

# HOUSE BILL No. 5743

April 6, 1992, Introduced by Reps. Gubow, Harrison, Emerson, Barns, Berman, Baade, Pitoniak and Harder and referred to the Committee on Public Health.

A bill to amend sections 20165, 20166, 20177, and 20199 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," section 20165 as amended by Act No. 179 of the Public Acts of 1990 and section 20166 as amended by Act No. 332 of the Public Acts of 1988, being sections 333.20165, 333.20166, 333.20177, and 333.20199 of the Michigan Compiled Laws; and to add part 219.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 20165, 20166, 20177, and 20199 of Act  
2 No. 368 of the Public Acts of 1978, section 20165 as amended by  
3 Act No. 179 of the Public Acts of 1990 and section 20166 as  
4 amended by Act No. 332 of the Public Acts of 1988, being sections  
5 333.20165, 333.20166, 333.20177, and 333.20199 of the Michigan  
6 Compiled Laws, are amended and part 219 is added to read as  
7 follows:

1       Sec. 20165. (1) Except as otherwise provided in this  
2 section, after notice of intent to an applicant, ~~or~~ licensee,  
3 OR REGISTRANT to deny, limit, suspend, or revoke a license, ~~or~~  
4 certification, OR REGISTRATION and an opportunity for a hearing,  
5 the department may deny, limit, suspend, or revoke the license,  
6 ~~or~~ certification, OR REGISTRATION if any of the following  
7 exist:

8       (a) Fraud or deceit in obtaining or attempting to obtain a  
9 license, ~~or~~ certification, OR REGISTRATION or in operation of  
10 the licensed health facility or agency OR REGISTERED NURSING  
11 POOL.

12       (b) A violation of this article or the rules promulgated  
13 under this article.

14       (c) False or misleading advertising.

15       (d) Negligence or failure to exercise due care, including  
16 negligent supervision of employees and subordinates.

17       (e) Permitting a license or certificate to be used by an  
18 unauthorized health facility or agency OR PERMITTING A REGISTRA-  
19 TION TO BE USED BY AN UNAUTHORIZED NURSING POOL.

20       (f) Evidence of abuse regarding patient health, welfare, or  
21 safety or a denial of rights.

22       (g) Failure to comply with section 10102a(7).

23       (h) Failure to comply with part 222 or a term, condition, or  
24 stipulation of a certificate of need issued under part 222, or  
25 both.

26       (2) An application for a license or certification may be  
27 denied on a finding of ~~any~~ A condition or practice ~~which~~ THAT

1 would constitute a violation of this article if the applicant  
2 were a licensee. AN APPLICATION FOR REGISTRATION MAY BE DENIED  
3 ON A FINDING OF A CONDITION OR PRACTICE THAT WOULD CONSTITUTE A  
4 VIOLATION OF THIS ARTICLE IF THE APPLICANT WERE A REGISTRANT.

5 (3) Denial, suspension, or revocation of an individual emer-  
6 gency medical services personnel license under part 209 is gov-  
7 erned by section 20958.

8 Sec. 20166. (1) Notice of intent to deny, limit, suspend,  
9 or revoke a license, ~~or~~ certification, OR REGISTRATION shall be  
10 given by certified mail or personal service, shall set forth the  
11 particular reasons for the proposed action, and shall fix a date,  
12 not less than 30 days after the date of service, on which the  
13 applicant, ~~or~~ licensee, OR REGISTRANT shall be given the oppor-  
14 tunity for a hearing before the director or the director's autho-  
15 rized representative. The hearing shall be conducted in accord-  
16 ance with the administrative procedures act of 1969 and rules  
17 promulgated by the department. A full and complete record shall  
18 be kept of the proceeding and shall be transcribed when requested  
19 by an interested party, who shall pay the cost of preparing the  
20 transcript.

21 (2) On the basis of a hearing or on the default of the  
22 applicant, ~~or~~ licensee, OR REGISTRANT, the department may  
23 issue, deny, limit, suspend, or revoke a license, ~~or~~  
24 certification, OR REGISTRATION. A copy of the determination  
25 shall be sent by certified mail or served personally upon the  
26 applicant, ~~or~~ licensee, OR REGISTRANT. The determination  
27 becomes final 30 days after it is mailed or served, unless the

1 applicant, ~~or~~ licensee, OR REGISTRANT within the 30 days  
2 appeals the decision to the circuit court in the county of juris-  
3 diction or to the Ingham county circuit court.

