child care center, group child care home, or family child care home record.
- Inspection of the child care center, group child care home, or family child care home.

The Department also could use fingerprint information retained by the MSP to obtain reports prepared independently for police, law enforcement, or other purposes to make a determination.

The Department would have to issue a group child care home or family child care home license to a person who had successfully completed a Department-offered orientation session and who met the requirements of the Act. The Department would have to make available to group child care home or family child care home license applicants an orientation session regarding the Act, the rules promulgated under it, and the needs of children in child care before issuing a group child care home or family child care home license.

Except as otherwise provided, LARA would have to issue an original or renewal license under the Act for a child care center, group child care home, or family child care home within six months after the applicant filed a completed application. If LARA considered the application incomplete, the Department would have to notify the applicant in writing or electronically within 30 days after receiving the incomplete application, describing the deficiency and requesting additional information. If LARA identified a deficiency or required a corrective action plan, the six-month period would be tolled until either of the following occurred:

- Upon notification of a deficiency, until the date LARA received the requested information.
- Upon notification that a corrective action plan was required, until the date LARA determined the requirements of the plan had been met.

The determination of the completeness of an application would not be an approval of it and would not confer eligibility on an applicant determined otherwise ineligible for issuance of a license.

Except as otherwise provided, if LARA failed to issue, deny, or refuse to renew a license to a child care center, group child care home, or family child care home within the time required by the bill, the Department would have to return the application fee and reduce the fee for the applicant's next renewal application, if any, by 15%. Failure to issue, deny, or refuse to renew a license within the required period would not allow the Department to otherwise delay the processing of the application. A completed application would have to be placed in sequence with other completed applications received at that same time. The Department could not discriminate against an applicant in processing an application based on the fact that the application fee was refunded or discounted.

If, on a continual basis, inspections performed by a local health department delayed LARA in issuing or denying a license for a child care center, group child care home, or family child care

home within the six-month period, LARA could use its staff to complete the inspection instead of the local health department causing the delays.

The bill would require LARA to assess fees as provided in Table 1.

Table 1

Type of License	Original Fee	Renewal Fee
Family Child Care Home	\$50	\$25
Group Child care Home	\$100	\$50
Child Care Center, with a capacity of 1 to 20	\$150	\$75
Child Care Center, with a capacity of 21 to 50	\$200	\$100
Child Care Center, with a capacity of 51 to 100	\$250	\$125
Child Care Center, with a capacity of over 100	\$300	\$150

The Department could use the fees only to fund the program licensing child care centers, group child care homes, and family child care homes. Funds remaining at the end of the fiscal year could not lapse to the General Fund but would have to remain available to fund the program in subsequent years. Fees would be payable to LARA at the time an application was submitted for original issuance or renewal. If a license were denied, revoked, or refused renewal, the Department could not refund paid fees.

Original & Provisional Licenses/Modification

Under the Act, a provisional license must be issued to a new organization during the first six months of operation. At the end of the six months, the Department must either issue a regular license or renew or refuse to renew the provisional license.

The bill specifies instead that an original license would have to be issued to a new child care organization during its first six months of operation. An original license would expire six months after the date of issuance. The renewal of an original license would be contingent upon the submission of a new application and approval by the Department. At the end of the first six months of operation, the Department would have to either renew or refuse to renew the original license or modify it to a provisional license.

The Act allows a provisional license to be issued to a child care organization that is temporarily unable to conform to rules. The issuance of a provisional license is contingent upon the submission to the Department of an acceptable plan to overcome the deficiency present in the child care organization within the time limitations of the provisional licensing period. A provisional license expires six months from the date of issuance and may be issued not more than four times.

Under the bill, a provisional license could be issued not more than three times. The renewal of a provisional license would be contingent upon the submission of a new application and approval by the appropriate Department. At the end of the six months, the Department would have to issue a regular license, refuse to renew the license, or modify a provisional license.

The bill would authorize the Department to modify the license of a child care organization to a provisional license when the licensee willfully and substantially violated the Act, rules promulgated under it, or the terms of the license. A license could not be modified unless the licensee was given written notice of the grounds of the proposed modification. If the proposed modification were not appealed, the license would be modified. A proposed modification would have to be appealed within 30 days after receipt, in writing to the Director or his or her designee. Upon receiving the appeal, the Director or designee would have to initiate a



contested case hearing. Notice of a hearing would have to be given to the licensee by personal service or delivery to the proper address by certified mail at least two weeks before the date of the hearing. The Director's decision would have to be made as soon as practicable after the hearing and be forwarded to the licensee by certified mail within 10 days after that. The formal notice and hearing requirement would not apply if the licensee and the Department complied with the provision described below.

The Department could immediately modify a license without providing written notice of the grounds for the proposed action or giving the licensee 30 days to appeal if the licensee, in writing, did the following:

- Waived the requirement that the Department provide written notice of the grounds for the proposed action.
- Waived the 30-day time frame in which to submit a written appeal to the proposed act.
- Waived the right to implement a contested case hearing.

#### Other Licensure Provisions

The bill would require an applicant, licensee, or licensee designee to present a valid driver license or an official State personal ID card in order to obtain or renew a license for a child care center, group child care home, or family child care home.

