

SENATE BILL No. 1578

November 5, 2008, Introduced by Senator GARCIA and referred to the Committee on Transportation.

A bill to amend 1979 PA 218, entitled
"Adult foster care facility licensing act,"
by amending section 34b (MCL 400.734b), as amended by 2008 PA 135.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 34b. (1) In addition to the restrictions prescribed in
2 sections 13, 22, and 31, and except as otherwise provided in
3 subsection (2), an adult foster care facility shall not employ or
4 independently contract with an individual who regularly has direct
5 access to or provides direct services to residents of the adult
6 foster care facility after April 1, 2006 if the individual
7 satisfies 1 or more of the following:

8 (a) Has been convicted of a relevant crime described under 42
9 USC 1320a-7.

1 (b) Has been convicted of any of the following felonies, an
2 attempt or conspiracy to commit any of those felonies, or any other
3 state or federal crime that is similar to the felonies described in
4 this subdivision, 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 the date of the execution
9 of the independent contract:

10 (i) A felony that involves the intent to cause death or serious
11 impairment of a body function, that results in death or serious
12 impairment of a body function, that involves the use of force or
13 violence, or that involves the threat of the use of force or
14 violence.

15 (ii) A felony involving cruelty or torture.

16 (iii) A felony under chapter XXA of the Michigan penal code,
17 1931 PA 328, MCL 750.145m to 750.145r.

18 (iv) A felony involving criminal sexual conduct.

19 (v) A felony involving abuse or neglect.

20 (vi) A felony involving the use of a firearm or dangerous
21 weapon.

22 (vii) A felony involving the diversion or adulteration of a
23 prescription drug or other medications.

24 (c) Has been convicted of a felony or an attempt or conspiracy
25 to commit a felony, other than a felony for a relevant crime
26 described under 42 USC 1320a-7 or a felony described under
27 subdivision (b), unless 10 years have lapsed since the individual

1 completed all of the terms and conditions of his or her sentencing,
2 parole, and probation for that conviction prior to the date of
3 application for employment or the date of the execution of the
4 independent contract.

5 (d) Has been convicted of any of the following misdemeanors,
6 other than a misdemeanor for a relevant crime described under 42
7 USC 1320a-7, or a state or federal crime that is substantially
8 similar to the misdemeanors described in this subdivision, within
9 the 10 years immediately preceding the date of application for
10 employment or the date of the execution of the independent
11 contract:

12 (i) A misdemeanor involving the use of a firearm or dangerous
13 weapon with the intent to injure, the use of a firearm or dangerous
14 weapon that results in a personal injury, or a misdemeanor
15 involving the use of force or violence or the threat of the use of
16 force or violence.

17 (ii) A misdemeanor under chapter XXA of the Michigan penal
18 code, 1931 PA 328, MCL 750.145m to 750.145r.

19 (iii) A misdemeanor involving criminal sexual conduct.

20 (iv) A misdemeanor involving cruelty or torture unless
21 otherwise provided under subdivision (e).

22 (v) A misdemeanor involving abuse or neglect.

23 (e) Has been convicted of any of the following misdemeanors,
24 other than a misdemeanor for a relevant crime described under 42
25 USC 1320a-7, or a state or federal crime that is substantially
26 similar to the misdemeanors described in this subdivision, within
27 the 5 years immediately preceding the date of application for

1 employment or the date of the execution of the independent
2 contract:

3 (i) A misdemeanor involving cruelty if committed by an
4 individual who is less than 16 years of age.

5 (ii) A misdemeanor involving home invasion.

6 (iii) A misdemeanor involving embezzlement.

7 (iv) A misdemeanor involving negligent homicide **OR A MOVING**
8 **VIOLATION CAUSING DEATH.**

9 (v) A misdemeanor involving larceny unless otherwise provided
10 under subdivision (g).

11 (vi) A misdemeanor of retail fraud in the second degree unless
12 otherwise provided under subdivision (g).

13 (vii) Any other misdemeanor involving assault, fraud, theft, or
14 the possession or delivery of a controlled substance unless
15 otherwise provided under subdivision (d), (f), or (g).

16 (f) Has been convicted of any of the following misdemeanors,
17 other than a misdemeanor for a relevant crime described under 42
18 USC 1320a-7, or a state or federal crime that is substantially
19 similar to the misdemeanors described in this subdivision, within
20 the 3 years immediately preceding the date of application for
21 employment or the date of the execution of the independent
22 contract:

23 (i) A misdemeanor for assault if there was no use of a firearm
24 or dangerous weapon and no intent to commit murder or inflict great
25 bodily injury.

