

HOUSE BILL NO. 4045

January 26, 2023, Introduced by Reps. Schmaltz, Roth, Kunse, Meerman, DeSana, Schuette and Harris and referred to the Committee on Judiciary.

A bill to create the volunteer employee criminal history system program; to impose a fee for conducting a national and state criminal history record information; and to provide for the powers and duties of certain state and local governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "volunteer employee
2 criminal history system act".

3 Sec. 2. As used in this act:

1 (a) "Care or care placement services" means the provision of
2 care, treatment, education, training, instruction, supervision, or
3 recreation to a child, an elderly individual, or individual with a
4 disability.

5 (b) "Child" means an individual who is less than 18 years of
6 age and is not emancipated by operation of law as provided in
7 section 4 of 1968 PA 293, MCL 722.4.

8 (c) "Covered individual" means an individual who meets any of
9 the following requirements:

10 (i) Is employed by a qualified entity and has, seeks to have,
11 or may have supervised or unsupervised access to a child, an
12 elderly individual, or individual with a disability for whom the
13 qualified entity provides care or care placement services.

14 (ii) Is a volunteer of a qualified entity and has, seeks to
15 have, or may have supervised or unsupervised access to a child, an
16 elderly individual, or individual with a disability for whom the
17 qualified entity provides care or care placement services.

18 (iii) Owns, operates, or seeks to own or operate a qualified
19 entity.

20 (d) "Criminal history record information" means that term as
21 defined in section 1a of 1925 PA 289, MCL 28.241a.

22 (e) "Department" means the department of state police.

23 (f) "Elderly individual" means an individual who is 65 years
24 of age or older.

25 (g) "Individual with a disability" means an individual with a
26 mental or physical impairment who requires assistance to perform 1
27 or more daily living tasks.

28 (h) "Program" means the volunteer employee criminal history
29 system program created in section 3.

1 (i) "Qualified entity" means a business or organization,
2 whether public, private, operated for profit, or operated not for
3 profit that provides care or care placement services. A qualified
4 entity includes a business or organization that licenses or
5 certifies others to provide care or care placement services.

6 (j) "Rap back program" means a state or federal record of
7 arrest and prosecution background program that enables qualified
8 entities to receive ongoing status notifications of any criminal
9 history reported on covered individuals whose fingerprints are
10 registered in the system thereby eliminating the need for repeated
11 background checks on covered individuals by qualified entities.

12 Sec. 3. (1) The volunteer employee criminal history system
13 program is created in the department for the purpose of authorizing
14 a national and state criminal history record information of a
15 qualified entity's covered individuals.

16 (2) The department shall do both of the following:

17 (a) Develop the application, approval, and compliance process
18 and standards necessary to operate and manage the program.

19 (b) Develop the application form and any other forms required
20 for a qualified entity's registration and participation in the
21 program.

22 Sec. 4. (1) A qualified entity may submit a request to the
23 department for a covered individual's national and state criminal
24 history record information under the program. The request submitted
25 under this subsection, for each covered individual, must include a
26 copy of the covered individual's signed and submitted statement
27 required under section 6(3) and the covered individual's
28 fingerprints.

29 (2) A qualified entity that submits a request for a covered

1 individual's national and state criminal history record information
2 under subsection (1) shall register with the department. As part of
3 the registration process, the qualified entity shall agree to
4 comply with state and federal law, including, but not limited to,
5 the national child protection act of 1993, 34 USC 40101 to 40104.

6 (3) The department may, in its sole discretion, audit a
7 registered qualified entity to ensure that the registered qualified
8 entity is complying with state and federal law, including, but not
9 limited to, the national child protection act of 1993, 34 USC 40101
10 to 40104.

11 Sec. 5. A qualified entity may participate in a rap back
12 program. A qualified entity that participates in a rap back program
13 shall notify a covered individual that is subject to a national and
14 state criminal history record information under this act that the
15 individual's fingerprints may be retained by the department's
16 automated fingerprint identification system and the Federal Bureau
17 of Investigation for all purposes authorized for fingerprint
18 submissions subject to ongoing monitoring.

19 Sec. 6. (1) A qualified entity may require a covered
20 individual to submit the individual's fingerprints under this
21 section to determine whether the national and state criminal
22 history record information shows that the covered individual has
23 been convicted of or is under pending indictment for any crime that
24 bears on the individual's fitness to be responsible for the safety
25 and well-being of a child, an elderly individual, or individual
26 with a disability.

