



HOUSE BILL No. 5035

October 26, 1999, Introduced by Reps. Brewer, Kelly, LaForge, Frank, Neumann, Basham and Quarles and referred to the Committee on Health Policy.

A bill to amend 1974 PA 258, entitled
"Mental health code,"
(MCL 330.1001 to 330.2106) by adding section 137b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 137B. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION
2 (2), A FACILITY SHALL NOT EMPLOY, INDEPENDENTLY CONTRACT WITH, OR
3 GRANT CLINICAL PRIVILEGES TO AN INDIVIDUAL WHO REGULARLY PROVIDES
4 DIRECT SERVICES TO PATIENTS OR RESIDENTS IN THE FACILITY AFTER
5 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION
6 IF THE INDIVIDUAL HAS BEEN CONVICTED IN THIS STATE OF 1 OR MORE
7 OF THE FOLLOWING:

8 (A) A FELONY INVOLVING ABUSE, NEGLIGENCE, ASSAULT, BATTERY, OR
9 CRIMINAL SEXUAL CONDUCT OR INVOLVING FRAUD OR THEFT AGAINST A
10 VULNERABLE ADULT AS THAT TERM IS DEFINED IN SECTION 145M OF THE
11 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.145M, OR AN ATTEMPT OR

1 CONSPIRACY TO COMMIT SUCH A FELONY WITHIN THE 15 YEARS
2 IMMEDIATELY PRECEDING THE DATE OF APPLICATION FOR EMPLOYMENT OR
3 CLINICAL PRIVILEGES OR IMMEDIATELY PRECEDING THE DATE OF THE EXE-
4 CUTION OF THE CONTRACT.

5 (B) A MISDEMEANOR INVOLVING ABUSE, NEGLIGENCE, ASSAULT, BAT-
6 TERY, OR CRIMINAL SEXUAL CONDUCT OR INVOLVING FRAUD OR THEFT
7 AGAINST A VULNERABLE ADULT AS THAT TERM IS DEFINED IN
8 SECTION 145M OF THE MICHIGAN PENAL CODE, 1931 PA 328,
9 MCL 750.145M, WITHIN THE 10 YEARS IMMEDIATELY PRECEDING THE DATE
10 OF APPLICATION FOR EMPLOYMENT OR CLINICAL PRIVILEGES OR IMMEDI-
11 ATELY PRECEDING THE DATE OF THE EXECUTION OF THE CONTRACT.

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

21 (3) AN INDIVIDUAL WHO APPLIES FOR EMPLOYMENT EITHER AS AN
22 EMPLOYEE OR AS AN INDEPENDENT CONTRACTOR OR FOR CLINICAL PRIVI-
23 LEGES WITH A FACILITY SHALL GIVE WRITTEN CONSENT AT THE TIME OF
24 APPLICATION FOR THE DEPARTMENT OF STATE POLICE OR ANOTHER AUTHO-
25 RIZED LAW ENFORCEMENT AGENCY TO CONDUCT A CRIMINAL HISTORY CHECK
26 UNDER SUBSECTION (4). IF THE DEPARTMENT OF STATE POLICE OR OTHER
27 AUTHORIZED LAW ENFORCEMENT AGENCY HAS CONDUCTED A CRIMINAL

1 HISTORY CHECK ON THE APPLICANT WITHIN THE 6 MONTHS IMMEDIATELY
2 PRECEDING THE DATE OF APPLICATION, THE FACILITY MAY USE A CERTI-
3 FIED COPY OF THAT CRIMINAL HISTORY CHECK IN LIEU OF OBTAINING
4 WRITTEN CONSENT AND REQUESTING A NEW CRIMINAL HISTORY CHECK UNDER
5 THIS SUBSECTION AND SUBSECTION (4). IF THE APPLICANT IS APPLYING
6 FOR EMPLOYMENT AS AN INDEPENDENT CONTRACTOR AND IS USING A PRIOR
7 CRIMINAL HISTORY CHECK AS DESCRIBED IN THIS SUBSECTION, THE
8 FACILITY SHALL ACCEPT THE CERTIFIED COPY OF THE CRIMINAL HISTORY
9 CHECK ONLY FROM THE FIRM OR AGENCY THAT EMPLOYS THE INDIVIDUAL OR
10 FROM THE DEPARTMENT OF STATE POLICE OR OTHER AUTHORIZED LAW
11 ENFORCEMENT AGENCY.

12 (4) UPON RECEIPT OF THE WRITTEN CONSENT REQUIRED UNDER SUB-
13 SECTION (3), A FACILITY SHALL MAKE A REQUEST TO THE DEPARTMENT OF
14 STATE POLICE OR ANOTHER AUTHORIZED LAW ENFORCEMENT AGENCY TO CON-
15 DUCT A CRIMINAL HISTORY CHECK ON THE APPLICANT. THE REQUEST
16 SHALL BE MADE ON A FORM AND IN A MANNER PRESCRIBED BY THE DEPART-
17 MENT OF STATE POLICE OR BY THE OTHER AUTHORIZED LAW ENFORCEMENT
18 AGENCY. IF THERE IS A CHARGE FOR CONDUCTING THE CRIMINAL HISTORY
19 CHECK, THE APPLICANT WHO IS THE SUBJECT OF THE CRIMINAL HISTORY
20 CHECK SHALL PAY THE COST OF THE CHARGE. THE DEPARTMENT OF STATE
21 POLICE OR OTHER AUTHORIZED LAW ENFORCEMENT AGENCY SHALL CONDUCT A
22 CRIMINAL HISTORY CHECK ON THE INDIVIDUAL NAMED IN THE REQUEST.
23 THE DEPARTMENT OF STATE POLICE OR OTHER AUTHORIZED LAW ENFORCE-
24 MENT AGENCY SHALL PROVIDE THE FACILITY WITH A REPORT OF THE CRIM-
25 INAL HISTORY CHECK. THE REPORT SHALL CONTAIN ANY CRIMINAL HIS-
26 TORY RECORD INFORMATION ON THE APPLICANT MAINTAINED BY THE
27 DEPARTMENT OF STATE POLICE OR OTHER AUTHORIZED LAW ENFORCEMENT

