

**SUBSTITUTE FOR
HOUSE BILL NO. 4453**

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
3 SUBSECTION (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 OF 1 OR MORE OF THE
8 FOLLOWING:

9 (A) A FELONY OR AN ATTEMPT OR CONSPIRACY TO COMMIT A FELONY
10 WITHIN THE 15 YEARS IMMEDIATELY PRECEDING THE DATE OF APPLICATION

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1 FOR EMPLOYMENT OR THE DATE OF THE EXECUTION OF THE INDEPENDENT
2 CONTRACT.

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

11 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION AND
12 SUBSECTION (6), AN ADULT FOSTER CARE FACILITY SHALL NOT EMPLOY OR
13 INDEPENDENTLY CONTRACT WITH AN INDIVIDUAL WHO REGULARLY PROVIDES
14 DIRECT SERVICES TO RESIDENTS AFTER THE EFFECTIVE DATE OF THE
15 AMENDATORY ACT THAT ADDED THIS SECTION UNTIL THE ADULT FOSTER
16 CARE FACILITY COMPLIES WITH SUBSECTION (4) OR (5), OR BOTH. 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 AND HAS RECEIVED A GOOD FAITH OFFER OF EMPLOYMENT
24 OR INDEPENDENT CONTRACT FROM THE ADULT FOSTER CARE FACILITY SHALL
25 GIVE WRITTEN CONSENT AT THE TIME OF APPLICATION FOR THE DEPART-
26 MENT OF STATE POLICE TO CONDUCT A CRIMINAL HISTORY CHECK UNDER
27 SUBSECTION (4) OR (5), OR BOTH, ALONG WITH IDENTIFICATION

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1 ACCEPTABLE TO THE DEPARTMENT OF STATE POLICE. IF THE DEPARTMENT
2 OF STATE POLICE HAS CONDUCTED A CRIMINAL HISTORY CHECK ON THE
3 INDIVIDUAL WITHIN THE 24 MONTHS IMMEDIATELY PRECEDING THE DATE OF
4 APPLICATION [AND THE INDIVIDUAL PROVIDES WRITTEN CONSENT FOR THE
RELEASE OF INFORMATION FOR THE PURPOSES OF THIS SECTION], THE ADULT
FOSTER CARE FACILITY MAY USE A COPY OF
5 THAT CRIMINAL HISTORY CHECK INSTEAD OF OBTAINING WRITTEN CONSENT
6 AND REQUESTING A NEW CRIMINAL HISTORY CHECK UNDER THIS SUBSEC-
7 TION, AND SUBSECTION (4) OR (5), OR BOTH. IF THE INDIVIDUAL IS
8 USING A PRIOR CRIMINAL HISTORY CHECK AS DESCRIBED IN THIS SUBSEC-
9 TION, THE ADULT FOSTER CARE FACILITY SHALL ACCEPT THE COPY OF THE
10 RESULTS OF THE CRIMINAL HISTORY CHECK ONLY FROM THE ADULT FOSTER
11 CARE FACILITY OR HEALTH FACILITY OR AGENCY THAT PREVIOUSLY
12 EMPLOYED OR INDEPENDENTLY CONTRACTED WITH THE INDIVIDUAL.

13 (4) UPON RECEIPT OF THE WRITTEN CONSENT AND IDENTIFICATION
14 REQUIRED UNDER SUBSECTION (3), IF THE INDIVIDUAL HAS RESIDED IN
15 THIS STATE FOR 3 OR MORE YEARS PRECEDING THE GOOD FAITH OFFER OF
16 EMPLOYMENT OR INDEPENDENT CONTRACT, THE ADULT FOSTER CARE FACIL-
17 ITY THAT HAS MADE A GOOD FAITH OFFER OF EMPLOYMENT OR INDEPENDENT
18 CONTRACT SHALL MAKE A REQUEST TO THE DEPARTMENT OF STATE POLICE
19 TO CONDUCT A CRIMINAL HISTORY CHECK ON THE INDIVIDUAL. THE
20 REQUEST SHALL BE MADE [] IN A MANNER PRESCRIBED BY THE
21 DEPARTMENT OF STATE POLICE. THE ADULT FOSTER CARE FACILITY SHALL
22 MAKE THE WRITTEN CONSENT AND IDENTIFICATION AVAILABLE TO THE
23 DEPARTMENT OF STATE POLICE. IF THERE IS A CHARGE FOR CONDUCTING
24 THE CRIMINAL HISTORY CHECK, THE ADULT FOSTER CARE FACILITY
25 REQUESTING THE CRIMINAL HISTORY CHECK SHALL PAY THE COST OF THE
26 CHARGE. THE ADULT FOSTER CARE FACILITY SHALL NOT SEEK
27 REIMBURSEMENT FOR THE CHARGE FROM THE INDIVIDUAL WHO IS THE

