

SENATE BILL No. 1161

March 4, 2008, Introduced by Senator BIRKHOLZ and referred to the Committee on Senior Citizens and Veterans Affairs.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 20173a (MCL 333.20173a), as added by 2006 PA
28.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20173a. (1) Except as otherwise provided in subsection
2 (2), a health facility or agency that is a nursing home, county
3 medical care facility, hospice, hospital that provides swing bed
4 services, home for the aged, or home health agency shall not
5 employ, independently contract with, or grant clinical privileges
6 to an individual who regularly has direct access to or provides
7 direct services to patients or residents in the health facility or
8 agency after ~~the effective date of this section~~ **APRIL 1, 2006** if

1 the individual satisfies 1 or more of the following:

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

4 (b) Has been convicted of any of the following felonies, an
5 attempt or conspiracy to commit any of those felonies, or any other
6 state or federal crime that is similar to the felonies described in
7 this subdivision, other than a felony for a relevant crime
8 described under 42 USC 1320a-7, unless 15 years have lapsed since
9 the individual completed all of the terms and conditions of his or
10 her sentencing, parole, and probation for that conviction prior to
11 the date of application for employment or clinical privileges or
12 the date of the execution of the independent contract:

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

18 (ii) A felony involving cruelty or torture.

19 (iii) A felony under chapter XXA of the Michigan penal code,
20 1931 PA 328, MCL 750.145m to 750.145r.

21 (iv) A felony involving criminal sexual conduct.

22 (v) A felony involving abuse or neglect.

23 (vi) A felony involving the use of a firearm or dangerous
24 weapon.

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

27 (c) Has been convicted of a felony or an attempt or conspiracy

1 to commit a felony, other than a felony for a relevant crime
2 described under 42 USC 1320a-7 or a felony described under
3 subdivision (b), unless 10 years have lapsed since the individual
4 completed all of the terms and conditions of his or her sentencing,
5 parole, and probation for that conviction prior to the date of
6 application for employment or clinical privileges or the date of
7 the execution of the independent contract.

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

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

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

22 (iii) A misdemeanor involving criminal sexual conduct.

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

25 (v) A misdemeanor involving abuse or neglect.

26 (e) Has been convicted of any of the following misdemeanors,
27 other than a misdemeanor for a relevant crime described under 42

1 USC 1320a-7, or a state or federal crime that is substantially
2 similar to the misdemeanors described in this subdivision, within
3 the 5 years immediately preceding the date of application for
4 employment or clinical privileges or the date of the execution of
5 the independent contract:

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

8 (ii) A misdemeanor involving home invasion.

9 (iii) A misdemeanor involving embezzlement.

10 (iv) A misdemeanor involving negligent homicide.

11 (v) A misdemeanor involving larceny unless otherwise provided
12 under subdivision (g).

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

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

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

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

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

3 (iii) A misdemeanor under part 74 unless otherwise provided
4 under subdivision (g).

5 (g) 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 year immediately preceding the date of application for
10 employment or clinical privileges or the date of the execution of
11 the independent contract:

12 (i) A misdemeanor under part 74 if the individual, at the time
13 of 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 pursuant to an investigation conducted in accordance
23 with 42 USC 1395i-3 or 1396r.

24 (2) Except as otherwise provided in subsection (5), a health
25 facility or agency that is a nursing home, county medical care
26 facility, hospice, hospital that provides swing bed services, home
27 for the aged, or home health agency shall not employ, independently

1 contract with, or grant privileges to an individual who regularly
2 has direct access to or provides direct services to patients or
3 residents in the health facility or agency after ~~the effective date~~
4 ~~of this section~~ **APRIL 1, 2006** until the health facility or agency
5 conducts a criminal history check in compliance with subsection
6 (4). This subsection and subsection (1) do not apply to any of the
7 following:

8 (a) An individual who is employed by, under independent
9 contract to, or granted clinical privileges in a health facility or
10 agency before ~~the effective date of this section~~ **APRIL 1, 2006**.
11 ~~Within 24 months after the effective date of this section~~ **BEGINNING**
12 **APRIL 1, 2009**, an individual who is exempt under this subdivision
13 shall provide the department of state police with a set of
14 fingerprints and the department of state police shall input those
15 fingerprints into the automated fingerprint identification system
16 database established under subsection (12). An individual who is
17 exempt under this subdivision is not limited to working within the
18 health facility or agency with which he or she is employed by,
19 under independent contract to, or granted clinical privileges on
20 ~~the effective date of this section~~ **APRIL 1, 2006**. That individual
21 may transfer to another health facility or agency that is under the
22 same ownership with which he or she was employed, under contract,
23 or granted privileges. If that individual wishes to transfer to
24 another health facility or agency that is not under the same
25 ownership, he or she may do so provided that a criminal history
26 check is conducted by the new health facility or agency in
27 accordance with subsection (4). If an individual who is exempt

