

**SUBSTITUTE FOR
HOUSE BILL NO. 5506**

A bill to amend 1979 PA 218, entitled "Adult foster care facility licensing act," by amending sections 24, 25, 34b, and 34c (MCL 400.724, 400.725, 400.734b, and 400.734c), section 24 as amended by 2016 PA 492, section 34b as amended by 2014 PA 73, and section 34c as added by 2006 PA 29; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 24. (1) A person who believes that this act or a rule
2 promulgated under this act may have been violated may request an
3 investigation of an adult foster care facility. The request shall
4 be submitted to the department in writing or the department shall
5 assist the person in reducing an oral complaint to writing within 7
6 days after the oral request is made.

7 (2) The substance of the complaint shall be provided to the

1 licensee not earlier than at the commencement of the on-site
2 inspection of the adult foster care facility that takes place
3 according to the complaint.

4 (3) The complaint, a copy of the complaint, or a record
5 published, released, or otherwise disclosed to the adult foster
6 care facility shall not disclose the name of the complainant or an
7 adult resident named in the complaint unless the complainant or an
8 adult resident consents in writing to the disclosure or the
9 investigation results in an administrative hearing or a judicial
10 proceeding, or unless disclosure is considered essential to the
11 investigation by the department. If disclosure is considered
12 essential to the investigation, the complainant shall be given the
13 opportunity to withdraw the complaint before disclosure.

14 (4) Upon receipt of a complaint, the department shall
15 determine, based on the allegations presented, whether this act or
16 a rule promulgated under this act has been, is, or is in danger of
17 being violated. The department shall investigate the complaint
18 according to the urgency determined by the department. The
19 initiation of a complaint investigation shall commence within 15
20 days after receipt of the written complaint by the department.

21 (5) The department shall inform the complainant of its
22 findings. Within 30 days after the receipt of complaint, the
23 department shall provide the complainant a copy, if any, of the
24 written determination or a status report indicating when these
25 documents may be expected. The final report shall include a copy of
26 the original complaint. The complainant may request additional
27 copies of the documents listed in this subsection and shall

1 reimburse the department for the copies according to ~~established~~
2 ~~policies and procedures.~~ **THE FREEDOM OF INFORMATION ACT, 1976 PA**
3 **442, MCL 15.231 TO 15.246.**

4 (6) The department shall inform the licensee of the
5 department's findings at the same time that the department informs
6 the complainant under subsection (5).

7 (7) A written determination concerning a complaint shall be
8 available for public inspection, but the name of the complainant or
9 adult resident shall not be disclosed without the complainant's or
10 adult resident's consent.

11 (8) A complainant who is dissatisfied with the determination
12 or investigation by the department may request ~~a hearing.~~ **AN**
13 **ADMINISTRATIVE REVIEW BY THE DEPARTMENT.** A request ~~for a hearing~~
14 shall be submitted in writing to the director within 30 days after
15 the mailing of the department's findings as described in subsection
16 (5). ~~Notice of the time and place of the hearing shall be sent to~~
17 ~~the complainant and the adult foster care facility. A complainant~~
18 ~~who is dissatisfied with the decision of the director may appeal by~~
19 ~~filing with the clerk of the court an affidavit setting forth the~~
20 ~~substance of the proceedings before the department and the errors~~
21 ~~of law upon which the person relies, and serving the director with~~
22 ~~a copy of the affidavit. The circuit court of the county in which~~
23 ~~the complainant resides shall have jurisdiction to hear and~~
24 ~~determine the questions of fact or law involved in the appeal.~~ **THE**
25 **ADMINISTRATIVE REVIEW SHALL BE CONDUCTED BASED ON PERTINENT**
26 **DOCUMENTATION OR A VERIFIABLE STATEMENT SUBMITTED IN WRITING BY THE**
27 **COMPLAINANT. THE DEPARTMENT SHALL SEND THE RESULTS OF THE**

1 **ADMINISTRATIVE REVIEW TO THE COMPLAINANT. IF THE ADMINISTRATIVE**
2 **REVIEW RESULTS IN RECONSIDERATION OF A COMPLAINT AGAINST THE ADULT**
3 **FOSTER CARE FACILITY, THE DEPARTMENT SHALL REOPEN THE COMPLAINT**
4 **INVESTIGATION.**