1 SUBJECT OF THE CRIMINAL HISTORY CHECK. THE DEPARTMENT OF STATE
2 POLICE SHALL CONDUCT A CRIMINAL HISTORY CHECK ON THE INDIVIDUAL
3 NAMED IN THE REQUEST. THE DEPARTMENT OF STATE POLICE SHALL PRO-
4 VIDE THE ADULT FOSTER CARE FACILITY WITH A WRITTEN REPORT OF THE
5 CRIMINAL HISTORY CHECK. THE REPORT SHALL CONTAIN ANY CRIMINAL
6 HISTORY RECORD INFORMATION ON THE INDIVIDUAL MAINTAINED BY THE
7 DEPARTMENT OF STATE POLICE. AS A CONDITION OF EMPLOYMENT, AN
8 INDIVIDUAL SHALL SIGN A WRITTEN STATEMENT THAT HE OR SHE HAS BEEN
9 A RESIDENT OF THIS STATE FOR 3 OR MORE YEARS PRECEDING THE GOOD
10 FAITH OFFER OF EMPLOYMENT OR INDEPENDENT CONTRACT.

11 (5) UPON RECEIPT OF THE WRITTEN CONSENT AND IDENTIFICATION
12 REQUIRED UNDER SUBSECTION (3), IF THE INDIVIDUAL HAS RESIDED IN
13 THIS STATE FOR LESS THAN 3 YEARS PRECEDING THE GOOD FAITH OFFER
14 OF EMPLOYMENT OR INDEPENDENT CONTRACT, THE ADULT FOSTER CARE
15 FACILITY THAT HAS MADE A GOOD FAITH OFFER OF EMPLOYMENT OR INDE-
16 PENDENT CONTRACT SHALL COMPLY WITH SUBSECTION (4) AND SHALL MAKE
17 A REQUEST TO THE DEPARTMENT OF STATE POLICE TO FORWARD THE
18 INDIVIDUAL'S FINGERPRINTS TO THE FEDERAL BUREAU OF
19 INVESTIGATION. THE DEPARTMENT OF STATE POLICE SHALL REQUEST THE
20 FEDERAL BUREAU OF INVESTIGATION TO MAKE A DETERMINATION OF THE
21 EXISTENCE OF ANY NATIONAL CRIMINAL HISTORY PERTAINING TO THE
22 INDIVIDUAL. AN INDIVIDUAL DESCRIBED IN THIS SUBSECTION SHALL
23 PROVIDE THE DEPARTMENT OF STATE POLICE WITH 2 SETS OF
24 FINGERPRINTS. THE DEPARTMENT OF STATE POLICE SHALL COMPLETE THE
25 CRIMINAL HISTORY CHECK UNDER SUBSECTION (4) AND, EXCEPT AS OTHER-
26 WISE PROVIDED IN THIS SUBSECTION, PROVIDE THE RESULTS OF ITS
27 DETERMINATION UNDER SUBSECTION (4) TO THE ADULT FOSTER CARE

1 FACILITY AND THE RESULTS OF THE FEDERAL BUREAU OF INVESTIGATION
2 DETERMINATION TO THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
3 WITHIN 30 DAYS AFTER THE REQUEST IS MADE. IF THE REQUESTING
4 ADULT FOSTER CARE FACILITY IS NOT A STATE DEPARTMENT OR AGENCY
5 AND IF A CRIME IS DISCLOSED ON THE FEDERAL BUREAU OF INVESTIGA-
6 TION DETERMINATION, THE DEPARTMENT SHALL NOTIFY THE ADULT FOSTER
7 CARE FACILITY IN WRITING OF THE TYPE OF CRIME DISCLOSED ON THE
8 FEDERAL BUREAU OF INVESTIGATION DETERMINATION WITHOUT DISCLOSING
9 THE DETAILS OF THE CRIME. ANY CHARGES FOR FINGERPRINTING OR A
10 FEDERAL BUREAU OF INVESTIGATION DETERMINATION UNDER THIS SUBSEC-
11 TION SHALL BE PAID IN THE MANNER REQUIRED UNDER SUBSECTION (4).

