

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 622

A bill to amend 1979 PA 218, entitled
"Adult foster care facility licensing act,"
(MCL 400.701 to 400.737) by adding sections 34b and 34c; and to
repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 34B. (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 HAS DIRECT
5 ACCESS TO OR PROVIDES DIRECT SERVICES TO RESIDENTS OF THE ADULT
6 FOSTER CARE FACILITY AFTER THE EFFECTIVE DATE OF THIS SECTION IF
7 THE INDIVIDUAL SATISFIES 1 OR MORE OF THE FOLLOWING:

8 (A) HAS BEEN CONVICTED OF A RELEVANT CRIME DESCRIBED UNDER 42

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1 USC 1320A-7.

2 (B) HAS BEEN CONVICTED OF ANY OF THE FOLLOWING FELONIES, AN
3 ATTEMPT OR CONSPIRACY TO COMMIT ANY OF THOSE FELONIES, OR ANY OTHER
4 STATE OR FEDERAL CRIME THAT IS SIMILAR TO THE FELONIES DESCRIBED IN
5 THIS SUBDIVISION, OTHER THAN A FELONY FOR A RELEVANT CRIME
6 DESCRIBED UNDER 42 USC 1320A-7, UNLESS 15 YEARS HAVE LAPSED SINCE
7 THE INDIVIDUAL COMPLETED ALL OF THE TERMS AND CONDITIONS OF HIS OR
8 HER SENTENCING, PAROLE, AND PROBATION FOR THAT CONVICTION PRIOR TO
9 THE DATE OF APPLICATION FOR EMPLOYMENT [] OR
10 THE DATE OF THE EXECUTION OF THE INDEPENDENT CONTRACT:

11 (i) A FELONY THAT INVOLVES THE INTENT TO CAUSE DEATH OR SERIOUS
12 IMPAIRMENT OF A BODY FUNCTION, THAT RESULTS IN DEATH OR SERIOUS
13 IMPAIRMENT OF A BODY FUNCTION, THAT INVOLVES THE USE OF FORCE OR
14 VIOLENCE, OR THAT INVOLVES THE THREAT OF THE USE OF FORCE OR
15 VIOLENCE.

16 (ii) A FELONY INVOLVING CRUELTY OR TORTURE.

17 (iii) A FELONY UNDER CHAPTER XXA OF THE MICHIGAN PENAL CODE,
18 1931 PA 328, MCL 750.145M TO 750.145R.

19 (iv) A FELONY INVOLVING CRIMINAL SEXUAL CONDUCT.

20 (v) A FELONY INVOLVING ABUSE OR NEGLECT.

21 (vi) A FELONY INVOLVING THE USE OF A FIREARM OR DANGEROUS
22 WEAPON.

23 (vii) A FELONY INVOLVING THE DIVERSION OR ADULTERATION OF A
24 PRESCRIPTION DRUG OR OTHER MEDICATIONS.

25 (C) HAS BEEN CONVICTED OF A FELONY OR AN ATTEMPT OR CONSPIRACY
26 TO COMMIT A FELONY, OTHER THAN A FELONY FOR A RELEVANT CRIME
27 DESCRIBED UNDER 42 USC 1320A-7 OR A FELONY DESCRIBED UNDER

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1 [SUBDIVISION (B)], UNLESS 10 YEARS HAVE LAPSED SINCE THE INDIVIDUAL
 2 COMPLETED ALL OF THE TERMS AND CONDITIONS OF HIS OR HER SENTENCING,
 3 PAROLE, AND PROBATION FOR THAT CONVICTION PRIOR TO THE DATE OF
 4 APPLICATION FOR EMPLOYMENT [] OR THE DATE OF
 5 THE EXECUTION OF THE INDEPENDENT CONTRACT.

