

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 621

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding sections 20173a and 20173b;
and to repeal acts and parts of acts.

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 IF THE INDIVIDUAL

1 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

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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 SUBDIVISIONS (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 INFLECT 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 UNTIL THE HEALTH FACILITY OR AGENCY CONDUCTS A
5 CRIMINAL HISTORY CHECK IN COMPLIANCE WITH SUBSECTION (4). THIS
6 SUBSECTION AND 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 THE EFFECTIVE DATE OF THIS SECTION. WITHIN 24 MONTHS
10 AFTER THE EFFECTIVE DATE OF THIS SECTION, AN INDIVIDUAL WHO IS
11 EXEMPT UNDER THIS SUBDIVISION SHALL PROVIDE THE DEPARTMENT OF STATE
12 POLICE WITH A SET OF FINGERPRINTS AND THE DEPARTMENT OF STATE
13 POLICE SHALL INPUT THOSE FINGERPRINTS INTO THE AUTOMATED
14 FINGERPRINT IDENTIFICATION SYSTEM DATABASE ESTABLISHED UNDER
15 SUBSECTION (12). AN INDIVIDUAL WHO IS EXEMPT UNDER THIS SUBDIVISION
16 IS NOT LIMITED TO WORKING WITHIN THE HEALTH FACILITY OR AGENCY WITH
17 WHICH HE OR SHE IS EMPLOYED BY, UNDER INDEPENDENT CONTRACT TO, OR
18 GRANTED CLINICAL PRIVILEGES ON THE EFFECTIVE DATE OF THIS SECTION.
19 THAT INDIVIDUAL MAY TRANSFER TO ANOTHER HEALTH FACILITY OR AGENCY
20 THAT IS UNDER THE SAME OWNERSHIP WITH WHICH HE OR SHE WAS EMPLOYED,
21 UNDER CONTRACT, OR GRANTED PRIVILEGES. IF THAT INDIVIDUAL WISHES TO
22 TRANSFER TO ANOTHER HEALTH FACILITY OR AGENCY THAT IS NOT UNDER THE
23 SAME OWNERSHIP, HE OR SHE MAY DO SO PROVIDED THAT A CRIMINAL
24 HISTORY CHECK IS CONDUCTED BY THE NEW HEALTH FACILITY OR AGENCY IN
25 ACCORDANCE WITH SUBSECTION (4). IF AN INDIVIDUAL WHO IS EXEMPT
26 UNDER THIS SUBDIVISION IS SUBSEQUENTLY CONVICTED OF A CRIME
27 DESCRIBED UNDER SUBSECTION (1) (A) THROUGH (G) OR FOUND TO BE THE

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SUBJECT OF A SUBSTANTIATED FINDING DESCRIBED UNDER SUBSECTION

(1) (I) OR AN ORDER OR DISPOSITION DESCRIBED UNDER SUBSECTION

(1) (H), OR IS FOUND TO HAVE BEEN CONVICTED OF A RELEVANT CRIME

DESCRIBED UNDER SUBSECTION (1) (A), THEN HE OR SHE IS NO LONGER

EXEMPT AND SHALL BE TERMINATED FROM EMPLOYMENT OR DENIED

EMPLOYMENT.

(B) AN INDIVIDUAL WHO IS AN INDEPENDENT CONTRACTOR WITH A

HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY MEDICAL

CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED SERVICES,

HOME FOR THE AGED, OR HOME HEALTH AGENCY IF THE SERVICES FOR WHICH

HE OR SHE IS CONTRACTED IS NOT DIRECTLY RELATED TO THE PROVISION OF

SERVICES TO A PATIENT OR RESIDENT OR IF THE SERVICES FOR WHICH HE

OR SHE IS CONTRACTED ALLOWS FOR DIRECT ACCESS TO THE PATIENTS OR

RESIDENTS BUT IS NOT PERFORMED ON AN ONGOING BASIS. THIS EXCEPTION

INCLUDES, BUT IS NOT LIMITED TO, AN INDIVIDUAL WHO INDEPENDENTLY

CONTRACTS WITH THE HEALTH FACILITY OR AGENCY TO PROVIDE UTILITY,

MAINTENANCE, CONSTRUCTION, OR COMMUNICATIONS SERVICES.

