

**SUBSTITUTE FOR
SENATE BILL NO. 378**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 20106, 20156, 20173a, and 21311 (MCL
333.20106, 333.20156, 333.20173a, and 333.21311), section 20106 as
amended by 2015 PA 104, section 20156 as amended by 2006 PA 195,
section 20173a as amended by 2014 PA 66, and section 21311 as
amended by 2004 PA 74, and by adding sections 21302 and 21311a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 20106. (1) "Health facility or agency", except as
2 provided in section 20115, means:
- 3 (a) An ambulance operation, aircraft transport operation,
4 nontransport prehospital life support operation, or medical first
5 response service.
- 6 (b) A county medical care facility.

1 (c) A freestanding surgical outpatient facility.

2 (d) A health maintenance organization.

3 (e) A home for the aged.

4 (f) A hospital.

5 (g) A nursing home.

6 (h) A hospice.

7 (i) A hospice residence.

8 (j) A facility or agency listed in subdivisions (a) to (g)
9 located in a university, college, or other educational institution.

10 (2) "Health maintenance organization" means that term as
11 defined in section 3501 of the insurance code of 1956, 1956 PA 218,
12 MCL 500.3501.

13 (3) "Home for the aged" means a supervised personal care
14 facility **AT A SINGLE ADDRESS**, other than a hotel, adult foster care
15 facility, hospital, nursing home, or county medical care facility
16 that provides room, board, and supervised personal care to 21 or
17 more unrelated, nontransient, individuals ~~60~~**55** years of age or
18 older. Home for the aged includes a supervised personal care
19 facility for 20 or fewer individuals ~~60~~**55** years of age or older if
20 the facility is operated in conjunction with and as a distinct part
21 of a licensed nursing home. Home for the aged does not include an
22 area excluded from this definition by section 17(3) of the
23 continuing care community disclosure act, 2014 PA 448, MCL 554.917.

24 (4) "Hospice" means a health care program that provides a
25 coordinated set of services rendered at home or in outpatient or
26 institutional settings for individuals suffering from a disease or
27 condition with a terminal prognosis.

1 (5) "Hospital" means a facility offering inpatient, overnight
2 care, and services for observation, diagnosis, and active treatment
3 of an individual with a medical, surgical, obstetric, chronic, or
4 rehabilitative condition requiring the daily direction or
5 supervision of a physician. Hospital does not include a mental
6 health hospital licensed or operated by the department of ~~community~~
7 health **AND HUMAN SERVICES** or a hospital operated by the department
8 of corrections.

9 (6) "Hospital long-term care unit" means a nursing care
10 facility, owned and operated by and as part of a hospital,
11 providing organized nursing care and medical treatment to 7 or more
12 unrelated individuals suffering or recovering from illness, injury,
13 or infirmity.

14 Sec. 20156. (1) A representative of the department or the
15 bureau of fire services created in section 1b of the fire
16 prevention code, 1941 PA 207, MCL 29.1b, upon presentation of
17 proper identification, may enter the premises of an applicant or
18 licensee at any reasonable time to determine whether the applicant
19 or licensee meets the requirements of this article and the rules
20 promulgated under this article. The director; the director of the
21 department of **HEALTH AND** human services; the bureau of fire
22 services; the director of the office of services to the aging; or
23 the director of a local health department; or an authorized
24 representative of the director, the director of the department of
25 **HEALTH AND** human services, the bureau of fire services, the
26 director of the office of services to the aging, or the director of
27 a local health department may enter on the premises of an applicant

1 or licensee under part 217 at any time in the course of carrying
2 out program responsibilities.

3 (2) The bureau of fire services created in section 1b of the
4 fire prevention code, 1941 PA 207, MCL 29.1b, shall enforce rules
5 promulgated by the bureau of fire services for health facilities
6 and agencies to ~~assure~~**ENSURE** that physical facilities owned,
7 maintained, or operated by a health facility or agency are planned,
8 constructed, and maintained in a manner to protect the health,
9 safety, and welfare of patients.

10 (3) BEGINNING ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
11 ADDED THIS SUBSECTION, THE BUREAU OF FIRE SERVICES SHALL AMEND THE
12 RULES TO ALLOW FACILITIES IN EXISTENCE ON OR BEFORE THE EFFECTIVE
13 DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION AND
14 CONTINUOUSLY OPERATING UP TO THE TIME OF APPLICATION FOR A HOME FOR
15 THE AGED LICENSE TO BE REVIEWED AND INSPECTED TO COMPLY WITH THE
16 PROVISIONS OF CHAPTER 18 OR 19 OR CHAPTER 32 OR 33 OF THE NATIONAL
17 FIRE PROTECTION ASSOCIATION STANDARD NUMBER 101. CHAPTER 32 OR 33
18 OF THE NATIONAL FIRE PROTECTION ASSOCIATION STANDARD NUMBER 101
19 ONLY APPLIES IF RESIDENTS ARE ASSESSED AS CAPABLE OF SELF-
20 PRESERVATION OR THE FACILITY IS ADEQUATELY STAFFED TO EVACUATE
21 RESIDENTS IN AN EMERGENCY.

