

HOUSE BILL No. 5894

March 13, 2008, Introduced by Reps. Jackson and Alma Smith and referred to the Committee on Families and Children's Services.

A bill to amend 1979 PA 218, entitled "Adult foster care facility licensing act," by amending section 34b (MCL 400.734b), as added by 2006 PA 29.

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~~ **APRIL**
7 **1, 2006** if the individual satisfies 1 or more of the following:

8 (a) Has been convicted of a relevant crime described under 42
9 USC 1320a-7.

1 (b) Has been convicted of any of the following felonies, an
2 attempt or conspiracy to commit any of those felonies, or any other
3 state or federal crime that is similar to the felonies described in
4 this subdivision, other than a felony for a relevant crime
5 described under 42 USC 1320a-7, unless 15 years have lapsed since
6 the individual completed all of the terms and conditions of his or
7 her sentencing, parole, and probation for that conviction prior to
8 the date of application for employment or the date of the execution
9 of the independent contract:

10 (i) A felony that involves the intent to cause death or serious
11 impairment of a body function, that results in death or serious
12 impairment of a body function, that involves the use of force or
13 violence, or that involves the threat of the use of force or
14 violence.

15 (ii) A felony involving cruelty or torture.

16 (iii) A felony under chapter XXA of the Michigan penal code,
17 1931 PA 328, MCL 750.145m to 750.145r.

18 (iv) A felony involving criminal sexual conduct.

19 (v) A felony involving abuse or neglect.

20 (vi) A felony involving the use of a firearm or dangerous
21 weapon.

22 (vii) A felony involving the diversion or adulteration of a
23 prescription drug or other medications.

24 (c) Has been convicted of a felony or an attempt or conspiracy
25 to commit a felony, other than a felony for a relevant crime
26 described under 42 USC 1320a-7 or a felony described under
27 subdivision (b), unless 10 years have lapsed since the individual

1 completed all of the terms and conditions of his or her sentencing,
2 parole, and probation for that conviction prior to the date of
3 application for employment or the date of the execution of the
4 independent contract.

5 (d) 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 10 years immediately preceding the date of application for
10 employment or the date of the execution of the independent
11 contract:

12 (i) A misdemeanor involving the use of a firearm or dangerous
13 weapon with the intent to injure, the use of a firearm or dangerous
14 weapon that results in a personal injury, or a misdemeanor
15 involving the use of force or violence or the threat of the use of
16 force or violence.

17 (ii) A misdemeanor under chapter XXA of the Michigan penal
18 code, 1931 PA 328, MCL 750.145m to 750.145r.

19 (iii) A misdemeanor involving criminal sexual conduct.

20 (iv) A misdemeanor involving cruelty or torture unless
21 otherwise provided under subdivision (e).

22 (v) A misdemeanor involving abuse or neglect.

23 (e) Has been convicted of any of the following misdemeanors,
24 other than a misdemeanor for a relevant crime described under 42
25 USC 1320a-7, or a state or federal crime that is substantially
26 similar to the misdemeanors described in this subdivision, within
27 the 5 years immediately preceding the date of application for

1 employment or the date of the execution of the independent
2 contract:

3 (i) A misdemeanor involving cruelty if committed by an
4 individual who is less than 16 years of age.

5 (ii) A misdemeanor involving home invasion.

6 (iii) A misdemeanor involving embezzlement.

7 (iv) A misdemeanor involving negligent homicide.

8 (v) A misdemeanor involving larceny unless otherwise provided
9 under subdivision (g).

10 (vi) A misdemeanor of retail fraud in the second degree unless
11 otherwise provided under subdivision (g).

12 (vii) Any other misdemeanor involving assault, fraud, theft, or
13 the possession or delivery of a controlled substance unless
14 otherwise provided under subdivision (d), (f), or (g).

15 (f) Has been convicted of any of the following misdemeanors,
16 other than a misdemeanor for a relevant crime described under 42
17 USC 1320a-7, or a state or federal crime that is substantially
18 similar to the misdemeanors described in this subdivision, within
19 the 3 years immediately preceding the date of application for
20 employment or the date of the execution of the independent
21 contract:

22 (i) A misdemeanor for assault if there was no use of a firearm
23 or dangerous weapon and no intent to commit murder or inflict great
24 bodily injury.

