



HOUSE BILL No. 5537

January 31, 1996, Introduced by Reps. Brewer, DeMars, LaForge, Perricone, Cherry and Olshove and referred to the Committee on Health Policy.

A bill to amend sections 20165 and 20175 of Act No. 368 of the Public Acts of 1978, entitled as amended

"Public health code,"

section 20165 as amended by Act No. 179 of the Public Acts of 1990 and section 20175 as amended by Act No. 79 of the Public Acts of 1993, being sections 333.20165 and 333.20175 of the Michigan Compiled Laws; and to add section 20173.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 20165 and 20175 of Act No. 368 of the
2 Public Acts of 1978, section 20165 as amended by Act No. 179 of
3 the Public Acts of 1990 and section 20175 as amended by Act
4 No. 79 of the Public Acts of 1993, being sections 333.20165 and
5 333.20175 of the Michigan Compiled Laws, are amended and section
6 20173 is added to read as follows:

1 Sec. 20165. (1) Except as otherwise provided in this
2 section, after notice of intent to an applicant or licensee to
3 deny, limit, suspend, or revoke a license or certification and an
4 opportunity for a hearing, the department may deny, limit, sus-
5 pend, or revoke the license or certification if ~~any~~ 1 OR MORE
6 of the following exist:

7 (a) Fraud or deceit in obtaining or attempting to obtain a
8 license or certification or in operation of the licensed health
9 facility or agency.

10 (b) A violation of this article or the rules promulgated
11 under this article.

12 (c) False or misleading advertising.

13 (d) Negligence or failure to exercise due care, including
14 negligent supervision of employees and subordinates.

15 (e) Permitting a license or certificate to be used by an
16 unauthorized health facility or agency.

17 (f) Evidence of abuse regarding patient health, welfare, or
18 safety or a denial of rights.

19 (g) Failure to comply with section 10102a(7).

20 (h) Failure to comply with part 222 or a term, condition, or
21 stipulation of a certificate of need issued under part 222, or
22 both.

23 (I) FAILURE TO MAKE A REPORT UNDER SECTION 20175(5) OR (7).

24 (2) An application for a license or certification may be
25 denied on a finding of any condition or practice ~~which~~ THAT
26 would constitute a violation of this article if the applicant
27 were a licensee.

1 (3) Denial, suspension, or revocation of an individual
2 emergency medical services personnel license under part 209 is
3 governed by section 20958.

4 SEC. 20173. (1) A HEALTH FACILITY OR AGENCY SHALL NOT
5 EMPLOY AN INDIVIDUAL OR UTILIZE AN INDIVIDUAL AS A VOLUNTEER IN
6 THE HEALTH FACILITY OR AGENCY IF THE INDIVIDUAL HAS BEEN CON-
7 VICTED IN THIS STATE OR IN ANOTHER STATE OR IN FEDERAL COURT OF
8 EITHER OF THE FOLLOWING:

9 (A) A FELONY OR AN ATTEMPT OR CONSPIRACY TO COMMIT A
10 FELONY.

11 (B) A MISDEMEANOR INVOLVING ABUSE, NEGLECT, ASSAULT, BAT-
12 TERY, OR FRAUD.

13 (2) A HEALTH FACILITY OR AGENCY SHALL NOT EMPLOY AN INDIVID-
14 UAL OR UTILIZE AN INDIVIDUAL AS A VOLUNTEER UNLESS THE INDIVIDUAL
15 PROVIDES THE HEALTH FACILITY OR AGENCY AS PART OF THE APPLICATION
16 PROCESS WITH INFORMATION FROM THE STATE POLICE OBTAINED PURSUANT
17 TO SUBSECTIONS (3) AND (4).