22 (4) AN APPLICANT UNDER SUBSECTION (3) SHALL PROVIDE
23 INFORMATION REQUESTED BY THE DEPARTMENT THAT ALLOWS THE DEPARTMENT
24 TO VERIFY THAT THE FACILITY WAS IN EXISTENCE ON OR BEFORE THE
25 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION AND
26 HAS BEEN CONTINUOUSLY OPERATING UP TO THE TIME OF APPLICATION.

27 (5) ~~(3)~~—The department shall not issue a license or

1 certificate to a health facility or agency until it receives an
2 appropriate certificate of approval from the bureau of fire
3 services. For purposes of this section, a decision of the bureau of
4 fire services to issue a certificate controls over that of a local
5 fire department.

6 (6) ~~(4)~~—Subsections (2), ~~and (3)~~, **(4), AND (5)** do not apply to
7 a health facility or an agency licensed under part 205 or 209.

8 Sec. 20173a. (1) Except as otherwise provided in subsection
9 (2), a covered facility shall not employ, independently contract
10 with, or grant clinical privileges to an individual who regularly
11 has direct access to or provides direct services to patients or
12 residents in the covered facility if the individual satisfies 1 or
13 more of the 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 clinical
24 privileges or the date of the execution of the independent
25 contract:

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

1 serious impairment of a body function, that involves the use of
2 force or violence, or that involves the threat of the use of force
3 or violence.

4 (ii) A felony involving cruelty or torture.

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

7 (iv) A felony involving criminal sexual conduct.

8 (v) A felony involving abuse or neglect.

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

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

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

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

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

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

8 (iii) A misdemeanor involving criminal sexual conduct.

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

11 (v) A misdemeanor involving abuse or neglect.

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

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

21 (ii) A misdemeanor involving home invasion.

22 (iii) A misdemeanor involving embezzlement.

23 (iv) A misdemeanor involving negligent homicide or a violation
24 of section 601d(1) of the Michigan vehicle code, 1949 PA 300, MCL
25 257.601d.

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

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

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

6 (f) 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(a), or a state or federal crime that is substantially
9 similar to the misdemeanors described in this subdivision, within
10 the 3 years immediately preceding the date of application for
11 employment or clinical privileges or the date of the execution of
12 the independent contract:

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

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

18 (iii) A misdemeanor under part 74 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 clinical privileges or the date of the execution of
26 the independent contract:

27 (i) A misdemeanor under part 74 if the individual, at the time

1 of conviction, is under the age of 18.

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

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

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

12 (2) Except as otherwise provided in this subsection or
13 subsection (5), a covered facility shall not employ, independently
14 contract with, or grant privileges to an individual who regularly
15 has direct access to or provides direct services to patients or
16 residents in the covered facility until the covered facility or
17 staffing agency has a criminal history check conducted in
18 compliance with this section or has received criminal history
19 record information in compliance with subsections (3) and (10).
20 This subsection and subsection (1) do not apply to any of the
21 following:

22 (a) An individual who is employed by, under independent
23 contract to, or granted clinical privileges in a covered facility
24 before April 1, 2006. On or before April 1, 2011, an individual who
25 is exempt under this subdivision and who has not been the subject
26 of a criminal history check conducted in compliance with this
27 section shall provide the department of state police with a set of

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

17 (b) An individual who is under an independent contract with a
18 covered facility if he or she is not under the facility's control
19 and the services for which he or she is contracted are not directly
20 related to the provision of services to a patient or resident or if
21 the services for which he or she is contracted allow for direct
22 access to the patients or residents but are not performed on an
23 ongoing basis. This exception includes, but is not limited to, an
24 individual who is under an independent contract with the covered
25 facility to provide utility, maintenance, construction, or
26 communications services.

27 (3) An individual who applies for employment either as an

1 employee or as an independent contractor or for clinical privileges
2 with a staffing agency or covered facility and who has not been the
3 subject of a criminal history check conducted in compliance with
4 this section shall give written consent at the time of application
5 for the department of state police to conduct a criminal history
6 check under this section, along with identification acceptable to
7 the department of state police. If the applicant has been the
8 subject of a criminal history check conducted in compliance with
9 this section, the applicant shall give written consent at the time
10 of application for the covered facility or staffing agency to
11 obtain the criminal history record information as prescribed in
12 subsection (4) from the relevant licensing or regulatory department
13 and for the department of state police to conduct a criminal
14 history check under this section if the requirements of subsection
15 (10) are not met and a request to the ~~federal bureau of~~
16 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** to make a
17 determination of the existence of any national criminal history
18 pertaining to the applicant is necessary, along with identification
19 acceptable to the department of state police. Upon receipt of the
20 written consent to obtain the criminal history record information
21 and identification required under this subsection, the staffing
22 agency or covered facility that has made a good faith offer of
23 employment or an independent contract or clinical privileges to the
24 applicant shall request the criminal history record information
25 from the relevant licensing or regulatory department and shall make
26 a request regarding that applicant to the relevant licensing or
27 regulatory department to conduct a check of all relevant registries

