

SENATE BILL NO. 1007

September 19, 2024, Introduced by Senators HOITENGA and HAUCK 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 sections 5d and 5n (MCL 722.115d and 722.115n), section 5d as amended by 2020 PA 10 and section 5n as added by 2017 PA 256.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5d. (1) Before a child care organization makes a

1 conditional offer of employment to ~~a person,~~**an individual**, the
2 child care organization shall perform a criminal history background
3 check on that ~~person~~**individual** using the department of state
4 police's internet criminal history access tool (ICHAT) or
5 equivalent check on that ~~person~~**individual** from the state or
6 province of residence.

7 (2) If a search of the department of state police's ICHAT or
8 equivalent check on the ~~person~~**individual** from the state or
9 province of residence reveals that the ~~person~~**individual** described
10 in subsection (1) has been convicted of a listed offense, the child
11 care organization shall not make an offer of employment to that
12 ~~person.~~**individual**. If a search of the department of state police's
13 ICHAT reveals that a current employee has been convicted of a
14 listed offense, the child care organization shall not continue to
15 employ that ~~person.~~**individual**. If a search of the department of
16 state police's ICHAT or equivalent check on that ~~person~~**individual**
17 from the state or province of residence reveals that ~~a person~~**an**
18 **individual** who regularly and continuously works under contract at
19 the child care organization has been convicted of a listed offense,
20 the child care organization shall not allow that ~~person~~**individual**
21 to regularly or continuously work under contract at the child care
22 organization.

23 (3) A child care organization ~~may~~**shall not** pass along the
24 actual cost of a search of the department of state police's ICHAT
25 or equivalent check on that ~~person~~**individual** from the state or
26 province of residence to the employee or applicant on whom the
27 search is being performed.

28 (4) A child caring institution subject to section 671 of title
29 IV-E of the social security act, 42 USC 671, shall not permit a

1 child caring institution staff member to begin working unless all
2 of the following have been completed:

3 (a) The department receives written consent from the child
4 caring institution staff member to conduct a criminal history
5 check. The department shall require the ~~person~~**individual** to submit
6 ~~his or her~~**the individual's** fingerprints to the department of state
7 police and the Federal Bureau of Investigation for the criminal
8 history check.

9 (b) The child caring institution receives the results of the
10 criminal history check from the department.

11 (c) If the employee has a criminal conviction, the child
12 caring institution shall complete a written evaluation that
13 addresses the nature of the conviction, the length of time since
14 the conviction was entered, and the relationship between the
15 conviction and regulated activity in the child caring institution
16 for the purpose of determining suitability for employment in the
17 child caring institution.

18 (5) If a child caring institution is applying to renew its
19 license, a staff member, who has previously undergone a criminal
20 history check required under subsection (4)(a) and has remained
21 continuously employed with the child caring institution that is
22 seeking renewal, is not required to submit to another criminal
23 history check upon renewal of the child caring institution's
24 license.

25 Sec. 5n. (1) Except as otherwise provided in subsection (13),
26 when a ~~person~~**an individual**, partnership, firm, corporation,
27 association, governmental organization, or nongovernmental
28 organization applies for or applies to renew a license to operate a
29 child care center, group child care home, or family child care home

1 under section 5m and before a group child care home or family child
2 care home allows an individual to be a member of the household, or
3 a child care center, group child care home, or family child care
4 home allows an individual to become a child care staff member, the
5 department shall do all of the following:

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

9 (b) Conduct a search of the individual through the national
10 sex offender registry.

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

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

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

29 (3) Each individual listed in subsection (1) shall give

1 written consent at the time of the license application and before a
2 group child care home or family child care home allows an
3 individual to be a member of the household, or before becoming a
4 child care staff member to allow the department of state police to
5 conduct the criminal history check required under subsection (1).
6 The department shall require the individual to submit ~~his or her~~
7 **the individual's** fingerprints to the department of state police and
8 the Federal Bureau of Investigation for the criminal history check
9 as required in subsection (1).

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

13 (5) Within a reasonable time after receiving a complete
14 request for a criminal history check on ~~a person~~ **an individual**
15 under this section, the department of state police shall conduct
16 the criminal history check and provide a report of the results to
17 the department. The report ~~shall~~ **must** contain any criminal history
18 record information on the ~~person~~ **individual** maintained by the
19 department of state police and the Federal Bureau of Investigation.

