

Act No. 173
Public Acts of 2023
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**STATE OF MICHIGAN
102ND LEGISLATURE
REGULAR SESSION OF 2023**

Introduced by Senators Santana, Cherry, Geiss, Chang, Shink, Wojno, Bayer, McMorrow, Polehanki, Outman, McDonald Rivet, Victory, Bellino, Camilleri, Cavanagh, Webber and Daley

ENROLLED SENATE BILL No. 88

AN ACT to amend 1973 PA 116, entitled “An act to provide for the protection of children through the licensing and regulation of child care organizations; to provide for the establishment of standards of care for child care organizations; to prescribe powers and duties of certain departments of this state and adoption facilitators; to provide penalties; and to repeal acts and parts of acts,” by amending section 1 (MCL 722.111), as amended by 2022 PA 208, and by adding section 3i.

The People of the State of Michigan enact:

Sec. 1. (1) As used in this act:

(a) “Child care staff member” means an individual who is 16 years of age or older to whom 1 or more of the following apply:

(i) The individual is 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.

(ii) 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.

(iii) 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.

(iv) An individual who acts in the role of a licensee designee or program director.

(b) “Child care organization” means 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. Child care organization 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 organization does not include a governmental or nongovernmental organization that does either of the following:

(i) Provides care exclusively to minors who have been emancipated by court order under section 4(3) of 1968 PA 293, MCL 722.4.

(ii) Provides care exclusively to individuals who are 18 years of age or older and to minors who have been emancipated by court order under section 4(3) of 1968 PA 293, MCL 722.4, at the same location.

(c) “Child caring institution” means a child care facility that is organized for the purpose of receiving minor children for care, maintenance, and supervision, usually on a 24-hour basis, in buildings maintained by the child caring institution for that purpose, and operates throughout the year. An educational program may be provided, but the educational program must not be the primary purpose of the facility. Child caring institution includes a maternity home for the care of unmarried mothers who are minors and an agency group home, that is described as a small child caring institution, owned, leased, or rented by a licensed agency providing care for more than 4 but less than 13 minor children. Child caring institution also includes an institution for developmentally disabled or emotionally disturbed minor children. Child caring institution does not include a hospital, nursing home, or home for the aged licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260, a boarding school licensed under section 1335 of the revised school code, 1976 PA 451, MCL 380.1335, a hospital or facility operated by the state or licensed under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, or an adult foster care family home or an adult foster care small group home licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, in which a child has been placed under section 5(6).

(d) “Child caring institution staff member” means an individual who is 18 years of age or older to whom 1 or more of the following apply:

(i) The individual is employed by a child caring institution for compensation, including an adult who does not work directly with children.

(ii) The individual is a contract employee or self-employed individual with a child caring institution.

(iii) The individual is an intern or other individual who provides specific services under the rules promulgated under this act.

(e) “Child placing agency” means a governmental organization or an agency organized under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, for the purpose of receiving children for placement in private family homes for foster care or for adoption. The function of a child placing agency may include investigating applicants for adoption and investigating and certifying foster family homes and foster family group homes as provided in this act. The function of a child placing agency may also include supervising children who are at least 16 but less than 21 years of age and who are living in unlicensed residences as provided in section 5(4).

(f) “Children’s camp” means a residential, day, troop, or travel camp that provides care and supervision and is conducted in a natural environment for more than 4 children, apart from the children’s parents, relatives, or legal guardians, for 5 or more days in a 14-day period.

(g) “Children’s campsite” means the outdoor setting where a children’s residential or day camp is located.

(h) “Children’s therapeutic group home” means a child caring institution receiving not more than 6 minor children who are diagnosed with a developmental disability as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, or a serious emotional disturbance as defined in section 100d of the mental health code, 1974 PA 258, MCL 330.1100d, and that meets all of the following requirements:

(i) Provides care, maintenance, and supervision, usually on a 24-hour basis.

(ii) Complies with the rules for child caring institutions, except that behavior management rooms, personal restraint, mechanical restraint, or seclusion, which is allowed in certain circumstances under licensing rules, are prohibited in a children’s therapeutic group home.

(iii) Is not a private home.

(iv) Is not located on a campus with other licensed facilities.

