

**SUBSTITUTE FOR
HOUSE BILL NO. 5795**

A bill to amend 1979 PA 218, entitled
"Adult foster care facility licensing act,"
by amending sections 9, 13, and 22 (MCL 400.709, 400.713, and
400.722), sections 13 and 22 as amended by 2004 PA 59, and by
adding section 27a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9. (1) The department shall administer this act and
2 shall require reports, establish procedures, make inspections,
3 and conduct investigations pursuant to law to enforce the
4 requirements of this act and the rules promulgated under this
5 act.

6 (2) The department shall provide advice and technical
7 assistance to facilities covered by this act to assist facilities
8 in meeting the requirements of this act and the rules promulgated
9 under this act. The department shall offer consultation, upon

1 request, in developing methods for the improvement of service.
2 The department shall cooperate with other state departments and
3 agencies and local units of government in administering this
4 act.

5 (3) The department shall provide education to the public
6 regarding the requirements of this act through the ongoing use of
7 mass media and other methods.

8 (4) If the department recommends, after conducting an
9 investigation or inspection, a change in the licensee's licensure
10 status, the department shall transmit a written or electronic
11 copy of that investigation or inspection report to the licensee
12 within 15 days after the investigation or inspection report is
13 completed.

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

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

22 (3) Before issuing or renewing a license, the department
23 shall investigate the activities and standards of care of the
24 applicant, ~~and~~ shall make an on-site evaluation of the
25 facility, and shall review the most recent investigation and
26 inspection reports and any written determinations or resolutions
27 made under section 23 or 24 concerning a complaint filed within

1 **the past 2 years.** On-site inspections conducted in response to
2 the application may be conducted without prior notice to the
3 applicant. Subject to subsections (9), (10), and (11), the
4 department shall issue or renew a license if satisfied as to all
5 of the following:

6 (a) The financial stability of the facility.

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

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

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

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

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

1 or indirect interest that the applicant or licensee has in the
2 lease other than as lessee.

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

5 (6) If applicable, a license shall state the type of
6 specialized program for which certification has been received
7 from the department.

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

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

1 (9) The department shall not issue a license to or renew the
2 license of a person who has been convicted of a felony under this
3 act or under chapter XXA of the Michigan penal code, 1931 PA 328,
4 MCL 750.145m to 750.145r. The department shall not issue a
5 license to or renew the license of a person who has been
6 convicted of a misdemeanor under this act or under chapter XXA of
7 the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r,
8 for a period of 10 years after the conviction.

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

15 (11) The department may refuse to issue a license to or renew
16 the license of an applicant if the department determines that the
17 applicant has a relationship with a former licensee whose license
18 under this act has been suspended, revoked, or nonrenewed under
19 subsection (9) or section 22 or a convicted person to whom a
20 license has been denied under subsection (9). This subsection
21 applies for 5 years after the suspension, revocation, or
22 nonrenewal of the former licensee's license or the denial of the
23 convicted person's license. For purposes of this subsection, an
24 applicant has a relationship with a former licensee or convicted
25 person if the former licensee or convicted person is involved
26 with the facility in 1 or more of the following ways:

27 (a) Participates in the administration or operation of the

1 facility.

2 (b) Has a financial interest in the operation of the
3 facility.

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

5 (d) Has contact with residents or staff on the premises of
6 the facility.

7 (e) Is employed by the facility.

8 (f) Resides in the facility.

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

16 (13) Subject to subsection (12), a person who violates
17 subsection (1) is guilty of a misdemeanor, punishable by
18 imprisonment for not more than 2 years or a fine of not more than
19 \$50,000.00, or both. A person who has been convicted of a
20 violation of subsection (1) who commits a second or subsequent
21 violation is guilty of a felony, punishable by imprisonment for
22 not more than 5 years or a fine of not more than \$75,000.00, or
23 both.

24 Sec. 22. (1) The department may deny, suspend, revoke, or
25 refuse to renew a license, or modify a regular license to a
26 provisional license, if the licensee falsifies information on the
27 application for license or willfully and substantially violates

1 this act, the rules promulgated under this act, or the terms of
2 the license.

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

15 (a) Participates in the administration or operation of the
16 facility.

17 (b) Has a financial interest in the operation of the
18 facility.

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

20 (d) Has contact with residents or staff on the premises of
21 the facility.

22 (e) Is employed by the facility.

23 (f) Resides in the facility.

24 (3) A license shall not be denied, suspended, or revoked, a
25 renewal shall not be refused, and a regular license shall not be
26 modified to a provisional license unless the department gives the
27 licensee or applicant written notice of the grounds of the

1 proposed denial, revocation, refusal to renew, or modification.
2 If a licensee or applicant receives a notice under this
3 subsection regarding a proposed change in its licensure status,
4 the licensee or applicant shall provide each resident and his or
5 her designated representative with a copy of the department's
6 summary report that recommended a change in the status of that
7 facility's license. If the licensee or applicant appeals the
8 denial, revocation, refusal to renew, or modification by filing a
9 written appeal with the director within 30 days after receipt of
10 the written notice, the director or the director's designated
11 representative shall conduct a hearing at which the licensee or
12 applicant may present testimony and confront witnesses. Notice
13 of the hearing shall be given to the licensee or applicant by
14 personal service or delivery to the proper address by registered
15 mail not less than 2 weeks before the date of the hearing. The
16 decision of the director shall be made and forwarded to the
17 protesting party by registered mail not more than 30 days after
18 the hearing. If the proposed denial, revocation, refusal to
19 renew, or modification is not protested within 30 days, the
20 license shall be denied, revoked, refused, or modified. As used
21 in this subsection, "designated representative" means a person,
22 other than the licensee or an employee or person having a direct
23 or indirect ownership interest in the facility, designated in
24 writing by a resident or a resident's guardian for a specific,
25 limited purpose or for general purposes, or, if a written
26 designation of a representative is not made, the guardian of the
27 resident.

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

7 (5) If the department has revoked, suspended, or refused to
8 renew a license, relocation services shall be provided to adults
9 who were being served by the formerly licensed facility, upon the
10 department's determination that the adult or his or her
11 designated representative is unable to relocate the adult in
12 another facility without assistance. The relocation services
13 shall be provided by the responsible agency, as defined in
14 administrative rules, or, if the adult has no agency designated
15 as responsible, by the department.

16 (6) In the case of facilities that are operated under lease
17 with a state department or a community mental health services
18 board, the department may issue an emergency license for a 90-day
19 period to avoid relocation of residents following the revocation,
20 suspension, or nonrenewal of a license, if all of the following
21 requirements are met:

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

24 (b) The applicant for the emergency license is a licensee who
25 is in compliance with all applicable regulations under this act
26 and under contract with a state department or a community mental
27 health services board to operate the leased physical plant

1 temporarily.

2 (c) The former licensee's access to the facility according to
3 a lease, sublease, or contract has been lawfully terminated by
4 the owner or lessee of the facility.

5 Sec. 27a. (1) A licensee shall provide each resident and
6 his or her designated representative with a copy of the most
7 recent final investigation report completed within the
8 immediately preceding 3 years and a copy of the most recent
9 inspection report upon admission to the facility.

10 (2) As used in this section, "designated representative"
11 means a person, other than the licensee or an employee or person
12 having a direct or indirect ownership interest in the facility,
13 designated in writing by a resident or a resident's guardian for
14 a specific, limited purpose or for general purposes, or, if a
15 written designation of a representative is not made, the guardian
16 of the resident.

17 Enacting section 1. This amendatory act does not take
18 effect unless House Bill No. 5794 of the 92nd Legislature is
19 enacted into law.