

SUBSTITUTE FOR
SENATE BILL NO. 1253

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 20173a (MCL 333.20173a), as amended by 2008 PA
444.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20173a. (1) Except as otherwise provided in subsection
2 (2), a ~~health-COVERED~~ facility ~~or agency that is a nursing home,~~
3 ~~county medical care facility, hospice, hospital that provides swing~~
4 ~~bed 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-COVERED~~
8 ~~facility or agency after April 1, 2006~~ if the individual satisfies

1 1 or more of the following:

2 (a) Has been convicted of a relevant crime described under 42
3 USC ~~1320a-7~~**1320A-7 (A)** .

4 (b) Has been convicted of any of the following felonies, an
5 attempt or conspiracy to commit any of those felonies, or any other
6 state or federal crime that is similar to the felonies described in
7 this subdivision, other than a felony for a relevant crime
8 described under 42 USC ~~1320a-7~~**1320A-7 (A)** , unless 15 years have
9 lapsed since the individual completed all of the terms and
10 conditions of his or her sentencing, parole, and probation for that
11 conviction prior to the date of application for employment or
12 clinical privileges or the date of the execution of the independent
13 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~~**1320A-7(A)** or a felony described
4 under subdivision (b), unless 10 years have lapsed since the
5 individual completed all of the terms and conditions of his or her
6 sentencing, parole, and probation for that conviction prior to the
7 date of application for employment or clinical privileges or the
8 date of 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~~**1320A-7(A)**, or a state or federal crime that is
12 substantially similar to the misdemeanors described in this
13 subdivision, within the 10 years immediately preceding the date of
14 application for employment or clinical privileges or the date of
15 the execution of 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~~**1320A-7(A)**, or a state or federal crime that is
3 substantially similar to the misdemeanors described in this
4 subdivision, within the 5 years immediately preceding the date of
5 application for employment or clinical privileges or the date of
6 the execution of 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~~**1320A-7(A)**, or a state or federal crime that is
24 substantially similar to the misdemeanors described in this
25 subdivision, within the 3 years immediately preceding the date of
26 application for employment or clinical privileges or the date of
27 the execution of 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~~ **1320A-7(A)**, or a state or federal crime that is
11 substantially similar to the misdemeanors described in this
12 subdivision, within the year immediately preceding the date of
13 application for employment or clinical privileges or the date of
14 the execution of 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~~ **ENGAGES IN CONDUCT THAT BECOMES** the subject of a
24 substantiated finding of neglect, abuse, or misappropriation of
25 property by a state or federal agency pursuant to an investigation
26 conducted in accordance with 42 USC 1395i-3 or 1396r.

27 (2) Except as otherwise provided in **THIS SUBSECTION OR**

1 subsection (5), a ~~health COVERED facility or agency that is a~~
2 ~~nursing home, county medical care facility, hospice, hospital that~~
3 ~~provides swing bed services, home for the aged, or home health~~
4 ~~agency~~ shall not employ, independently contract with, or grant
5 privileges to an individual who regularly has direct access to or
6 provides direct services to patients or residents in the ~~health~~
7 **COVERED** facility ~~or agency after April 1, 2006~~ until the health
8 **COVERED** facility or **STAFFING** agency ~~conducts~~ **HAS** a criminal history
9 check **CONDUCTED** in compliance with ~~subsection (4)~~ **THIS SECTION OR**
10 **HAS RECEIVED CRIMINAL HISTORY RECORD INFORMATION IN COMPLIANCE WITH**
11 **SUBSECTIONS (3) AND (10)**. This subsection and subsection (1) do not
12 apply to any of the following:

13 (a) An individual who is employed by, under independent
14 contract to, or granted clinical privileges in a ~~health COVERED~~
15 ~~facility or agency before April 1, 2006~~. ~~Beginning~~ **ON OR BEFORE**
16 April 1, 2011, an individual who is exempt under this subdivision
17 **AND WHO HAS NOT BEEN THE SUBJECT OF A CRIMINAL HISTORY CHECK**
18 **CONDUCTED IN COMPLIANCE WITH THIS SECTION** shall provide the
19 department of state police with a set of fingerprints and the
20 department of state police shall input those fingerprints into the
21 automated fingerprint identification system database established
22 under ~~subsection (12)~~ **(13)**. An individual who is exempt under this
23 subdivision is not limited to working within the ~~health COVERED~~
24 ~~facility or agency with which he or she is employed by, under~~
25 independent contract to, or granted clinical privileges on April 1,
26 2006. ~~That individual~~ **BUT** may transfer to another ~~health COVERED~~
27 ~~facility, or agency that is under the same ownership with which he~~

