

HOUSE BILL No. 4453

March 13, 2001, Introduced by Reps. Woronchak, Pestka, Julian, Gilbert, Schermesser, Woodward, Kuipers, Allen, Koetje, Lockwood, Toy, Van Woerkom, Spade, Lipsey, Mans, Voorhees, Richner, Richardville, Bovin, Dennis, Schauer, Pappageorge, DeVuyst, Hager, Cassis, Raczkowski and Birkholz and referred to the Committee on Senior Health, Security and Retirement.

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 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

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, WITHIN THE 10 YEARS IMMEDIATELY PRECEDING THE DATE
8 OF APPLICATION FOR EMPLOYMENT OR THE DATE OF THE EXECUTION OF THE
9 CONTRACT.

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

19 (3) AN INDIVIDUAL WHO APPLIES FOR EMPLOYMENT EITHER AS AN
20 EMPLOYEE OR AS AN INDEPENDENT CONTRACTOR WITH AN ADULT FOSTER
21 CARE FACILITY AND HAS RECEIVED A GOOD FAITH OFFER OF EMPLOYMENT
22 OR INDEPENDENT CONTRACT FROM THE ADULT FOSTER CARE FACILITY SHALL
23 GIVE WRITTEN CONSENT AT THE TIME OF APPLICATION FOR THE DEPART-
24 MENT OF STATE POLICE OR ANOTHER AUTHORIZED LAW ENFORCEMENT AGENCY
25 TO CONDUCT A CRIMINAL HISTORY CHECK UNDER SUBSECTION (4). IF THE
26 DEPARTMENT OF STATE POLICE OR OTHER AUTHORIZED LAW ENFORCEMENT
27 AGENCY HAS CONDUCTED A CRIMINAL HISTORY CHECK ON THE INDIVIDUAL

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

12 (4) UPON RECEIPT OF THE WRITTEN CONSENT REQUIRED UNDER SUB-
13 SECTION (3), AN ADULT FOSTER CARE FACILITY THAT HAS MADE A GOOD
14 FAITH OFFER OF EMPLOYMENT OR INDEPENDENT CONTRACT SHALL MAKE A
15 REQUEST TO THE DEPARTMENT OF STATE POLICE OR ANOTHER AUTHORIZED
16 LAW ENFORCEMENT AGENCY TO CONDUCT A CRIMINAL HISTORY CHECK ON THE
17 INDIVIDUAL. THE REQUEST SHALL BE MADE ON A FORM AND IN A MANNER
18 PRESCRIBED BY THE DEPARTMENT OF STATE POLICE OR BY THE OTHER
19 AUTHORIZED LAW ENFORCEMENT AGENCY. IF THERE IS A CHARGE FOR CON-
20 DUCTING THE CRIMINAL HISTORY CHECK, THE ADULT FOSTER CARE FACIL-
21 ITY REQUESTING THE CRIMINAL HISTORY CHECK SHALL PAY THE COST OF
22 THE CHARGE. THE ADULT FOSTER CARE FACILITY SHALL NOT SEEK REIM-
23 BURSEMENT FOR THE CHARGE FROM THE INDIVIDUAL WHO IS THE SUBJECT
24 OF THE CRIMINAL HISTORY CHECK. THE DEPARTMENT OF STATE POLICE OR
25 OTHER AUTHORIZED LAW ENFORCEMENT AGENCY SHALL CONDUCT A CRIMINAL
26 HISTORY CHECK ON THE INDIVIDUAL NAMED IN THE REQUEST. THE
27 DEPARTMENT OF STATE POLICE OR OTHER AUTHORIZED LAW ENFORCEMENT

1 AGENCY SHALL PROVIDE THE ADULT FOSTER CARE FACILITY WITH A
2 WRITTEN REPORT OF THE CRIMINAL HISTORY CHECK. THE REPORT SHALL
3 CONTAIN ANY CRIMINAL HISTORY RECORD INFORMATION ON THE INDIVIDUAL
4 MAINTAINED BY THE DEPARTMENT OF STATE POLICE OR OTHER AUTHORIZED
5 LAW ENFORCEMENT AGENCY. THE DEPARTMENT OF STATE POLICE OR OTHER
6 AUTHORIZED LAW ENFORCEMENT AGENCY SHALL CERTIFY EACH REPORT
7 REQUIRED UNDER THIS SUBSECTION WITH AN OFFICIAL SEAL OR OTHER
8 SYMBOL OF AUTHENTICITY.