25 (ii) A misdemeanor of retail fraud in the third degree unless
26 otherwise provided under subdivision (g).

27 (iii) A misdemeanor under part 74 of the public health code,

1 1978 PA 368, MCL 333.7401 to 333.7461, unless otherwise provided
2 under subdivision (g).

3 (g) Has been convicted of any of the following misdemeanors,
4 other than a misdemeanor for a relevant crime described under 42
5 USC 1320a-7, or a state or federal crime that is substantially
6 similar to the misdemeanors described in this subdivision, within
7 the year immediately preceding the date of application for
8 employment or the date of the execution of the independent
9 contract:

10 (i) A misdemeanor under part 74 of the public health code, 1978
11 PA 368, MCL 333.7401 to 333.7461, if the individual, at the time of
12 conviction, is under the age of 18.

13 (ii) A misdemeanor for larceny or retail fraud in the second or
14 third degree if the individual, at the time of conviction, is under
15 the age of 16.

16 (h) Is the subject of an order or disposition under section
17 16b of chapter IX of the code of criminal procedure, 1927 PA 175,
18 MCL 769.16b.

19 (i) Has been the subject of a substantiated finding of
20 neglect, abuse, or misappropriation of property by a state or
21 federal agency ~~pursuant~~**ACCORDING** to an investigation conducted in
22 accordance with 42 USC 1395i-3 or 1396r.

23 (2) Except as otherwise provided in subsection (6), an adult
24 foster care facility shall not employ or independently contract
25 with an individual who has direct access to residents after ~~the~~
26 ~~effective date of this section~~**APRIL 1, 2006** until the adult foster
27 care facility conducts a criminal history check in compliance with

1 subsections (4) and (5). This subsection and subsection (1) do not
2 apply to an individual who is employed by or under contract to an
3 adult foster care facility before ~~the effective date of this~~
4 ~~section. Within 24 months after the effective date of this section~~
5 **APRIL 1, 2006. BEGINNING APRIL 1, 2009**, an individual who is exempt
6 under this subsection shall provide the department of state police
7 a set of fingerprints and the department of state police shall
8 input those fingerprints into the automated fingerprint
9 identification system database established under subsection (12).
10 An individual who is exempt under this subsection is not limited to
11 working within the adult foster care facility with which he or she
12 is employed by or under independent contract with on ~~the effective~~
13 ~~date of this section~~ **APRIL 1, 2006**. That individual may transfer to
14 another adult foster care facility that is under the same ownership
15 with which he or she was employed or under contract. If that
16 individual wishes to transfer to an adult foster care facility that
17 is not under the same ownership, he or she may do so provided that
18 a criminal history check is conducted by the new facility in
19 accordance with subsection (4). If an individual who is exempt
20 under this subsection is subsequently convicted of a crime or
21 offense described under subsection (1)(a) ~~through~~ **TO** (g) or found
22 to be the subject of a substantiated finding described under
23 subsection (1)(i) or an order or disposition described under
24 subsection (1)(h), or is found to have been convicted of a relevant
25 crime described under subsection (1)(a), he or she is no longer
26 exempt and shall be terminated from employment or denied
27 employment.

1 (3) An individual who applies for employment either as an
2 employee or as an independent contractor with an adult foster care
3 facility and has received a good faith offer of employment or
4 independent contract from the adult foster care facility shall give
5 written consent at the time of application for the department of
6 state police to conduct an initial criminal history check under
7 this section. The individual, at the time of initial application,
8 shall provide identification acceptable to the department of state
9 police.

10 (4) Upon receipt of the written consent and identification
11 required under subsection (3), the adult foster care facility that
12 has made a good faith offer of employment or independent contract
13 shall make a request to the department of state police to conduct a
14 criminal history check on the individual and input the individual's
15 fingerprints into the automated fingerprint identification system
16 database, and shall make a request to the relevant licensing or
17 regulatory department to perform a check of all relevant registries
18 established ~~pursuant~~ **ACCORDING** to federal and state law and
19 regulations for any substantiated findings of abuse, neglect, or
20 misappropriation of property. The request shall be made in a manner
21 prescribed by the department of state police and the relevant
22 licensing or regulatory department or agency. The adult foster care
23 facility shall make the written consent and identification
24 available to the department of state police and the relevant
25 licensing or regulatory department or agency. If the department of
26 state police or the federal bureau of investigation charges a fee
27 for conducting the initial criminal history check, the charge shall