26 (ii) A misdemeanor of retail fraud in the third degree unless
27 otherwise provided under subdivision (g).

1 (iii) A misdemeanor under part 74 of the public health code,
2 1978 PA 368, MCL 333.7401 to 333.7461, unless otherwise provided
3 under subdivision (g).

4 (g) Has been convicted of any of the following misdemeanors,
5 other than a misdemeanor for a relevant crime described under 42
6 USC 1320a-7, or a state or federal crime that is substantially
7 similar to the misdemeanors described in this subdivision, within
8 the year immediately preceding the date of application for
9 employment or the date of the execution of the independent
10 contract:

11 (i) A misdemeanor under part 74 of the public health code, 1978
12 PA 368, MCL 333.7401 to 333.7461, if the individual, at the time of
13 conviction, is under the age of 18.

14 (ii) A misdemeanor for larceny or retail fraud in the second or
15 third degree if the individual, at the time of conviction, is under
16 the age of 16.

17 (h) Is the subject of an order or disposition under section
18 16b of chapter IX of the code of criminal procedure, 1927 PA 175,
19 MCL 769.16b.

20 (i) Has been the subject of a substantiated finding of
21 neglect, abuse, or misappropriation of property by a state or
22 federal agency according to an investigation conducted in
23 accordance with 42 USC 1395i-3 or 1396r.

24 (2) Except as otherwise provided in subsection (6), an adult
25 foster care facility shall not employ or independently contract
26 with an individual who has direct access to residents after April
27 1, 2006 until the adult foster care facility conducts a criminal

1 history check in compliance with subsections (4) and (5). This
2 subsection and subsection (1) do not apply to an individual who is
3 employed by or under contract to an adult foster care facility
4 before April 1, 2006. Beginning April 1, 2009, an individual who is
5 exempt under this subsection shall provide the department of state
6 police a set of fingerprints and the department of state police
7 shall input those fingerprints into the automated fingerprint
8 identification system database established under subsection (12).
9 An individual who is exempt under this subsection is not limited to
10 working within the adult foster care facility with which he or she
11 is employed by or under independent contract with on April 1, 2006.
12 That individual may transfer to another adult foster care facility
13 that is under the same ownership with which he or she was employed
14 or under contract. If that individual wishes to transfer to an
15 adult foster care facility that is not under the same ownership, he
16 or she may do so provided that a criminal history check is
17 conducted by the new facility in accordance with subsection (4). If
18 an individual who is exempt under this subsection is subsequently
19 convicted of a crime or offense described under subsection (1)(a)
20 to (g) or found to be the subject of a substantiated finding
21 described under subsection (1)(i) or an order or disposition
22 described under subsection (1)(h), or is found to have been
23 convicted of a relevant crime described under subsection (1)(a), he
24 or she is no longer exempt and shall be terminated from employment
25 or denied employment.

26 (3) An individual who applies for employment either as an
27 employee or as an independent contractor with an adult foster care

1 facility and has received a good faith offer of employment or
2 independent contract from the adult foster care facility shall give
3 written consent at the time of application for the department of
4 state police to conduct an initial criminal history check under
5 this section. The individual, at the time of initial application,
6 shall provide identification acceptable to the department of state
7 police.

8 (4) Upon receipt of the written consent and identification
9 required under subsection (3), the adult foster care facility that
10 has made a good faith offer of employment or independent contract
11 shall make a request to the department of state police to conduct a
12 criminal history check on the individual and input the individual's
13 fingerprints into the automated fingerprint identification system
14 database, and shall make a request to the relevant licensing or
15 regulatory department to perform a check of all relevant registries
16 established according to federal and state law and regulations for
17 any substantiated findings of abuse, neglect, or misappropriation
18 of property. The request shall be made in a manner prescribed by
19 the department of state police and the relevant licensing or
20 regulatory department or agency. The adult foster care facility
21 shall make the written consent and identification available to the
22 department of state police and the relevant licensing or regulatory
23 department or agency. If the department of state police or the
24 federal bureau of investigation charges a fee for conducting the
25 initial criminal history check, the charge shall be paid by or
26 reimbursed by the department with federal funds as provided to
27 implement a pilot program for national and state background checks

1 on direct patient access employees of long-term care facilities or
2 providers in accordance with section 307 of the medicare
3 prescription drug, improvement, and modernization act of 2003,
4 Public Law 108-173. The adult foster care facility shall not seek
5 reimbursement for a charge imposed by the department of state
6 police or the federal bureau of investigation from the individual
7 who is the subject of the initial criminal history check. The
8 department of state police shall conduct an initial criminal
9 history check on the individual named in the request. The
10 department of state police shall provide the department with a
11 written report of the criminal history check conducted under this
12 subsection that contains a criminal record. The report shall
13 contain any criminal history record information on the individual
14 maintained by the department of state police.

