

HOUSE BILL No. 5166

September 13, 2005, Introduced by Reps. Newell, Zelenko, Vander Veen, Murphy, Vagnozzi, Shaffer, Lipsey, Byrum, Clack, Stahl, Meisner, Bieda, Gonzales, Plakas, Gleason and Leland 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 34b; and to repeal acts
and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 34B. (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 HAS DIRECT
5 ACCESS TO OR PROVIDES DIRECT SERVICES TO RESIDENTS OF THE ADULT
6 FOSTER CARE FACILITY AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT
7 THAT ADDED THIS SECTION IF 1 OR MORE OF THE FOLLOWING APPLY:
8 (A) THE INDIVIDUAL HAS BEEN CONVICTED OF A FELONY OR AN

1 ATTEMPT OR CONSPIRACY TO COMMIT A FELONY OTHER THAN A FELONY FOR A
2 RELEVANT CRIME DESCRIBED UNDER 42 USC 1320A-7 UNLESS 15 YEARS HAVE
3 LAPSED SINCE THE INDIVIDUAL COMPLETED ALL OF THE TERMS AND
4 CONDITIONS OF HIS OR HER SENTENCING, PAROLE, AND PROBATION FOR THAT
5 CONVICTION BEFORE THE DATE OF APPLICATION FOR EMPLOYMENT OR THE
6 DATE OF THE EXECUTION OF THE INDEPENDENT CONTRACT.

7 (B) THE INDIVIDUAL HAS BEEN CONVICTED OF A MISDEMEANOR, OTHER
8 THAN A MISDEMEANOR FOR A RELEVANT CRIME DESCRIBED UNDER 42 USC
9 1320A-7 INVOLVING ABUSE, NEGLECT, ASSAULT, BATTERY, OR CRIMINAL
10 SEXUAL CONDUCT OR INVOLVING FRAUD OR THEFT AGAINST A VULNERABLE
11 ADULT AS THAT TERM IS DEFINED IN SECTION 145M OF THE MICHIGAN PENAL
12 CODE, 1931 PA 328, MCL 750.145M, OR A STATE OR FEDERAL CRIME THAT
13 IS SUBSTANTIALLY SIMILAR TO A MISDEMEANOR DESCRIBED IN THIS
14 SUBDIVISION WITHIN THE 10 YEARS IMMEDIATELY PRECEDING THE DATE OF
15 APPLICATION FOR EMPLOYMENT OR THE DATE OF THE EXECUTION OF THE
16 CONTRACT.

17 (C) THE INDIVIDUAL HAS BEEN CONVICTED OF AN OFFENSE LISTED
18 UNDER R 400.1152 OF THE MICHIGAN ADMINISTRATIVE CODE.

19 (D) THE INDIVIDUAL HAS BEEN CONVICTED OF A RELEVANT CRIME
20 DESCRIBED UNDER 42 USC 1320A-7.

21 (E) THE INDIVIDUAL HAS BEEN THE SUBJECT OF A SUBSTANTIATED
22 FINDING OF NEGLECT, ABUSE, OR MISAPPROPRIATION OF PROPERTY BY THE
23 DEPARTMENT UNDER AN INVESTIGATION CONDUCTED IN ACCORDANCE WITH 42
24 USC 1395I-3 OR 1396R.

25 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION AND
26 SUBSECTION (7), AN ADULT FOSTER CARE FACILITY SHALL NOT EMPLOY OR
27 INDEPENDENTLY CONTRACT WITH AN INDIVIDUAL WHO REGULARLY HAS DIRECT