6 (D) HAS BEEN CONVICTED OF ANY OF THE FOLLOWING MISDEMEANORS,
 7 OTHER THAN A MISDEMEANOR FOR A RELEVANT CRIME DESCRIBED UNDER 42
 8 USC 1320A-7, OR A STATE OR FEDERAL CRIME THAT IS SUBSTANTIALLY
 9 SIMILAR TO THE MISDEMEANORS DESCRIBED IN THIS SUBDIVISION, WITHIN
 10 THE 10 YEARS IMMEDIATELY PRECEDING THE DATE OF APPLICATION FOR
 11 EMPLOYMENT [] OR THE DATE OF THE EXECUTION OF
 12 THE INDEPENDENT CONTRACT:

13 (i) A MISDEMEANOR INVOLVING THE USE OF A FIREARM OR DANGEROUS
 14 WEAPON WITH THE INTENT TO INJURE, THE USE OF A FIREARM OR DANGEROUS
 15 WEAPON THAT RESULTS IN A PERSONAL INJURY, OR A MISDEMEANOR
 16 INVOLVING THE USE OF FORCE OR VIOLENCE OR THE THREAT OF THE USE OF
 17 FORCE OR VIOLENCE.

18 (ii) A MISDEMEANOR UNDER CHAPTER XXA OF THE MICHIGAN PENAL
 19 CODE, 1931 PA 328, MCL 750.145M TO 750.145R.

20 (iii) A MISDEMEANOR INVOLVING CRIMINAL SEXUAL CONDUCT.

21 (iv) A MISDEMEANOR INVOLVING CRUELTY OR TORTURE UNLESS
 22 OTHERWISE PROVIDED UNDER SUBDIVISION (E).

23 (v) A MISDEMEANOR INVOLVING ABUSE OR NEGLECT.

24 (E) HAS BEEN CONVICTED OF ANY OF THE FOLLOWING MISDEMEANORS,
 25 OTHER THAN A MISDEMEANOR FOR A RELEVANT CRIME DESCRIBED UNDER 42
 26 USC 1320A-7, OR A STATE OR FEDERAL CRIME THAT IS SUBSTANTIALLY
 27 SIMILAR TO THE MISDEMEANORS DESCRIBED IN THIS SUBDIVISION, WITHIN

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1 THE 5 YEARS IMMEDIATELY PRECEDING THE DATE OF APPLICATION FOR
2 EMPLOYMENT [] OR THE DATE OF THE EXECUTION OF
3 THE INDEPENDENT CONTRACT:

4 (i) A MISDEMEANOR INVOLVING CRUELTY IF COMMITTED BY AN
5 INDIVIDUAL WHO IS LESS THAN 16 YEARS OF AGE.

6 (ii) A MISDEMEANOR INVOLVING HOME INVASION.

7 (iii) A MISDEMEANOR INVOLVING EMBEZZLEMENT.

8 (iv) A MISDEMEANOR INVOLVING NEGLIGENT HOMICIDE.

9 (v) A MISDEMEANOR INVOLVING LARCENY UNLESS OTHERWISE PROVIDED
10 UNDER SUBDIVISION (G).

11 (vi) A MISDEMEANOR OF RETAIL FRAUD IN THE SECOND DEGREE UNLESS
12 OTHERWISE PROVIDED UNDER SUBDIVISION (G).

13 (vii) ANY OTHER MISDEMEANOR INVOLVING ASSAULT, FRAUD, THEFT, OR
14 THE POSSESSION OR DELIVERY OF A CONTROLLED SUBSTANCE UNLESS
15 OTHERWISE PROVIDED UNDER SUBDIVISIONS (D), (F), OR (G).

16 (F) HAS BEEN CONVICTED OF ANY OF THE FOLLOWING MISDEMEANORS,
17 OTHER THAN A MISDEMEANOR FOR A RELEVANT CRIME DESCRIBED UNDER 42
18 USC 1320A-7, OR A STATE OR FEDERAL CRIME THAT IS SUBSTANTIALLY
19 SIMILAR TO THE MISDEMEANORS DESCRIBED IN THIS SUBDIVISION, WITHIN
20 THE 3 YEARS IMMEDIATELY PRECEDING THE DATE OF APPLICATION FOR
21 EMPLOYMENT [] OR THE DATE OF THE EXECUTION OF
22 THE INDEPENDENT CONTRACT:

23 (i) A MISDEMEANOR FOR ASSAULT IF THERE WAS NO USE OF A FIREARM
24 OR DANGEROUS WEAPON AND NO INTENT TO COMMIT MURDER OR INFLICT GREAT
25 BODILY INJURY.

26 (ii) A MISDEMEANOR OF RETAIL FRAUD IN THE THIRD DEGREE UNLESS
27 OTHERWISE PROVIDED UNDER SUBDIVISION (G).