15 (5) Upon receipt of the written consent and identification
16 required under subsection (3), if the individual has applied for
17 employment either as an employee or as an independent contractor
18 with an adult foster care facility, the adult foster care facility
19 that has made a good faith offer of employment or independent
20 contract shall comply with subsection (4) and shall make a request
21 to the department of state police to forward the individual's
22 fingerprints to the federal bureau of investigation. The department
23 of state police shall request the federal bureau of investigation
24 to make a determination of the existence of any national criminal
25 history pertaining to the individual. An individual described in
26 this subsection shall provide the department of state police with a
27 set of fingerprints. The department of state police shall complete

1 the criminal history check under subsection (4) and, except as
2 otherwise provided in this subsection, provide the results of its
3 determination under subsection (4) and the results of the federal
4 bureau of investigation determination to the department within 30
5 days after the request is made. If the requesting adult foster care
6 facility is not a state department or agency and if a criminal
7 conviction is disclosed on the written report of the criminal
8 history check obtained under subsection (4) or the federal bureau
9 of investigation determination, the department shall notify the
10 adult foster care facility and the individual in writing of the
11 type of crime disclosed on the written report of the criminal
12 history check obtained under subsection (4) or the federal bureau
13 of investigation determination without disclosing the details of
14 the crime. The notification shall inform the facility or agency and
15 the applicant regarding the appeal process in section 34c. Any
16 charges imposed by the department of state police or the federal
17 bureau of investigation for conducting an initial criminal history
18 check or making a determination under this subsection shall be paid
19 in the manner required under subsection (4).

20 (6) If an adult foster care facility determines it necessary
21 to employ or independently contract with an individual before
22 receiving the results of the individual's criminal history check
23 required under this section, the adult foster care facility may
24 conditionally employ the individual if both of the following apply:

25 (a) The adult foster care facility requests the criminal
26 history check required under this section, upon conditionally
27 employing the individual.

1 (b) The individual signs a written statement indicating all of
2 the following:

3 (i) That he or she has not been convicted of 1 or more of the
4 crimes that are described in subsection (1)(a) to (g) within the
5 applicable time period prescribed by subsection (1)(a) to (g).

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

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

10 (iv) The individual agrees that, if the information in the
11 criminal history check conducted under this section does not
12 confirm the individual's statement under subparagraphs (i) to (iii),
13 his or her employment will be terminated by the adult foster care
14 facility as required under subsection (1) unless and until the
15 individual can prove that the information is incorrect.

16 (v) That he or she understands the conditions described in
17 subparagraphs (i) to (iv) that result in the termination of his or
18 her employment and that those conditions are good cause for
19 termination.

20 (7) The department shall develop and distribute the model form
21 for the statement required under subsection (6)(b). The department
22 shall make the model form available to adult foster care facilities
23 upon request at no charge.

24 (8) If an individual is conditionally employed under
25 subsection (6), and the report described in subsection (4) or (5),
26 if applicable, does not confirm the individual's statement under
27 subsection (6)(b)(i) to (iii), the adult foster care facility shall

1 terminate the individual's employment as required by subsection
2 (1).

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

9 (10) An adult foster care facility shall use criminal history
10 record information obtained under subsection (4) or (5) only for
11 the purpose of evaluating an individual's qualifications for
12 employment in the position for which he or she has applied and for
13 the purposes of subsections (6) and (8). An adult foster care
14 facility or an employee of the adult foster care facility shall not
15 disclose criminal history record information obtained under this
16 section to a person who is not directly involved in evaluating the
17 individual's qualifications for employment or independent contract.
18 An individual who knowingly uses or disseminates the criminal
19 history record information obtained under subsection (4) or (5) in
20 violation of this subsection is guilty of a misdemeanor punishable
21 by imprisonment for not more than 93 days or a fine of not more
22 than \$1,000.00, or both. Upon written request from another adult
23 foster care facility, psychiatric facility or intermediate care
24 facility for people with mental retardation, or health facility or
25 agency that is considering employing or independently contracting
26 with an individual, an adult foster care facility that has obtained
27 criminal history record information under this section on that

1 individual shall, with the consent of the applicant, share the
2 information with the requesting adult foster care facility,
3 psychiatric facility or intermediate care facility for people with
4 mental retardation, or health facility or agency. Except for a
5 knowing or intentional release of false information, an adult
6 foster care facility has no liability in connection with a
7 background check conducted under this section or the release of
8 criminal history record information under this subsection.

