

SENATE BILL NO. 469

September 07, 2023, Introduced by Senators HOITENGA, DAMOOSE, THEIS, RUNESTAD and LAUWERS and referred to the Committee on Regulatory Affairs.

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 5n (MCL 722.115n), as added by 2017 PA 256.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5n. (1) Except as otherwise provided in subsection (13),
2 when a person, partnership, firm, corporation, association,

1 governmental organization, or nongovernmental organization applies
2 for or applies to renew a license to operate a child care center,
3 group child care home, or family child care home under section 5m
4 and before a group child care home or family child care home allows
5 an individual to be a member of the household, or a child care
6 center, group child care home, or family child care home allows an
7 individual to become a child care staff member, the department
8 ~~shall~~**must** do all of the following:

9 (a) Review its database of individuals with previous
10 disciplinary action within a child care center, group child care
11 home, or family child care home or an adult foster care facility.

12 (b) Conduct a search of the individual through the national
13 sex offender registry.

14 (c) Request a search of the individual through all state
15 criminal registries or repositories for any states of residence in
16 the past 5 years.

17 (d) Request that the department of state police perform a
18 criminal history check on the individual, child care staff member,
19 or adult member of the household.

20 (2) If the individual, child care staff member, or adult
21 member of the household has resided out of the United States within
22 the preceding 5 years, equivalent clearances of those described in
23 subsection (1)(b) and (d) and section 5q from each country must be
24 provided, if available. If the country does not have the equivalent
25 clearance, the individual must sign a self-certifying statement
26 that he or she is not ineligible to receive a license, to be an
27 adult member of the household, or to be a child care staff member
28 as prescribed by sections 5q and 5r. An individual who provides or
29 is determined to have provided false information or knowingly omits

1 information in the self-certification statement is ineligible for
2 that application.

3 (3) Each individual listed in subsection (1) ~~shall~~**must** give
4 written consent at the time of the license application and before a
5 group child care home or family child care home allows an
6 individual to be a member of the household, or before becoming a
7 child care staff member to allow the department of state police to
8 conduct the criminal history check required under subsection (1).
9 The department shall require the individual to submit ~~his or her~~
10 **the individual's** fingerprints to the department of state police and
11 the Federal Bureau of Investigation for the criminal history check
12 as required in subsection (1). **To obtain fingerprints for**
13 **submission to the department of state police required under this**
14 **subsection, an individual may request a local law enforcement**
15 **agency or county sheriff's office to record the individual's**
16 **fingerprints on a Michigan applicant fingerprint card and provide a**
17 **copy to the individual.**

18 (4) The department shall request a criminal history check
19 required under this section on a form and in the manner prescribed
20 by the department of state police.

21 (5) Within a reasonable time after receiving a complete
22 request for a criminal history check on a person under this
23 section, the department of state police ~~shall~~**must** conduct the
24 criminal history check and provide a report of the results to the
25 department. The report ~~shall~~**must** contain any criminal history
26 record information on the person maintained by the department of
27 state police and the Federal Bureau of Investigation.

28 (6) The department of state police may charge the department a
29 fee for a criminal history check required under this section that

1 does not exceed the actual and reasonable cost of conducting the
2 check. The department may pass along to the individual
3 fingerprinted the actual cost or fee charged by the department of
4 state police, the Federal Bureau of Investigation, or a vendor
5 approved by the department of state police for performing a
6 criminal history check required under this section.

7 (7) The department shall provide whether the individual is
8 eligible or ineligible as provided by sections 5q and 5r within 45
9 days after the date on which the request was submitted.

10 (8) The individual may serve as a child care staff member
11 pending the results of the record and database checks required by
12 this section and section 5q if the individual is supervised at all
13 times.

14 (9) Within 45 days after the date on which the request was
15 submitted, the department ~~shall~~**must** provide a statement to the
16 child care center, group child care home, or family child care home
17 that indicates whether the individual is eligible or ineligible to
18 be, a licensee, an adult member of the household, or a child care
19 staff member as provided under sections 5q and 5r without revealing
20 any disqualifying crime or other related information regarding the
21 individual.