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1 (iii) A MISDEMEANOR UNDER PART 74 OF THE PUBLIC HEALTH CODE,
2 1978 PA 368, MCL 333.7401 TO 333.7461, UNLESS OTHERWISE PROVIDED
3 UNDER SUBDIVISION (G).

4 (G) HAS BEEN CONVICTED OF ANY OF THE FOLLOWING MISDEMEANORS,
5 OTHER THAN A MISDEMEANOR FOR A RELEVANT CRIME DESCRIBED UNDER 42
6 USC 1320A-7, OR A STATE OR FEDERAL CRIME THAT IS SUBSTANTIALLY
7 SIMILAR TO THE MISDEMEANORS DESCRIBED IN THIS SUBDIVISION, WITHIN
8 THE YEAR IMMEDIATELY PRECEDING THE DATE OF APPLICATION FOR
9 EMPLOYMENT [] OR THE DATE OF THE EXECUTION OF
10 THE INDEPENDENT CONTRACT:

11 (i) A MISDEMEANOR UNDER PART 74 OF THE PUBLIC HEALTH CODE, 1978
12 PA 368, MCL 333.7401 TO 333.7461, IF THE INDIVIDUAL, AT THE TIME OF
13 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 (6), AN ADULT
25 FOSTER CARE FACILITY SHALL NOT EMPLOY OR INDEPENDENTLY CONTRACT
26 WITH AN INDIVIDUAL WHO HAS DIRECT ACCESS TO RESIDENTS AFTER THE
27 EFFECTIVE DATE OF THIS SECTION UNTIL THE ADULT FOSTER CARE FACILITY

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1 CONDUCTS A CRIMINAL HISTORY CHECK IN COMPLIANCE WITH SUBSECTIONS
2 (4) AND (5). THIS SUBSECTION AND SUBSECTION (1) DO NOT APPLY TO AN
3 INDIVIDUAL WHO IS EMPLOYED BY OR UNDER CONTRACT TO AN ADULT FOSTER
4 CARE FACILITY BEFORE THE EFFECTIVE DATE OF THIS SECTION. WITHIN 24
5 MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION, AN INDIVIDUAL WHO
6 IS EXEMPT UNDER THIS SUBSECTION SHALL PROVIDE THE DEPARTMENT OF
7 STATE POLICE A SET OF FINGERPRINTS AND THE DEPARTMENT OF STATE
8 POLICE SHALL INPUT THOSE FINGERPRINTS INTO THE AUTOMATED
9 FINGERPRINT IDENTIFICATION SYSTEM DATABASE ESTABLISHED UNDER
10 SUBSECTION (12). AN INDIVIDUAL WHO IS EXEMPT UNDER THIS SUBSECTION
11 IS NOT LIMITED TO WORKING WITHIN THE ADULT FOSTER CARE FACILITY
12 WITH WHICH HE OR SHE IS EMPLOYED BY OR UNDER INDEPENDENT CONTRACT
13 WITH ON THE EFFECTIVE DATE OF THIS SECTION. THAT INDIVIDUAL MAY
14 TRANSFER TO ANOTHER ADULT FOSTER CARE FACILITY THAT IS UNDER THE
15 SAME OWNERSHIP WITH WHICH HE OR SHE WAS EMPLOYED [OR UNDER CONTRACT
16]. IF THAT INDIVIDUAL WISHES TO TRANSFER TO AN
17 ADULT FOSTER CARE FACILITY THAT IS NOT UNDER THE SAME OWNERSHIP, HE
18 OR SHE MAY DO SO PROVIDED THAT A CRIMINAL HISTORY CHECK IS
19 CONDUCTED BY THE NEW FACILITY IN ACCORDANCE WITH SUBSECTION (4). IF
20 AN INDIVIDUAL WHO IS EXEMPT UNDER THIS SUBSECTION IS SUBSEQUENTLY
21 CONVICTED OF A CRIME OR OFFENSE DESCRIBED UNDER SUBSECTION (1) (A)
22 THROUGH (G) OR FOUND TO BE THE SUBJECT OF A SUBSTANTIATED FINDING
23 DESCRIBED UNDER SUBSECTION (1) (I) OR AN ORDER OR DISPOSITION
24 DESCRIBED UNDER SUBSECTION (1) (H), OR IS FOUND TO HAVE BEEN
25 CONVICTED OF A RELEVANT CRIME DESCRIBED UNDER SUBSECTION (1) (A), HE
26 OR SHE IS NO LONGER EXEMPT AND SHALL BE TERMINATED FROM EMPLOYMENT
27 OR DENIED EMPLOYMENT.

