

SENATE BILL No. 1579

November 5, 2008, Introduced by Senators SWITALSKI and GLEASON and referred to the Committee on Transportation.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 20173a (MCL 333.20173a), as amended by 2008 PA
123.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20173a. (1) Except as otherwise provided in subsection
2 (2), a health facility or agency that is a nursing home, county
3 medical care facility, hospice, hospital that provides swing bed
4 services, home for the aged, or home health agency shall not
5 employ, independently contract with, or grant clinical privileges
6 to an individual who regularly has direct access to or provides
7 direct services to patients or residents in the health facility or

1 agency after April 1, 2006 if the individual satisfies 1 or more of
2 the following:

3 (a) Has been convicted of a relevant crime described under 42
4 USC 1320a-7.

5 (b) Has been convicted of any of the following felonies, an
6 attempt or conspiracy to commit any of those felonies, or any other
7 state or federal crime that is similar to the felonies described in
8 this subdivision, other than a felony for a relevant crime
9 described under 42 USC 1320a-7, unless 15 years have lapsed since
10 the individual completed all of the terms and conditions of his or
11 her sentencing, parole, and probation for that conviction prior to
12 the date of application for employment or clinical privileges or
13 the date of the execution of the independent contract:

14 (i) A felony that involves the intent to cause death or serious
15 impairment of a body function, that results in death or serious
16 impairment of a body function, that involves the use of force or
17 violence, or that involves the threat of the use of force or
18 violence.

19 (ii) A felony involving cruelty or torture.

20 (iii) A felony under chapter XXA of the Michigan penal code,
21 1931 PA 328, MCL 750.145m to 750.145r.

22 (iv) A felony involving criminal sexual conduct.

23 (v) A felony involving abuse or neglect.

24 (vi) A felony involving the use of a firearm or dangerous
25 weapon.

26 (vii) A felony involving the diversion or adulteration of a
27 prescription drug or other medications.

1 (c) Has been convicted of a felony or an attempt or conspiracy
2 to commit a felony, other than a felony for a relevant crime
3 described under 42 USC 1320a-7 or a felony described under
4 subdivision (b), unless 10 years have lapsed since the individual
5 completed all of the terms and conditions of his or her sentencing,
6 parole, and probation for that conviction prior to the date of
7 application for employment or clinical privileges or the date of
8 the execution of the independent contract.

9 (d) Has been convicted of any of the following misdemeanors,
10 other than a misdemeanor for a relevant crime described under 42
11 USC 1320a-7, or a state or federal crime that is substantially
12 similar to the misdemeanors described in this subdivision, within
13 the 10 years immediately preceding the date of application for
14 employment or clinical privileges or the date of the execution of
15 the independent contract:

16 (i) A misdemeanor involving the use of a firearm or dangerous
17 weapon with the intent to injure, the use of a firearm or dangerous
18 weapon that results in a personal injury, or a misdemeanor
19 involving the use of force or violence or the threat of the use of
20 force or violence.

21 (ii) A misdemeanor under chapter XXA of the Michigan penal
22 code, 1931 PA 328, MCL 750.145m to 750.145r.

23 (iii) A misdemeanor involving criminal sexual conduct.

24 (iv) A misdemeanor involving cruelty or torture unless
25 otherwise provided under subdivision (e).

26 (v) A misdemeanor involving abuse or neglect.

27 (e) Has been convicted of any of the following misdemeanors,

1 other than a misdemeanor for a relevant crime described under 42
2 USC 1320a-7, or a state or federal crime that is substantially
3 similar to the misdemeanors described in this subdivision, within
4 the 5 years immediately preceding the date of application for
5 employment or clinical privileges or the date of the execution of
6 the independent contract:

7 (i) A misdemeanor involving cruelty if committed by an
8 individual who is less than 16 years of age.

9 (ii) A misdemeanor involving home invasion.

10 (iii) A misdemeanor involving embezzlement.

