



Senate Fiscal Agency  
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BILL ANALYSIS

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Senate Bill 621 (Substitute S-4 as reported)  
Senate Bill 622 (Substitute S-4 as reported)  
Sponsor: Senator Patricia L. Birkholz (S.B. 621)  
Senator Tony Stamas (S.B. 622)  
Committee: Senior Citizens and Veterans Affairs

### **CONTENT**

Senate Bill 621 (S-4) would amend the Public Health Code to repeal and replace provisions that disqualify a person from employment with a nursing home for certain convictions and require criminal history checks of applicants for employment. The bill would expand the crimes covered by the law, include drug misdemeanors, expand the types of facilities that must conduct background checks, require annual background checks, and increase sanctions.

The bill would apply to nursing homes, county medical care facilities, hospices, hospitals that provide swing bed services, homes for the aged, and home health agencies. It would prohibit individuals who would have direct access or provide direct services to patients or residents in those facilities or agencies from working, contracting, or being granted clinical privileges with the facilities or agencies, if they were convicted of or subject to any of the following:

- A felony, within 15 years immediately preceding the date of application.
- A misdemeanor involving controlled substances, abuse, neglect, assault, battery, criminal sexual conduct (CSC), or a State or Federal crime that was substantially similar, within 10 years immediately preceding the date of application.
- A relevant crime under provisions of Federal law that exclude certain individuals and entities from participation in Medicare and State health care programs.
- An order or disposition under sections of the Mental Health Code (involuntary hospitalization), Estates and Protected Individuals Code (legally incapacitated), and the Code of Criminal Procedure (not guilty by reason of insanity).
- A substantiated finding of neglect, abuse, or misappropriation of property by a State or Federal agency pursuant to an investigation conducted in accordance with Federal law.

Applicants would have to provide their fingerprints for State and Federal criminal background checks. If the Department of State Police or the FBI charged a fee for conducting the initial criminal history check, the charge would have to be paid or reimbursed by the Department of Community Health (DCH) with Medicaid and Medicare funding as appropriate. As a condition of continued employment, each employee, independent contractor, or individual granted clinical privileges would have to consent to annual criminal history checks and agree to report to the health facility or agency immediately upon being arraigned for or convicted of any of the criminal offenses that would prohibit employment; upon becoming the subject of an order or disposition that would prohibit employment; or upon being the subject of a substantiated finding that would prohibit employment.

An individual who knowingly provided false information regarding his or her identity, criminal convictions, or substantiated findings would be guilty of a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$500. A licensee, owner, administrator, or operator of a health facility or agency who knowingly and willfully failed to conduct the required criminal history checks would be guilty of a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$5,000.

An individual disqualified from or denied employment under the bill or the Code's current criminal background check provisions could appeal to the DCH Director if he or she believed that the criminal history report was inaccurate.

Senate Bill 622 (S-4) would amend the Adult Foster Care Facility Licensing Act to repeal and replace provisions that disqualify a person from employment for certain convictions and that require criminal history checks of applicants for employment. The bill includes proposals pertaining to employment in an adult foster care facility that are consistent with those proposed in Senate Bill 621 (S-4) regarding employment in a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home of the aged, or home health agency.

Both bills' criminal background check provisions would take effect 60 days after the DCH secured the necessary Federal approval or waiver to use Federal funds to reimburse facilities and agencies for the costs of requesting an FBI national criminal history check and filed with the Secretary of State a notice of the Federal approval or waiver and a notice that the DCH had issued a Medicaid policy bulletin regarding the payment and reimbursement. The Acts' current criminal background check provisions would be repealed at that time.

The bills are tie-barred to each other and House Bills 5168 and 5448.

Proposed MCL 333.20173a & 333.20173b (S.B. 621) Legislative Analyst: Patrick Affholter  
Proposed MCL 400.734b & 400.734c (S.B. 622)

### **FISCAL IMPACT**

The Department of Community Health has received a grant from the Federal Centers for Medicare and Medicaid Services for \$5.0 million to provide criminal background checks for nursing home and adult foster care employees. This grant would cover costs of providing criminal background checks from January 2005 through 2007. The State would incur some administrative expense associated with managing the criminal background check process, administering an appeals process for individuals denied employment because of a background check, and meeting the bills' reporting requirements.

The bills would have a negative fiscal impact upon local government. Public nursing homes, county medical care facilities and infirmaries, and community mental health agency-affiliated adult foster care facilities would see increased administrative costs associated with processing criminal history requests for job applicants and current employees.

There are no data to indicate how many individuals or facilities would be convicted of the proposed misdemeanors. Local government would incur the cost of incarceration in a local facility, which varies by county. Additional penal fine revenue would benefit public libraries.

Date Completed: 12-7-05

Fiscal Analyst: David Fosdick  
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#### Floor\sb621

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.