1 HISTORY CHECK, THE CHARGE SHALL BE PAID BY OR REIMBURSED BY THE
2 DEPARTMENT WITH FEDERAL FUNDS AS PROVIDED TO IMPLEMENT A PILOT
3 PROGRAM FOR NATIONAL AND STATE BACKGROUND CHECKS ON DIRECT PATIENT
4 ACCESS EMPLOYEES OF LONG-TERM CARE FACILITIES OR PROVIDERS IN
5 ACCORDANCE WITH SECTION 307 OF THE MEDICARE PRESCRIPTION DRUG,
6 IMPROVEMENT, AND MODERNIZATION ACT OF 2003, PUBLIC LAW 108-173. THE
7 ADULT FOSTER CARE FACILITY SHALL NOT SEEK REIMBURSEMENT FOR A
8 CHARGE IMPOSED BY THE DEPARTMENT OF STATE POLICE OR THE FEDERAL
9 BUREAU OF INVESTIGATION FROM THE INDIVIDUAL WHO IS THE SUBJECT OF
10 THE INITIAL CRIMINAL HISTORY CHECK. THE DEPARTMENT OF STATE POLICE
11 SHALL CONDUCT AN INITIAL CRIMINAL HISTORY CHECK ON THE INDIVIDUAL
12 NAMED IN THE REQUEST. THE DEPARTMENT OF STATE POLICE SHALL PROVIDE
13 THE DEPARTMENT WITH A WRITTEN REPORT OF THE CRIMINAL HISTORY CHECK
14 CONDUCTED UNDER THIS SUBSECTION THAT CONTAINS A CRIMINAL RECORD.
15 THE REPORT SHALL CONTAIN ANY CRIMINAL HISTORY RECORD INFORMATION ON
16 THE INDIVIDUAL MAINTAINED BY THE DEPARTMENT OF STATE POLICE.

17 (5) UPON RECEIPT OF THE WRITTEN CONSENT AND IDENTIFICATION
18 REQUIRED UNDER SUBSECTION (3), IF THE INDIVIDUAL HAS APPLIED FOR
19 EMPLOYMENT EITHER AS AN EMPLOYEE OR AS AN INDEPENDENT CONTRACTOR
20 WITH AN ADULT FOSTER CARE FACILITY, THE ADULT FOSTER CARE FACILITY
21 THAT HAS MADE A GOOD FAITH OFFER OF EMPLOYMENT OR INDEPENDENT
22 CONTRACT SHALL COMPLY WITH SUBSECTION (4) AND SHALL MAKE A REQUEST
23 TO THE DEPARTMENT OF STATE POLICE TO FORWARD THE INDIVIDUAL'S
24 FINGERPRINTS TO THE FEDERAL BUREAU OF INVESTIGATION. THE DEPARTMENT
25 OF STATE POLICE SHALL REQUEST THE FEDERAL BUREAU OF INVESTIGATION
26 TO MAKE A DETERMINATION OF THE EXISTENCE OF ANY NATIONAL CRIMINAL
27 HISTORY PERTAINING TO THE INDIVIDUAL. AN INDIVIDUAL DESCRIBED IN