(3) AN INDIVIDUAL WHO APPLIES FOR EMPLOYMENT EITHER AS AN

EMPLOYEE OR AS AN INDEPENDENT CONTRACTOR OR FOR CLINICAL PRIVILEGES

WITH A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY

MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED

SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY AND HAS RECEIVED

A GOOD FAITH OFFER OF EMPLOYMENT, AN INDEPENDENT CONTRACT, OR

CLINICAL PRIVILEGES FROM THE HEALTH FACILITY OR AGENCY SHALL GIVE

WRITTEN CONSENT AT THE TIME OF APPLICATION FOR THE DEPARTMENT OF

STATE POLICE TO CONDUCT AN INITIAL CRIMINAL HISTORY CHECK UNDER

[THIS SECTION], ALONG WITH IDENTIFICATION ACCEPTABLE TO THE

1 DEPARTMENT OF STATE POLICE.

2 (4) UPON RECEIPT OF THE WRITTEN CONSENT AND IDENTIFICATION
3 REQUIRED UNDER SUBSECTION (3), A HEALTH FACILITY OR AGENCY THAT IS
4 A NURSING HOME, COUNTY MEDICAL CARE FACILITY, HOSPICE, HOSPITAL
5 THAT PROVIDES SWING BED SERVICES, HOME FOR THE AGED, OR HOME HEALTH
6 AGENCY THAT HAS MADE A GOOD FAITH OFFER OF EMPLOYMENT OR AN
7 INDEPENDENT CONTRACT OR CLINICAL PRIVILEGES TO THE APPLICANT SHALL
8 MAKE A REQUEST TO THE DEPARTMENT OF STATE POLICE TO CONDUCT A
9 CRIMINAL HISTORY CHECK ON THE APPLICANT, TO INPUT THE APPLICANT'S
10 FINGERPRINTS INTO THE AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM
11 DATABASE, AND TO FORWARD THE APPLICANT'S FINGERPRINTS TO THE
12 FEDERAL BUREAU OF INVESTIGATION. THE DEPARTMENT OF STATE POLICE
13 SHALL REQUEST THE FEDERAL BUREAU OF INVESTIGATION TO MAKE A
14 DETERMINATION OF THE EXISTENCE OF ANY NATIONAL CRIMINAL HISTORY
15 PERTAINING TO THE APPLICANT. THE APPLICANT SHALL PROVIDE THE
16 DEPARTMENT OF STATE POLICE WITH A SET OF FINGERPRINTS. THE REQUEST
17 SHALL BE MADE IN A MANNER PRESCRIBED BY THE DEPARTMENT OF STATE
18 POLICE. THE HEALTH FACILITY OR AGENCY SHALL MAKE THE WRITTEN
19 CONSENT AND IDENTIFICATION AVAILABLE TO THE DEPARTMENT OF STATE
20 POLICE. THE HEALTH FACILITY OR AGENCY SHALL MAKE A REQUEST TO THE
21 RELEVANT LICENSING OR REGULATORY DEPARTMENT TO CONDUCT A CHECK OF
22 ALL RELEVANT REGISTRIES ESTABLISHED PURSUANT TO FEDERAL AND STATE
23 LAW AND REGULATIONS FOR ANY SUBSTANTIATED FINDINGS OF ABUSE,
24 NEGLECT, OR MISAPPROPRIATION OF PROPERTY. IF THE DEPARTMENT OF
25 STATE POLICE OR THE FEDERAL BUREAU OF INVESTIGATION CHARGES A FEE
26 FOR CONDUCTING THE INITIAL CRIMINAL HISTORY CHECK, THE CHARGE SHALL
27 BE PAID BY OR REIMBURSED BY THE DEPARTMENT WITH FEDERAL FUNDS AS