(i) “Child care center” means a facility, other than a private residence, receiving 1 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. Child care center includes a facility that provides care for not less than 2 consecutive weeks, regardless of the number of hours of care per day. The facility is generally described as a child care center, day care center, day nursery, nursery school, parent cooperative preschool, play group, before- or after-school program, or drop-in center. Child care center does not include any of the following:

(i) A Sunday school, a vacation bible school, or a religious instructional class that is conducted by a religious organization where children are attending for not more than 3 hours per day for an indefinite period or for not more than 8 hours per day for a period not to exceed 4 weeks during a 12-month period.

(ii) A facility operated by a religious organization where children are in the religious organization’s care for not more than 3 hours while persons responsible for the children are attending religious services.

(iii) A program that is primarily supervised, school-age-child-focused training in a specific subject, including, but not limited to, dancing, drama, music, or religion. This exclusion applies only to the time a child is involved in supervised, school-age-child-focused training.

(iv) A program that is primarily an incident of group athletic or social activities for school-age children sponsored by or under the supervision of an organized club or hobby group, including, but not limited to, youth clubs, scouting, and school-age recreational or supplementary education programs. This exclusion applies only to the time the school-age child is engaged in the group athletic or social activities and if the school-age child can come and go at will.

(v) A program that primarily provides therapeutic services to a child.

(j) “Conviction” means a final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, a finding of guilt for a criminal law violation or a juvenile adjudication or disposition by the juvenile division of probate court or family division of circuit court for a violation that if committed by an adult would be a crime, or a conviction in a tribal court or a military court.

(k) “Criminal history check” means a fingerprint-based criminal history record information background check through the department of state police and the Federal Bureau of Investigation.

(l) “Criminal history record information” means that term as defined in section 1a of 1925 PA 289, MCL 28.241a.

(m) “Department” means the department of health and human services and the department of licensing and regulatory affairs or a successor agency or department responsible for licensure under this act. The department of licensing and regulatory affairs 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 department of health and human services 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.

(n) “Drinking fountain” means a plumbing fixture that is connected to the potable water distribution system and drainage system that allows the user to obtain a drink directly from a stream of flowing water without the use of any accessory.

(o) “Eligible” means that the individual obtained the checks and clearances described in sections 5n and 5q and is considered appropriate to obtain a license, to be a member of the household of a group child care home or family child care home, or to be a child care staff member.

(p) “Faucet” means a valve end of a water pipe by which water is drawn from or held within the pipe.

(q) “Filtered bottle-filling station” or “station” means an apparatus that meets all of the following requirements:

(i) Is connected to customer site piping.

(ii) Filters water and is certified to meet NSF/ANSI standard 53 for lead reduction and NSF/ANSI standard 42 for particulate removal.

(iii) The flow rate through the station is paired to the specified flow rate of the filter cartridge.

(iv) Has a light or other device to indicate filter cartridge replacement status.

(v) Is designed to fill drinking bottles or other containers for personal water consumption.

(vi) Includes a drinking fountain.

(r) “Filtered faucet” means a faucet that at the point of use includes a filter that is certified to meet NSF/ANSI standard 53 for lead reduction and NSF/ANSI standard 42 for particulate removal.

(s) “Filtered pitcher” means a container used for holding and pouring liquids that at the point of use includes a filter that is certified to meet NSF/ANSI standard 53 for lead reduction and NSF/ANSI standard 42 for particulate removal.

(t) “Ineligible” means that the individual obtained the checks and clearances as described in sections 5n and 5q and is not considered appropriate to obtain a license, to be a member of the household of a group child care home or family child care home, or to be a child care staff member due to violation of section 5n, 5q, or 5r.

(u) “Increased capacity” means 1 additional child added to the total number of minor children received for care and supervision in a family child care home or 2 additional children added to the total number of minor children received for care and supervision in a group child care home.

(v) “Private home” means a private residence in which the licensee permanently resides, which residency is not contingent upon caring for children or employment by a child placing agency. Private home includes a full-time foster family home, a full-time foster family group home, a group child care home, or a family child care home, as follows:

(i) “Foster family home” means the private home of an individual who is licensed to provide 24-hour care for 1 but not more than 4 minor children who are placed away from their parent, legal guardian, or legal custodian in foster care. The licensed individual providing care is required to comply with the reasonable and prudent parenting standard as defined in section 1 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1.

