

**SUBSTITUTE FOR
HOUSE BILL NO. 5168**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 16146, 16174, and 16245 (MCL 333.16146,
333.16174, and 333.16245), section 16146 as amended by 1988 PA 462,
section 16174 as amended by 2002 PA 643, and section 16245 as
amended by 1998 PA 109, and by adding sections 20173a and 20173b;
and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 16146. (1) A board shall grant a license or registration
2 to an applicant meeting the requirements for the license or
3 registration as prescribed in this article and the rules
4 promulgated under this article.

5 (2) A board which grants licenses may:

1 (a) Certify licensees in those health profession specialty
2 fields within its scope of practice which are established in this
3 article.

4 (b) Reclassify licenses on the basis of a determination that
5 the addition or removal of conditions or restrictions is
6 appropriate.

7 **(C) UPON GOOD CAUSE, REQUEST THAT A LICENSEE OR REGISTRANT**
8 **HAVE A CRIMINAL HISTORY CHECK CONDUCTED IN ACCORDANCE WITH SECTION**
9 **16174(3).**

10 Sec. 16174. (1) An individual who is licensed or registered
11 under this article shall meet all of the following requirements:

12 (a) Be 18 or more years of age.

13 (b) Be of good moral character.

14 (c) Have a specific education or experience in the health
15 profession or in a health profession subfield or health profession
16 specialty field of the health profession, or training equivalent,
17 or both, as prescribed by this article or rules of a board
18 necessary to promote safe and competent practice and informed
19 consumer choice.

20 (d) Have a working knowledge of the English language as
21 determined in accordance with minimum standards established for
22 that purpose by the department.

23 (e) Pay the appropriate fees as prescribed in this article.

24 (2) In addition to the requirements of subsection (1), an
25 applicant for licensure, registration, specialty certification, or
26 a health profession specialty subfield license under this article
27 shall meet all of the following requirements:

1 (a) Establish that disciplinary proceedings before a similar
2 licensure, registration, or specialty licensure or specialty
3 certification board of this or any other state, of the United
4 States military, of the federal government, or of another country
5 are not pending against the applicant.

6 (b) Establish that if sanctions have been imposed against the
7 applicant by a similar licensure, registration, or specialty
8 licensure or specialty certification board of this or any other
9 state, of the United States military, of the federal government, or
10 of another country based upon grounds that are substantially
11 similar to those set forth in this article or article 7 or the
12 rules promulgated under this article or article 7, as determined by
13 the board or task force to which the applicant applies, the
14 sanctions are not in force at the time of application.

15 (c) File with the board or task force a written, signed
16 consent to the release of information regarding a disciplinary
17 investigation involving the applicant conducted by a similar
18 licensure, registration, or specialty licensure or specialty
19 certification board of this or any other state, of the United
20 States military, of the federal government, or of another country.

21 **(3) IN ADDITION TO THE REQUIREMENTS OF SUBSECTIONS (1) AND**
22 **(2), BEGINNING JANUARY 1, 2006, AN APPLICANT FOR INITIAL LICENSURE**
23 **OR REGISTRATION OR FOR RENEWAL OF A LICENSE OR REGISTRATION SHALL**
24 **SUBMIT A NOMINAL FEE AS DETERMINED BY THE DEPARTMENT BUT NOT TO**
25 **EXCEED \$2.00 FOR THE PROCESSING OF CRIMINAL HISTORY BACKGROUND**
26 **CHECKS. BEGINNING JANUARY 1, 2006, AN APPLICANT FOR INITIAL**
27 **LICENSURE OR REGISTRATION SHALL SUBMIT HIS OR HER FINGERPRINTS TO**

1 THE DEPARTMENT OF STATE POLICE TO HAVE A CRIMINAL HISTORY CHECK
2 CONDUCTED AND REQUEST THAT THE DEPARTMENT OF STATE POLICE FORWARD
3 HIS OR HER FINGERPRINTS TO THE FEDERAL BUREAU OF INVESTIGATION FOR
4 A NATIONAL CRIMINAL HISTORY CHECK. THE DEPARTMENT OF STATE POLICE
5 SHALL CONDUCT A CRIMINAL HISTORY CHECK AND REQUEST THE FEDERAL
6 BUREAU OF INVESTIGATION TO MAKE A DETERMINATION OF THE EXISTENCE OF
7 ANY NATIONAL CRIMINAL HISTORY PERTAINING TO THE APPLICANT. THE
8 DEPARTMENT OF STATE POLICE SHALL PROVIDE THE BOARD AND THE
9 APPLICANT WITH A WRITTEN REPORT OF THE CRIMINAL HISTORY CHECK
10 INCLUDING ANY CRIMINAL HISTORY RECORD INFORMATION ON THE APPLICANT
11 MAINTAINED BY THE DEPARTMENT OF STATE POLICE. THE DEPARTMENT OF
12 STATE POLICE SHALL FORWARD THE RESULTS OF THE FEDERAL BUREAU OF
13 INVESTIGATION DETERMINATION TO THE BOARD AND THE APPLICANT. IF
14 THERE ARE ANY CHARGES FOR FINGERPRINTING, CONDUCTING THE CRIMINAL
15 HISTORY CHECK, OR A FEDERAL BUREAU OF INVESTIGATION DETERMINATION
16 UNDER THIS SUBSECTION, THE APPLICANT REQUESTING THE CRIMINAL
17 HISTORY CHECK SHALL PAY THOSE CHARGES. THE CRIMINAL HISTORY RECORD
18 INFORMATION OBTAINED UNDER THIS SUBSECTION SHALL BE USED ONLY FOR
19 THE PURPOSE OF EVALUATING AN APPLICANT'S QUALIFICATIONS FOR
20 LICENSURE OR REGISTRATION FOR WHICH HE OR SHE HAS APPLIED. A MEMBER
21 OF THE BOARD SHALL NOT DISCLOSE THE REPORT OR ITS CONTENTS TO ANY
22 PERSON WHO IS NOT DIRECTLY INVOLVED IN EVALUATING THE APPLICANT'S
23 QUALIFICATIONS FOR LICENSURE OR REGISTRATION.