9 (11) As a condition of continued employment, each employee or
10 independent contractor shall do both of the following:

11 (a) Agree in writing to report to the adult foster care
12 facility immediately upon being arraigned on 1 or more of the
13 criminal offenses listed in subsection (1)(a) to (g), upon being
14 convicted of 1 or more of the criminal offenses listed in
15 subsection (1)(a) to (g), upon becoming the subject of an order or
16 disposition described under subsection (1)(h), and upon becoming
17 the subject of a substantiated finding described under subsection
18 (1)(i). Reporting of an arraignment under this subdivision is not
19 cause for termination or denial of employment.

20 (b) If a set of fingerprints is not already on file with the
21 department of state police, provide the department of state police
22 with a set of fingerprints.

23 (12) In addition to sanctions set forth in this act, a
24 licensee, owner, administrator, or operator of an adult foster care
25 facility who knowingly and willfully fails to conduct the criminal
26 history checks as required under this section is guilty of a
27 misdemeanor punishable by imprisonment for not more than 1 year or

1 a fine of not more than \$5,000.00, or both.

2 (13) In collaboration with the department of state police, the
3 department of information technology shall establish an automated
4 fingerprint identification system database that would allow the
5 department of state police to store and maintain all fingerprints
6 submitted under this section and would provide for an automatic
7 notification at the time a subsequent criminal arrest fingerprint
8 card submitted into the system matches a set of fingerprints
9 previously submitted in accordance with this section. Upon such
10 notification, the department of state police shall immediately
11 notify the department and the department shall immediately contact
12 the respective adult foster care facility with which that
13 individual is associated. Information in the database established
14 under this subsection is confidential, is not subject to disclosure
15 under the freedom of information act, 1976 PA 442, MCL 15.231 to
16 15.246, and shall not be disclosed to any person except for
17 purposes of this act or for law enforcement purposes.

18 (14) If an individual independently contracts with an adult
19 foster care facility, subsections (1) and (2) do not apply if the
20 contractual work performed by the individual is not directly
21 related to the clinical, health care, or personal services
22 delivered by the adult foster care facility or if the individual's
23 duties are not performed on an ongoing basis with direct access to
24 residents. This exception includes, but is not limited to, an
25 individual who independently contracts with the adult foster care
26 facility to provide utility, maintenance, construction, or
27 communication services.

1 (15) The department and the department of state police shall
2 maintain an electronic web-based system to assist the adult foster
3 care facilities required to check relevant registries and conduct
4 criminal history checks of its employees and independent
5 contractors and to provide for an automated notice to the adult
6 foster care facilities for the individuals entered in the system
7 who, since the initial check, have been convicted of a
8 disqualifying offense or have been the subject of a substantiated
9 finding of abuse, neglect, or misappropriation of property.

10 (16) The department shall submit to the legislature not later
11 than April 1, 2009 a written report regarding the department's plan
12 to continue performing criminal history checks if adequate federal
13 funding is not available to continue performing future criminal
14 history checks.

15 (17) An adult foster care facility or a prospective employee
16 covered under this section may not be charged for the cost of an
17 initial criminal history check required under this act.

18 (18) As used in this section:

19 (a) "Direct access" means access to a resident or resident's
20 property, financial information, medical records, treatment
21 information, or any other identifying information.

22 (b) "Health facility or agency" means a health facility or
23 agency as defined in section 20106 of the public health code, 1978
24 PA 368, MCL 333.20106.

25 (c) "Independent contract" means a contract entered into by an
26 adult foster care facility with an individual who provides the
27 contracted services independently or a contract entered into by an

1 adult foster care facility with an organization or agency that
2 employs or contracts with an individual after complying with the
3 requirements of this section to provide the contracted services to
4 the adult foster care facility on behalf of the organization or
5 agency.

6 (d) "Title XIX" means title XIX of the social security act, 42
7 USC 1396 to 1396r-6 and 1396r-8 to 1396v.

8 Enacting section 1. This amendatory act takes effect October
9 31, 2010.

10 Enacting section 2. This amendatory act does not take effect
11 unless Senate Bill No. 104 of the 94th Legislature is enacted into
12 law.