22 (10) If the individual is ineligible due to the records or
23 database checks required under this section and section 5q, the
24 department ~~shall~~**must** provide information related to each
25 disqualifying item in a report to the individual who has been
26 determined ineligible.

27 (11) An individual who has been determined to be ineligible as
28 provided under sections 5q and 5r may request a redetermination by
29 the department if ~~he or she~~**the individual** believes that the basis

1 for the ineligible determination is inaccurate. The individual
 2 ~~shall~~**must** file the request for redetermination with the department
 3 within 30 calendar days after receiving the written notice that he
 4 or she was determined to be ineligible. If an individual has been
 5 determined to be ineligible based upon a conviction that has been
 6 expunged or set aside or a central registry case that has been
 7 expunged, the individual ~~shall~~**must** provide the supporting court,
 8 law enforcement, or department of health and human services, or
 9 equivalent department from another state, documents along with the
 10 request for redetermination. The individual shall not be determined
 11 to be ineligible based ~~upon~~**on** a conviction that has been set aside
 12 or expunged or a central registry case that has been expunged. The
 13 department ~~shall~~**must** review the request and issue a written
 14 decision within 30 business days after receiving the request for
 15 redetermination. The **department's** ~~decision of the department is~~
 16 final.

17 (12) Each ineligible individual ~~shall~~**must** be given
 18 instructions about how to complete the request for redetermination
 19 process as provided in subsection (11).

20 (13) ~~Except as otherwise provided in this subsection, not~~
 21 ~~later than September 30, 2017, every~~**Every** child care center
 22 licensee, group child care home licensee, family child care home
 23 licensee, child care staff member, and adult member of the
 24 household ~~shall~~**must** submit ~~his or her~~**the individual's**
 25 fingerprints to the department of state police and the Federal
 26 Bureau of Investigation in order to carry out the records and
 27 database checks required under this section and section 5q. ~~If the~~
 28 ~~department of education obtains an extension on the implementation~~
 29 ~~of this program from the federal government, the provisions of this~~

1 ~~section may be implemented no later than September 30, 2018.~~

2 (14) If a licensee, licensee designee, or program director of
3 a child care center, group child care home, or family child care
4 home applying for a new license or to renew a license to operate a
5 child care center, group child care home, or family child care home
6 has previously undergone a criminal history check required under
7 ~~subsections~~ **subsection** (1) ~~and-or~~ (13) and has remained
8 continuously licensed after the criminal history check has been
9 performed, that licensee, licensee designee, or program director of
10 a child care center, group child care home, or family child care
11 home is not required to submit to another criminal history check
12 upon renewal of, or application for, the license obtained under
13 this act.

14 (15) Upon consent of an applicant as required in subsection
15 (3) and upon request from a child care center, group child care
16 home, or family child care home, the department ~~shall~~ **must** review
17 the information received from the criminal history check, if any,
18 and notify the requesting child care center, group child care home,
19 or family child care home of the information in the manner
20 prescribed in subsection (7). Until the Federal Bureau of
21 Investigation implements an automatic notification system as
22 outlined in section 5k, a child care center, group child care home,
23 or family child care home may rely on the criminal history record
24 information provided by the department under this subsection and a
25 new request as provided under this section is not necessary if all
26 of the following requirements are met:

27 (a) The criminal history check was conducted during the
28 immediately preceding 5-year period.

29 (b) The applicant has been continuously employed by a child

1 care center, group child care home, or family child care home since
2 the criminal history check was conducted in compliance with this
3 section.

4 (c) The applicant can provide evidence acceptable to the
5 department that ~~he or she~~ **the applicant** has been a resident of this
6 state for the immediately preceding 5-year period.

7 (16) The checks and clearances required in subsection (1)(a)
8 to (c) and section 5q ~~shall~~ **must** be updated at least every 5 years
9 if the individual has been continuously licensed, has continuously
10 been serving as a child care staff member, or has continuously been
11 an adult member of the household.