



HOUSE BILL No. 5034

October 26, 1999, Introduced by Reps. Brewer, LaForge, Frank and Neumann and referred to the Committee on Health Policy.

A bill to amend 1979 PA 218, entitled
"Adult foster care facility licensing act,"
(MCL 400.701 to 400.737) by adding section 34a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 34A. (1) IN ADDITION TO THE RESTRICTIONS PRESCRIBED IN
2 SECTIONS 13, 22, AND 31, AND EXCEPT AS OTHERWISE PROVIDED IN SUB-
3 SECTION (2), AN ADULT FOSTER CARE FACILITY SHALL NOT EMPLOY OR
4 INDEPENDENTLY CONTRACT WITH AN INDIVIDUAL WHO REGULARLY PROVIDES
5 DIRECT SERVICES TO RESIDENTS OF THE ADULT FOSTER CARE FACILITY
6 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
7 SECTION IF THE INDIVIDUAL HAS BEEN CONVICTED IN THIS STATE OF 1
8 OR MORE OF THE FOLLOWING:

9 (A) A FELONY INVOLVING ABUSE, NEGLECT, ASSAULT, BATTERY, OR
10 CRIMINAL SEXUAL CONDUCT OR INVOLVING FRAUD OR THEFT AGAINST A
11 VULNERABLE ADULT AS THAT TERM IS DEFINED IN SECTION 145M OF THE

1 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.145M, OR AN ATTEMPT OR
2 CONSPIRACY TO COMMIT SUCH A FELONY WITHIN THE 15 YEARS IMMEDI-
3 ATELY PRECEDING THE DATE OF APPLICATION FOR EMPLOYMENT OR THE
4 DATE OF THE EXECUTION OF THE CONTRACT.

5 (B) A MISDEMEANOR INVOLVING ABUSE, NEGLECT, ASSAULT, BAT-
6 TERY, OR CRIMINAL SEXUAL CONDUCT OR INVOLVING FRAUD OR THEFT
7 AGAINST A VULNERABLE ADULT AS THAT TERM IS DEFINED IN
8 SECTION 145M OF THE MICHIGAN PENAL CODE, 1931 PA 328,
9 MCL 750.145M, WITHIN THE 10 YEARS IMMEDIATELY PRECEDING THE DATE
10 OF APPLICATION FOR EMPLOYMENT OR THE DATE OF THE EXECUTION OF THE
11 CONTRACT.

12 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION AND SUB-
13 SECTION (5), AN ADULT FOSTER CARE FACILITY SHALL NOT EMPLOY OR
14 INDEPENDENTLY CONTRACT WITH AN INDIVIDUAL AFTER THE EFFECTIVE
15 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION UNTIL THE
16 ADULT FOSTER CARE FACILITY COMPLIES WITH SUBSECTION (4). THIS
17 SUBSECTION AND SUBSECTION (1) DO NOT APPLY TO AN INDIVIDUAL WHO
18 IS EMPLOYED BY OR UNDER CONTRACT TO AN ADULT FOSTER CARE FACILITY
19 BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
20 SUBSECTION.

21 (3) AN INDIVIDUAL WHO APPLIES FOR EMPLOYMENT EITHER AS AN
22 EMPLOYEE OR AS AN INDEPENDENT CONTRACTOR WITH AN ADULT FOSTER
23 CARE FACILITY SHALL GIVE WRITTEN CONSENT AT THE TIME OF APPLICA-
24 TION FOR THE DEPARTMENT OF STATE POLICE OR ANOTHER AUTHORIZED LAW
25 ENFORCEMENT AGENCY TO CONDUCT A CRIMINAL HISTORY CHECK UNDER SUB-
26 SECTION (4). IF THE DEPARTMENT OF STATE POLICE OR OTHER
27 AUTHORIZED LAW ENFORCEMENT AGENCY HAS CONDUCTED A CRIMINAL