1 ACCESS TO OR PROVIDES DIRECT SERVICES TO RESIDENTS AFTER THE
2 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION UNTIL
3 THE ADULT FOSTER CARE FACILITY COMPLIES WITH SUBSECTION (4). EXCEPT
4 AS OTHERWISE PROVIDED, THIS SUBSECTION AND SUBSECTION (1) DO NOT
5 APPLY TO AN INDIVIDUAL WHO IS EMPLOYED BY OR UNDER CONTRACT TO AN
6 ADULT FOSTER CARE FACILITY BEFORE THE EFFECTIVE DATE OF THE
7 AMENDATORY ACT THAT ADDED THIS SECTION. AN INDIVIDUAL WHO IS EXEMPT
8 UNDER THIS SUBSECTION IS NOT LIMITED TO WORKING WITHIN THE ADULT
9 FOSTER CARE FACILITY WITH WHICH HE OR SHE IS EMPLOYED BY OR UNDER
10 INDEPENDENT CONTRACT WITH ON THE EFFECTIVE DATE OF THE AMENDATORY
11 ACT THAT ADDED THIS SECTION. THAT INDIVIDUAL MAY TRANSFER TO
12 ANOTHER ADULT FOSTER CARE FACILITY WITHOUT A CRIMINAL HISTORY CHECK
13 BEING CONDUCTED IN ACCORDANCE WITH THIS SUBSECTION AND SUBSECTION
14 (1). IF THE INDIVIDUAL IS SUBSEQUENTLY CONVICTED OF A CRIME OR
15 OFFENSE DESCRIBED UNDER SUBSECTION (1)(A), (B), (C), OR (D) OR
16 FOUND TO BE THE SUBJECT OF A SUBSTANTIATED FINDING DESCRIBED UNDER
17 SUBSECTION (1)(E), HE OR SHE IS SUBJECT TO THE REQUIREMENTS OF THIS
18 SUBSECTION AND SUBSECTION (1) AND MAY BE DENIED EMPLOYMENT.

19 (3) AN INDIVIDUAL WHO APPLIES FOR EMPLOYMENT EITHER AS AN
20 EMPLOYEE OR AS AN INDEPENDENT CONTRACTOR WITH AN ADULT FOSTER CARE
21 FACILITY AND HAS RECEIVED A GOOD FAITH OFFER OF EMPLOYMENT OR
22 INDEPENDENT CONTRACT FROM THE ADULT FOSTER CARE FACILITY SHALL GIVE
23 WRITTEN CONSENT AT THE TIME OF APPLICATION FOR THE DEPARTMENT OF
24 STATE POLICE TO CONDUCT A CRIMINAL HISTORY CHECK UNDER THIS
25 SECTION, ALONG WITH IDENTIFICATION ACCEPTABLE TO THE DEPARTMENT OF
26 STATE POLICE.

27 (4) UPON RECEIPT OF THE WRITTEN CONSENT AND IDENTIFICATION

1 REQUIRED UNDER SUBSECTION (3), THE ADULT FOSTER CARE FACILITY THAT
2 HAS MADE A GOOD FAITH OFFER OF EMPLOYMENT OR INDEPENDENT CONTRACT
3 SHALL MAKE A REQUEST TO THE DEPARTMENT OF STATE POLICE TO CONDUCT A
4 CRIMINAL HISTORY CHECK ON THE INDIVIDUAL AND TO FORWARD THE
5 INDIVIDUAL'S FINGERPRINTS TO THE FEDERAL BUREAU OF INVESTIGATION.
6 THE DEPARTMENT OF STATE POLICE SHALL REQUEST THE FEDERAL BUREAU OF
7 INVESTIGATION TO MAKE A DETERMINATION OF THE EXISTENCE OF ANY
8 NATIONAL CRIMINAL HISTORY PERTAINING TO THE INDIVIDUAL. THE
9 INDIVIDUAL SHALL PROVIDE THE DEPARTMENT OF STATE POLICE WITH A SET
10 OF FINGERPRINTS. THE REQUEST SHALL BE MADE IN A MANNER PRESCRIBED
11 BY THE DEPARTMENT OF STATE POLICE. THE ADULT FOSTER CARE FACILITY
12 SHALL MAKE THE WRITTEN CONSENT AND IDENTIFICATION AVAILABLE TO THE
13 DEPARTMENT OF STATE POLICE. THE ADULT FOSTER CARE FACILITY SHALL
14 REQUEST THE DEPARTMENT TO CONDUCT A CHECK OF ALL RELEVANT
15 REGISTRIES ESTABLISHED ACCORDING TO FEDERAL REGULATIONS FOR ANY
16 SUBSTANTIATED FINDINGS OF ABUSE, NEGLECT, OR MISAPPROPRIATION OF
17 PROPERTY. IF THERE IS A CHARGE FOR CONDUCTING THE CRIMINAL HISTORY
18 CHECK, THE ADULT FOSTER CARE FACILITY REQUESTING THE CRIMINAL
19 HISTORY CHECK SHALL PAY THE COST OF THE CHARGE. THE ADULT FOSTER
20 CARE FACILITY SHALL NOT SEEK REIMBURSEMENT FOR THE CHARGE FROM THE
21 INDIVIDUAL WHO IS THE SUBJECT OF THE CRIMINAL HISTORY CHECK. THE
22 DEPARTMENT OF STATE POLICE SHALL CONDUCT A CRIMINAL HISTORY CHECK
23 ON THE INDIVIDUAL NAMED IN THE REQUEST. THE DEPARTMENT OF STATE
24 POLICE SHALL PROVIDE THE ADULT FOSTER CARE FACILITY WITH A WRITTEN
25 REPORT OF THE CRIMINAL HISTORY CHECK. THE REPORT SHALL CONTAIN ANY
26 CRIMINAL HISTORY RECORD INFORMATION ON THE INDIVIDUAL MAINTAINED BY
27 THE DEPARTMENT OF STATE POLICE. THE DEPARTMENT OF STATE POLICE