1 be paid by or reimbursed by the department with federal funds as
2 provided to implement a pilot program for national and state
3 background checks on direct patient access employees of long-term
4 care facilities or providers in accordance with section 307 of the
5 medicare prescription drug, improvement, and modernization act of
6 2003, Public Law 108-173. The adult foster care facility shall not
7 seek reimbursement for a charge imposed by the department of state
8 police or the federal bureau of investigation from the individual
9 who is the subject of the initial criminal history check. The
10 department of state police shall conduct an initial criminal
11 history check on the individual named in the request. The
12 department of state police shall provide the department with a
13 written report of the criminal history check conducted under this
14 subsection that contains a criminal record. The report shall
15 contain any criminal history record information on the individual
16 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

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
10 history check obtained under subsection (4) or the federal bureau
11 of investigation determination, the department shall notify the
12 adult foster care facility and the individual in writing of the
13 type of crime disclosed on the written report of the criminal
14 history check obtained under subsection (4) or the federal bureau
15 of investigation determination without disclosing the details of
16 the crime. The notification shall inform the facility or agency and
17 the applicant regarding the appeal process in section 34c. Any
18 charges imposed by the department of state police or the federal
19 bureau of investigation for conducting an initial criminal history
20 check or making a determination under this subsection shall be paid
21 in the manner required under subsection (4).

22 (6) If an adult foster care facility determines it necessary
23 to employ or independently contract with an individual before
24 receiving the results of the individual's criminal history check
25 required under this section, the adult foster care facility may
26 conditionally employ the individual if both of the following apply:

27 (a) The adult foster care facility requests the criminal

1 history check required under this section, upon conditionally
2 employing the individual.

3 (b) The individual signs a written statement indicating all of
4 the following:

5 (i) That he or she has not been convicted of 1 or more of the
6 crimes that are described in subsection (1)(a) to (g) within the
7 applicable time period prescribed by subsection (1)(a) to (g).

8 (ii) That he or she is not the subject of an order or
9 disposition described in subsection (1)(h).

10 (iii) That he or she has not been the subject of a substantiated
11 finding as described in subsection (1)(i).

12 (iv) The individual agrees that, if the information in the
13 criminal history check conducted under this section does not
14 confirm the individual's statement under subparagraphs (i) to (iii),
15 his or her employment will be terminated by the adult foster care
16 facility as required under subsection (1) unless and until the
17 individual can prove that the information is incorrect.

18 (v) That he or she understands the conditions described in
19 subparagraphs (i) to (iv) that result in the termination of his or
20 her employment and that those conditions are good cause for
21 termination.

22 (7) The department shall develop and distribute the model form
23 for the statement required under subsection (6)(b). The department
24 shall make the model form available to adult foster care facilities
25 upon request at no charge.

26 (8) If an individual is conditionally employed under
27 subsection (6), and the report described in subsection (4) or (5),

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
26 facility for people with mental retardation, or health facility or
27 agency that is considering employing or independently contracting

1 with an individual, an adult foster care facility 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 adult foster care facility,
5 psychiatric facility or intermediate care facility for people with
6 mental retardation, or health facility or agency. Except for a
7 knowing or intentional release of false information, an adult
8 foster care facility has no liability in connection with a
9 background check conducted under this section or the release of
10 criminal history record information under this subsection.

11 (11) As a condition of continued employment, each employee or
12 independent contractor shall do both of the following:

13 (a) Agree in writing to report to the adult foster care
14 facility immediately upon being arraigned on 1 or more of the
15 criminal offenses listed in subsection (1)(a) to (g), upon being
16 convicted of 1 or more of the criminal offenses listed in
17 subsection (1)(a) to (g), upon becoming the subject of an order or
18 disposition described under subsection (1)(h), and upon becoming
19 the subject of a substantiated finding described under subsection
20 (1)(i). Reporting of an arraignment under this subdivision is not
21 cause for termination or denial of employment.

22 (b) If a set of fingerprints is not already on file with the
23 department of state police, provide the department of state police
24 with a set of fingerprints.