24 (4) ~~-(3)-~~ Before granting a license, registration, specialty
25 certification, or a health profession specialty field license to an
26 applicant, the board or task force to which the applicant applies
27 may do 1 of the following:

1 (a) Make an independent inquiry into the applicant's
2 compliance with the requirements described in subsection (2). If a
3 licensure or registration board or task force determines under
4 subsection (2)(b) that sanctions have been imposed and are in force
5 at the time of application, the board or task force shall not grant
6 a license or registration or specialty certification or health
7 profession specialty field license to the applicant.

8 (b) Require the applicant to secure from a national
9 association or federation of state professional licensing boards
10 certification of compliance with the requirements described in
11 subsection (2).

12 (5) ~~-(4)-~~ If, after issuing a license, registration, specialty
13 certification, or health profession specialty field license, a
14 board or task force or the department determines that sanctions
15 have been imposed against the licensee or registrant by a similar
16 licensure or registration or specialty licensure or specialty
17 certification board as described in subsection (2)(b), the
18 disciplinary subcommittee may impose appropriate sanctions upon the
19 licensee or registrant. The licensee or registrant may request a
20 show cause hearing before a hearing examiner to demonstrate why the
21 sanctions should not be imposed.

22 (6) ~~-(5)-~~ An applicant for licensure, registration, specialty
23 certification, or a health profession specialty field license who
24 is or has been licensed, registered, or certified in a health
25 profession or specialty by another state or country shall disclose
26 that fact on the application form.

27 Sec. 16245. (1) An individual whose license is limited,

1 suspended, or revoked under this part may apply to his or her board
2 or task force for a reinstatement of a revoked or suspended license
3 or reclassification of a limited license pursuant to section 16247
4 or 16249.

5 (2) An individual whose registration is suspended or revoked
6 under this part may apply to his or her board for a reinstatement
7 of a suspended or revoked registration pursuant to section 16248.

8 (3) A board or task force shall reinstate a license or
9 registration suspended for grounds stated in section ~~16221(i)~~
10 **16221(J)** upon payment of the installment.

11 (4) Except as otherwise provided in this subsection, in case
12 of a revoked license or registration, an applicant shall not apply
13 for reinstatement before the expiration of 3 years after the
14 effective date of the revocation. In the case of a license or
15 registration that was revoked for a violation of section
16 16221(b)(vii), a violation of section 16221(c)(iv) consisting of a
17 felony conviction, any other felony conviction involving a
18 controlled substance, or a violation of section ~~16221(p)~~
19 **16221(Q)**, an applicant shall not apply for reinstatement before the
20 expiration of 5 years after the effective date of the revocation.
21 The department shall return an application for reinstatement
22 received before the expiration of the applicable time period under
23 this subsection.

24 (5) The department shall provide an opportunity for a hearing
25 before final rejection of an application for reinstatement.

26 (6) Based upon the recommendation of the disciplinary
27 subcommittee for each health profession, the department shall adopt

1 guidelines to establish specific criteria to be met by an applicant
2 for reinstatement under this article or article 7. The criteria may
3 include corrective measures or remedial education as a condition of
4 reinstatement. If a board or task force, in reinstating a license
5 or registration, deviates from the guidelines adopted under this
6 subsection, the board or task force shall state the reason for the
7 deviation on the record.

8 (7) An individual who seeks reinstatement or reclassification
9 of a license or registration pursuant to this section shall pay the
10 application processing fee as a reinstatement or reclassification
11 fee. If approved for reinstatement or reclassification, the
12 individual shall pay the per year license or registration fee for
13 the applicable license or registration period.

14 (8) AN INDIVIDUAL WHO SEEKS REINSTATEMENT OF A REVOKED OR
15 SUSPENDED LICENSE OR RECLASSIFICATION OF A LIMITED LICENSE PURSUANT
16 TO THIS SECTION SHALL HAVE A CRIMINAL HISTORY CHECK CONDUCTED IN
17 ACCORDANCE WITH SECTION 16174 AND SUBMIT A COPY OF THE RESULTS OF
18 THE BACKGROUND CHECK TO THE BOARD WITH HIS OR HER APPLICATION FOR
19 REINSTATEMENT OR RECLASSIFICATION.

20 SEC. 20173A. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION
21 (2), 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 SHALL NOT
24 EMPLOY, INDEPENDENTLY CONTRACT WITH, OR GRANT CLINICAL PRIVILEGES
25 TO AN INDIVIDUAL WHO REGULARLY HAS DIRECT ACCESS TO OR PROVIDES
26 DIRECT SERVICES TO PATIENTS OR RESIDENTS IN THE HEALTH FACILITY OR
27 AGENCY AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED

1 THIS SECTION IF THE INDIVIDUAL SATISFIES 1 OR MORE OF THE
2 FOLLOWING:

3 (A) HAS BEEN CONVICTED OF A FELONY OR AN ATTEMPT OR CONSPIRACY
4 TO COMMIT A FELONY, OTHER THAN A FELONY FOR A RELEVANT CRIME
5 DESCRIBED UNDER 42 USC 1320A-7, UNLESS 15 YEARS HAVE LAPSED SINCE
6 THE INDIVIDUAL COMPLETED ALL OF THE TERMS AND CONDITIONS OF HIS OR
7 HER SENTENCING, PAROLE, AND PROBATION FOR THAT CONVICTION PRIOR TO
8 THE DATE OF APPLICATION FOR EMPLOYMENT OR CLINICAL PRIVILEGES OR
9 THE DATE OF THE EXECUTION OF THE INDEPENDENT CONTRACT.