1 ~~or she was employed, under contract, or granted privileges. If that~~
2 ~~individual wishes to transfer to another health facility or agency~~
3 ~~that is not under the same ownership, he or she may do so provided~~
4 ~~that a criminal history check is conducted by the new health~~
5 ~~facility or agency in accordance with subsection (4) **ADULT FOSTER**~~
6 ~~**CARE FACILITY, OR MENTAL HEALTH FACILITY.**~~ If an individual who is
7 exempt under this subdivision is subsequently convicted of a crime
8 described under subsection (1) (a) to (g) or found to be the subject
9 of a substantiated finding described under subsection (1) (i) or an
10 order or disposition described under subsection (1) (h), or is found
11 to have been convicted of a relevant crime described under
12 ~~subsection (1) (a) **42 USC 1320A-7(A)**,~~ then he or she is no longer
13 exempt and shall be terminated from employment or denied employment
14 **OR CLINICAL PRIVILEGES.**

15 (b) An individual who is **UNDER** an independent ~~contractor~~
16 ~~**CONTRACT** with a health **COVERED** facility or agency that is a nursing~~
17 ~~home, county medical care facility, hospice, hospital that provides~~
18 ~~swing bed services, home for the aged, or home health agency if **HE**~~
19 ~~**OR SHE IS NOT UNDER THE FACILITY'S CONTROL AND**~~ the services for
20 which he or she is contracted are not directly related to the
21 provision of services to a patient or resident or if the services
22 for which he or she is contracted allow for direct access to the
23 patients or residents but are not performed on an ongoing basis.
24 This exception includes, but is not limited to, an individual who
25 ~~independently contracts~~ **IS UNDER AN INDEPENDENT CONTRACT** with the
26 ~~health **COVERED** facility or agency to provide utility, maintenance,~~
27 construction, or communications services.

1 (3) An individual who applies for employment either as an
2 employee or as an independent contractor or for clinical privileges
3 with a health ~~STAFFING AGENCY OR COVERED~~ facility ~~or agency that is~~
4 a ~~nursing home, county medical care facility, hospice, hospital~~
5 ~~that provides swing bed services, home for the aged, or home health~~
6 ~~agency and WHO has received a good faith offer of employment, an~~
7 ~~independent contract, or clinical privileges from the health~~
8 ~~facility or agency~~ **NOT BEEN THE SUBJECT OF A CRIMINAL HISTORY CHECK**
9 **CONDUCTED IN COMPLIANCE WITH THIS SECTION** shall give written
10 consent at the time of application for the department of state
11 police to conduct ~~an initial~~ **A** criminal history check under this
12 section, along with identification acceptable to the department of
13 state police. **IF THE APPLICANT HAS BEEN THE SUBJECT OF A CRIMINAL**
14 **HISTORY CHECK CONDUCTED IN COMPLIANCE WITH THIS SECTION, THE**
15 **APPLICANT SHALL GIVE WRITTEN CONSENT AT THE TIME OF APPLICATION FOR**
16 **THE COVERED FACILITY OR STAFFING AGENCY TO OBTAIN THE CRIMINAL**
17 **HISTORY RECORD INFORMATION AS PRESCRIBED IN SUBSECTION (4) FROM THE**
18 **RELEVANT LICENSING OR REGULATORY DEPARTMENT AND FOR THE DEPARTMENT**
19 **OF STATE POLICE TO CONDUCT A CRIMINAL HISTORY CHECK UNDER THIS**
20 **SECTION IF THE REQUIREMENTS OF SUBSECTION (10) ARE NOT MET AND A**
21 **REQUEST TO THE FEDERAL BUREAU OF INVESTIGATION TO MAKE A**
22 **DETERMINATION OF THE EXISTENCE OF ANY NATIONAL CRIMINAL HISTORY**
23 **PERTAINING TO THE APPLICANT IS NECESSARY, ALONG WITH IDENTIFICATION**
24 **ACCEPTABLE TO THE DEPARTMENT OF STATE POLICE. UPON RECEIPT OF THE**
25 **WRITTEN CONSENT TO OBTAIN THE CRIMINAL HISTORY RECORD INFORMATION**
26 **AND IDENTIFICATION REQUIRED UNDER THIS SUBSECTION, THE STAFFING**
27 **AGENCY OR COVERED FACILITY THAT HAS MADE A GOOD FAITH OFFER OF**

