

**SUBSTITUTE FOR  
HOUSE BILL NO. 5184**

A bill to amend 1979 PA 218, entitled "Adult foster care facility licensing act," by amending sections 13, 22, and 36 (MCL 400.713, 400.722, and 400.736), sections 13 and 22 as amended by 1994 PA 150 and section 36 as added by 1984 PA 140, and by adding section 34a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 13. (1) A person, partnership, corporation,  
2 association, or a department or agency of the state, county,  
3 city, or other political subdivision shall not establish or  
4 maintain an adult foster care facility unless licensed by the  
5 department.

6       (2) Application for a license shall be made on forms provided  
7 and in the manner prescribed by the department. The application  
8 shall be accompanied by the fee prescribed in section 13a.

9       (3) Before issuing or renewing a license, the department

1 shall investigate the activities and standards of care of the  
2 applicant and shall make an on-site evaluation of the facility.  
3 On-site inspections conducted in response to the application may  
4 be conducted without prior notice to the applicant. Subject to  
5 subsections (9), (10), and (11), the department shall issue or  
6 renew a license if satisfied as to all of the following:

7 (a) The financial stability of the facility.

8 (b) The applicant's compliance with this act and rules  
9 promulgated under this act.

10 (c) The good moral character of the applicant, or owners,  
11 partners, or directors of the facility, if other than an  
12 individual. Each of these persons shall be not less than 18  
13 years of age.

14 (d) The physical and emotional ability of the applicant, and  
15 the person responsible for the daily operation of the facility to  
16 operate an adult foster care facility.

17 (e) The good moral character of the person responsible for  
18 the daily operations of the facility and all employees of the  
19 facility. The applicant shall be responsible for assessing the  
20 good moral character of the employees of the facility. The  
21 person responsible for the daily operation of the facility shall  
22 be not less than 18 years of age.

23 (4) The department shall require an applicant or a licensee  
24 to disclose the names, addresses, and official positions of all  
25 persons who have an ownership interest in the adult foster care  
26 facility. If the adult foster care facility is located on or in  
27 real estate that is leased, the applicant or licensee shall

1 disclose the name of the lessor of the real estate and any direct  
2 or indirect interest that the applicant or licensee has in the  
3 lease other than as lessee.

4 (5) Each license shall state the maximum number of persons to  
5 be received for foster care at 1 time.

6 (6) If applicable, a license shall state the type of  
7 specialized program for which certification has been received  
8 from the department of ~~mental health~~ **consumer and industry**  
9 **services**.

10 (7) A license shall be issued to a specific person for a  
11 facility at a specific location, shall be nontransferable, and  
12 shall remain the property of the department. The prohibition  
13 against transfer of a license to another location does not apply  
14 if a licensee's adult foster care facility or home is closed as a  
15 result of eminent domain proceedings, if the facility or home, as  
16 relocated, otherwise meets the requirements of this act and the  
17 rules promulgated under this act.

18 (8) An applicant or licensee proposing a sale of an adult  
19 foster care facility or home to another owner shall provide the  
20 department with advance notice of the proposed sale in writing.  
21 The applicant or licensee and other parties to the sale shall  
22 arrange to meet with specified department representatives and  
23 shall obtain before the sale a determination of the items of  
24 noncompliance with applicable law and rules that shall be  
25 corrected. The department shall notify the respective parties of  
26 the items of noncompliance before the change of ownership, shall  
27 indicate that the items of noncompliance shall be corrected as a

1 condition of issuance of a license to the new owner, and shall  
2 notify the prospective purchaser of all licensure requirements.

3 (9) The department shall not issue a license to or renew the  
4 license of a person who has been convicted of a felony under this  
5 act or under chapter XXA of the Michigan penal code, ~~Act No. 328~~  
6 ~~of the Public Acts of 1931, being sections 750.145m to 750.145r~~  
7 ~~of the Michigan Compiled Laws~~ **1931 PA 328, MCL 750.145m to**  
8 **750.145r**. The department shall not issue a license to or renew  
9 the license of a person who has been convicted of a misdemeanor  
10 under this act or under chapter XXA of ~~Act No. 328 of the Public~~  
11 ~~Acts of 1931~~ **the Michigan penal code, 1931 PA 328, MCL 750.145m**  
12 **to 750.145r**, for a period of ~~5~~ 10 years after the conviction.

