



HOUSE BILL No. 5741

May 4, 2000, Introduced by Reps. Woronchak, Kukuk, Hart, Birkholz, Julian, Tabor, Mead, Kowall, Pumford, Vander Roest, Van Woerkom, Howell, DeRossett, Caul, Shackleton, Jelinek, Richardville, Faunce, Bishop, Kuipers, Ehardt, Koetje, Pappageorge, DeWeese, Geiger, Rick Johnson, Richner, Scranton, LaSata, Jansen, Middaugh, Voorhees, Rocca, Ruth Johnson, Hager, DeVuyst, Thomas and Rivet and referred to the Committee on Family and Children Services.

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 a person seeking to become a
5 child-related employee or child-related volunteer of a
6 child-related employer whom that employer intends to employ or

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

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

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

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

12 (e) "Child-related employee" means a child-related
13 employer's full-time, part-time, or temporary paid employee. A
14 child-related employee includes a family independence agency
15 enrolled day care aide and a family independence agency enrolled
16 relative care provider.

17 (f) "Child-related employer" means a business, organization,
18 or association that is licensed or registered by the department
19 of consumer and industry services, employs or uses the services
20 of a child-related employee or child-related volunteer, and has
21 the care of, or supervisory or disciplinary powers over, 1 or
22 more children, including but not limited to providers of educa-
23 tional, recreational, or similar activities.

24 (g) "Child-related volunteer" means a person who is 17 years
25 of age or older providing regular voluntary services to a
26 child-related employer and who has unsupervised contact with 1 or
27 more children as a result of providing those services.

1 Child-related volunteer does not include a parent or guardian
2 whose child is participating in or attending services or activi-
3 ties offered by that child-related employer. As used in this
4 subdivision, "regular" means more than once per year.

5 (h) "Criminal history check" means a determination, through
6 fingerprints and use of the state repository of criminal history
7 record information, of whether a person has been convicted of a
8 crime.

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

10 (j) "Employer" means a person who currently employs or uses
11 the services of the applicant as an employee or volunteer or has
12 previously employed or used the services of the applicant as an
13 employee or volunteer.

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

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

23 Sec. 3. (1) A child-related employer shall obtain from each
24 applicant or may obtain from each child-related employee or
25 child-related volunteer a signed statement of whether that appli-
26 cant, employee, or volunteer has ever been convicted of any of

1 the following offenses and, if so, the details of the
2 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 any of the offenses specified in
18 subparagraphs (i) or (ii) of this subdivision.

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:

- 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 any of the offenses specified in
- 7 subparagraph (i) or (iii) of this subdivision.
- 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.

1 (xiv) An attempt to commit any of the offenses specified in
2 subparagraph (i), (ii), or (iii) of this subdivision.

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

9 (3) A child-related employee or child-related volunteer who
10 violates subsection (2) is also subject to immediate disciplinary
11 action, including, but not limited to, discharge.

12 Sec. 4. (1) An applicant, child-related employee, or
13 child-related volunteer of a child-related employer shall give
14 written consent for that employer to conduct a background check.
15 The applicant, child-related employee, or child-related volunteer
16 giving written consent shall also provide to the department any
17 information necessary for the criminal history check portion of
18 the background check, including, but not limited to, 1 set of
19 fingerprints and date of birth, and to the family independence
20 agency any information necessary for the central registry check.

21 (2) A child-related employer shall request the department to
22 conduct a criminal history check and the family independence
23 agency to conduct a central registry check on an applicant,
24 child-related employee, or child-related volunteer who has given
25 written consent for a background check under subsection (1).

26 (3) The department shall conduct the criminal history check
27 upon a request submitted under subsection (2). The department

1 shall determine the existence of any criminal history in this
2 state through use of the state repository of criminal history
3 record information. An applicant, child-related employee, or
4 child-related volunteer shall provide the 1 set of fingerprints
5 necessary for the criminal history check to the department
6 through a law enforcement agency that shall comply with 1935 PA
7 120, MCL 28.271 to 28.273, and any applicable procedure estab-
8 lished by the department for a criminal history check.

9 (4) The department shall complete the criminal history check
10 and, except as otherwise provided in this subsection, provide the
11 results of its determination to the child-related employer and to
12 the applicant, child-related employee, or child-related volunteer
13 within 21 days after the request is made.

14 (5) The family independence agency shall conduct the central
15 registry check upon a request submitted under subsection (2).
16 The family independence agency shall determine whether the cen-
17 tral registry contains a record of a central registry case
18 involving the person and provide the results to the child-related
19 employer and to the applicant, child-related employee, or
20 child-related volunteer within 21 days after the request is
21 made.