(ii) “Foster family group home” means the private home of an individual who has been licensed by the department to provide 24-hour care for more than 4 but fewer than 7 minor children who are placed away from their parent, legal guardian, or legal custodian in foster care. The licensed individual providing care is required

to comply with the reasonable and prudent parenting standard as defined in section 1 of chapter XHIA of the probate code of 1939, 1939 PA 288, MCL 712A.1.

(iii) "Family child care home" means a private home in which 1 but fewer than 7 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. Family child care home includes a home in which care is given to an unrelated minor child for more than 4 weeks during a calendar year. A family child care home does not include an individual providing babysitting services for another individual. As used in this subparagraph, "providing babysitting services" means caring for a child on behalf of the child's parent or guardian if the annual compensation for providing those services does not equal or exceed \$600.00 or an amount that would according to the internal revenue code of 1986 obligate the child's parent or guardian to provide a form 1099-MISC to the individual for compensation paid during the calendar year for those services. Family child care home includes a private home with increased capacity.

(iv) "Group child care home" means a private home in which more than 6 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. Group child care home includes a home in which care is given to an unrelated minor child for more than 4 weeks during a calendar year. Group child care home includes a private home with increased capacity.

(w) "Legal custodian" means an individual who is at least 18 years of age in whose care a minor child remains or is placed after a court makes a finding under section 13a(5) of chapter XHIA of the probate code of 1939, 1939 PA 288, MCL 712A.13a.

(x) "Legal entity" means a sole proprietorship, partnership, corporation, limited liability company, or any other entity.

(y) "Licensee" means a person, legal entity organized under a law of this state, state or local government, or trust that has been issued a license under this act to operate a child care organization.

(z) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(aa) "Member of the household" means any individual who resides 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, but not limited to, overnight stays. For foster family homes and foster family group homes, a member of the household does not include a foster child. For group child care homes and family child care homes, a member of the household does not include a child to whom child care is being provided.

(bb) "Original license" means a license issued to a child care organization during the first 6 months of operation indicating that the organization is in compliance with all rules promulgated by the department under this act.

(cc) "Provisional license" means a license issued to a child care organization that is temporarily unable to conform to the rules promulgated under this act.

(dd) "Qualified residential treatment program" or "QRTP" means a program within a child caring institution to which all of the following apply:

(i) The program has a trauma-informed treatment model, evidenced by the inclusion of trauma awareness, knowledge, and skills into the program's culture, practices, and policies.

(ii) The program has registered or licensed nursing and other licensed clinical staff on-site or available 24 hours a day, 7 days a week, who provide care in the scope of their practice as provided in parts 170, 172, 181, 182, 182A, and 185 of the public health code, 1978 PA 368, MCL 333.17001 to 333.17097, 333.17201 to 333.17242, 333.18101 to 333.18117, 333.18201 to 333.18237, 333.18251 to 333.18267, and 333.18501 to 333.18518.

(iii) The program integrates families into treatment, including maintaining sibling connections.

(iv) The program provides aftercare services for at least 6 months post discharge.

(v) The program is accredited by an independent not-for-profit organization as described in 42 USC 672(k)(4)(G).

(vi) The program does not include a detention facility, forestry camp, training school, or other facility operated primarily for detaining minor children who are determined to be delinquent.

(ee) "Regular license" means a license issued to a child care organization indicating that the organization is in substantial compliance with all rules promulgated under this act and, if there is a deficiency, has entered into a corrective action plan.

(ff) "Guardian" means the guardian of the person.

(gg) "Minor child" means any of the following:

(i) An individual less than 18 years of age.

(ii) An individual who is a resident in a child caring institution, foster family home, or foster family group home, who is at least 18 but less than 21 years of age, and who meets the requirements of the young adult voluntary foster care act, 2011 PA 225, MCL 400.641 to 400.671.

