

**SUBSTITUTE FOR
HOUSE BILL NO. 5184**

A bill to amend 1979 PA 218, entitled "Adult foster care facility licensing act," by amending sections 13, 22, and 36 (MCL 400.713, 400.722, and 400.736), sections 13 and 22 as amended by 1994 PA 150 and section 36 as added by 1984 PA 140, and by adding section 34a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 13. (1) A person, partnership, corporation,
2 association, or a department or agency of the state, county,
3 city, or other political subdivision shall not establish or
4 maintain an adult foster care facility unless licensed by the
5 department.

6 (2) Application for a license shall be made on forms provided
7 and in the manner prescribed by the department. The application
8 shall be accompanied by the fee prescribed in section 13a.

9 (3) Before issuing or renewing a license, the department

1 shall investigate the activities and standards of care of the
2 applicant and shall make an on-site evaluation of the facility.
3 On-site inspections conducted in response to the application may
4 be conducted without prior notice to the applicant. Subject to
5 subsections (9), (10), and (11), the department shall issue or
6 renew a license if satisfied as to all of the following:

7 (a) The financial stability of the facility.

8 (b) The applicant's compliance with this act and rules
9 promulgated under this act.

10 (c) The good moral character of the applicant, or owners,
11 partners, or directors of the facility, if other than an
12 individual. Each of these persons shall be not less than 18
13 years of age.

14 (d) The physical and emotional ability of the applicant, and
15 the person responsible for the daily operation of the facility to
16 operate an adult foster care facility.

17 (e) The good moral character of the person responsible for
18 the daily operations of the facility and all employees of the
19 facility. The applicant shall be responsible for assessing the
20 good moral character of the employees of the facility. The
21 person responsible for the daily operation of the facility shall
22 be not less than 18 years of age.

23 (4) The department shall require an applicant or a licensee
24 to disclose the names, addresses, and official positions of all
25 persons who have an ownership interest in the adult foster care
26 facility. If the adult foster care facility is located on or in
27 real estate that is leased, the applicant or licensee shall

House Bill No. 5184 as amended March 24, 2004

1 disclose the name of the lessor of the real estate and any direct
2 or indirect interest that the applicant or licensee has in the
3 lease other than as lessee.

4 (5) Each license shall state the maximum number of persons to
5 be received for foster care at 1 time.

6 (6) If applicable, a license shall state the type of
7 specialized program for which certification has been received
8 from the department <<of ~~mental health~~
9 >>.

10 (7) A license shall be issued to a specific person for a
11 facility at a specific location, shall be nontransferable, and
12 shall remain the property of the department. The prohibition
13 against transfer of a license to another location does not apply
14 if a licensee's adult foster care facility or home is closed as a
15 result of eminent domain proceedings, if the facility or home, as
16 relocated, otherwise meets the requirements of this act and the
17 rules promulgated under this act.

18 (8) An applicant or licensee proposing a sale of an adult
19 foster care facility or home to another owner shall provide the
20 department with advance notice of the proposed sale in writing.
21 The applicant or licensee and other parties to the sale shall
22 arrange to meet with specified department representatives and
23 shall obtain before the sale a determination of the items of
24 noncompliance with applicable law and rules that shall be
25 corrected. The department shall notify the respective parties of
26 the items of noncompliance before the change of ownership, shall
27 indicate that the items of noncompliance shall be corrected as a

1 condition of issuance of a license to the new owner, and shall
2 notify the prospective purchaser of all licensure requirements.

3 (9) The department shall not issue a license to or renew the
4 license of a person who has been convicted of a felony under this
5 act or under chapter XXA of the Michigan penal code, ~~Act No. 328~~
6 ~~of the Public Acts of 1931, being sections 750.145m to 750.145r~~
7 ~~of the Michigan Compiled Laws~~ **1931 PA 328, MCL 750.145m to**
8 **750.145r**. The department shall not issue a license to or renew
9 the license of a person who has been convicted of a misdemeanor
10 under this act or under chapter XXA of ~~Act No. 328 of the Public~~
11 ~~Acts of 1931~~ **the Michigan penal code, 1931 PA 328, MCL 750.145m**
12 **to 750.145r**, for a period of ~~5~~ 10 years after the conviction.