1 under this subdivision is subsequently convicted of a crime
2 described under subsection (1) (a) ~~through~~ **TO** (g) or found to be the
3 subject of a substantiated finding described under subsection
4 (1) (i) or an order or disposition described under subsection
5 (1) (h), or is found to have been convicted of a relevant crime
6 described under subsection (1) (a), then he or she is no longer
7 exempt and shall be terminated from employment or denied
8 employment.

9 (b) An individual who is an independent contractor with a
10 health facility or agency that is a nursing home, county medical
11 care facility, hospice, hospital that provides swing bed services,
12 home for the aged, or home health agency if the services for which
13 he or she is contracted is not directly related to the provision of
14 services to a patient or resident or if the services for which he
15 or she is contracted allows for direct access to the patients or
16 residents but is not performed on an ongoing basis. This exception
17 includes, but is not limited to, an individual who independently
18 contracts with the health facility or agency to provide utility,
19 maintenance, construction, or communications services.

20 (3) An individual who applies for employment either as an
21 employee or as an independent contractor or for clinical privileges
22 with a health facility or agency that is a nursing home, county
23 medical care facility, hospice, hospital that provides swing bed
24 services, home for the aged, or home health agency and has received
25 a good faith offer of employment, an independent contract, or
26 clinical privileges from the health facility or agency shall give
27 written consent at the time of application for the department of

1 state police to conduct an initial criminal history check under
2 this section, along with identification acceptable to the
3 department of state police.

4 (4) Upon receipt of the written consent and identification
5 required under subsection (3), a health facility or agency that is
6 a nursing home, county medical care facility, hospice, hospital
7 that provides swing bed services, home for the aged, or home health
8 agency that has made a good faith offer of employment or an
9 independent contract or clinical privileges to the applicant shall
10 make a request to the department of state police to conduct a
11 criminal history check on the applicant, to input the applicant's
12 fingerprints into the automated fingerprint identification system
13 database, and to forward the applicant's fingerprints to the
14 federal bureau of investigation. The department of state police
15 shall request the federal bureau of investigation to make a
16 determination of the existence of any national criminal history
17 pertaining to the applicant. The applicant shall provide the
18 department of state police with a set of fingerprints. The request
19 shall be made in a manner prescribed by the department of state
20 police. The health facility or agency shall make the written
21 consent and identification available to the department of state
22 police. The health facility or agency shall make a request to the
23 relevant licensing or regulatory department to conduct a check of
24 all relevant registries established pursuant to federal and state
25 law and regulations for any substantiated findings of abuse,
26 neglect, or misappropriation of property. If the department of
27 state police or the federal bureau of investigation charges a fee

1 for conducting the initial criminal history check, the charge shall
2 be paid by or reimbursed by the department with federal funds as
3 provided to implement a pilot program for national and state
4 background checks on direct patient access employees of long-term
5 care facilities or providers in accordance with section 307 of the
6 medicare prescription drug, improvement, and modernization act of
7 2003, Public Law 108-173. The health facility or agency shall not
8 seek reimbursement for a charge imposed by the department of state
9 police or the federal bureau of investigation from the individual
10 who is the subject of the initial criminal history check. A health
11 facility or agency, a prospective employee, or a prospective
12 independent contractor covered under this section ~~may~~**SHALL** not be
13 charged for the cost of ~~an initial~~**A** criminal history check
14 required under this section. The department of state police shall
15 conduct a criminal history check on the applicant named in the
16 request. The department of state police shall provide the
17 department with a written report of the criminal history check
18 conducted under this subsection if the criminal history check
19 contains any criminal history record information. The report shall
20 contain any criminal history record information on the applicant
21 maintained by the department of state police. The department of
22 state police shall provide the results of the federal bureau of
23 investigation determination to the department within 30 days after
24 the request is made. If the requesting health facility or agency is
25 not a state department or agency and if a criminal conviction is
26 disclosed on the written report of the criminal history check or
27 the federal bureau of investigation determination, the department

1 shall notify the health facility or agency and the applicant in
2 writing of the type of crime disclosed on the written report of the
3 criminal history check or the federal bureau of investigation
4 determination without disclosing the details of the crime. Any
5 charges imposed by the department of state police or the federal
6 bureau of investigation for conducting an initial criminal history
7 check or making a determination under this subsection shall be paid
8 in the manner required under this subsection. The notice shall
9 include a statement that the applicant has a right to appeal a
10 decision made by the health facility or agency regarding his or her
11 employment eligibility based on the criminal background check. The
12 notice shall also include information regarding where to file and
13 describing the appellate procedures established under section
14 20173b.