5 (9) Notwithstanding subsection (3) and sections 5 and 7(2) of
6 the child protection law, 1975 PA 238, MCL 722.625 and 722.627,
7 information or records in the possession of the department **OF**
8 **HEALTH AND HUMAN SERVICES** or the department ~~of licensing and~~
9 ~~regulatory affairs~~ may be shared to the extent necessary for the
10 proper functioning of the department **OF HEALTH AND HUMAN SERVICES**
11 or the department ~~of licensing and regulatory affairs~~ in
12 administering adult welfare or adult foster care licensing under
13 this act or in an investigation conducted under section 43b of the
14 social welfare act, 1939 PA 280, MCL 400.43b. Information or
15 records shared under this subsection shall not be released by the
16 department **OF HEALTH AND HUMAN SERVICES** or the department ~~of~~
17 ~~licensing and regulatory affairs~~ unless otherwise permitted under
18 this act or other state or federal law.

19 Sec. 25. A ~~person~~ **PARTY** aggrieved by the decision of the
20 director following a **CONTESTED CASE** hearing under section 22 ~~or 23,~~
21 ~~within 10 days after receipt of decision,~~ may appeal to the circuit
22 court for the county in which the person resides by filing with the
23 clerk of the court an affidavit setting forth the substance of the
24 proceedings before the department and the errors of law upon which
25 the person relies, and serving the director with a copy of the
26 affidavit. The circuit court shall have jurisdiction to hear and
27 determine the questions of fact or law involved in the appeal. If

1 ~~the department prevails, the circuit court shall affirm the~~
2 ~~decision of the department; if the licensee, or applicant prevails,~~
3 ~~the circuit court shall set aside the revocation or order the~~
4 ~~issuance or renewal of the license.~~ **MAY SEEK JUDICIAL REVIEW IN**
5 **ACCORDANCE WITH CHAPTER 6 OF THE ADMINISTRATIVE PROCEDURES ACT OF**
6 **1969, 1969 PA 306, MCL 24.301 TO 24.306.**

7 Sec. 34b. (1) In addition to the restrictions prescribed in
8 sections 13, 22, and 31, and except as otherwise provided in
9 subsection (2), an adult foster care facility shall not employ or
10 independently contract with an individual who regularly has direct
11 access to or provides direct services to residents of the adult
12 foster care facility if the individual satisfies 1 or more of the
13 following:

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

16 (b) Has been convicted of any of the following felonies, an
17 attempt or conspiracy to commit any of those felonies, or any other
18 state or federal crime that is similar to the felonies described in
19 this subdivision, other than a felony for a relevant crime
20 described under 42 USC 1320a-7(a), unless 15 years have lapsed
21 since the individual completed all of the terms and conditions of
22 his or her sentencing, parole, and probation for that conviction
23 ~~prior to~~ **BEFORE** the date of application for employment or the date
24 of the execution of the independent contract:

25 (i) A felony that involves the intent to cause death or
26 serious impairment of a body function, that results in death or
27 serious impairment of a body function, that involves the use of

1 force or violence, or that involves the threat of the use of force
2 or violence.

3 (ii) A felony involving cruelty or torture.

4 (iii) A felony under chapter XXA of the Michigan penal code,
5 1931 PA 328, MCL 750.145m to 750.145r.

6 (iv) A felony involving criminal sexual conduct.

7 (v) A felony involving abuse or neglect.

8 (vi) A felony involving the use of a firearm or dangerous
9 weapon.

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

12 (c) Has been convicted of a felony or an attempt or conspiracy
13 to commit a felony, other than a felony for a relevant crime
14 described under 42 USC 1320a-7(a) or a felony described under
15 subdivision (b), unless 10 years have lapsed since the individual
16 completed all of the terms and conditions of his or her sentencing,
17 parole, and probation for that conviction ~~prior to~~ **BEFORE** the date
18 of application for employment or the date of the execution of the
19 independent contract.

