



SENATE BILL No. 303

February 2, 1993, Introduced by Senators BOUCHARD, HONIGMAN, MC MANUS, EMMONS, CISKY, ARTHURHULTZ and WELBORN and referred to the Committee on Family Law, Criminal Law, and Corrections.

A bill to require disclosures of criminal convictions by certain persons; to require criminal history checks of certain persons; to regulate the employment of certain persons; to prescribe the powers and duties and limit the liability of certain state and local departments and agencies; and to prescribe penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "child-related employment criminal history check act".

3 Sec. 2. As used in this act:

4 (a) "Applicant" means a person seeking to become an employee
5 or volunteer of an employer whom the employer intends to employ
6 or use the services of following completion of a criminal history
7 check that is satisfactory to the employer.

1 (b) "Criminal history check" means a determination, through
2 fingerprints and use of the state repository of criminal history
3 record information, of whether a person has been convicted of a
4 crime in this state.

5 (c) "Department" means the department of state police.

6 (d) "Employee" means an employer's paid employee who is 17
7 years of age or older, whether of a full-time, part-time, or tem-
8 porary nature.

9 (e) "Employer" means any of the following that employs or
10 uses the services of an employee or volunteer:

11 (i) A child care organization as defined in section 1 of Act
12 No. 116 of the Public Acts of 1973, being section 722.111 of the
13 Michigan Compiled Laws.

14 (ii) An adult foster care family home or adult foster care
15 small group home as defined in section 3 of the adult foster care
16 facility licensing act, Act No. 218 of the Public Acts of 1979,
17 being section 400.703 of the Michigan Compiled Laws.

18 (iii) A private or public school with a preschool or any
19 grade from kindergarten to twelfth grade.

20 (iv) A public or private intermediate or long-term care
21 facility providing care or treatment for a mental, physical, emo-
22 tional, or rehabilitative condition or disease for a minor.

23 (v) A juvenile facility as defined in section 2 of the juve-
24 nile facilities act, Act No. 73 of the Public Acts of 1988, being
25 section 803.222 of the Michigan Compiled Laws.

26 (vi) Any other business, organization, or association that
27 has the care of, or supervisory or disciplinary powers over, a

1 minor, including, but not limited to, providers of recreational
2 or similar activities.

3 (f) "Law enforcement agency" means a sheriff's department or
4 the organized police department of a city, village, or township.

5 (g) "Volunteer" means a person who is 17 years of age or
6 older providing voluntary services to an employer. Volunteer
7 does not include a parent or guardian whose child is participat-
8 ing in or attending services or activities offered by that
9 employer.

10 Sec. 3. (1) An employer shall obtain from each applicant,
11 employee, or volunteer a signed statement of whether the appli-
12 cant, employee, or volunteer has ever been convicted of any of
13 the following offenses and, if so, the details of the
14 conviction:

15 (a) A felony.

16 (b) A misdemeanor that is a violation of any of the
17 following:

18 (i) Section 7455(2) of the public health code, Act No. 368
19 of the Public Acts of 1978, being section 333.7455 of the
20 Michigan Compiled Laws.

21 (ii) The youth employment standards act, Act No. 90 of the
22 Public Acts of 1978, being sections 409.101 to 409.124 of the
23 Michigan Compiled Laws, involving the employment of a minor.

24 (iii) Section 33 of the Michigan liquor control act, Act
25 No. 8 of the Public Acts of the Extra Session of 1933, being sec-
26 tion 436.33 of the Michigan Compiled Laws.

1 (iv) Section 33b(3) of Act No. 8 of the Public Acts of the
2 Extra Session of 1933, being section 436.33b of the Michigan
3 Compiled Laws, involving furnishing fraudulent identification.

4 (v) Act No. 116 of the Public Acts of 1973, being sections
5 722.111 to 722.128 of the Michigan Compiled Laws.

6 (vi) Section 1 of Act No. 296 of the Public Acts of 1968,
7 being section 722.151 of the Michigan Compiled Laws.

8 (vii) Section 13(2) or (5) of the child protection law, Act
9 No. 238 of the Public Acts of 1975, being section 722.633 of the
10 Michigan Compiled Laws.

11 (viii) Section 1 of the youth tobacco act, Act No. 31 of the
12 Public Acts of 1915, being section 722.641 of the Michigan
13 Compiled Laws.

14 (ix) Section 5, 7, or 8 of Act No. 33 of the Public Acts of
15 1978, being sections 722.675, 722.677, and 722.678 of the
16 Michigan Compiled Laws.

17 (x) Section 3 of Act No. 41 of the Public Acts of 1960,
18 being section 722.753 of the Michigan Compiled Laws.

19 (xi) Section 28, 136b, 137, 138, 140, 141, 142, 143, 144,
20 145, 145a, 167(a), (b), (c), (f), or (i), 223(2), 327a, 335a,
21 448, 449, 449a, 450, 454, 462, or 520e of the Michigan penal
22 code, Act No. 328 of the Public Acts of 1931, being sections
23 750.28, 750.136b, 750.137, 750.138, 750.140, 750.141, 750.142,
24 750.143, 750.144, 750.145, 750.145a, 750.167, 750.223, 750.327a,
25 750.335a, 750.448, 750.449, 750.449a, 750.450, 750.454, 750.462,
26 and 750.520e of the Michigan Compiled Laws.

