

SENATE BILL No. 622

June 21, 2005, Introduced by Senators STAMAS, CROPSEY, BIRKHOLZ, GILBERT, PATTERSON, TOY and ALLEN and referred to the Committee on Senior Citizens and Veterans Affairs.

A bill to amend 1979 PA 218, entitled "Adult foster care facility licensing act," by amending section 34a (MCL 400.734a), as added by 2004 PA 59.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 34a. (1) In addition to the restrictions prescribed in
2 sections 13, 22, and 31, and except as otherwise provided in
3 subsection (2), an adult foster care facility shall not employ or
4 independently contract with an individual ~~who regularly provides~~
5 ~~direct services to residents of the adult foster care facility~~
6 ~~after the effective date of the amendatory act that added this~~
7 ~~section~~ if the individual ~~has been convicted of~~ **SATISFIES** 1 or
8 more of the following:

9 (a) ~~A~~ **HAS BEEN CONVICTED OF A** felony or an attempt or
10 conspiracy to commit a felony within the 15 years immediately

1 preceding the date of application for employment or the date of the
2 execution of the independent contract.

3 (b) ~~A~~ **HAS BEEN CONVICTED OF A** misdemeanor involving abuse,
4 neglect, assault, battery, ~~or~~ criminal sexual conduct, ~~or~~
5 ~~involving~~ fraud, or theft, ~~against a vulnerable adult as that~~
6 ~~term is defined in section 145m of the Michigan penal code, 1931 PA~~
7 ~~328, MCL 750.145m,~~ or a state or federal crime that is
8 substantially similar to a misdemeanor described in this
9 subdivision within the 10 years immediately preceding the date of
10 application for employment or the date of the execution of the
11 contract.

12 (c) ~~An~~ **HAS BEEN CONVICTED OF AN** offense listed under R
13 400.1152 of the Michigan administrative code.

14 (D) **IS THE SUBJECT OF AN ORDER OR DISPOSITION UNDER ANY OF THE**
15 **FOLLOWING:**

16 (i) **SECTION 464A OF THE MENTAL HEALTH CODE, 1974 PA 258, MCL**
17 **330.1464A.**

18 (ii) **SECTION 5107 OF THE ESTATES AND PROTECTED INDIVIDUALS**
19 **CODE, 1998 PA 386, MCL 700.5107.**

20 (iii) **SECTIONS 2950 AND 2950A OF THE REVISED JUDICATURE ACT OF**
21 **1961, 1961 PA 236, MCL 600.2950 AND 600.2950A.**

22 (iv) **SECTION 16B OF CHAPTER IX OF THE CODE OF CRIMINAL**
23 **PROCEDURE, 1927 PA 175, MCL 769.16B.**

24 (E) **HAS BEEN FOUND NOT GUILTY BUT MENTALLY ILL OF ANY CRIME**
25 **AND HAS OFFERED A PLEA OF NOT GUILTY OF, OR BEEN ACQUITTED OF, ANY**
26 **CRIME BY REASON OF INSANITY.**

27 (F) **HAS BEEN SUBJECT TO AN ORDER OF INVOLUNTARY COMMITMENT IN**

1 AN INPATIENT OR OUTPATIENT SETTING DUE TO MENTAL ILLNESS.

2 (G) HAS A DIAGNOSED MENTAL ILLNESS AT THE TIME THE APPLICATION
3 IS MADE REGARDLESS OF WHETHER HE OR SHE IS RECEIVING TREATMENT FOR
4 THAT ILLNESS.

5 (H) IS UNDER A COURT ORDER OF LEGAL INCAPACITY IN THIS STATE
6 OR ELSEWHERE.

7 (I) IS PARTICIPATING IN A SUBSTANCE ABUSE REHABILITATION
8 PROGRAM.

9 (2) Except as otherwise provided in this subsection and
10 subsection (7), an adult foster care facility shall not employ or
11 independently contract with an individual ~~who regularly provides~~
12 ~~direct services to residents after the effective date of the~~
13 ~~amendatory act that added this section~~ until the adult foster care
14 facility complies with subsection (4), (5), or (6). ~~This~~
15 ~~subsection and subsection (1) do not apply to an individual who is~~
16 ~~employed by or under contract to an adult foster care facility~~
17 ~~before the effective date of the amendatory act that added this~~
18 ~~subsection.~~