20 (d) Has been convicted of any of the following misdemeanors,
21 other than a misdemeanor for a relevant crime described under 42
22 USC 1320a-7(a), or a state or federal crime that is substantially
23 similar to the misdemeanors described in this subdivision, within
24 the 10 years immediately preceding the date of application for
25 employment or the date of the execution of the independent
26 contract:

27 (i) A misdemeanor involving the use of a firearm or dangerous

1 weapon with the intent to injure, the use of a firearm or dangerous
2 weapon that results in a personal injury, or a misdemeanor
3 involving the use of force or violence or the threat of the use of
4 force or violence.

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

7 (iii) A misdemeanor involving criminal sexual conduct.

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

10 (v) A misdemeanor involving abuse or neglect.

11 (e) Has been convicted of any of the following misdemeanors,
12 other than a misdemeanor for a relevant crime described under 42
13 USC 1320a-7(a), or a state or federal crime that is substantially
14 similar to the misdemeanors described in this subdivision, within
15 the 5 years immediately preceding the date of application for
16 employment or the date of the execution of the independent
17 contract:

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

20 (ii) A misdemeanor involving home invasion.

21 (iii) A misdemeanor involving embezzlement.

22 (iv) A misdemeanor involving negligent homicide or a violation
23 of section 601d(1) of the Michigan vehicle code, 1949 PA 300, MCL
24 257.601d.

25 (v) A misdemeanor involving larceny unless otherwise provided
26 under subdivision (g).

27 (vi) A misdemeanor of retail fraud in the second degree unless

1 otherwise provided under subdivision (g).

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

5 (f) 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(a), or a state or federal crime that is substantially
8 similar to the misdemeanors described in this subdivision, within
9 the 3 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 for assault if there was no use of a firearm
13 or dangerous weapon and no intent to commit murder or inflict great
14 bodily injury.

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

17 (iii) A misdemeanor under part 74 of the public health code,
18 1978 PA 368, MCL 333.7401 to 333.7461, unless otherwise provided
19 under subdivision (g).

20 (g) Has been convicted of any of the following misdemeanors,
21 other than a misdemeanor for a relevant crime described under 42
22 USC 1320a-7(a), or a state or federal crime that is substantially
23 similar to the misdemeanors described in this subdivision, within
24 the year immediately preceding the date of application for
25 employment or the date of the execution of the independent
26 contract:

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

1 1978 PA 368, MCL 333.7401 to 333.7461, if the individual, at the
2 time of conviction, is under the age of 18.

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

6 (h) Is the subject of an order or disposition under section
7 16b of chapter IX of the code of criminal procedure, 1927 PA 175,
8 MCL 769.16b.

9 (i) Engages in conduct that becomes the subject of a
10 substantiated finding of neglect, abuse, or misappropriation of
11 property by a state or federal agency according to an investigation
12 conducted in accordance with 42 USC 1395i-3 or 1396r.

13 (2) Except as otherwise provided in this subsection or
14 subsection (6), an adult foster care facility shall not employ or
15 independently contract with an individual who has direct access to
16 residents until the adult foster care facility or staffing agency
17 has conducted a criminal history check in compliance with this
18 section or has received criminal history record information in
19 compliance with subsections (3) and (11). This subsection and
20 subsection (1) do not apply to an individual who is employed by or
21 under contract to an adult foster care facility before April 1,
22 2006. On or before April 1, 2011, an individual who is exempt under
23 this subsection and who has not been the subject of a criminal
24 history check conducted in compliance with this section shall
25 provide the department of state police a set of fingerprints and
26 the department of state police shall input those fingerprints into
27 the automated fingerprint identification system database

1 established under subsection (14). An individual who is exempt
2 under this subsection is not limited to working within the adult
3 foster care facility with which he or she is employed by or under
4 independent contract with on April 1, 2006 but may transfer to
5 another adult foster care facility, mental health facility, or
6 covered health facility. If an individual who is exempt under this
7 subsection is subsequently convicted of a crime or offense
8 described under subsection (1) (a) to (g) or found to be the subject
9 of a substantiated finding described under subsection (1) (i) or an
10 order or disposition described under subsection (1) (h), or is found
11 to have been convicted of a relevant crime described under 42 USC
12 1320a-7(a), he or she is no longer exempt and shall be terminated
13 from employment or denied employment.