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1 PROVIDED TO IMPLEMENT A PILOT PROGRAM FOR NATIONAL AND STATE
2 BACKGROUND CHECKS ON DIRECT PATIENT ACCESS EMPLOYEES OF LONG-TERM
3 CARE FACILITIES OR PROVIDERS IN ACCORDANCE WITH SECTION 307 OF THE
4 MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF
5 2003, PUBLIC LAW 108-173. THE HEALTH FACILITY OR AGENCY SHALL NOT
6 SEEK REIMBURSEMENT FOR A CHARGE IMPOSED BY THE DEPARTMENT OF STATE
7 POLICE OR THE FEDERAL BUREAU OF INVESTIGATION FROM THE INDIVIDUAL
8 WHO IS THE SUBJECT OF THE INITIAL CRIMINAL HISTORY CHECK. A HEALTH
9 FACILITY OR AGENCY, A PROSPECTIVE EMPLOYEE, OR A PROSPECTIVE
10 INDEPENDENT CONTRACTOR COVERED UNDER THIS SECTION MAY NOT BE
11 CHARGED FOR THE COST OF AN INITIAL CRIMINAL HISTORY CHECK REQUIRED
12 UNDER THIS SECTION. THE DEPARTMENT OF STATE POLICE SHALL CONDUCT A
13 CRIMINAL HISTORY CHECK ON THE APPLICANT NAMED IN THE REQUEST. THE
14 DEPARTMENT OF STATE POLICE SHALL PROVIDE THE DEPARTMENT WITH A
15 WRITTEN REPORT OF THE CRIMINAL HISTORY CHECK CONDUCTED UNDER THIS
16 SUBSECTION IF THE CRIMINAL HISTORY CHECK CONTAINS ANY CRIMINAL
17 HISTORY RECORD INFORMATION. THE REPORT SHALL CONTAIN ANY CRIMINAL
18 HISTORY RECORD INFORMATION ON THE APPLICANT MAINTAINED BY THE
19 DEPARTMENT OF STATE POLICE. THE DEPARTMENT OF STATE POLICE SHALL
20 PROVIDE THE RESULTS OF THE FEDERAL BUREAU OF INVESTIGATION
21 DETERMINATION TO THE DEPARTMENT WITHIN 30 DAYS AFTER THE REQUEST IS
22 MADE. IF THE REQUESTING HEALTH FACILITY OR AGENCY IS NOT A STATE
23 DEPARTMENT OR AGENCY AND IF A CRIMINAL CONVICTION IS DISCLOSED ON [THE
WRITTEN REPORT OF THE CRIMINAL HISTORY CHECK OR]
24 THE FEDERAL BUREAU OF INVESTIGATION DETERMINATION, THE DEPARTMENT
25 SHALL NOTIFY THE HEALTH FACILITY OR AGENCY AND THE APPLICANT IN
26 WRITING OF THE TYPE OF CRIME DISCLOSED ON [THE WRITTEN REPORT OF THE
CRIMINAL HISTORY CHECK OR] THE FEDERAL BUREAU OF
27 INVESTIGATION DETERMINATION WITHOUT DISCLOSING THE DETAILS OF THE

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1 CRIME. ANY CHARGES IMPOSED BY THE DEPARTMENT OF STATE POLICE OR THE
2 FEDERAL BUREAU OF INVESTIGATION FOR CONDUCTING AN INITIAL CRIMINAL
3 HISTORY CHECK OR MAKING A DETERMINATION UNDER THIS SUBSECTION SHALL
4 BE PAID IN THE MANNER REQUIRED UNDER THIS SUBSECTION. THE NOTICE
5 SHALL INCLUDE A STATEMENT THAT THE APPLICANT HAS A RIGHT TO APPEAL
6 A DECISION MADE BY THE HEALTH FACILITY OR AGENCY REGARDING HIS OR
7 HER EMPLOYMENT ELIGIBILITY BASED ON THE CRIMINAL BACKGROUND CHECK.
8 THE NOTICE SHALL ALSO INCLUDE INFORMATION REGARDING WHERE TO FILE
9 AND DESCRIBING THE APPELLATE PROCEDURES ESTABLISHED UNDER SECTION
10 20173B.

11 (5) IF A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME,
12 COUNTY MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING
13 BED SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY DETERMINES
14 IT NECESSARY TO EMPLOY OR GRANT CLINICAL PRIVILEGES TO AN APPLICANT
15 BEFORE RECEIVING THE RESULTS OF THE APPLICANT'S CRIMINAL HISTORY
16 CHECK UNDER [THIS SECTION], THE HEALTH FACILITY OR AGENCY MAY
17 CONDITIONALLY EMPLOY OR GRANT CONDITIONAL CLINICAL PRIVILEGES TO
18 THE INDIVIDUAL IF ALL OF THE FOLLOWING APPLY:

19 (A) THE HEALTH FACILITY OR AGENCY REQUESTS THE CRIMINAL
20 HISTORY CHECK UNDER [THIS SECTION] UPON CONDITIONALLY EMPLOYING OR
21 CONDITIONALLY GRANTING CLINICAL PRIVILEGES TO THE INDIVIDUAL.

