

**SUBSTITUTE FOR
HOUSE BILL NO. 4057**

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding section 20173.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 20173. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION
2 (2), A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY
3 MEDICAL CARE FACILITY, OR HOME FOR THE AGED SHALL NOT EMPLOY,
4 INDEPENDENTLY CONTRACT WITH, OR GRANT CLINICAL PRIVILEGES TO AN
5 INDIVIDUAL WHO REGULARLY PROVIDES DIRECT SERVICES TO PATIENTS OR
6 RESIDENTS IN THE HEALTH FACILITY OR AGENCY AFTER THE EFFECTIVE
7 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION IF THE INDI-
8 VIDUAL HAS BEEN CONVICTED OF 1 OR MORE OF THE FOLLOWING:

9 (A) A FELONY OR AN ATTEMPT OR CONSPIRACY TO COMMIT A FELONY
10 WITHIN THE 15 YEARS IMMEDIATELY PRECEDING THE DATE OF APPLICATION

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1 FOR EMPLOYMENT OR CLINICAL PRIVILEGES OR THE DATE OF THE
2 EXECUTION OF THE INDEPENDENT CONTRACT.

3 (B) A MISDEMEANOR INVOLVING ABUSE, NEGLECT, ASSAULT, BAT-
4 TERY, OR CRIMINAL SEXUAL CONDUCT OR INVOLVING FRAUD OR THEFT
5 AGAINST A VULNERABLE ADULT AS THAT TERM IS DEFINED IN
6 SECTION 145M OF THE MICHIGAN PENAL CODE, 1931 PA 328,
7 MCL 750.145M, OR A STATE OR FEDERAL CRIME THAT IS SUBSTANTIALLY
8 SIMILAR TO A MISDEMEANOR DESCRIBED IN THIS SUBDIVISION, WITHIN
9 THE 10 YEARS IMMEDIATELY PRECEDING THE DATE OF APPLICATION FOR
10 EMPLOYMENT OR CLINICAL PRIVILEGES OR THE DATE OF THE EXECUTION OF
11 THE INDEPENDENT CONTRACT.

12 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION AND SUB-
13 SECTION (5), A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME,
14 COUNTY MEDICAL CARE FACILITY, OR HOME FOR THE AGED SHALL NOT
15 EMPLOY, INDEPENDENTLY CONTRACT WITH, OR GRANT PRIVILEGES TO AN
16 INDIVIDUAL WHO REGULARLY PROVIDES DIRECT SERVICES TO PATIENTS OR
17 RESIDENTS IN THE HEALTH FACILITY OR AGENCY AFTER THE EFFECTIVE
18 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION UNTIL THE
19 HEALTH FACILITY OR AGENCY COMPLIES WITH SUBSECTION (4) OR (5), OR
20 BOTH. THIS SUBSECTION AND SUBSECTION (1) DO NOT APPLY TO AN
21 INDIVIDUAL WHO IS EMPLOYED BY, UNDER INDEPENDENT CONTRACT TO, OR
22 GRANTED CLINICAL PRIVILEGES IN A HEALTH FACILITY OR AGENCY BEFORE
23 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
24 SECTION.

25 (3) AN INDIVIDUAL WHO APPLIES FOR EMPLOYMENT EITHER AS AN
26 EMPLOYEE OR AS AN INDEPENDENT CONTRACTOR OR FOR CLINICAL
27 PRIVILEGES WITH A HEALTH FACILITY OR AGENCY THAT IS A NURSING