4 (3) The department may establish procedures, hold hearings,  
5 administer oaths, issue subpoenas, or order testimony to be taken  
6 at a hearing or by deposition in a proceeding pending at any  
7 stage of the proceeding. A person may be compelled to appear and  
8 testify and to produce books, papers, or documents in a  
9 proceeding.

10 (4) In case of disobedience of a subpoena, a party to a  
11 hearing may invoke the aid of the circuit court of the jurisdic-  
12 tion in which the hearing is held to require the attendance and  
13 testimony of witnesses. The circuit court may issue an order  
14 requiring an individual to appear and give testimony. Failure to  
15 obey the order of the circuit court may be punished by the court  
16 as a contempt.

17 (5) The department shall not deny, limit, suspend, or revoke  
18 a license on the basis of an applicant's or licensee's failure to  
19 show a need for a health facility or agency unless the health  
20 facility or agency has not obtained a certificate of need  
21 required by part 222.

22 Sec. 20177. Notwithstanding the existence and pursuit of  
23 any other remedy, the director, without posting a bond, may  
24 request the prosecuting attorney or attorney general to bring an  
25 action in the name of the people of this state to restrain,  
26 enjoin, or prevent the establishment, maintenance, or operation

1 of a health facility or agency OR NURSING POOL in violation of  
2 this article or rules promulgated under this article.

3       Sec. 20199. (1) Except as provided in subsection (2) OR (3)  
4 or section 20142, a person who violates this article or a rule  
5 promulgated or an order issued under this article is guilty of a  
6 misdemeanor, punishable by A fine of not more than \$1,000.00 for  
7 each day the violation continues or, in case of a violation of  
8 sections 20551 to 20554, a fine of not more than \$1,000.00 for  
9 each occurrence.

10       (2) A person who violates sections 20181 to 20184 is guilty  
11 of a misdemeanor, punishable by imprisonment for not more than 6  
12 months, or a fine of not more than \$2,000.00, or both.

13       (3) A PERSON WHO VIOLATES PART 219 OR A RULE PROMULGATED OR  
14 AN ORDER ISSUED UNDER PART 219 IS GUILTY OF A MISDEMEANOR, PUN-  
15 ISHABLE BY A FINE OF NOT MORE THAN \$5,000.00 FOR EACH DAY THE  
16 VIOLATION CONTINUES.

17                       PART 219. NURSING POOLS

18       SEC. 21901. (1) AS USED IN THIS PART:

19       (A) "NURSING PERSONNEL" MEANS REGISTERED PROFESSIONAL  
20 NURSES, LICENSED PRACTICAL NURSES, AND NURSE AIDES.

21       (B) "NURSING POOL" MEANS A PERSON ENGAGED IN THE BUSINESS OF  
22 PROVIDING OR PROCURING INDIVIDUALS TO BE EMPLOYED ON A TEMPORARY  
23 BASIS IN A HEALTH FACILITY OR AGENCY AS NURSING PERSONNEL.

24 NURSING POOL DOES NOT INCLUDE ANY OF THE FOLLOWING:

25       (i) AN INDIVIDUAL WHO PROVIDES SERVICES ON A TEMPORARY BASIS  
26 TO A HEALTH FACILITY OR AGENCY ON HIS OR HER OWN INITIATIVE AND

1 NOT IN CONNECTION WITH A NURSING POOL OR OTHER TYPE OF EMPLOYMENT  
2 AGENCY.

3 (ii) AN INDIVIDUAL WHO IS PERMANENTLY EMPLOYED BY A HEALTH  
4 FACILITY OR AGENCY AND IS RESPONSIBLE FOR PERSONNEL DECISIONS.

5 (iii) A PERSON WHO PROVIDES PRIMARILY MANAGEMENT OR CONSULT-  
6 ING SERVICES TO A HEALTH FACILITY OR AGENCY PURSUANT TO AN AGREE-  
7 MENT UNDER WHICH THE PERSON IS PAID BY THE HEALTH FACILITY OR  
8 AGENCY FOR ITS SERVICES AND THE PERSON PAYS ANY NURSING PERSONNEL  
9 USED BY THE PERSON IN THE PROCESS OF PROVIDING THE MANAGEMENT OR  
10 CONSULTING SERVICES.

11 (2) IN ADDITION, ARTICLE 1 CONTAINS GENERAL DEFINITIONS AND  
12 PRINCIPLES OF CONSTRUCTION APPLICABLE TO ALL ARTICLES IN THIS  
13 CODE AND PART 201 CONTAINS DEFINITIONS APPLICABLE TO THIS PART.