14 (3) An individual who applies for employment either as an
15 employee or as an independent contractor with an adult foster care
16 facility or staffing agency and who has not been the subject of a
17 criminal history check conducted in compliance with this section
18 shall give written consent at the time of application for the
19 department of state police to conduct a criminal history check
20 under this section, along with identification acceptable to the
21 department of state police. If the individual has been the subject
22 of a criminal history check conducted in compliance with this
23 section, the individual shall give written consent at the time of
24 application for the adult foster care facility or staffing agency
25 to obtain the criminal history record information as prescribed in
26 subsection (4) or (5) from the relevant licensing or regulatory
27 department and for the department of state police to conduct a

1 criminal history check under this section if the requirements of
2 subsection (11) are not met and a request to the ~~federal bureau of~~
3 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** to make a
4 determination of the existence of any national criminal history
5 pertaining to the individual is necessary, along with
6 identification acceptable to the department of state police. Upon
7 receipt of the written consent to obtain the criminal history
8 record information and identification required under this
9 subsection, the adult foster care facility or staffing agency that
10 has made a ~~good faith~~ **GOOD-FAITH** offer of employment or an
11 independent contract to the individual shall request the criminal
12 history record information from the relevant licensing or
13 regulatory department and shall make a request regarding that
14 individual to the relevant licensing or regulatory department to
15 conduct a check of all relevant registries in the manner required
16 in subsection (4). If the requirements of subsection (11) are not
17 met and a request to the ~~federal bureau of investigation~~ **FEDERAL**
18 **BUREAU OF INVESTIGATION** to make a subsequent determination of the
19 existence of any national criminal history pertaining to the
20 individual is necessary, the adult foster care facility or staffing
21 agency shall proceed in the manner required in subsection (5). A
22 staffing agency that employs an individual who regularly has direct
23 access to or provides direct services to residents under an
24 independent contract with an adult foster care facility shall
25 submit information regarding the criminal history check conducted
26 by the staffing agency to the adult foster care facility that has
27 made a ~~good faith~~ **GOOD-FAITH** offer of independent contract to that

1 applicant.

2 (4) Upon receipt of the written consent to conduct a criminal
3 history check and identification required under subsection (3), the
4 adult foster care facility or staffing agency that has made a ~~good~~
5 ~~faith~~**GOOD-FAITH** offer of employment or independent contract to the
6 individual shall make a request to the department of state police
7 to conduct a criminal history check on the individual and input the
8 individual's fingerprints into the automated fingerprint
9 identification system database, and shall make a request to the
10 relevant licensing or regulatory department to perform a check of
11 all relevant registries established according to federal and state
12 law and regulations for any substantiated findings of abuse,
13 neglect, or misappropriation of property. The request shall be made
14 in a manner prescribed by the department of state police and the
15 relevant licensing or regulatory department or agency. The adult
16 foster care facility or staffing agency shall make the written
17 consent and identification available to the department of state
18 police and the relevant licensing or regulatory department or
19 agency. ~~If~~**UNTIL DECEMBER 31, 2019, IF** the department of state
20 police or the ~~federal bureau of investigation~~**FEDERAL BUREAU OF**
21 **INVESTIGATION** charges a fee for conducting the criminal history
22 check, the charge shall be paid by or reimbursed by the department.
23 ~~The~~**UNTIL DECEMBER 31, 2019, THE** adult foster care facility or
24 staffing agency shall not seek reimbursement for a charge imposed
25 by the department of state police or the federal bureau of
26 investigation from the individual who is the subject of the
27 criminal history check. **BEGINNING JANUARY 1, 2020, IF THE**

1 **DEPARTMENT OF STATE POLICE OR THE FEDERAL BUREAU OF INVESTIGATION**
2 **CHARGES A FEE FOR CONDUCTING THE CRIMINAL HISTORY CHECK, THE CHARGE**
3 **SHALL BE PAID BY THE ADULT FOSTER CARE FACILITY, THE STAFFING**
4 **AGENCY, OR THE INDIVIDUAL.** The department of state police shall
5 conduct a criminal history check on the individual named in the
6 request. The department of state police shall provide the
7 department with a written report of the criminal history check
8 conducted under this subsection. The report shall contain any
9 criminal history record information on the individual maintained by
10 the department of state police.

