

**SUBSTITUTE FOR  
HOUSE BILL NO. 4727**

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
(MCL 333.1101 to 333.25211) by adding section 20173.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1        SEC. 20173. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION  
2 (2), A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY  
3 MEDICAL CARE FACILITY, OR HOME FOR THE AGED SHALL NOT EMPLOY,  
4 INDEPENDENTLY CONTRACT WITH, OR GRANT CLINICAL PRIVILEGES TO AN  
5 INDIVIDUAL WHO REGULARLY PROVIDES DIRECT SERVICES TO PATIENTS OR  
6 RESIDENTS IN THE HEALTH FACILITY OR AGENCY AFTER THE EFFECTIVE  
7 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION IF THE INDI-  
8 VIDUAL HAS BEEN CONVICTED OF 1 OR MORE OF THE FOLLOWING:

9        (A) A FELONY OR AN ATTEMPT OR CONSPIRACY TO COMMIT A FELONY  
10 WITHIN THE 15 YEARS IMMEDIATELY PRECEDING THE DATE OF APPLICATION

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1 FOR EMPLOYMENT OR CLINICAL PRIVILEGES OR THE DATE OF THE  
2 EXECUTION OF THE INDEPENDENT CONTRACT.

3 (B) A MISDEMEANOR INVOLVING ABUSE, NEGLECT, ASSAULT, BAT-  
4 TERY, OR CRIMINAL SEXUAL CONDUCT OR INVOLVING FRAUD OR THEFT  
5 AGAINST A VULNERABLE ADULT AS THAT TERM IS DEFINED IN  
6 SECTION 145M OF THE MICHIGAN PENAL CODE, 1931 PA 328,  
7 MCL 750.145M, OR A STATE OR FEDERAL CRIME THAT IS SUBSTANTIALLY  
8 SIMILAR TO A MISDEMEANOR DESCRIBED IN THIS SUBDIVISION, WITHIN  
9 THE 10 YEARS IMMEDIATELY PRECEDING THE DATE OF APPLICATION FOR  
10 EMPLOYMENT OR CLINICAL PRIVILEGES OR THE DATE OF THE EXECUTION OF  
11 THE INDEPENDENT CONTRACT.

12 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION AND SUB-  
13 SECTION (5), A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME,  
14 COUNTY MEDICAL CARE FACILITY, OR HOME FOR THE AGED SHALL NOT  
15 EMPLOY, INDEPENDENTLY CONTRACT WITH, OR GRANT PRIVILEGES TO AN  
16 INDIVIDUAL AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT  
17 ADDED THIS SECTION UNTIL THE HEALTH FACILITY OR AGENCY COMPLIES  
18 WITH SUBSECTION (4). THIS SUBSECTION AND SUBSECTION (1) DO NOT  
19 APPLY TO AN INDIVIDUAL WHO IS EMPLOYED BY, UNDER INDEPENDENT CON-  
20 TRACT TO, OR GRANTED CLINICAL PRIVILEGES IN A HEALTH FACILITY OR  
21 AGENCY BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED  
22 THIS SUBSECTION.

23 (3) AN INDIVIDUAL WHO APPLIES FOR EMPLOYMENT EITHER AS AN  
24 EMPLOYEE OR AS AN INDEPENDENT CONTRACTOR OR FOR CLINICAL PRIVI-  
25 LEGES WITH A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME,  
26 COUNTY MEDICAL CARE FACILITY, OR HOME FOR THE AGED AND HAS  
27 RECEIVED A GOOD FAITH OFFER OF EMPLOYMENT, AN INDEPENDENT

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1 CONTRACT, OR CLINICAL PRIVILEGES FROM THE HEALTH FACILITY OR  
2 AGENCY SHALL GIVE WRITTEN CONSENT AT THE TIME OF APPLICATION FOR  
3 THE DEPARTMENT OF STATE POLICE OR ANOTHER AUTHORIZED LAW ENFORCE-  
4 MENT AGENCY TO CONDUCT A CRIMINAL HISTORY CHECK UNDER SUBSECTION  
5 (4). IF THE DEPARTMENT OF STATE POLICE OR OTHER AUTHORIZED LAW  
6 ENFORCEMENT AGENCY HAS CONDUCTED A CRIMINAL HISTORY CHECK ON THE  
7 APPLICANT WITHIN THE 12 MONTHS IMMEDIATELY PRECEDING THE DATE OF  
8 APPLICATION, THE HEALTH FACILITY OR AGENCY MAY USE A CERTIFIED  
9 COPY OF THAT CRIMINAL HISTORY CHECK INSTEAD OF OBTAINING WRITTEN  
10 CONSENT AND REQUESTING A NEW CRIMINAL HISTORY CHECK UNDER THIS  
11 SUBSECTION AND SUBSECTION (4). IF THE APPLICANT IS APPLYING FOR  
12 EMPLOYMENT AS AN INDEPENDENT CONTRACTOR AND IS USING A PRIOR  
13 CRIMINAL HISTORY CHECK AS DESCRIBED IN THIS SUBSECTION, THE  
14 HEALTH FACILITY OR AGENCY SHALL ACCEPT THE CERTIFIED COPY OF THE  
15 CRIMINAL HISTORY CHECK ONLY FROM THE FIRM OR AGENCY THAT EMPLOYS  
16 THE INDIVIDUAL OR FROM THE DEPARTMENT OF STATE POLICE OR OTHER  
17 AUTHORIZED LAW ENFORCEMENT AGENCY.