10 (B) HAS BEEN CONVICTED OF A MISDEMEANOR, OTHER THAN A
11 MISDEMEANOR FOR A RELEVANT CRIME DESCRIBED UNDER 42 USC 1320A-7,
12 INVOLVING ABUSE, NEGLECT, ASSAULT, BATTERY, OR CRIMINAL SEXUAL
13 CONDUCT OR INVOLVING FRAUD OR THEFT, A MISDEMEANOR UNDER PART 74,
14 OR A STATE OR FEDERAL CRIME THAT IS SUBSTANTIALLY SIMILAR TO A
15 MISDEMEANOR DESCRIBED IN THIS SUBDIVISION, WITHIN THE 10 YEARS
16 IMMEDIATELY PRECEDING THE DATE OF APPLICATION FOR EMPLOYMENT OR
17 CLINICAL PRIVILEGES OR THE DATE OF THE EXECUTION OF THE INDEPENDENT
18 CONTRACT.

19 (C) HAS BEEN CONVICTED OF A RELEVANT CRIME DESCRIBED UNDER 42
20 USC 1320A-7.

21 (D) HAS BEEN THE SUBJECT OF A SUBSTANTIATED FINDING OF
22 NEGLECT, ABUSE, OR MISAPPROPRIATION OF PROPERTY BY THE DEPARTMENT
23 PURSUANT TO AN INVESTIGATION CONDUCTED IN ACCORDANCE WITH 42 USC
24 1395I-3 OR 1396R.

25 (E) IS THE SUBJECT OF AN ORDER OR DISPOSITION UNDER SECTION
26 16B OF CHAPTER IX OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175,
27 MCL 769.16B.

1 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION AND
2 SUBSECTION (5), A HEALTH 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 PRIVILEGES TO AN
6 INDIVIDUAL WHO REGULARLY HAS DIRECT ACCESS TO OR PROVIDES DIRECT
7 SERVICES TO PATIENTS OR RESIDENTS IN THE HEALTH FACILITY OR AGENCY
8 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
9 SECTION UNTIL THE HEALTH FACILITY OR AGENCY COMPLIES WITH
10 SUBSECTION (4). THIS SUBSECTION AND SUBSECTION (1) DO NOT APPLY TO
11 ANY OF THE FOLLOWING:

12 (A) EXCEPT AS OTHERWISE PROVIDED UNDER THIS SUBDIVISION, AN
13 INDIVIDUAL WHO IS EMPLOYED BY, UNDER INDEPENDENT CONTRACT TO, OR
14 GRANTED CLINICAL PRIVILEGES IN A HEALTH FACILITY OR AGENCY BEFORE
15 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION.
16 AN INDIVIDUAL WHO IS EXEMPT UNDER THIS SUBDIVISION IS NOT LIMITED
17 TO WORKING WITHIN THE HEALTH FACILITY OR AGENCY WITH WHICH HE OR
18 SHE IS EMPLOYED BY, UNDER INDEPENDENT CONTRACT TO, OR GRANTED
19 CLINICAL PRIVILEGES ON THE EFFECTIVE DATE OF THE AMENDATORY ACT
20 THAT ADDED THIS SECTION. THAT INDIVIDUAL MAY TRANSFER TO ANOTHER
21 HEALTH FACILITY OR AGENCY PROVIDED THAT A CRIMINAL HISTORY CHECK
22 BEING CONDUCTED IN ACCORDANCE WITH SUBSECTIONS (1) AND (2) DOES NOT
23 INDICATE A PROHIBITED OFFENSE AS DESCRIBED UNDER SUBSECTION (1). IF
24 AN INDIVIDUAL WHO IS EXEMPT UNDER THIS SUBDIVISION IS SUBSEQUENTLY
25 CONVICTED OF A CRIME DESCRIBED UNDER SUBSECTION (1)(A) OR (B) OR
26 FOUND TO BE THE SUBJECT OF A SUBSTANTIATED FINDING DESCRIBED UNDER
27 SUBSECTION (1)(D) OR AN ORDER OR DISPOSITION DESCRIBED UNDER

1 SUBSECTION (1)(E), OR IS FOUND TO HAVE BEEN CONVICTED OF A RELEVANT
2 CRIME DESCRIBED UNDER SUBSECTION (1)(C), THEN HE OR SHE IS SUBJECT
3 TO THE REQUIREMENTS OF SUBSECTIONS (1) AND (2) AND MAY BE DENIED
4 EMPLOYMENT OR MAY BE TERMINATED FROM EMPLOYMENT.