13 (10) If the department has revoked, suspended, or refused to
14 renew a person's license for an adult foster care facility
15 ~~pursuant~~ **according** to section 22, the department may refuse to
16 issue a license to or renew a license of that person for a period
17 of 5 years after the suspension, revocation, or nonrenewal of the
18 license.

19 (11) The department may refuse to issue a license to or renew
20 the license of an applicant if the department determines that the
21 applicant has a relationship with a former licensee whose license
22 under this act has been suspended, revoked, or nonrenewed under
23 subsection (9) or section 22 or a convicted person to whom a
24 license has been denied under subsection (9). This subsection
25 applies for 5 years after the suspension, revocation, or
26 nonrenewal of the former licensee's license or the denial of the
27 convicted person's license. For purposes of this subsection, an

1 applicant has a relationship with a former licensee or convicted
2 person if the former licensee or convicted person is involved
3 with the facility in 1 or more of the following ways:

4 (a) Participates in the administration or operation of the
5 facility.

6 (b) Has a financial interest in the operation of the
7 facility.

8 (c) Provides care to residents of the facility.

9 (d) Has contact with residents or staff on the premises of
10 the facility.

11 (e) Is employed by the facility.

12 (f) Resides in the facility.

13 (12) If the department determines that an unlicensed facility
14 is an adult foster care facility, the department shall notify the
15 owner or operator of the facility that it is required to be
16 licensed under this act. A person receiving the notification
17 required under this section who does not apply for a license
18 within 30 days is subject to the penalties described in
19 subsection (13).

20 (13) Subject to subsection (12), a person who violates
21 subsection (1) is guilty of a misdemeanor, punishable by
22 imprisonment for not more than 2 years or a fine of not more than
23 \$50,000.00, or both. A person who has been convicted of a
24 violation of subsection (1) who commits a second or subsequent
25 violation is guilty of a felony, punishable by imprisonment for
26 not more than 5 years or a fine of not more than \$75,000.00, or
27 both.

1 Sec. 22. (1) The department may deny, suspend, revoke, or
2 refuse to renew a license, or modify a regular license to a
3 provisional license, if the licensee falsifies information on the
4 application for license or willfully and substantially violates
5 this act, the rules promulgated under this act, or the terms of
6 the license.

7 (2) The department may suspend, revoke, or modify a license
8 of an applicant if the department determines that the applicant
9 has a relationship with a former licensee whose license under
10 this act has been suspended, revoked, or nonrenewed under this
11 section or section 13(9) or a convicted person to whom a license
12 has been denied under section 13(9). This subsection applies for
13 ~~5~~ 10 years after the suspension, revocation, or nonrenewal of
14 the former licensee's license or the denial of the convicted
15 person's license. As used in this subsection, an applicant has a
16 relationship with a former licensee or convicted person if the
17 former licensee or convicted person is involved with the facility
18 in 1 or more of the following ways:

19 (a) Participates in the administration or operation of the
20 facility.

21 (b) Has a financial interest in the operation of the
22 facility.

23 (c) Provides care to residents of the facility.

24 (d) Has contact with residents or staff on the premises of
25 the facility.

26 (e) Is employed by the facility.

27 (f) Resides in the facility.

1 (3) A license shall not be denied, suspended, or revoked, a
2 renewal shall not be refused, and a regular license shall not be
3 modified to a provisional license unless the department gives the
4 licensee or applicant written notice of the grounds of the
5 proposed denial, revocation, refusal to renew, or modification.
6 If the licensee or applicant appeals the denial, revocation,
7 refusal to renew, or modification by filing a written appeal with
8 the director within 30 days after receipt of the written notice,
9 the director or the director's designated representative shall
10 conduct a hearing at which the licensee or applicant may present
11 testimony and confront witnesses. Notice of the hearing shall be
12 given to the licensee or applicant by personal service or
13 delivery to the proper address by registered mail not less than 2
14 weeks before the date of the hearing. The decision of the
15 director shall be made and forwarded to the protesting party by
16 registered mail not more than 30 days after the hearing. If the
17 proposed denial, revocation, refusal to renew, or modification is
18 not protested within 30 days, the license shall be denied,
19 revoked, refused, or modified.