1 in the manner required in subsection (4). If the requirements of
2 subsection (10) are not met and a request to the ~~federal bureau of~~
3 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** to make a subsequent
4 determination of the existence of any national criminal history
5 pertaining to the applicant is necessary, the covered facility or
6 staffing agency shall proceed in the manner required in subsection
7 (4). A staffing agency that employs an individual who regularly has
8 direct access to or provides direct services to patients or
9 residents under an independent contract with a covered facility
10 shall submit information regarding the criminal history check
11 conducted by the staffing agency to the covered facility that has
12 made a good faith offer of independent contract to that applicant.

13 (4) Upon receipt of the written consent to conduct a criminal
14 history check and identification required under subsection (3), a
15 staffing agency or covered facility that has made a good faith
16 offer of employment or an independent contract or clinical
17 privileges to the applicant shall make a request to the department
18 of state police to conduct a criminal history check on the
19 applicant, to input the applicant's fingerprints into the automated
20 fingerprint identification system database, and to forward the
21 applicant's fingerprints to the ~~federal bureau of~~
22 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION**. The department of
23 state police shall request the ~~federal bureau of investigation~~
24 **FEDERAL BUREAU OF INVESTIGATION** to make a determination of the
25 existence of any national criminal history pertaining to the
26 applicant. The applicant shall provide the department of state
27 police with a set of fingerprints. The request shall be made in a

1 manner prescribed by the department of state police. The staffing
2 agency or covered facility shall make the written consent and
3 identification available to the department of state police. The
4 staffing agency or covered facility shall make a request regarding
5 that applicant to the relevant licensing or regulatory department
6 to conduct a check of all relevant registries established pursuant
7 **ACCORDING** to federal and state law and regulations for any
8 substantiated findings of abuse, neglect, or misappropriation of
9 property. If the department of state police or the ~~federal bureau~~
10 ~~of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** charges a fee for
11 conducting the criminal history check, the staffing agency or
12 covered facility shall pay the cost of the charge. ~~If~~ **EXCEPT AS**
13 **OTHERWISE PROVIDED IN THIS SUBSECTION, IF** the department of state
14 police or the ~~federal bureau of investigation~~ **FEDERAL BUREAU OF**
15 **INVESTIGATION** charges a fee for conducting the criminal history
16 check, the department shall pay the cost of or reimburse the charge
17 for a covered facility that is a home for the aged. **AFTER OCTOBER**
18 **1, 2018, IF THE DEPARTMENT OF STATE POLICE OR THE FEDERAL BUREAU OF**
19 **INVESTIGATION CHARGES A FEE FOR CONDUCTING THE CRIMINAL HISTORY**
20 **CHECK, THE DEPARTMENT SHALL PAY THE COST OF THE CHARGE UP TO 40**
21 **CRIMINAL HISTORY CHECKS PER YEAR FOR A COVERED FACILITY THAT IS A**
22 **HOME FOR THE AGED WITH FEWER THAN 100 BEDS AND 50 CRIMINAL HISTORY**
23 **CHECKS PER YEAR FOR A HOME FOR THE AGED WITH 100 BEDS OR MORE.** The
24 staffing agency or covered facility shall not seek reimbursement
25 for a charge imposed by the department of state police or the
26 ~~federal bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION**
27 from the individual who is the subject of the criminal history

1 check. A prospective employee or a prospective independent
 2 contractor covered under this section may not be charged for the
 3 cost of a criminal history check required under this section. The
 4 department of state police shall conduct a criminal history check
 5 on the applicant named in the request. The department of state
 6 police shall provide the department with a written report of the
 7 criminal history check conducted under this subsection. The report
 8 shall contain any criminal history record information on the
 9 applicant maintained by the department of state police. The
 10 department of state police shall provide the results of the ~~federal~~
 11 ~~bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION**
 12 determination to the department within 30 days after the request is
 13 made. If the requesting staffing agency or covered facility is not
 14 a state department or agency and if criminal history record
 15 information is disclosed on the written report of the criminal
 16 history check or the ~~federal bureau of investigation~~ **FEDERAL BUREAU**
 17 **OF INVESTIGATION** determination that resulted in a conviction, the
 18 department shall notify the staffing agency or covered facility and
 19 the applicant in writing of the type of crime disclosed on the
 20 written report of the criminal history check or the ~~federal bureau~~
 21 ~~of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** determination
 22 without disclosing the details of the crime. Any charges imposed by
 23 the department of state police or the ~~federal bureau of~~
 24 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** for conducting a
 25 criminal history check or making a determination under this
 26 subsection shall be paid in the manner required under this
 27 subsection. The notice shall include a statement that the applicant

1 has a right to appeal the information relied upon by the staffing
2 agency or covered facility in making its decision regarding his or
3 her employment eligibility based on the criminal history check. The
4 notice shall also include information regarding where to file and
5 describing the appellate procedures established under section
6 20173b.