5 (B) AN INDIVIDUAL WHO IS AN INDEPENDENT CONTRACTOR WITH A
6 HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY MEDICAL
7 CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED SERVICES,
8 HOME FOR THE AGED, OR HOME HEALTH AGENCY IF THE SERVICES FOR WHICH
9 HE OR SHE IS CONTRACTED ARE NOT DIRECTLY RELATED TO THE PROVISION
10 OF SERVICES TO A PATIENT OR RESIDENT OR IF THE SERVICES FOR WHICH
11 HE OR SHE IS CONTRACTED DO ALLOW FOR DIRECT ACCESS TO THE PATIENTS
12 OR RESIDENTS BUT ARE NOT PERFORMED ON AN ONGOING BASIS. THIS
13 EXCEPTION INCLUDES, BUT IS NOT LIMITED TO, INDEPENDENT CONTRACTORS
14 WHO PROVIDE UTILITY, MAINTENANCE, CONSTRUCTION, OR COMMUNICATIONS
15 SERVICES.

16 (3) AN INDIVIDUAL WHO APPLIES FOR EMPLOYMENT EITHER AS AN
17 EMPLOYEE OR AS AN INDEPENDENT CONTRACTOR OR FOR CLINICAL PRIVILEGES
18 WITH A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY
19 MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED
20 SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY AND HAS RECEIVED
21 A GOOD FAITH OFFER OF EMPLOYMENT, AN INDEPENDENT CONTRACT, OR
22 CLINICAL PRIVILEGES FROM THE HEALTH FACILITY OR AGENCY SHALL GIVE
23 WRITTEN CONSENT AT THE TIME OF APPLICATION FOR THE DEPARTMENT OF
24 STATE POLICE TO CONDUCT A CRIMINAL HISTORY CHECK UNDER SUBSECTION
25 (4), ALONG WITH IDENTIFICATION ACCEPTABLE TO THE DEPARTMENT OF
26 STATE POLICE.

27 (4) UPON RECEIPT OF THE WRITTEN CONSENT AND IDENTIFICATION

1 REQUIRED UNDER SUBSECTION (3), A HEALTH FACILITY OR AGENCY THAT IS
2 A NURSING HOME, COUNTY MEDICAL CARE FACILITY, HOSPICE, HOSPITAL
3 THAT PROVIDES SWING BED SERVICES, HOME FOR THE AGED, OR HOME HEALTH
4 AGENCY THAT HAS MADE A GOOD FAITH OFFER OF EMPLOYMENT OR AN
5 INDEPENDENT CONTRACT OR CLINICAL PRIVILEGES TO THE APPLICANT SHALL
6 MAKE A REQUEST TO THE DEPARTMENT OF STATE POLICE TO CONDUCT A
7 CRIMINAL HISTORY CHECK ON THE APPLICANT AND TO FORWARD THE
8 APPLICANT'S FINGERPRINTS TO THE FEDERAL BUREAU OF INVESTIGATION.
9 THE DEPARTMENT OF STATE POLICE SHALL REQUEST THE FEDERAL BUREAU OF
10 INVESTIGATION TO MAKE A DETERMINATION OF THE EXISTENCE OF ANY
11 NATIONAL CRIMINAL HISTORY PERTAINING TO THE APPLICANT. THE
12 APPLICANT SHALL PROVIDE THE DEPARTMENT OF STATE POLICE WITH A SET
13 OF FINGERPRINTS. THE REQUEST SHALL BE MADE IN A MANNER PRESCRIBED
14 BY THE DEPARTMENT OF STATE POLICE. THE HEALTH FACILITY OR AGENCY
15 SHALL MAKE THE WRITTEN CONSENT AND IDENTIFICATION AVAILABLE TO THE
16 DEPARTMENT OF STATE POLICE. THE HEALTH FACILITY OR AGENCY SHALL
17 MAKE A REQUEST TO THE DEPARTMENT TO CONDUCT A CHECK OF ALL RELEVANT
18 REGISTRIES ESTABLISHED PURSUANT TO FEDERAL REGULATIONS FOR ANY
19 SUBSTANTIATED FINDINGS OF ABUSE, NEGLECT, OR MISAPPROPRIATION OF
20 PROPERTY. IF THERE IS A CHARGE FOR CONDUCTING THE CRIMINAL HISTORY
21 CHECK, THE CHARGE SHALL BE PAID BY OR REIMBURSED BY THE DEPARTMENT
22 WITH MEDICAID AND MEDICARE FUNDING AS APPROPRIATE. THE HEALTH
23 FACILITY OR AGENCY SHALL NOT SEEK REIMBURSEMENT FOR THE CHARGE FROM
24 THE INDIVIDUAL WHO IS THE SUBJECT OF THE CRIMINAL HISTORY CHECK.
25 THE DEPARTMENT OF STATE POLICE SHALL CONDUCT A CRIMINAL HISTORY
26 CHECK ON THE APPLICANT NAMED IN THE REQUEST. THE DEPARTMENT OF
27 STATE POLICE SHALL PROVIDE THE DEPARTMENT WITH A WRITTEN REPORT OF