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1 HOME, COUNTY MEDICAL CARE FACILITY, OR HOME FOR THE AGED AND HAS
2 RECEIVED A GOOD FAITH OFFER OF EMPLOYMENT, AN INDEPENDENT CON-
3 TRACT, OR CLINICAL PRIVILEGES FROM THE HEALTH FACILITY OR AGENCY
4 SHALL GIVE WRITTEN CONSENT AT THE TIME OF APPLICATION FOR THE
5 DEPARTMENT OF STATE POLICE TO CONDUCT A CRIMINAL HISTORY CHECK
6 UNDER SUBSECTION (4) OR (5), OR BOTH, ALONG WITH IDENTIFICATION
7 ACCEPTABLE TO THE DEPARTMENT OF STATE POLICE. IF THE DEPARTMENT
8 OF STATE POLICE HAS CONDUCTED A CRIMINAL HISTORY CHECK ON THE
9 APPLICANT WITHIN THE 24 MONTHS IMMEDIATELY PRECEDING THE DATE OF
10 APPLICATION [AND THE APPLICANT PROVIDES WRITTEN CONSENT FOR THE
RELEASE OF INFORMATION FOR THE PURPOSES OF THIS SECTION], THE HEALTH
FACILITY OR AGENCY MAY USE A COPY OF THE
11 RESULTS OF THAT CRIMINAL HISTORY CHECK INSTEAD OF OBTAINING WRIT-
12 TEN CONSENT AND REQUESTING A NEW CRIMINAL HISTORY CHECK UNDER
13 THIS SUBSECTION, AND UNDER SUBSECTIONS (4) AND (5), OR BOTH. IF
14 THE APPLICANT IS USING A PRIOR CRIMINAL HISTORY CHECK AS
15 DESCRIBED IN THIS SUBSECTION, THE HEALTH FACILITY OR AGENCY SHALL
16 ACCEPT THE COPY OF THE RESULTS OF THE CRIMINAL HISTORY CHECK ONLY
17 FROM THE HEALTH FACILITY OR AGENCY OR ADULT FOSTER CARE FACILITY
18 THAT PREVIOUSLY EMPLOYED OR GRANTED CLINICAL PRIVILEGES TO THE
19 APPLICANT OR FROM THE FIRM OR AGENCY THAT INDEPENDENTLY CONTRACTS
20 WITH THE APPLICANT.

21 (4) UPON RECEIPT OF THE WRITTEN CONSENT AND IDENTIFICATION
22 REQUIRED UNDER SUBSECTION (3), IF AN APPLICANT HAS RESIDED IN
23 THIS STATE FOR 3 OR MORE YEARS PRECEDING THE GOOD FAITH OFFER OF
24 EMPLOYMENT, AN INDEPENDENT CONTRACT, OR CLINICAL PRIVILEGES, A
25 HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY MEDICAL
26 CARE FACILITY, OR HOME FOR THE AGED THAT HAS MADE A GOOD FAITH
27 OFFER OF EMPLOYMENT OR AN INDEPENDENT CONTRACT OR CLINICAL

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1 PRIVILEGES TO THE APPLICANT SHALL MAKE A REQUEST TO THE
2 DEPARTMENT OF STATE POLICE TO CONDUCT A CRIMINAL HISTORY CHECK ON
3 THE APPLICANT. THE REQUEST SHALL BE MADE [] IN A
4 MANNER PRESCRIBED BY THE DEPARTMENT OF STATE POLICE. THE HEALTH
5 FACILITY OR AGENCY SHALL MAKE THE WRITTEN CONSENT AND IDENTIFICA-
6 TION AVAILABLE TO THE DEPARTMENT OF STATE POLICE. IF THERE IS A
7 CHARGE FOR CONDUCTING THE CRIMINAL HISTORY CHECK, THE HEALTH
8 FACILITY OR AGENCY REQUESTING THE CRIMINAL HISTORY CHECK SHALL
9 PAY THE COST OF THE CHARGE. THE HEALTH FACILITY OR AGENCY SHALL
10 NOT SEEK REIMBURSEMENT FOR THE CHARGE FROM THE INDIVIDUAL WHO IS
11 THE SUBJECT OF THE CRIMINAL HISTORY CHECK. THE DEPARTMENT OF
12 STATE POLICE SHALL CONDUCT A CRIMINAL HISTORY CHECK ON THE APPLI-
13 CANT NAMED IN THE REQUEST. THE DEPARTMENT OF STATE POLICE SHALL
14 PROVIDE THE HEALTH FACILITY OR AGENCY WITH A WRITTEN REPORT OF
15 THE CRIMINAL HISTORY CHECK CONDUCTED UNDER THIS SUBSECTION. THE
16 REPORT SHALL CONTAIN ANY CRIMINAL HISTORY RECORD INFORMATION ON
17 THE APPLICANT MAINTAINED BY THE DEPARTMENT OF STATE POLICE. AS A
18 CONDITION OF EMPLOYMENT, AN APPLICANT SHALL SIGN A WRITTEN STATE-
19 MENT THAT HE OR SHE HAS BEEN A RESIDENT OF THIS STATE FOR 3 OR
20 MORE YEARS PRECEDING THE GOOD FAITH OFFER OF EMPLOYMENT, INDEPEN-
21 DENT CONTRACT, OR CLINICAL PRIVILEGES.

