

HOUSE BILL NO. 5280

August 18, 2021, Introduced by Reps. Fink, LaGrand, Hood, Stone, Tyrone Carter, Aiyash, Weiss, Hope, Witwer, O'Neal, Anthony, Kuppa, Bezotte, Huizenga, Rendon, Meerman, Maddock, Wozniak and Yancey and referred to the Committee on Families, Children, and Seniors.

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 2020 PA 6.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1** Sec. 1. As used in this act:
- 2** (a) "Child care staff member" means an individual who is 18

1 years of age or older to whom 1 or more of the following applies:

2 (i) The individual is employed by a child care center, group
3 child care home, or family child care home for compensation,
4 including a contract employee or a self-employed individual.

5 (ii) An individual whose activities involve the unsupervised
6 care or supervision of children for a child care center, group
7 child care home, or family child care home.

8 (iii) An individual who has unsupervised access to children who
9 are cared for or supervised by a child care center, group child
10 care home, or family child care home.

11 (iv) An individual who acts in the role of a licensee designee
12 or program director.

13 (b) "Child care organization" means a governmental or
14 nongovernmental organization having as its principal function
15 receiving minor children for care, maintenance, training, and
16 supervision, notwithstanding that educational instruction may be
17 given. Child care organization includes organizations commonly
18 described as child caring institutions, child placing agencies,
19 children's camps, children's campsites, children's therapeutic
20 group homes, child care centers, day care centers, nursery schools,
21 parent cooperative preschools, foster homes, group homes, or child
22 care homes. Child care organization does not include a governmental
23 or nongovernmental organization that does either of the following:

24 (i) Provides care exclusively to minors who have been
25 emancipated by court order under section 4(3) of 1968 PA 293, MCL
26 722.4.

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

1 (c) "Child caring institution" means a child care facility
2 that is organized for the purpose of receiving minor children for
3 care, maintenance, and supervision, usually on a 24-hour basis, in
4 buildings maintained by the child caring institution for that
5 purpose, and operates throughout the year. An educational program
6 may be provided, but the educational program shall not be the
7 primary purpose of the facility. Child caring institution includes
8 a maternity home for the care of unmarried mothers who are minors
9 and an agency group home, that is described as a small child caring
10 institution, owned, leased, or rented by a licensed agency
11 providing care for more than 4 but less than 13 minor children.
12 Child caring institution also includes an institution for
13 developmentally disabled or emotionally disturbed minor children.
14 Child caring institution does not include a hospital, nursing home,
15 or home for the aged licensed under article 17 of the public health
16 code, 1978 PA 368, MCL 333.20101 to 333.22260, a boarding school
17 licensed under section 1335 of the revised school code, 1976 PA
18 451, MCL 380.1335, a hospital or facility operated by the state or
19 licensed under the mental health code, 1974 PA 258, MCL 330.1001 to
20 330.2106, or an adult foster care family home or an adult foster
21 care small group home licensed under the adult foster care facility
22 licensing act, 1979 PA 218, MCL 400.701 to 400.737, in which a
23 child has been placed under section 5(6).

24 (d) "Child caring institution staff member" means an
25 individual who is 18 years of age or older to whom 1 or more of the
26 following applies:

27 (i) The individual is employed by a child caring institution
28 for compensation, including an adult who does not work directly
29 with children.

1 (ii) The individual is a contract employee or self-employed
2 individual with a child caring institution.

3 (iii) The individual is an intern or other individual who
4 provides specific services under the rules promulgated under this
5 act.

6 (e) "Child placing agency" means a governmental organization
7 or an agency organized under the nonprofit corporation act, 1982 PA
8 162, MCL 450.2101 to 450.3192, for the purpose of receiving
9 children for placement in private family homes for foster care or
10 for adoption. The function of a child placing agency may include
11 investigating applicants for adoption and investigating and
12 certifying foster family homes and foster family group homes as
13 provided in this act. The function of a child placing agency may
14 also include supervising children who are at least 16 but less than
15 21 years of age and who are living in unlicensed residences as
16 provided in section 5(4).

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

22 (g) "Children's campsite" means the outdoor setting where a
23 children's residential or day camp is located.

24 (h) "Children's therapeutic group home" means a child caring
25 institution receiving not more than 6 minor children who are
26 diagnosed with a developmental disability as defined in section
27 100a of the mental health code, 1974 PA 258, MCL 330.1100a, or a
28 serious emotional disturbance as defined in section 100d of the
29 mental health code, 1974 PA 258, MCL 330.1100d, and that meets all

1 of the following requirements:

2 (i) Provides care, maintenance, and supervision, usually on a
3 24-hour basis.

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

9 (iii) Is not a private home.