14 SEC. 21903. (1) A PERSON SHALL NOT ESTABLISH OR MAINTAIN  
15 AND OPERATE A NURSING POOL UNLESS THE PERSON IS REGISTERED UNDER  
16 THIS PART.

17 (2) A PERSON SHALL OBTAIN A SEPARATE CERTIFICATE OF REGIS-  
18 TRATION FOR EACH BUSINESS LOCATION FROM WHICH A NURSING POOL IS  
19 OPERATED INCLUDING A BUSINESS LOCATION OUTSIDE OF THIS STATE IF  
20 THAT BUSINESS LOCATION PROVIDES NURSING POOL SERVICES IN THIS  
21 STATE.

22 (3) A PERSON APPLYING FOR REGISTRATION UNDER THIS PART SHALL  
23 APPLY ON A FORM PROVIDED BY THE DEPARTMENT THAT CONTAINS ALL OF  
24 THE FOLLOWING INFORMATION:

25 (A) THE NAME AND ADDRESS OF EACH OWNER AND OPERATOR OF THE  
26 NURSING POOL.

1 (B) IF THE APPLICANT IS A CORPORATION, A COPY OF ITS  
2 ARTICLES OF INCORPORATION, A COPY OF ITS CURRENT BYLAWS, AND THE  
3 NAMES AND ADDRESSES OF EACH OFFICER AND MEMBER OF THE BOARD OF  
4 DIRECTORS OF THE CORPORATION AND EACH SHAREHOLDER OWNING MORE  
5 THAN 5% OF THE CORPORATION'S STOCK.

6 (C) THE PROFESSIONAL QUALIFICATIONS OF THE INDIVIDUALS  
7 RESPONSIBLE FOR THE OPERATION OF THE NURSING POOL.

8 (D) A DESCRIPTION OF THE SERVICES, FACILITIES, AND PERSONNEL  
9 OF THE NURSING POOL.

10 (E) ANY OTHER INFORMATION CONSIDERED NECESSARY BY THE  
11 DEPARTMENT.

12 (4) AN APPLICANT FOR REGISTRATION UNDER THIS PART SHALL  
13 SUBMIT WITH THE APPLICATION FORM A REGISTRATION FEE OF \$100.00.

14 (5) UPON RECEIPT OF AN APPLICATION FORM, THE DEPARTMENT  
15 SHALL REVIEW THE APPLICATION AND NOTIFY THE APPLICANT WITHIN 15  
16 WORKING DAYS WHETHER THE APPLICATION IS COMPLETE AND, IF NOT,  
17 WHAT ADDITIONAL INFORMATION IS REQUIRED. WITHIN 30 DAYS AFTER  
18 THE APPLICATION IS CONSIDERED BY THE DEPARTMENT TO BE COMPLETE,  
19 THE DEPARTMENT SHALL GRANT OR REFUSE TO GRANT A CERTIFICATE OF  
20 REGISTRATION TO THE APPLICANT.

21 (6) A CERTIFICATE OF REGISTRATION IS NOT TRANSFERABLE AND IS  
22 VALID FOR A PERIOD OF NOT MORE THAN 1 YEAR FROM THE DATE OF ITS  
23 ISSUANCE, UNLESS THE REGISTRATION IS REVOKED OR SUSPENDED PURSU-  
24 ANT TO SECTION 20165. IF A NURSING POOL IS SOLD OR OWNERSHIP OR  
25 MANAGEMENT OF THE NURSING POOL IS OTHERWISE TRANSFERRED TO  
26 ANOTHER PERSON, THE REGISTRATION OF THE NURSING POOL IS VOID AND  
27 THE PERSON TO WHOM THE NURSING POOL WAS SOLD OR TO WHOM OWNERSHIP

1 OR MANAGEMENT WAS OTHERWISE TRANSFERRED SHALL APPLY FOR  
2 REGISTRATION UNDER THIS PART.

3 SEC. 21905. (1) A NURSING POOL SHALL COMPLY WITH THE  
4 REQUIREMENTS OF THIS ARTICLE AND THE RULES OF THE DEPARTMENT  
5 RELATING TO THE HEALTH AND OTHER QUALIFICATIONS OF PERSONNEL  
6 EMPLOYED IN HEALTH FACILITIES OR AGENCIES.