22 (B) THE INDIVIDUAL SIGNS A STATEMENT IN WRITING THAT INDICATES
23 ALL OF THE FOLLOWING:

24 (i) THAT HE OR SHE HAS NOT BEEN CONVICTED OF 1 OR MORE OF THE
25 CRIMES THAT ARE DESCRIBED IN SUBSECTION (1)(A) THROUGH (G) WITHIN
26 THE APPLICABLE TIME PERIOD PRESCRIBED BY EACH [SUBDIVISION]
27 RESPECTIVELY.

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(ii) THAT HE OR SHE IS NOT THE SUBJECT OF AN ORDER OR
DISPOSITION DESCRIBED IN SUBSECTION (1) (H) .

(iii) THAT HE OR SHE HAS NOT BEEN THE SUBJECT OF A SUBSTANTIATED
FINDING AS DESCRIBED IN SUBSECTION (1) (I) .

(iv) THE INDIVIDUAL AGREES THAT, IF THE INFORMATION IN THE
CRIMINAL HISTORY CHECK CONDUCTED UNDER [THIS SECTION] DOES NOT
CONFIRM THE INDIVIDUAL'S STATEMENTS UNDER SUBPARAGRAPHS (i) THROUGH
(iii) , HIS OR HER EMPLOYMENT OR CLINICAL PRIVILEGES WILL BE
TERMINATED BY THE HEALTH FACILITY OR AGENCY AS REQUIRED UNDER
SUBSECTION (1) UNLESS AND UNTIL THE INDIVIDUAL APPEALS AND CAN
PROVE THAT THE INFORMATION IS INCORRECT. [

]

(v) THAT HE OR SHE UNDERSTANDS THE CONDITIONS DESCRIBED IN
SUBPARAGRAPHS (i) THROUGH (iv) THAT RESULT IN THE TERMINATION OF HIS
OR HER EMPLOYMENT OR CLINICAL PRIVILEGES AND THAT THOSE CONDITIONS
ARE GOOD CAUSE FOR TERMINATION.

(6) [THE
] DEPARTMENT SHALL DEVELOP AND DISTRIBUTE A MODEL
FORM FOR THE STATEMENT REQUIRED UNDER SUBSECTION (5) (B) . THE
DEPARTMENT SHALL MAKE THE MODEL FORM AVAILABLE TO HEALTH FACILITIES
OR AGENCIES SUBJECT TO THIS SECTION UPON REQUEST AT NO CHARGE.

(7) IF AN INDIVIDUAL IS EMPLOYED AS A CONDITIONAL EMPLOYEE OR
IS GRANTED CONDITIONAL CLINICAL PRIVILEGES UNDER SUBSECTION (5) ,
AND THE REPORT DESCRIBED IN SUBSECTION (4) DOES NOT CONFIRM THE
INDIVIDUAL'S STATEMENT UNDER SUBSECTION (5) (B) (i) THROUGH (iii) , THE
HEALTH FACILITY OR AGENCY SHALL TERMINATE THE INDIVIDUAL'S

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1 EMPLOYMENT OR CLINICAL PRIVILEGES AS REQUIRED BY SUBSECTION (1).

2 (8) AN INDIVIDUAL WHO KNOWINGLY PROVIDES FALSE INFORMATION
3 REGARDING HIS OR HER IDENTITY, CRIMINAL CONVICTIONS, OR
4 SUBSTANTIATED FINDINGS ON A STATEMENT DESCRIBED IN SUBSECTION
5 (5) (B) (i) THROUGH (iii) IS GUILTY OF A MISDEMEANOR PUNISHABLE BY
6 IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN
7 \$500.00, OR BOTH.