1 AGENCY. THE DEPARTMENT OF STATE POLICE OR OTHER AUTHORIZED LAW
2 ENFORCEMENT AGENCY SHALL CERTIFY EACH REPORT WITH AN OFFICIAL
3 SEAL OR OTHER SYMBOL OF AUTHENTICITY.

4 (5) IF A FACILITY DETERMINES IT NECESSARY TO EMPLOY OR GRANT
5 CLINICAL PRIVILEGES TO AN APPLICANT BEFORE RECEIVING THE RESULTS
6 OF THE APPLICANT'S CRIMINAL HISTORY CHECK UNDER SUBSECTION (4),
7 THE FACILITY MAY EMPLOY OR GRANT CLINICAL PRIVILEGES TO THE INDI-
8 VIDUAL AS A CONDITIONAL EMPLOYEE OR CONDITIONAL STAFF MEMBER IF
9 ALL OF THE FOLLOWING APPLY:

10 (A) THE FACILITY REQUESTS THE CRIMINAL HISTORY CHECK UNDER
11 SUBSECTION (4) BEFORE CONDITIONALLY EMPLOYING OR GRANTING CLINI-
12 CAL PRIVILEGES TO THE INDIVIDUAL.

13 (B) THE INDIVIDUAL SIGNS A STATEMENT THAT HE OR SHE HAS NOT
14 BEEN CONVICTED OF 1 OR MORE OF THE CRIMES THAT ARE DESCRIBED IN
15 SUBSECTION (1)(A) AND (B), AND AGREEING THAT, IF THE CRIMINAL
16 HISTORY CHECK CONDUCTED UNDER SUBSECTION (4) IS NOT THE SAME AS
17 THE INDIVIDUAL'S STATEMENT UNDER THIS SUBDIVISION, HIS OR HER
18 EMPLOYMENT OR CLINICAL PRIVILEGES ARE TERMINABLE AT THE OPTION OF
19 THE FACILITY. NOT LATER THAN 90 DAYS AFTER THE EFFECTIVE DATE OF
20 THE AMENDATORY ACT THAT ADDED THIS SUBSECTION, THE DEPARTMENT, IN
21 COOPERATION WITH THE DEPARTMENT OF CONSUMER AND INDUSTRY SERV-
22 ICES, SHALL DEVELOP AND DISTRIBUTE A MODEL FORM FOR THE STATEMENT
23 REQUIRED UNDER THIS SUBDIVISION. THE DEPARTMENT SHALL MAKE THE
24 MODEL FORM AVAILABLE TO FACILITIES UPON REQUEST AT NO CHARGE.

25 (6) IF AN INDIVIDUAL IS EMPLOYED AS A CONDITIONAL EMPLOYEE
26 OR IS GRANTED CONDITIONAL STAFF PRIVILEGES UNDER SUBSECTION (5),
27 AND THE REPORT DESCRIBED IN SUBSECTION (4) IS SUBSTANTIALLY

1 DIFFERENT FROM THE INDIVIDUAL'S STATEMENT UNDER SUBSECTION
2 (5)(B), THE FACILITY MAY TERMINATE THE INDIVIDUAL'S EMPLOYMENT OR
3 CLINICAL PRIVILEGES. AN INDIVIDUAL WHO KNOWINGLY PROVIDES FALSE
4 INFORMATION REGARDING CRIMINAL CONVICTIONS ON A STATEMENT
5 DESCRIBED IN SUBSECTION (5)(B) IS GUILTY OF A MISDEMEANOR, PUN-
6 ISHABLE BY IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR A FINE OF
7 NOT MORE THAN \$500.00, OR BOTH.

8 (7) A FACILITY SHALL USE CRIMINAL HISTORY RECORD INFORMATION
9 OBTAINED UNDER SUBSECTION (4) OR (5) ONLY FOR THE PURPOSE OF
10 EVALUATING AN APPLICANT'S QUALIFICATIONS FOR CLINICAL PRIVILEGES
11 OR FOR EMPLOYMENT IN THE POSITION FOR WHICH HE OR SHE HAS APPLIED
12 AND FOR THE PURPOSES OF SUBSECTIONS (5) AND (6). A FACILITY OR
13 AN EMPLOYEE OF THE FACILITY SHALL NOT DISCLOSE CRIMINAL HISTORY
14 RECORD INFORMATION OBTAINED UNDER SUBSECTION (4) OR (5) TO A
15 PERSON WHO IS NOT DIRECTLY INVOLVED IN EVALUATING THE APPLICANT'S
16 QUALIFICATIONS FOR EMPLOYMENT OR CLINICAL PRIVILEGES.

17 Enacting section 1. This amendatory act takes effect
18 January 1, 2000.

19 Enacting section 2. This amendatory act does not take
20 effect unless all of the following bills of the 90th Legislature
21 are enacted into law:

22 (a) Senate Bill No. _____ or House Bill No. 5033(request
23 no. 03040'99).

24 (b) Senate Bill No. _____ or House Bill No. 5034(request
25 no. 03040'99 a).