12 (6) IF AN ADULT FOSTER CARE FACILITY DETERMINES IT NECESSARY
13 TO EMPLOY OR INDEPENDENTLY CONTRACT WITH AN INDIVIDUAL BEFORE
14 RECEIVING THE RESULTS OF THE INDIVIDUAL'S CRIMINAL HISTORY CHECK
15 UNDER SUBSECTION (4) OR (5), OR BOTH, THE ADULT FOSTER CARE
16 FACILITY MAY CONDITIONALLY EMPLOY THE INDIVIDUAL IF BOTH OF THE
17 FOLLOWING APPLY:

18 (A) THE ADULT FOSTER CARE FACILITY REQUESTS THE CRIMINAL
19 HISTORY CHECK UNDER SUBSECTION (4) OR (5), OR BOTH, UPON CONDI-
20 TIONALLY EMPLOYING THE INDIVIDUAL.

21 (B) THE INDIVIDUAL SIGNS A WRITTEN STATEMENT INDICATING ALL
22 OF THE FOLLOWING:

23 (i) THAT HE OR SHE HAS NOT BEEN CONVICTED OF 1 OR MORE OF
24 THE CRIMES THAT ARE DESCRIBED IN SUBSECTION (1)(A) AND (B) WITHIN
25 THE APPLICABLE TIME PERIOD PRESCRIBED BY SUBSECTION (1)(A) AND
26 (B).

1 (ii) THE INDIVIDUAL AGREES THAT, IF THE INFORMATION IN THE
2 CRIMINAL HISTORY CHECK CONDUCTED UNDER SUBSECTION (4) OR (5), OR
3 BOTH, DOES NOT CONFIRM THE INDIVIDUAL'S STATEMENT UNDER SUBPARA-
4 GRAPH (i), HIS OR HER EMPLOYMENT WILL BE TERMINATED BY THE ADULT
5 FOSTER CARE FACILITY AS REQUIRED UNDER SUBSECTION (1) UNLESS AND
6 UNTIL THE INDIVIDUAL CAN PROVE THAT THE INFORMATION IS
7 INCORRECT. THE ADULT FOSTER CARE FACILITY SHALL PROVIDE A COPY
8 OF THE RESULTS OF THE CRIMINAL HISTORY CHECK CONDUCTED UNDER
9 SUBSECTION (4) OR (5), OR BOTH, TO THE INDIVIDUAL UPON REQUEST.

10 (iii) THAT HE OR SHE UNDERSTANDS THE CONDITIONS DESCRIBED IN
11 SUBPARAGRAPHS (i) AND (ii) THAT RESULT IN THE TERMINATION OF HIS
12 OR HER EMPLOYMENT AND THAT THOSE CONDITIONS ARE GOOD CAUSE FOR
13 TERMINATION.

14 (7) ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
15 THIS SUBSECTION, THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
16 SHALL DEVELOP AND DISTRIBUTE A MODEL FORM FOR THE STATEMENT
17 REQUIRED UNDER SUBSECTION (6)(B). THE DEPARTMENT OF CONSUMER AND
18 INDUSTRY SERVICES SHALL MAKE THE MODEL FORM AVAILABLE TO ADULT
19 FOSTER CARE FACILITIES UPON REQUEST AT NO CHARGE.

20 (8) IF AN INDIVIDUAL IS CONDITIONALLY EMPLOYED UNDER
21 SUBSECTION (6), AND THE REPORT DESCRIBED IN SUBSECTION (4) OR
22 (5), OR BOTH, IF APPLICABLE, DOES NOT CONFIRM THE INDIVIDUAL'S
23 STATEMENT UNDER SUBSECTION (6)(B)(i), THE ADULT FOSTER CARE
24 FACILITY SHALL TERMINATE THE INDIVIDUAL'S EMPLOYMENT AS REQUIRED
25 BY SUBSECTION (1).