19 (3) An individual who applies for employment either as an
20 employee or as an independent contractor with an adult foster care
21 facility and has received a good faith offer of employment or
22 independent contract from the adult foster care facility shall give
23 written consent at the time of application for the department of
24 state police to conduct ~~a~~ **ANNUAL** criminal history ~~check~~ **CHECKS**
25 under this section, along with identification acceptable to the
26 department of state police. If the department of state police or
27 equivalent state agency under subsection (6) has conducted a

1 criminal history check on the individual within the ~~24~~ 12 months
2 immediately preceding the date of application and the individual
3 provides written consent for release of information for the
4 purposes of this section, the adult foster care facility may use a
5 copy of that criminal history check instead of obtaining written
6 consent and requesting a new criminal history check under this
7 section. If the individual is using a prior criminal history check
8 as described in this subsection, the adult foster care facility
9 shall accept the copy of the results of the criminal history check
10 only from the adult foster care facility or health facility or
11 agency that previously employed or independently contracted with
12 the individual.

13 (4) Upon receipt of the written consent and identification
14 required under subsection (3), if the individual has resided in
15 this state for 3 or more years preceding the good faith offer of
16 employment or independent contract, the adult foster care facility
17 that has made a good faith offer of employment or independent
18 contract shall make a request to the department of state police to
19 conduct a criminal history check on the individual. The request
20 shall be made in a manner prescribed by the department of state
21 police. The adult foster care facility shall make the written
22 consent and identification available to the department of state
23 police. If there is a charge for conducting the criminal history
24 check, the adult foster care facility requesting the criminal
25 history check shall pay the cost of the charge. The adult foster
26 care facility shall not seek reimbursement for the charge from the
27 individual who is the subject of the criminal history check. The

1 department of state police shall conduct ~~—a—~~ **AN ANNUAL** criminal
2 history check on the individual named in the request. The
3 department of state police shall provide the adult foster care
4 facility with a written report of the criminal history check. The
5 report shall contain any criminal history record information on the
6 individual maintained by the department of state police. As a
7 condition of employment, an individual shall sign a written
8 statement that he or she has been a resident of this state for 3 or
9 more years preceding the good faith offer of employment or
10 independent contract.

11 (5) Upon receipt of the written consent and identification
12 required under subsection (3), if the individual has applied for
13 employment either as an employee or as an independent contractor
14 with an adult foster care facility licensed for more than 6 persons
15 and has resided in this state for less than 3 years preceding the
16 good faith offer of employment or independent contract, the adult
17 foster care facility that has made a good faith offer of employment
18 or independent contract shall comply with subsection (4) and shall
19 make a request to the department of state police to forward the
20 individual's fingerprints to the federal bureau of investigation.
21 The department of state police shall request the federal bureau of
22 investigation to make a determination of the existence of any
23 national criminal history pertaining to the individual. An
24 individual described in this subsection shall provide the
25 department of state police with 2 sets of fingerprints. The
26 department of state police shall complete the criminal history
27 check under subsection (4) and, except as otherwise provided in

1 this subsection, provide the results of its determination under
2 subsection (4) to the adult foster care facility and the results of
3 the federal bureau of investigation determination to the department
4 of ~~consumer and industry~~ **HUMAN** services within 30 days after the
5 request is made. If the requesting adult foster care facility is
6 not a state department or agency and if a crime is disclosed on the
7 federal bureau of investigation determination, the department **OF**
8 **HUMAN SERVICES** shall notify the adult foster care facility in
9 writing of the type of crime disclosed on the federal bureau of
10 investigation determination without disclosing the details of the
11 crime. The charges for fingerprinting or a federal bureau of
12 investigation determination under this subsection shall be paid in
13 the manner required under subsection (4).

14 (6) Upon receipt of the written consent and identification
15 required under subsection (3), if the individual has applied for
16 employment either as an employee or as an independent contractor
17 with an adult foster care facility licensed for 6 persons or less
18 and has resided in this state for less than 3 years preceding the
19 good faith offer of employment or independent contract, the adult
20 foster care facility that has made the good faith offer of
21 employment or independent contract shall comply with subsection (4)
22 and shall make a request to the department of state police or state
23 agency responsible for maintaining statewide criminal history
24 information of all the states in which the individual resided
25 during the preceding 5 years to conduct a criminal history check on
26 the individual.

27 (7) If an adult foster care facility determines it necessary

1 to employ or independently contract with an individual before
2 receiving the results of the individual's criminal history check
3 required under this section, the adult foster care facility may
4 conditionally employ the individual if both of the following apply:

5 (a) The adult foster care facility requests the criminal
6 history check required under this section, upon conditionally
7 employing the individual.