13 (10) If the department has revoked, suspended, or refused to  
14 renew a person's license for an adult foster care facility  
15 ~~pursuant~~ **according** to section 22, the department may refuse to  
16 issue a license to or renew a license of that person for a period  
17 of 5 years after the suspension, revocation, or nonrenewal of the  
18 license.

19 (11) The department may refuse to issue a license to or renew  
20 the license of an applicant if the department determines that the  
21 applicant has a relationship with a former licensee whose license  
22 under this act has been suspended, revoked, or nonrenewed under  
23 subsection (9) or section 22 or a convicted person to whom a  
24 license has been denied under subsection (9). This subsection  
25 applies for 5 years after the suspension, revocation, or  
26 nonrenewal of the former licensee's license or the denial of the  
27 convicted person's license. For purposes of this subsection, an

1 applicant has a relationship with a former licensee or convicted  
2 person if the former licensee or convicted person is involved  
3 with the facility in 1 or more of the following ways:

4 (a) Participates in the administration or operation of the  
5 facility.

6 (b) Has a financial interest in the operation of the  
7 facility.

8 (c) Provides care to residents of the facility.

9 (d) Has contact with residents or staff on the premises of  
10 the facility.

11 (e) Is employed by the facility.

12 (f) Resides in the facility.

13 (12) If the department determines that an unlicensed facility  
14 is an adult foster care facility, the department shall notify the  
15 owner or operator of the facility that it is required to be  
16 licensed under this act. A person receiving the notification  
17 required under this section who does not apply for a license  
18 within 30 days is subject to the penalties described in  
19 subsection (13).

20 (13) Subject to subsection (12), a person who violates  
21 subsection (1) is guilty of a misdemeanor, punishable by  
22 imprisonment for not more than 2 years or a fine of not more than  
23 \$50,000.00, or both. A person who has been convicted of a  
24 violation of subsection (1) who commits a second or subsequent  
25 violation is guilty of a felony, punishable by imprisonment for  
26 not more than 5 years or a fine of not more than \$75,000.00, or  
27 both.

1           Sec. 22. (1) The department may deny, suspend, revoke, or  
2 refuse to renew a license, or modify a regular license to a  
3 provisional license, if the licensee falsifies information on the  
4 application for license or willfully and substantially violates  
5 this act, the rules promulgated under this act, or the terms of  
6 the license.

7           (2) The department may suspend, revoke, or modify a license  
8 of an applicant if the department determines that the applicant  
9 has a relationship with a former licensee whose license under  
10 this act has been suspended, revoked, or nonrenewed under this  
11 section or section 13(9) or a convicted person to whom a license  
12 has been denied under section 13(9). This subsection applies for  
13 ~~5~~ 10 years after the suspension, revocation, or nonrenewal of  
14 the former licensee's license or the denial of the convicted  
15 person's license. As used in this subsection, an applicant has a  
16 relationship with a former licensee or convicted person if the  
17 former licensee or convicted person is involved with the facility  
18 in 1 or more of the following ways:

19           (a) Participates in the administration or operation of the  
20 facility.

21           (b) Has a financial interest in the operation of the  
22 facility.

23           (c) Provides care to residents of the facility.

24           (d) Has contact with residents or staff on the premises of  
25 the facility.

26           (e) Is employed by the facility.

27           (f) Resides in the facility.

1 (3) A license shall not be denied, suspended, or revoked, a  
2 renewal shall not be refused, and a regular license shall not be  
3 modified to a provisional license unless the department gives the  
4 licensee or applicant written notice of the grounds of the  
5 proposed denial, revocation, refusal to renew, or modification.  
6 If the licensee or applicant appeals the denial, revocation,  
7 refusal to renew, or modification by filing a written appeal with  
8 the director within 30 days after receipt of the written notice,  
9 the director or the director's designated representative shall  
10 conduct a hearing at which the licensee or applicant may present  
11 testimony and confront witnesses. Notice of the hearing shall be  
12 given to the licensee or applicant by personal service or  
13 delivery to the proper address by registered mail not less than 2  
14 weeks before the date of the hearing. The decision of the  
15 director shall be made and forwarded to the protesting party by  
16 registered mail not more than 30 days after the hearing. If the  
17 proposed denial, revocation, refusal to renew, or modification is  
18 not protested within 30 days, the license shall be denied,  
19 revoked, refused, or modified.