8 (9) A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY
9 MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED
10 SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY SHALL USE
11 CRIMINAL HISTORY RECORD INFORMATION OBTAINED UNDER SUBSECTION (4)
12 ONLY FOR THE PURPOSE OF EVALUATING AN APPLICANT'S QUALIFICATIONS
13 FOR EMPLOYMENT, AN INDEPENDENT CONTRACT, OR CLINICAL PRIVILEGES IN
14 THE POSITION FOR WHICH HE OR SHE HAS APPLIED AND FOR THE PURPOSES
15 OF SUBSECTIONS (5) AND (7). A HEALTH FACILITY OR AGENCY OR AN
16 EMPLOYEE OF THE HEALTH FACILITY OR AGENCY SHALL NOT DISCLOSE
17 CRIMINAL HISTORY RECORD INFORMATION OBTAINED UNDER SUBSECTION (4)
18 TO A PERSON WHO IS NOT DIRECTLY INVOLVED IN EVALUATING THE
19 APPLICANT'S QUALIFICATIONS FOR EMPLOYMENT, AN INDEPENDENT CONTRACT,
20 OR CLINICAL PRIVILEGES. AN INDIVIDUAL WHO KNOWINGLY USES OR
21 DISSEMINATES THE CRIMINAL HISTORY RECORD INFORMATION OBTAINED UNDER
22 SUBSECTION (4) IN VIOLATION OF THIS SUBSECTION IS GUILTY OF A
23 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR
24 A FINE OF NOT MORE THAN \$1,000.00, OR BOTH. UPON WRITTEN REQUEST
25 FROM ANOTHER HEALTH FACILITY OR AGENCY[, PSYCHIATRIC FACILITY OR
INTERMEDIATE CARE FACILITY FOR PEOPLE WITH MENTAL RETARDATION,] OR ADULT
FOSTER CARE
26 FACILITY THAT IS CONSIDERING EMPLOYING, INDEPENDENTLY CONTRACTING
27 WITH, OR GRANTING CLINICAL PRIVILEGES TO AN INDIVIDUAL, A HEALTH

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1 FACILITY OR AGENCY [] THAT HAS OBTAINED
 2 CRIMINAL HISTORY RECORD INFORMATION UNDER THIS SECTION ON THAT
 3 INDIVIDUAL SHALL, WITH THE CONSENT OF THE APPLICANT, SHARE THE
 4 INFORMATION WITH THE REQUESTING HEALTH FACILITY OR AGENCY[, PSYCHIATRIC
 FACILITY OR INTERMEDIATE CARE FACILITY FOR PEOPLE WITH MENTAL
 RETARDATION,] OR ADULT
 5 FOSTER CARE FACILITY. EXCEPT FOR A KNOWING OR INTENTIONAL RELEASE
 6 OF FALSE INFORMATION, A HEALTH FACILITY OR AGENCY HAS NO LIABILITY
 7 IN CONNECTION WITH A CRIMINAL BACKGROUND CHECK CONDUCTED UNDER THIS
 8 SECTION OR THE RELEASE OF CRIMINAL HISTORY RECORD INFORMATION UNDER
 9 THIS SUBSECTION.

10 (10) AS A CONDITION OF CONTINUED EMPLOYMENT, EACH EMPLOYEE,
 11 INDEPENDENT CONTRACTOR, OR INDIVIDUAL GRANTED CLINICAL PRIVILEGES
 12 SHALL DO EACH OF THE FOLLOWING:

13 (A) AGREE IN WRITING TO REPORT TO THE HEALTH FACILITY OR
 14 AGENCY IMMEDIATELY UPON BEING ARRAIGNED FOR 1 OR MORE OF THE
 15 CRIMINAL OFFENSES LISTED IN SUBSECTION (1)(A) THROUGH (G), UPON
 16 BEING CONVICTED OF 1 OR MORE OF THE CRIMINAL OFFENSES LISTED IN
 17 SUBSECTION (1)(A) THROUGH (G), UPON BECOMING THE SUBJECT OF AN
 18 ORDER OR DISPOSITION DESCRIBED UNDER SUBSECTION (1)(H), AND UPON
 19 BEING THE SUBJECT OF A SUBSTANTIATED FINDING OF NEGLECT, ABUSE, OR
 20 MISAPPROPRIATION OF PROPERTY AS DESCRIBED IN SUBSECTION (1)(I).
 [REPORTING OF AN ARRAIGNMENT UNDER THIS SUBDIVISION IS NOT CAUSE FOR
 TERMINATION OR DENIAL OF EMPLOYMENT.]

21 (B) IF A SET OF FINGERPRINTS IS NOT ALREADY ON FILE WITH THE
 22 DEPARTMENT OF STATE POLICE, PROVIDE THE DEPARTMENT OF STATE POLICE
 23 WITH A SET OF FINGERPRINTS.