11 (iv) A misdemeanor involving negligent homicide **OR A VIOLATION**
12 **OF SECTION 601D(1) OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL**
13 **257.601D.**

14 (v) A misdemeanor involving larceny unless otherwise provided
15 under subdivision (g).

16 (vi) A misdemeanor of retail fraud in the second degree unless
17 otherwise provided under subdivision (g).

18 (vii) Any other misdemeanor involving assault, fraud, theft, or
19 the possession or delivery of a controlled substance unless
20 otherwise provided under subdivision (d), (f), or (g).

21 (f) Has been convicted of any of the following misdemeanors,
22 other than a misdemeanor for a relevant crime described under 42
23 USC 1320a-7, or a state or federal crime that is substantially
24 similar to the misdemeanors described in this subdivision, within
25 the 3 years immediately preceding the date of application for
26 employment or clinical privileges or the date of the execution of
27 the independent contract:

1 (i) A misdemeanor for assault if there was no use of a firearm
2 or dangerous weapon and no intent to commit murder or inflict great
3 bodily injury.

4 (ii) A misdemeanor of retail fraud in the third degree unless
5 otherwise provided under subdivision (g).

6 (iii) A misdemeanor under part 74 unless otherwise provided
7 under subdivision (g).

8 (g) Has been convicted of any of the following misdemeanors,
9 other than a misdemeanor for a relevant crime described under 42
10 USC 1320a-7, or a state or federal crime that is substantially
11 similar to the misdemeanors described in this subdivision, within
12 the year immediately preceding the date of application for
13 employment or clinical privileges or the date of the execution of
14 the independent contract:

15 (i) A misdemeanor under part 74 if the individual, at the time
16 of conviction, is under the age of 18.

17 (ii) A misdemeanor for larceny or retail fraud in the second or
18 third degree if the individual, at the time of conviction, is under
19 the age of 16.

20 (h) Is the subject of an order or disposition under section
21 16b of chapter IX of the code of criminal procedure, 1927 PA 175,
22 MCL 769.16b.

23 (i) Has been the subject of a substantiated finding of
24 neglect, abuse, or misappropriation of property by a state or
25 federal agency pursuant to an investigation conducted in accordance
26 with 42 USC 1395i-3 or 1396r.

27 (2) Except as otherwise provided in subsection (5), a health

1 facility or agency that is a nursing home, county medical care
2 facility, hospice, hospital that provides swing bed services, home
3 for the aged, or home health agency shall not employ, independently
4 contract with, or grant privileges to an individual who regularly
5 has direct access to or provides direct services to patients or
6 residents in the health facility or agency after April 1, 2006
7 until the health facility or agency conducts a criminal history
8 check in compliance with subsection (4). This subsection and
9 subsection (1) do not apply to any of the following:

10 (a) An individual who is employed by, under independent
11 contract to, or granted clinical privileges in a health facility or
12 agency before April 1, 2006. Beginning April 1, 2009, an individual
13 who is exempt under this subdivision shall provide the department
14 of state police with a set of fingerprints and the department of
15 state police shall input those fingerprints into the automated
16 fingerprint identification system database established under
17 subsection (12). An individual who is exempt under this subdivision
18 is not limited to working within the health facility or agency with
19 which he or she is employed by, under independent contract to, or
20 granted clinical privileges on April 1, 2006. That individual may
21 transfer to another health facility or agency that is under the
22 same ownership with which he or she was employed, under contract,
23 or granted privileges. If that individual wishes to transfer to
24 another health facility or agency that is not under the same
25 ownership, he or she may do so provided that a criminal history
26 check is conducted by the new health facility or agency in
27 accordance with subsection (4). If an individual who is exempt

1 under this subdivision is subsequently convicted of a crime
2 described under subsection (1)(a) to (g) or found to be the subject
3 of a substantiated finding described under subsection (1)(i) or an
4 order or disposition described under subsection (1)(h), or is found
5 to have been convicted of a relevant crime described under
6 subsection (1)(a), then he or she is no longer exempt and shall be
7 terminated from employment or denied employment.

