



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 180 through 183 (as enacted)
Sponsor: Senator Tonya Schuitmaker (S.B. 180 & 183)
Senator Dave Hildenbrand (S.B. 181)
Senator Hoon-Young Hopgood (S.B. 182)
Senate Committee: Families, Seniors and Human Services
House Committee: Families, Children, and Seniors

PUBLIC ACTS 256-258 of 2017

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CONTENT

Senate Bills 180, 181, and 182 amended the child care licensing Act to revise various requirements concerning the regulation of child care organizations. The bills establish a separate set of licensure and application requirements, including criminal history checks, for child care centers, family child care homes, and group child care homes.

Senate Bill 181 redefines "department" as the Department of Health and Human Services (DHHS) and the Department of Licensing and Regulatory Affairs (LARA) or a successor agency or department responsible for licensure under the Act. The DHHS is responsible for child caring institutions, child placing agencies, children's therapeutic group homes, foster family homes, and foster family group homes, while LARA is required to oversee child care centers, family and group child care homes, children's camps, and children's campsites. (As used in the bills and in this summary, "Department" means either the DHHS or LARA, depending on the type of facility licensed and regulated.)

Senate Bill 180 does the following:

- Revises requirements for criminal history checks of applicants for licensure as a child care organization, foster family home, or foster family group home.
- Revises requirements for licensees to report when they are arraigned for certain crimes, and extends the requirement to child care staff members.
- Establishes new provisions specifically applying to child care centers, group child care homes, and family child care homes, regarding criminal background checks of licensees, applicants for licensure, child care staff members, and members of a licensee's household.
- Prohibits a child care center, group child care home, or family child care home licensee, child care staff member, or adult member of the household from having contact with a child in the care of one of those facilities, until he or she is documented as not having been named as the perpetrator of child abuse or neglect in the DHHS's central registry.
- Provides that a person is ineligible to be licensed as a child care center, group child care home, or family child care home or to be a child care staff member or adult member of the household if he or she has certain criminal convictions, refuses to consent to a criminal history or central registry check, or makes a false statement or omission in connection with those checks.
- Allows LARA to find a person who otherwise is ineligible to receive a license, be a member of the household, or be a child care staff member, to be eligible, if the Department has previously reviewed and approved the person as a licensee or registrant, and he or she meets other specified criteria.

Senate Bill 181 does the following:

- Defines "family child care home" as a private home in which three to six children, rather than one to six children, are received for care and supervision for compensation.
- Specifies that Section 5 of the Act, which deals with licensure of child care organizations, does not apply to a child care center, group child care home, or family child care home (which is subject to a separate licensure and application process under Senate Bill 182).
- Revises provisions regarding license revocation, refusal, or denial.
- Allows the Department to obtain an injunction to restrain or prevent a person from continuing to violate the Act or rules promulgated under it, after the Department informs the person of violations.
- Allows the Department to obtain an injunction to restrain or prevent a person from acting in a manner that threatens the public health, safety, or welfare or to compel a person to take corrective action, if the Department has conducted an investigation that discloses an imminent threat.
- Specifies that the Department is entitled to actual costs and attorney fees if it is successful in obtaining an injunction.
- Extends from two to five years the period during which the Department may refuse a license, or prohibit a person from being connected with a licensee, after the revocation, denial, or refusal to renew a license.
- Revises provisions dealing with the evaluation and examination of child care organizations, and includes inspection of those facilities in those provisions.
- Revises requirements for certain child care organizations regarding first aid and CPR certification, personal restraint restrictions, parental visits, and smoking prohibitions.
- Requires an annual inspection of a child care organization to be unannounced unless the Department considers it necessary to schedule an appointment.
- Allows the temporary operation of a child care center, group child care home, or family child care home at an unlicensed location, in the case of a disaster, under certain circumstances.

Senate Bill 182 does the following:

- Enacts a new section to regulate licensure and application for licensure as a child care center, family child care home, or group child care home.
- Prohibits a person or other entity from establishing or maintaining a child care center, group child care home, or family child care home unless licensed by LARA.
- Establishes fees that must assess for original and renewal licensure as a child care center, family child care home, or group child care home.
- Revises provisions concerning the issuance of a provisional license to a child care organization.
- Authorizes the Department to modify the license of a child care organization to a provisional license when the licensee violates the Act, rules promulgated under it, or the terms of the license.
- Revises provisions addressing the effectiveness and renewal of a license.
- Revises the information that must be included in a database of child care centers, family child care homes, and group child care homes, and requires certain information in the database to be made available to people seeking information on child care options.

Senate Bill 183 amended the Code of Criminal Procedure to make changes to the sentencing guidelines to reflect revisions made by Senate Bills 180 and 181.

The bills took effect on March 28, 2017.

Senate Bill 180

Criminal History Check

Child Care Organizations As enacted by the bill, the child care licensing Act provides that, when a person or partnership, or a licensee designee if the applicant is a limited liability corporation, firm, corporation, association, governmental organization, or nongovernmental organization, applies for a child care organization under Section 5, the Department must request the Michigan Department of State Police (MSP) to perform a criminal history check on the person and a criminal records check through the FBI. The bill added the reference to a governmental organization, and deleted a requirement of a criminal history check upon application to renew a license.

Senate Bill 181 defines "criminal history check" as a fingerprint-based criminal history record information background check through the MSP and the FBI.

Section 5 prohibits a person, partnership, firm, corporation, association, governmental organization, or nongovernmental organization from establishing or maintaining a child care organization unless licensed, and establishes licensure and application requirements. Under Senate Bill 181, Section 5 does not apply to a child care center, group child care home, or family child care home; Senate Bill 182 added Section 5m to establish separate licensure and application requirements for those facilities.