1 HISTORY CHECK ON THE APPLICANT WITHIN THE 6 MONTHS IMMEDIATELY
2 PRECEDING THE DATE OF APPLICATION, THE ADULT FOSTER CARE FACILITY
3 MAY USE A CERTIFIED COPY OF THAT CRIMINAL HISTORY CHECK IN LIEU
4 OF OBTAINING WRITTEN CONSENT AND REQUESTING A NEW CRIMINAL HIS-
5 TORY CHECK UNDER THIS SUBSECTION AND SUBSECTION (4). IF THE
6 APPLICANT IS APPLYING FOR EMPLOYMENT AS AN INDEPENDENT CONTRACTOR
7 AND IS USING A PRIOR CRIMINAL HISTORY CHECK AS DESCRIBED IN THIS
8 SUBSECTION, THE ADULT FOSTER CARE FACILITY SHALL ACCEPT THE CER-
9 TIFIED COPY OF THE CRIMINAL HISTORY CHECK ONLY FROM THE FIRM OR
10 AGENCY THAT EMPLOYS THE INDIVIDUAL OR FROM THE DEPARTMENT OF
11 STATE POLICE OR OTHER AUTHORIZED LAW ENFORCEMENT AGENCY.

12 (4) UPON RECEIPT OF THE WRITTEN CONSENT REQUIRED UNDER SUB-
13 SECTION (3), AN ADULT FOSTER CARE FACILITY SHALL MAKE A REQUEST
14 TO THE DEPARTMENT OF STATE POLICE OR ANOTHER AUTHORIZED LAW
15 ENFORCEMENT AGENCY TO CONDUCT A CRIMINAL HISTORY CHECK ON THE
16 APPLICANT. THE REQUEST SHALL BE MADE ON A FORM AND IN A MANNER
17 PRESCRIBED BY THE DEPARTMENT OF STATE POLICE OR BY THE OTHER
18 AUTHORIZED LAW ENFORCEMENT AGENCY. IF THERE IS A CHARGE FOR CON-
19 DUCTING THE CRIMINAL HISTORY CHECK, THE APPLICANT WHO IS THE
20 SUBJECT OF THE CRIMINAL HISTORY CHECK SHALL PAY THE COST OF THE
21 CHARGE. THE DEPARTMENT OF STATE POLICE OR OTHER AUTHORIZED LAW
22 ENFORCEMENT AGENCY SHALL CONDUCT A CRIMINAL HISTORY CHECK ON THE
23 INDIVIDUAL NAMED IN THE REQUEST. THE DEPARTMENT OF STATE POLICE
24 OR OTHER AUTHORIZED LAW ENFORCEMENT AGENCY SHALL PROVIDE THE
25 ADULT FOSTER CARE FACILITY WITH A REPORT OF THE CRIMINAL HISTORY
26 CHECK. THE REPORT SHALL CONTAIN ANY CRIMINAL HISTORY RECORD
27 INFORMATION ON THE APPLICANT MAINTAINED BY THE DEPARTMENT OF

1 STATE POLICE OR OTHER AUTHORIZED LAW ENFORCEMENT AGENCY. THE
2 DEPARTMENT OF STATE POLICE OR OTHER AUTHORIZED LAW ENFORCEMENT
3 AGENCY SHALL CERTIFY EACH REPORT WITH AN OFFICIAL SEAL OR OTHER
4 SYMBOL OF AUTHENTICITY.

5 (5) IF AN ADULT FOSTER CARE FACILITY DETERMINES IT NECESSARY
6 TO EMPLOY AN APPLICANT BEFORE RECEIVING THE RESULTS OF THE
7 APPLICANT'S CRIMINAL HISTORY CHECK UNDER SUBSECTION (4), THE
8 ADULT FOSTER CARE FACILITY MAY EMPLOY THE INDIVIDUAL AS A CONDI-
9 TIONAL EMPLOYEE IF ALL OF THE FOLLOWING APPLY:

10 (A) THE ADULT FOSTER CARE FACILITY REQUESTS THE CRIMINAL
11 HISTORY CHECK UNDER SUBSECTION (4) BEFORE CONDITIONALLY EMPLOYING
12 THE INDIVIDUAL.