1 THE CRIMINAL HISTORY CHECK CONDUCTED UNDER THIS SUBSECTION IF THE
2 REPORT CONTAINS ANY CRIMINAL HISTORY RECORD INFORMATION. THE REPORT
3 SHALL CONTAIN ANY CRIMINAL HISTORY RECORD INFORMATION ON THE
4 APPLICANT MAINTAINED BY THE DEPARTMENT OF STATE POLICE. THE
5 DEPARTMENT OF STATE POLICE SHALL PROVIDE THE RESULTS OF THE FEDERAL
6 BUREAU OF INVESTIGATION DETERMINATION TO THE DEPARTMENT WITHIN 30
7 DAYS AFTER THE REQUEST IS MADE. IF THE REQUESTING HEALTH FACILITY
8 OR AGENCY IS NOT A STATE DEPARTMENT OR AGENCY AND IF A CRIMINAL
9 CONVICTION IS DISCLOSED ON THE FEDERAL BUREAU OF INVESTIGATION
10 DETERMINATION, THE DEPARTMENT SHALL NOTIFY THE HEALTH FACILITY OR
11 AGENCY AND THE APPLICANT IN WRITING OF THE TYPE OF CRIME DISCLOSED
12 ON THE FEDERAL BUREAU OF INVESTIGATION DETERMINATION WITHOUT
13 DISCLOSING THE DETAILS OF THE CRIME. ANY CHARGES FOR FINGERPRINTING
14 OR A FEDERAL BUREAU OF INVESTIGATION DETERMINATION UNDER THIS
15 SUBSECTION SHALL BE PAID IN THE MANNER REQUIRED UNDER THIS
16 SUBSECTION. THE NOTICE SHALL INCLUDE A STATEMENT THAT THE APPLICANT
17 HAS A RIGHT TO APPEAL A DECISION MADE BY THE HEALTH FACILITY OR
18 AGENCY REGARDING HIS OR HER EMPLOYMENT ELIGIBILITY BASED ON THE
19 CRIMINAL BACKGROUND CHECK. THE NOTICE SHALL ALSO INCLUDE
20 INFORMATION REGARDING WHERE TO FILE AND DESCRIBING THE APPELLATE
21 PROCEDURES ESTABLISHED UNDER SECTION 20173B.

22 (5) IF A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME,
23 COUNTY MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING
24 BED SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY DETERMINES
25 IT NECESSARY TO EMPLOY OR GRANT CLINICAL PRIVILEGES TO AN APPLICANT
26 BEFORE RECEIVING THE RESULTS OF THE APPLICANT'S CRIMINAL HISTORY
27 CHECK UNDER SUBSECTION (4), THE HEALTH FACILITY OR AGENCY MAY

1 CONDITIONALLY EMPLOY OR GRANT CONDITIONAL CLINICAL PRIVILEGES TO
2 THE INDIVIDUAL IF ALL OF THE FOLLOWING APPLY:

3 (A) THE HEALTH FACILITY OR AGENCY REQUESTS THE CRIMINAL
4 HISTORY CHECK UNDER SUBSECTION (4) UPON CONDITIONALLY EMPLOYING OR
5 CONDITIONALLY GRANTING CLINICAL PRIVILEGES TO THE INDIVIDUAL.

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

8 (i) THAT HE OR SHE HAS NOT BEEN CONVICTED OF 1 OR MORE OF THE
9 CRIMES THAT ARE DESCRIBED IN SUBSECTION (1)(A), (B), AND (C) WITHIN
10 THE APPLICABLE TIME PERIOD PRESCRIBED BY SUBSECTION (1)(A) AND (B).

11 (ii) THAT HE OR SHE HAS NOT BEEN THE SUBJECT OF A SUBSTANTIATED
12 FINDING AS DESCRIBED IN SUBSECTION (1)(D) OR AN ORDER OR
13 DISPOSITION AS DESCRIBED UNDER SUBSECTION (1)(E).

14 (iii) THE INDIVIDUAL AGREES THAT, IF THE INFORMATION IN THE
15 CRIMINAL HISTORY CHECK CONDUCTED UNDER SUBSECTION (4) DOES NOT
16 CONFIRM THE INDIVIDUAL'S STATEMENTS UNDER SUBPARAGRAPHS (i) AND (ii),
17 HIS OR HER EMPLOYMENT OR CLINICAL PRIVILEGES WILL BE TERMINATED BY
18 THE HEALTH FACILITY OR AGENCY AS REQUIRED UNDER SUBSECTION (1)
19 UNLESS AND UNTIL THE INDIVIDUAL APPEALS AND CAN PROVE THAT THE
20 INFORMATION IS INCORRECT. THE HEALTH FACILITY OR AGENCY SHALL
21 PROVIDE A COPY OF THE RESULTS OF THE CRIMINAL HISTORY CHECK
22 CONDUCTED UNDER SUBSECTION (4) TO THE APPLICANT.

23 (iv) THAT HE OR SHE UNDERSTANDS THE CONDITIONS DESCRIBED IN
24 SUBPARAGRAPHS (i), (ii), AND (iii) THAT RESULT IN THE TERMINATION OF
25 HIS OR HER EMPLOYMENT OR CLINICAL PRIVILEGES AND THAT THOSE
26 CONDITIONS ARE GOOD CAUSE FOR TERMINATION.

27 (6) ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED

1 THIS SECTION, THE DEPARTMENT SHALL DEVELOP AND DISTRIBUTE A MODEL
2 FORM FOR THE STATEMENT REQUIRED UNDER SUBSECTION (5)(B). THE
3 DEPARTMENT SHALL MAKE THE MODEL FORM AVAILABLE TO HEALTH FACILITIES
4 OR AGENCIES SUBJECT TO THIS SECTION UPON REQUEST AT NO CHARGE.

5 (7) IF AN INDIVIDUAL IS EMPLOYED AS A CONDITIONAL EMPLOYEE OR
6 AN INDEPENDENT CONTRACTOR, OR IS GRANTED CONDITIONAL CLINICAL
7 PRIVILEGES UNDER SUBSECTION (5), AND THE REPORT DESCRIBED IN
8 SUBSECTION (4) DOES NOT CONFIRM THE INDIVIDUAL'S STATEMENT UNDER
9 SUBSECTION (5)(B)(i) AND (ii), THE HEALTH FACILITY OR AGENCY SHALL
10 TERMINATE THE INDIVIDUAL'S EMPLOYMENT OR CLINICAL PRIVILEGES AS
11 REQUIRED BY SUBSECTION (1).