The Act defines "child care organization" as a governmental or nongovernmental organization having as its principal function receiving minor children for care, maintenance, training, and supervision, notwithstanding that educational instruction may be given. The term includes organizations commonly described as child caring institutions, child placing agencies, children's camps, children's campsites, children's therapeutic group homes, child care centers, day care centers, nursery schools, parent cooperative preschools, foster homes, group homes, or child care homes.

"Child care center" means a facility, other than a private residence, receiving one or more children under 13 years of age for care for periods of less than 24 hours a day, where the parents or guardians are not immediately available to the child. (Senate Bill 181 amended the definition to refer to children under 13 years of age, rather than preschool or school-age children.)

"Family child care home" means a private home in which three but fewer than seven minor children are received for care and supervision for compensation for periods of less than 24 hours a day, unattended by a parent or legal guardian, except children related to an adult member of the household by blood, marriage, or adoption. (Previously, the definition referred to one but fewer than seven children, and, in the exception, it referred to children related to an adult member of the family, rather than household.)

"Group child care home" means a private home in which more than six but not more than 12 minor children are given care and supervision for periods of less than 24 hours a day unattended by a parent or legal guardian, except children related to an adult member of the household by blood, marriage, or adoption. (Previously, in the exception, the term referred to children related to an adult member of the family, rather than household.)

As defined by Senate Bill 181, "related" means in the relationship by blood, marriage, or adoption, as parent, grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great aunt or great uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of those individuals, even after the marriage has ended by death or divorce. "Related" meant in the relationship of parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, aunt, cousin, great aunt, great uncle, or step grandparent by marriage, blood, or adoption.

Senate Bill 181 defines "member of the household" as any individual who lives in a family child care home, group child care home, foster family home, or foster family group home on an ongoing basis, or who has a recurrent presence in the home, including overnight stays. A member of the household does not include a child to whom child care is being provided or a foster child.

Foster Family Homes Under Senate Bill 180, when a person applies for or to renew a license to operate a foster family home or foster family group home, the Department must perform a criminal history background check on an adult member of the household using the MSP's ICHAT (Internet Criminal History Access Tool).

Previously, when a person applied for or to renew a license to operate a foster family home or foster family group home, the Department was required to request the MSP to perform both a criminal history check on the person and a criminal records check through the FBI on all people over the age of 18 residing in the home in which the foster family home or group home was operated.

"Foster family home" means a private home in which one but not more than four minor children, who are not related to an adult member of the household by blood or marriage, or who are not placed in the household under the Michigan Adoption Code, are given care and supervision for 24 hours a day, for four or more days a week, for two or more consecutive weeks, unattended by a parent, legal guardian, or legal custodian.

A "foster family group home" is a home described above in which more than four but fewer than seven minor children are cared for.

Report of Arraignment

Previously, the Act required a child care center or day care center licensee to report to the Department, and required an employee of a child care center or day care center to report to that child care center or day care center, within three business days after he or she had been arraigned for a felony or any of the misdemeanors listed in the Act.

The bill instead requires a child care center licensee, licensee designee, or program director, group child care home licensee, and family child care home licensee to report to the Department within three business days after he or she is arraigned for or convicted of one or more of the crimes listed in Section 5r (which the bill added to the Act). A child care staff member must report to the child care center, group child care home, or family child care home within three business days after he or she is arraigned for or convicted of one or more of those crimes.

The bill also requires a child care center licensee, licensee designee, or program director, group child care home licensee, and family child care home licensee to report to the Department within three business days after receiving a report from a child care staff member. A group child care home licensee or family child care home licensee must report to the Department within three business days after he or she knows or should reasonably know that an adult member of the household has been arraigned for or convicted of one or more of the crimes listed in Section 5r.

(Section 5r, which is described in greater detail below, lists crimes for which a person required to undergo a criminal history check is ineligible to receive a license for, or be an adult member of the household or child care staff member of a child care center, group child care home, or family child care home.)

Senate Bill 181 defines "child care staff member" as an individual who is 18 years of age or older and is one or more of the following:

- An individual employed by a child care center, group child care home, or family child care home for compensation, including a contract employee or a self-employed individual.

- An individual whose activities involve the unsupervised care or supervision of children for a child care center, group child care home, or family child care home.
- An individual who has unsupervised access to children who are cared for or supervised by a child care center, group child care home, or family child care home.

MSP Records

The Act requires the MSP to store and maintain all fingerprints submitted under the Act in an automated fingerprint identification system database that provides for an automatic notification at the time a subsequent criminal arrest fingerprint card submitted into the system matches a set of fingerprints previously submitted in accordance with the Act. Previously, upon that notification, the MSP was required to immediately notify the Department, which had to immediately contact the respective child care center, day care center, family child care home, group child care home, licensed child placing agency, or approved governmental unit, foster family home, or foster family group home with which the person was associated. Senate Bill 180 deleted reference to all those entities and instead requires the Department to contact the respective child care organization with which the individual is associated. Except for child placing agencies, the criminal history record information may be released only to the individual to whom it pertains.

Under the bill, when the MSP is able to participate with the FBI's automatic notification system similar to the system administered by the MSP, all fingerprints submitted to the FBI may be stored and retained. When a subsequent criminal arrest fingerprint card submitted into the system matches a set of fingerprints for a person retained in accordance with the Act, the MSP must immediately notify the Department, which must immediately contact the child care organization with which the person is associated if a conviction results from the arrest. Except for child placing agencies, the criminal history record information may be released only to the person to whom it pertains.