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1 THIS SUBSECTION SHALL PROVIDE THE DEPARTMENT OF STATE POLICE WITH A
2 SET OF FINGERPRINTS. THE DEPARTMENT OF STATE POLICE SHALL COMPLETE
3 THE CRIMINAL HISTORY CHECK UNDER SUBSECTION (4) AND, EXCEPT AS
4 OTHERWISE PROVIDED IN THIS SUBSECTION, PROVIDE THE RESULTS OF ITS
5 DETERMINATION UNDER SUBSECTION (4) AND THE RESULTS OF THE FEDERAL
6 BUREAU OF INVESTIGATION DETERMINATION TO THE DEPARTMENT WITHIN 30
7 DAYS AFTER THE REQUEST IS MADE. IF THE REQUESTING ADULT FOSTER CARE
8 FACILITY IS NOT A STATE DEPARTMENT OR AGENCY AND IF A CRIMINAL
9 CONVICTION IS DISCLOSED ON [THE WRITTEN REPORT OF THE CRIMINAL HISTORY
CHECK OBTAINED UNDER SUBSECTION (4) OR] THE FEDERAL BUREAU OF
INVESTIGATION
10 DETERMINATION, THE DEPARTMENT SHALL NOTIFY THE ADULT FOSTER CARE
11 FACILITY AND THE INDIVIDUAL IN WRITING OF THE TYPE OF CRIME
12 DISCLOSED ON [THE WRITTEN REPORT OF THE CRIMINAL HISTORY CHECK OBTAINED
UNDER SUBSECTION (4) OR] THE FEDERAL BUREAU OF INVESTIGATION
DETERMINATION
13 WITHOUT DISCLOSING THE DETAILS OF THE CRIME. THE NOTIFICATION SHALL
14 INFORM THE FACILITY OR AGENCY AND THE APPLICANT REGARDING THE
15 APPEAL PROCESS IN SECTION 34C. ANY CHARGES IMPOSED BY THE
16 DEPARTMENT OF STATE POLICE OR THE FEDERAL BUREAU OF INVESTIGATION
17 FOR CONDUCTING AN INITIAL CRIMINAL HISTORY CHECK OR MAKING A
18 DETERMINATION UNDER THIS SUBSECTION SHALL BE PAID IN THE MANNER
19 REQUIRED UNDER SUBSECTION (4).

20 (6) IF AN ADULT FOSTER CARE FACILITY DETERMINES IT NECESSARY
21 TO EMPLOY OR INDEPENDENTLY CONTRACT WITH AN INDIVIDUAL BEFORE
22 RECEIVING THE RESULTS OF THE INDIVIDUAL'S CRIMINAL HISTORY CHECK
23 REQUIRED UNDER THIS SECTION, THE ADULT FOSTER CARE FACILITY MAY
24 CONDITIONALLY EMPLOY THE INDIVIDUAL IF BOTH OF THE FOLLOWING APPLY:

25 (A) THE ADULT FOSTER CARE FACILITY REQUESTS THE CRIMINAL
26 HISTORY CHECK REQUIRED UNDER THIS SECTION, UPON CONDITIONALLY
27 EMPLOYING THE INDIVIDUAL.

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1 (B) THE INDIVIDUAL SIGNS A WRITTEN STATEMENT INDICATING ALL OF
2 THE FOLLOWING:

3 (i) THAT HE OR SHE HAS NOT BEEN CONVICTED OF 1 OR MORE OF THE
4 CRIMES THAT ARE DESCRIBED IN SUBSECTION (1) (A) TO (G) WITHIN THE
5 APPLICABLE TIME PERIOD PRESCRIBED BY SUBSECTION (1) (A) TO (G) .

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

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

10 (iv) THE INDIVIDUAL AGREES THAT, IF THE INFORMATION IN THE
11 CRIMINAL HISTORY CHECK CONDUCTED UNDER THIS SECTION DOES NOT
12 CONFIRM THE INDIVIDUAL'S STATEMENT UNDER SUBPARAGRAPHS (i) TO (iii) ,
13 HIS OR HER EMPLOYMENT WILL BE TERMINATED BY THE ADULT FOSTER CARE
14 FACILITY AS REQUIRED UNDER SUBSECTION (1) UNLESS AND UNTIL THE
15 INDIVIDUAL CAN PROVE THAT THE INFORMATION IS INCORRECT. [

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19 (v) THAT HE OR SHE UNDERSTANDS THE CONDITIONS DESCRIBED IN
20 SUBPARAGRAPHS (i) TO [(iv)] THAT RESULT IN THE TERMINATION OF HIS OR
21 HER EMPLOYMENT AND THAT THOSE CONDITIONS ARE GOOD CAUSE FOR
22 TERMINATION.

23 (7) THE DEPARTMENT SHALL [DEVELOP AND DISTRIBUTE] THE MODEL FORM
24 FOR THE []
25 STATEMENT REQUIRED UNDER SUBSECTION (6) (B) [. THE DEPARTMENT SHALL MAKE
26 THE MODEL FORM] AVAILABLE TO ADULT
27 FOSTER CARE FACILITIES UPON REQUEST AT NO CHARGE.