11 (5) Upon receipt of the written consent to conduct a criminal
12 history check and identification required under subsection (3), if
13 the individual has applied for employment either as an employee or
14 as an independent contractor with an adult foster care facility or
15 staffing agency, the adult foster care facility or staffing agency
16 that has made a ~~good faith~~ **GOOD-FAITH** offer of employment or
17 independent contract shall comply with subsection (4) and shall
18 make a request to the department of state police to forward the
19 individual's fingerprints to the ~~federal bureau of investigation.~~
20 **FEDERAL BUREAU OF INVESTIGATION.** The department of state police
21 shall request the ~~federal bureau of investigation~~ **FEDERAL BUREAU OF**
22 **INVESTIGATION** to make a determination of the existence of any
23 national criminal history pertaining to the individual. An
24 individual described in this subsection shall provide the
25 department of state police with a set of fingerprints. The
26 department of state police shall complete the criminal history
27 check under subsection (4) and, except as otherwise provided in

1 this subsection, provide the results of its determination under
2 subsection (4) and the results of the ~~federal bureau of~~
3 ~~investigation~~**FEDERAL BUREAU OF INVESTIGATION** determination to the
4 department within 30 days after the request is made. If the
5 requesting adult foster care facility or staffing agency is not a
6 state department or agency and if criminal history record
7 information is disclosed on the written report of the criminal
8 history check or the ~~federal bureau of investigation~~**FEDERAL BUREAU**
9 **OF INVESTIGATION** determination that resulted in a conviction, the
10 department shall notify the adult foster care facility or staffing
11 agency and the individual in writing of the type of crime disclosed
12 on the written report of the criminal history check or the ~~federal~~
13 ~~bureau of investigation~~**FEDERAL BUREAU OF INVESTIGATION**
14 determination without disclosing the details of the crime. The
15 notification shall inform the adult foster care facility or
16 staffing agency and the applicant regarding the appeal process in
17 section 34c and shall include a statement that the individual has a
18 right to appeal the information relied upon by the adult foster
19 care facility or staffing agency in making its decision regarding
20 his or her employment eligibility based on the criminal history
21 check. Any charges imposed by the department of state police or the
22 ~~federal bureau of investigation~~**FEDERAL BUREAU OF INVESTIGATION** for
23 conducting a criminal history check or making a determination under
24 this subsection shall be paid in the manner required under
25 subsection (4).

26 (6) If an adult foster care facility determines it necessary
27 to employ or independently contract with an individual before

1 receiving the results of the individual's criminal history check or
2 criminal history record information required under this section,
3 the adult foster care facility may conditionally employ the
4 individual if all of the following apply:

5 (a) The adult foster care facility requests the criminal
6 history check or criminal history record information required under
7 this section, upon conditionally employing the individual.

8 (b) The individual signs a written statement indicating all of
9 the following:

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

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

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

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

23 (v) That he or she understands the conditions described in
24 subparagraphs (i) to (iv) that result in the termination of his or
25 her employment and that those conditions are good cause for
26 termination.

27 (c) Except as otherwise provided in this subdivision, the

1 adult foster care facility does not permit the individual to have
2 regular direct access to or provide direct services to residents in
3 the adult foster care facility without supervision until the
4 criminal history check or criminal history record information is
5 obtained and the individual is eligible for that employment. If
6 required under this subdivision, the adult foster care facility
7 shall provide on-site supervision of an individual in the facility
8 on a conditional basis under this subsection by an individual who
9 has undergone a criminal history check conducted in compliance with
10 this section. An adult foster care facility may permit an
11 individual in the facility on a conditional basis under this
12 subsection to have regular direct access to or provide direct
13 services to residents in the adult foster care facility without
14 supervision if all of the following conditions are met:

15 (i) The adult foster care facility, at its own expense and
16 before the individual has direct access to or provides direct
17 services to residents of the facility, conducts a search of public
18 records on that individual through the internet criminal history
19 access tool maintained by the department of state police and the
20 results of that search do not uncover any information that would
21 indicate that the individual is not eligible to have regular direct
22 access to or provide direct services to residents under this
23 section.