False Report

Under the Act, a person is guilty of a crime if he or she intentionally makes a false report to the Department regarding a child care organization that causes the Department to initiate a special investigation for which the child care organization is required to send notice to parents and legal guardians. Under the bill, this provision applies if the false report causes the Department to initiate a special investigation that the Department classifies as high-risk.

Reporting Immunity; Confidentiality

Under the bill, a person acting in good faith who makes a report, cooperates in an investigation, or assists in any other requirement of the Act is immune from civil or criminal liability that otherwise might be incurred by that action. A person making a report or assisting in any other requirement of the Act is presumed to have acted in good faith. Immunity extends only to an act performed according the Act for reporting a potential violation or assisting or cooperating with the Department in an investigation it conducts.

The identity of a person making a report and cooperating with or assisting the Department relative to that report is confidential, subject to disclosure only with the consent of the person or by judicial process. If the Department receives a complaint by an individual remaining anonymous, it may take no action on the complaint if it does not include sufficient information to reasonably investigate.

Child Care Centers, Group Child Care Homes, & Family Child Care Homes

Background Checks Under Section 5n, added by the bill, when a person, partnership, firm, corporation, association, governmental organization, or nongovernmental organization applies for or applies to renew a license to operate a child care center, group child care home, or family child care home under Section 5m (which Senate Bill 182 added), and before the facility allows an

individual to be a member of the household or allows an individual to become a child care staff member, LARA must do all of the following:

- Review its database of individuals with previous disciplinary action within a child care center, a group or family child care home, or an adult foster care facility.
- Conduct a search of the individual through the national sex offender registry.
- Request a search of the person through all state criminal registries or repositories for any states of residence in the past five years.
- Request that the MSP perform a criminal history check on the individual, licensee designee, program director, child care staff member, or adult member of the household.

If the person lived out of the United States within the preceding five years, equivalent clearances from each country must be provided, if available. If a country does not have the equivalent clearance, the person must sign a self-certifying statement that he or she is not ineligible to receive a license, to be an adult member of the household, or to be a child care staff member. A person who provides or is determined to have provided false information or knowingly omits information in the self-certification statement is ineligible for the application.

Each person required to undergo a criminal background check described above must give written consent at the time of the license application or before becoming a child care staff member to allow the MSP to conduct the required criminal history check. The Department of Licensing and Regulation must require the individual to submit his or her fingerprints to the MSP.

The MSP must conduct a criminal history check within a reasonable time after receiving a complete request. The MSP does charge LARA a fee that does not exceed the actual and reasonable cost of conducting the check, and LARA may pass along the actual cost or fee to the individual.

The bill allows an individual who was fingerprinted to serve as a child care staff member pending the results of the criminal record and DHHS central registry check if he or she is supervised at all times. Within 45 days after the date on which a criminal history check request was submitted, LARA must give a statement to the child care center, group child care home, or family child care home that indicates whether the person is eligible or ineligible to be an adult member of the household or a child care staff member, without revealing any disqualifying crime or other related information regarding the person. The MSP must provide information related to each disqualifying item in a report to an individual who is determined ineligible. An individual who is determined to be ineligible may appeal to LARA if he or she believes that the basis for the determination is inaccurate. The bill outlines the appeals process and procedures.

The bill required every child care center licensee, licensee designee, or program director, group child care home licensee, family child care home licensee, child care staff member, and adult member of the household, by September 30, 2017, to provide his or her fingerprints to the MSP in order to carry out the records and central registry checks. If an extension on the implementation of this program is obtained from the Federal government, that requirement must be implemented by September 30, 2018.

If a licensee, licensee designee, or program director of a child care center, group child care home, or family child care home applying for a new license or to renew a license to operate a center or home has previously undergone a criminal history check and has remained continuously licensed since then, that licensee, designee, program director, or home does not have to submit to another criminal history check.

The checks and clearances required for a criminal history check and a central registry check must be updated at least every five years if an individual has been continuously licensed, been serving as a child care staff member, or been an adult member of the household.

Except as otherwise provided, LARA may not issue a license to operate a child care center, group child care home, or family child care home without requesting a criminal history check. If a criminal

history check or information obtained as a result of notification from the MSP reveals that an applicant for a license to operate a child care center, group child care home, or family child care home has been convicted of a crime described in Section 5r, LARA may not issue a license to that applicant. If a criminal history check or information obtained from the MSP reveals that an applicant for renewal of a license has been convicted of one of those crimes, LARA may not renew the license. If a criminal history check or information from the MSP reveals that a current licensee has been convicted of one of those crimes, LARA must revoke the license.

Except as otherwise provided, a child care center, group child care home, or family child care home may not allow a person to be a child care staff member without requesting a criminal history check. If a criminal history check or information from the MSP reveals that a potential or current child care staff member has been convicted of a crime described in Section 5r, LARA must notify the child care center, group child care home, or family child care home. The center or home may not allow the person to be a child care staff member.

DHHS Central Registry. Under the bill, except as otherwise provided, a licensee, licensee designee, program director, child care staff member, or adult member of the household may not have contact with a child who is in the care of a child care center, group child care home, or family child care home, until LARA obtains documentation from the DHHS that he or she has not been named in a central registry case as the perpetrator of child abuse or neglect. If a central registry clearance documents that the person is so named, he or she is ineligible to receive a license, be an adult member of the household, or be a child care staff member. For a person who has lived outside of Michigan as an adult within the immediately preceding five years, LARA must obtain equivalent documentation for the states of previous residence.

Ineligibility. The bill added Section 5r to specify conditions that make an individual ineligible to be licensed as a child care center, group child care home, or family child care home.

