

**SUBSTITUTE FOR
HOUSE BILL NO. 5741**

A bill to require disclosures of criminal convictions and certain conduct by certain persons; to require criminal history checks of certain persons; to require disclosure of child abuse or child neglect records of certain persons; to regulate the employment of certain persons; to prescribe the powers and duties and limit the liability of certain state and local departments and agencies; and to prescribe penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "child-related employment background check act".

3 Sec. 2. As used in this act:

4 (a) "Applicant" means 1 of the following:

5 (i) A person seeking to become a child-related employee of a
6 child-related employer whom that employer intends to employ

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1 following completion of a background check that is satisfactory
2 to the child-related employer.

3 (ii) A person applying through the department of consumer
4 and industry services for a license to operate a child care
5 organization or a certificate of registration to operate a family
6 day care home.

7 (iii) A person applying through the family independence
8 agency to become an enrolled day care aide or an enrolled rela-
9 tive care provider.

10 (b) "Background check" means both a criminal history check
11 and a central registry check of an individual.

12 (c) "Central registry case" means that term as defined in
13 section 2 of the child protection law, 1975 PA 238, MCL 722.622.

14 (d) "Central registry check" means a determination by the
15 family independence agency of whether the central registry con-
16 tains a record of a central registry case involving a person, as
17 provided in section 7 of the child protection law, 1975 PA 238,
18 MCL 722.627.

19 (e) "Child care organization", "family day care home",
20 "licensee", and "registrant" mean those terms as defined in sec-
21 tion 1 of 1973 PA 116, MCL 722.111.

22 (f) "Child-related employee" means a child-related
23 employer's full-time, part-time, or temporary paid employee. A
24 child-related employee includes a family independence agency
25 enrolled day care aide and a family independence agency enrolled
26 relative care provider.

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1 (g) "Child-related employer" means a business, organization,
2 or association that is licensed or registered by the department
3 of consumer and industry services [under section 1(e), (f)(iii), or
(f)(iv) of 1973 PA 116, MCL 722.111,] except as provided in this
sub-
4 division, employs a child-related employee, and has the care of,
5 or supervisory or disciplinary powers over, 1 or more children,
6 including but not limited to providers of educational, recrea-
7 tional, or similar activities. [
8
9]

10 (h) "Criminal history check" means a determination, through
11 fingerprints and use of the state repository of criminal history
12 record information and federal bureau of investigation records,
13 of whether a person has been convicted of a crime.

14 (i) "Department" means the department of state police.

15 (j) "Employer" means a person who currently employs or has
16 previously employed the applicant.

17 (k) "Law enforcement agency" means a sheriff's department or
18 the police department of a city, village, or township.

19 (l) "Unsupervised contact" means contact with 1 or more
20 children by the child-related employee alone or in the presence
21 of only 1 or more other adults who are related to that employee.
22 Unsupervised contact does not include contact by an employee with
23 1 or more children in the presence of 1 or more adults who are
24 unrelated to the child-related employee.

25 Sec. 3. (1) A child-related employer shall obtain from each
26 applicant or may obtain from each child-related employee a signed
27 statement of whether that applicant or employee has ever been

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1 convicted of any of the following offenses and, if so, the
2 details of the conviction:

3 (a) Any crime involving a substantial misrepresentation of
4 any material fact, including any of the following:

5 (i) Bribery.

6 (ii) Fraud.

7 (iii) Filing of false claims.

8 (iv) Aiding or abetting the filing of false claims.

9 (v) Allowing an establishment to be used for illegal
10 purposes.

11 (b) Any crime involving any of the following:

12 (i) Homicide.

13 (ii) Murder.

14 (iii) Manslaughter.

15 (iv) Mayhem.

16 (v) Negligent homicide.

17 (vi) An attempt to commit an offense specified in subpara-
18 graph (i) or (ii).

19 (c) Any crime involving either of the following:

20 (i) Assault.

21 (ii) Battery.

22 (d) Any crime that involves a violent act, or a threat of a
23 violent act, against a person or a crime constituting a sexual
24 offense, including any of the following:

25 (i) Criminal sexual conduct in any degree.