26 (9) AN INDIVIDUAL WHO KNOWINGLY PROVIDES FALSE INFORMATION
27 REGARDING A CRIMINAL CONVICTION ON A STATEMENT DESCRIBED IN

1 SUBSECTION (6)(B)(i) IS GUILTY OF A MISDEMEANOR PUNISHABLE BY
2 IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR A FINE OF NOT MORE THAN
3 \$500.00, OR BOTH.

4 (10) AN ADULT FOSTER CARE FACILITY SHALL USE CRIMINAL HIS-
5 TORY RECORD INFORMATION OBTAINED UNDER SUBSECTION (4), (5), OR
6 (6) ONLY FOR THE PURPOSE OF EVALUATING AN INDIVIDUAL'S QUALIFICA-
7 TIONS FOR EMPLOYMENT IN THE POSITION FOR WHICH HE OR SHE HAS
8 APPLIED AND FOR THE PURPOSES OF SUBSECTIONS (6) AND (8). AN
9 ADULT FOSTER CARE FACILITY OR AN EMPLOYEE OF THE ADULT FOSTER
10 CARE FACILITY SHALL NOT DISCLOSE CRIMINAL HISTORY RECORD INFORMA-
11 TION OBTAINED UNDER SUBSECTION (4) OR (5) TO A PERSON WHO IS NOT
12 DIRECTLY INVOLVED IN EVALUATING THE INDIVIDUAL'S QUALIFICATIONS
13 FOR EMPLOYMENT OR INDEPENDENT CONTRACT. UPON WRITTEN REQUEST
14 FROM ANOTHER ADULT FOSTER CARE FACILITY OR HEALTH FACILITY OR
15 AGENCY THAT IS CONSIDERING EMPLOYING OR INDEPENDENTLY CONTRACTING
16 WITH AN INDIVIDUAL, AN ADULT FOSTER CARE FACILITY THAT HAS
17 OBTAINED CRIMINAL HISTORY RECORD INFORMATION UNDER THIS SECTION
18 ON THAT INDIVIDUAL SHALL SHARE THE INFORMATION WITH THE REQUEST-
19 ING ADULT FOSTER CARE FACILITY OR HEALTH FACILITY OR AGENCY.
20 EXCEPT FOR A KNOWING OR INTENTIONAL RELEASE OF FALSE INFORMATION,
21 AN ADULT FOSTER CARE FACILITY HAS NO LIABILITY IN CONNECTION WITH
22 A BACKGROUND CHECK CONDUCTED UNDER THIS SECTION OR THE RELEASE OF
23 CRIMINAL HISTORY RECORD INFORMATION UNDER THIS SUBSECTION.

24 (11) AS A CONDITION OF CONTINUED EMPLOYMENT, EACH EMPLOYEE
25 OR INDEPENDENT CONTRACTOR SHALL AGREE IN WRITING TO REPORT TO THE
26 ADULT FOSTER CARE FACILITY IMMEDIATELY UPON BEING ARRESTED FOR OR

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1 CONVICTED OF 1 OR MORE OF THE CRIMINAL OFFENSES LISTED IN
2 SUBSECTION (1)(A) AND (B).

3 (12) AS USED IN THIS SECTION:

4 (A) "HEALTH FACILITY OR AGENCY" MEANS A HEALTH FACILITY OR
5 AGENCY AS DEFINED IN SECTION 20106 OF THE PUBLIC HEALTH CODE,
6 1978 PA 368, MCL 333.20106.

7 (B) "INDEPENDENT CONTRACT" MEANS A CONTRACT ENTERED INTO BY
8 AN ADULT FOSTER CARE FACILITY WITH AN INDIVIDUAL WHO PROVIDES THE
9 CONTRACTED SERVICES INDEPENDENTLY OR A CONTRACT ENTERED INTO BY
10 AN ADULT FOSTER CARE FACILITY WITH AN ORGANIZATION OR AGENCY THAT
11 EMPLOYS OR CONTRACTS WITH AN INDIVIDUAL AFTER COMPLYING WITH THE
12 REQUIREMENTS OF THIS SECTION TO PROVIDE THE CONTRACTED SERVICES
13 TO THE ADULT FOSTER CARE FACILITY ON BEHALF OF THE ORGANIZATION
14 OR AGENCY.