25 (12) In addition to sanctions set forth in this act, a
26 licensee, owner, administrator, or operator of an adult foster care
27 facility who knowingly and willfully fails to conduct the criminal

1 history checks as required under this section is guilty of a
2 misdemeanor punishable by imprisonment for not more than 1 year or
3 a fine of not more than \$5,000.00, or both.

4 (13) In collaboration with the department of state police, the
5 department of information technology shall establish an automated
6 fingerprint identification system database that would allow the
7 department of state police to store and maintain all fingerprints
8 submitted under this section and would provide for an automatic
9 notification at the time a subsequent criminal arrest fingerprint
10 card submitted into the system matches a set of fingerprints
11 previously submitted in accordance with this section. Upon such
12 notification, the department of state police shall immediately
13 notify the department and the department shall immediately contact
14 the respective adult foster care facility with which that
15 individual is associated. Information in the database established
16 under this subsection is confidential, is not subject to disclosure
17 under the freedom of information act, 1976 PA 442, MCL 15.231 to
18 15.246, and shall not be disclosed to any person except for
19 purposes of this act or for law enforcement purposes.

20 (14) If an individual independently contracts with an adult
21 foster care facility, subsections (1) and (2) do not apply if the
22 contractual work performed by the individual is not directly
23 related to the clinical, health care, or personal services
24 delivered by the adult foster care facility or if the individual's
25 duties are not performed on an ongoing basis with direct access to
26 residents. This exception includes, but is not limited to, an
27 individual who independently contracts with the adult foster care

1 facility to provide utility, maintenance, construction, or
2 communication services.

3 ~~—— (15) Within 1 year after the effective date of the amendatory~~
4 ~~act that added this section, the department shall submit a written~~
5 ~~report to the legislature regarding each of the following:~~

6 ~~—— (a) The impact and effectiveness of this amendatory act.~~

7 ~~—— (b) The feasibility of implementing criminal history checks on~~
8 ~~volunteers who work in the adult foster care facilities and on~~
9 ~~state agency employees who are involved in the licensing of the~~
10 ~~adult foster care facilities and regulation of the employees.~~

11 ~~—— (c) The amount of federal funds provided to implement a pilot~~
12 ~~program for national and state criminal history checks on direct~~
13 ~~access employees of long term care facilities or providers, the~~
14 ~~amount of those funds expended to date, and the amount of those~~
15 ~~funds remaining.~~

16 (15) ~~(16) By March 1, 2007, the~~ **THE** department and the
17 department of state police shall ~~develop and implement~~ **MAINTAIN** an
18 electronic web-based system to assist the adult foster care
19 facilities required to check relevant registries and conduct
20 criminal history checks of its employees and independent
21 contractors and to provide for an automated notice to the adult
22 foster care facilities for the individuals entered in the system
23 who, since the initial check, have been convicted of a
24 disqualifying offense or have been the subject of a substantiated
25 finding of abuse, neglect, or misappropriation of property.

26 (16) ~~(17)~~ The department shall submit to the legislature not
27 later than ~~3 years after the effective date of the amendatory act~~

1 ~~that added this subsection~~ **APRIL 1, 2009** a written report regarding
2 the department's plan to continue performing criminal history
3 checks if adequate federal funding is not available to continue
4 performing future criminal history checks.

5 (17) ~~(18)~~—An adult foster care facility or a prospective
6 employee covered under this section may not be charged for the cost
7 of an initial criminal history check required under this act.

8 (18) ~~(19)~~—As used in this section:

9 (a) "Direct access" means access to a resident or resident's
10 property, financial information, medical records, treatment
11 information, or any other identifying information.

12 (b) "Health facility or agency" means a health facility or
13 agency as defined in section 20106 of the public health code, 1978
14 PA 368, MCL 333.20106.

15 (c) "Independent contract" means a contract entered into by an
16 adult foster care facility with an individual who provides the
17 contracted services independently or a contract entered into by an
18 adult foster care facility with an organization or agency that
19 employs or contracts with an individual after complying with the
20 requirements of this section to provide the contracted services to
21 the adult foster care facility on behalf of the organization or
22 agency.

23 (d) "Title XIX" means title XIX of the social security act, 42
24 USC 1396 to 1396r-6 and 1396r-8 to 1396v.