A person required to undergo a criminal history check under Section 5n is ineligible, for that application only, to receive a license, be an adult member of the household, or be a child care staff member if he or she does either of the following:

- Refuses to consent to a criminal history check or central registry check.
- Knowingly makes a materially false statement or knowingly omits information in connection with a criminal history check or central registry check.

An individual required to undergo a database check of previous disciplinary actions may be considered ineligible to receive a license, be an adult member of the household, or be a child care staff member if he or she has a confirmed history of disciplinary action or a violation of the Act, rules promulgated under it, or the terms of a license that resulted in severe physical injury, sexual abuse, or death of a child.

An individual required to undergo a criminal history check is ineligible to receive a license, be an adult member of the household, or be a child care staff member if he or she meets one or more of the following:

- Is registered, or is required to be registered, on a state sex offender registry or repository or the national sex offender registry.
- Has been convicted of a felony constituting any of the following: murder or homicide; child abuse or child neglect; a crime against a minor child, including child pornography; spousal abuse or domestic violence; a crime involving rape or sexual assault; kidnapping; arson, physical assault or battery; or human trafficking or involuntary servitude.
- Has been convicted of a violent misdemeanor against a child, including child abuse, child endangerment, or sexual assault.
- Has been convicted of a misdemeanor involving child pornography.

(Subsequent provisions refer to individuals meeting the conditions listed above as "permanently ineligible".)

An individual required to undergo a criminal history check is ineligible to receive a license, be an adult member of the household, or be a child care staff member if he or she has been convicted a felony involving one or more of the following, unless 10 years have lapsed since the conviction:

- Harm or threatened harm to an individual.
- Use of a firearm or dangerous weapon.
- Cruelty or torture of any person.
- Substantial misrepresentation of any material fact, bribery, fraud, larceny, embezzlement, theft, home invasion, breaking and entering, receiving and concealing stolen property, or a crime of similar statute.
- Operating a motor vehicle while intoxicated or impaired causing serious injury or death.
- Use of a computer or the internet to commit a crime.
- Cruelty to animals, including fighting, killing, torturing, and abandoning.
- Aggravated stalking, aggravated indecent exposure, indecent exposure by a sexually delinquent person, pandering, transporting an individual for prostitution, and keeping, maintaining, or operating a house of ill fame.
- Being a habitual offender.

An individual required to undergo a criminal history check is ineligible to receive a license, be an adult member of the household, or be a child care staff member if he or she has been convicted of a felony drug offense, or an attempt or conspiracy to commit a felony drug offense, unless seven years have lapsed since the conviction.

An individual required to undergo a criminal history check is ineligible to receive a license, be an adult member of the household, or be a child care staff member if he or she has been convicted of one or more of the following or an attempt or conspiracy to commit one or more of the following, unless five years have lapsed since the conviction:

- A misdemeanor involving operating under the presence of a controlled substance, use or possession of a controlled substance, and selling or furnishing a controlled substance to a minor.
- A misdemeanor involving using computers to commit a crime, a substantial misrepresentation of a material fact, embezzlement, breaking and entering, and any other fraudulent crime except third-degree retail fraud, petty theft, or shoplifting.
- A misdemeanor involving stalking, assault, spousal abuse, domestic violence, weapons offense, harboring runaways, aiding and abetting, and arson.

If a person was previously reviewed and approved by LARA as a licensee of a child care center or group child care home, as a registrant of a family child care home, as a licensee designee or program director for a child care center, or as an adult member of the household before the bill's effective date, LARA may find him or her to be eligible to receive a license, be a member of the household, or be eligible to be a child care staff member, if all of the following apply:

- The offense was previously known and approved by the Department before the bill's effective date.
- The offense is not a felony for which a person would be permanently ineligible under Section 5r.
- The person has remained continuously licensed under the Act or continuously employed with an active child care center license, group child care home license, or family child care home registration since the date of approval.

Except for a person convicted of a felony that would require permanent ineligibility, a person determined to be ineligible under Section 5r who is a licensee, licensee designee, program director, child care staff member, or adult member of the household at the time the record and database

checks are completed, may request a redetermination of his or her eligibility. A redetermination must be requested in writing within 30 days after receipt of the determination of ineligibility. The request must include all evidence of rehabilitation that the individual wishes LARA to consider. The Department will have 60 days, after it receives all requested information, to respond in writing with the recommendation for the redetermination. The LARA Director's decision will be final.

Senate Bill 181

Departments & Rules

Formerly, the Department of Health and Human Services was responsible for developing and promulgating rules for the care and protection of children in organizations covered by the Act. The bill instead specifies that the DHHS and LARA have that responsibility.

Under the Act, "department" meant the DHHS or a successor agency or department responsible for licensure and registration under the Act. The bill instead defines "department" as the DHHS and LARA or a successor agency or department responsible for licensure under the Act. The bill specifies that LARA is responsible for licensing and regulatory matters for child care centers, group child care homes, family child care homes, children's camps, and children's campsites. The DHHS is responsible for licensing and regulatory matters for child caring institutions, child placing agencies, children's therapeutic group homes, foster family homes, and foster family group homes.

The bill prohibits a group child care home or a family child care home from being concurrently licensed as an adult foster care family home or an adult foster care small group home.

The Act restricts rules promulgated under it to certain matters. The bill includes in those matters the health of applicants and other people directly responsible for the care and welfare of children served. It also includes the character and health of household members.

Licensure

Section 5 of the Act establishes licensure and application requirements for child care organizations. Previously, Section 5 prohibited a person, partnership, firm, corporation, association, or nongovernmental organization from establishing or maintaining a child care organization unless licensed or registered. Under the bill, Section 5 prohibits a person, partnership, firm, corporation, association, nongovernmental organization, or governmental organization from establishing or maintaining a child care organization unless licensed by the Department.