24 (ii) Before the individual has direct access to or provides
25 direct services to residents of the adult foster care facility, the
26 individual signs a statement in writing that he or she has resided
27 in this state without interruption for at least the immediately

1 preceding 12-month period.

2 (iii) If applicable, the individual provides to the department
3 of state police a set of fingerprints on or before the expiration
4 of 10 business days following the date the individual was
5 conditionally employed under this subsection.

6 (7) The department shall develop and distribute the model form
7 for the statements required under subsection (6) (b) and (c). The
8 department shall make the model form available to adult foster care
9 facilities upon request at no charge.

10 (8) If an individual is conditionally employed under
11 subsection (6), and the information under subsection (3) or report
12 under subsection (4) or (5), if applicable, does not confirm the
13 individual's statement under subsection (6) (b) (i) to (iii), the
14 adult foster care facility shall terminate the individual's
15 employment as required by subsection (1).

16 (9) An individual who knowingly provides false information
17 regarding his or her identity, criminal convictions, or
18 substantiated findings on a statement described in subsection
19 (6) (b) (i) to (iii) is guilty of a misdemeanor punishable by
20 imprisonment for not more than 93 days or a fine of not more than
21 \$500.00, or both.

22 (10) An adult foster care facility or staffing agency shall
23 use criminal history record information obtained under subsection
24 (3), (4), or (5) only for the purpose of evaluating an individual's
25 qualifications for employment in the position for which he or she
26 has applied and for the purposes of subsections (6) and (8). An
27 adult foster care facility or staffing agency or an employee of the

1 adult foster care facility or staffing agency shall not disclose
2 criminal history record information obtained under this section to
3 a person who is not directly involved in evaluating the
4 individual's qualifications for employment or independent contract.
5 An individual who knowingly uses or disseminates the criminal
6 history record information obtained under subsection (3), (4), or
7 (5) in violation of this subsection is guilty of a misdemeanor
8 punishable by imprisonment for not more than 93 days or a fine of
9 not more than \$1,000.00, or both. Except for a knowing or
10 intentional release of false information, an adult foster care
11 facility or staffing agency has no liability in connection with a
12 criminal history check conducted in compliance with this section or
13 the release of criminal history record information under this
14 subsection.

15 (11) Upon consent of an individual as required in subsection
16 (3) and upon request from an adult foster care facility or staffing
17 agency that has made a ~~good faith~~ **GOOD-FAITH** offer of employment or
18 an independent contract to the individual, the relevant licensing
19 or regulatory department shall review the criminal history record
20 information, if any, and notify the requesting adult foster care
21 facility or staffing agency of the information in the manner
22 prescribed in subsection (4) or (5). Until the ~~federal bureau of~~
23 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** implements an
24 automatic notification system similar to the system required of the
25 state police under subsection (14) and federal regulations allow
26 the federal criminal record to be used for subsequent authorized
27 uses, as determined in an order issued by the department, an adult

1 foster care facility or staffing agency may rely on the criminal
2 history record information provided by the relevant licensing or
3 regulatory department under this subsection and a request to the
4 ~~federal bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** to
5 make a subsequent determination of the existence of any national
6 criminal history pertaining to the individual is not necessary if
7 all of the following requirements are met:

8 (a) The criminal history check was conducted during the
9 immediately preceding 12-month period.

10 (b) The individual has been continuously employed by an adult
11 foster care facility, mental health facility, or covered health
12 facility, or the staffing agency since the criminal history check
13 was conducted in compliance with this section or meets the
14 continuous employment requirement of this subdivision other than
15 being on layoff status for less than 1 year from an adult foster
16 care facility, mental health facility, or covered health facility.

17 (c) The individual can provide evidence acceptable to the
18 relevant licensing or regulatory department that he or she has been
19 a resident of this state for the immediately preceding 12-month
20 period.

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

23 (a) Agree in writing to report to the adult foster care
24 facility or staffing agency immediately upon being arraigned on 1
25 or more of the criminal offenses listed in subsection (1)(a) to
26 (g), upon being convicted of 1 or more of the criminal offenses
27 listed in subsection (1)(a) to (g), upon becoming the subject of an

1 order or disposition described under subsection (1)(h), and upon
2 becoming the subject of a substantiated finding described under
3 subsection (1)(i). Reporting of an arraignment under this
4 subdivision is not cause for termination or denial of employment.

