



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 1100 (Substitute S-1 as passed by the Senate) *(as enrolled)*
Senate Bill 1101 (Substitute S-3 as passed by the Senate) *(as enrolled)*
Senate Bill 1102 (Substitute S-3 as passed by the Senate) *(as enrolled)*
Sponsor: Senator Dennis Olshove (S.B. 1100 & 1102)
Senator Mike Nofs (S.B. 1101)
Committee: Families and Human Services

Date Completed: 5-10-10

RATIONALE

Several Michigan statutes govern the licensure of homes and other facilities that provide care to children and adults. While each of these statutes requires criminal background checks to be performed on facility employees and license applicants, the laws do not contain corresponding or consistent requirements for other individuals who might have contact with children or vulnerable adults, such as designated representatives of licensees, partners of applicants, or administrators. Evidently, this came to light several years ago during the process of licensing a home for troubled teenage girls, when it was discovered that the chief administrator had an extensive criminal history. In addition, not all types of child care facilities are subject to the requirements for criminal history checks or provisions that prohibit criminal offenders from having contact with children, and these provisions apply only to staff members and volunteers. Also, the laws governing adult facilities do not contain similar limits on criminal offenders' access to residents. Other inconsistencies between the statutes have been pointed out, as well. The licensing criteria for adult foster care facilities, for example, include good moral character, but the law governing homes for the aged does not contain that standard. It has been suggested that the statutory inconsistencies and perceived gaps in the law be addressed by legislation.

CONTENT

Senate Bill 1100 (S-1) would amend the child care licensing Act to do the following:

- **Extend criminal history and records check requirements to licensee designees of child care organizations.**
- **Expand the types of child care organizations whose employees are subject to criminal history checks.**
- **Prohibit the Department of Human Services (DHS) from issuing a license to an applicant if the individual applicant or the owner, partner, or director of the applying organization had been convicted of child abuse or neglect.**
- **Prohibit a licensee, registrant, adult household member, licensee designee, chief administrator, or program director of a child care organization from being present in a child care organization if he or she had been convicted of child abuse or neglect.**
- **Include licensees, registrants, licensee designees, administrators, and adult household members among those who must provide documentation that they have not been named as the perpetrator of child abuse or neglect.**
- **Prohibit children's camp staff members and unsupervised adult volunteers from having contact with**

children unless they provided such documentation.

Senate Bill 1101 (S-3) would amend the Adult Foster Care Facility Licensing Act, and **Senate Bill 1102 (S-3)** would amend the Public Health Code in regard to homes for the aged, to do the following:

- **Require an applicant for a license, if an individual, and a licensee designee or an authorized representative to consent to criminal history and records checks.**
- **Require an owner, partner, or director of an applicant for an adult foster care facility license, or a governing body member in the case of a home for the aged, who has regular direct access to residents or on-site operational responsibilities to consent to criminal history and records checks.**
- **Require the State Police to conduct the criminal history check, and allow the Department to charge a fee to the person subject to the checks.**
- **Require the State Police to maintain fingerprints in a database that provided for automatic notification of subsequent criminal arrests.**
- **Prohibit the DHS from issuing a license to an applicant, a licensee designee, an authorized representative, or an owner, partner, director, or governing body member who has regular direct access to residents or on-site operational responsibilities if he or she had been convicted of an offense described in the bills.**
- **Prohibit an applicant, licensee, licensee designee, authorized representative, or owner, partner, director, or governing body member from being permitted on the premises of a facility or present in a home if he or she had been convicted of a specified offense.**

Senate Bill 1102 (S-3) also would require the owner, operator, member of the governing body, and authorized representative of a home for the aged to be of good moral character.

Senate Bills 1101 (S-3) and 1102 (S-3) are tie-barred. All of the bills are described in detail below.

Senate Bill 1100 (S-1)

Licensee Designee; Application

The bill would define "licensee designee" as the individual designated in writing by the board of directors of the corporation or by the owner or person with legal authority to act on behalf of the company or organization on licensing matters.

All license applications would have to be signed by the licensee in the case of an individual or by a member of the corporation, company, or organization.

Criminal Checks: Organizations

The child care licensing Act prohibits the DHS from issuing a license to or renewing the license of a child care center or day care center without requesting a criminal history check and criminal records check. If a check reveals that an applicant has been convicted of a listed offense, the DHS may not issue or renew a license. ("Listed offense" means that term as defined in the Sex Offenders Registration Act.) Under the bill, the DHS would have to request a criminal history check and criminal records check before issuing a license to or renewing a license of a child care organization.

(The Act defines "child care organization" as a governmental or nongovernmental organization whose principal function is receiving minor children for care, maintenance, training, and supervision. The term includes organizations commonly described as child caring institutions, child care centers, day care centers, nursery schools, foster homes, group homes, child care homes, child placing agencies, children's camps, children's campsites, children's therapeutic group homes, or parent cooperative preschools.)