20 (4) If the department has revoked, suspended, or refused to
21 renew a license, the former licensee shall not receive or
22 maintain in that facility an adult who requires foster care. A
23 person who violates this subsection is guilty of a felony,
24 punishable by imprisonment for not more than 5 years or a fine of
25 not more than \$75,000.00, or both.

26 (5) If the department has revoked, suspended, or refused to
27 renew a license, relocation services shall be provided to adults

1 who were being served by the formerly licensed facility, upon the
2 department's determination that the adult or his or her
3 designated representative is unable to relocate the adult in
4 another facility without assistance. The relocation services
5 shall be provided by the responsible agency, as defined in
6 administrative rules, or, if the adult has no agency designated
7 as responsible, by the department.

8 (6) In the case of facilities that are operated under lease
9 with ~~the~~ a **state** department ~~of mental health~~ or a ~~county~~
10 community mental health **services** board, the department may issue
11 an emergency license for a 90-day period to avoid relocation of
12 residents following the revocation, suspension, or nonrenewal of
13 a license, if all of the following requirements are met:

14 (a) The leased physical plant is in substantial compliance
15 with all licensing requirements.

16 (b) The applicant for the emergency license is a licensee who
17 is in compliance with all applicable regulations under this act
18 and under contract with ~~the~~ a **state** department ~~of mental~~
19 ~~health~~ or a ~~county~~ community mental health **services** board to
20 operate the leased physical plant temporarily.

21 (c) The former licensee's access to the facility ~~pursuant~~
22 **according** to a lease, sublease, or contract has been lawfully
23 terminated by the owner or lessee of the facility.

24 **Sec. 34a. (1) In addition to the restrictions prescribed in**
25 **sections 13, 22, and 31, and except as otherwise provided in**
26 **subsection (2), an adult foster care facility shall not employ or**
27 **independently contract with an individual who regularly provides**

1 direct services to residents of the adult foster care facility
2 after the effective date of the amendatory act that added this
3 section if the individual has been convicted of 1 or more of the
4 following:

5 (a) A felony or an attempt or conspiracy to commit a felony
6 within the 15 years immediately preceding the date of application
7 for employment or the date of the execution of the independent
8 contract.

9 (b) A misdemeanor involving abuse, neglect, assault, battery,
10 or criminal sexual conduct or involving fraud or theft against a
11 vulnerable adult as that term is defined in section 145m of the
12 Michigan penal code, 1931 PA 328, MCL 750.145m, or a state or
13 federal crime that is substantially similar to a misdemeanor
14 described in this subdivision within the 10 years immediately
15 preceding the date of application for employment or the date of
16 the execution of the contract.

17 (c) An offense listed under R 400.1152 of the Michigan
18 administrative code.

19 (2) Except as otherwise provided in this subsection and
20 subsection (7), an adult foster care facility shall not employ or
21 independently contract with an individual who regularly provides
22 direct services to residents after the effective date of the
23 amendatory act that added this section until the adult foster
24 care facility complies with subsection (4), (5), or (6). This
25 subsection and subsection (1) do not apply to an individual who
26 is employed by or under contract to an adult foster care facility
27 before the effective date of the amendatory act that added this

1 subsection.

2 (3) An individual who applies for employment either as an
3 employee or as an independent contractor with an adult foster
4 care facility and has received a good faith offer of employment
5 or independent contract from the adult foster care facility shall
6 give written consent at the time of application for the
7 department of state police to conduct a criminal history check
8 under this section, along with identification acceptable to the
9 department of state police. If the department of state police or
10 equivalent state agency under subsection (6) has conducted a
11 criminal history check on the individual within the 24 months
12 immediately preceding the date of application and the individual
13 provides written consent for release of information for the
14 purposes of this section, the adult foster care facility may use
15 a copy of that criminal history check instead of obtaining
16 written consent and requesting a new criminal history check under
17 this section. If the individual is using a prior criminal
18 history check as described in this subsection, the adult foster
19 care facility shall accept the copy of the results of the
20 criminal history check only from the adult foster care facility
21 or health facility or agency that previously employed or
22 independently contracted with the individual.