5 (b) If a set of fingerprints is not already on file with the
6 department of state police, provide the department of state police
7 with a set of fingerprints.

8 (13) In addition to sanctions set forth in this act, a
9 licensee, owner, administrator, or operator of an adult foster care
10 facility or staffing agency who knowingly and willfully fails to
11 conduct the criminal history checks as required under this section
12 is guilty of a misdemeanor punishable by imprisonment for not more
13 than 1 year or a fine of not more than \$5,000.00, or both.

14 (14) In collaboration with the department of state police, the
15 department of technology, management, and budget shall establish
16 and maintain an automated fingerprint identification system
17 database that would allow the department of state police to store
18 and maintain all fingerprints submitted under this section and
19 would provide for an automatic notification at the time a
20 subsequent criminal arrest fingerprint card submitted into the
21 system matches a set of fingerprints previously submitted under
22 this section. Upon ~~such~~ notification, the department of state
23 police shall immediately notify the department and the department
24 shall immediately contact each respective adult foster care
25 facility or staffing agency with which that individual is
26 associated. Information in the database established under this
27 subsection is confidential, is not subject to disclosure under the

1 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and
2 shall not be disclosed to any person except for purposes of this
3 act or for law enforcement purposes.

4 (15) If an individual independently contracts with an adult
5 foster care facility, subsections (1) and (2) do not apply if the
6 individual is not under the adult foster care facility's control
7 and the contractual work performed by the individual is not
8 directly related to the clinical, health care, or personal services
9 delivered by the adult foster care facility or if the individual's
10 duties are not performed on an ongoing basis with direct access to
11 residents. This exception includes, but is not limited to, an
12 individual who independently contracts with the adult foster care
13 facility to provide utility, maintenance, construction, or
14 communication services.

15 (16) The department shall maintain an electronic web-based
16 system to assist the adult foster care facilities and staffing
17 agencies required to check relevant registries and conduct criminal
18 history checks of its employees and independent contractors and to
19 provide for an automated notice to the adult foster care facilities
20 and staffing agencies for the individuals entered in the system
21 who, since the initial criminal history check, have been convicted
22 of a disqualifying offense or have been the subject of a
23 substantiated finding of abuse, neglect, or misappropriation of
24 property. The department may charge a staffing agency a 1-time set-
25 up fee of up to \$100.00 for access to the electronic web-based
26 system under this section.

27 ~~(17) An adult foster care facility, staffing agency, or a~~

1 ~~prospective employee covered under this section may not be charged~~
2 ~~for the cost of a criminal history check required under this act.~~

3 (17) ~~(18)~~ As used in this section:

4 (a) "Convicted" means either of the following:

5 (i) For a crime that is not a relevant crime, a final
6 conviction, the payment of a fine, a plea of guilty or nolo
7 contendere if accepted by the court, or a finding of guilt for a
8 criminal law violation or a juvenile adjudication or disposition by
9 the juvenile division of probate court or family division of
10 circuit court for a violation that if committed by an adult would
11 be a crime.

12 (ii) For a relevant crime described under 42 USC 1320a-7(a),
13 convicted means that term as defined in 42 USC 1320a-7.

14 (b) "Covered health facility" means a nursing home, county
15 medical care facility, hospice, hospital that provides swing bed
16 services, home for the aged, or home health agency licensed under
17 article 17 of the public health code, 1978 PA 368, MCL 333.20101 to
18 333.22260.

19 (c) "Criminal history check conducted in compliance with this
20 section" includes a criminal history check conducted under this
21 section, under section 134a of the mental health code, 1974 PA 258,
22 MCL 330.1134a, or under section 20173a of the public health code,
23 1978 PA 368, MCL 333.20173a.

24 (d) "Direct access" means access to a resident or resident's
25 property, financial information, medical records, treatment
26 information, or any other identifying information.

27 (e) "Home health agency" means that term as defined in section

1 20173a of the public health code, 1978 PA 368, MCL 333.20173a.