1 EMPLOYMENT OR AN INDEPENDENT CONTRACT OR CLINICAL PRIVILEGES TO THE
2 APPLICANT SHALL REQUEST THE CRIMINAL HISTORY RECORD INFORMATION
3 FROM THE RELEVANT LICENSING OR REGULATORY DEPARTMENT AND SHALL MAKE
4 A REQUEST REGARDING THAT APPLICANT TO THE RELEVANT LICENSING OR
5 REGULATORY DEPARTMENT TO CONDUCT A CHECK OF ALL RELEVANT REGISTRIES
6 IN THE MANNER REQUIRED IN SUBSECTION (4). IF THE REQUIREMENTS OF
7 SUBSECTION (10) ARE NOT MET AND A REQUEST TO THE FEDERAL BUREAU OF
8 INVESTIGATION TO MAKE A SUBSEQUENT DETERMINATION OF THE EXISTENCE
9 OF ANY NATIONAL CRIMINAL HISTORY PERTAINING TO THE APPLICANT IS
10 NECESSARY, THE COVERED FACILITY OR STAFFING AGENCY SHALL PROCEED IN
11 THE MANNER REQUIRED IN SUBSECTION (4). A STAFFING AGENCY THAT
12 EMPLOYS AN INDIVIDUAL WHO REGULARLY HAS DIRECT ACCESS TO OR
13 PROVIDES DIRECT SERVICES TO PATIENTS OR RESIDENTS UNDER AN
14 INDEPENDENT CONTRACT WITH A COVERED FACILITY SHALL SUBMIT
15 INFORMATION REGARDING THE CRIMINAL HISTORY CHECK CONDUCTED BY THE
16 STAFFING AGENCY TO THE COVERED FACILITY THAT HAS MADE A GOOD FAITH
17 OFFER OF INDEPENDENT CONTRACT TO THAT APPLICANT.

18 (4) Upon receipt of the written consent **TO CONDUCT A CRIMINAL**
19 **HISTORY CHECK** and identification required under subsection (3), a
20 ~~health-STAFFING AGENCY OR COVERED facility or agency that is a~~
21 ~~nursing home, county medical care facility, hospice, hospital that~~
22 ~~provides swing bed services, home for the aged, or home health~~
23 ~~agency~~ that has made a good faith offer of employment or an
24 independent contract or clinical privileges to the applicant shall
25 make a request to the department of state police to conduct a
26 criminal history check on the applicant, to input the applicant's
27 fingerprints into the automated fingerprint identification system

1 database, and to forward the applicant's fingerprints to the
2 federal bureau of investigation. The department of state police
3 shall request the federal bureau of investigation to make a
4 determination of the existence of any national criminal history
5 pertaining to the applicant. The applicant shall provide the
6 department of state police with a set of fingerprints. The request
7 shall be made in a manner prescribed by the department of state
8 police. The ~~health~~**STAFFING AGENCY OR COVERED** facility ~~or agency~~
9 shall make the written consent and identification available to the
10 department of state police. The ~~health~~**STAFFING AGENCY OR COVERED**
11 facility ~~or agency~~ shall make a request **REGARDING THAT APPLICANT** to
12 the relevant licensing or regulatory department to conduct a check
13 of all relevant registries established pursuant to federal and
14 state law and regulations for any substantiated findings of abuse,
15 neglect, or misappropriation of property. If the department of
16 state police or the federal bureau of investigation charges a fee
17 for conducting the ~~initial~~ criminal history check, a ~~health~~**THE**
18 **STAFFING AGENCY OR COVERED** facility ~~or agency that is a nursing~~
19 ~~home, county medical care facility, hospice, hospital that provides~~
20 ~~swing bed services, or home health agency~~ shall pay the cost of the
21 charge. If the department of state police or the federal bureau of
22 investigation charges a fee for conducting the ~~initial~~ criminal
23 history check, the department shall pay the cost of or reimburse
24 the charge for a ~~health~~**COVERED** facility ~~or agency that is a home~~
25 ~~for the aged.~~ The ~~health~~**STAFFING AGENCY OR COVERED** facility ~~or~~
26 ~~agency~~ shall not seek reimbursement for a charge imposed by the
27 department of state police or the federal bureau of investigation

