

HOUSE BILL No. 5184

October 16, 2003, Introduced by Reps. Woronchak, Nofs, Zelenko, Murphy, Tabor, Vagnozzi, DeRossett, Amos, Bieda, Byrum, Caul, Ward, Hager, Vander Veen, Voorhees, Minore, Huizenga, Stahl and Palmer and referred to the Committee on Senior Health, Security and Retirement.

A bill to amend 1979 PA 218, entitled "Adult foster care facility licensing act," (MCL 400.701 to 400.737) by adding section 34a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 34a. (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 provides
5 direct services to residents of the adult foster care facility
6 after the effective date of the amendatory act that added this
7 section if the individual has been convicted of 1 or more of the
8 following:

9 (a) A felony or an attempt or conspiracy to commit a felony
10 within the 15 years immediately preceding the date of application
11 for employment or the date of the execution of the independent

1 contract.

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

10 (2) Except as otherwise provided in this subsection and
11 subsection (6), an adult foster care facility shall not employ or
12 independently contract with an individual who regularly provides
13 direct services to residents after the effective date of the
14 amendatory act that added this section until the adult foster
15 care facility complies with subsection (4) or (5), or both. This
16 subsection and subsection (1) do not apply to an individual who
17 is employed by or under contract to an adult foster care facility
18 before the effective date of the amendatory act that added this
19 subsection.

20 (3) An individual who applies for employment either as an
21 employee or as an independent contractor with an adult foster
22 care facility and has received a good faith offer of employment
23 or independent contract from the adult foster care facility shall
24 give written consent at the time of application for the
25 department of state police to conduct a criminal history check
26 under subsection (4) or (5), or both, along with identification
27 acceptable to the department of state police. If the department

1 of state police has conducted a criminal history check on the
2 individual within the 24 months immediately preceding the date of
3 application and the individual provides written consent for
4 release of information for the purposes of this section, the
5 adult foster care facility may use a copy of that criminal
6 history check instead of obtaining written consent and requesting
7 a new criminal history check under this subsection, and
8 subsection (4) or (5), or both. If the individual is using a
9 prior criminal history check as described in this subsection, the
10 adult foster care facility shall accept the copy of the results
11 of the criminal history check only from the adult foster care
12 facility or health facility or agency that previously employed or
13 independently contracted with the individual.

14 (4) Upon receipt of the written consent and identification
15 required under subsection (3), if the individual has resided in
16 this state for 3 or more years preceding the good faith offer of
17 employment or independent contract, the adult foster care
18 facility that has made a good faith offer of employment or
19 independent contract shall make a request to the department of
20 state police to conduct a criminal history check on the
21 individual. The request shall be made in a manner prescribed by
22 the department of state police. The adult foster care facility
23 shall make the written consent and identification available to
24 the department of state police. If there is a charge for
25 conducting the criminal history check, the adult foster care
26 facility requesting the criminal history check shall pay the cost
27 of the charge. The adult foster care facility shall not seek

1 reimbursement for the charge from the individual who is the
2 subject of the criminal history check. The department of state
3 police shall conduct a criminal history check on the individual
4 named in the request. The department of state police shall
5 provide the adult foster care facility with a written report of
6 the criminal history check. The report shall contain any
7 criminal history record information on the individual maintained
8 by the department of state police. As a condition of employment,
9 an individual shall sign a written statement that he or she has
10 been a resident of this state for 3 or more years preceding the
11 good faith offer of employment or independent contract.

12 (5) Upon receipt of the written consent and identification
13 required under subsection (3), if the individual has resided in
14 this state for less than 3 years preceding the good faith offer
15 of employment or independent contract, the adult foster care
16 facility that has made a good faith offer of employment or
17 independent contract shall comply with subsection (4) and shall
18 make a request to the department of state police to forward the
19 individual's fingerprints to the federal bureau of
20 investigation. The department of state police shall request the
21 federal bureau of investigation to make a determination of the
22 existence of any national criminal history pertaining to the
23 individual. An individual described in this subsection shall
24 provide the department of state police with 2 sets of
25 fingerprints. The department of state police shall complete the
26 criminal history check under subsection (4) and, except as
27 otherwise provided in this subsection, provide the results of its

1 determination under subsection (4) to the adult foster care
2 facility and the results of the federal bureau of investigation
3 determination to the department of consumer and industry services
4 within 30 days after the request is made. If the requesting
5 adult foster care facility is not a state department or agency
6 and if a crime is disclosed on the federal bureau of
7 investigation determination, the department shall notify the
8 adult foster care facility in writing of the type of crime
9 disclosed on the federal bureau of investigation determination
10 without disclosing the details of the crime. The charges for
11 fingerprinting or a federal bureau of investigation determination
12 under this subsection shall be paid in the manner required under
13 subsection (4).

14 (6) If an adult foster care facility determines it necessary
15 to employ or independently contract with an individual before
16 receiving the results of the individual's criminal history check
17 under subsection (4) or (5), or both, the adult foster care
18 facility may conditionally employ the individual if both of the
19 following apply:

20 (a) The adult foster care facility requests the criminal
21 history check under subsection (4) or (5), or both, upon
22 conditionally employing the individual.

23 (b) The individual signs a written statement indicating all
24 of the following:

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

1 (ii) The individual agrees that, if the information in the
2 criminal history check conducted under subsection (4) or (5), or
3 both, does not confirm the individual's statement under
4 subparagraph (i), his or her employment will be terminated by the
5 adult foster care facility as required under subsection (1)
6 unless and until the individual can prove that the information is
7 incorrect. The adult foster care facility shall provide a copy
8 of the results of the criminal history check conducted under
9 subsection (4) or (5), or both, to the individual upon request.

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

14 (7) On the effective date of the amendatory act that added
15 this subsection, the department of consumer and industry services
16 shall develop and distribute a model form for the statement
17 required under subsection (6)(b). The department of consumer and
18 industry services shall make the model form available to adult
19 foster care facilities upon request at no charge.

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

26 (9) An individual who knowingly provides false information
27 regarding a criminal conviction on a statement described in

1 subsection (6)(b)(i) is guilty of a misdemeanor punishable by
2 imprisonment for not more than 90 days or a fine of not more than
3 \$500.00, or both.

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

24 (11) As a condition of continued employment, each employee or
25 independent contractor shall agree in writing to report to the
26 adult foster care facility immediately upon being arrested for or
27 convicted of 1 or more of the criminal offenses listed in

1 subsection (1)(a) and (b).

2 (12) As used in this section:

3 (a) "Health facility or agency" means a health facility or
4 agency as defined in section 20106 of the public health code,
5 1978 PA 368, MCL 333.20106.

6 (b) "Independent contract" means a contract entered into by
7 an adult foster care facility with an individual who provides the
8 contracted services independently or a contract entered into by
9 an adult foster care facility with an organization or agency that
10 employs or contracts with an individual after complying with the
11 requirements of this section to provide the contracted services
12 to the adult foster care facility on behalf of the organization
13 or agency.