8 (b) An individual who is an independent contractor with a
9 health facility or agency that is a nursing home, county medical
10 care facility, hospice, hospital that provides swing bed services,
11 home for the aged, or home health agency if the services for which
12 he or she is contracted is not directly related to the provision of
13 services to a patient or resident or if the services for which he
14 or she is contracted allows for direct access to the patients or
15 residents but is not performed on an ongoing basis. This exception
16 includes, but is not limited to, an individual who independently
17 contracts with the health facility or agency to provide utility,
18 maintenance, construction, or communications services.

19 (3) An individual who applies for employment either as an
20 employee or as an independent contractor or for clinical privileges
21 with a health facility or agency that is a nursing home, county
22 medical care facility, hospice, hospital that provides swing bed
23 services, home for the aged, or home health agency and has received
24 a good faith offer of employment, an independent contract, or
25 clinical privileges from the health facility or agency shall give
26 written consent at the time of application for the department of
27 state police to conduct an initial criminal history check under

1 this section, along with identification acceptable to the
2 department of state police.

3 (4) Upon receipt of the written consent and identification
4 required under subsection (3), a health facility or agency that is
5 a nursing home, county medical care facility, hospice, hospital
6 that provides swing bed services, home for the aged, or home health
7 agency that has made a good faith offer of employment or an
8 independent contract or clinical privileges to the applicant shall
9 make a request to the department of state police to conduct a
10 criminal history check on the applicant, to input the applicant's
11 fingerprints into the automated fingerprint identification system
12 database, and to forward the applicant's fingerprints to the
13 federal bureau of investigation. The department of state police
14 shall request the federal bureau of investigation to make a
15 determination of the existence of any national criminal history
16 pertaining to the applicant. The applicant shall provide the
17 department of state police with a set of fingerprints. The request
18 shall be made in a manner prescribed by the department of state
19 police. The health facility or agency shall make the written
20 consent and identification available to the department of state
21 police. The health facility or agency shall make a request to the
22 relevant licensing or regulatory department to conduct a check of
23 all relevant registries established pursuant to federal and state
24 law and regulations for any substantiated findings of abuse,
25 neglect, or misappropriation of property. If the department of
26 state police or the federal bureau of investigation charges a fee
27 for conducting the initial criminal history check, the charge shall

1 be paid by or reimbursed by the department with federal funds as
2 provided to implement a pilot program for national and state
3 background checks on direct patient access employees of long-term
4 care facilities or providers in accordance with section 307 of the
5 medicare prescription drug, improvement, and modernization act of
6 2003, Public Law 108-173. The health facility or agency shall not
7 seek reimbursement for a charge imposed by the department of state
8 police or the federal bureau of investigation from the individual
9 who is the subject of the initial criminal history check. A health
10 facility or agency, a prospective employee, or a prospective
11 independent contractor covered under this section may not be
12 charged for the cost of an initial criminal history check required
13 under this section. The department of state police shall conduct a
14 criminal history check on the applicant named in the request. The
15 department of state police shall provide the department with a
16 written report of the criminal history check conducted under this
17 subsection if the criminal history check contains any criminal
18 history record information. The report shall contain any criminal
19 history record information on the applicant maintained by the
20 department of state police. The department of state police shall
21 provide the results of the federal bureau of investigation
22 determination to the department within 30 days after the request is
23 made. If the requesting health facility or agency is not a state
24 department or agency and if a criminal conviction is disclosed on
25 the written report of the criminal history check or the federal
26 bureau of investigation determination, the department shall notify
27 the health facility or agency and the applicant in writing of the

1 type of crime disclosed on the written report of the criminal
2 history check or the federal bureau of investigation determination
3 without disclosing the details of the crime. Any charges imposed by
4 the department of state police or the federal bureau of
5 investigation for conducting an initial criminal history check or
6 making a determination under this subsection shall be paid in the
7 manner required under this subsection. The notice shall include a
8 statement that the applicant has a right to appeal a decision made
9 by the health facility or agency regarding his or her employment
10 eligibility based on the criminal background check. The notice
11 shall also include information regarding where to file and
12 describing the appellate procedures established under section
13 20173b.