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

11 (i) "Child care center" means a facility, other than a private
12 residence, receiving 1 or more children under 13 years of age for
13 care for periods of less than 24 hours a day, where the parents or
14 guardians are not immediately available to the child. Child care
15 center includes a facility that provides care for not less than 2
16 consecutive weeks, regardless of the number of hours of care per
17 day. The facility is generally described as a child care center,
18 day care center, day nursery, nursery school, parent cooperative
19 preschool, play group, before- or after-school program, or drop-in
20 center. Child care center does not include any of the following:

21 (i) A Sunday school, a vacation bible school, or a religious
22 instructional class that is conducted by a religious organization
23 where children are attending for not more than 3 hours per day for
24 an indefinite period or for not more than 8 hours per day for a
25 period not to exceed 4 weeks during a 12-month period.

26 (ii) A facility operated by a religious organization where
27 children are in the religious organization's care for not more than
28 3 hours while persons responsible for the children are attending
29 religious services.

1 (iii) A program that is primarily supervised, school-age-child-
2 focused training in a specific subject, including, but not limited
3 to, dancing, drama, music, or religion. This exclusion applies only
4 to the time a child is involved in supervised, school-age-child-
5 focused training.

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

14 (v) A program that primarily provides therapeutic services to
15 a child.

16 (j) "Conviction" means a final conviction, the payment of a
17 fine, a plea of guilty or nolo contendere if accepted by the court,
18 a finding of guilt for a criminal law violation or a juvenile
19 adjudication or disposition by the juvenile division of probate
20 court or family division of circuit court for a violation that if
21 committed by an adult would be a crime, or a conviction in a tribal
22 court or a military court.

23 (k) "Criminal history check" means a fingerprint-based
24 criminal history record information background check through the
25 department of state police and the Federal Bureau of Investigation.

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

28 (m) "Department" means the department of health and human
29 services and the department of licensing and regulatory affairs or

1 a successor agency or department responsible for licensure under
2 this act. The department of licensing and regulatory affairs is
3 responsible for licensing and regulatory matters for child care
4 centers, group child care homes, family child care homes,
5 children's camps, and children's campsites. The department of
6 health and human services is responsible for licensing and
7 regulatory matters for child caring institutions, child placing
8 agencies, children's therapeutic group homes, foster family homes,
9 and foster family group homes.

10 (n) "Eligible" means that the individual obtained the checks
11 and clearances described in sections 5n and 5q and is considered
12 appropriate to obtain a license, to be a member of the household of
13 a group child care home or family child care home, or to be a child
14 care staff member.

15 (o) "Ineligible" means that the individual obtained the checks
16 and clearances as described in sections 5n and 5q and is not
17 considered appropriate to obtain a license, to be a member of the
18 household of a group child care home or family child care home, or
19 to be a child care staff member due to violation of section 5n, 5q,
20 or 5r.

21 (p) "Private home" means a private residence in which the
22 licensee permanently resides, which residency is not contingent
23 upon caring for children or employment by a child placing agency.
24 Private home includes a full-time foster family home, a full-time
25 foster family group home, a group child care home, or a family
26 child care home, as follows:

27 (i) "Foster family home" means the private home of an
28 individual who is licensed to provide 24-hour care for 1 but not
29 more than 4 minor children who are placed away from their parent,

1 legal guardian, or legal custodian in foster care. The licensed
2 individual providing care is required to comply with the reasonable
3 and prudent parenting standard as defined in section 1 of chapter
4 XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1.

5 (ii) "Foster family group home" means the private home of an
6 individual who has been licensed by the department to provide 24-
7 hour care for more than 4 but fewer than 7 minor children who are
8 placed away from their parent, legal guardian, or legal custodian
9 in foster care. The licensed individual providing care is required
10 to comply with the reasonable and prudent parenting standard as
11 defined in section 1 of chapter XIIIA of the probate code of 1939,
12 1939 PA 288, MCL 712A.1.

13 (iii) "Family child care home" means a private home in which 1
14 but fewer than 7 minor children are received for care and
15 supervision for compensation for periods of less than 24 hours a
16 day, unattended by a parent or legal guardian, except children
17 related to an adult member of the household by blood, marriage, or
18 adoption. Family child care home includes a home in which care is
19 given to an unrelated minor child for more than 4 weeks during a
20 calendar year. A family child care home does not include an
21 individual providing babysitting services for another individual.
22 As used in this subparagraph, "providing babysitting services"
23 means caring for a child on behalf of the child's parent or
24 guardian if the annual compensation for providing those services
25 does not equal or exceed \$600.00 or an amount that would according
26 to the internal revenue code of 1986 obligate the child's parent or
27 guardian to provide a form 1099-MISC to the individual for
28 compensation paid during the calendar year for those services.

29 (iv) "Group child care home" means a private home in which more

1 than 6 but not more than 12 minor children are given care and
2 supervision for periods of less than 24 hours a day unattended by a
3 parent or legal guardian, except children related to an adult
4 member of the household by blood, marriage, or adoption. Group
5 child care home includes a home in which care is given to an
6 unrelated minor child for more than 4 weeks during a calendar year.