12 (8) AN INDIVIDUAL WHO KNOWINGLY PROVIDES FALSE INFORMATION
13 REGARDING CRIMINAL CONVICTIONS OR SUBSTANTIATED FINDINGS ON A
14 STATEMENT DESCRIBED IN SUBSECTION (5)(B)(i) OR (ii) IS GUILTY OF A
15 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR
16 A FINE OF NOT MORE THAN \$500.00, OR BOTH.

17 (9) A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY
18 MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED
19 SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY SHALL USE
20 CRIMINAL HISTORY RECORD INFORMATION OBTAINED UNDER SUBSECTION (4)
21 OR (5) ONLY FOR THE PURPOSE OF EVALUATING AN APPLICANT'S
22 QUALIFICATIONS FOR EMPLOYMENT, AN INDEPENDENT CONTRACT, OR CLINICAL
23 PRIVILEGES IN THE POSITION FOR WHICH HE OR SHE HAS APPLIED AND FOR
24 THE PURPOSES OF SUBSECTIONS (5) AND (7). A HEALTH FACILITY OR
25 AGENCY OR AN EMPLOYEE OF THE HEALTH FACILITY OR AGENCY SHALL NOT
26 DISCLOSE CRIMINAL HISTORY RECORD INFORMATION OBTAINED UNDER
27 SUBSECTION (4) TO A PERSON WHO IS NOT DIRECTLY INVOLVED IN

1 EVALUATING THE APPLICANT'S QUALIFICATIONS FOR EMPLOYMENT, AN
2 INDEPENDENT CONTRACT, OR CLINICAL PRIVILEGES. AN INDIVIDUAL WHO
3 KNOWINGLY USES OR DISSEMINATES THE CRIMINAL HISTORY RECORD
4 INFORMATION OBTAINED UNDER SUBSECTION (4) IN VIOLATION OF THIS
5 SUBSECTION IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT
6 FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN \$1,000.00, OR
7 BOTH. A PERSON WHO SUFFERS INJURY AS A RESULT OF A VIOLATION OF
8 THIS SUBSECTION MAY BRING A CIVIL CAUSE OF ACTION FOR DAMAGES
9 AGAINST THE PERSON WHO VIOLATES THIS SUBSECTION. UPON WRITTEN
10 REQUEST FROM ANOTHER HEALTH FACILITY OR AGENCY OR ADULT FOSTER CARE
11 FACILITY THAT IS CONSIDERING EMPLOYING, INDEPENDENTLY CONTRACTING
12 WITH, OR GRANTING CLINICAL PRIVILEGES TO AN INDIVIDUAL, A HEALTH
13 FACILITY OR AGENCY OR ADULT FOSTER CARE FACILITY THAT HAS OBTAINED
14 CRIMINAL HISTORY RECORD INFORMATION UNDER THIS SECTION ON THAT
15 INDIVIDUAL SHALL SHARE, WITH THE CONSENT OF THE APPLICANT, THE
16 INFORMATION WITH THE REQUESTING HEALTH FACILITY OR AGENCY OR ADULT
17 FOSTER CARE FACILITY. EXCEPT FOR A KNOWING OR INTENTIONAL RELEASE
18 OF FALSE INFORMATION, A HEALTH FACILITY OR AGENCY OR ADULT FOSTER
19 CARE FACILITY HAS NO LIABILITY IN CONNECTION WITH THE RELEASE OF
20 CRIMINAL HISTORY RECORD INFORMATION UNDER THIS SUBSECTION.

21 (10) AS A CONDITION OF CONTINUED EMPLOYMENT, EACH EMPLOYEE,
22 INDEPENDENT CONTRACTOR, OR INDIVIDUAL GRANTED CLINICAL PRIVILEGES
23 SHALL AGREE IN WRITING TO REPORT TO THE HEALTH FACILITY OR AGENCY
24 IMMEDIATELY UPON EITHER OF THE FOLLOWING:

25 (A) BEING CONVICTED OF 1 OR MORE OF THE CRIMINAL OFFENSES
26 LISTED IN SUBSECTION (1)(A), (B), AND (C).

27 (B) BEING THE SUBJECT OF A SUBSTANTIATED FINDING OF NEGLECT,

House Bill No. 5168 (H-2) as amended December 6, 2005
1 ABUSE, OR MISAPPROPRIATION OF PROPERTY AS DESCRIBED IN SUBSECTION
2 (1)(D).

3 (C) BEING THE SUBJECT OF AN ORDER OR DISPOSITION DESCRIBED
4 UNDER SUBSECTION (1)(E).

5 (11) IN ADDITION TO SANCTIONS SET FORTH IN SECTION 20165, A
6 LICENSEE, OWNER, ADMINISTRATOR, OR OPERATOR OF A NURSING HOME,
7 COUNTY MEDICAL CARE FACILITY, [HOSPICE, HOSPITAL THAT PROVIDES SWING BED
SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY] WHO KNOWINGLY
8 AND WILLFULLY FAILS TO CONDUCT THE CRIMINAL HISTORY CHECKS AS
9 REQUIRED UNDER THIS SECTION IS GUILTY OF A MISDEMEANOR PUNISHABLE
10 BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE THAN
11 \$5,000.00, OR BOTH.