22 (5) UPON RECEIPT OF THE WRITTEN CONSENT AND IDENTIFICATION
23 REQUIRED UNDER SUBSECTION (3), IF AN APPLICANT HAS RESIDED IN
24 THIS STATE FOR LESS THAN 3 YEARS PRECEDING THE GOOD FAITH OFFER
25 OF EMPLOYMENT, AN INDEPENDENT CONTRACT, OR CLINICAL PRIVILEGES, A
26 HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY MEDICAL
27 CARE FACILITY, OR HOME FOR THE AGED THAT HAS MADE A GOOD FAITH

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1 OFFER DESCRIBED IN THIS SUBSECTION TO THE APPLICANT SHALL COMPLY
2 WITH SUBSECTION (4) AND SHALL MAKE A REQUEST TO THE DEPARTMENT OF
3 STATE POLICE TO FORWARD THE APPLICANT'S FINGERPRINTS TO THE FED-
4 ERAL BUREAU OF INVESTIGATION. THE DEPARTMENT OF STATE POLICE
5 SHALL REQUEST THE FEDERAL BUREAU OF INVESTIGATION TO MAKE A
6 DETERMINATION OF THE EXISTENCE OF ANY NATIONAL CRIMINAL HISTORY
7 PERTAINING TO THE APPLICANT. AN APPLICANT DESCRIBED IN THIS SUB-
8 SECTION SHALL PROVIDE THE DEPARTMENT OF STATE POLICE WITH 2 SETS
9 OF FINGERPRINTS. THE DEPARTMENT OF STATE POLICE SHALL COMPLETE
10 THE CRIMINAL HISTORY CHECK UNDER SUBSECTION (4) AND, EXCEPT AS
11 OTHERWISE PROVIDED IN THIS SUBSECTION, PROVIDE THE RESULTS OF ITS
12 DETERMINATION UNDER SUBSECTION (4) TO THE HEALTH FACILITY OR
13 AGENCY AND THE RESULTS OF THE FEDERAL BUREAU OF INVESTIGATION
14 DETERMINATION TO THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
15 WITHIN 30 DAYS AFTER THE REQUEST IS MADE. IF THE REQUESTING
16 HEALTH FACILITY OR AGENCY IS NOT A STATE DEPARTMENT OR AGENCY AND
17 IF A CRIME IS DISCLOSED ON THE FEDERAL BUREAU OF INVESTIGATION
18 DETERMINATION, THE DEPARTMENT SHALL NOTIFY THE HEALTH FACILITY OR
19 AGENCY IN WRITING OF THE TYPE OF CRIME DISCLOSED ON THE FEDERAL
20 BUREAU OF INVESTIGATION DETERMINATION WITHOUT DISCLOSING THE
21 DETAILS OF THE CRIME. ANY CHARGES FOR FINGERPRINTING OR A FED-
22 ERAL BUREAU OF INVESTIGATION DETERMINATION UNDER THIS SUBSECTION
23 SHALL BE PAID IN THE MANNER REQUIRED UNDER SUBSECTION (4).

24 (6) IF A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME,
25 COUNTY MEDICAL CARE FACILITY, OR HOME FOR THE AGED DETERMINES IT
26 NECESSARY TO EMPLOY OR GRANT CLINICAL PRIVILEGES TO AN APPLICANT
27 BEFORE RECEIVING THE RESULTS OF THE APPLICANT'S CRIMINAL HISTORY

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1 CHECK UNDER SUBSECTION (4) OR (5), OR BOTH, THE HEALTH FACILITY
2 OR AGENCY MAY CONDITIONALLY EMPLOY OR GRANT CONDITIONAL CLINICAL
3 PRIVILEGES TO THE INDIVIDUAL IF ALL OF THE FOLLOWING APPLY:

4 (A) THE HEALTH FACILITY OR AGENCY REQUESTS THE CRIMINAL HIS-
5 TORY CHECK UNDER SUBSECTION (4) OR (5), OR BOTH, UPON CONDITION-
6 ALLY EMPLOYING OR CONDITIONALLY GRANTING CLINICAL PRIVILEGES TO
7 THE INDIVIDUAL.