7 (5) If a covered facility determines it necessary to employ or
8 grant clinical privileges to an applicant before receiving the
9 results of the applicant's criminal history check or criminal
10 history record information under this section, the covered facility
11 may conditionally employ or grant conditional clinical privileges
12 to the individual if all of the following apply:

13 (a) The covered facility requests the criminal history check
14 or criminal history record information under this section upon
15 conditionally employing or conditionally granting clinical
16 privileges to the individual.

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

19 (i) That he or she has not been convicted of 1 or more of the
20 crimes that are described in subsection (1)(a) to (g) within the
21 applicable time period prescribed by each subdivision respectively.

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

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

26 (iv) That he or she agrees that, if the information in the
27 criminal history check conducted under this section does not

1 confirm the individual's statements under subparagraphs (i) to
2 (iii), his or her employment or clinical privileges will be
3 terminated by the covered facility as required under subsection (1)
4 unless and until the individual appeals and can prove that the
5 information is incorrect.

6 (v) That he or she understands that the conditions described
7 in subparagraphs (i) to (iv) may result in the termination of his
8 or her employment or clinical privileges and that those conditions
9 are good cause for termination.

10 (c) Except as otherwise provided in this subdivision, the
11 covered facility does not permit the individual to have regular
12 direct access to or provide direct services to patients or
13 residents in the covered facility without supervision until the
14 criminal history check or criminal history record information is
15 obtained and the individual is eligible for that employment or
16 clinical privileges. If required under this subdivision, the
17 covered facility shall provide on-site supervision of an individual
18 in the covered facility on a conditional basis under this
19 subsection by an individual who has undergone a criminal history
20 check conducted in compliance with this section. A covered facility
21 may permit an individual in the covered facility on a conditional
22 basis under this subsection to have regular direct access to or
23 provide direct services to patients or residents in the covered
24 facility without supervision if all of the following conditions are
25 met:

26 (i) The covered facility, at its own expense and before the
27 individual has direct access to or provides direct services to

1 patients or residents of the covered facility, conducts a search of
2 public records on that individual through the internet criminal
3 history access tool maintained by the department of state police
4 and the results of that search do not uncover any information that
5 would indicate that the individual is not eligible to have regular
6 direct access to or provide direct services to patients or
7 residents under this section.

8 (ii) Before the individual has direct access to or provides
9 direct services to patients or residents of the covered facility,
10 the individual signs a statement in writing that he or she has
11 resided in this state without interruption for at least the
12 immediately preceding 12-month period.

13 (iii) If applicable, the individual provides to the department
14 of state police a set of fingerprints on or before the expiration
15 of 10 business days following the date the individual was
16 conditionally employed or granted conditional clinical privileges
17 under this subsection.

18 (6) The department shall develop and distribute a model form
19 for the statements required under subsection (5)(b) and (c). The
20 department shall make the model form available to covered
21 facilities upon request at no charge.

22 (7) If an individual is employed as a conditional employee or
23 is granted conditional clinical privileges under subsection (5),
24 and the information under subsection (3) or report under subsection
25 (4) does not confirm the individual's statement under subsection
26 (5)(b)(i) to (iii), the covered facility shall terminate the
27 individual's employment or clinical privileges as required by

1 subsection (1).

2 (8) An individual who knowingly provides false information
3 regarding his or her identity, criminal convictions, or
4 substantiated findings on a statement described in subsection
5 (5)(b)(i) to (iii) is guilty of a misdemeanor punishable by
6 imprisonment for not more than 93 days or a fine of not more than
7 \$500.00, or both.

8 (9) A staffing agency or covered facility shall use criminal
9 history record information obtained under subsection (3) or (4)
10 only for the purpose of evaluating an applicant's qualifications
11 for employment, an independent contract, or clinical privileges in
12 the position for which he or she has applied and for the purposes
13 of subsections (5) and (7). A staffing agency or covered facility
14 or an employee of the staffing agency or covered facility shall not
15 disclose criminal history record information obtained under
16 subsection (3) or (4) to a person who is not directly involved in
17 evaluating the applicant's qualifications for employment, an
18 independent contract, or clinical privileges. An individual who
19 knowingly uses or disseminates the criminal history record
20 information obtained under subsection (3) or (4) in violation of
21 this subsection is guilty of a misdemeanor punishable by
22 imprisonment for not more than 93 days or a fine of not more than
23 \$1,000.00, or both. Except for a knowing or intentional release of
24 false information, a staffing agency or covered facility has no
25 liability in connection with a criminal history check conducted in
26 compliance with this section or the release of criminal history
27 record information under this subsection.