1 from the individual who is the subject of the ~~initial~~ criminal
2 history check. A prospective employee or a prospective independent
3 contractor covered under this section may not be charged for the
4 cost of ~~an initial~~ **A** criminal history check required under this
5 section. The department of state police shall conduct a criminal
6 history check on the applicant named in the request. The department
7 of state police shall provide the department with a written report
8 of the criminal history check conducted under this subsection. ~~if~~
9 ~~the criminal history check contains any criminal history record~~
10 ~~information.~~ The report shall contain any criminal history record
11 information on the applicant maintained by the department of state
12 police. The department of state police shall provide the results of
13 the federal bureau of investigation determination to the department
14 within 30 days after the request is made. If the requesting ~~health~~
15 **STAFFING AGENCY OR COVERED** facility ~~or agency~~ is not a state
16 department or agency and if ~~a criminal conviction~~ **HISTORY RECORD**
17 **INFORMATION** is disclosed on the written report of the criminal
18 history check or the federal bureau of investigation determination
19 **THAT RESULTED IN A CONVICTION**, the department shall notify the
20 ~~health~~ **STAFFING AGENCY OR COVERED** facility ~~or agency~~ and the
21 applicant in writing of the type of crime disclosed on the written
22 report of the criminal history check or the federal bureau of
23 investigation determination without disclosing the details of the
24 crime. Any charges imposed by the department of state police or the
25 federal bureau of investigation for conducting ~~an initial~~ **A**
26 criminal history check or making a determination under this
27 subsection shall be paid in the manner required under this

1 subsection. The notice shall include a statement that the applicant
2 has a right to appeal ~~a decision made~~ **THE INFORMATION RELIED UPON**
3 by the ~~health~~ **STAFFING AGENCY OR COVERED** facility ~~or agency~~ **IN**
4 **MAKING ITS DECISION** regarding his or her employment eligibility
5 based on the criminal ~~background~~ **HISTORY** check. The notice shall
6 also include information regarding where to file and describing the
7 appellate procedures established under section 20173b.

8 (5) If a ~~health~~ **COVERED** facility ~~or agency that is a nursing~~
9 ~~home, county medical care facility, hospice, hospital that provides~~
10 ~~swing bed services, home for the aged, or home health agency~~
11 determines it necessary to employ or grant clinical privileges to
12 an applicant before receiving the results of the applicant's
13 criminal history check **OR CRIMINAL HISTORY RECORD INFORMATION** under
14 this section, the ~~health~~ **COVERED** facility ~~or agency~~ may
15 conditionally employ or grant conditional clinical privileges to
16 the individual if all of the following apply:

17 (a) The ~~health~~ **COVERED** facility ~~or agency~~ requests the
18 criminal history check **OR CRIMINAL HISTORY RECORD INFORMATION** under
19 this section upon conditionally employing or conditionally granting
20 clinical privileges to the individual.

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

23 (i) That he or she has not been convicted of 1 or more of the
24 crimes that are described in subsection (1)(a) to (g) within the
25 applicable time period prescribed by each subdivision respectively.

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

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

3 (iv) That he or she agrees that, if the information in the
4 criminal history check conducted under this section does not
5 confirm the individual's statements under subparagraphs (i) to (iii),
6 his or her employment or clinical privileges will be terminated by
7 the ~~health~~**COVERED** facility ~~or agency~~ as required under subsection
8 (1) unless and until the individual appeals and can prove that the
9 information is incorrect.

10 (v) That he or she understands that the conditions described
11 in subparagraphs (i) to (iv) may result in the termination of his or
12 her employment or clinical privileges and that those conditions are
13 good cause for termination.

14 **(C) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION, THE**
15 **COVERED FACILITY DOES NOT PERMIT THE INDIVIDUAL TO HAVE REGULAR**
16 **DIRECT ACCESS TO OR PROVIDE DIRECT SERVICES TO PATIENTS OR**
17 **RESIDENTS IN THE COVERED FACILITY WITHOUT SUPERVISION UNTIL THE**
18 **CRIMINAL HISTORY CHECK OR CRIMINAL HISTORY RECORD INFORMATION IS**
19 **OBTAINED AND THE INDIVIDUAL IS ELIGIBLE FOR THAT EMPLOYMENT OR**
20 **CLINICAL PRIVILEGES. IF REQUIRED UNDER THIS SUBDIVISION, THE**
21 **COVERED FACILITY SHALL PROVIDE ON-SITE SUPERVISION OF AN INDIVIDUAL**
22 **IN THE COVERED FACILITY ON A CONDITIONAL BASIS UNDER THIS**
23 **SUBSECTION BY AN INDIVIDUAL WHO HAS UNDERGONE A CRIMINAL HISTORY**
24 **CHECK CONDUCTED IN COMPLIANCE WITH THIS SECTION. A COVERED FACILITY**
25 **MAY PERMIT AN INDIVIDUAL IN THE COVERED FACILITY ON A CONDITIONAL**
26 **BASIS UNDER THIS SUBSECTION TO HAVE REGULAR DIRECT ACCESS TO OR**
27 **PROVIDE DIRECT SERVICES TO PATIENTS OR RESIDENTS IN THE COVERED**