Under the Act, when a person, partnership, firm, corporation, association, or nongovernmental organization applies for or applies to renew a license for a child care center or day care center, the DHS must request the State Police to conduct a criminal history check, and to conduct a criminal records check through the FBI, on

the person or each partner, officer, or manager of the child care or day care center.

The bill would extend this requirement to license applications for a child care organization. In addition, the criminal history and records checks would have to be conducted on the licensee designee, chief administrator, and program director of the child care organization, rather than the partner, officer, or manager.

The Act requires applicants to give consent for the criminal history and records checks, and provides that the checks are not required for license renewal if a person has previously undergone criminal history and records checks and remained continuously licensed. The bill would extend these provisions to child care organizations.

Criminal Checks: Employees

Under the Act, before a child care center or day care center offers employment to a person or allows a person to work regularly and continuously under contract at the center, it must conduct a criminal history check on the person using the State Police's internet criminal history access tool (ICHAT). If the ICHAT search reveals that the person has been convicted of a listed offense, the child care or day care center may not offer that person employment or allow him or her to work regularly and continuously under contract at the center.

Under the bill, these provisions would apply to a child care organization, rather than only to a child care center or day care center. The bill also would require use of either ICHAT or an equivalent check from the person's state or province of residence.

In addition, a child care organization would have to conduct a criminal history check on all current employees using ICHAT or an equivalent check within one year of the bill's effective date. (Originally, child care centers and day care centers had to perform ICHAT searches on all current employees within one year after the effective date of Public Act 133 of 2005, which added the requirement.)

Criminal Convictions

The bill would prohibit the DHS from issuing an license to, or renewing a license of, an

applicant if any of the following had been convicted of child abuse or neglect:

- The individual applicant.
- The owner, partner, or director of the applying organization, if other than an individual.

The Act prohibits a staff member from being present in a child care center, child caring institution, or child placing agency if he or she has been convicted of a felony involving harm or threatened harm to an individual within 10 years before the date of hire, or has been convicted of child abuse or child neglect.

The Act also prohibits a volunteer from having unsupervised contact with children who are in the care of a child care center, child caring institution, or child placing agency if he or she has been convicted of a felony involving harm or threatened harm to an individual within 10 years before offering to volunteer, or has been convicted of child abuse or child neglect.

The bill, instead, would prohibit a licensee, registrant, adult household member, licensee designee, chief administrator, or program director of a child care organization from being present in a child care organization if he or she had been convicted of a felony involving harm or threatened harm to an individual within 10 years before the date of hire or appointment, or had been convicted of child abuse or neglect. The bill also would prohibit a staff member or unsupervised volunteer from having contact with children in the care of a child care organization if he or she had been convicted of a felony involving harm or threatened harm to an individual within 10 years before the date of hire or appointment, or had been convicted of child abuse or neglect.

Perpetrator of Child Abuse or Neglect

Currently, before a staff member or unsupervised volunteer has contact with a child in the care of a child care center, child caring institution, or child placing agency, the staff member or volunteer must give the center, institution, or agency documentation from the DHS that he or she has not been named in a central registry case as the perpetrator of child abuse or child neglect.

Under the bill, instead, a licensee, registrant, adult household member,

licensee designee, chief administrator, staff member, or unsupervised volunteer could not have contact with a child in the care of a child care organization until that person gave the organization documentation from the DHS that he or she had not been named in a central registry case as the perpetrator of child abuse or child neglect.

Upon the Department's request, the licensee, registrant, adult household member, licensee designee, chief administrator, staff member, or unsupervised volunteer would have to give the DHS an updated authorization for central registry clearance. If an updated clearance documented that the person was named as a perpetrator in a central registry case, he or she could not be present in the child care organization.

A staff member or unsupervised volunteer in a children's camp or children's campsite who was at least 21 years old could not have contact with a child in the care of a children's camp until the staff member or volunteer gave the camp documentation from the DHS that he or she had not been named in a central registry case as the perpetrator of child abuse or neglect.

The Act requires each child care center, child caring institution, or child placing agency to establish and maintain a policy regarding supervision of volunteers, including parents of children who receive care at the center, institution, or agency. Under the bill, this requirement would apply to each child care organization.

(The central registry is a statewide, electronic registry that the DHS maintains to keep a record of all reports filed with the Department in which relevant and accurate evidence of child abuse or neglect is found to exist.)

Senate Bill 1101 (S-3)

Licensee Designee; Application

The bill would define "licensee designee" as the individual designated in writing by the owner or person with legal authority to act on behalf of the company or organization on licensing matters.

A licensee designee who was not an owner, partner, or director of the applicant could

not sign the original license application or amendments to it.