(8) IF AN INDIVIDUAL IS CONDITIONALLY EMPLOYED UNDER
SUBSECTION (6) , AND THE REPORT DESCRIBED IN SUBSECTION (4) OR (5) ,

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1 IF APPLICABLE, DOES NOT CONFIRM THE INDIVIDUAL'S STATEMENT UNDER
2 SUBSECTION (6) (B) (i) TO (iii), THE ADULT FOSTER CARE FACILITY SHALL
3 TERMINATE THE INDIVIDUAL'S EMPLOYMENT AS REQUIRED BY SUBSECTION
4 (1).

5 (9) AN INDIVIDUAL WHO KNOWINGLY PROVIDES FALSE INFORMATION
6 REGARDING HIS OR HER IDENTITY, CRIMINAL CONVICTIONS, OR
7 SUBSTANTIATED FINDINGS ON A STATEMENT DESCRIBED IN SUBSECTION
8 (6) (B) (i) TO (iii) IS GUILTY OF A MISDEMEANOR PUNISHABLE BY
9 IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN
10 \$500.00, OR BOTH.

11 (10) AN ADULT FOSTER CARE FACILITY SHALL USE CRIMINAL HISTORY
12 RECORD INFORMATION OBTAINED UNDER SUBSECTION (4) OR (5) ONLY FOR
13 THE PURPOSE OF EVALUATING AN INDIVIDUAL'S QUALIFICATIONS FOR
14 EMPLOYMENT IN THE POSITION FOR WHICH HE OR SHE HAS APPLIED AND FOR
15 THE PURPOSES OF SUBSECTIONS (6) AND (8). AN ADULT FOSTER CARE
16 FACILITY OR AN EMPLOYEE OF THE ADULT FOSTER CARE FACILITY SHALL NOT
17 DISCLOSE CRIMINAL HISTORY RECORD INFORMATION OBTAINED UNDER THIS
18 SECTION TO A PERSON WHO IS NOT DIRECTLY INVOLVED IN EVALUATING THE
19 INDIVIDUAL'S QUALIFICATIONS FOR EMPLOYMENT OR INDEPENDENT CONTRACT.
20 AN INDIVIDUAL WHO KNOWINGLY USES OR DISSEMINATES THE CRIMINAL
21 HISTORY RECORD INFORMATION OBTAINED UNDER SUBSECTION (4) [OR (5)] IN
22 VIOLATION OF THIS SUBSECTION IS GUILTY OF A MISDEMEANOR PUNISHABLE
23 BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE
24 THAN \$1,000.00, OR BOTH. UPON WRITTEN REQUEST FROM ANOTHER ADULT
25 FOSTER CARE FACILITY[, PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY
FOR PEOPLE WITH MENTAL RETARDATION,] OR HEALTH FACILITY OR AGENCY THAT
IS
26 CONSIDERING EMPLOYING OR INDEPENDENTLY CONTRACTING WITH AN
27 INDIVIDUAL, AN ADULT FOSTER CARE FACILITY THAT HAS OBTAINED

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

9 (11) AS A CONDITION OF CONTINUED EMPLOYMENT, EACH EMPLOYEE OR
10 INDEPENDENT CONTRACTOR SHALL DO BOTH OF THE FOLLOWING:

11 (A) AGREE IN WRITING TO REPORT TO THE ADULT FOSTER CARE
12 FACILITY IMMEDIATELY UPON BEING ARRAIGNED ON 1 OR MORE OF THE
13 CRIMINAL OFFENSES LISTED IN SUBSECTION (1) (A) TO (G), UPON BEING
14 CONVICTED OF 1 OR MORE OF THE CRIMINAL OFFENSES LISTED IN
15 SUBSECTION (1) (A) TO (G), UPON BECOMING THE SUBJECT OF AN ORDER OR
16 DISPOSITION DESCRIBED UNDER SUBSECTION (1) (H), AND UPON BECOMING
17 THE SUBJECT OF A SUBSTANTIATED FINDING DESCRIBED UNDER SUBSECTION
18 (1) (I). [REPORTING OF AN ARRAIGNMENT UNDER THIS SUBDIVISION IS NOT CAUSE
FOR TERMINATION OR DENIAL OF EMPLOYMENT.]

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

22 (12) IN ADDITION TO SANCTIONS SET FORTH IN THIS ACT, A
23 LICENSEE, OWNER, ADMINISTRATOR, OR OPERATOR OF AN ADULT FOSTER CARE
24 FACILITY WHO KNOWINGLY AND WILLFULLY FAILS TO CONDUCT THE CRIMINAL
25 HISTORY CHECKS AS REQUIRED UNDER THIS SECTION IS GUILTY OF A
26 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR
27 A FINE OF NOT MORE THAN \$5,000.00, OR BOTH.