1 (10) Upon consent of an applicant as required in subsection
2 (3) and upon request from a staffing agency or covered facility
3 that has made a good faith offer of employment or an independent
4 contract or clinical privileges to the applicant, the relevant
5 licensing or regulatory department shall review the criminal
6 history record information, if any, and notify the requesting
7 staffing agency or covered facility of the information in the
8 manner prescribed in subsection (4). Until the ~~federal bureau of~~
9 ~~investigation implements an~~ **DEPARTMENT OF STATE POLICE CAN**
10 **PARTICIPATE WITH THE FEDERAL BUREAU OF INVESTIGATION'S** automatic
11 notification system similar to the system required of the state
12 police under subsection (13) and federal regulations allow the
13 federal criminal record to be used for subsequent authorized uses,
14 as determined in an order issued by the department, a staffing
15 agency or covered facility may rely on the criminal history record
16 information provided by the relevant licensing or regulatory
17 department under this subsection and a request to the ~~federal~~
18 ~~bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** to make a
19 subsequent determination of the existence of any national criminal
20 history pertaining to the applicant is not necessary if all of the
21 following requirements are met:

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

24 (b) The applicant has been continuously employed by the
25 staffing agency or a covered facility, adult foster care facility,
26 or mental health facility since the criminal history check was
27 conducted in compliance with this section or meets the continuous

1 employment requirement of this subdivision other than being on
2 layoff status for less than 1 year from a covered facility, adult
3 foster care facility, or mental health facility.

4 (c) The applicant can provide evidence acceptable to the
5 relevant licensing or regulatory department that he or she has been
6 a resident of this state for the immediately preceding 12-month
7 period.

8 (11) As a condition of continued employment, each employee,
9 independent contractor, or individual granted clinical privileges
10 shall do each of the following:

11 (a) Agree in writing to report to the staffing agency or
12 covered facility immediately upon being arraigned for 1 or more of
13 the criminal offenses listed in subsection (1)(a) to (g), upon
14 being 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 being the
17 subject of a substantiated finding of neglect, abuse, or
18 misappropriation of property as described in subsection (1)(i).
19 Reporting of an arraignment under this subdivision is not cause for
20 termination or denial of employment.

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

24 (12) In addition to sanctions set forth in section 20165, a
25 licensee, owner, administrator, or operator of a staffing agency or
26 covered facility who knowingly and willfully fails to conduct the
27 criminal history checks as required under this section is guilty of

1 a misdemeanor punishable by imprisonment for not more than 1 year
2 or a fine of not more than \$5,000.00, or both.

3 (13) ~~In collaboration with the department of state police, the~~
4 ~~department of technology, management, and budget shall establish~~
5 ~~and maintain an automated fingerprint identification system~~
6 ~~database that would allow the~~ **THE** department of state police ~~to~~ **AND**
7 **THE FEDERAL BUREAU OF INVESTIGATION SHALL** store and ~~maintain~~ **RETAIN**
8 all fingerprints submitted under this section and ~~would~~ provide for
9 an automatic notification if and when a subsequent criminal arrest
10 ~~fingerprint card~~ **INFORMATION** submitted into the system matches a
11 set of fingerprints previously submitted under this section. Upon
12 such notification, the department of state police shall immediately
13 notify the department and the department shall immediately contact
14 each respective staffing agency or covered 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) The department shall maintain an electronic web-based
21 system to assist staffing agencies and covered facilities required
22 to check relevant registries and conduct criminal history checks of
23 its employees, independent contractors, and individuals granted
24 privileges and to provide for an automated notice to those staffing
25 agencies and covered facilities for those individuals inputted in
26 the system who, since the initial criminal history check, have been
27 convicted of a disqualifying offense or have been the subject of a

1 substantiated finding of abuse, neglect, or misappropriation of
2 property. The department may charge a staffing agency a 1-time set-
3 up fee of up to \$100.00 for access to the electronic web-based
4 system under this section.

5 (15) As used in this section:

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

9 (b) "Convicted" means either of the following:

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

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

19 (c) "Covered facility" means a health facility or agency that
20 is a nursing home, county medical care facility, hospice, hospital
21 that provides swing bed services, home for the aged, or home health
22 agency.

23 (d) "Criminal history check conducted in compliance with this
24 section" includes a criminal history check conducted under this
25 section, under section 134a of the mental health code, 1974 PA 258,
26 MCL 330.1134a, or under section 34b of the adult foster care
27 facility licensing act, 1979 PA 218, MCL 400.734b.