27 (2) The determination of the covered individual's fitness must
28 be made solely by the qualified entity. This section does not
29 require the department to make a fitness determination on behalf of

1 a qualified entity. The national and state criminal history record
2 information received under this section may only be used by the
3 qualified entity for the purpose of determining the fitness of a
4 covered individual, as described in this section.

5 (3) A qualified entity may not submit a request for a national
6 and state criminal history record information to the department
7 under this section unless the covered individual has provided the
8 individual's fingerprints and a completed and signed written
9 statement to the qualified entity that includes, but is not limited
10 to, all of the following:

11 (a) The name, address, and date of birth of the covered
12 individual as it appears on a valid identification document. As
13 used in this subdivision, "identification document" means a
14 document that is intended or commonly accepted for the purpose of
15 identifying an individual and is made or issued by or under the
16 authority of the United States government, a state, political
17 subdivision of a state, sponsoring entity of an event designated as
18 a special event of national significance, foreign government,
19 political subdivision of a foreign government, or an international
20 governmental or an international quasi-governmental organization.

21 (b) Notice that the covered individual's fingerprints may be
22 used to conduct a national and state criminal history record
23 information of the covered individual and that the criminal history
24 record may be used by the qualified entity to deny the individual's
25 supervised or unsupervised access to a child, an elderly
26 individual, or individual with a disability for whom the qualified
27 entity provides care or care placement services.

28 (c) A waiver permitting the qualified entity to request and
29 receive the national and state criminal history record information

1 of a covered individual for the purpose of determining the
2 individual's fitness to provide care or care placement services for
3 a child, an elderly individual, or individual with a disability.

4 (d) A disclosure stating whether the covered individual has
5 ever been convicted or is the subject of pending charges for a
6 criminal offense and, if convicted, a description of the offense
7 and the result of the conviction.

8 (e) Notice of the covered individual's right to obtain a copy
9 of any background screening report, including the national and
10 state criminal history record information, if any, contained in the
11 report, and of the right to challenge the accuracy or completeness
12 of any information contained in the report and to obtain a prompt
13 determination as to the validity of the challenge before a final
14 determination regarding the individual's fitness is made by the
15 qualified entity reviewing the national and state criminal history
16 record information. A covered individual may only challenge the
17 information contained in the national and state criminal history
18 record information as provided in 28 CFR 16.34.

19 (4) A qualified entity shall maintain in its records the
20 statement provided under subsection (3) that is completed and
21 signed by the covered individual.

22 Sec. 7. (1) The department shall store and retain all
23 fingerprints submitted under this act in an automated fingerprint
24 identification system database that searches against latent
25 fingerprints. The department shall forward all fingerprints
26 submitted to it under this section to the Federal Bureau of
27 Investigation to be retained in the next generation identification
28 system or its successor system.

29 (2) The department shall provide directly to the qualified

1 entity the state criminal history record information that is not
2 exempt from disclosure under section 2a of 1925 PA 289, MCL
3 28.242a, or otherwise confidential under state or federal law. The
4 department shall provide directly to the qualified entity the
5 national and state criminal history record information as
6 authorized by law and the covered individual's signed and written
7 statement required under section 6(3).

8 Sec. 8. The department may charge a fee for a national and
9 state criminal history record information conducted under this act
10 that does not exceed the actual and reasonable cost of conducting
11 the check, plus the amount prescribed by the Federal Bureau of
12 Investigation for the national criminal history record information
13 in compliance with the national child protection act of 1993, 34
14 USC 40101 to 40104.

15 Sec. 9. If federal or state law, other than this section,
16 requires a qualified entity to apply screening criteria to the
17 national and state criminal history record information of a covered
18 individual, including any right to contest or request an exemption
19 from disqualification, this section does not apply and the
20 qualified entity shall apply the screening criteria under that
21 other law to the national and state criminal history record
22 information received for a covered individual that is subject to
23 the required screening.

24 Sec. 10. A qualified entity is not liable for damages solely
25 for failing to obtain the national and state criminal history
26 record information authorized under this act with respect to a
27 covered individual. This state, a political subdivision of this
28 state, or any agency, officer, or employee of this state or a
29 political subdivision is not liable for damages for providing the

1 national and state criminal history record information requested
2 under this act.

3 Sec. 11. This program does not create an entitlement or right
4 to use the program. The department is not required to administer
5 this program unless the legislature appropriates sufficient funds
6 for the program. The department may administer the program subject
7 to any limitations the department considers necessary or
8 appropriate in the absence of the legislature appropriating funds
9 for the program.