12 (12) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY
13 ACT THAT ADDED THIS SECTION, THE DEPARTMENT SHALL SUBMIT A WRITTEN
14 REPORT TO THE LEGISLATURE REGARDING EACH OF THE FOLLOWING:

15 (A) THE IMPACT AND EFFECTIVENESS OF THIS AMENDATORY ACT.

16 (B) THE FEASIBILITY OF IMPLEMENTING CRIMINAL HISTORY CHECKS ON
17 VOLUNTEERS WHO WORK IN THOSE HEALTH FACILITIES OR AGENCIES AND ON
18 STATE AGENCY EMPLOYEES WHO ARE INVOLVED IN THE LICENSING OF THOSE
19 HEALTH FACILITIES OR AGENCIES AND REGULATION OF THOSE EMPLOYEES.

20 (C) THE AMOUNT OF MEDICAID AND MEDICARE FUNDING UTILIZED TO
21 PAY FOR OR REIMBURSE CHARGES FOR CONDUCTING CRIMINAL HISTORY CHECKS
22 IN ACCORDANCE WITH THIS SECTION AND THE AMOUNT REMAINING OF THOSE
23 FUNDS.

24 (13) WITHIN 3 YEARS AFTER THE EFFECTIVE DATE OF THIS SECTION,
25 THE DEPARTMENT SHALL SUBMIT A WRITTEN REPORT TO THE LEGISLATURE
26 OUTLINING A PLAN TO COVER THE COSTS OF THE CRIMINAL HISTORY CHECKS
27 REQUIRED UNDER THIS SECTION IF FEDERAL FUNDING IS NO LONGER

1 AVAILABLE OR IS INADEQUATE TO COVER THOSE COSTS.

2 (14) AS USED IN THIS SECTION:

3 (A) "ADULT FOSTER CARE FACILITY" MEANS AN ADULT FOSTER CARE
4 FACILITY LICENSED UNDER THE ADULT FOSTER CARE FACILITY LICENSING
5 ACT, 1979 PA 218, MCL 400.701 TO 400.737.

6 (B) "DIRECT ACCESS" MEANS ACCESS TO A PATIENT OR RESIDENT OR
7 TO A PATIENT'S OR RESIDENT'S PROPERTY, FINANCIAL INFORMATION,
8 MEDICAL RECORDS, TREATMENT INFORMATION, OR ANY OTHER IDENTIFYING
9 INFORMATION.

10 (C) "HOME HEALTH AGENCY" MEANS A PERSON CERTIFIED BY MEDICARE
11 WHOSE BUSINESS IS TO PROVIDE TO INDIVIDUALS IN THEIR PLACES OF
12 RESIDENCE OTHER THAN IN A HOSPITAL, NURSING HOME, OR COUNTY MEDICAL
13 CARE FACILITY 1 OR MORE OF THE FOLLOWING SERVICES: NURSING
14 SERVICES, THERAPEUTIC SERVICES, SOCIAL WORK SERVICES, HOMEMAKER
15 SERVICES, HOME HEALTH AIDE SERVICES, OR OTHER RELATED SERVICES.

16 (D) "INDEPENDENT CONTRACT" MEANS A CONTRACT ENTERED INTO BY A
17 HEALTH FACILITY OR AGENCY WITH AN INDIVIDUAL WHO PROVIDES THE
18 CONTRACTED SERVICES INDEPENDENTLY OR A CONTRACT ENTERED INTO BY A
19 HEALTH FACILITY OR AGENCY WITH AN ORGANIZATION OR AGENCY THAT
20 EMPLOYS OR CONTRACTS WITH AN INDIVIDUAL AFTER COMPLYING WITH THE
21 REQUIREMENTS OF THIS SECTION TO PROVIDE THE CONTRACTED SERVICES TO
22 THE HEALTH FACILITY OR AGENCY ON BEHALF OF THE ORGANIZATION OR
23 AGENCY.

24 (E) "MEDICARE" MEANS BENEFITS UNDER THE FEDERAL MEDICARE
25 PROGRAM ESTABLISHED UNDER TITLE XVIII OF THE SOCIAL SECURITY ACT,
26 42 USC 1395 TO 1395GGG.

27 SEC. 20173B. (1) THE DEPARTMENT SHALL ESTABLISH AN EMPLOYMENT

1 ELIGIBILITY APPEAL BOARD. THE APPEAL BOARD SHALL CONSIST OF THE
2 FOLLOWING MEMBERS APPOINTED BY THE GOVERNOR:

3 (A) TWO REPRESENTATIVES OF THE DEPARTMENT'S BUREAU OF HEALTH
4 SYSTEMS WHO DEAL PRIMARILY WITH THE LICENSING OF HEALTH FACILITIES.

5 (B) TWO REPRESENTATIVES OF THE DEPARTMENT OF HUMAN SERVICES
6 WHO DEAL PRIMARILY WITH THE LICENSING OF ADULT FOSTER CARE
7 FACILITIES AND HOMES FOR THE AGED.

8 (C) TWO MEMBERS REPRESENTING THE PUBLIC.

9 (D) ONE MEMBER REPRESENTING PROVIDERS.

10 (E) ONE MEMBER REPRESENTING ORGANIZED LABOR GROUPS.

11 (F) ONE MEMBER REPRESENTING CONSUMERS OF LONG-TERM CARE
12 SERVICES.