The bill states that Section 5 does not apply to a child care center, group child care home, or family child care home. (Senate Bill 182 added Section 5m to establish separate licensure and application requirements for those facilities.)

The bill also states that Sections 5c, 5d, 5g, and 9 do not apply to a child care center, group child care home, or family child care center. (Sections 5c, 5d, and 5g are among those that Senate Bill 180 amended. Section 5c pertains to criminal history checks for licensure of child care organizations. Section 5d requires criminal history background checks of potential employees of child care organizations. Section 5g prohibits the Department from issuing or renewing a license, and requires the Department to revoke a license, if it becomes aware that a member of the household of a group child care home or family child care home has been convicted of a listed offense. Section 9 prohibits certain people from being present in a child care organization or having contact with children in a child care organization, if they have been convicted of particular offenses or until they provide documentation that they have not been named in a central registry case as the perpetrator of child abuse or neglect.)

The bill deleted several provisions of Section 5 that dealt with licensure and application for licensure of child care centers, family child care homes, and group child care homes.

License Revocation, Refusal, or Denial

Previously, the Act allowed the Department to deny, revoke, or refuse to renew a license or certificate of registration of a child care organization when the licensee or applicant falsified information on the application or willfully and substantially violated the Act, rules promulgated under it, or the terms of the license. The bill deleted references to a certificate of registration.

A license may not be revoked, refused, or denied unless the licensee or applicant is given written notice of the grounds for the proposed action. If revocation, denial, or refusal is appealed within 30 days after receipt of the notice, the Department Director or his or her designee must conduct a hearing at which the licensee or applicant may present testimony and confront witnesses.

The bill specifies that, if the proposed action is not appealed, the license must be revoked or refused renewal, or the application must be denied. The proposed action must be appealed within 30 days after receipt, by writing to the Department Director or his or her designee. Upon receiving of the written appeal, the Director or his or her designee must initiate contested case hearing provisions of the Administrative Procedures Act. Formerly, the decision of the Director had to be made within 30 days after the hearing. The bill requires the decision to be made as soon as practicable after the hearing.

In addition, the bill prohibits the Department from issuing a license to an individual who works in a child care center, group child care home, or family child care home at the time of a violation of the child care licensing Act, rules promulgated under it, or the terms of a license that resulted in the severe physical injury or death of a child or resulted in a child's being sexually abused if that individual had direct care and supervision of the child at the time of the violation.

The Department may immediately revoke or refuse to renew a license or deny an application for a license without providing written notice of the grounds for the proposed action or giving the licensee or applicant 30 days to appeal, if the licensee or applicant does all of the following in writing:

- Waives the requirement that the Department provide written notice of the grounds for the proposed action.
- Waives the 30-day time frame in which to submit a written appeal of the proposed action.
- Waives the right to implement the contested case hearing provisions of the Administrative Procedures Act.

The Department Director or his or her designee may issue a subpoena to do either of the following:

- Compel the attendance of a witness to testify at a contested case hearing.
- Produce books, papers, documents, or other items relevant to the investigation or hearing.

If a subpoena is disobeyed, the Director or his or her designee may petition the circuit court to require the attendance of a witness or the production of books, papers, documents, or other items. The court may issue an order requiring a person to appear and give testimony or produce books, papers, documents, or other items. Failure to obey the court order may be punished as contempt of court.

Injunctive Action

Previously, when there was a violation of the Act or a rule promulgated under it, and the unlawful activity or condition of the child care organization was likely to result in serious harm to the children under care, the Department could seek injunctive action against the child care organization in circuit court through proceedings instituted by the Attorney General on behalf of the Department. The bill deleted that provision.

The bill permits the Department to bring an action for injunctive relief in the circuit court for the county in which the person resides or in the Ingham County Circuit Court, to enjoin a violation or threatened violation of the Act or a rule promulgated under it. An affidavit of an individual who is personally familiar with the basis of noncompliance must be filed with the action for injunctive relief.

If the Department has conducted an investigation that discloses an imminent threat to the public health, safety, or welfare, or the well-being of a child is endangered, the Department may obtain an injunction to restrain or prevent a person from acting in a manner that threatens the public health, safety, or welfare, or to compel a person to affirmatively take reasonable corrective action. Before obtaining an injunction, the Department must obtain an affidavit by a person familiar with the facts set forth in the affidavit, or, if appropriate, based upon an affidavit, that an imminent threat to the public health, safety, or welfare exists or the well-being of a child is endangered. The appropriate department is not required to provide prior warning to the person before obtaining an injunction. The appropriate department also is not required to demonstrate an imminent threat to the public health, safety, or welfare or child endangerment if the person is operating a child care organization without a license in violation of the Director's final order to revoke, refuse, or deny a license.

If the Department is successful in obtaining an injunction, it is entitled to actual costs and attorney fees for maintaining the action.

Extended Denial of License

Under the bill, if a person, child care organization, agency, or representative or officer of a firm, corporation, association, or organization is convicted under the Act, the conviction is sufficient ground for the revocation of its license and the person or entity may not be granted a license or be permitted to be connected with a licensee for a period of at least five years after the conviction. Previously, that period was at least two years.

Also, under the bill, a person, child care organization, agency, or representative or officer of a firm, a corporation, an association, or an organization who has a license or certificate of registration revoked, application denied, or renewal refused, may be refused a license or be prohibited from being connected, directly or indirectly, with a licensee or registrant for not less than five years after the revocation, denial, or refusal to renew. Previously, that period was not less than two years. The bill also specifies that the Department, in its discretion, is not required to accept an application from a person, child care organization, agency, or representative or officer of a firm, a corporation, an association, or an organization described in these provisions. The Department may reject the application on its face without taking further action after notifying the applicant of the rejection and the reason for rejection.