22 (6) A child-related employer may request a background check
23 of a parent or guardian who otherwise meets the definition of
24 child-related volunteer but whose child is participating in or
25 attending services or activities offered by the employer if the
26 parent or guardian has or will have care of, or supervisory or
27 disciplinary powers over, another child. The parent or guardian

1 shall give consent for the background check if requested by the
2 child-related employer. The department shall conduct a criminal
3 history check as provided in subsections (1), (2), (3), and (4)
4 and the family independence agency shall conduct the central reg-
5 istry check as provided in subsection (5).

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

9 (8) The department shall prescribe the form of the request
10 and necessary information for a criminal history check under this
11 act and the form for providing the results. The family indepen-
12 dence agency shall prescribe the form of the request and neces-
13 sary information for a central registry check under this act and
14 the form for providing the results.

15 (9) A child-related employer may employ or use the services
16 of an applicant required to undergo a background check under this
17 act before completion of that background check with appropriate
18 staff supervision until the background check is complete. If a
19 background check reveals a conviction for a crime against a
20 child, a conviction for a violent felony, or a record of a cen-
21 tral registry case, the child-related employer shall not hire the
22 applicant or may dismiss the child-related employee or
23 child-related volunteer. If a child-related employer retains a
24 child-related employee or child-related volunteer whose back-
25 ground check reveals a conviction for a crime listed in section
26 3(1) or a record of a central registry case, the child-related
27 employer shall notify the parent or guardian of each child who

1 uses the employer's services of the fact of the conviction or
2 record and the nature of the conviction or record.

3 (10) The provisions concerning criminal history checks do
4 not apply to an individual required to undergo a criminal history
5 or records check under section 1230 or 1230a of the revised
6 school code, 1976 PA 451, MCL 380.1230 and 380.1230a, if the
7 results of the criminal history and records checks are available
8 to the child-related employer.

9 Sec. 5. A child-related employee who has a conviction for a
10 crime listed in section 3(1) or a record of a central registry
11 case shall not receive any payment from the state for providing
12 child-related employment services.

13 Sec. 6. A child-related employer may conduct the background
14 checks required under this act according to the following
15 schedule:

16 (a) For the calendar year in which this act takes effect,
17 the child-related employer shall conduct background checks of
18 applicants who apply in that calendar year, child-related employ-
19 ees and child-related volunteers who begin in that calendar year,
20 and may conduct background checks of child-related employees and
21 child-related volunteers who began in the 2 preceding calendar
22 years.

23 (b) For each subsequent calendar year, the child-related
24 employer shall conduct background checks of applicants who apply
25 in that calendar year, child-related employees and child-related
26 volunteers who begin in that calendar year, and may conduct
27 background checks of child-related employees and child-related

1 volunteers who began in the 2 calendar years preceding the
2 earliest calendar year for which background checks were conducted
3 in the preceding calendar year.

4 Sec. 7. If a parent or guardian of a child hires or intends
5 to hire a person who has or will have the care of, or supervisory
6 or disciplinary powers over, the child in that parent's or
7 guardian's custody, the parent or guardian may request a back-
8 ground check of that person. Upon request, the department shall
9 conduct a criminal history check and the family independence
10 agency shall conduct a central registry check for the parent or
11 guardian as the department or family independence agency would
12 for a child-related employer under section 4.

13 Sec. 8. (1) Except for a knowing or intentional release of
14 false information, the department, the family independence
15 agency, a law enforcement agency, and the employees of the
16 department, the family independence agency, or law enforcement
17 agency have no liability in connection with a background check
18 conducted under this act.

19 (2) An employer, or an employee acting on behalf of the
20 employer, that discloses information under section 5 in good
21 faith is immune from civil liability for the disclosure. An
22 employer, or an employee acting on behalf of the employer, is
23 presumed to be acting in good faith at the time of a disclosure
24 under section 5 unless 1 or more of the following is established
25 by a preponderance of the evidence:

26 (a) The employer or employee knew the information disclosed
27 was false or misleading.

1 (b) The employer or employee disclosed the information with
2 a reckless disregard for the truth.

3 (c) A state or federal statute specifically prohibited the
4 disclosure.

5 Enacting section 1. This act takes effect September 1,
6 2000.

7 Enacting section 2. This act does not take effect unless
8 Senate Bill No. _____ or House Bill No. 5743 (request
9 no. 02221'99 a) of the 90th Legislature is enacted into law.