24 (11) IN ADDITION TO SANCTIONS SET FORTH IN SECTION 20165, A
 25 LICENSEE, OWNER, ADMINISTRATOR, OR OPERATOR OF A NURSING HOME,
 26 COUNTY MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING
 27 BED SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY WHO

1 KNOWINGLY AND WILLFULLY FAILS TO CONDUCT THE CRIMINAL HISTORY
2 CHECKS AS REQUIRED UNDER THIS SECTION IS GUILTY OF A MISDEMEANOR
3 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A FINE OF
4 NOT MORE THAN \$5,000.00, OR BOTH.

5 (12) IN COLLABORATION WITH THE DEPARTMENT OF STATE POLICE, THE
6 DEPARTMENT OF INFORMATION TECHNOLOGY SHALL ESTABLISH AN AUTOMATED
7 FINGERPRINT IDENTIFICATION SYSTEM DATABASE THAT WOULD ALLOW THE
8 DEPARTMENT OF STATE POLICE TO STORE AND MAINTAIN ALL FINGERPRINTS
9 SUBMITTED UNDER THIS SECTION AND WOULD PROVIDE FOR AN AUTOMATIC
10 NOTIFICATION IF AND WHEN A SUBSEQUENT CRIMINAL ARREST FINGERPRINT
11 CARD SUBMITTED INTO THE SYSTEM MATCHES A SET OF FINGERPRINTS
12 PREVIOUSLY SUBMITTED IN ACCORDANCE WITH THIS SECTION. UPON SUCH
13 NOTIFICATION, THE DEPARTMENT OF STATE POLICE SHALL IMMEDIATELY
14 NOTIFY THE DEPARTMENT AND THE DEPARTMENT SHALL IMMEDIATELY CONTACT
15 THE RESPECTIVE HEALTH FACILITY OR AGENCY WITH WHICH THAT INDIVIDUAL
16 IS ASSOCIATED. INFORMATION IN THE DATABASE ESTABLISHED UNDER THIS
17 SUBSECTION IS CONFIDENTIAL, IS NOT SUBJECT TO DISCLOSURE UNDER THE
18 FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246, AND
19 SHALL NOT BE DISCLOSED TO ANY PERSON EXCEPT FOR PURPOSES OF THIS
20 ACT OR FOR LAW ENFORCEMENT PURPOSES.

21 (13) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY
22 ACT THAT ADDED THIS SECTION, THE DEPARTMENT SHALL SUBMIT A WRITTEN
23 REPORT TO THE LEGISLATURE REGARDING EACH OF THE FOLLOWING:

24 (A) THE IMPACT AND EFFECTIVENESS OF THIS AMENDATORY ACT.

25 (B) THE FEASIBILITY OF IMPLEMENTING CRIMINAL HISTORY CHECKS ON
26 VOLUNTEERS WHO WORK IN THOSE HEALTH FACILITIES OR AGENCIES AND ON
27 STATE AGENCY EMPLOYEES WHO ARE INVOLVED IN THE LICENSING OF THOSE

1 HEALTH FACILITIES OR AGENCIES AND REGULATION OF THOSE EMPLOYEES.

2 (C) THE AMOUNT OF FEDERAL FUNDS PROVIDED TO IMPLEMENT A PILOT
3 PROGRAM FOR NATIONAL AND STATE BACKGROUND CHECKS ON DIRECT ACCESS
4 EMPLOYEES OF LONG-TERM CARE FACILITIES OR PROVIDERS, THE AMOUNT OF
5 THOSE FUNDS EXPENDED TO DATE, AND THE AMOUNT OF THOSE FUNDS
6 REMAINING.

7 (14) WITHIN 3 YEARS AFTER THE EFFECTIVE DATE OF THIS SECTION,
8 THE DEPARTMENT SHALL SUBMIT A WRITTEN REPORT TO THE LEGISLATURE
9 OUTLINING A PLAN TO COVER THE COSTS OF THE CRIMINAL HISTORY CHECKS
10 REQUIRED UNDER THIS SECTION IF FEDERAL FUNDING IS NO LONGER
11 AVAILABLE OR IS INADEQUATE TO COVER THOSE COSTS.