8 (b) The individual signs a written statement indicating all of
9 the following:

10 (i) That he or she has not been convicted of 1 or more of the
11 crimes that are described in subsection (1)(a) and (b) within the
12 applicable time period prescribed by subsection (1)(a) and (b).

13 (ii) The individual agrees that, if the information in the
14 criminal history check conducted under this section does not
15 confirm the individual's statement under subparagraph (i), his or
16 her employment will be terminated by the adult foster care facility
17 as required under subsection (1) unless and until the individual
18 can prove that the information is incorrect. The adult foster care
19 facility shall provide a copy of the results of the criminal
20 history check conducted under this section, to the individual upon
21 request.

22 (iii) That he or she understands the conditions described in
23 subparagraphs (i) and (ii) that result in the termination of his or
24 her employment and that those conditions are good cause for
25 termination.

26 (8) ~~On the effective date of the amendatory act that added~~
27 ~~this subsection, the department of consumer and industry services~~

1 ~~shall develop and distribute a model form for the statement~~
2 ~~required under subsection (7)(b).~~ The department of ~~consumer and~~
3 ~~industry~~ **HUMAN** services shall make the model form **FOR THE**
4 **STATEMENT REQUIRED UNDER SUBSECTION (7)(B)** available to adult
5 foster care facilities upon request at no charge.

6 (9) If an individual is conditionally employed under
7 subsection (7), and the report described in subsection (4), (5), or
8 (6), if applicable, does not confirm the individual's statement
9 under subsection (7)(b)(i), the adult foster care facility shall
10 terminate the individual's employment as required by subsection
11 (1).

12 (10) An individual who knowingly provides false information
13 regarding a criminal conviction on a statement described in
14 subsection (7)(b)(i) is guilty of a misdemeanor punishable by
15 imprisonment for not more than 90 days or a fine of not more than
16 \$500.00, or both.

17 (11) An adult foster care facility shall use criminal history
18 record information obtained under subsection (4), (5), or (6) only
19 for the purpose of evaluating an individual's qualifications for
20 employment in the position for which he or she has applied and for
21 the purposes of subsections (7) and (9). An adult foster care
22 facility or an employee of the adult foster care facility shall not
23 disclose criminal history record information obtained under this
24 section to a person who is not directly involved in evaluating the
25 individual's qualifications for employment or independent contract.
26 Upon written request from another adult foster care facility or
27 health facility or agency that is considering employing or

1 independently contracting with an individual, an adult foster care
2 facility that has obtained criminal history record information
3 under this section on that individual shall share the information
4 with the requesting adult foster care facility or health facility
5 or agency. Except for a knowing or intentional release of false
6 information, an adult foster care facility has no liability in
7 connection with a background check conducted under this section or
8 the release of criminal history record information under this
9 subsection.

10 (12) As a condition of continued employment, each employee or
11 independent contractor shall agree in writing to ~~report~~ **DO BOTH**
12 **OF THE FOLLOWING:**

13 (A) **REPORT** to the adult foster care facility immediately upon
14 being arrested for or convicted of 1 or more of the criminal
15 offenses listed in subsection (1)(a) and (b).

16 (B) **CONSENT TO THE PERFORMANCE OF AN ANNUAL CRIMINAL HISTORY**
17 **CHECK AS PROVIDED UNDER SUBSECTION (4).**

18 (13) **IN ADDITION TO SANCTIONS SET FORTH IN THIS ACT, AN ADULT**
19 **FOSTER CARE FACILITY THAT FAILS TO CONDUCT THE CRIMINAL HISTORY**
20 **CHECKS AS REQUIRED UNDER THIS SECTION IS GUILTY OF A FELONY**
21 **PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 4 YEARS OR A FINE OF**
22 **NOT MORE THAN \$50,000.00, OR BOTH.**

23 (14) ~~(13)~~ As used in this section:

24 (a) "Health facility or agency" means a health facility or
25 agency as defined in section 20106 of the public health code, 1978
26 PA 368, MCL 333.20106.

27 (b) "Independent contract" means a contract entered into by an

1 adult foster care facility with an individual who provides the
2 contracted services independently or a contract entered into by an
3 adult foster care facility with an organization or agency that
4 employs or contracts with an individual after complying with the
5 requirements of this section to provide the contracted services to
6 the adult foster care facility on behalf of the organization or
7 agency.