7 (2) A NURSING POOL SHALL DO ALL OF THE FOLLOWING:

8 (A) ASSURE THAT EACH TEMPORARY EMPLOYEE PROVIDED TO A HEALTH  
9 FACILITY OR AGENCY CURRENTLY MEETS THE MINIMUM LICENSING, CERTI-  
10 FICATION, TRAINING, AND CONTINUING EDUCATION STANDARDS FOR THE  
11 POSITION IN WHICH THE EMPLOYEE WILL BE WORKING.

12 (B) ASSURE THAT EACH TEMPORARY EMPLOYEE PROVIDED TO A NURS-  
13 ING HOME OR HOSPITAL LONG-TERM CARE UNIT TO FUNCTION AS A NURSE  
14 AIDE HAS COMPLETED A STATE-APPROVED NURSE AIDE TRAINING PROGRAM  
15 AND STATE ADMINISTERED COMPETENCY EVALUATION PROGRAM, IS REGIS-  
16 TERED WITH THE STATE NURSE AIDE REGISTRY, AND HAS NO RECORD OF A  
17 SUBSTANTIATED ACT OF PATIENT ABUSE IN THIS STATE.

18 (C) ASSURE THAT EACH TEMPORARY EMPLOYEE LICENSED UNDER ARTI-  
19 CLE 15 AS A REGISTERED PROFESSIONAL NURSE OR A LICENSED PRACTICAL  
20 NURSE PROVIDED TO A NURSING HOME OR HOSPITAL LONG-TERM CARE UNIT  
21 HAS A VALID LICENSE AND IS A LICENSEE IN GOOD STANDING. A NURS-  
22 ING POOL MAY COMPLY WITH THIS SUBDIVISION BY CONTACTING THE  
23 DEPARTMENT OF LICENSING AND REGULATION FOR THE INFORMATION  
24 REQUIRED UNDER THIS SUBDIVISION.

25 (D) ASSURE THAT EACH TEMPORARY EMPLOYEE RECEIVES AN ORIENTA-  
26 TION TO A HEALTH FACILITY OR AGENCY BEFORE BEING PROVIDED TO THE  
27 HEALTH FACILITY OR AGENCY.



1 (E) ASSURE THAT EACH TEMPORARY EMPLOYEE PROVIDED TO A HEALTH  
2 FACILITY HAS EVIDENCE OF A CURRENT NEGATIVE TUBERCULIN SKIN TEST  
3 OR CHEST X RAY.

4 (F) ASSURE THAT EACH TEMPORARY EMPLOYEE PROVIDED TO A HEALTH  
5 FACILITY OR AGENCY PRESENTS APPROPRIATE PROOF OF COMPLIANCE WITH  
6 SUBDIVISION (B) OR (C) TO THE HEALTH FACILITY OR AGENCY UPON  
7 REPORTING FOR ASSIGNMENT.

8 (3) A NURSING POOL SHALL NOT:

9 (A) REQUIRE, AS A CONDITION OF EMPLOYMENT, THAT AN EMPLOYEE  
10 OF THE NURSING POOL RECRUIT NEW EMPLOYEES FOR THE NURSING POOL  
11 FROM AMONG INDIVIDUALS EMPLOYED AS PERMANENT EMPLOYEES BY THE  
12 HEALTH FACILITY OR AGENCY TO WHICH THE NURSING POOL EMPLOYEE HAS  
13 BEEN ASSIGNED.

14 (B) REQUIRE IN A CONTRACT WITH AN EMPLOYEE OR HEALTH FACIL-  
15 ITY OR AGENCY THE PAYMENT OF LIQUIDATED DAMAGES, EMPLOYMENT FEES,  
16 OR OTHER COMPENSATION PAYABLE TO THE NURSING POOL IF THE EMPLOYEE  
17 IS HIRED AS A PERMANENT EMPLOYEE OF A HEALTH CARE FACILITY OR  
18 AGENCY.

19 (C) RESTRICT EMPLOYMENT OPPORTUNITIES FOR EMPLOYEES OF THE  
20 NURSING POOL IN ANY MANNER.

21 (4) A NURSING POOL SHALL ESTABLISH AND IMPLEMENT WRITTEN  
22 POLICIES AND PROCEDURES THAT REQUIRE, AT A MINIMUM, ALL OF THE  
23 FOLLOWING:

24 (A) THAT EACH TEMPORARY EMPLOYEE TO BE PROVIDED TO A HEALTH  
25 FACILITY OR AGENCY RECEIVE A PERSONAL INTERVIEW, REFERENCE CHECK,  
26 AND ANNUAL EVALUATION.