Examination/Inspection of Child Care Organization

Previously, the Act authorized the Department to investigate and examine conditions of a child care organization and the books and records of the licensee. The bill permits the Department to investigate, inspect, and examine conditions and investigate and examine a licensee's books.

Additionally, the Act required a licensee to admit members of the Department and furnish all reasonable facilities for thorough examination of books, records, and reports. The bill instead requires a licensee to cooperate with the Department's investigation, inspection, and examination by doing all of the following:

- Admitting members of the Department into the child care organization and furnishing all reasonable facilities for thorough examination of books, records, and reports.
- Allowing the Department to perform routine investigative functions during the course of an investigation, inspection, or examination.

-- Providing accurate and truthful information to the Department, and encouraging witnesses, such as staff and household members, to provide accurate and truthful information.

The bill specifies that routine investigative functions include interviewing potential witnesses, such as staff and household members, and taking photographs to assess and document the conditions of the child care organization and its compliance with the Act and rules promulgated under it.

The bill also requires a child care center, group child care home, or family child care home licensee to give LARA child information cards for all children presently enrolled for care, as requested by the Department, whenever it initiates or conducts an investigation, inspection, or assessment. If the investigation, inspection, or assessment results in the Department's pursuing disciplinary action, the center or home licensee must give the Department the child information cards for newly enrolled children for the pendency of the proposed disciplinary action.

The Department may suspend, deny, revoke, or refuse to renew a license of the child care organization if the licensee does not cooperate with an investigation, inspection, or examination.

Evaluation of Governmental Child Care Organizations

Formerly, local and State government child care organizations similar to those nongovernmental organizations required to be licensed under the Act had to be evaluated and approved at least once every two years, using the Act and rules promulgated for similar nongovernmental organizations licensed under the Act. The bill deleted that provision.

The Act required a report of the evaluation to be furnished to the funding body for each child care organization. Under the bill, that provision applies to a report or inspection for each governmental child care organization.

Temporary Operation at Unlicensed Location

Under the bill, in the case of a disaster, a child care center, group child care home, or family child care home may temporarily operate at an unlicensed location. The Department must determine what constitutes a disaster under this provision.

The child care center, group child care home, or family child care home may not operate in a new location until after the Department has conducted an inspection and approved the new location. For a child care center, a fire safety inspection, an environmental health inspection, and, if necessary, a lead hazard risk assessment, and, for a group or family child care home, an environmental health inspection, if necessary, must be conducted within 45 days of the proposal of the new location. If any of the inspections find the new location to be unsafe, the center or home must discontinue operation in that new location.

If the child care center, group child care home, or family child care home remains at the new location, the licensee must apply for and obtain a new license within one year of moving to the new location.

First Aid & CPR

The Act required a child caring institution, child care center, or group child care home to have on duty, at all times while the facility was providing care to one or more children, at least one person who had been certified within the preceding 36 months in first aid and within the preceding 12 months in CPR by the American Red Cross, the American Heart Association, or an equivalent organization or institution approved by the Department.

The bill instead requires a child caring institution, foster family home, foster family group home, child care center, group child care home, and family child care home to have individuals present, as prescribed in the appropriate administrative rules, who have current certification in first aid and

CPR obtained through the Red Cross, Heart Association, or an equivalent entity approved by the Department.

Personal Restraint/Seclusion

Under the bill, personal restraint or seclusion may not result in serious injury to the minor child and may be used only to ensure the child's safety or the safety of others during an emergency safety situation. Previously, personal restraint or seclusion could not result in harm or injury.

Parental Visit

The bill specifies that a parent or legal guardian of a child at a child care center, group child care home, or family care home may visit the child at the facility at any time. Previously, that provision applied to a child at a child care center, or day care center.

Previously, a parent or legal guardian who wished to enroll a child at a child care center or day care center could visit the center before the child's enrollment at the times the center established. Under the bill, a parent or guardian who wishes to enroll a child at a child care center, group child care home, or family child care home may visit the center or home before the child's enrollment during the facility's hours of operation.

Smoking Prohibited Signs

The Act prohibits smoking in a child caring institution or child care center or on real property that is under the control of the institution or center and upon which it is located, including other related buildings. The bill requires the operator of a child care center to conspicuously post on the premises a notice specifying that smoking on the premises is prohibited.

The Act also prohibits smoking on the premises of a group child care home or a family child care home during the home's hours of operation. The operator of the home may permit smoking on the premises during other periods, if he or she has notified a parent or legal guardian of each child participating in a home activity that smoking on the premises occurs or may occur when the home is not in operation. The bill requires the operator of a group child care home or family child care home to conspicuously post on the premises a notice specifying that smoking on the premises is prohibited during the home's hours of operation.

Annual Inspection

The bill provides that an annual inspection of a child care organization licensed under the Act must be unannounced, unless the Department, in its discretion, considers it necessary to schedule an appointment for an inspection.

Senate Bill 182

Child Care Center & Group or Family Child Care Home Licensure

The bill added Section 5m to regulate licensure and application for licensure as a child care center, family child care home, or group child care home.

The bill prohibits a person, partnership, firm, corporation, association, nongovernmental organization, or governmental organization from establishing or maintaining a child care center, group child care home, or family child care home unless licensed by LARA. Application for a license must be made on forms provided, and in the manner prescribed, by the Department, including required fees. Before issuing or renewing a license, LARA must investigate the applicant's activities and proposed standards of care and make an on-site visit.