2 (f) "Independent contract" means a contract entered into by an
3 adult foster care facility with an individual who provides the
4 contracted services independently or a contract entered into by an
5 adult foster care facility with a staffing agency that complies
6 with the requirements of this section to provide the contracted
7 services to the adult foster care facility on behalf of the
8 staffing agency.

9 (g) "Mental health facility" means a psychiatric facility or
10 other facility defined in 42 USC 1396d(d) as described under the
11 mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

12 (h) "Staffing agency" means an entity that recruits candidates
13 and provides temporary and permanent qualified staffing for adult
14 foster care facilities, including independent contractors.

15 (i) "Title XIX" means title XIX of the social security act, 42
16 USC 1396 to 1396w-5.

17 (j) "Under the adult foster care facility's control" means an
18 individual employed by or under independent contract with an adult
19 foster care facility for whom the adult foster care facility does
20 both of the following:

21 (i) Determines whether the individual who has access to
22 residents may provide care, treatment, or other similar support
23 service functions to residents served by the adult foster care
24 facility.

25 (ii) Directs or oversees 1 or more of the following:

26 (A) The policy or procedures the individual must follow in
27 performing his or her duties.

1 (B) The tasks performed by the individual.

2 (C) The individual's work schedule.

3 (D) The supervision or evaluation of the individual's work or
4 job performance, including imposing discipline or granting
5 performance awards.

6 (E) The compensation the individual receives for performing
7 his or her duties.

8 (F) The conditions under which the individual performs his or
9 her duties.

10 Sec. 34c. (1) An individual who has been disqualified from or
11 denied employment by an adult foster care facility based on a
12 criminal history check conducted ~~pursuant to~~ **UNDER** section 34a or
13 34b may appeal to the department if he or she believes that the
14 criminal history report is inaccurate, and ~~the appeal shall be~~
15 ~~conducted as a contested case hearing conducted pursuant to the~~
16 ~~administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to~~
17 ~~24.328.~~ **THE DEPARTMENT SHALL CONDUCT AN ADMINISTRATIVE REVIEW.** The
18 individual shall file the appeal with the director of the
19 department within 15 business days after receiving the written
20 report of the criminal history check unless the conviction
21 contained in the criminal history report is ~~one~~ **A CONVICTION** that
22 may be expunged or set aside. If an individual has been
23 disqualified or denied employment based on a conviction that may be
24 expunged or set aside, then he or she shall file the appeal within
25 15 business days after a court order granting or denying his or her
26 application to expunge or set aside that conviction is granted. If
27 the order is granted and the conviction is expunged or set aside,

1 ~~then~~ the individual shall not be disqualified or denied employment
2 based solely on that conviction. The director **OR THE DIRECTOR'S**
3 **DESIGNEE** shall review the appeal, **ALONG WITH ALL PERTINENT**
4 **DOCUMENTATION**, and **SHALL** issue a written decision ~~within 30~~
5 ~~business days after receiving the appeal.~~ **AS SOON AS PRACTICABLE.**

6 The decision of the director **OR THE DIRECTOR'S DESIGNEE** is final.

7 ~~— (2) One year after the effective date of this section and each~~
8 ~~year thereafter for the next 3 years, the department shall provide~~
9 ~~the legislature with a written report regarding the appeals process~~
10 ~~implemented under this section for employees subject to criminal~~
11 ~~history checks. The report shall include, but is not limited to,~~
12 ~~for the immediately preceding year the number of applications for~~
13 ~~appeal received, the number of inaccuracies found and appeals~~
14 ~~granted with regard to the criminal history checks conducted under~~
15 ~~section 34b, the average number of days necessary to complete the~~
16 ~~appeals process for each appeal, and the number of appeals rejected~~
17 ~~without a hearing and a brief explanation of the denial.~~

18 (2) ~~(3)~~ As used in this section, "business day" means a day
19 other than a Saturday, Sunday, or any legal holiday.

20 Enacting section 1. Section 23 of adult foster care facility
21 licensing act, 1979 PA 218, MCL 400.723, is repealed.

22 Enacting section 2. This amendatory act takes effect 90 days
23 after the date it is enacted into law.

24 Enacting section 3. This amendatory act does not take effect
25 unless House Bill No. 5505 of the 99th Legislature is enacted into
26 law.