20 (4) If the department has revoked, suspended, or refused to  
21 renew a license, the former licensee shall not receive or  
22 maintain in that facility an adult who requires foster care. A  
23 person who violates this subsection is guilty of a felony,  
24 punishable by imprisonment for not more than 5 years or a fine of  
25 not more than \$75,000.00, or both.

26 (5) If the department has revoked, suspended, or refused to  
27 renew a license, relocation services shall be provided to adults

1 who were being served by the formerly licensed facility, upon the  
2 department's determination that the adult or his or her  
3 designated representative is unable to relocate the adult in  
4 another facility without assistance. The relocation services  
5 shall be provided by the responsible agency, as defined in  
6 administrative rules, or, if the adult has no agency designated  
7 as responsible, by the department.

8 (6) In the case of facilities that are operated under lease  
9 with ~~the~~ a **state** department ~~of mental health~~ or a ~~county~~  
10 community mental health **services** board, the department may issue  
11 an emergency license for a 90-day period to avoid relocation of  
12 residents following the revocation, suspension, or nonrenewal of  
13 a license, if all of the following requirements are met:

14 (a) The leased physical plant is in substantial compliance  
15 with all licensing requirements.

16 (b) The applicant for the emergency license is a licensee who  
17 is in compliance with all applicable regulations under this act  
18 and under contract with ~~the~~ a **state** department ~~of mental~~  
19 ~~health~~ or a ~~county~~ community mental health **services** board to  
20 operate the leased physical plant temporarily.

21 (c) The former licensee's access to the facility ~~pursuant~~  
22 **according** to a lease, sublease, or contract has been lawfully  
23 terminated by the owner or lessee of the facility.

24 **Sec. 34a. (1) In addition to the restrictions prescribed in**  
25 **sections 13, 22, and 31, and except as otherwise provided in**  
26 **subsection (2), an adult foster care facility shall not employ or**  
27 **independently contract with an individual who regularly provides**



1 direct services to residents of the adult foster care facility  
2 after the effective date of the amendatory act that added this  
3 section if the individual has been convicted of 1 or more of the  
4 following:

5 (a) A felony or an attempt or conspiracy to commit a felony  
6 within the 15 years immediately preceding the date of application  
7 for employment or the date of the execution of the independent  
8 contract.

9 (b) A misdemeanor involving abuse, neglect, assault, battery,  
10 or criminal sexual conduct or involving fraud or theft against a  
11 vulnerable adult as that term is defined in section 145m of the  
12 Michigan penal code, 1931 PA 328, MCL 750.145m, or a state or  
13 federal crime that is substantially similar to a misdemeanor  
14 described in this subdivision within the 10 years immediately  
15 preceding the date of application for employment or the date of  
16 the execution of the contract.

17 (c) An offense listed under R 400.1152 of the Michigan  
18 administrative code.

19 (2) Except as otherwise provided in this subsection and  
20 subsection (7), an adult foster care facility shall not employ or  
21 independently contract with an individual who regularly provides  
22 direct services to residents after the effective date of the  
23 amendatory act that added this section until the adult foster  
24 care facility complies with subsection (4), (5), or (6). This  
25 subsection and subsection (1) do not apply to an individual who  
26 is employed by or under contract to an adult foster care facility  
27 before the effective date of the amendatory act that added this

1 subsection.

2       (3) An individual who applies for employment either as an  
3 employee or as an independent contractor with an adult foster  
4 care facility and has received a good faith offer of employment  
5 or independent contract from the adult foster care facility shall  
6 give written consent at the time of application for the  
7 department of state police to conduct a criminal history check  
8 under this section, along with identification acceptable to the  
9 department of state police. If the department of state police or  
10 equivalent state agency under subsection (6) has conducted a  
11 criminal history check on the individual within the 24 months  
12 immediately preceding the date of application and the individual  
13 provides written consent for release of information for the  
14 purposes of this section, the adult foster care facility may use  
15 a copy of that criminal history check instead of obtaining  
16 written consent and requesting a new criminal history check under  
17 this section. If the individual is using a prior criminal  
18 history check as described in this subsection, the adult foster  
19 care facility shall accept the copy of the results of the  
20 criminal history check only from the adult foster care facility  
21 or health facility or agency that previously employed or  
22 independently contracted with the individual.