1 (B) THAT THE NURSING POOL CONTACT THE HEALTH FACILITY OR  
2 AGENCY TO WHICH A TEMPORARY EMPLOYEE HAS BEEN PROVIDED NOT LESS  
3 THAN ONCE EVERY 3 MONTHS DURING THE TERM OF THE EMPLOYEE'S  
4 EMPLOYMENT TO OBTAIN INFORMATION REGARDING THE EMPLOYEE'S PER-  
5 FORMANCE AT THE HEALTH FACILITY OR AGENCY. THE NURSING POOL  
6 SHALL USE THE INFORMATION OBTAINED FOR THE EMPLOYEE'S ANNUAL  
7 EVALUATION.

8 (C) THAT A COMPLAINT RECEIVED BY THE NURSING POOL REGARDING  
9 A TEMPORARY EMPLOYEE PROVIDED TO A HEALTH FACILITY OR AGENCY BY  
10 THE NURSING POOL BE INVESTIGATED BY THE NURSING POOL, AND THAT A  
11 RESPONSE IS PROVIDED TO THE COMPLAINANT WITHIN 10 DAYS AFTER  
12 RECEIPT OF THE COMPLAINT.

13 SEC. 21907. (1) A NURSING POOL SHALL CARRY MEDICAL MALPRAC-  
14 TICE INSURANCE OR PROVIDE OTHER FINANCIAL SECURITY SUITABLE TO  
15 THE DIRECTOR TO ENSURE AGAINST LOSS, DAMAGE, OR EXPENSE INCIDENT  
16 TO A CLAIM ARISING OUT OF THE DEATH OR INJURY OF AN INDIVIDUAL AS  
17 A RESULT OF NEGLIGENCE OR MALPRACTICE BY THE NURSING POOL OR ITS  
18 EMPLOYEES, AND SHALL PROVIDE PROOF OF THE MEDICAL MALPRACTICE  
19 INSURANCE OR OTHER FINANCIAL SECURITY TO ANY PERSON TO WHOM NURS-  
20 ING POOL SERVICES ARE SUPPLIED.

21 (2) A NURSING POOL THAT DOES NOT PROVIDE ITS OWN EMPLOYEES  
22 TO HEALTH FACILITIES OR AGENCIES AND REFERS ONLY SELF-EMPLOYED,  
23 INDEPENDENT CONTRACTORS TO HEALTH FACILITIES OR AGENCIES SHALL  
24 CARRY PROFESSIONAL AND GENERAL LIABILITY INSURANCE TO COVER ITS  
25 OWN LIABILITY AS A NURSING POOL, AND SHALL REQUIRE THAT  
26 SELF-EMPLOYED, INDEPENDENT CONTRACTORS REFERRED BY THE NURSING  
27 POOL CARRY PROFESSIONAL AND GENERAL LIABILITY INSURANCE TO INSURE

1 AGAINST LOSS OR DAMAGE RESULTING FROM THEIR OWN ACTS COMMITTED IN  
2 THE COURSE OF THEIR SERVICE AT A HEALTH FACILITY OR AGENCY.

3 SEC. 21909. (1) THE DEPARTMENT SHALL PROMULGATE AND ENFORCE  
4 RULES TO IMPLEMENT THIS PART AND TO PROTECT THE HEALTH, SAFETY,  
5 AND WELFARE OF PATIENTS. AT A MINIMUM, THE RULES SHALL ESTABLISH  
6 ALL OF THE FOLLOWING:

7 (A) STANDARDS FOR THE EMPLOYMENT OF COMPETENT AND QUALIFIED  
8 NURSING PERSONNEL BY NURSING POOLS.

9 (B) PROCEDURES RELATING TO THE REGISTRATION AND OPERATION OF  
10 NURSING POOLS INCLUDING, BUT NOT LIMITED TO, PROCEDURES FOR THE  
11 RENEWAL OF REGISTRATION.

12 (2) EACH NURSING POOL BIENNIALY SHALL SUBMIT TO THE DEPART-  
13 MENT ON A FORM PROVIDED BY THE DEPARTMENT THE NURSING POOL'S  
14 AVERAGE, MINIMUM, AND MAXIMUM HOURLY CHARGES TO NURSING HOMES AND  
15 HOSPITAL LONG-TERM CARE UNITS FOR REGISTERED PROFESSIONAL NURSES,  
16 LICENSED PRACTICAL NURSES, AND NURSE AIDES SUPPLIED BY THE NURS-  
17 ING POOL. THE DEPARTMENT SHALL COMPILE THIS INFORMATION AND MAKE  
18 IT AVAILABLE TO THE PUBLIC.