23 (4) Upon receipt of the written consent and identification
24 required under subsection (3), if the individual has resided in
25 this state for 3 or more years preceding the good faith offer of
26 employment or independent contract, the adult foster care
27 facility that has made a good faith offer of employment or

1 independent contract shall make a request to the department of
2 state police to conduct a criminal history check on the
3 individual. The request shall be made in a manner prescribed by
4 the department of state police. The adult foster care facility
5 shall make the written consent and identification available to
6 the department of state police. If there is a charge for
7 conducting the criminal history check, the adult foster care
8 facility requesting the criminal history check shall pay the cost
9 of the charge. The adult foster care facility shall not seek
10 reimbursement for the charge from the individual who is the
11 subject of the criminal history check. The department of state
12 police shall conduct a criminal history check on the individual
13 named in the request. The department of state police shall
14 provide the adult foster care facility with a written report of
15 the criminal history check. The report shall contain any
16 criminal history record information on the individual maintained
17 by the department of state police. As a condition of employment,
18 an individual shall sign a written statement that he or she has
19 been a resident of this state for 3 or more years preceding the
20 good faith offer of employment or independent contract.

21 (5) Upon receipt of the written consent and identification
22 required under subsection (3), if the individual has applied for
23 employment either as an employee or as an independent contractor
24 with an adult foster care facility licensed for more than 6
25 persons and has resided in this state for less than 3 years
26 preceding the good faith offer of employment or independent
27 contract, the adult foster care facility that has made a good

1 faith offer of employment or independent contract shall comply
2 with subsection (4) and shall make a request to the department of
3 state police to forward the individual's fingerprints to the
4 federal bureau of investigation. The department of state police
5 shall request the federal bureau of investigation to make a
6 determination of the existence of any national criminal history
7 pertaining to the individual. An individual described in this
8 subsection shall provide the department of state police with 2
9 sets of fingerprints. The department of state police shall
10 complete the criminal history check under subsection (4) and,
11 except as otherwise provided in this subsection, provide the
12 results of its determination under subsection (4) to the adult
13 foster care facility and the results of the federal bureau of
14 investigation determination to the department of consumer and
15 industry services within 30 days after the request is made. If
16 the requesting adult foster care facility is not a state
17 department or agency and if a crime is disclosed on the federal
18 bureau of investigation determination, the department shall
19 notify the adult foster care facility in writing of the type of
20 crime disclosed on the federal bureau of investigation
21 determination without disclosing the details of the crime. The
22 charges for fingerprinting or a federal bureau of investigation
23 determination under this subsection shall be paid in the manner
24 required under subsection (4).

25 (6) Upon receipt of the written consent and identification
26 required under subsection (3), if the individual has applied for
27 employment either as an employee or as an independent contractor

1 with an adult foster care facility licensed for 6 persons or less
2 and has resided in this state for less than 3 years preceding the
3 good faith offer of employment or independent contract, the adult
4 foster care facility that has made the good faith offer of
5 employment or independent contract shall comply with subsection
6 (4) and shall make a request to the department of state police or
7 state agency responsible for maintaining statewide criminal
8 history information of all the states in which the individual
9 resided during the preceding 5 years to conduct a criminal
10 history check on the individual.

11 (7) If an adult foster care facility determines it necessary
12 to employ or independently contract with an individual before
13 receiving the results of the individual's criminal history check
14 required under this section, the adult foster care facility may
15 conditionally employ the individual if both of the following
16 apply:

17 (a) The adult foster care facility requests the criminal
18 history check required under this section, upon conditionally
19 employing the individual.

20 (b) The individual signs a written statement indicating all
21 of the following:

22 (i) That he or she has not been convicted of 1 or more of the
23 crimes that are described in subsection (1) (a) and (b) within the
24 applicable time period prescribed by subsection (1) (a) and (b).

25 (ii) The individual agrees that, if the information in the
26 criminal history check conducted under this section does not
27 confirm the individual's statement under subparagraph (i), his or

1 her employment will be terminated by the adult foster care
2 facility as required under subsection (1) unless and until the
3 individual can prove that the information is incorrect. The
4 adult foster care facility shall provide a copy of the results of
5 the criminal history check conducted under this section, to the
6 individual upon request.