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

17 (14) IF AN INDIVIDUAL INDEPENDENTLY CONTRACTS WITH AN ADULT
18 FOSTER CARE FACILITY, SUBSECTIONS (1) AND (2) DO NOT APPLY IF THE
19 CONTRACTUAL WORK PERFORMED BY THE INDIVIDUAL IS NOT DIRECTLY
20 RELATED TO THE CLINICAL, HEALTH CARE, OR PERSONAL SERVICES
21 DELIVERED BY THE ADULT FOSTER CARE FACILITY OR IF THE INDIVIDUAL'S
22 DUTIES ARE NOT PERFORMED ON AN ONGOING BASIS WITH DIRECT ACCESS TO
23 [RESIDENTS]. THIS EXCEPTION INCLUDES, BUT IS NOT LIMITED TO, AN
24 INDIVIDUAL WHO INDEPENDENTLY CONTRACTS WITH THE ADULT FOSTER CARE
25 FACILITY TO PROVIDE UTILITY, MAINTENANCE, CONSTRUCTION, OR
26 COMMUNICATION SERVICES.

27 (15) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY

1 ACT THAT ADDED THIS SECTION, THE DEPARTMENT SHALL SUBMIT A WRITTEN
2 REPORT TO THE LEGISLATURE REGARDING EACH OF THE FOLLOWING:

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

4 (B) THE FEASIBILITY OF IMPLEMENTING CRIMINAL HISTORY CHECKS ON
5 VOLUNTEERS WHO WORK IN THE ADULT FOSTER CARE FACILITIES AND ON
6 STATE AGENCY EMPLOYEES WHO ARE INVOLVED IN THE LICENSING OF THE
7 ADULT FOSTER CARE FACILITIES AND REGULATION OF THE EMPLOYEES.

8 (C) THE AMOUNT OF FEDERAL FUNDS PROVIDED TO IMPLEMENT A PILOT
9 PROGRAM FOR NATIONAL AND STATE CRIMINAL HISTORY CHECKS ON DIRECT
10 ACCESS EMPLOYEES OF LONG-TERM CARE FACILITIES OR PROVIDERS, THE
11 AMOUNT OF THOSE FUNDS EXPENDED TO DATE, AND THE AMOUNT OF THOSE
12 FUNDS REMAINING.

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

23 (17) THE DEPARTMENT SHALL SUBMIT TO THE LEGISLATURE NOT LATER
24 THAN 3 YEARS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
25 ADDED THIS SUBSECTION A WRITTEN REPORT REGARDING THE DEPARTMENT'S
26 PLAN TO CONTINUE PERFORMING CRIMINAL HISTORY CHECKS IF ADEQUATE
27 FEDERAL FUNDING IS NOT AVAILABLE TO CONTINUE PERFORMING FUTURE

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1 CRIMINAL HISTORY CHECKS.

2 (18) AN ADULT FOSTER CARE FACILITY OR A PROSPECTIVE EMPLOYEE
3 COVERED UNDER THIS SECTION MAY NOT BE CHARGED FOR THE COST OF AN
4 INITIAL CRIMINAL HISTORY CHECK REQUIRED UNDER THIS ACT.

5 (19) AS USED IN THIS SECTION:

6 (A) "DIRECT ACCESS" MEANS ACCESS TO A RESIDENT OR RESIDENT'S
7 PROPERTY, FINANCIAL INFORMATION, MEDICAL RECORDS, TREATMENT
8 INFORMATION, OR ANY OTHER IDENTIFYING INFORMATION.

9 (B) "HEALTH FACILITY OR AGENCY" MEANS A HEALTH FACILITY OR
10 AGENCY AS DEFINED IN SECTION 20106 OF THE PUBLIC HEALTH CODE, 1978
11 PA 368, MCL 333.20106.