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

11 (r) "Licensee" means a person, partnership, firm, corporation,
12 association, nongovernmental organization, or local or state
13 government organization that has been issued a license under this
14 act to operate a child care organization.

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

17 (t) "Member of the household" means any individual who resides
18 in a family child care home, group child care home, foster family
19 home, or foster family group home on an ongoing basis, or who has a
20 recurrent presence in the home, including, but not limited to,
21 overnight stays. For foster family homes and foster family group
22 homes, a member of the household does not include a foster child.
23 For group child care homes and family child care homes, a member of
24 the household does not include a child to whom child care is being
25 provided.

26 (u) "Original license" means a license issued to a child care
27 organization during the first 6 months of operation indicating that
28 the organization is in compliance with all rules promulgated by the
29 department under this act.

1 (v) "Provisional license" means a license issued to a child
2 care organization that is temporarily unable to conform to the
3 rules promulgated under this act.

4 (w) "Qualified residential treatment program" or "QRTP" means
5 a program within a child caring institution to which all of the
6 following apply:

7 (i) The program has a trauma-informed treatment model,
8 evidenced by the inclusion of trauma awareness, knowledge, and
9 skills into the program's culture, practices, and policies.

10 (ii) The program has registered or licensed nursing and other
11 licensed clinical staff on-site or available 24 hours a day, 7 days
12 a week, who provide care in the scope of their practice as provided
13 in parts 170, 172, 181, 182, 182A, and 185 of the public health
14 code, 1978 PA 368, MCL 333.17001 to 333.17097, 333.17201 to
15 333.17242, 333.18101 to 333.18117, 333.18201 to 333.18237,
16 333.18251 to 333.18267, and 333.18501 to 333.18518.

17 (iii) The program integrates families into treatment, including
18 maintaining sibling connections.

19 (iv) The program provides aftercare services for at least 6
20 months post discharge.

21 (v) The program is accredited by an independent not-for-profit
22 organization as described in 42 USC 672(k)(4)(G).

23 (vi) The program does not include a detention facility,
24 forestry camp, training school, or other facility operated
25 primarily for detaining minor children who are determined to be
26 delinquent.

27 (x) "Regular license" means a license issued to a child care
28 organization indicating that the organization is in substantial
29 compliance with all rules promulgated under this act and, if there

1 is a deficiency, has entered into a corrective action plan.

2 (y) "Guardian" means the guardian of the person.

3 (z) "Minor child" means any of the following:

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

5 (ii) A person who is a resident in a child caring institution,
6 foster family home, or foster family group home, who is at least 18
7 but less than 21 years of age, and who meets the requirements of
8 the young adult voluntary foster care act, 2011 PA 225, MCL 400.641
9 to 400.671.

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

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

26 (B) Three, if the total number of residents is not less than
27 11 and not more than 14.

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

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

2 (iv) A person 18 years of age or older who is placed in an
3 unlicensed residence under section 5(4) or a foster family home
4 under section 5(7).

5 (aa) "Related" means in the relationship by blood, marriage,
6 or adoption, as parent, grandparent, great-grandparent, great-
7 great-grandparent, aunt or uncle, great-aunt or great-uncle, great-
8 great-aunt or great-great-uncle, sibling, stepsibling, nephew or
9 niece, first cousin or first cousin once removed, and the spouse of
10 any of the individuals described in this definition, even after the
11 marriage has ended by death or divorce.

12 (bb) "Religious organization" means a church, ecclesiastical
13 corporation, or group, not organized for pecuniary profit, that
14 gathers for mutual support and edification in piety or worship of a
15 supreme deity.

16 (cc) "School-age child" means a child who is eligible to
17 attend a grade of kindergarten or higher, but is less than 13 years
18 of age. A child is considered to be a school-age child on the first
19 day of the school year in which he or she is eligible to attend
20 school.

21 (dd) "Severe physical injury" means ~~that term as defined in~~
22 ~~section 8 of the child protection law, 1975 PA 238, MCL 722.628.~~**an**
23 **injury to a child that requires medical treatment or**
24 **hospitalization and that seriously impairs the child's health or**
25 **physical well-being.**

26 (ee) "Licensee designee" means the individual designated in
27 writing by the board of directors of the corporation or by the
28 owner or person with legal authority to act on behalf of the
29 company or organization on licensing matters. The individual must

1 agree in writing to be designated as the licensee designee. All
2 license applications must be signed by the licensee in the case of
3 the individual or by a member of the corporation, company, or
4 organization.

5 Enacting section 1. This amendatory act does not take effect
6 unless Senate Bill No. _____ or House Bill No. 5274 (request no.
7 03593'21) of the 101st Legislature is enacted into law.