1 (e) "Direct access" means access to a patient or resident or
2 to a patient's or resident's property, financial information,
3 medical records, treatment information, or any other identifying
4 information.

5 (f) "Home health agency" means a person certified by medicare
6 whose business is to provide to individuals in their places of
7 residence other than in a hospital, nursing home, or county medical
8 care facility 1 or more of the following services: nursing
9 services, therapeutic services, social work services, homemaker
10 services, home health aide services, or other related services.

11 (g) "Independent contract" means a contract entered into by a
12 covered facility with an individual who provides the contracted
13 services independently or a contract entered into by a covered
14 facility with a staffing agency that complies with the requirements
15 of this section to provide the contracted services to the covered
16 facility on behalf of the staffing agency.

17 (h) "Medicare" means benefits under the federal medicare
18 program established under title XVIII of the social security act,
19 42 USC 1395 to ~~1395kkk-1-1395lll~~.

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

23 (j) "Staffing agency" means an entity that recruits candidates
24 and provides temporary and permanent qualified staffing for covered
25 facilities, including independent contractors.

26 (k) "Under the facility's control" means an individual
27 employed by or under independent contract with a covered facility

1 for whom the covered facility does both of the following:

2 (i) Determines whether the individual who has access to
3 patients or residents may provide care, treatment, or other similar
4 support service functions to patients or residents served by the
5 covered facility.

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

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

9 (B) The tasks performed by the individual.

10 (C) The individual's work schedule.

11 (D) The supervision or evaluation of the individual's work or
12 job performance, including imposing discipline or granting
13 performance awards.

14 (E) The compensation the individual receives for performing
15 his or her duties.

16 (F) The conditions under which the individual performs his or
17 her duties.

18 **SEC. 21302. (1) "CONTINUING CARE COMMUNITY" MEANS THAT TERM AS**
19 **DEFINED IN SECTION 3 OF THE CONTINUING CARE COMMUNITY DISCLOSURE**
20 **ACT, 2014 PA 448, MCL 554.903.**

21 **(2) "SUPERVISED PERSONAL CARE" MEANS THE DIRECT GUIDANCE OR**
22 **HANDS-ON ASSISTANCE WITH ACTIVITIES OF DAILY LIVING OFFERED BY A**
23 **FACILITY TO RESIDENTS OF THE FACILITY THAT INCLUDE 2 OR MORE OF THE**
24 **FOLLOWING SERVICES PROVIDED BY THE FACILITY TO ANY RESIDENT FOR 30**
25 **OR MORE CONSECUTIVE DAYS AS DOCUMENTED IN THE RESIDENT'S SERVICE**
26 **PLAN:**

27 **(A) DIRECT AND REGULAR INVOLVEMENT BY STAFF IN ASSISTING A**

1 RESIDENT WITH THE ADMINISTRATION OF THE RESIDENT'S PRESCRIPTION
 2 MEDICATIONS, INCLUDING DIRECT SUPERVISION OF THE RESIDENT TAKING
 3 MEDICATION IN ACCORDANCE WITH THE INSTRUCTIONS OF THE RESIDENT'S
 4 LICENSED HEALTH CARE PROFESSIONAL.

5 (B) HANDS-ON ASSISTANCE BY STAFF IN CARRYING OUT 2 OR MORE OF
 6 THE FOLLOWING ACTIVITIES OF DAILY LIVING: EATING, TOILETING,
 7 BATHING, GROOMING, DRESSING, TRANSFERRING, AND MOBILITY.

8 (C) DIRECT STAFF INVOLVEMENT IN A RESIDENT'S PERSONAL AND
 9 SOCIAL ACTIVITIES OR THE USE OF DEVICES TO ENHANCE RESIDENT SAFETY
 10 BY CONTROLLING RESIDENT EGRESS FROM THE FACILITY.

11 Sec. 21311. (1) ~~A~~EXCEPT AS PROVIDED IN SECTION 21311A, A home
 12 for the aged shall be licensed under this article.

13 (2) ~~"Home~~EXCEPT AS PROVIDED IN SECTION 21311A, "HOME for the
 14 aged" or a similar term or abbreviation shall not be used to
 15 describe or refer to a health facility or agency unless the health
 16 facility or agency is licensed as a home for the aged by the
 17 department under this article.

18 (3) Except as otherwise provided in this subsection, a home
 19 for the aged shall not admit an individual under ~~60~~55 years of
 20 age. Upon the request of a home for the aged and subject to
 21 subsection (4), the director shall waive the age limitation imposed
 22 by this subsection if the individual, the individual's guardian or
 23 other legal representative, if appointed, and the owner, operator,
 24 and governing body of the home for the aged, upon consultation with
 25 the individual's physician, agree on each of the following:

26 (a) The home for the aged is capable of meeting all of the
 27 individual's medical, social, and other needs as determined in the

1 individual's plan of service.