7 (iii) That he or she understands the conditions described in
8 subparagraphs (i) and (ii) that result in the termination of his
9 or her employment and that those conditions are good cause for
10 termination.

11 (8) On the effective date of the amendatory act that added
12 this subsection, the department of consumer and industry services
13 shall develop and distribute a model form for the statement
14 required under subsection (7)(b). The department of consumer and
15 industry services shall make the model form available to adult
16 foster care facilities upon request at no charge.

17 (9) If an individual is conditionally employed under
18 subsection (7), and the report described in subsection (4), (5),
19 or (6), if applicable, does not confirm the individual's
20 statement under subsection (7)(b)(i), the adult foster care
21 facility shall terminate the individual's employment as required
22 by subsection (1).

23 (10) An individual who knowingly provides false information
24 regarding a criminal conviction on a statement described in
25 subsection (7)(b)(i) is guilty of a misdemeanor punishable by
26 imprisonment for not more than 90 days or a fine of not more than
27 \$500.00, or both.

1 (11) An adult foster care facility shall use criminal history
2 record information obtained under subsection (4), (5), or (6)
3 only for the purpose of evaluating an individual's qualifications
4 for employment in the position for which he or she has applied
5 and for the purposes of subsections (7) and (9). An adult foster
6 care facility or an employee of the adult foster care facility
7 shall not disclose criminal history record information obtained
8 under this section to a person who is not directly involved in
9 evaluating the individual's qualifications for employment or
10 independent contract. Upon written request from another adult
11 foster care facility or health facility or agency that is
12 considering employing or independently contracting with an
13 individual, an adult foster care facility that has obtained
14 criminal history record information under this section on that
15 individual shall share the information with the requesting adult
16 foster care facility or health facility or agency. Except for a
17 knowing or intentional release of false information, an adult
18 foster care facility has no liability in connection with a
19 background check conducted under this section or the release of
20 criminal history record information under this subsection.

21 (12) As a condition of continued employment, each employee or
22 independent contractor shall agree in writing to report to the
23 adult foster care facility immediately upon being arrested for or
24 convicted of 1 or more of the criminal offenses listed in
25 subsection (1)(a) and (b).

26 (13) As used in this section:

27 (a) "Health facility or agency" means a health facility or

1 agency as defined in section 20106 of the public health code,
2 1978 PA 368, MCL 333.20106.

3 (b) "Independent contract" means a contract entered into by
4 an adult foster care facility with an individual who provides the
5 contracted services independently or a contract entered into by
6 an adult foster care facility with an organization or agency that
7 employs or contracts with an individual after complying with the
8 requirements of this section to provide the contracted services
9 to the adult foster care facility on behalf of the organization
10 or agency.

11 Sec. 36. (1) An adult foster care family home may be
12 concurrently licensed as a foster family home or a foster family
13 group home. ~~Additional~~ **Except as provided in subsection (2),**
14 **additional** minor children who are not related to a resident of
15 the adult foster care family home shall not be received in the
16 adult foster care family home after the filing of an application
17 for a license ~~pursuant to~~ **under** this act.

18 (2) A licensee may receive a minor child placed in foster
19 care under the laws of this state after filing an application for
20 a license under this act. A placement under this subsection
21 shall be approved at the discretion of the director or his or her
22 designee and shall be based upon a recommendation by a licensed
23 child placing agency or an approved governmental unit and shall
24 be subject to appropriate terms and conditions determined by the
25 department.

26 (3) ~~(2)~~ As used in this section:

27 (a) "Foster family home" means that term as defined in

House Bill No. 5184 as amended March 24, 2004

1 section 1 of ~~Act No. 116 of the Public Acts of 1973, being~~
2 ~~section 722.111 of the Michigan Compiled Laws 1973 PA 116, MCL~~
3 ~~722.111.~~

4 (b) "Foster family group home" means that term as defined in
5 section 1 of ~~Act No. 116 of the Public Acts of 1973, being~~
6 ~~section 722.111 of the Michigan Compiled Laws 1973 PA 116, MCL~~
7 ~~722.111.~~

<<Enacting section 1. This amendatory act takes effect August 1,
2004.>>