23       (4) Upon receipt of the written consent and identification  
24 required under subsection (3), if the individual has resided in  
25 this state for 3 or more years preceding the good faith offer of  
26 employment or independent contract, the adult foster care  
27 facility that has made a good faith offer of employment or

1 independent contract shall make a request to the department of  
2 state police to conduct a criminal history check on the  
3 individual. The request shall be made in a manner prescribed by  
4 the department of state police. The adult foster care facility  
5 shall make the written consent and identification available to  
6 the department of state police. If there is a charge for  
7 conducting the criminal history check, the adult foster care  
8 facility requesting the criminal history check shall pay the cost  
9 of the charge. The adult foster care facility shall not seek  
10 reimbursement for the charge from the individual who is the  
11 subject of the criminal history check. The department of state  
12 police shall conduct a criminal history check on the individual  
13 named in the request. The department of state police shall  
14 provide the adult foster care facility with a written report of  
15 the criminal history check. The report shall contain any  
16 criminal history record information on the individual maintained  
17 by the department of state police. As a condition of employment,  
18 an individual shall sign a written statement that he or she has  
19 been a resident of this state for 3 or more years preceding the  
20 good faith offer of employment or independent contract.

21 (5) Upon receipt of the written consent and identification  
22 required under subsection (3), if the individual has applied for  
23 employment either as an employee or as an independent contractor  
24 with an adult foster care facility licensed for more than 6  
25 persons and has resided in this state for less than 3 years  
26 preceding the good faith offer of employment or independent  
27 contract, the adult foster care facility that has made a good

1 faith offer of employment or independent contract shall comply  
2 with subsection (4) and shall make a request to the department of  
3 state police to forward the individual's fingerprints to the  
4 federal bureau of investigation. The department of state police  
5 shall request the federal bureau of investigation to make a  
6 determination of the existence of any national criminal history  
7 pertaining to the individual. An individual described in this  
8 subsection shall provide the department of state police with 2  
9 sets of fingerprints. The department of state police shall  
10 complete the criminal history check under subsection (4) and,  
11 except as otherwise provided in this subsection, provide the  
12 results of its determination under subsection (4) to the adult  
13 foster care facility and the results of the federal bureau of  
14 investigation determination to the department of consumer and  
15 industry services within 30 days after the request is made. If  
16 the requesting adult foster care facility is not a state  
17 department or agency and if a crime is disclosed on the federal  
18 bureau of investigation determination, the department shall  
19 notify the adult foster care facility in writing of the type of  
20 crime disclosed on the federal bureau of investigation  
21 determination without disclosing the details of the crime. The  
22 charges for fingerprinting or a federal bureau of investigation  
23 determination under this subsection shall be paid in the manner  
24 required under subsection (4).

25 (6) Upon receipt of the written consent and identification  
26 required under subsection (3), if the individual has applied for  
27 employment either as an employee or as an independent contractor

1 with an adult foster care facility licensed for 6 persons or less  
2 and has resided in this state for less than 3 years preceding the  
3 good faith offer of employment or independent contract, the adult  
4 foster care facility that has made the good faith offer of  
5 employment or independent contract shall comply with subsection  
6 (4) and shall make a request to the department of state police or  
7 state agency responsible for maintaining statewide criminal  
8 history information of all the states in which the individual  
9 resided during the preceding 5 years to conduct a criminal  
10 history check on the individual.

11 (7) If an adult foster care facility determines it necessary  
12 to employ or independently contract with an individual before  
13 receiving the results of the individual's criminal history check  
14 required under this section, the adult foster care facility may  
15 conditionally employ the individual if both of the following  
16 apply:

17 (a) The adult foster care facility requests the criminal  
18 history check required under this section, upon conditionally  
19 employing the individual.

20 (b) The individual signs a written statement indicating all  
21 of the following:

22 (i) That he or she has not been convicted of 1 or more of the  
23 crimes that are described in subsection (1)(a) and (b) within the  
24 applicable time period prescribed by subsection (1)(a) and (b).