1 FACILITY WITHOUT SUPERVISION IF ALL OF THE FOLLOWING CONDITIONS ARE
2 MET:

3 (i) THE COVERED FACILITY, AT ITS OWN EXPENSE AND BEFORE THE
4 INDIVIDUAL HAS DIRECT ACCESS TO OR PROVIDES DIRECT SERVICES TO
5 PATIENTS OR RESIDENTS OF THE COVERED FACILITY, CONDUCTS A SEARCH OF
6 PUBLIC RECORDS ON THAT INDIVIDUAL THROUGH THE INTERNET CRIMINAL
7 HISTORY ACCESS TOOL MAINTAINED BY THE DEPARTMENT OF STATE POLICE
8 AND THE RESULTS OF THAT SEARCH DO NOT UNCOVER ANY INFORMATION THAT
9 WOULD INDICATE THAT THE INDIVIDUAL IS NOT ELIGIBLE TO HAVE REGULAR
10 DIRECT ACCESS TO OR PROVIDE DIRECT SERVICES TO PATIENTS OR
11 RESIDENTS UNDER THIS SECTION.

12 (ii) BEFORE THE INDIVIDUAL HAS DIRECT ACCESS TO OR PROVIDES
13 DIRECT SERVICES TO PATIENTS OR RESIDENTS OF THE COVERED FACILITY,
14 THE INDIVIDUAL SIGNS A STATEMENT IN WRITING THAT HE OR SHE HAS
15 RESIDED IN THIS STATE WITHOUT INTERRUPTION FOR AT LEAST THE
16 IMMEDIATELY PRECEDING 12-MONTH PERIOD.

17 (iii) IF APPLICABLE, THE INDIVIDUAL PROVIDES TO THE DEPARTMENT
18 OF STATE POLICE A SET OF FINGERPRINTS ON OR BEFORE THE EXPIRATION
19 OF 10 BUSINESS DAYS FOLLOWING THE DATE THE INDIVIDUAL WAS
20 CONDITIONALLY EMPLOYED OR GRANTED CONDITIONAL CLINICAL PRIVILEGES
21 UNDER THIS SUBSECTION.

22 (6) The department shall develop and distribute a model form
23 for the ~~statement~~ **STATEMENTS** required under subsection (5) (b) **AND**
24 (C). The department shall make the model form available to ~~health~~
25 **COVERED** facilities ~~or agencies subject to this section~~ upon request
26 at no charge.

27 (7) If an individual is employed as a conditional employee or

1 is granted conditional clinical privileges under subsection (5),
2 and the **INFORMATION UNDER SUBSECTION (3) OR** report ~~described in~~
3 **UNDER** subsection (4) does not confirm the individual's statement
4 under subsection (5) (b) (i) to (iii), the ~~health-COVERED~~ facility ~~or~~
5 ~~agency~~ shall terminate the individual's employment or clinical
6 privileges as required by subsection (1).

7 (8) An individual who knowingly provides false information
8 regarding his or her identity, criminal convictions, or
9 substantiated findings on a statement described in subsection
10 (5) (b) (i) to (iii) is guilty of a misdemeanor punishable by
11 imprisonment for not more than 93 days or a fine of not more than
12 \$500.00, or both.

13 (9) A ~~health-STAFFING AGENCY OR COVERED~~ facility ~~or agency~~
14 ~~that is a nursing home, county medical care facility, hospice,~~
15 ~~hospital that provides swing bed services, home for the aged, or~~
16 ~~home health agency~~ shall use criminal history record information
17 obtained under subsection **(3) OR** (4) only for the purpose of
18 evaluating an applicant's qualifications for employment, an
19 independent contract, or clinical privileges in the position for
20 which he or she has applied and for the purposes of subsections (5)
21 and (7). A ~~health-STAFFING AGENCY OR COVERED~~ facility ~~or agency~~ ~~or~~
22 an employee of the ~~health-STAFFING AGENCY OR COVERED~~ facility ~~or~~
23 ~~agency~~ shall not disclose criminal history record information
24 obtained under subsection **(3) OR** (4) to a person who is not
25 directly involved in evaluating the applicant's qualifications for
26 employment, an independent contract, or clinical privileges. An
27 individual who knowingly uses or disseminates the criminal history