9 (5) IF AN ADULT FOSTER CARE FACILITY DETERMINES IT NECESSARY
10 TO EMPLOY AN INDIVIDUAL BEFORE RECEIVING THE RESULTS OF THE
11 INDIVIDUAL'S CRIMINAL HISTORY CHECK UNDER SUBSECTION (4), THE
12 ADULT FOSTER CARE FACILITY MAY CONDITIONALLY EMPLOY THE INDIVID-
13 UAL IF ALL OF THE FOLLOWING APPLY:

14 (A) THE ADULT FOSTER CARE FACILITY REQUESTS THE CRIMINAL
15 HISTORY CHECK UNDER SUBSECTION (4) BEFORE CONDITIONALLY EMPLOYING
16 THE INDIVIDUAL.

17 (B) THE INDIVIDUAL SIGNS A WRITTEN STATEMENT INDICATING ALL
18 OF THE FOLLOWING:

19 (i) THAT HE OR SHE HAS NOT BEEN CONVICTED OF 1 OR MORE OF
20 THE CRIMES THAT ARE DESCRIBED IN SUBSECTION (1)(A) AND (B) WITHIN
21 THE APPLICABLE TIME PERIOD PRESCRIBED BY SUBSECTION (1)(A) AND
22 (B).

23 (ii) THE INDIVIDUAL AGREES THAT, IF THE INFORMATION IN THE
24 CRIMINAL HISTORY CHECK CONDUCTED UNDER SUBSECTION (4) DOES NOT
25 CONFIRM THE INDIVIDUAL'S STATEMENT UNDER SUBPARAGRAPH (i), HIS OR
26 HER EMPLOYMENT WILL BE TERMINATED BY THE ADULT FOSTER CARE
27 FACILITY AS REQUIRED UNDER SUBSECTION (1).

1 (*iii*) THAT HE OR SHE UNDERSTANDS THE CONDITIONS DESCRIBED IN
2 SUBPARAGRAPHS (*i*) AND (*ii*) THAT RESULT IN THE TERMINATION OF HIS
3 OR HER EMPLOYMENT OR CLINICAL PRIVILEGES AND THAT THOSE CONDI-
4 TIONS ARE GOOD CAUSE FOR TERMINATION.

5 (6) NOT LATER THAN 90 DAYS AFTER THE EFFECTIVE DATE OF THE
6 AMENDATORY ACT THAT ADDED THIS SUBSECTION, THE DEPARTMENT OF CON-
7 SUMER AND INDUSTRY SERVICES SHALL DEVELOP AND DISTRIBUTE A MODEL
8 FORM FOR THE STATEMENT REQUIRED UNDER SUBSECTION (5)(B). THE
9 DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES SHALL MAKE THE MODEL
10 FORM AVAILABLE TO ADULT FOSTER CARE FACILITIES UPON REQUEST AT NO
11 CHARGE.

12 (7) IF AN INDIVIDUAL IS CONDITIONALLY EMPLOYED UNDER SUBSEC-
13 TION (5), AND THE REPORT DESCRIBED IN SUBSECTION (4) DOES NOT
14 CONFIRM THE INDIVIDUAL'S STATEMENT UNDER SUBSECTION (5)(B)(*i*),
15 THE ADULT FOSTER CARE FACILITY MAY TERMINATE THE INDIVIDUAL'S
16 EMPLOYMENT.

17 (8) AN INDIVIDUAL WHO KNOWINGLY PROVIDES FALSE INFORMATION
18 REGARDING A CRIMINAL CONVICTION ON A STATEMENT DESCRIBED IN SUB-
19 SECTION (5)(B)(*i*) IS GUILTY OF A MISDEMEANOR, PUNISHABLE BY
20 IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR A FINE OF NOT MORE THAN
21 \$500.00, OR BOTH.

22 (9) AN ADULT FOSTER CARE FACILITY SHALL USE CRIMINAL HISTORY
23 RECORD INFORMATION OBTAINED UNDER SUBSECTION (4) OR (5) ONLY FOR
24 THE PURPOSE OF EVALUATING AN INDIVIDUAL'S QUALIFICATIONS FOR
25 EMPLOYMENT IN THE POSITION FOR WHICH HE OR SHE HAS APPLIED AND
26 FOR THE PURPOSES OF SUBSECTIONS (5) AND (7). AN ADULT FOSTER
27 CARE FACILITY OR AN EMPLOYEE OF THE ADULT FOSTER CARE FACILITY

1 SHALL NOT DISCLOSE CRIMINAL HISTORY RECORD INFORMATION OBTAINED
2 UNDER SUBSECTION (4) OR (5) TO A PERSON WHO IS NOT DIRECTLY
3 INVOLVED IN EVALUATING THE INDIVIDUAL'S QUALIFICATIONS FOR
4 EMPLOYMENT OR INDEPENDENT CONTRACT.