13 (B) THE INDIVIDUAL SIGNS A STATEMENT THAT HE OR SHE HAS NOT
14 BEEN CONVICTED OF 1 OR MORE OF THE CRIMES THAT ARE DESCRIBED IN
15 SUBSECTION (1)(A) AND (B), AND AGREEING THAT, IF THE CRIMINAL
16 HISTORY CHECK CONDUCTED UNDER SUBSECTION (4) IS NOT THE SAME AS
17 THE INDIVIDUAL'S STATEMENT UNDER THIS SUBDIVISION, HIS OR HER
18 EMPLOYMENT IS TERMINABLE AT THE OPTION OF THE ADULT FOSTER CARE
19 FACILITY. NOT LATER THAN 90 DAYS AFTER THE EFFECTIVE DATE OF THE
20 AMENDATORY ACT THAT ADDED THIS SUBSECTION, THE FAMILY INDEPEN-
21 DENCE AGENCY, IN COOPERATION WITH THE DEPARTMENT OF COMMUNITY
22 HEALTH AND THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES,
23 SHALL DEVELOP AND DISTRIBUTE A MODEL FORM FOR THE STATEMENT
24 REQUIRED UNDER THIS SUBDIVISION. THE FAMILY INDEPENDENCE AGENCY
25 SHALL MAKE THE MODEL FORM AVAILABLE TO ADULT FOSTER CARE FACILI-
26 TIES UPON REQUEST AT NO CHARGE.

1 (6) IF AN INDIVIDUAL IS EMPLOYED AS A CONDITIONAL EMPLOYEE
2 UNDER SUBSECTION (5), AND THE REPORT DESCRIBED IN SUBSECTION (4)
3 IS SUBSTANTIALLY DIFFERENT FROM THE INDIVIDUAL'S STATEMENT UNDER
4 SUBSECTION (5)(B), THE ADULT FOSTER CARE FACILITY MAY TERMINATE
5 THE INDIVIDUAL'S EMPLOYMENT. AN INDIVIDUAL WHO KNOWINGLY PRO-
6 VIDES FALSE INFORMATION REGARDING CRIMINAL CONVICTIONS ON A
7 STATEMENT DESCRIBED IN SUBSECTION (5)(B) IS GUILTY OF A MISDE-
8 MEANOR, PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR A
9 FINE OF NOT MORE THAN \$500.00, OR BOTH.

10 (7) AN ADULT FOSTER CARE FACILITY SHALL USE CRIMINAL HISTORY
11 RECORD INFORMATION OBTAINED UNDER SUBSECTION (4) OR (5) ONLY FOR
12 THE PURPOSE OF EVALUATING AN APPLICANT'S QUALIFICATIONS FOR
13 EMPLOYMENT IN THE POSITION FOR WHICH HE OR SHE HAS APPLIED AND
14 FOR THE PURPOSES OF SUBSECTIONS (5) AND (6). AN ADULT FOSTER
15 CARE FACILITY OR AN EMPLOYEE OF THE ADULT FOSTER CARE FACILITY
16 SHALL NOT DISCLOSE CRIMINAL HISTORY RECORD INFORMATION OBTAINED
17 UNDER SUBSECTION (4) OR (5) TO A PERSON WHO IS NOT DIRECTLY
18 INVOLVED IN EVALUATING THE APPLICANT'S QUALIFICATIONS FOR
19 EMPLOYMENT.

20 Enacting section 1. This amendatory act takes effect
21 January 1, 2000.

22 Enacting section 2. This amendatory act does not take
23 effect unless all of the following bills of the 90th Legislature
24 are enacted into law:

25 (a) Senate Bill No. _____ or House Bill No. 5033(request
26 no. 03040'99).

1 (b) Senate Bill No. _____ or House Bill No. 5035(request
2 no. 03040'99 b).