26 (ii) Activity for profit involving any of the following:

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- 1 (A) Child abuse, neglect, or exploitation.
- 2 (B) Kidnapping.
- 3 (C) Adoption schemes.
- 4 (D) Prostitution or related crimes.
- 5 (iii) Cruelty toward, or torture of, any person.
- 6 (iv) An attempt to commit an offense specified in subpara-
- 7 graph (i) or (iii).
- 8 (e) Any of the following crimes:
- 9 (i) Robbery.
- 10 (ii) Armed robbery.
- 11 (iii) Burglary.
- 12 (iv) Receiving stolen property.
- 13 (v) Concealing stolen property.
- 14 (vi) Extortion.
- 15 (vii) Obtaining property by false pretenses.
- 16 (viii) Larceny by trick.
- 17 (ix) Larceny by conversion.
- 18 (x) Embezzlement.
- 19 (xi) Arson.
- 20 (xii) Offenses involving narcotics, alcohol, or controlled
- 21 substances that result in a felony conviction.
- 22 (xiii) Offenses involving any of the following:
- 23 (A) Adulterating drugs, controlled substances, or
- 24 preparations.
- 25 (B) Poisoning.
- 26 (C) Unlawful manufacture or delivery of drugs or possession
- 27 with intent to manufacture or deliver drugs.

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1 (xiv) An attempt to commit an offense specified in
2 subparagraph (i), (ii), or (iii).

3 (2) A child-related employer shall obtain from each appli-
4 cant or may obtain from each child-related employee a signed
5 statement of whether that applicant or employee has resided in
6 the state for the 5 years preceding the date of the statement.

7 (3) An applicant or child-related employee who knowingly or
8 intentionally makes a false statement or withholds information in
9 connection with the signed statement required under subsection
10 (1) or (2) is guilty of a misdemeanor punishable by imprisonment
11 for not more than 180 days or a fine of not more than \$1,000.00,
12 or both.

13 (4) A child-related employee who violates subsection (3) is
14 subject to immediate disciplinary action, including, but not
15 limited to, discharge.

16 Sec. 4. (1) Before issuing or renewing a license or certifi-
17 cate of registration, the department of consumer and industry
18 services shall obtain from each applicant a signed statement of
19 whether the applicant has ever been convicted of a crime listed
20 in section 3(1), and, if so, the details of the conviction.

21 (2) Before issuing or renewing a license or certificate of
22 registration, the department of consumer and industry services
23 shall obtain from each applicant a signed statement of whether
24 the applicant has resided in the state for the 5 years preceding
25 the date of the statement.

26 (3) An applicant who knowingly or intentionally makes a
27 false statement or withholds information in connection with a

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1 signed statement required under subsection (1) or (2) is guilty
2 of a misdemeanor punishable by imprisonment for not more than 180
3 days or a fine of not more than \$1,000.00, or both.

4 (4) An applicant who violates subsection (3) is subject to
5 immediate disciplinary action, including, but not limited to,
6 denial or refusal to renew a license or certificate.

7 Sec. 5. (1) An applicant or child-related employee of a
8 child-related employer shall give written consent for that
9 employer or the department of consumer and industry services to
10 conduct a background check. The applicant or child-related
11 employee giving written consent shall also provide to the depart-
12 ment any information necessary for the criminal history check
13 portion of the background check, including, but not limited to, 2
14 sets of fingerprints and date of birth, and to the family inde-
15 pendence agency any information necessary for the central regis-
16 try check.

17 (2) A child-related employer or the department of consumer
18 and industry services shall request the department to conduct a
19 criminal history check and the family independence agency to con-
20 duct a central registry check on an applicant or child-related
21 employee who has given written consent for a background check
22 under subsection (1).

23 (3) The department shall conduct the criminal history check
24 upon a request submitted under subsection (2). The department
25 shall determine the existence of any criminal history in this
26 state through use of the state repository of criminal history
27 record information. For any applicant who has not lived in the

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1 state for 5 years prior to the date of the statement required in
2 section 3(2) or 4(2), the department shall also forward finger-
3 prints to the federal bureau of investigation and request that
4 the federal bureau of investigation make a determination of the
5 existence of any national criminal history. An applicant or
6 child-related employee shall provide the 2 sets of fingerprints
7 necessary for the criminal history check to the department
8 through a law enforcement agency that shall comply with 1935 PA
9 120, MCL 28.271 to 28.273, and any applicable procedure estab-
10 lished by the department for a criminal history check.

11 (4) The department shall complete the criminal history check
12 and, except as otherwise provided in this subsection, provide the
13 results of its determination and that of the federal bureau of
14 investigation, if one is required by subsection (3), to the
15 child-related employer or the department of consumer and industry
16 services within 30 days after the request is made. If the
17 child-related employer is not a state department or agency, the
18 department shall not provide the results of the determination
19 made through the federal bureau of investigation to that
20 child-related employer, but shall only notify the child-related
21 employer whether the determination disclosed any criminal history
22 for the applicant or child-related employee in addition to that
23 disclosed by the department's determination. The department
24 shall not charge an applicant or child-related employer a fee to
25 complete a background check required under this act.

26 (5) The family independence agency shall conduct the central
27 registry check upon a request submitted under subsection (2).

