

SENATE BILL No. 763

September 20, 2005, Introduced by Senators BERNERO, SCHAUER, OLSHOVE, GEORGE, SCOTT, PRUSI, GOSCHKA, BARCIA, JACOBS, LELAND and CLARKE and referred to the Committee on Senior Citizens and Veterans Affairs.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 20173 (MCL 333.20173), as added by 2002 PA 303.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20173. (1) Except as otherwise provided in subsection
2 (2), a health facility or agency that is a nursing home, county
3 medical care facility, or home for the aged shall not employ,
4 independently contract with, or grant clinical privileges to an
5 individual who ~~regularly provides direct services to patients or~~
6 ~~residents in the health facility or agency after the effective date~~
7 ~~of the amendatory act that added this section if the individual~~
8 has been convicted of 1 or more of the following:

1 (a) A felony or an attempt or conspiracy to commit a felony
2 within the 15 years immediately preceding the date of application
3 for employment or clinical privileges or the date of the execution
4 of the independent contract.

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

14 (2) Except as otherwise provided in this subsection and
15 subsection (5), a health facility or agency that is a nursing home,
16 county medical care facility, or home for the aged shall not
17 employ, independently contract with, or grant privileges to an
18 individual ~~who regularly provides direct services to patients or~~
19 ~~residents in the health facility or agency after the effective date~~
20 ~~of the amendatory act that added this section~~ until the health
21 facility or agency complies with subsection (4) or (5), or both.
22 ~~This subsection and subsection (1) do not apply to an individual~~
23 ~~who is employed by, under independent contract to, or granted~~
24 ~~clinical privileges in a health facility or agency before the~~
25 ~~effective date of the amendatory act that added this section.~~

26 (3) An individual who applies for employment either as an
27 employee or as an independent contractor or for clinical privileges

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

23 (4) Upon receipt of the written consent and identification
24 required under subsection (3), if an applicant has resided in this
25 state for 3 or more years preceding the good faith offer of
26 employment, an independent contract, or clinical privileges, a
27 health facility or agency that is a nursing home, county medical

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

23 (5) Upon receipt of the written consent and identification
24 required under subsection (3), if an applicant has resided in this
25 state for less than 3 years preceding the good faith offer of
26 employment, an independent contract, or clinical privileges, a
27 health facility or agency that is a nursing home, county medical

1 care facility, or home for the aged that has made a good faith
2 offer described in this subsection to the applicant shall comply
3 with subsection (4) and shall make a request to the department of
4 state police to forward the applicant's fingerprints to the federal
5 bureau of investigation. The department of state police shall
6 request the federal bureau of investigation to make a determination
7 of the existence of any national criminal history pertaining to the
8 applicant. An applicant described in this subsection shall provide
9 the department of state police with 2 sets of fingerprints. The
10 department of state police shall complete the criminal history
11 check under subsection (4) and, except as otherwise provided in
12 this subsection, provide the results of its determination under
13 subsection (4) to the health facility or agency and the results of
14 the federal bureau of investigation determination to the department
15 of consumer and industry services within 30 days after the request
16 is made. If the requesting health facility or agency 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 notify
19 the health facility or agency in writing of the type of crime
20 disclosed on the federal bureau of investigation determination
21 without disclosing the details of the crime. Any charges for
22 fingerprinting or a federal bureau of investigation determination
23 under this subsection shall be paid in the manner required under
24 subsection (4).

25 (6) If a health facility or agency that is a nursing home,
26 county medical care facility, or home for the aged determines it
27 necessary to employ or grant clinical privileges to an applicant

1 before receiving the results of the applicant's criminal history
2 check under subsection (4) or (5), or both, the health facility or
3 agency may conditionally employ or grant conditional clinical
4 privileges to the individual if all of the following apply:

5 (a) The health facility or agency requests the criminal
6 history check under subsection (4) or (5), or both, upon
7 conditionally employing or conditionally granting clinical
8 privileges to the individual.

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

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

14 (ii) The individual agrees that, if the information in the
15 criminal history check conducted under subsection (4) or (5), or
16 both, does not confirm the individual's statement under
17 subparagraph (i), his or her employment or clinical privileges will
18 be terminated by the health facility or agency as required under
19 subsection (1) unless and until the individual can prove that the
20 information is incorrect. The health facility or agency shall
21 provide a copy of the results of the criminal history check
22 conducted under subsection (4) or (5), or both, to the applicant
23 upon request.

24 (iii) That he or she understands the conditions described in
25 subparagraphs (i) and (ii) that result in the termination of his or
26 her employment or clinical privileges and that those conditions are
27 good cause for termination.

1 (7) On ~~the effective date of the amendatory act that added~~
2 ~~this section~~ **MAY 10, 2002**, the department shall develop and
3 distribute a model form for the statement required under subsection
4 (6)(b). The department shall make the model form available to
5 health facilities or agencies subject to this section upon request
6 at no charge.

7 (8) If an individual is employed as a conditional employee or
8 is granted conditional clinical privileges under subsection (6),
9 and the report described in subsection (4) or (5), or both, does
10 not confirm the individual's statement under subsection (6)(b)(i),
11 the health facility or agency shall terminate the individual's
12 employment or clinical privileges as required by subsection (1).

13 (9) An individual who knowingly provides false information
14 regarding criminal convictions on a statement described in
15 subsection (6)(b)(i) is guilty of a misdemeanor punishable by
16 imprisonment for not more than 90 days or a fine of not more than
17 \$500.00, or both.

18 (10) A health facility or agency that is a nursing home,
19 county medical care facility, or home for the aged shall use
20 criminal history record information obtained under subsection (4),
21 (5), or (6) only for the purpose of evaluating an applicant's
22 qualifications for employment, an independent contract, or clinical
23 privileges in the position for which he or she has applied and for
24 the purposes of subsections (6) and (8). A health facility or
25 agency or an employee of the health facility or agency shall not
26 disclose criminal history record information obtained under
27 subsection (4) or (5) to a person who is not directly involved in

1 evaluating the applicant's qualifications for employment, an
2 independent contract, or clinical privileges. Upon written request
3 from another health facility or agency or adult foster care
4 facility that is considering employing, independently contracting
5 with, or granting clinical privileges to an individual, a health
6 facility or agency that has obtained criminal history record
7 information under this section on that individual shall share the
8 information with the requesting health facility or agency or adult
9 foster care facility. Except for a knowing or intentional release
10 of false information, a health facility or agency has no liability
11 in connection with a criminal background check conducted under this
12 section or the release of criminal history record information under
13 this subsection.

14 (11) As a condition of continued employment, each employee,
15 independent contractor, or individual granted clinical privileges
16 shall agree in writing to report to the health facility or agency
17 immediately upon being arrested for or convicted of 1 or more of
18 the criminal offenses listed in subsection (1) (a) and (b).

19 (12) As used in this section:

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

23 (b) "Independent contract" means a contract entered into by a
24 health facility or agency with an individual who provides the
25 contracted services independently or a contract entered into by a
26 health facility or agency with an organization or agency that
27 employs or contracts with an individual after complying with the

1 requirements of this section to provide the contracted services to
2 the health facility or agency on behalf of the organization or
3 agency.