14 (5) If a health facility or agency that is a nursing home,
15 county medical care facility, hospice, hospital that provides swing
16 bed services, home for the aged, or home health agency determines
17 it necessary to employ or grant clinical privileges to an applicant
18 before receiving the results of the applicant's criminal history
19 check under this section, the health facility or agency may
20 conditionally employ or grant conditional clinical privileges to
21 the individual if all of the following apply:

22 (a) The health facility or agency requests the criminal
23 history check under this section upon conditionally employing or
24 conditionally granting clinical privileges to the individual.

25 (b) The individual signs a statement in writing that indicates
26 all of the following:

27 (i) That he or she has not been convicted of 1 or more of the

1 crimes that are described in subsection (1)(a) to (g) within the
2 applicable time period prescribed by each subdivision respectively.

3 (ii) That he or she is not the subject of an order or
4 disposition described in subsection (1)(h).

5 (iii) That he or she has not been the subject of a substantiated
6 finding as described in subsection (1)(i).

7 (iv) The individual agrees that, if the information in the
8 criminal history check conducted under this section does not
9 confirm the individual's statements under subparagraphs (i) to (iii),
10 his or her employment or clinical privileges will be terminated by
11 the health facility or agency as required under subsection (1)
12 unless and until the individual appeals and can prove that the
13 information is incorrect.

14 (v) That he or she understands the conditions described in
15 subparagraphs (i) to (iv) that result in the termination of his or
16 her employment or clinical privileges and that those conditions are
17 good cause for termination.

18 (6) The department shall develop and distribute a model form
19 for the statement required under subsection (5)(b). The department
20 shall make the model form available to health facilities or
21 agencies subject to this section upon request at no charge.

22 (7) If an individual is employed as a conditional employee or
23 is granted conditional clinical privileges under subsection (5),
24 and the report described in subsection (4) does not confirm the
25 individual's statement under subsection (5)(b)(i) to (iii), the
26 health facility or agency shall terminate the individual's
27 employment or clinical privileges as required by subsection (1).

1 (8) An individual who knowingly provides false information
2 regarding his or her identity, criminal convictions, or
3 substantiated findings on a statement described in subsection
4 (5)(b)(i) to (iii) is guilty of a misdemeanor punishable by
5 imprisonment for not more than 93 days or a fine of not more than
6 \$500.00, or both.

7 (9) A health facility or agency that is a nursing home, county
8 medical care facility, hospice, hospital that provides swing bed
9 services, home for the aged, or home health agency shall use
10 criminal history record information obtained under subsection (4)
11 only for the purpose of evaluating an applicant's qualifications
12 for employment, an independent contract, or clinical privileges in
13 the position for which he or she has applied and for the purposes
14 of subsections (5) and (7). A health facility or agency or an
15 employee of the health facility or agency shall not disclose
16 criminal history record information obtained under subsection (4)
17 to a person who is not directly involved in evaluating the
18 applicant's qualifications for employment, an independent contract,
19 or clinical privileges. An individual who knowingly uses or
20 disseminates the criminal history record information obtained under
21 subsection (4) in violation of this subsection is guilty of a
22 misdemeanor punishable by imprisonment for not more than 93 days or
23 a fine of not more than \$1,000.00, or both. Upon written request
24 from another health facility or agency, psychiatric facility or
25 intermediate care facility for people with mental retardation, or
26 adult foster care facility that is considering employing,
27 independently contracting with, or granting clinical privileges to

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

11 (10) As a condition of continued employment, each employee,
12 independent contractor, or individual granted clinical privileges
13 shall do each of the following:

14 (a) Agree in writing to report to the health facility or
15 agency immediately upon being arraigned for 1 or more of the
16 criminal offenses listed in subsection (1)(a) to (g), upon being
17 convicted of 1 or more of the criminal offenses listed in
18 subsection (1)(a) to (g), upon becoming the subject of an order or
19 disposition described under subsection (1)(h), and upon being the
20 subject of a substantiated finding of neglect, abuse, or
21 misappropriation of property as described in subsection (1)(i).
22 Reporting of an arraignment under this subdivision is not cause for
23 termination or denial of employment.

24 (b) If a set of fingerprints is not already on file with the
25 department of state police, provide the department of state police
26 with a set of fingerprints.

27 (11) In addition to sanctions set forth in section 20165, a

1 licensee, owner, administrator, or operator of a nursing home,
2 county medical care facility, hospice, hospital that provides swing
3 bed services, home for the aged, or home health agency who
4 knowingly and willfully fails to conduct the criminal history
5 checks as required under this section is guilty of a misdemeanor
6 punishable by imprisonment for not more than 1 year or a fine of
7 not more than \$5,000.00, or both.

8 (12) In collaboration with the department of state police, the
9 department of information technology shall establish an automated
10 fingerprint identification system database that would allow the
11 department of state police to store and maintain all fingerprints
12 submitted under this section and would provide for an automatic
13 notification if and when a subsequent criminal arrest fingerprint
14 card submitted into the system matches a set of fingerprints
15 previously submitted in accordance with this section. Upon such
16 notification, the department of state police shall immediately
17 notify the department and the department shall immediately contact
18 the respective health facility or agency with which that individual
19 is associated. Information in the database established under this
20 subsection is confidential, is not subject to disclosure under the
21 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and
22 shall not be disclosed to any person except for purposes of this
23 act or for law enforcement purposes.

24 (13) On or before April 1, 2009, the department shall submit a
25 written report to the legislature outlining a plan to cover the
26 costs of the criminal history checks required under this section if
27 federal funding is no longer available or is inadequate to cover

1 those costs.

2 (14) The department and the department of state police shall
3 maintain an electronic web-based system to assist those health
4 facilities and agencies required to check relevant registries and
5 conduct criminal history checks of its employees and independent
6 contractors and to provide for an automated notice to those health
7 facilities or agencies for those individuals inputted in the system
8 who, since the initial check, have been convicted of a
9 disqualifying offense or have been the subject of a substantiated
10 finding of abuse, neglect, or misappropriation of property.

11 (15) As used in this section:

12 (a) "Adult foster care facility" means an adult foster care
13 facility licensed under the adult foster care facility licensing
14 act, 1979 PA 218, MCL 400.701 to 400.737.

15 (b) "Direct access" means access to a patient or resident or
16 to a patient's or resident's property, financial information,
17 medical records, treatment information, or any other identifying
18 information.

19 (c) "Home health agency" means a person certified by medicare
20 whose business is to provide to individuals in their places of
21 residence other than in a hospital, nursing home, or county medical
22 care facility 1 or more of the following services: nursing
23 services, therapeutic services, social work services, homemaker
24 services, home health aide services, or other related services.

25 (d) "Independent contract" means a contract entered into by a
26 health facility or agency with an individual who provides the
27 contracted services independently or a contract entered into by a

1 health facility or agency with an organization or agency that
2 employs or contracts with an individual after complying with the
3 requirements of this section to provide the contracted services to
4 the health facility or agency on behalf of the organization or
5 agency.

6 (e) "Medicare" means benefits under the federal medicare
7 program established under title XVIII of the social security act,
8 42 USC 1395 to 1395hhh.

9 Enacting section 1. This amendatory act takes effect October
10 31, 2010.

11 Enacting section 2. This amendatory act does not take effect
12 unless Senate Bill No. 104 of the 94th Legislature is enacted into
13 law.