Except as otherwise provided, if LARA is satisfied as to the need for a child care center, group child care home, or family child care home, as to its financial stability, and that the service, facility, applicant, licensee, licensee designee, program director, child care staff member, or adult member of the household is conducive to the welfare of the children, the Department must issue or renew the license. If LARA determines that that is not the case, it must deny the application or revoke the licensee's license. To assess whether those conditions exist, LARA may use available information, including any of the following:

- Investigative report, such as a law enforcement report and a children's protective services report.
- Medical report.
- Public record.
- Child care center, group child care home, or family child care home record.
- Inspection of the child care center, group child care home, or family child care home.

The Department also may use fingerprint information obtained by the MSP to acquire reports prepared independently for police, law enforcement, or other purposes, to make a determination.

The Department must issue a group child care home or family child care home license to a person who has successfully completed a Department-offered orientation session and who meets the requirements of the Act. The Department must make available to group child care home or family child care home license applicants an orientation session regarding the Act, the rules promulgated under it, and the needs of children in child care, before issuing a group child care home or family child care home license.

Except as otherwise provided, LARA must issue an original or renewal license for a child care center, group child care home, or family child care home within six months after the applicant files a completed application. If LARA considers the application incomplete, the Department must notify the applicant in writing or electronically within 30 days after receiving the incomplete application, describing the deficiency and requesting additional information. If LARA identifies a deficiency or requires a corrective action plan, the six-month period will be tolled until either of the following occurs:

- Upon notification of a deficiency, until the date LARA receives the requested information.
- Upon notification that a corrective action plan is required, until the date LARA determines the requirements of the plan have been met.

The determination of the completeness of an application is not an approval of it and does not confer eligibility on an applicant determined otherwise ineligible for issuance of a license.

Except as provided below regarding inspection delays, if LARA fails to issue, deny, or refuse to renew a license to a child care center, group child care home, or family child care home within the time required by the bill, the Department must return the application fee and reduce the fee for the applicant's next renewal application, if any, by 15%. Failure to issue, deny, or refuse to renew a license within the required period does not allow the Department to otherwise delay the processing of the application. A completed application must be placed in sequence with other completed applications received at the same time. The Department may not discriminate against an applicant in processing an application based on the fact that the application fee has been refunded or discounted.

If, on a continual basis, inspections performed by a local health department delay LARA in issuing or denying a license for a child care center, group child care home, or family child care home within the six-month period, LARA may use its staff, instead of the local health department causing the delays, to complete the inspection.

The bill requires LARA to assess fees as provided in [Table 1](#).

Table 1

Type of License	Original Fee	Renewal Fee
Family Child Care Home	\$50	\$25
Group Child care Home	\$100	\$50
Child Care Center, with a capacity of 1 to 20	\$150	\$75
Child Care Center, with a capacity of 21 to 50	\$200	\$100
Child Care Center, with a capacity of 51 to 100	\$250	\$125
Child Care Center, with a capacity of over 100	\$300	\$150

The Department may use the fees only to fund the program licensing child care centers, group child care homes, and family child care homes. Funds remaining at the end of the fiscal year may not lapse to the General Fund but must remain available to fund the program in subsequent years. Fees are payable to LARA at the time an application is submitted for original issuance or renewal. If a license is denied, revoked, or refused renewal, the Department may not refund paid fees.

Original & Provisional Licenses/Modification

Formerly, a provisional license had to be issued to a new organization during the first six months of operation. At the end of the six months, the Department had to either issue a regular license or renew or refuse to renew the provisional license.

The bill requires instead that an original license be issued to a new child care organization during its first six months of operation. An original license expires six months after the date of issuance. The renewal of an original license is contingent upon the submission of a new application and approval by the Department. At the end of the first six months of operation, the Department must either renew or refuse to renew the original license or modify it to a provisional license.

As previously provided, the bill allows a provisional license to be issued to a child care organization that is temporarily unable to conform to the rules. The issuance of a provisional license is contingent upon the submission to the Department of an acceptable plan to overcome the deficiency present in the child care organization within the time limitations of the provisional licensing period. A provisional license expires six months from the date of issuance. Previously, a provisional license could be issued not more than four times.

Under the bill, a provisional license may be issued not more than three times. The renewal of a provisional license is contingent upon the submission of a new application and approval by the appropriate Department. At the end of the six months, the Department must issue a regular license, refuse to renew the license, or modify a provisional license.

The bill authorizes the Department to modify the license of a child care organization to a provisional license when the licensee willfully and substantially violates the Act, the rules promulgated under it, or the terms of the license. A license may not be modified unless the licensee is given written notice of the grounds of the proposed modification. If the proposed modification is not appealed, the license will be modified. A proposed modification must be appealed within 30 days after receipt by writing to the Director or his or her designee. Upon receiving the appeal, the Director or designee must initiate a contested case hearing. Notice of a hearing must be given to the licensee by personal service or delivery to the proper address by certified mail at least two weeks before the date of the hearing. The Director's decision must be made as soon as practicable after the hearing and be forwarded to the licensee by certified mail within 10 days after that. The formal notice and hearing requirement does not apply if the licensee and the Department comply with the provision described below.

The Department may immediately modify a license without providing written notice of the grounds for the proposed action or giving the licensee 30 days to appeal if the licensee, in writing, does the following:

- Waives the requirement that the Department provide written notice of the grounds for the proposed action.
- Waives the 30-day time frame in which to submit a written appeal to the proposed action.
- Waives the right to implement a contested case hearing.

