

**SUBSTITUTE FOR
HOUSE BILL NO. 4045**

A bill to create the volunteer employee criminal history system program; to impose a fee for conducting a national and state criminal history record information check; and to provide for the powers and duties of certain state and local governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "volunteer employee
2 criminal history system act".

3 Sec. 2. As used in this act:

4 (a) "Care or care placement services" means the provision of
5 care, treatment, education, training, instruction, supervision, or
6 recreation to a child, an elderly individual, or an individual with
7 a disability.

1 (b) "Child" means an individual who is less than 18 years of
2 age and is not emancipated by operation of law as provided in
3 section 4 of 1968 PA 293, MCL 722.4.

4 (c) "Covered individual" means an individual who meets any of
5 the following requirements:

6 (i) Is employed by a qualified entity and has, seeks to have,
7 or may have supervised or unsupervised access to a child, an
8 elderly individual, or individual with a disability for whom the
9 qualified entity provides care or care placement services.

10 (ii) Is a volunteer of a qualified entity and has, seeks to
11 have, or may have supervised or unsupervised access to a child, an
12 elderly individual, or individual with a disability for whom the
13 qualified entity provides care or care placement services.

14 (iii) Owns, operates, or seeks to own or operate a qualified
15 entity.

16 (d) "Criminal history record information" means that term as
17 defined in section 1a of 1925 PA 289, MCL 28.241a.

18 (e) "Department" means the department of state police.

19 (f) "Elderly individual" means an individual who is 65 years
20 of age or older.

21 (g) "Individual with a disability" means an individual with a
22 mental or physical impairment who requires assistance to perform 1
23 or more daily living tasks.

24 (h) "Program" means the volunteer employee criminal history
25 system program created in section 3.

26 (i) "Qualified entity" means a business or organization,
27 whether public, private, operated for profit, or operated not for
28 profit that provides care or care placement services. A qualified
29 entity includes a business or organization that licenses or

1 certifies others to provide care or care placement services.

2 (j) "Rap back program" means a state or federal record of
3 arrest and prosecution background program that enables qualified
4 entities to receive ongoing status notifications of any criminal
5 history reported on covered individuals whose fingerprints are
6 registered in the system thereby eliminating the need for repeated
7 background checks on covered individuals by qualified entities.

8 Sec. 3. (1) The volunteer employee criminal history system
9 program is created in the department for the purpose of authorizing
10 a national and state criminal history record information of a
11 qualified entity's covered individuals.

12 (2) The department shall do both of the following:

13 (a) Develop the application, approval, and compliance process
14 and standards necessary to operate and manage the program.

15 (b) Develop the application form and any other forms required
16 for a qualified entity's registration and participation in the
17 program.

18 Sec. 4. (1) A qualified entity may submit a request to the
19 department for a covered individual's national and state criminal
20 history record information under the program. The request submitted
21 under this subsection, for each covered individual, must include a
22 copy of the covered individual's signed and submitted statement
23 required under section 6(3) and the covered individual's
24 fingerprints.

25 (2) A qualified entity that submits a request for a covered
26 individual's national and state criminal history record information
27 under subsection (1) shall register with the department. As part of
28 the registration process, the qualified entity shall agree to
29 comply with state and federal law, including, but not limited to,

1 the national child protection act of 1993, 34 USC 40101 to 40104.

2 (3) The department may, in its sole discretion, audit a
3 registered qualified entity to ensure that the registered qualified
4 entity is complying with state and federal law, including, but not
5 limited to, the national child protection act of 1993, 34 USC 40101
6 to 40104.

7 Sec. 5. A qualified entity may participate in a rap back
8 program. A qualified entity that participates in a rap back program
9 shall notify a covered individual that is subject to a national and
10 state criminal history record information under this act that the
11 individual's fingerprints may be retained by the department's
12 automated fingerprint identification system and the Federal Bureau
13 of Investigation for all purposes authorized for fingerprint
14 submissions subject to ongoing monitoring.

15 Sec. 6. (1) A qualified entity may require a covered
16 individual to submit the individual's fingerprints under this
17 section to determine whether the national and state criminal
18 history record information shows that the covered individual has
19 been convicted of or is under pending indictment for any crime that
20 bears on the individual's fitness to be responsible for the safety
21 and well-being of a child, an elderly individual, or individual
22 with a disability.

23 (2) The determination of the covered individual's fitness must
24 be made solely by the qualified entity. This section does not
25 require the department to make a fitness determination on behalf of
26 a qualified entity. The national and state criminal history record
27 information received under this section may only be used by the
28 qualified entity for the purpose of determining the fitness of a
29 covered individual, as described in this section.

1 (3) A qualified entity may not submit a request for a national
2 and state criminal history record information to the department
3 under this section unless the covered individual has provided the
4 individual's fingerprints and a completed and signed written
5 statement to the qualified entity that includes, but is not limited
6 to, all of the following:

7 (a) The name, address, and date of birth of the covered
8 individual as it appears on a valid identification document. As
9 used in this subdivision, "identification document" means a
10 document that is intended or commonly accepted for the purpose of
11 identifying an individual and is made or issued by or under the
12 authority of the United States government, a state, political
13 subdivision of a state, sponsoring entity of an event designated as
14 a special event of national significance, foreign government,
15 political subdivision of a foreign government, or an international
16 governmental or an international quasi-governmental organization.

17 (b) Notice that the covered individual's fingerprints may be
18 used to conduct a national and state criminal history record
19 information of the covered individual and that the criminal history
20 record may be used by the qualified entity to deny the individual's
21 supervised or unsupervised access to a child, an elderly
22 individual, or individual with a disability for whom the qualified
23 entity provides care or care placement services.

24 (c) A waiver permitting the qualified entity to request and
25 receive the national and state criminal history record information
26 of a covered individual for the purpose of determining the
27 individual's fitness to provide care or care placement services for
28 a child, an elderly individual, or individual with a disability.

29 (d) A disclosure stating whether the covered individual has

1 ever been convicted or is the subject of pending charges for a
2 criminal offense and, if convicted, a description of the offense
3 and the result of the conviction.

4 (e) Notice of the covered individual's right to obtain a copy
5 of any background screening report, including the national and
6 state criminal history record information, if any, contained in the
7 report, and of the right to challenge the accuracy or completeness
8 of any information contained in the report and to obtain a prompt
9 determination as to the validity of the challenge before a final
10 determination regarding the individual's fitness is made by the
11 qualified entity reviewing the national and state criminal history
12 record information. A covered individual may only challenge the
13 information contained in the national and state criminal history
14 record information as provided in 28 CFR 16.34.

15 (4) A qualified entity shall maintain in its records the
16 statement provided under subsection (3) that is completed and
17 signed by the covered individual.

18 Sec. 7. (1) The department shall store and retain all
19 fingerprints submitted under this act in an automated fingerprint
20 identification system database that searches against latent
21 fingerprints. The department shall forward all fingerprints
22 submitted to it under this section to the Federal Bureau of
23 Investigation to be retained in the next generation identification
24 system or its successor system.

25 (2) The department shall provide directly to the qualified
26 entity the state criminal history record information that is not
27 exempt from disclosure under section 2a of 1925 PA 289, MCL
28 28.242a, or otherwise confidential under state or federal law. The
29 department shall provide directly to the qualified entity the

1 national and state criminal history record information as
2 authorized by law and the covered individual's signed and written
3 statement required under section 6(3).

4 Sec. 8. The department may charge a fee for a national and
5 state criminal history record information conducted under this act
6 that does not exceed the actual and reasonable cost of conducting
7 the check, plus the amount prescribed by the Federal Bureau of
8 Investigation for the national criminal history record information
9 in compliance with the national child protection act of 1993, 34
10 USC 40101 to 40104.

11 Sec. 9. If a federal or state law requires a qualified entity
12 to apply screening criteria to the national and state criminal
13 history record information of a covered individual, including any
14 right to contest or request an exemption from disqualification, the
15 qualified entity shall apply the screening criteria under that
16 other law to the national and state criminal history record
17 information received for a covered individual that is subject to
18 the required screening.

19 Sec. 10. (1) This act does not do either of the following:

20 (a) Create additional duties or obligations for a qualified
21 entity to obtain the national and state criminal history record
22 information authorized under this act.

23 (b) Relieve a qualified entity of its duty to obtain a covered
24 individual's criminal history or any other information in
25 accordance with the requirements of any other applicable law.

26 (2) This state, a political subdivision of this state, or any
27 agency, officer, or employee of this state or a political
28 subdivision is not liable for damages to a covered individual for
29 the timely provision of an accurate national and state criminal

1 history record information requested under this act.

2 Sec. 11. This program does not create an entitlement or right
3 to use the program. The department is not required to administer
4 this program unless the legislature appropriates sufficient funds
5 for the program. The department may administer the program subject
6 to any limitations the department considers necessary or
7 appropriate in the absence of the legislature appropriating funds
8 for the program.

9 Enacting section 1. This act takes effect May 1, 2023.