25 (ii) The individual agrees that, if the information in the  
26 criminal history check conducted under this section does not  
27 confirm the individual's statement under subparagraph (i), his or

1 her employment will be terminated by the adult foster care  
2 facility as required under subsection (1) unless and until the  
3 individual can prove that the information is incorrect. The  
4 adult foster care facility shall provide a copy of the results of  
5 the criminal history check conducted under this section, to the  
6 individual upon request.

7 (iii) That he or she understands the conditions described in  
8 subparagraphs (i) and (ii) that result in the termination of his  
9 or her employment and that those conditions are good cause for  
10 termination.

11 (8) On the effective date of the amendatory act that added  
12 this subsection, the department of consumer and industry services  
13 shall develop and distribute a model form for the statement  
14 required under subsection (7)(b). The department of consumer and  
15 industry services shall make the model form available to adult  
16 foster care facilities upon request at no charge.

17 (9) If an individual is conditionally employed under  
18 subsection (7), and the report described in subsection (4), (5),  
19 or (6), if applicable, does not confirm the individual's  
20 statement under subsection (7)(b)(i), the adult foster care  
21 facility shall terminate the individual's employment as required  
22 by subsection (1).

23 (10) An individual who knowingly provides false information  
24 regarding a criminal conviction on a statement described in  
25 subsection (7)(b)(i) is guilty of a misdemeanor punishable by  
26 imprisonment for not more than 90 days or a fine of not more than  
27 \$500.00, or both.

1           (11) An adult foster care facility shall use criminal history  
2 record information obtained under subsection (4), (5), or (6)  
3 only for the purpose of evaluating an individual's qualifications  
4 for employment in the position for which he or she has applied  
5 and for the purposes of subsections (7) and (9). An adult foster  
6 care facility or an employee of the adult foster care facility  
7 shall not disclose criminal history record information obtained  
8 under this section to a person who is not directly involved in  
9 evaluating the individual's qualifications for employment or  
10 independent contract. Upon written request from another adult  
11 foster care facility or health facility or agency that is  
12 considering employing or independently contracting with an  
13 individual, an adult foster care facility that has obtained  
14 criminal history record information under this section on that  
15 individual shall share the information with the requesting adult  
16 foster care facility or health facility or agency. Except for a  
17 knowing or intentional release of false information, an adult  
18 foster care facility has no liability in connection with a  
19 background check conducted under this section or the release of  
20 criminal history record information under this subsection.

21           (12) As a condition of continued employment, each employee or  
22 independent contractor shall agree in writing to report to the  
23 adult foster care facility immediately upon being arrested for or  
24 convicted of 1 or more of the criminal offenses listed in  
25 subsection (1)(a) and (b).

26           (13) As used in this section:

27           (a) "Health facility or agency" means a health facility or

1 agency as defined in section 20106 of the public health code,  
2 1978 PA 368, MCL 333.20106.

3 (b) "Independent contract" means a contract entered into by  
4 an adult foster care facility with an individual who provides the  
5 contracted services independently or a contract entered into by  
6 an adult foster care facility 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  
9 to the adult foster care facility on behalf of the organization  
10 or agency.

11 Sec. 36. (1) An adult foster care family home may be  
12 concurrently licensed as a foster family home or a foster family  
13 group home. ~~Additional~~ **Except as provided in subsection (2),**  
14 **additional** minor children who are not related to a resident of  
15 the adult foster care family home shall not be received in the  
16 adult foster care family home after the filing of an application  
17 for a license ~~pursuant to~~ **under** this act.

18 (2) A licensee may receive a minor child placed in foster  
19 care under the laws of this state after filing an application for  
20 a license under this act. A placement under this subsection  
21 shall be approved at the discretion of the director or his or her  
22 designee and shall be based upon a recommendation by a licensed  
23 child placing agency or an approved governmental unit and shall  
24 be subject to appropriate terms and conditions determined by the  
25 department.

26 (3) ~~(2)~~ As used in this section:

27 (a) "Foster family home" means that term as defined in



1 section 1 of ~~Act No. 116 of the Public Acts of 1973, being~~  
2 ~~section 722.111 of the Michigan Compiled Laws~~ **1973 PA 116, MCL**  
3 **722.111.**

4 (b) "Foster family group home" means that term as defined in  
5 section 1 of ~~Act No. 116 of the Public Acts of 1973, being~~  
6 ~~section 722.111 of the Michigan Compiled Laws~~ **1973 PA 116, MCL**  
7 **722.111.**