12 (15) BY MARCH 1, 2007, THE DEPARTMENT AND THE DEPARTMENT OF
13 STATE POLICE SHALL DEVELOP AND IMPLEMENT AN ELECTRONIC WEB-BASED
14 SYSTEM TO ASSIST THOSE HEALTH FACILITIES AND AGENCIES REQUIRED TO
15 CHECK RELEVANT REGISTRIES AND CONDUCT CRIMINAL HISTORY CHECKS OF
16 ITS EMPLOYEES AND INDEPENDENT CONTRACTORS AND TO PROVIDE FOR AN
17 AUTOMATED NOTICE TO THOSE HEALTH FACILITIES OR AGENCIES FOR THOSE
18 INDIVIDUALS INPUTTED IN THE SYSTEM WHO, SINCE THE INITIAL CHECK,
19 HAVE BEEN CONVICTED OF A DISQUALIFYING OFFENSE OR HAVE BEEN THE
20 SUBJECT OF A SUBSTANTIATED FINDING OF ABUSE, NEGLECT, OR
21 MISAPPROPRIATION OF PROPERTY.

22 (16) AS USED IN THIS SECTION:

23 (A) "ADULT FOSTER CARE FACILITY" MEANS AN ADULT FOSTER CARE
24 FACILITY LICENSED UNDER THE ADULT FOSTER CARE FACILITY LICENSING
25 ACT, 1979 PA 218, MCL 400.701 TO 400.737.

26 (B) "DIRECT ACCESS" MEANS ACCESS TO A PATIENT OR RESIDENT OR
27 TO A PATIENT'S OR RESIDENT'S PROPERTY, FINANCIAL INFORMATION,

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1 MEDICAL RECORDS, TREATMENT INFORMATION, OR ANY OTHER IDENTIFYING
2 INFORMATION.

3 (C) "HOME HEALTH AGENCY" MEANS A PERSON CERTIFIED BY MEDICARE
4 WHOSE BUSINESS IS TO PROVIDE TO INDIVIDUALS IN THEIR PLACES OF
5 RESIDENCE OTHER THAN IN A HOSPITAL, NURSING HOME, OR COUNTY MEDICAL
6 CARE FACILITY 1 OR MORE OF THE FOLLOWING SERVICES: NURSING
7 SERVICES, THERAPEUTIC SERVICES, SOCIAL WORK SERVICES, HOMEMAKER
8 SERVICES, HOME HEALTH AIDE SERVICES, OR OTHER RELATED SERVICES.

9 (D) "INDEPENDENT CONTRACT" MEANS A CONTRACT ENTERED INTO BY A
10 HEALTH FACILITY OR AGENCY WITH AN INDIVIDUAL WHO PROVIDES THE
11 CONTRACTED SERVICES INDEPENDENTLY OR A CONTRACT ENTERED INTO BY A
12 HEALTH FACILITY OR AGENCY WITH AN ORGANIZATION OR AGENCY THAT
13 EMPLOYS OR CONTRACTS WITH AN INDIVIDUAL AFTER COMPLYING WITH THE
14 REQUIREMENTS OF THIS SECTION TO PROVIDE THE CONTRACTED SERVICES TO
15 THE HEALTH FACILITY OR AGENCY ON BEHALF OF THE ORGANIZATION OR
16 AGENCY.

17 (E) "MEDICARE" MEANS BENEFITS UNDER THE FEDERAL MEDICARE
18 PROGRAM ESTABLISHED UNDER TITLE XVIII OF THE SOCIAL SECURITY ACT,
19 42 USC 1395 TO 1395GGG.

20 SEC. 20173B. (1) AN INDIVIDUAL WHO HAS BEEN DISQUALIFIED FROM
21 OR DENIED EMPLOYMENT BY A HEALTH FACILITY OR AGENCY THAT IS A
22 NURSING HOME, COUNTY MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT
23 PROVIDES SWING BED SERVICES, HOME FOR THE AGED, OR HOME HEALTH
24 AGENCY [OR BY A PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY FOR
PEOPLE WITH MENTAL RETARDATION] BASED ON A CRIMINAL HISTORY CHECK
CONDUCTED PURSUANT TO

25 SECTION 20173 OR 20173A [OR PURSUANT TO SECTION 134A OF THE MENTAL HEALTH
CODE, 1974 PA 258, MCL 330.1134A, RESPECTIVELY,] MAY APPEAL TO THE
DEPARTMENT IF HE OR SHE