(iii) An individual who is a resident in a child caring institution, children's camp, foster family home, or foster family group home; who becomes 18 years of age while residing in a child caring institution, children's camp, foster family home, or foster family group home; and who continues residing in a child caring institution, children's camp, foster family home, or foster family group home to receive care, maintenance, training, and supervision. A minor child under this subparagraph does not include a person 18 years of age or older who is placed in a child caring institution, foster family home, or foster family group home under an adjudication under section 2(a) of chapter XIII of the probate code of 1939, 1939 PA 288, MCL 712A.2, or under section 1 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1. This subparagraph applies only if the number of those residents who become 18 years of age does not exceed the following:

(A) Two, if the total number of residents is 10 or fewer.

(B) Three, if the total number of residents is not less than 11 and not more than 14.

(C) Four, if the total number of residents is not less than 15 and not more than 20.

(D) Five, if the total number of residents is 21 or more.

(iv) An individual 18 years of age or older who is placed in an unlicensed residence under section 5(4) or a foster family home under section 5(7).

(hh) "Related" means 1 of the following:

(i) Except as provided in subparagraph (ii), a relative as defined in section 13a of chapter XIII of the probate code of 1939, 1939 PA 288, MCL 712A.13a.

(ii) For licensing by the department related to a child care center, children's camp, children's campsite, family child care home, foster family home, foster family group home, or group child care home, 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 the individuals described in this definition, even after the marriage has ended by death or divorce.

(ii) "Religious organization" means a church, ecclesiastical corporation, or group, not organized for pecuniary profit, that gathers for mutual support and edification in piety or worship of a supreme deity.

(jj) "School-age child" means a child who is eligible to attend a grade of kindergarten or higher, but is less than 13 years of age. A child is considered to be a school-age child on the first day of the school year in which the child is eligible to attend school.

(kk) "Severe physical injury" means serious physical harm as that term is defined in section 136b of the Michigan penal code, 1931 PA 328, MCL 750.136b.

(ll) "Licensee designee" means 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. The individual must agree in writing to be designated as the licensee designee. All license applications must be signed by the licensee in the case of the individual or by a member of the corporation, company, or organization.

(mm) "Water delivery service" means a service that delivers drinking water to a child care center and provides drinking water that meets the standards of the safe drinking water act, 42 USC 300f to 300j-25.

(2) A family child care home or group child care home is automatically eligible for increased capacity after satisfying all of the following criteria:

(a) Holds a current license.

(b) Has been licensed to operate for at least 29 consecutive months.

(c) Has received 1 or more unrelated minor children for care and supervision during the licensed period under subdivision (b).

(d) Has received a renewed regular license after at least 29 months of licensed operation under subdivision (b).

(3) The department may rescind increased capacity due to 1 or more of the following:

(a) Corrective action.

(b) Licensing action.

(c) Determination by the department that increased capacity is not conducive to the welfare of children as that term is defined in section 5m.

(4) If the department rescinds increased capacity as outlined in subsection (3), the family child care home or group child care home may be considered for increased capacity not less than 22 months after rescinding increased capacity in a form and manner determined by the department.

(5) A family child care home or group child care home may appeal rescission of increased capacity under a hearing held in the manner provided under section 11(2).

Sec. 3i. (1) Within 15 months after the effective date of the amendatory act that added this section, each child care center shall develop a drinking water management plan and make the plan available to the department of licensing and regulatory affairs, child care center staff, and parents and guardians of children enrolled in the child care center on request. The plan must specify all of the following:

(a) Locations where water outlets will be maintained to deliver water for human consumption, whether as drinking water or a component of a food or beverage, using the following categories, if applicable:

(i) Locations where filtered bottle-filling stations will be maintained.

(ii) Locations where filtered faucets will be maintained.

(iii) Locations where filtered pitchers will be maintained.

(iv) Locations where unfiltered drinking fountains or unfiltered faucets will be maintained, subject to section 3j(a).

(v) Locations where drinking water from a water delivery service will be maintained.

(b) Locations where water outlets will be maintained for purposes other than as described in subdivision (a).

(c) Locations where water outlets will be shut off or rendered permanently inoperable, if applicable.

(d) Regular replacement of the filter cartridge for each filtered bottle-filling station, filtered faucet, and filtered pitcher in compliance with manufacturer instructions or recommendations of the department of environment, Great Lakes, and energy.