18 (4) UPON RECEIPT OF THE WRITTEN CONSENT REQUIRED UNDER SUB-  
19 SECTION (3), A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME,  
20 COUNTY MEDICAL CARE FACILITY, OR HOME FOR THE AGED THAT HAS MADE  
21 A GOOD FAITH OFFER OF EMPLOYMENT OR AN INDEPENDENT CONTRACT OR  
22 CLINICAL PRIVILEGES TO AN APPLICANT SHALL MAKE A REQUEST TO THE  
23 DEPARTMENT OF STATE POLICE OR ANOTHER AUTHORIZED LAW ENFORCEMENT  
24 AGENCY TO CONDUCT A CRIMINAL HISTORY CHECK ON THE APPLICANT. THE  
25 REQUEST SHALL BE MADE ON A FORM AND IN A MANNER PRESCRIBED BY THE  
26 DEPARTMENT OF STATE POLICE OR BY THE OTHER AUTHORIZED LAW  
27 ENFORCEMENT AGENCY. IF THERE IS A CHARGE FOR CONDUCTING THE

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1 CRIMINAL HISTORY CHECK, THE HEALTH FACILITY OR AGENCY REQUESTING  
2 THE CRIMINAL HISTORY CHECK SHALL PAY THE COST OF THE CHARGE. THE  
3 HEALTH FACILITY OR AGENCY SHALL NOT SEEK REIMBURSEMENT FOR THE  
4 CHARGE FROM THE INDIVIDUAL WHO IS THE SUBJECT OF THE CRIMINAL  
5 HISTORY CHECK. THE DEPARTMENT OF STATE POLICE OR OTHER AUTHO-  
6 RIZED LAW ENFORCEMENT AGENCY SHALL CONDUCT A CRIMINAL HISTORY  
7 CHECK ON THE INDIVIDUAL NAMED IN THE REQUEST. THE DEPARTMENT OF  
8 STATE POLICE OR OTHER AUTHORIZED LAW ENFORCEMENT AGENCY SHALL  
9 PROVIDE THE HEALTH FACILITY OR AGENCY WITH A WRITTEN REPORT OF  
10 THE CRIMINAL HISTORY CHECK. THE REPORT SHALL CONTAIN ANY CRIMI-  
11 NAL HISTORY RECORD INFORMATION ON THE APPLICANT MAINTAINED BY THE  
12 DEPARTMENT OF STATE POLICE OR OTHER AUTHORIZED LAW ENFORCEMENT  
13 AGENCY. THE DEPARTMENT OF STATE POLICE OR OTHER AUTHORIZED LAW  
14 ENFORCEMENT AGENCY SHALL CERTIFY EACH REPORT REQUIRED UNDER THIS  
15 SUBSECTION WITH AN OFFICIAL SEAL OR OTHER SYMBOL OF  
16 AUTHENTICITY.

17 (5) IF A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME,  
18 COUNTY MEDICAL CARE FACILITY, OR HOME FOR THE AGED DETERMINES IT  
19 NECESSARY TO EMPLOY OR GRANT CLINICAL PRIVILEGES TO AN APPLICANT  
20 BEFORE RECEIVING THE RESULTS OF THE APPLICANT'S CRIMINAL HISTORY  
21 CHECK UNDER SUBSECTION (4), THE HEALTH FACILITY OR AGENCY MAY  
22 CONDITIONALLY EMPLOY OR GRANT CONDITIONAL CLINICAL PRIVILEGES TO  
23 THE INDIVIDUAL IF ALL OF THE FOLLOWING APPLY:

24 (A) THE HEALTH FACILITY OR AGENCY REQUESTS THE CRIMINAL HIS-  
25 TORY CHECK UNDER SUBSECTION (4) BEFORE CONDITIONALLY EMPLOYING OR  
26 CONDITIONALLY GRANTING CLINICAL PRIVILEGES TO THE INDIVIDUAL.