18 (3) AN INDIVIDUAL WHO APPLIES FOR EMPLOYMENT OR TO VOLUNTEER
19 WITH A HEALTH FACILITY OR AGENCY SHALL OBTAIN INFORMATION REGARD-
20 ING A CRIMINAL RECORD BY FOLLOWING THE PROCEDURE PROVIDED IN THIS
21 SUBSECTION AND SUBSECTION (4). UPON THE REQUEST OF THE INDIVIDU-
22 AL, A LAW ENFORCEMENT AGENCY SHALL TAKE 2 SETS OF THE
23 INDIVIDUAL'S FINGERPRINTS ON FORMS FURNISHED BY THE DEPARTMENT OF
24 STATE POLICE AND THE FEDERAL BUREAU OF INVESTIGATION. IF THE LAW
25 ENFORCEMENT AGENCY CHARGES A FEE FOR THIS SERVICE, THE INDIVIDUAL
26 REQUESTING THE SERVICE IS RESPONSIBLE FOR THE FEE. THE

1 INDIVIDUAL SHALL SUBMIT THE FINGERPRINT FORMS TO THE DEPARTMENT
2 OF STATE POLICE WITH THE APPROPRIATE STATE AND FEDERAL FEES.

3 (4) THE DEPARTMENT OF STATE POLICE SHALL COMPARE THE
4 INDIVIDUAL'S FINGERPRINTS WITH STATE CRIMINAL HISTORY RECORDS AND
5 SHALL SUBMIT THE OTHER SET OF FINGERPRINTS TO THE FEDERAL BUREAU
6 OF INVESTIGATION FOR COMPARISON WITH FEDERAL CRIMINAL HISTORY
7 RECORDS. THE DEPARTMENT OF STATE POLICE SHALL SEND BOTH OF THE
8 FOLLOWING TO THE HEALTH FACILITY OR AGENCY:

9 (A) THE STATE CRIMINAL HISTORY RECORD.

10 (B) A STATEMENT STATING THAT, BASED UPON THE FEDERAL CRIMI-
11 NAL HISTORY RECORD COMPARISON, UNDER THE CRITERIA DESCRIBED IN
12 SUBSECTION (1), THE INDIVIDUAL MAY OR MAY NOT MEET THE REQUIRE-
13 MENTS OF SUBSECTION (1).

14 (5) IF THE STATEMENT SENT UNDER SUBSECTION (4)(B) STATES
15 THAT THE INDIVIDUAL MAY NOT MEET THE REQUIREMENTS OF SUBSECTION
16 (1), THE HEALTH FACILITY OR AGENCY SHALL NOTIFY THE INDIVIDUAL OF
17 HIS OR HER RIGHT TO OBTAIN FROM THE FEDERAL BUREAU OF INVESTIGA-
18 TION A COPY OF HIS OR HER FEDERAL CRIMINAL HISTORY RECORD AND TO
19 CHALLENGE THE ACCURACY OF THAT RECORD.

20 (6) A HEALTH FACILITY OR AGENCY SHALL PROVIDE AN APPLICANT
21 WITH INFORMATION ON HOW AND WHERE TO OBTAIN THE INFORMATION
22 REQUIRED BY THIS SECTION ON A FORM PROVIDED BY THE DEPARTMENT.

23 Sec. 20175. (1) A health facility or agency shall keep and
24 maintain a record for each patient including a full and complete
25 record of tests and examinations performed, observations made,
26 treatments provided, and in the case of a hospital, the purpose
27 of hospitalization. In addition to the sanctions set forth in

1 section 20165, a hospital that fails to comply with this
2 subsection is subject to an administrative fine of \$10,000.00.

3 (2) A hospital shall take precautions to assure that the
4 records required by subsection (1) are not wrongfully altered or
5 destroyed. A hospital that fails to comply with this subsection
6 is subject to an administrative fine of \$10,000.00.

7 (3) Unless otherwise provided by law, the licensing and cer-
8 tification records required by this article are public records.

9 (4) Departmental officers and employees shall respect the
10 confidentiality of patient clinical records and shall not divulge
11 or disclose the contents of records in a manner that identifies
12 an individual except pursuant to court order.