8 (B) THE INDIVIDUAL SIGNS A STATEMENT IN WRITING THAT INDI-
9 CATES ALL OF THE FOLLOWING:

10 (i) THAT HE OR SHE HAS NOT BEEN CONVICTED OF 1 OR MORE OF
11 THE CRIMES THAT ARE DESCRIBED IN SUBSECTION (1)(A) AND (B) WITHIN
12 THE APPLICABLE TIME PERIOD PRESCRIBED BY SUBSECTION (1)(A) AND
13 (B).

14 (ii) THE INDIVIDUAL AGREES THAT, IF THE INFORMATION IN THE
15 CRIMINAL HISTORY CHECK CONDUCTED UNDER SUBSECTION (4) OR (5), OR
16 BOTH, DOES NOT CONFIRM THE INDIVIDUAL'S STATEMENT UNDER SUBPARA-
17 GRAPH (i), HIS OR HER EMPLOYMENT OR CLINICAL PRIVILEGES WILL BE
18 TERMINATED BY THE HEALTH FACILITY OR AGENCY AS REQUIRED UNDER
19 SUBSECTION (1) UNLESS AND UNTIL THE INDIVIDUAL CAN PROVE THAT THE
20 INFORMATION IS INCORRECT. THE HEALTH FACILITY OR AGENCY SHALL
21 PROVIDE A COPY OF THE RESULTS OF THE CRIMINAL HISTORY CHECK CON-
22 DUCTED UNDER SUBSECTION (4) OR (5), OR BOTH, TO THE APPLICANT
23 UPON REQUEST.

24 (iii) THAT HE OR SHE UNDERSTANDS THE CONDITIONS DESCRIBED IN
25 SUBPARAGRAPHS (i) AND (ii) THAT RESULT IN THE TERMINATION OF HIS
26 OR HER EMPLOYMENT OR CLINICAL PRIVILEGES AND THAT THOSE
27 CONDITIONS ARE GOOD CAUSE FOR TERMINATION.

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1 (7) ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
2 THIS SECTION, THE DEPARTMENT SHALL DEVELOP AND DISTRIBUTE A MODEL
3 FORM FOR THE STATEMENT REQUIRED UNDER SUBSECTION (6)(B). THE
4 DEPARTMENT SHALL MAKE THE MODEL FORM AVAILABLE TO HEALTH FACILI-
5 TIES OR AGENCIES SUBJECT TO THIS SECTION UPON REQUEST AT NO
6 CHARGE.

7 (8) IF AN INDIVIDUAL IS EMPLOYED AS A CONDITIONAL EMPLOYEE
8 OR IS GRANTED CONDITIONAL CLINICAL PRIVILEGES UNDER SUBSECTION
9 (6), AND THE REPORT DESCRIBED IN SUBSECTION (4) OR (5), OR BOTH,
10 DOES NOT CONFIRM THE INDIVIDUAL'S STATEMENT UNDER SUBSECTION
11 (6)(B)(i), THE HEALTH FACILITY OR AGENCY SHALL TERMINATE THE
12 INDIVIDUAL'S EMPLOYMENT OR CLINICAL PRIVILEGES AS REQUIRED BY
13 SUBSECTION (1).

14 (9) AN INDIVIDUAL WHO KNOWINGLY PROVIDES FALSE INFORMATION
15 REGARDING CRIMINAL CONVICTIONS ON A STATEMENT DESCRIBED IN SUB-
16 SECTION (6)(B)(i) IS GUILTY OF A MISDEMEANOR PUNISHABLE BY
17 IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR A FINE OF NOT MORE THAN
18 \$500.00, OR BOTH.