1 record information obtained under subsection (3) OR (4) in
2 violation of this subsection is guilty of a misdemeanor punishable
3 by imprisonment for not more than 93 days or a fine of not more
4 than \$1,000.00, or both. ~~Upon written request from another health~~
5 ~~facility or agency, psychiatric facility or intermediate care~~
6 ~~facility for people with mental retardation, or adult foster care~~
7 ~~facility that is considering employing, independently contracting~~
8 ~~with, or granting clinical privileges to an individual, a health~~
9 ~~facility or agency that has obtained criminal history record~~
10 ~~information under this section on that individual shall, with the~~
11 ~~consent of the applicant, share the information with the requesting~~
12 ~~health facility or agency, psychiatric facility or intermediate~~
13 ~~care facility for people with mental retardation, or adult foster~~
14 ~~care facility.~~ Except for a knowing or intentional release of false
15 information, a health **STAFFING AGENCY OR COVERED** facility ~~or agency~~
16 has no liability in connection with a criminal ~~background~~ **HISTORY**
17 check conducted ~~under~~ **IN COMPLIANCE WITH** this section or the
18 release of criminal history record information under this
19 subsection.

20 (10) UPON CONSENT OF AN APPLICANT AS REQUIRED IN SUBSECTION
21 (3) AND UPON REQUEST FROM A STAFFING AGENCY OR COVERED FACILITY
22 THAT HAS MADE A GOOD FAITH OFFER OF EMPLOYMENT OR AN INDEPENDENT
23 CONTRACT OR CLINICAL PRIVILEGES TO THE APPLICANT, THE RELEVANT
24 LICENSING OR REGULATORY DEPARTMENT SHALL REVIEW THE CRIMINAL
25 HISTORY RECORD INFORMATION, IF ANY, AND NOTIFY THE REQUESTING
26 STAFFING AGENCY OR COVERED FACILITY OF THE INFORMATION IN THE
27 MANNER PRESCRIBED IN SUBSECTION (4). UNTIL THE FEDERAL BUREAU OF

1 INVESTIGATION IMPLEMENTS AN AUTOMATIC NOTIFICATION SYSTEM SIMILAR
2 TO THE SYSTEM REQUIRED OF THE STATE POLICE UNDER SUBSECTION (13)
3 AND FEDERAL REGULATIONS ALLOW THE FEDERAL CRIMINAL RECORD TO BE
4 USED FOR SUBSEQUENT AUTHORIZED USES, AS DETERMINED IN AN ORDER
5 ISSUED BY THE DEPARTMENT, A STAFFING AGENCY OR COVERED HEALTH
6 FACILITY MAY RELY ON THE CRIMINAL HISTORY RECORD INFORMATION
7 PROVIDED BY THE RELEVANT LICENSING OR REGULATORY DEPARTMENT UNDER
8 THIS SUBSECTION AND A REQUEST TO THE FEDERAL BUREAU OF
9 INVESTIGATION TO MAKE A SUBSEQUENT DETERMINATION OF THE EXISTENCE
10 OF ANY NATIONAL CRIMINAL HISTORY PERTAINING TO THE APPLICANT IS NOT
11 NECESSARY IF ALL OF THE FOLLOWING REQUIREMENTS ARE MET:

12 (A) THE CRIMINAL HISTORY CHECK WAS CONDUCTED DURING THE
13 IMMEDIATELY PRECEDING 12-MONTH PERIOD.

14 (B) THE APPLICANT HAS BEEN CONTINUOUSLY EMPLOYED BY THE
15 STAFFING AGENCY OR A COVERED FACILITY, ADULT FOSTER CARE FACILITY,
16 OR MENTAL HEALTH FACILITY SINCE THE CRIMINAL HISTORY CHECK WAS
17 CONDUCTED IN COMPLIANCE WITH THIS SECTION OR MEETS THE CONTINUOUS
18 EMPLOYMENT REQUIREMENT OF THIS SUBDIVISION OTHER THAN BEING ON
19 LAYOFF STATUS FOR LESS THAN 1 YEAR FROM A COVERED FACILITY, ADULT
20 FOSTER CARE FACILITY, OR MENTAL HEALTH FACILITY.

21 (C) THE APPLICANT CAN PROVIDE EVIDENCE ACCEPTABLE TO THE
22 RELEVANT LICENSING OR REGULATORY DEPARTMENT THAT HE OR SHE HAS BEEN
23 A RESIDENT OF THIS STATE FOR THE IMMEDIATELY PRECEDING 12-MONTH
24 PERIOD.

25 (11) ~~(10)~~As a condition of continued employment, each
26 employee, independent contractor, or individual granted clinical
27 privileges shall do each of the following:

1 (a) Agree in writing to report to the ~~health~~**STAFFING AGENCY**
2 **OR COVERED** facility ~~or agency~~ immediately upon being arraigned for
3 1 or more of the criminal offenses listed in subsection (1)(a) to
4 (g), upon being convicted of 1 or more of the criminal offenses
5 listed in subsection (1)(a) to (g), upon becoming the subject of an
6 order or disposition described under subsection (1)(h), and upon
7 being the subject of a substantiated finding of neglect, abuse, or
8 misappropriation of property as described in subsection (1)(i).
9 Reporting of an arraignment under this subdivision is not cause for
10 termination or denial of employment.