13 (5) A health facility or agency ~~that employs, contracts~~
14 ~~with, or grants privileges to a health professional licensed or~~
15 ~~registered under article 15~~ shall report the following to the
16 department of commerce not more than 30 days after it occurs:

17 (a) Disciplinary action taken by the health facility or
18 agency against a health professional licensed or registered under
19 article 15 AND EMPLOYED BY, UNDER CONTRACT TO, OR WITH PRIVILEGES
20 IN THE HEALTH FACILITY OR AGENCY based on the licensee's or
21 registrant's professional competence, disciplinary action that
22 results in a change of employment status, or disciplinary action
23 based on conduct that adversely affects the licensee's or
24 registrant's clinical privileges for a period of more than 15
25 days. As used in this subdivision, "adversely affects" means the
26 reduction, restriction, suspension, revocation, denial, or

1 failure to renew the clinical privileges of a licensee or
2 registrant by a health facility or agency.

3 (b) Restriction or acceptance of the surrender of the clini-
4 cal privileges of a ~~licensee or registrant~~ HEALTH PROFESSIONAL
5 LICENSED OR REGISTERED UNDER ARTICLE 15 under either of the fol-
6 lowing circumstances:

7 (i) The licensee or registrant is under investigation by the
8 health facility or agency.

9 (ii) There is an agreement in which the health facility or
10 agency agrees not to conduct an investigation into the licensee's
11 or registrant's alleged professional incompetence or improper
12 professional conduct.

13 (c) A case in which a health professional LICENSED OR REGIS-
14 TERED UNDER ARTICLE 15 resigns or terminates a contract or whose
15 contract is not renewed instead of the health facility OR AGENCY
16 taking disciplinary action against the health professional.

17 (6) Upon request by another health facility or agency seek-
18 ing a reference for purposes of changing or granting staff privi-
19 leges, credentials, or employment, a health facility or agency
20 that employs, contracts with, or grants privileges to health pro-
21 fessionals licensed or registered under article 15 shall notify
22 the requesting health facility or agency of any disciplinary or
23 other action reportable under subsection (5) that it has taken
24 against a health professional licensed or registered under arti-
25 cle 15 and employed by, under contract to, or granted privileges
26 by the health facility or agency.

1 (7) A HEALTH FACILITY OR AGENCY SHALL REPORT TO THE
2 DEPARTMENT OF PUBLIC HEALTH DISCIPLINARY ACTION TAKEN BY THE
3 HEALTH FACILITY OR AGENCY AGAINST AN EMPLOYEE THAT RESULTS IN A
4 CHANGE IN THE EMPLOYEE'S EMPLOYMENT STATUS AND THAT INVOLVES
5 ABUSE, NEGLECT, PHYSICAL HARM, THEFT, OR FRAUDULENT BEHAVIOR
6 AGAINST A PATIENT OR RESIDENT OF THE HEALTH FACILITY OR AGENCY.
7 A REPORT REQUIRED UNDER THIS SUBSECTION IS IN ADDITION TO, AND IS
8 NOT SATISFIED BY, A REPORT MADE UNDER SUBSECTION (5)(A).

9 (8) A REPORT RECEIVED BY THE DEPARTMENT OF COMMERCE OR THE
10 DEPARTMENT OF PUBLIC HEALTH UNDER SUBSECTION (5) OR (7) IS PUBLIC
11 INFORMATION.

12 (9) ~~-(7)-~~ For the purpose of reporting disciplinary actions
13 pursuant to this section, a health facility or agency shall
14 include only the following in the information provided:

15 (a) The name of the licensee or registrant OR OTHER EMPLOYEE
16 against whom disciplinary action has been taken.

17 (b) A description of the disciplinary action taken.

18 (c) The specific grounds for the disciplinary action taken.

19 (d) The date of the incident that is the basis for the dis-
20 ciplinary action.

21 (10) ~~-(8)-~~ The records, data, and knowledge collected for or
22 by individuals or committees assigned a professional review func-
23 tion in a health facility or agency are confidential, shall be
24 used only for the purposes provided in this article, are not
25 public records, and are not subject to court subpoena.

1 Section 2. This amendatory act shall not take effect unless
2 all of the following bills of the 88th Legislature are enacted
3 into law:

4 (a) Senate Bill No. _____ or House Bill No. 5538 (request
5 no. 05514'95 b).

6 (b) Senate Bill No. _____ or House Bill No. 5539 (request
7 no. 05514'95 c).