2 (b) The individual will be compatible with the other residents
3 of that home for the aged.

4 (c) The placement in that home for the aged is in the best
5 interests of the individual.

6 (4) The owner, operator, and governing body of the home for
7 the aged shall submit, with its request for a waiver, documentation
8 to the director that supports each of the points of agreement
9 necessary under subsection (3). Within 5 days after receipt of the
10 information required under this subsection, the director shall
11 determine if that documentation collectively substantiates each of
12 the points of agreement necessary under subsection (3) and approve
13 or deny the waiver. If denied, the director shall send a written
14 notice of the denial and the reasons for denial to the requesting
15 party.

16 **SEC. 21311A. (1) BEGINNING ON THE EFFECTIVE DATE OF THE**
17 **AMENDATORY ACT THAT ADDED THIS SECTION, AN EXEMPTION FROM LICENSING**
18 **ALLOWED UNDER THIS SECTION SHALL BE GIVEN TO AN EXISTING FACILITY**
19 **OR A FACILITY UNDER CONSTRUCTION AT WHICH BOARD IS OFFERED THROUGH**
20 **A PERSON NOT RELATED TO THE PERSON THAT PROVIDES ROOM OR SUPERVISED**
21 **PERSONAL CARE, OR BOTH, OR SUPERVISED PERSONAL CARE IS OFFERED**
22 **THROUGH ANY PERSON WHETHER OR NOT THAT PERSON IS RELATED TO THE**
23 **PERSON THAT PROVIDES ROOM OR BOARD, OR BOTH, IF THE SUPERVISED**
24 **PERSONAL CARE ARRANGEMENT HAS BEEN IN EFFECT FOR AT LEAST 5**
25 **CONSECUTIVE YEARS BEFORE THE EXEMPTION IS REQUESTED AND RESIDENTS**
26 **AT THE FACILITY HAVE THE OPTION TO SELECT ANY SUPERVISED PERSONAL**
27 **CARE PROVIDER, IF THAT FACILITY MEETS THE REQUIREMENTS OF THIS**

1 SECTION. AN ATTESTATION MUST BE PROVIDED BY THE OWNER OR MANAGING
2 COMPANY THAT CERTIFIES THAT THE PERSONS DESCRIBED IN THIS
3 SUBSECTION ARE NOT RELATED. THE APPLICANT MUST ACKNOWLEDGE THAT THE
4 PENALTY FOR SUBMITTING A FALSE OR INACCURATE ATTESTATION IS AN
5 ADMINISTRATIVE FINE OF \$5,000.00. AN EXEMPTION GRANTED UNDER THIS
6 SUBSECTION CONTINUES TO EXIST FOR A SUCCESSOR OWNER, OPERATOR, OR
7 GOVERNING BODY PROVIDED THAT THE SUCCESSOR FILES THE ATTESTATION
8 REQUIRED UNDER THIS SUBSECTION. AN EXEMPTION SHALL NOT BE GRANTED
9 UNDER THIS SUBSECTION AFTER DECEMBER 31, 2019, EXCEPT TO A
10 SUCCESSOR OWNER, OPERATOR, OR GOVERNING BODY AS PROVIDED IN THIS
11 SUBSECTION.

12 (2) THE DEPARTMENT SHALL MAKE A DETERMINATION THAT A FACILITY
13 IS EXEMPT FROM LICENSURE AS A HOME FOR THE AGED UNDER THIS ARTICLE
14 IF THE OWNER, OPERATOR, OR GOVERNING BODY OF THE FACILITY SUBMITS
15 AN ATTESTATION TO THE DEPARTMENT THAT ASSURES EITHER OF THE
16 FOLLOWING:

17 (A) ALL OF THE FOLLOWING REQUIREMENTS ARE MET:

18 (i) THE OWNER, OPERATOR, OR GOVERNING BODY THAT PROVIDES ROOM
19 AND THE PERSON THAT PROVIDES SUPERVISED PERSONAL CARE ARE NOT
20 RELATED.

21 (ii) THE INDIVIDUAL HAS THE RIGHT TO CONTRACT FOR SUPERVISED
22 PERSONAL CARE FROM A PERSON OF HIS OR HER CHOICE.

23 (iii) THE ATTESTATION MUST BE PROVIDED BY THE OWNER OR
24 MANAGING COMPANY THAT CERTIFIES THAT THE PERSONS DESCRIBED IN
25 SUBPARAGRAPH (i) ARE NOT RELATED.