11 (b) If a set of fingerprints is not already on file with the
12 department of state police, provide the department of state police
13 with a set of fingerprints.

14 (12) ~~(11)~~—In addition to sanctions set forth in section 20165,
15 a licensee, owner, administrator, or operator of a ~~nursing home,~~
16 ~~county medical care facility, hospice, hospital that provides swing~~
17 ~~bed services, home for the aged, or home health agency~~**STAFFING**
18 **AGENCY OR COVERED FACILITY** who knowingly and willfully fails to
19 conduct the criminal history checks as required under this section
20 is guilty of a misdemeanor punishable by imprisonment for not more
21 than 1 year or a fine of not more than \$5,000.00, or both.

22 (13) ~~(12)~~—In collaboration with the department of state
23 police, the department of ~~information~~ technology, **MANAGEMENT, AND**
24 **BUDGET** shall establish **AND MAINTAIN** an automated fingerprint
25 identification system database that would allow the department of
26 state police to store and maintain all fingerprints submitted under
27 this section and would provide for an automatic notification if and

1 when a subsequent criminal arrest fingerprint card submitted into
2 the system matches a set of fingerprints previously submitted ~~in~~
3 ~~accordance with~~ **UNDER** this section. Upon such notification, the
4 department of state police shall immediately notify the department
5 and the department shall immediately contact ~~the~~ **EACH** respective
6 ~~health~~ **STAFFING AGENCY OR COVERED** facility ~~or agency~~ with which
7 that individual is associated. Information in the database
8 established under this subsection is confidential, is not subject
9 to disclosure under the freedom of information act, 1976 PA 442,
10 MCL 15.231 to 15.246, and shall not be disclosed to any person
11 except for purposes of this act or for law enforcement purposes.

12 ~~—— (13) On or before April 1, 2009, the department shall submit a~~
13 ~~written report to the legislature outlining a plan to cover the~~
14 ~~costs of the criminal history checks required under this section if~~
15 ~~federal funding is no longer available or is inadequate to cover~~
16 ~~those costs.~~

17 (14) The department ~~and the department of state police~~ shall
18 maintain an electronic web-based system to assist ~~those health~~
19 **STAFFING AGENCIES AND COVERED** facilities ~~and agencies~~ required to
20 check relevant registries and conduct criminal history checks of
21 its employees, ~~and independent contractors,~~ **AND INDIVIDUALS GRANTED**
22 **PRIVILEGES** and to provide for an automated notice to those ~~health~~
23 **STAFFING AGENCIES AND COVERED** facilities ~~or agencies~~ for those
24 individuals inputted in the system who, since the initial **CRIMINAL**
25 **HISTORY** check, have been convicted of a disqualifying offense or
26 have been the subject of a substantiated finding of abuse, neglect,
27 or misappropriation of property. **THE DEPARTMENT MAY CHARGE A**

1 STAFFING AGENCY A 1-TIME SET-UP FEE OF UP TO \$100.00 FOR ACCESS TO
2 THE ELECTRONIC WEB-BASED SYSTEM UNDER THIS SECTION.

3 (15) As used in this section:

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

7 (B) "CONVICTED" MEANS EITHER OF THE FOLLOWING:

8 (i) FOR A CRIME THAT IS NOT A RELEVANT CRIME, A FINAL
9 CONVICTION, THE PAYMENT OF A FINE, A PLEA OF GUILTY OR NOLO
10 CONTENDERE IF ACCEPTED BY THE COURT, OR A FINDING OF GUILT FOR A
11 CRIMINAL LAW VIOLATION OR A JUVENILE ADJUDICATION OR DISPOSITION BY
12 THE JUVENILE DIVISION OF PROBATE COURT OR FAMILY DIVISION OF
13 CIRCUIT COURT FOR A VIOLATION THAT IF COMMITTED BY AN ADULT WOULD
14 BE A CRIME.

15 (ii) FOR A RELEVANT CRIME DESCRIBED UNDER 42 USC 1320A-7(A),
16 CONVICTED MEANS THAT TERM AS DEFINED IN 42 USC 1320A-7.