Criminal History & Records Checks

The bill would require an applicant, if an individual, at the time of original license application, or a licensee designee, at the time of appointment, to give written consent for the State Police to conduct a criminal history check and criminal records check. Also, an owner, partner, or director of the applicant who has regular direct access to residents or on-site facility operational responsibilities, at the time of original license application, would have to give written consent for the State Police to conduct criminal history and records checks. ("Direct access" would mean access to a resident or to a resident's property, financial information, medical records, treatment information, or any other identifying information.)

The DHS would have to request a criminal history check and criminal records check in the manner prescribed by the State Police, which would have to conduct the criminal history check and give a report of the results to the licensing or regulatory bureau of the DHS. The report would have to contain any criminal history information on the person maintained by the State Police and the results of the criminal records check from the FBI. The State Police could charge the person on whom the checks were performed a fee that did not exceed the actual and reasonable cost of conducting them.

Within one year after the bill's effective date, all licensees and licensee designees of facilities licensed on that date, and all owners, partners, or directors described above, would have to comply with the requirements for criminal history and records checks.

Beginning on the bill's effective date, if an applicant, a licensee designee, or an owner, partner, or director described above applied for a license or to renew a license to operate an adult foster care facility, and he or she or the licensee designee had previously undergone a criminal history check and criminal records check, and had remained continuously licensed after the checks had been performed, that person would not be required to submit to another criminal

history or records check when renewing the license.

The State Police would have to store and maintain all fingerprints submitted under the Adult Foster Care Facility Licensing Act in an automated fingerprint identification system database that provided for an automatic notification when a subsequent criminal arrest fingerprint card submitted into the system matched a set of prints submitted under the Act. Upon notification, the State Police immediately would have to notify the DHS, which would have to take appropriate action.

Criminal Convictions

The Act prohibits the DHS from issuing a license to, or renewing the license of, a person who has been convicted of a felony under the Act or under Chapter 20A of the Michigan Penal Code. If a person has been convicted of a misdemeanor under the Act or under Chapter 20A, the DHS may not license the person for 10 years after the misdemeanor conviction. (Chapter 20A of the Penal Code prescribes felony and misdemeanor penalties for vulnerable adult abuse.)

The bill, instead, would prohibit the DHS from issuing a license to, or renewing the license of, an owner, partner, or director of the applicant, who has regular direct access to residents or has on-site facility operational responsibilities, or an applicant or the licensee designee, if any of those individuals had been convicted of one or more of the following:

- A felony under the Act or Chapter 20A of the Penal Code.
- A misdemeanor under the Act or Chapter 20A within the 10 years immediately before the application.
- A misdemeanor involving abuse, neglect, assault, battery, or criminal sexual conduct or involving fraud or theft against a vulnerable adult, or a substantially similar state or Federal crime, within the 10 years immediately before the application.

(The bill would refer to a vulnerable adult as that term is defined in Section 145m of the Penal Code. That section defines "vulnerable adult" as an individual at least 18 years old who, because of age,

developmental disability, mental illness, or physical disability requires supervision or personal care or lacks the personal and social skills required to live independently. The term also includes a person placed in an adult foster care family home or an adult foster care small group home under certain circumstances, and a vulnerable person at least 18 years old who is believed to be abused, neglected, or exploited.)

The bill also would prohibit a licensee, licensee designee, owner, partner, or director of the licensee from being permitted on the premises of an adult foster care facility if he or she had been convicted of adult abuse, neglect, or financial exploitation, or a listed offense as defined in the Sex Offenders Registration Act.

Senate Bill 1102 (S-3)

Authorized Representative; Application

The bill would define "authorized representative" as the individual designated in writing by the board of directors of the corporation or by the owner or person with legal authority to act on behalf of the company or organization on licensing matters.

An authorized representative who was not an owner or licensee could not sign the original license application or amendments to it.

Criminal History & Records Checks

The bill would require the applicant for a license for a home for the aged, at the time of application, and an authorized representative, at the time of appointment, to give written consent for the State Police to conduct a criminal history check and a criminal records check. Also, an owner, operator, or member of the governing body who has regular direct access to residents or on-site facility operational responsibilities, at the time of license application, would have to give written consent for the State Police to conduct criminal history and records checks. ("Direct access" would mean access to a patient or resident or to a patient's or resident's property, financial information, medical records, treatment information, or any other identifying information.)

Within one year after the bill's effective date, all owners, operators, and governing body members with regular direct access to residents or on-site facility operational responsibilities, and all authorized representatives would have to comply with the requirements for criminal history and records checks.

The DHS would have to request a criminal history check and criminal records check in the manner prescribed by the State Police, which would have to conduct the criminal history check and give a report of the results to the licensing or regulatory bureau of the DHS. The report would have to contain any criminal history information on the person maintained by the State Police and the results of the criminal records check from the FBI. The State Police could charge the person on whom the checks were performed a fee for the checks that did not exceed the actual and reasonable cost of conducting them.