19 (10) A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME,
20 COUNTY MEDICAL CARE FACILITY, OR HOME FOR THE AGED SHALL USE
21 CRIMINAL HISTORY RECORD INFORMATION OBTAINED UNDER SUBSECTION
22 (4), (5), OR (6) ONLY FOR THE PURPOSE OF EVALUATING AN
23 APPLICANT'S QUALIFICATIONS FOR EMPLOYMENT, AN INDEPENDENT CON-
24 TRACT, OR CLINICAL PRIVILEGES IN THE POSITION FOR WHICH HE OR SHE
25 HAS APPLIED AND FOR THE PURPOSES OF SUBSECTIONS (5) AND (7). A
26 HEALTH FACILITY OR AGENCY OR AN EMPLOYEE OF THE HEALTH FACILITY
27 OR AGENCY SHALL NOT DISCLOSE CRIMINAL HISTORY RECORD INFORMATION

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1 OBTAINED UNDER SUBSECTION (4) OR (5) TO A PERSON WHO IS NOT
2 DIRECTLY INVOLVED IN EVALUATING THE APPLICANT'S QUALIFICATIONS
3 FOR EMPLOYMENT, AN INDEPENDENT CONTRACT, OR CLINICAL PRIVILEGES.
4 UPON WRITTEN REQUEST FROM ANOTHER HEALTH FACILITY OR AGENCY OR
5 ADULT FOSTER CARE FACILITY THAT IS CONSIDERING EMPLOYING, INDE-
6 PENDENTLY CONTRACTING WITH, OR GRANTING CLINICAL PRIVILEGES TO AN
7 INDIVIDUAL, A HEALTH FACILITY OR AGENCY THAT HAS OBTAINED CRIMI-
8 NAL HISTORY RECORD INFORMATION UNDER THIS SECTION ON THAT INDI-
9 VIDUAL SHALL SHARE THE INFORMATION WITH THE REQUESTING HEALTH
10 FACILITY OR AGENCY OR ADULT FOSTER CARE FACILITY. EXCEPT FOR A
11 KNOWING OR INTENTIONAL RELEASE OF FALSE INFORMATION, A HEALTH
12 FACILITY OR AGENCY HAS NO LIABILITY IN CONNECTION WITH A CRIMINAL
13 BACKGROUND CHECK CONDUCTED UNDER THIS SECTION OR THE RELEASE OF
14 CRIMINAL HISTORY RECORD INFORMATION UNDER THIS SUBSECTION.

15 (11) AS A CONDITION OF CONTINUED EMPLOYMENT, EACH EMPLOYEE,
16 INDEPENDENT CONTRACTOR, OR INDIVIDUAL GRANTED CLINICAL PRIVILEGES
17 SHALL AGREE IN WRITING TO REPORT TO THE HEALTH FACILITY OR AGENCY
18 IMMEDIATELY UPON BEING ARRESTED FOR OR CONVICTED OF 1 OR MORE OF
19 THE CRIMINAL OFFENSES LISTED IN SUBSECTION (1)(A) AND (B).

20 (12) AS USED IN THIS SECTION:

21 (A) "ADULT FOSTER CARE FACILITY" MEANS AN ADULT FOSTER CARE
22 FACILITY LICENSED UNDER THE ADULT FOSTER CARE FACILITY LICENSING
23 ACT, 1979 PA 218, MCL 400.701 TO 400.737.

24 (B) "INDEPENDENT CONTRACT" MEANS A CONTRACT ENTERED INTO BY
25 A HEALTH FACILITY OR AGENCY WITH AN INDIVIDUAL WHO PROVIDES THE
26 CONTRACTED SERVICES INDEPENDENTLY OR A CONTRACT ENTERED INTO BY A
27 HEALTH FACILITY OR AGENCY WITH AN ORGANIZATION OR AGENCY THAT

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1 EMPLOYS OR CONTRACTS WITH AN INDIVIDUAL AFTER COMPLYING WITH THE
2 REQUIREMENTS OF THIS SECTION TO PROVIDE THE CONTRACTED SERVICES
3 TO THE HEALTH FACILITY OR AGENCY ON BEHALF OF THE ORGANIZATION OR
4 AGENCY.