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BACKGROUND CHECKS FOR CHILD CARE WORKERS

House Bill 5741

Sponsor: Rep. Gary Woronchak

House Bill 5742

Sponsor: Rep. Jennifer Faunce

House Bill 5743

Sponsor: Rep. Janet Kukuk

Committee: Family and Children Services

Complete to 5-9-00

A SUMMARY OF HOUSE BILLS 5741-5743 AS INTRODUCED 5-4-00

House Bill 5741 would create an act to require background checks to be conducted on persons seeking employment as child care workers. House Bills 5742 and 5753 would amend related acts to incorporate references to the new act. Specifically, the bills would do the following:

House Bill 5741 would create the Child-Related Employment Background Check Act. Under the bill, an applicant for a job with a licensed child care organization or registered family day care home, persons enrolled by the Family Independence Agency (FIA) to provide child care, current employees of a person licensed or registered to provide child care, or a volunteer (who has unsupervised contact with the children) for a licensed or registered child care provider would have to provide written consent for the employer to conduct a background check. (Refusal to sign the consent form could constitute grounds for dismissal for current employees and volunteers and would prohibit the hiring of a new person.) The background check would comprise a fingerprint check of state criminal records by the Department of State Police and a check by the FIA of the central registry that tracks reports and investigations of incidents of child abuse and neglect.

Beginning in the year of the bill's effective date, all persons applying for or who have started jobs or volunteer service with licensed or registered child care providers, or persons enrolled with the FIA to provide child care to low-income families, would have to undergo a background check. Background checks could be conducted on current employees and volunteers, but the bill would set limits on how many years back a check could be conducted for employees starting in those years. (For example, if the bill took effect in 2000, background checks could be done on employees or volunteers who started work in 1998 and 1999. As written, the language pertaining to subsequent years is unclear, but appears to mean that if the employer did not conduct the checks in the year 2000 for current employees and volunteers, but waited until 2001 or after, the checks could only be done for those employees or volunteers who started in 1999.) If the background check revealed a conviction for a crime against a child, a conviction for a violent felony, or a record of a central registry case, the child care provider could not hire the applicant, and could dismiss a current employee or volunteer.

Further, an applicant would have to provide, and a current employee or volunteer could be requested to provide, a signed statement of whether he or she had ever been convicted of any of the offenses specified in Section 3(1) of the bill. (Note: The list of offenses is identical to that contained in R 400.1152 of the Michigan Administrative Rules, known as the Good Moral Character standard. The Bureau of Regulatory Services within the Department of Consumer and Industry Services uses the list of offenses as a guideline for determining whether to issue or renew a child care license or registration to an applicant, but states on its website that “criminal convictions do not in and of themselves indicate a lack of good moral character nor represent risk and predictable harm.” Other factors, such as extenuating circumstances, length of time since the offense, and evidence of rehabilitation are also considered.) Making a false statement or withholding information in connection with the signed statement would be a misdemeanor offense with imprisonment for up to 180 days or a fine up to \$1,000, or both.

Current employees and volunteers who were found to have a conviction for an offense listed in Section 3(1) could be retained, but only if each parent of a child utilizing the services of the licensed day care provider was notified of the fact of the conviction or central registry record and the nature of the conviction or central registry record. (The language is not clear as to whether a person with a conviction of one of the specified offenses could be hired if the offense did not constitute a violent felony, a crime against a child, or a central registry case.) In addition, payment from the state, for example, FIA day care subsidies for low-income families, could not be used to pay an employee, including an FIA enrolled day care aide and an FIA enrolled relative care provider, who had a conviction of the offenses listed in Section 3(1).

Background checks could also be done on a parent or guardian of a child who attends the day care if the parent or guardian has the care of, or supervisory or disciplinary powers over, another child. In addition, any parent or guardian of a child can request a similar background check before hiring a person to care for his or her child. A person who was required to undergo the criminal history check under the Revised School Code (teachers and certain school staff), would not be subject to the bill’s requirement, if the results of the check were available to the day care provider. Except for a knowing or intentional release of false information, the Department of State Police, a law enforcement agency, the Family Independence Agency, and any of their employees would be free from liability in connection with a background check conducted under the bill.

The bill is tie-barred to House Bill 5743 and would take effect September 1, 2000.

House Bill 5742 would amend Public Act 116 of 1973 (MCL 722.115 and 722.121), which provides for the licensing of child care organizations and registration of family day care homes, to require compliance with the provisions of the Child-Related Employment Background Check Act in addition to other requirements for licensure or registration. Failure to comply with the Child-Related Employment Background Check Act could result in license or registration sanctions.

The bill is tie-barred to House Bill 5741.

Under current law, the Family Independence Agency must maintain a central registry of information regarding child abuse and neglect cases. Certain specified entities are allowed access to the information contained in the registry; for instance, law enforcement and child placement agencies. House Bill 5743 would amend the Child Protection Law (MCL 722.627) to also allow access by a person requesting a central registry check for a record of a central registry case under the Child-Related Employment Background Check Act. The bill is tie-barred to House Bill 5741 and would take effect on September 1, 1999.

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.