1 (xii) Section 81 or 81a of Act No. 328 of the Public Acts of
2 1931, being sections 750.81 and 750.81a of the Michigan Compiled
3 Laws, involving an assault against a minor.

4 (xiii) Section 5 of Act No. 343 of the Public Acts of 1984,
5 being section 752.365 of the Michigan Compiled Laws.

6 (xiv) A former law of this state or an ordinance or former
7 ordinance of a political subdivision of this state that is sub-
8 stantially similar to a law described in subparagraphs (i) to
9 (xiii).

10 (xv) A law or former law of the United States or another
11 state or an ordinance or former ordinance of a political subdivi-
12 sion of another state that is substantially similar to a law
13 described in subparagraphs (i) to (xiii).

14 (c) An attempt or conspiracy to commit an offense described
15 in subdivision (a) or (b).

16 (2) An applicant, employee, or volunteer who knowingly or
17 intentionally makes a false statement or withholds information in
18 connection with the signed statement required under subsection
19 (1) is guilty of a misdemeanor punishable by imprisonment for not
20 more than 6 months or a fine of not more than \$1,000.00, or
21 both.

22 (3) An employee or volunteer who violates subsection (2) is
23 also subject to immediate disciplinary action, including
24 discharge.

25 Sec. 4. (1) An applicant, employee, or volunteer shall give
26 written consent for his or her employer to conduct a criminal
27 history check. The applicant, employee, or volunteer shall also

1 provide to the department any information necessary for the
2 criminal history check, including, but not limited to, finger-
3 prints and date of birth. Subject to section 3 of Act No. 120 of
4 the Public Acts of 1935, being section 28.273 of the Michigan
5 Compiled Laws, and any other applicable limitations, the employer
6 shall pay the first \$5.00 of the fee for the criminal history
7 check and the state shall pay any amount in excess of \$5.00.

8 (2) An employer shall request the department to conduct a
9 criminal history check on an applicant, employee, or volunteer
10 who has given written consent pursuant to subsection (1).

11 (3) The department shall conduct the criminal history check
12 upon a request submitted pursuant to subsection (2). An appli-
13 cant, employee, or volunteer may provide fingerprints necessary
14 for the criminal history check to the department through a law
15 enforcement agency, which shall comply with Act No. 120 of the
16 Public Acts of 1935, being sections 28.271 to 28.273 of the
17 Michigan Compiled Laws, and with any applicable procedure estab-
18 lished by the department for those checks.

19 (4) The department shall complete the criminal history check
20 and provide the results to the employer and to the applicant,
21 employee, or volunteer within 7 days after the request is made.
22 Pursuant to this subsection, the department shall only provide
23 information concerning a conviction for a crime described in sec-
24 tion 3(1).

25 (5) An employer may request a criminal history check of a
26 parent or guardian who otherwise meets the definition of
27 volunteer but whose child is participating in or attending

1 services or activities offered by that employer. The parent or
2 guardian shall give consent for the criminal history check if
3 requested by the employer before engaging in services offered by
4 that employer and the local law enforcement agency or the depart-
5 ment shall conduct the criminal history check upon the same terms
6 as it would for an employer under subsections (1), (2), (3), and
7 (4).

8 (6) An employer shall refuse to hire an applicant or may
9 dismiss an employee or volunteer who does not comply with
10 subsection (1).

11 (7) The department shall prescribe the form of the request
12 and necessary information for a criminal history check pursuant
13 to this act and the form for providing the results pursuant to
14 subsection (4).

15 Sec. 5. If a parent or guardian of a minor hires or intends
16 to hire a person who has or will have the care of, or supervisory
17 or disciplinary powers over, the minor in that parent's or
18 guardian's custody, the parent or guardian may request a criminal
19 history check of that person. Upon request, the department shall
20 conduct the criminal history check for the parent or guardian
21 upon the same terms as it would for an employer pursuant to sec-
22 tion 4.

23 Sec. 6. An employer shall not employ or use the services of
24 an applicant before completion of a criminal history check under
25 this act. If a criminal history check reveals a conviction for a
26 crime described in section 3(1), the employer may refuse to hire
27 the applicant or may dismiss the employee or volunteer who had

1 that conviction. If an employer hires an applicant or retains an
2 employee or volunteer whose criminal history check reveals a con-
3 viction for a crime listed in section 3(1), the employer shall
4 notify the parent or guardian of each minor who uses the services
5 of the employer of the fact of the conviction and its nature.

6 Sec. 7. Except for a knowing or intentional release of
7 false information, the department, a law enforcement agency, and
8 the employees of the department or law enforcement agency have no
9 liability in connection with a criminal history check conducted
10 pursuant to this act.