(2) Each child care center shall review and update the drinking water management plan created under subsection (1) at least once every 5 years and make changes as directed by the department of licensing and regulatory affairs or as needed to comply with this section.

(3) Water sampling and testing must be conducted at each child care center at least once every 2 years and as otherwise required under this section. The child care center shall collect the water for water sampling and testing. The water must be drawn from all of the bubble fixtures of the filtered bottle-filling stations and filtered faucets and must be collected in 250-milliliter bottles after at least an 8-hour stagnation period and before any water use occurs at the child care center. Upon request, the department of licensing and regulatory affairs shall provide the child care center with a sufficient number of 250-milliliter bottles. After the child care center collects the water, the child care center shall deliver, through the mail or in person, all of the 250-milliliter bottles for water testing. Water testing described under this section must be conducted at a laboratory certified for lead and copper testing for the approved EPA method.

(4) If the water sampling and testing under subsection (3) indicates the presence of lead at a concentration of 1 part per billion or more but not more than 5 parts per billion, the child care center shall do all of the following:

(a) Immediately check the status of the filter or filters at the filtered bottle-filling station or filtered faucet and replace the filter cartridge if the status light indicates that replacement is or will soon be required.

(b) Ensure the filtered bottle-filling station or filtered faucet is properly installed.

(c) Resample and retest the water.

(d) If the water sampling and testing under subdivision (c) indicates the presence of lead at a concentration of 1 part per billion or more but not more than 5 parts per billion, have the child care center do both of the following:

(i) Send a copy of the test results and a document that lists the make and model of the filtered bottle-filling station or filtered faucet and filter cartridge to the department of licensing and regulatory affairs and the department of environment, Great Lakes, and energy.

(ii) Consult with the department of environment, Great Lakes, and energy and the filtered bottle-filling station or filtered faucet manufacturer.

(5) If the water sampling and testing under subsection (3) or (4)(c) indicates the presence of lead at a concentration of more than 5 parts per billion, the child care center shall do all of the following:

(a) Immediately shut off or render inoperable the water outlet.

(b) Post a conspicuous sign near the water outlet stating that the water outlet is inoperable because of high lead concentration and maintain the sign until the water outlet is returned to service under subdivision (e).

(c) Replace the filter cartridge in the filtered bottle-filling station or filtered faucet.

(d) Resample and retest the water.

(e) If the water sampling and testing under subdivision (d) indicates the presence of lead at a concentration of 1 part per billion or more but not more than 5 parts per billion, return the water outlet to service and comply with the requirements of subsection (4)(b), (c), and (d).

(f) If the water sampling and testing under subdivision (d) indicates the presence of lead at a concentration of more than 5 parts per billion, do all of the following:

(i) Within 30 days after receiving test results under this subsection, send a copy of the test results to the department of licensing and regulatory affairs, the department of environment, Great Lakes, and energy, and each parent or guardian of a child enrolled in the child care center.

(ii) Develop a remediation plan in consultation with the department of licensing and regulatory affairs and the department of environment, Great Lakes, and energy and incorporate the remediation plan into the drinking water management plan under subsection (1).

(6) A child care center that installs a filtered bottle-filling station, filtered faucet, filtered pitcher, or other filtered source shall install, operate, and maintain them in accordance with manufacturer instructions or recommendations of the department of environment, Great Lakes, and energy.

(7) A child care center shall retain the following documents for 3 years or until after any water sampling and testing occurs under this section, whichever is sooner, and make the documents available to the department of licensing and regulatory affairs on request:

(a) Original copies of the results of all water sampling and testing conducted under this section, as applicable.

(b) Records of the dates when and locations where filters or filter cartridges were installed or replaced.

(c) Installation instructions for each filter and filter cartridge installed by the child care center.

(8) As used in this section:

(a) "Bubble fixture" means a fixture on a drinking water fountain through which water is forced up in a small arc from a nozzle that allows an individual to drink from the arc directly.

(b) "EPA" means the United States Environmental Protection Agency.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 102nd Legislature are enacted into law:

(a) House Bill No. 4341.

(b) House Bill No. 4342.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor