

**SUBSTITUTE FOR
HOUSE BILL NO. 6056**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 20173a (MCL 333.20173a), as amended by 2008 PA
123.

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 April 1, 2006 if the individual satisfies 1 or more of

1 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

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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 April 1, 2006
4 until the health facility or agency conducts a criminal history
5 check in compliance with subsection (4). This subsection and
6 subsection (1) do not apply to any of the following:

7 (a) An individual who is employed by, under independent
8 contract to, or granted clinical privileges in a health facility or
9 agency before April 1, 2006. Beginning April 1, <<2009 2011>>, an
individual
10 who is exempt under this subdivision shall provide the department
11 of state police with a set of fingerprints and the department of
12 state police shall input those fingerprints into the automated
13 fingerprint identification system database established under
14 subsection (12). An individual who is exempt under this subdivision
15 is not limited to working within the health facility or agency with
16 which he or she is employed by, under independent contract to, or
17 granted clinical privileges on April 1, 2006. That individual may
18 transfer to another health facility or agency that is under the
19 same ownership with which he or she was employed, under contract,
20 or granted privileges. If that individual wishes to transfer to
21 another health facility or agency that is not under the same
22 ownership, he or she may do so provided that a criminal history
23 check is conducted by the new health facility or agency in
24 accordance with subsection (4). If an individual who is exempt
25 under this subdivision is subsequently convicted of a crime
26 described under subsection (1)(a) to (g) or found to be the subject
27 of a substantiated finding described under subsection (1)(i) or an

1 order or disposition described under subsection (1)(h), or is found
2 to have been convicted of a relevant crime described under
3 subsection (1)(a), then he or she is no longer exempt and shall be
4 terminated from employment or denied 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 ~~is~~**ARE** not directly related to the
10 provision of services to a patient or resident or if the services
11 for which he or she is contracted ~~allows~~**ALLOW** for direct access to
12 the patients or residents but ~~is~~**ARE** not performed on an ongoing
13 basis. This exception includes, but is not limited to, an
14 individual who independently contracts with the health facility or
15 agency to provide utility, maintenance, construction, or
16 communications services.

17 (3) An individual who applies for employment either as an
18 employee or as an independent contractor or for clinical privileges
19 with a health facility or agency that is a nursing home, county
20 medical care facility, hospice, hospital that provides swing bed
21 services, home for the aged, or home health agency and has received
22 a good faith offer of employment, an independent contract, or
23 clinical privileges from the health facility or agency shall give
24 written consent at the time of application for the department of
25 state police to conduct an initial criminal history check under
26 this section, along with identification acceptable to the
27 department of state police.

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

1 ~~background checks on direct patient access employees of long term~~
2 ~~care facilities or providers in accordance with section 307 of the~~
3 ~~medicare prescription drug, improvement, and modernization act of~~
4 ~~2003, Public Law 108-173~~ **A HEALTH FACILITY OR AGENCY THAT IS A**
5 **NURSING HOME, COUNTY MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT**
6 **PROVIDES SWING BED SERVICES, OR HOME HEALTH AGENCY SHALL PAY THE**
7 **COST OF THE CHARGE. IF THE DEPARTMENT OF STATE POLICE OR THE**
8 **FEDERAL BUREAU OF INVESTIGATION CHARGES A FEE FOR CONDUCTING THE**
9 **INITIAL CRIMINAL HISTORY CHECK, THE DEPARTMENT SHALL PAY THE COST**
10 **OF OR REIMBURSE THE CHARGE FOR A HEALTH FACILITY OR AGENCY THAT IS**
11 **A HOME FOR THE AGED.** The health facility or agency shall not seek
12 reimbursement for a charge imposed by the department of state
13 police or the federal bureau of investigation from the individual
14 who is the subject of the initial criminal history check. A ~~health~~
15 ~~facility or agency, a prospective employee, or a prospective~~
16 independent contractor covered under this section may not be
17 charged for the cost of an initial criminal history check required
18 under this section. The department of state police shall conduct a
19 criminal history check on the applicant named in the request. The
20 department of state police shall provide the department with a
21 written report of the criminal history check conducted under this
22 subsection if the criminal history check contains any criminal
23 history record information. The report shall contain any criminal
24 history record information on the applicant maintained by the
25 department of state police. The department of state police shall
26 provide the results of the federal bureau of investigation
27 determination to the department within 30 days after the request is

1 made. If the requesting health facility or agency is not a state
2 department or agency and if a criminal conviction is disclosed on
3 the written report of the criminal history check or the federal
4 bureau of investigation determination, the department shall notify
5 the health facility or agency and the applicant in writing of the
6 type of crime disclosed on the written report of the criminal
7 history check or the federal bureau of investigation determination
8 without disclosing the details of the crime. Any charges imposed by
9 the department of state police or the federal bureau of
10 investigation for conducting an initial criminal history check or
11 making a determination under this subsection shall be paid in the
12 manner required under this subsection. The notice shall include a
13 statement that the applicant has a right to appeal a decision made
14 by the health facility or agency regarding his or her employment
15 eligibility based on the criminal background check. The notice
16 shall also include information regarding where to file and
17 describing the appellate procedures established under section
18 20173b.

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

27 (a) The health facility or agency requests the criminal

1 history check under this section upon conditionally employing or
2 conditionally granting clinical privileges to the individual.

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

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

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

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

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

19 (v) That he or she understands **THAT** the conditions described
20 in subparagraphs (i) to (iv) ~~that~~ **MAY** result in the termination of
21 his or her employment or clinical privileges and that those
22 conditions are good cause for termination.

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

27 (7) If an individual is employed as a conditional employee or

1 is granted conditional clinical privileges under subsection (5),
2 and the report described in subsection (4) does not confirm the
3 individual's statement under subsection (5)(b)(i) to (iii), the
4 health facility or agency shall terminate the individual's
5 employment or clinical privileges as required by subsection (1).

6 (8) An individual who knowingly provides false information
7 regarding his or her identity, criminal convictions, or
8 substantiated findings on a statement described in subsection
9 (5)(b)(i) to (iii) is guilty of a misdemeanor punishable by
10 imprisonment for not more than 93 days or a fine of not more than
11 \$500.00, or both.

12 (9) A health facility or agency that is a nursing home, county
13 medical care facility, hospice, hospital that provides swing bed
14 services, home for the aged, or home health agency shall use
15 criminal history record information obtained under subsection (4)
16 only for the purpose of evaluating an applicant's qualifications
17 for employment, an independent contract, or clinical privileges in
18 the position for which he or she has applied and for the purposes
19 of subsections (5) and (7). A health facility or agency or an
20 employee of the health facility or agency shall not disclose
21 criminal history record information obtained under subsection (4)
22 to a person who is not directly involved in evaluating the
23 applicant's qualifications for employment, an independent contract,
24 or clinical privileges. An individual who knowingly uses or
25 disseminates the criminal history record information obtained under
26 subsection (4) in violation of this subsection is guilty of a
27 misdemeanor punishable by imprisonment for not more than 93 days or

1 a fine of not more than \$1,000.00, or both. Upon written request
2 from another health facility or agency, psychiatric facility or
3 intermediate care facility for people with mental retardation, or
4 adult foster care facility that is considering employing,
5 independently contracting with, or granting clinical privileges to
6 an individual, a health facility or agency that has obtained
7 criminal history record information under this section on that
8 individual shall, with the consent of the applicant, share the
9 information with the requesting health facility or agency,
10 psychiatric facility or intermediate care facility for people with
11 mental retardation, or adult foster care facility. Except for a
12 knowing or intentional release of false information, a health
13 facility or agency has no liability in connection with a criminal
14 background check conducted under this section or the release of
15 criminal history record information under this subsection.

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

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

1 termination or denial of employment.

2 (b) If a set of fingerprints is not already on file with the
3 department of state police, provide the department of state police
4 with a set of fingerprints.

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
8 bed services, home for the aged, or home health agency who
9 knowingly and willfully fails to conduct the criminal history
10 checks as required under this section is guilty of a misdemeanor
11 punishable by imprisonment for not more than 1 year or a fine of
12 not more than \$5,000.00, or both.

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

1 act or for law enforcement purposes.

2 (13) On or before April 1, 2009, the department shall submit a
3 written report to the legislature outlining a plan to cover the
4 costs of the criminal history checks required under this section if
5 federal funding is no longer available or is inadequate to cover
6 those costs.

7 (14) The department and the department of state police shall
8 maintain an electronic web-based system to assist those health
9 facilities and agencies required to check relevant registries and
10 conduct criminal history checks of its employees and independent
11 contractors and to provide for an automated notice to those health
12 facilities or agencies for those individuals inputted in the system
13 who, since the initial check, have been convicted of a
14 disqualifying offense or have been the subject of a substantiated
15 finding of abuse, neglect, or misappropriation of property.

16 (15) As used in this section:

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

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

24 (c) "Home health agency" means a person certified by medicare
25 whose business is to provide to individuals in their places of
26 residence other than in a hospital, nursing home, or county medical
27 care facility 1 or more of the following services: nursing

1 services, therapeutic services, social work services, homemaker
2 services, home health aide services, or other related services.

3 (d) "Independent contract" means a contract entered into by a
4 health facility or agency with an individual who provides the
5 contracted services independently or a contract entered into by a
6 health facility or agency with an organization or agency that
7 employs or contracts with an individual after complying with the
8 requirements of this section to provide the contracted services to
9 the health facility or agency on behalf of the organization or
10 agency.

11 (e) "Medicare" means benefits under the federal medicare
12 program established under title XVIII of the social security act,
13 42 USC 1395 to 1395hhh.