The bill defines "substantially violates" as repeated violations of or noncompliance with the Act, a rule promulgated under it, or the terms of a license, that jeopardizes the health, safety, care, treatment, maintenance, or supervision of individuals receiving services or, in the case of an applicant, individuals who may receive services. "Willfully violates" means, after receiving a copy of the Act, the rules, and, for a licensee, the terms of a license, or a previous citation for a violation of the Act or a rule, a licensee or an applicant knew or had reason to know that his or her conduct was a violation of the Act, the rules, or the terms of a license.

Other Licensure Provisions

The bill requires an applicant, licensee, or licensee designee to present a valid driver license or an official State personal ID card in order to obtain or renew a license for a child care center, group child care home, or family child care home.

Formerly, a regular license was effective for two years after the date of issuance unless revoked or modified to a provisional status. Under the bill, a regular license is effective for two years unless revoked, modified to a provisional license, or refused for renewal.

The bill specifies that the Department may accept a licensee's written request to close a license if it does not have an active investigation against the licensee or is not pursuing revocation or refusal to renew the license.

A certification of registration issued by the Department before the bill's effective date had to be reissued as a license within one year after that date.

A license must be issued to a specific person or organization at a specific location, must be nontransferable, and remains the property of the Department.

Database

Previously, the Act required the Department to establish and maintain a database of child care centers, family child care homes, and group child care homes "as a central clearinghouse for persons seeking information on child care options". The bill retained the requirement but deleted the quoted phrase.

The Act specifies information that, at a minimum, must be contained in the database. That information includes the license number, effective date, and expiration date of the child care center, family child care home, or group child care home. In addition, the bill also includes the date of the last inspection. The required information includes the number and nature of any special investigations regarding the child care center, family child care home, or group child care home conducted by the Department. Previously, this applied to investigations that the Department classified as high risk.

The Act required the Department to make the database available to the public on the internet, without charge, through its website. Under the bill, the Department must make certain database information available in that manner for people seeking information on child care options. The information that must be made available includes the following:

- The name, address, and telephone number of the child care center, family child care home, or group child care home.

- The days and general hours of operation of the child care center, family child care home, or group child care home.
- The license number, effective date, expiration date, and date of the last inspection.
- The results of any monitoring inspections conducted in the past three years and information on corrective actions taken, if applicable.
- The results of any substantiated complaint investigations conducted in the past five years and information on corrective actions taken.

Senate Bill 183

The bill changes the Michigan Compiled Laws (MCL) citation in the sentencing guideline for failure of child care centers, day care centers, and employees to report an arraignment on criminal charges (which reflects revisions made by Senate Bill 180). The bill also refers to child care organizations in that description, rather than child care centers and day care centers. The bill deleted a separate sentencing guideline for failure of family child care homes and group child care homes to report an arraignment on criminal charges (a violation that Senate Bill 181 repealed).

The bill also changed the MCL citation in the sentencing guideline for a false report initiating a special investigation of a child care organization (which reflects revisions made by Senate Bill 180), and the bill refers to a false report initiating a "high-risk" special investigation.

MCL 722.115c et al. (S.B. 180)
 722.111 et al. (S.B. 181)
 722.114a et al. (S.B. 182)
 777.15g (S.B. 183)

Legislative Analyst: Nathan Leaman

FISCAL IMPACT

The bills have a negative fiscal impact on the Department of Licensing and Regulatory Affairs. Under the bills, child care license applicants must be fingerprinted and have a background check. These services are provided by the Michigan State Police. Increased costs to LARA arise from the administrative burden associated with processing these additional records. The fiscal year 2017-18 LARA budget contained an additional 4.0 FTEs and \$800,000 in Federal funds (passed through from the Michigan Department of Education) to assist with processing fingerprints and background checks for the approximately 84,500 people currently in the child care industry. Going forward, as new people enter the field, LARA and the Department of Education must work out how these costs will be covered.

Senate Bill 180 has a moderate fiscal impact on the Department of State Police. The bill requires thousands of employees of child care organizations, as a condition of employment, to submit to fingerprint criminal history checks, which are processed and analyzed by the MSP. Under current law, the cost of each fingerprint criminal history check, which includes a search of State and Federal fingerprint databases, is \$42 (\$30 State fee, \$12 Federal fee). Also, a law enforcement agency or vendor that takes fingerprint impressions from an individual for submission to the MSP may charge a nominal fee for doing so (often \$15 or less, if anything). The cost of performing the background checks by the MSP is wholly covered by the existing fee, and in fact the law requires that the fee not exceed the actual and reasonable cost of the MSP to conduct the check.

Senate Bill 182 established child care license fees in statute, but did not effectively change the fees charged for the licensure of various child care facilities, as these fees were already being charged.

There may be a slight fiscal cost to the Department of Health and Human Services if there is an increase in the cost of a criminal history check by the Michigan State Police or the Federal Bureau of Investigation for applications for licensing and regulatory matters for child caring institutions, child placing agencies, children's therapeutic group homes, foster family homes, and foster family group homes.

The changes to Sections 5e and 5i (involving the required reporting of an employee or adult member of a household who has been arraigned for or convicted of listed offenses) were of a clarifying nature, so it is not known whether implementing the changes will result in more or fewer felony and misdemeanor arrests and convictions. The prohibition against intentionally making a false report regarding a child care organization was revised so it is a crime only if the false report causes the Department of Health and Human Services to initiate a special investigation that the Department classifies as high-risk. This change may lead to fewer individuals being charged with making a false report.

More misdemeanor and felony arrests and convictions may increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately \$3,764 per prisoner per year. Any associated increase in fine revenue increases funding to public libraries.

Conversely, fewer misdemeanor and felony arrests and convictions reduce resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. Any associated decrease in fine revenue reduces funding to public libraries.

The bills have no fiscal impact on local units of government.

Fiscal Analyst: Bruce Baker
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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.