15 (5) If a health facility or agency that is a nursing home,
16 county medical care facility, hospice, hospital that provides swing
17 bed services, home for the aged, or home health agency determines
18 it necessary to employ or grant clinical privileges to an applicant
19 before receiving the results of the applicant's criminal history
20 check under this section, the health facility or agency may
21 conditionally employ or grant conditional clinical privileges to
22 the individual if all of the following apply:

23 (a) The health facility or agency requests the criminal
24 history check under this section upon conditionally employing or
25 conditionally granting clinical privileges to the individual.

26 (b) The individual signs a statement in writing that indicates
27 all of the following:

1 (i) That he or she has not been convicted of 1 or more of the
2 crimes that are described in subsection (1)(a) ~~through~~**TO** (g)
3 within the applicable time period prescribed by each subdivision
4 respectively.

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

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

9 (iv) The individual agrees that, if the information in the
10 criminal history check conducted under this section does not
11 confirm the individual's statements under subparagraphs (i) ~~through~~
12 **TO** (iii), his or her employment or clinical privileges will be
13 terminated by the health facility or agency as required under
14 subsection (1) unless and until the individual appeals and can
15 prove that the information is incorrect.

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

20 (6) The department shall develop and distribute a model form
21 for the statement required under subsection (5)(b). The department
22 shall make the model form available to health facilities or
23 agencies subject to this section upon request at no charge.

24 (7) If an individual is employed as a conditional employee or
25 is granted conditional clinical privileges under subsection (5),
26 and the report described in subsection (4) does not confirm the
27 individual's statement under subsection (5)(b) (i) ~~through~~**TO** (iii),

1 the health facility or agency shall terminate the individual's
2 employment or clinical privileges as required by subsection (1).

3 (8) 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 (5)(b)(i) ~~through~~ **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 (9) A health facility or agency that is a nursing home, county
10 medical care facility, hospice, hospital that provides swing bed
11 services, home for the aged, or home health agency shall use
12 criminal history record information obtained under subsection (4)
13 only for the purpose of evaluating an applicant's qualifications
14 for employment, an independent contract, or clinical privileges in
15 the position for which he or she has applied and for the purposes
16 of subsections (5) and (7). A health facility or agency or an
17 employee of the health facility or agency shall not disclose
18 criminal history record information obtained under subsection (4)
19 to a person who is not directly involved in evaluating the
20 applicant's qualifications for employment, an independent contract,
21 or clinical privileges. An individual who knowingly uses or
22 disseminates the criminal history record information obtained under
23 subsection (4) in violation of this subsection is guilty of a
24 misdemeanor punishable by imprisonment for not more than 93 days or
25 a fine of not more than \$1,000.00, or both. Upon written request
26 from another health facility or agency, psychiatric facility or
27 intermediate care facility for people with mental retardation, or

1 adult foster care facility that is considering employing,
2 independently contracting with, or granting clinical privileges to
3 an individual, a health facility or agency that has obtained
4 criminal history record information under this section on that
5 individual shall, with the consent of the applicant, share the
6 information with the requesting health facility or agency,
7 psychiatric facility or intermediate care facility for people with
8 mental retardation, or adult foster care facility. Except for a
9 knowing or intentional release of false information, a health
10 facility or agency has no liability in connection with a criminal
11 background check conducted under this section or the release of
12 criminal history record information under this subsection.

13 (10) As a condition of continued employment, each employee,
14 independent contractor, or individual granted clinical privileges
15 shall do each of the following:

16 (a) Agree in writing to report to the health facility or
17 agency immediately upon being arraigned for 1 or more of the
18 criminal offenses listed in subsection (1)(a) ~~through~~ ~~TO~~ (g), upon
19 being convicted of 1 or more of the criminal offenses listed in
20 subsection (1)(a) ~~through~~ ~~TO~~ (g), upon becoming the subject of an
21 order or disposition described under subsection (1)(h), and upon
22 being the subject of a substantiated finding of neglect, abuse, or
23 misappropriation of property as described in subsection (1)(i).
24 Reporting of an arraignment under this subdivision is not cause for
25 termination or denial of employment.

26 (b) If a set of fingerprints is not already on file with the
27 department of state police, provide the department of state police

1 with a set of fingerprints.

2 (11) In addition to sanctions set forth in section 20165, a
3 licensee, owner, administrator, or operator of a nursing home,
4 county medical care facility, hospice, hospital that provides swing
5 bed services, home for the aged, or home health agency who
6 knowingly and willfully fails to conduct the criminal history
7 checks as required under this section is guilty of a misdemeanor
8 punishable by imprisonment for not more than 1 year or a fine of
9 not more than \$5,000.00, or both.

10 (12) In collaboration with the department of state police, the
11 department of information technology shall establish an automated
12 fingerprint identification system database that would allow the
13 department of state police to store and maintain all fingerprints
14 submitted under this section and would provide for an automatic
15 notification if and when a subsequent criminal arrest fingerprint
16 card submitted into the system matches a set of fingerprints
17 previously submitted in accordance with this section. Upon such
18 notification, the department of state police shall immediately
19 notify the department and the department shall immediately contact
20 the respective health facility or agency with which that individual
21 is associated. Information in the database established under this
22 subsection is confidential, is not subject to disclosure under the
23 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and
24 shall not be disclosed to any person except for purposes of this
25 act or for law enforcement purposes.

26 ~~———— (13) Within 1 year after the effective date of the amendatory~~
27 ~~act that added this section, the department shall submit a written~~

1 ~~report to the legislature regarding each of the following:~~

2 ~~—— (a) The impact and effectiveness of this amendatory act.~~

3 ~~—— (b) The feasibility of implementing criminal history checks on~~
4 ~~volunteers who work in those health facilities or agencies and on~~
5 ~~state agency employees who are involved in the licensing of those~~
6 ~~health facilities or agencies and regulation of those employees.~~

7 ~~—— (c) The amount of federal funds provided to implement a pilot~~
8 ~~program for national and state background checks on direct access~~
9 ~~employees of long term care facilities or providers, the amount of~~
10 ~~those funds expended to date, and the amount of those funds~~
11 ~~remaining.~~

12 ~~(13) (14) Within 3 years after the effective date of this~~
13 ~~section~~ **ON OR BEFORE APRIL 1, 2009**, the department shall submit a
14 written report to the legislature outlining a plan to cover the
15 costs of the criminal history checks required under this section if
16 federal funding is no longer available or is inadequate to cover
17 those costs.

18 ~~(14) (15) By March 1, 2007, the~~ **THE** department and the
19 department of state police shall ~~develop and implement~~ **MAINTAIN** an
20 electronic web-based system to assist those health facilities and
21 agencies required to check relevant registries and conduct criminal
22 history checks of its employees and independent contractors and to
23 provide for an automated notice to those health facilities or
24 agencies for those individuals inputted in the system who, since
25 the initial check, have been convicted of a disqualifying offense
26 or have been the subject of a substantiated finding of abuse,
27 neglect, or misappropriation of property.

1 (15) ~~(16)~~—As used in this section:

2 (a) "Adult foster care facility" means an adult foster care
3 facility licensed under the adult foster care facility licensing
4 act, 1979 PA 218, MCL 400.701 to 400.737.

5 (b) "Direct access" means access to a patient or resident or
6 to a patient's or resident's property, financial information,
7 medical records, treatment information, or any other identifying
8 information.

9 (c) "Home health agency" means a person certified by medicare
10 whose business is to provide to individuals in their places of
11 residence other than in a hospital, nursing home, or county medical
12 care facility 1 or more of the following services: nursing
13 services, therapeutic services, social work services, homemaker
14 services, home health aide services, or other related services.

15 (d) "Independent contract" means a contract entered into by a
16 health facility or agency with an individual who provides the
17 contracted services independently or a contract entered into by a
18 health facility or agency with an organization or agency that
19 employs or contracts with an individual after complying with the
20 requirements of this section to provide the contracted services to
21 the health facility or agency on behalf of the organization or
22 agency.

23 (e) "Medicare" means benefits under the federal medicare
24 program established under title XVIII of the social security act,
25 42 USC 1395 to ~~1395ggg~~ **1395HHH**.