12 (C) "INDEPENDENT CONTRACT" MEANS A CONTRACT ENTERED INTO BY AN
13 ADULT FOSTER CARE FACILITY WITH AN INDIVIDUAL WHO PROVIDES THE
14 CONTRACTED SERVICES INDEPENDENTLY OR A CONTRACT ENTERED INTO BY AN
15 ADULT FOSTER CARE FACILITY WITH AN ORGANIZATION OR AGENCY THAT
16 EMPLOYS OR CONTRACTS WITH AN INDIVIDUAL AFTER COMPLYING WITH THE
17 REQUIREMENTS OF THIS SECTION TO PROVIDE THE CONTRACTED SERVICES TO
18 THE ADULT FOSTER CARE FACILITY ON BEHALF OF THE ORGANIZATION OR
19 AGENCY.

20 (D) "TITLE XIX" MEANS TITLE XIX OF THE SOCIAL SECURITY ACT, 42
21 USC 1396 TO 1396R-6 AND 1396R-8 TO 1396V.

22 SEC. 34C. (1) AN INDIVIDUAL WHO HAS BEEN DISQUALIFIED FROM OR
23 DENIED EMPLOYMENT BY AN ADULT FOSTER CARE FACILITY BASED ON A
24 CRIMINAL HISTORY CHECK CONDUCTED PURSUANT TO SECTION 34A OR 34B MAY
25 APPEAL TO THE DEPARTMENT [] IF HE
26 OR SHE BELIEVES THAT THE CRIMINAL HISTORY REPORT IS INACCURATE, AND
27 THE APPEAL SHALL BE CONDUCTED AS A CONTESTED CASE HEARING CONDUCTED

1 PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306,
2 MCL 24.201 TO 24.328. THE INDIVIDUAL SHALL FILE THE APPEAL WITH THE
3 DIRECTOR OF THE DEPARTMENT WITHIN 15 BUSINESS DAYS AFTER RECEIVING
4 THE WRITTEN REPORT OF THE CRIMINAL HISTORY CHECK UNLESS THE
5 CONVICTION CONTAINED IN THE CRIMINAL HISTORY REPORT IS ONE THAT MAY
6 BE EXPUNGED OR SET ASIDE. IF AN INDIVIDUAL HAS BEEN DISQUALIFIED OR
7 DENIED EMPLOYMENT BASED ON A CONVICTION THAT MAY BE EXPUNGED OR SET
8 ASIDE, THEN HE OR SHE SHALL FILE THE APPEAL WITHIN 15 BUSINESS DAYS
9 AFTER A COURT ORDER GRANTING OR DENYING HIS OR HER APPLICATION TO
10 EXPUNGE OR SET ASIDE THAT CONVICTION IS GRANTED. IF THE ORDER IS
11 GRANTED AND THE CONVICTION IS EXPUNGED OR SET ASIDE, THEN THE
12 INDIVIDUAL SHALL NOT BE DISQUALIFIED OR DENIED EMPLOYMENT BASED
13 SOLELY ON THAT CONVICTION. THE DIRECTOR SHALL REVIEW THE APPEAL AND
14 ISSUE A WRITTEN DECISION WITHIN 30 BUSINESS DAYS AFTER RECEIVING
15 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 34B, THE AVERAGE NUMBER OF DAYS NECESSARY TO COMPLETE THE
25 APPEALS PROCESS FOR EACH APPEAL, AND THE NUMBER OF APPEALS REJECTED
26 WITHOUT A HEARING AND A BRIEF EXPLANATION OF THE DENIAL.

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

Senate Bill No. 622 (H-2) as amended January 31, 2006
1 THAN A SATURDAY, SUNDAY, OR ANY LEGAL HOLIDAY.

2 Enacting section 1. Section 34a of the adult foster care
3 facility licensing act, 1979 PA 218, MCL 400.734a, is repealed
4 effective [April 1, 2006.

5
6]

7 Enacting section 2. Sections 34b and 34c of the adult foster
8 care facility licensing act, 1979 PA 218, MCL 400.734b, as added by
9 this amendatory act, take effect [April 1, 2006, since the department has
10 secured the necessary federal approval to utilize federal funds to
11 reimburse those facilities for the costs incurred for requesting a
12 national criminal history check to be conducted by the federal bureau of
13 investigation and the department has filed written notice of that
14 approval with the secretary of state. The department shall issue a
15 medicaid policy bulletin regarding the payment and reimbursement for the
16 criminal history checks by April 1, 2006.

17]

18 Enacting section 3. This amendatory act does not take effect
19 unless all of the following bills of the 93rd Legislature are
20 enacted into law:

21 (a) Senate Bill No. 621.

22 (b) House Bill No. 5168.

23 (c) House Bill No. 5448.