13 (2) EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTION (4), THE
14 APPEAL BOARD SHALL HEAR AND DECIDE APPLICATIONS FOR APPEAL FROM
15 INDIVIDUALS WHO HAVE BEEN DISQUALIFIED FROM OR DENIED EMPLOYMENT BY
16 A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY MEDICAL
17 CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED SERVICES,
18 HOME FOR THE AGED, OR HOME HEALTH AGENCY, OR BY AN ADULT FOSTER
19 CARE FACILITY, BASED ON A CRIMINAL BACKGROUND CHECK CONDUCTED
20 PURSUANT TO SECTION 20173 OR 20173A.

21 (3) MEMBERS OF THE APPEAL BOARD SHALL SERVE FOR TERMS OF 3
22 YEARS OR UNTIL A SUCCESSOR IS APPOINTED, WHICHEVER IS LATER, EXCEPT
23 THAT OF THE MEMBERS FIRST APPOINTED 3 SHALL SERVE 3 YEARS, 3 SHALL
24 SERVE 2 YEARS, AND 3 SHALL SERVE 1 YEAR. IF A VACANCY OCCURS ON THE
25 APPEAL BOARD, THE GOVERNOR SHALL MAKE AN APPOINTMENT FOR THE
26 UNEXPIRED TERM IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT.
27 MEMBERS OF THE APPEAL BOARD SHALL SERVE WITHOUT COMPENSATION.

1 HOWEVER, MEMBERS OF THE APPEAL BOARD MAY BE REIMBURSED FOR THEIR
2 ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR
3 OFFICIAL DUTIES AS MEMBERS OF THE APPEAL BOARD.

4 (4) AN INDIVIDUAL WHO HAS BEEN CONVICTED OF A RELEVANT CRIME
5 AS DESCRIBED UNDER SECTION 20173A(1)(C) DOES NOT HAVE A RIGHT TO
6 APPEAL A DENIAL OF HIS OR HER EMPLOYMENT WITH A HEALTH FACILITY OR
7 AGENCY THAT IS A NURSING HOME, COUNTY MEDICAL CARE FACILITY,
8 HOSPICE, HOSPITAL THAT PROVIDES SWING BED SERVICES, HOME FOR THE
9 AGED, OR HOME HEALTH AGENCY. AN INDIVIDUAL WHO HAS BEEN CONVICTED
10 OF A FELONY, OTHER THAN THAT DESCRIBED UNDER SECTION 20173A(1)(C),
11 INVOLVING ABUSE, NEGLECT, ASSAULT, BATTERY, OR CRIMINAL SEXUAL
12 CONDUCT OR INVOLVING FRAUD OR THEFT AGAINST A VULNERABLE ADULT AS
13 THAT TERM IS DEFINED IN SECTION 145M OF THE MICHIGAN PENAL CODE,
14 1931 PA 328, MCL 750.145M, OR A STATE OR FEDERAL CRIME THAT IS
15 SUBSTANTIALLY SIMILAR TO A FELONY DESCRIBED IN THIS SUBDIVISION,
16 DOES NOT HAVE THE RIGHT TO APPEAL A DENIAL OF HIS OR HER EMPLOYMENT
17 WITH A HEALTH FACILITY DESCRIBED UNDER THIS SUBSECTION UNLESS 3
18 YEARS HAVE LAPSED SINCE HE OR SHE COMPLETED ALL OF THE SENTENCING
19 REQUIREMENTS, INCLUDING PROBATION, PAROLE, AND RESTITUTION FOR THAT
20 CONVICTION.

21 (5) THE DEPARTMENT MAY CHARGE A FEE TO COVER THE COST OF THE
22 APPEAL.

23 (6) THE DEPARTMENT SHALL PROMULGATE RULES TO IMPLEMENT THIS
24 SECTION. THE DEPARTMENT MAY PROMULGATE RULES TO PROVIDE FOR AN
25 EXPEDITED ADMINISTRATIVE APPEALS PROCESS FOR CERTAIN NONVIOLENT
26 CRIMES. THE APPEAL BOARD SHALL HEAR ALL APPEALS WITHIN 60 DAYS OF
27 RECEIVING THE APPLICATION. IF THE APPEAL BOARD FINDS UPON CLEAR AND

1 CONVINCING EVIDENCE THAT THE INDIVIDUAL WAS WRONGFULLY DISQUALIFIED
2 FROM OR DENIED EMPLOYMENT, THE APPEAL BOARD MAY GRANT THE APPELLANT
3 A CERTIFICATE OF EMPLOYABILITY. THE APPEAL BOARD MAY IMPOSE ANY
4 CONDITIONS OR LIMITATIONS ON THAT CERTIFICATE AS IT DETERMINES
5 NECESSARY TO PROTECT THE HEALTH AND SAFETY OF PATIENTS OR RESIDENTS
6 WITHIN THOSE FACILITIES DESCRIBED UNDER SUBSECTION (2).

7 Enacting section 1. (1) Section 20173 of the public health
8 code, 1978 PA 368, MCL 333.20173, is repealed effective 60 days
9 after the department secures the necessary federal approval or
10 waiver, and files a written notice, as provided under subsection
11 (2).

12 (2) Section 20173a of the public health code, 1978 PA 368, MCL
13 333.20173a, as added by this amendatory act, takes effect 60 days
14 after the department secures the necessary federal approval or
15 waiver to utilize federal funds to enable the department to pay for
16 or reimburse for the costs incurred by those facilities for
17 requesting a national criminal history check to be conducted by the
18 federal bureau of investigation and files with the secretary of
19 state a written notice that the federal approval or waiver has been
20 secured.

21 (3) Section 20173b of the public health code, 1978 PA 368, MCL
22 333.20173b, as added by this amendatory act, takes effect the date
23 this amendatory act is enacted.