26 (iv) THE APPLICANT ACKNOWLEDGES THAT THE PENALTY FOR
27 SUBMITTING A FALSE OR INACCURATE ATTESTATION IS AN ADMINISTRATIVE

1 FINE OF \$5,000.00.

2 (B) BOTH OF THE FOLLOWING REQUIREMENTS ARE MET:

3 (i) THE ENTITY THAT PROVIDES ROOM AND THE ENTITY THAT PROVIDES
4 SUPERVISED PERSONAL CARE ARE RELATED, AND THE FACILITY IS
5 REGISTERED AS A CONTINUING CARE COMMUNITY UNDER THE CONTINUING CARE
6 COMMUNITY DISCLOSURE ACT, 2014 PA 448, MCL 554.901 TO 554.993, AND
7 THAT INCLUDES A LICENSED NURSING HOME AS PART OF THE CONTINUING
8 CARE COMMUNITY.

9 (ii) THE APPLICANT ACKNOWLEDGES THAT THE PENALTY FOR
10 SUBMITTING A FALSE OR INACCURATE ATTESTATION IS AN ADMINISTRATIVE
11 FINE OF \$5,000.00.

12 (3) A DENIAL OF AN APPLICATION FOR EXEMPTION, AN ISSUANCE OF A
13 FINE, OR A REVOCATION OF AN EXEMPTION IS SUBJECT TO A REVIEW BY THE
14 DEPARTMENT UPON THE APPLICANT PROVIDING FURTHER INFORMATION OR AN
15 APPEAL AS PROVIDED IN SECTION 1205, OR BOTH. THE DEPARTMENT SHALL
16 ACT ON AN EXEMPTION REQUESTED UNDER THIS SECTION AS SOON AS
17 PRACTICABLE BUT NO LATER THAN 60 DAYS AFTER RECEIPT OF THE REQUEST
18 FOR EXEMPTION.

19 (4) AN EXEMPTION GRANTED UNDER SUBSECTION (1) OR (2) MAY BE
20 REVOKED IF THE DEPARTMENT DETERMINES 1 OF THE FOLLOWING:

21 (A) THAT THE FALSE OR INACCURATE INFORMATION PROVIDED IN THE
22 ATTESTATION WAS MATERIAL TO GRANTING THE EXEMPTION.

23 (B) THE APPLICANT RECEIVING THE EXEMPTION IS FOUND TO BE
24 NEGLIGENT, WHICH NEGLIGENCE RESULTS IN SERIOUS PHYSICAL INJURY,
25 DEATH OF A RESIDENT, OR SERIOUS MENTAL ANGUISH, AND THERE CONTINUES
26 TO BE A RISK TO THE HEALTH AND SAFETY OF THE RESIDENTS AT THAT
27 FACILITY.

1 (C) THE APPLICANT RECEIVING THE EXEMPTION DOES NOT COOPERATE
2 IN THE DEPARTMENT'S INVESTIGATION TO MAKE A DETERMINATION FOR
3 SUBDIVISION (A) OR (B).

4 (5) AS USED IN THIS SECTION:

5 (A) "BOARD" MEANS FOOD SERVICE PROVIDED AT A FACILITY.

6 (B) "RELATED" MEANS ANY OF THE FOLLOWING PERSONAL
7 RELATIONSHIPS BY MARRIAGE, BLOOD, OR ADOPTION: SPOUSE, CHILD,
8 PARENT, BROTHER, SISTER, GRANDPARENT, GRANDCHILD, AUNT, UNCLE,
9 STEPPARENT, STEPBROTHER, STEPSISTER, OR COUSIN. RELATED ALSO MEANS
10 AN ENTITY OWNS OR IS OWNED BY ANY PERSON THAT HAS A DIRECT OR
11 INDIRECT OWNERSHIP INTEREST IN ANY OTHER ENTITY THAT PROVIDES A
12 COMPONENT OF OPERATIONS OR SERVICE UNDER SUBSECTION (1) (A) (i).

13 (C) "SERIOUS MENTAL ANGUISH" MEANS DAMAGE SUFFERED BY A
14 RESIDENT THAT A PHYSICIAN, PHYSICIAN ASSISTANT, OR NURSE
15 PRACTITIONER DETERMINES CAUSED OR COULD HAVE CAUSED EXTREME
16 EMOTIONAL DISTRESS THAT RESULTED IN HOSPITALIZATION, PSYCHIATRIC
17 TREATMENT, OR DEATH OF A RESIDENT.

18 (D) "SERIOUS PHYSICAL INJURY" MEANS DAMAGE SUFFERED BY A
19 RESIDENT THAT A PHYSICIAN, PHYSICIAN ASSISTANT, OR NURSE
20 PRACTITIONER DETERMINES CAUSED OR COULD HAVE CAUSED DEATH OF A
21 RESIDENT, CAUSED THE IMPAIRMENT OF HIS OR HER BODILY FUNCTION, OR
22 CAUSED THE PERMANENT DISFIGUREMENT OF A RESIDENT.

23 Enacting section 1. This amendatory act takes effect 90 days
24 after the date it is enacted into law.