The State Police would have to store and maintain all fingerprints submitted under the Public Health Code in an automated fingerprint identification system database that provided for an automatic notification when a subsequent criminal arrest fingerprint card submitted into the system matched a set of prints submitted under the Code. At the time of notification, the State Police immediately would have to notify the DHS, which would have to take appropriate action.

Criminal Convictions

The bill would prohibit the DHS from issuing a license to, or renewing the license of, an owner, operator, or governing body member, who has regular direct access to residents or on-site facility operational responsibilities, or an applicant, if an individual or the authorized representative, if any of those individuals had been convicted of one or more of the following:

- A felony under the Public Health Code or Chapter 20A of the Penal Code.
- A misdemeanor under the Public Health Code or Chapter 20A within the 10 years immediately before the application.
- A misdemeanor involving abuse, neglect, assault, battery, or criminal sexual conduct or involving fraud or theft against a vulnerable adult, or a

substantially similar state or Federal crime, within the 10 years immediately before the application.

An applicant, owner, operator, member of a governing body, or authorized representative of a home for the aged could not be present in a home for the aged if he or she had been convicted of either of the following:

- Vulnerable adult abuse, neglect, or financial exploitation.
- A listed offense as defined in the Sex Offenders Registration Act.

Good Moral Character

Under the bill, the owner, operator, or member of the governing body of a home for the aged and the authorized representative would have to be of good moral character.

"Good moral character" would mean that term as defined in Public Act 381 of 1974 (i.e., the propensity to serve the public in the licensed area in a fair, honest, and open manner).

MCL 722.111 et al. (S.B. 1100)
400.704 et al. (S.B. 1101)
333.20102 et al. (S.B. 1102)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

By addressing statutory inconsistencies and closing gaps in the law, the bills would enhance Michigan's protections for children and adults who are cared for or reside in child care facilities, adult foster care facilities, and homes for the aged. Depending on the type of facility, the legislation would extend the criminal background check requirements to licensee designees, authorized representatives, and chief administrators, as well as facility owners, operators, and directors with on-site organizational responsibility or regular, direct access to residents, preventing these individuals from being licensed, appointed, or hired if they had been convicted of a violation of the licensing act, child or vulnerable adult abuse, or another offense

involving assault, battery, or criminal sexual conduct. The bills also would help ensure that individuals who had been convicted of abuse, neglect, financial exploitation, or a listed offense under the Sex Offenders Registration Act, did not have contact with children or access to vulnerable adults. In addition, Senate Bill 1100 (S-1) would extend the law's protections to children in any type of child care organization.

Response: The State currently pays the cost of criminal background checks for licensees of adult foster care facilities and homes for the aged. Senate Bills 1101 (S-3) and 1102 (S-3) would impose a financial burden on these licensees by shifting the cost to them, and requiring background checks to be performed on more individuals.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills could lead to increases in administrative cost for the Department of Human Services. The increase would be associated with processing increased requests for checks with the Department of State Police, and ensuring that child care organizations, adult foster care facilities, and homes for the aged complied with the background check standard.

The bills would require the Department of State Police to run criminal history and criminal records background checks for licensees of all child care organizations; license applicants and licensee designees of adult foster care facilities; facility owners, partners, and directors with direct access to residents or facility operational responsibilities; and all license applicants and authorized representatives of homes for the aged, and owners, operators, and governing body members who have direct access to residents or operational responsibilities.

The cost is \$49.25 per check. The child care licensing Act allows the State Police to pass the cost of licensees' criminal history checks on to the DHS, and allows the DHS to pass the cost on to the licensees. Under Senate Bills 1101 (S-3) and 1102 (S-3), the cost could be charged to the person subject to the criminal history and records checks. Currently, the cost of background checks for eligible employees in adult foster care facilities and homes for the aged is paid

through the Department of Community Health (DCH) appropriation.

The FY 2010-11 executive recommendation for the Department of Community Health assumes savings of \$2.1 million Gross and \$1.7 million GF/GP through the transfer of financial responsibility for criminal history checks from the State to adult foster care facilities and homes for the aged. If enacted, this would influence the fiscal impact of Senate Bills 1101 (S-3) and 1102 (S-3). This would depend upon legislative concurrence with the proposed change and whether the allocation to the DCH for the cost of background checks would be used for license applicants, licensee designees, or authorized representatives.

Senate Bill 1100 (S-1) also would require the performance of a criminal history (name) check on each employee of a child care organization through ICHAT at a cost of \$10 per name check. The Act allows a licensee to pass the cost of an ICHAT search on to the employee.

Fiscal Analyst: Bruce Baker
David Fosdick

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.