20 (6) The department of state police may charge the department a
21 fee for a criminal history check required under this section that
22 does not exceed the actual and reasonable cost of conducting the
23 check. The department ~~may~~ **shall not** pass along to the individual
24 fingerprinted the actual cost or fee charged by the department of
25 state police, the Federal Bureau of Investigation, or a vendor
26 approved by the department of state police for performing a
27 criminal history check required under this section.

28 (7) The department shall provide whether the individual is
29 eligible or ineligible as provided by sections 5q and 5r within 45

1 days after the date on which the request was submitted.

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

6 (9) Within 45 days after the date on which the request was
7 submitted, the department shall provide a statement to the child
8 care center, group child care home, or family child care home that
9 indicates whether the individual is eligible or ineligible to be, a
10 licensee, an adult member of the household, or a child care staff
11 member as provided under sections 5q and 5r without revealing any
12 disqualifying crime or other related information regarding the
13 individual.

14 (10) If the individual is ineligible due to the records or
15 database checks required under this section and section 5q, the
16 department shall provide information related to each disqualifying
17 item in a report to the individual who has been determined
18 ineligible.

19 (11) An individual who has been determined to be ineligible as
20 provided under sections 5q and 5r may request a redetermination by
21 the department if ~~he or she~~ **the individual** believes that the basis
22 for the ineligible determination is inaccurate. The individual
23 shall file the request for redetermination with the department
24 within 30 calendar days after receiving the written notice that ~~he~~
25 ~~or she~~ **the individual** was determined to be ineligible. If an
26 individual has been determined to be ineligible based upon a
27 conviction that has been expunged or set aside or a central
28 registry case that has been expunged, the individual shall provide
29 the supporting court, law enforcement, or department of health and

1 human services, or equivalent department from another state,
2 documents along with the request for redetermination. The
3 individual ~~shall~~**must** not be determined to be ineligible based upon
4 a conviction that has been set aside or expunged or a central
5 registry case that has been expunged. The department shall review
6 the request and issue a written decision within 30 business days
7 after receiving the request for redetermination. The decision of
8 the department is final.

9 (12) Each ineligible individual shall be given instructions
10 about how to complete the request for redetermination process as
11 provided in subsection (11).

12 (13) Except as otherwise provided in this subsection, not
13 later than September 30, 2017, every child care center licensee,
14 group child care home licensee, family child care home licensee,
15 child care staff member, and adult member of the household shall
16 submit ~~his or her~~**the individual's** fingerprints to the department
17 of state police and the Federal Bureau of Investigation in order to
18 carry out the records and database checks required under this
19 section and section 5q. If the department of education obtains an
20 extension on the implementation of this program from the federal
21 government, the provisions of this section may be implemented no
22 later than September 30, 2018.

23 (14) If a licensee, licensee designee, or program director of
24 a child care center, group child care home, or family child care
25 home applying for a new license or to renew a license to operate a
26 child care center, group child care home, or family child care home
27 has previously undergone a criminal history check required under
28 subsections (1) and (13) and has remained continuously licensed
29 after the criminal history check has been performed, that licensee,

1 licensee designee, or program director of a child care center,
2 group child care home, or family child care home is not required to
3 submit to another criminal history check upon renewal of, or
4 application for, the license obtained under this act.

5 (15) Upon consent of an applicant as required in subsection
6 (3) and upon request from a child care center, group child care
7 home, or family child care home, the department shall review the
8 information received from the criminal history check, if any, and
9 notify the requesting child care center, group child care home, or
10 family child care home of the information in the manner prescribed
11 in subsection (7). Until the Federal Bureau of Investigation
12 implements an automatic notification system as outlined in section
13 5k, a child care center, group child care home, or family child
14 care home may rely on the criminal history record information
15 provided by the department under this subsection and a new request
16 as provided under this section is not necessary if all of the
17 following requirements are met:

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

20 (b) The applicant has been continuously employed by a child
21 care center, group child care home, or family child care home since
22 the criminal history check was conducted in compliance with this
23 section.

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

27 (16) The checks and clearances required in subsection (1)(a)
28 to (c) and section 5q ~~shall~~ **must** be updated at least every 5 years
29 if the individual has been continuously licensed, has continuously

1 been serving as a child care staff member, or has continuously been
2 an adult member of the household.