26 BELIEVES THAT THE CRIMINAL HISTORY REPORT IS INACCURATE, AND THE
27 APPEAL SHALL BE CONDUCTED AS A CONTESTED CASE HEARING PURSUANT TO

1 THE ADMINISTRATIVE PROCEDURES ACT OF 1969. THE INDIVIDUAL SHALL
2 FILE THE APPEAL WITH THE DIRECTOR OF THE DEPARTMENT WITHIN 15
3 BUSINESS DAYS AFTER RECEIVING THE WRITTEN REPORT OF THE CRIMINAL
4 HISTORY CHECK UNLESS THE CONVICTION CONTAINED IN THE CRIMINAL
5 HISTORY REPORT IS ONE THAT MAY BE EXPUNGED OR SET ASIDE. IF AN
6 INDIVIDUAL HAS BEEN DISQUALIFIED OR DENIED EMPLOYMENT BASED ON A
7 CONVICTION THAT MAY BE EXPUNGED OR SET ASIDE, THEN HE OR SHE SHALL
8 FILE THE APPEAL ON A FORM PROVIDED BY THE DEPARTMENT WITHIN 15
9 BUSINESS DAYS AFTER A COURT ORDER GRANTING OR DENYING HIS OR HER
10 APPLICATION TO EXPUNGE OR SET ASIDE THAT CONVICTION IS GRANTED. IF
11 THE ORDER IS GRANTED AND THE CONVICTION IS EXPUNGED OR SET ASIDE,
12 THEN THE INDIVIDUAL SHALL NOT BE DISQUALIFIED OR DENIED EMPLOYMENT
13 BASED SOLELY ON THAT CONVICTION. THE DIRECTOR SHALL REVIEW THE
14 APPEAL AND ISSUE A WRITTEN DECISION WITHIN 30 BUSINESS DAYS AFTER
15 RECEIVING THE APPEAL. THE DECISION OF THE DIRECTOR IS FINAL.

16 (2) ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION AND EACH
17 YEAR THEREAFTER FOR THE NEXT 3 YEARS, THE DEPARTMENT SHALL PROVIDE
18 THE LEGISLATURE WITH A WRITTEN REPORT REGARDING THE APPEALS PROCESS
19 IMPLEMENTED UNDER THIS SECTION FOR EMPLOYEES SUBJECT TO CRIMINAL
20 HISTORY CHECKS. THE REPORT SHALL INCLUDE, BUT IS NOT LIMITED TO,
21 FOR THE IMMEDIATELY PRECEDING YEAR THE NUMBER OF APPLICATIONS FOR
22 APPEAL RECEIVED, THE NUMBER OF INACCURACIES FOUND AND APPEALS
23 GRANTED WITH REGARD TO THE CRIMINAL HISTORY CHECKS CONDUCTED UNDER
24 SECTION 20173A, THE AVERAGE NUMBER OF DAYS NECESSARY TO COMPLETE
25 THE APPEALS PROCESS FOR EACH APPEAL, AND THE NUMBER OF APPEALS
26 REJECTED WITHOUT A HEARING AND A BRIEF EXPLANATION OF THE DENIAL.

27 (3) AS USED IN THIS SECTION, "BUSINESS DAY" MEANS A DAY OTHER

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THAN A SATURDAY, SUNDAY, OR ANY LEGAL HOLIDAY.

Enacting section 1. (1) Section 20173 of the public health
code, 1978 PA 368, MCL 333.20173, is repealed effective [April 1, 2006.

]

(2) Section 20173a of the public health code, 1978 PA 368, MCL
333.20173a, as added by this amendatory act, takes effect [April 1, 2006,
since the department has secured the necessary federal approval to
utilize federal funds to reimburse those facilities for the costs
incurred for requesting a national criminal history check to be conducted
by the federal bureau of investigation and the department has filed
written notice of that approval with the secretary of state. The
department shall issue a medicaid policy bulletin regarding the payment
and reimbursement for the criminal history checks by April 1, 2006.

]

(3) Section 20173b of the public health code, 1978 PA 368, MCL
333.20173b, as added by this amendatory act, takes effect the date
this amendatory act is enacted.

Enacting section 2. This amendatory act does not take effect
unless all of the following bills of the 93rd Legislature are
enacted into law:

(a) Senate Bill No. 622.

(b) House Bill No. 5168.

(c) House Bill No. 5448.