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1 (B) THE INDIVIDUAL SIGNS A STATEMENT IN WRITING THAT  
2 INDICATES ALL OF THE FOLLOWING:

3 (i) THAT HE OR SHE HAS NOT BEEN CONVICTED OF 1 OR MORE OF  
4 THE CRIMES THAT ARE DESCRIBED IN SUBSECTION (1)(A) AND (B) WITHIN  
5 THE APPLICABLE TIME PERIOD PRESCRIBED BY SUBSECTION (1)(A) AND  
6 (B).

7 (ii) THE INDIVIDUAL AGREES THAT, IF THE INFORMATION IN THE  
8 CRIMINAL HISTORY CHECK CONDUCTED UNDER SUBSECTION (4) DOES NOT  
9 CONFIRM THE INDIVIDUAL'S STATEMENT UNDER SUBPARAGRAPH (i), HIS OR  
10 HER EMPLOYMENT OR CLINICAL PRIVILEGES WILL BE TERMINATED BY THE  
11 HEALTH FACILITY OR AGENCY AS REQUIRED UNDER SUBSECTION (1).

12 (iii) THAT HE OR SHE UNDERSTANDS THE CONDITIONS DESCRIBED IN  
13 SUBPARAGRAPHS (i) AND (ii) THAT RESULT IN THE TERMINATION OF HIS  
14 OR HER EMPLOYMENT OR CLINICAL PRIVILEGES AND THAT THOSE CONDI-  
15 TIONS ARE GOOD CAUSE FOR TERMINATION.

16 (6) NOT LATER THAN 90 DAYS AFTER THE EFFECTIVE DATE OF THE  
17 AMENDATORY ACT THAT ADDED THIS SUBSECTION, THE DEPARTMENT SHALL  
18 DEVELOP AND DISTRIBUTE A MODEL FORM FOR THE STATEMENT REQUIRED  
19 UNDER SUBSECTION (5)(B). THE DEPARTMENT SHALL MAKE THE MODEL  
20 FORM AVAILABLE TO HEALTH FACILITIES OR AGENCIES UPON REQUEST AT  
21 NO CHARGE.

22 (7) IF AN INDIVIDUAL IS EMPLOYED AS A CONDITIONAL EMPLOYEE  
23 OR IS GRANTED CONDITIONAL CLINICAL PRIVILEGES UNDER SUBSECTION  
24 (5), AND THE REPORT DESCRIBED IN SUBSECTION (4) DOES NOT CONFIRM  
25 THE INDIVIDUAL'S STATEMENT UNDER SUBSECTION (5)(B)(i), THE HEALTH  
26 FACILITY OR AGENCY SHALL TERMINATE THE INDIVIDUAL'S EMPLOYMENT OR  
27 CLINICAL PRIVILEGES AS REQUIRED BY SUBSECTION (1).

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1 (8) AN INDIVIDUAL WHO KNOWINGLY PROVIDES FALSE INFORMATION  
2 REGARDING CRIMINAL CONVICTIONS ON A STATEMENT DESCRIBED IN SUB-  
3 SECTION (5)(B)(i) IS GUILTY OF A MISDEMEANOR PUNISHABLE BY  
4 IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR A FINE OF NOT MORE THAN  
5 \$500.00, OR BOTH.

6 (9) A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME,  
7 COUNTY MEDICAL CARE FACILITY, OR HOME FOR THE AGED SHALL USE  
8 CRIMINAL HISTORY RECORD INFORMATION OBTAINED UNDER SUBSECTION (4)  
9 OR (5) ONLY FOR THE PURPOSE OF EVALUATING AN APPLICANT'S QUALIFI-  
10 CATIONS FOR EMPLOYMENT, AN INDEPENDENT CONTRACT, OR CLINICAL  
11 PRIVILEGES IN THE POSITION FOR WHICH HE OR SHE HAS APPLIED AND  
12 FOR THE PURPOSES OF SUBSECTIONS (5) AND (7). A HEALTH FACILITY  
13 OR AGENCY OR AN EMPLOYEE OF THE HEALTH FACILITY OR AGENCY SHALL  
14 NOT DISCLOSE CRIMINAL HISTORY RECORD INFORMATION OBTAINED UNDER  
15 SUBSECTION (4) OR (5) TO A PERSON WHO IS NOT DIRECTLY INVOLVED IN  
16 EVALUATING THE APPLICANT'S QUALIFICATIONS FOR EMPLOYMENT, AN  
17 INDEPENDENT CONTRACT, OR CLINICAL PRIVILEGES.