Under the Act, a regular license is effective for two years after the date of issuance unless revoked or modified to a provisional status. Under the bill, a regular license would be effective for two years unless revoked, modified to a provisional license, or refused for renewal.

The bill specifies that the Department could accept a licensee's written request to close a license if it did not have an active investigation against the licensee or were not pursuing revocation or refusal to renew the license.

A certification of registration issued by the Department before the bill's effective date would have to be reissued as a license. Reissuance would have to be completed in the manner determined by the Department within one year after the bill's effective date.

A license would have to be issued to a specific person or organization at a specific location, would have to be nontransferable, and would remain the property of the Department.

#### Database

The Act requires the Department and to establish and maintain a database of child care centers, family child care homes, and group child care homes "as a central clearinghouse for persons seeking information on child care options". The bill would delete the quoted phrase.

The Act specifies information that, at a minimum, must be contained in the database. That information includes the license or registration number, effective date, and expiration date of the child care center, family child care home, or group child care home. The bill would delete reference to the registration number and would add the date of the last inspection. The required information also includes the number and nature of any special investigations regarding the child care center, family child care home, or group child care home conducted by the Department that the Department classifies as high risk. The bill would delete "that the department classifies as high risk".

The Act requires the Department to make the database available to the public on the internet, without charge, through its website. Under the bill, the Department would have to make

certain database information available in that manner for people seeking information on child care options. The information that would have to be made available includes the following:

- The name, address, and telephone number of the child care center, family child care home, or group child care home.
- The days and general hours of operation of the child care center, family child care home, or group child care home.
- The license number, effective date, expiration date, and date of the last inspection.
- The results of any monitoring inspections conducted in the past three years and information on corrective actions taken, if applicable.
- The results of any substantiated complaint investigations conducted in the past five years and information on corrective actions taken.

### **Senate Bill 183**

The bill would change the Michigan Compiled Laws (MCL) citation in the sentencing guideline for failure of child care centers, day care centers, and employees to report an arraignment on criminal charges (which would reflect revisions proposed by Senate Bill 180). The bill also would refer to child care organizations in that description, rather than child care centers and day care centers. The bill would delete a separate sentencing guideline for failure of family child care homes and group child care homes to report and arraignment on criminal charges (a violation that Senate Bill 181 would repeal).

The bill would change the MCL citation in the sentencing guideline for a false report initiating a special investigation of a child care organization (which would reflect revisions proposed by Senate Bill 180). The bill also would refer to a false report initiating a "high-risk" special investigation.

MCL 722.115c et al. (S.B. 180)  
722.111 et al. (S.B. 181)  
722.117 et al. (S.B. 182)  
777.15g (S.B. 183)

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bills would have a negative fiscal impact on the Department of Licensing and Regulatory Affairs. Under the bills, child care license applicants would have to be fingerprinted and have a background check. These services would be provided by the Michigan State Police. Increased costs to LARA would arise from the administrative burden associated with processing these additional records. The fiscal year 2017-18 Governor's Recommendation for the LARA budget contains an additional 4.0 FTEs and \$800,000 in Federal funds (passed through from the Michigan Department of Education) to assist with processing fingerprints and background checks for the approximately 84,500 people currently in the child care industry. Going forward, as new people enter the field, LARA and the Department of Education would have to work out how these costs would be covered.

Senate Bill 180 would have a moderate fiscal impact on the Department of State Police. The bill would require thousands of employees of child care organizations, as a condition of employment, to submit to a fingerprint criminal history check, which would be processed and analyzed by the MSP. Under current law, the cost of each fingerprint criminal history check, which includes a search of State and Federal fingerprint databases, is \$42 (\$30 State fee, \$12 Federal fee). Also under current law, a law enforcement agency or vendor that takes fingerprint impressions from an individual for submission to the MSP may charge a nominal fee for doing so (often \$15 or less, if anything). The cost of performing the background checks by the MSP would be wholly covered by the existing fee, and in fact the law requires that the

fee not exceed the actual and reasonable cost of the MSP to conduct the check. Senate Bill 182 would establish child care license fees in statute, but would not effectively change the fees currently charged for the licensure of various child care facilities, as these fees are already being charged.

There could be a slight fiscal cost to the Department of Health and Human Services if there were an increase in the cost of a criminal history check by the Michigan State Police or the Federal Bureau of Investigation for applications for licensing and regulatory matters for child caring institutions, child placing agencies, children's therapeutic group homes, foster family homes, and foster family group homes.

The proposed changes to Sections 5e and 5i (involving the required reporting of an employee or adult member of a household who has been arraigned for or convicted of listed offenses) are of a clarifying nature, so it is not known whether implementing the changes would result in more or fewer felony and misdemeanor arrests and convictions. The prohibition against intentionally making a false report regarding a child care organization would be revised so that it would be a crime only if the false report caused the Department of Health and Human Services to initiate a special investigation that the Department classified as high-risk. This change could lead to fewer individuals being charged with making a false report.

More misdemeanor and felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government would be approximately \$3,764 per prisoner per year. Any associated increase in fine revenue would increase funding to public libraries.

Conversely, fewer misdemeanor and felony arrests and convictions could reduce resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. Any associated decrease in fine revenue would reduce funding to public libraries.

The bills would have no fiscal impact on local units of government.

Fiscal Analyst: Bruce Baker  
Ryan Bergan  
John Maxwell  
Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.