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1 The family independence agency shall determine whether the
2 central registry contains a record of a central registry case
3 involving the person and provide the results to the child-related
4 employer or the department of consumer and industry services
5 within 30 days after the request is made.

6 (6) A child-related employer may request a background check
7 of a parent or guardian whose child is participating in or
8 attending services or activities offered by the employer if the
9 parent or guardian has or will have care of, or supervisory or
10 disciplinary powers over, another child. The parent or guardian
11 shall give consent for the background check if requested by the
12 child-related employer. The department shall conduct a criminal
13 history check as provided in subsections (1), (2), (3), and (4)
14 and the family independence agency shall conduct the central reg-
15 istry check as provided in subsection (5).

16 (7) A child-related employer shall not hire an applicant or
17 may dismiss a child-related employee who does not comply with
18 subsection (1).

19 (8) The department shall prescribe the form of the request
20 and necessary information for a criminal history check under this
21 act and the form for providing the results. The family indepen-
22 dence agency shall prescribe the form of the request and neces-
23 sary information for a central registry check under this act and
24 the form for providing the results.

25 (9) A child-related employer may employ an applicant
26 required to undergo a background check under this act before
27 completion of that background check with appropriate staff

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1 supervision until the background check is complete. If a
2 background check reveals a conviction for a crime against a child
3 involving homicide, murder, manslaughter, or criminal sexual con-
4 duct, a conviction within the preceding 10 years for any other
5 crime listed in section 3(1), or a record of a central registry
6 case, the child-related employer shall not hire the applicant or
7 may dismiss the child-related employee. If a child-related
8 employer retains a child-related employee whose background check
9 reveals a conviction within the preceding 10 years for a crime
10 listed in section 3(1) or a record of a central registry case,
11 the child-related employer shall notify the parent or guardian of
12 each child who uses the employer's services of the fact of the
13 conviction or record and the nature of the conviction or record.

14 (10) If a background check reveals a conviction within the
15 preceding 10 years for a crime listed in section 3(1) or a record
16 of a central registry case, the department of consumer and indus-
17 try services shall not issue a license or certificate of regis-
18 tration to the applicant.

19 (11) The provisions concerning criminal history checks do
20 not apply to an individual required to undergo a criminal history
21 or records check under section 1230 or 1230a of the revised
22 school code, 1976 PA 451, MCL 380.1230 and 380.1230a, if the
23 results of the criminal history and records checks are available
24 to the child-related employer.

[(12) An applicant, child-related employee, or volunteer who
fully complies with the conditions under this act, may request of
their employer and shall receive a copy of their background and
central registry checks.]

25 Sec. 6. A licensee, registrant, or child-related employee
26 who has a conviction within the preceding 10 years for a crime
27 listed in section 3(1) or a record of a central registry case

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1 shall not receive any payment from the state for providing
2 child-related employment services.

3 Sec. 7. A child-related employer may conduct the background
4 checks required under this act according to the following
5 schedule:

6 (a) For the calendar year in which this act takes effect,
7 the child-related employer shall conduct background checks of
8 applicants who apply in that calendar year, child-related employ-
9 ees who begin in that calendar year, and may conduct background
10 checks of child-related employees who began in the 2 preceding
11 calendar years.

12 (b) For each subsequent calendar year, the child-related
13 employer shall conduct background checks of applicants who apply
14 in that calendar year and child-related employees who begin in
15 that calendar year, and may conduct background checks of
16 child-related employees who began in the 2 calendar years preced-
17 ing the earliest calendar year for which background checks were
18 conducted in the preceding calendar year.

19 Sec. 8. If a parent or guardian of a child hires or intends
20 to hire a person who has or will have the care of, or supervisory
21 or disciplinary powers over, the child in that parent's or
22 guardian's custody, the parent or guardian may request a back-
23 ground check of that person. Upon request, the department shall
24 conduct a criminal history check and the family independence
25 agency shall conduct a central registry check for the parent or
26 guardian as the department or family independence agency would
27 for a child-related employer under section 5.

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1 Sec. 9. Except for a knowing or intentional release of
2 false information, the department, the family independence
3 agency, a law enforcement agency, and the employees of the
4 department, the family independence agency, or law enforcement
5 agency have no liability in connection with a background check
6 conducted under this act.

7 Sec. 10. A person shall not intentionally disclose, in a
8 manner not authorized by law or rule, any information obtained
9 from a background check required by this act. A person who vio-
10 lates this section is guilty of a misdemeanor punishable by a
11 fine of not more than \$5,000.00.

12 Sec. 11. Child-related employers shall develop and imple-
13 ment a policy relating to background checks for volunteers.

14 Enacting section 1. This act takes effect September 1,
15 2000.

16 Enacting section 2. This act does not take effect unless
17 House Bill No. 5743 of the 90th Legislature is enacted into law.