17 (C) "COVERED FACILITY" MEANS A HEALTH FACILITY OR AGENCY THAT
18 IS A NURSING HOME, COUNTY MEDICAL CARE FACILITY, HOSPICE, HOSPITAL
19 THAT PROVIDES SWING BED SERVICES, HOME FOR THE AGED, OR HOME HEALTH
20 AGENCY.

21 (D) "CRIMINAL HISTORY CHECK CONDUCTED IN COMPLIANCE WITH THIS
22 SECTION" INCLUDES A CRIMINAL HISTORY CHECK CONDUCTED UNDER THIS
23 SECTION, UNDER SECTION 134A OF THE MENTAL HEALTH CODE, 1974 PA 258,
24 MCL 330.1134A, OR UNDER SECTION 34B OF THE ADULT FOSTER CARE
25 FACILITY LICENSING ACT, 1979 PA 218, MCL 400.734B.

26 (E) ~~(b)~~—"Direct access" means access to a patient or resident
27 or to a patient's or resident's property, financial information,

1 medical records, treatment information, or any other identifying
2 information.

3 (F) ~~(e)~~—"Home health agency" means a person certified by
4 medicare whose business is to provide to individuals in their
5 places of residence other than in a hospital, nursing home, or
6 county medical care facility 1 or more of the following services:
7 nursing services, therapeutic services, social work services,
8 homemaker services, home health aide services, or other related
9 services.

10 (G) ~~(d)~~—"Independent contract" means a contract entered into
11 by a ~~health-COVERED~~ facility ~~or agency~~ with an individual who
12 provides the contracted services independently or a contract
13 entered into by a ~~health-COVERED~~ facility ~~or agency~~ with an
14 ~~organization or agency that employs or contracts with an individual~~
15 ~~after complying~~ **A STAFFING AGENCY THAT COMPLIES** with the
16 requirements of this section to provide the contracted services to
17 the ~~health-COVERED~~ facility ~~or agency~~ on behalf of the ~~organization~~
18 ~~or STAFFING~~ agency.

19 (H) ~~(e)~~—"Medicare" means benefits under the federal medicare
20 program established under title XVIII of the social security act,
21 42 USC 1395 to ~~1395hhh~~ **1395III**.

22 (I) **"MENTAL HEALTH FACILITY" MEANS A PSYCHIATRIC FACILITY OR**
23 **INTERMEDIATE CARE FACILITY FOR PEOPLE WITH MENTAL RETARDATION UNDER**
24 **THE MENTAL HEALTH CODE, 1974 PA 258, MCL 330.1001 TO 330.2106.**

25 (J) **"STAFFING AGENCY" MEANS AN ENTITY THAT RECRUITS CANDIDATES**
26 **AND PROVIDES TEMPORARY AND PERMANENT QUALIFIED STAFFING FOR COVERED**
27 **FACILITIES, INCLUDING INDEPENDENT CONTRACTORS.**

1 (K) "UNDER THE FACILITY'S CONTROL" MEANS AN INDIVIDUAL
2 EMPLOYED BY OR UNDER INDEPENDENT CONTRACT WITH A COVERED FACILITY
3 FOR WHOM THE COVERED FACILITY DOES BOTH OF THE FOLLOWING:

4 (i) DETERMINES WHETHER THE INDIVIDUAL WHO HAS ACCESS TO
5 PATIENTS OR RESIDENTS MAY PROVIDE CARE, TREATMENT, OR OTHER SIMILAR
6 SUPPORT SERVICE FUNCTIONS TO PATIENTS OR RESIDENTS SERVED BY THE
7 COVERED FACILITY.

8 (ii) DIRECTS OR OVERSEES 1 OR MORE OF THE FOLLOWING:

9 (A) THE POLICY OR PROCEDURES THE INDIVIDUAL MUST FOLLOW IN
10 PERFORMING HIS OR HER DUTIES.

11 (B) THE TASKS PERFORMED BY THE INDIVIDUAL.

12 (C) THE INDIVIDUAL'S WORK SCHEDULE.

13 (D) THE SUPERVISION OR EVALUATION OF THE INDIVIDUAL'S WORK OR
14 JOB PERFORMANCE, INCLUDING IMPOSING DISCIPLINE OR GRANTING
15 PERFORMANCE AWARDS.

16 (E) THE COMPENSATION THE INDIVIDUAL RECEIVES FOR PERFORMING
17 HIS OR HER DUTIES.

18 (F) THE CONDITIONS UNDER WHICH THE INDIVIDUAL PERFORMS HIS OR
19 HER DUTIES.

20 Enacting section 1. This amendatory act does not take effect
21 unless all of the following bills of the 95th Legislature are
22 enacted into law:

23 (a) Senate Bill No. 1254.

24 (b) Senate Bill No. 1255.