1 SHALL PROVIDE THE RESULTS OF THE FEDERAL BUREAU OF INVESTIGATION
2 DETERMINATION TO THE DEPARTMENT WITHIN 30 DAYS AFTER THE REQUEST IS
3 MADE. IF THE REQUESTING ADULT FOSTER CARE FACILITY IS NOT A STATE
4 DEPARTMENT OR AGENCY AND IF A CRIMINAL CONVICTION IS DISCLOSED ON
5 THE FEDERAL BUREAU OF INVESTIGATION DETERMINATION, THE DEPARTMENT
6 SHALL NOTIFY THE ADULT FOSTER CARE FACILITY AND THE INDIVIDUAL WHO
7 IS THE SUBJECT OF THE FEDERAL BUREAU OF INVESTIGATION DETERMINATION
8 IN WRITING OF THE TYPE OF CRIMINAL CONVICTION DISCLOSED ON THE
9 FEDERAL BUREAU OF INVESTIGATION DETERMINATION WITHOUT DISCLOSING
10 THE DETAILS OF THE CRIMINAL CONVICTION. THE CHARGES FOR
11 FINGERPRINTING OR A FEDERAL BUREAU OF INVESTIGATION DETERMINATION
12 UNDER THIS SUBSECTION SHALL BE PAID IN THE MANNER REQUIRED UNDER
13 THIS SUBSECTION. THE NOTICE SHALL INCLUDE A STATEMENT THAT THE
14 INDIVIDUAL HAS A RIGHT TO APPEAL A DECISION MADE BY THE ADULT
15 FOSTER CARE FACILITY REGARDING HIS OR HER EMPLOYMENT ELIGIBILITY
16 BASED ON THE CRIMINAL BACKGROUND CHECK. THE NOTICE SHALL INCLUDE
17 INFORMATION REGARDING WHERE TO FILE THE APPEAL AND INFORMATION
18 DESCRIBING THE APPELLATE PROCEDURES ESTABLISHED UNDER SECTION
19 20173B OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.20173B.

20 (5) IF AN ADULT FOSTER CARE FACILITY DETERMINES IT NECESSARY
21 TO EMPLOY OR INDEPENDENTLY CONTRACT WITH AN INDIVIDUAL BEFORE
22 RECEIVING THE RESULTS OF THE INDIVIDUAL'S CRIMINAL HISTORY CHECK
23 REQUIRED UNDER THIS SECTION, THE ADULT FOSTER CARE FACILITY MAY
24 CONDITIONALLY EMPLOY THE INDIVIDUAL IF BOTH OF THE FOLLOWING APPLY:

25 (A) THE ADULT FOSTER CARE FACILITY REQUESTS THE CRIMINAL
26 HISTORY CHECK REQUIRED UNDER THIS SECTION, UPON CONDITIONALLY
27 EMPLOYING THE INDIVIDUAL.

1 (B) THE INDIVIDUAL SIGNS A WRITTEN STATEMENT INDICATING ALL OF
2 THE FOLLOWING:

3 (i) THAT HE OR SHE HAS NOT BEEN CONVICTED OF 1 OR MORE OF THE
4 CRIMES THAT ARE DESCRIBED IN SUBSECTION (1)(A), (B), (C), AND (D)
5 WITHIN THE APPLICABLE TIME PERIOD PRESCRIBED BY SUBSECTION (1)(A)
6 AND (B).

7 (ii) THAT HE OR SHE HAS NOT BEEN THE SUBJECT OF A SUBSTANTIATED
8 FINDING AS DESCRIBED IN SUBSECTION (1)(E).

9 (iii) THE INDIVIDUAL AGREES THAT, IF THE INFORMATION IN THE
10 CRIMINAL HISTORY CHECK CONDUCTED UNDER THIS SECTION DOES NOT
11 CONFIRM THE INDIVIDUAL'S STATEMENTS UNDER SUBPARAGRAPHS (i) AND (ii),
12 HIS OR HER EMPLOYMENT WILL BE TERMINATED BY THE ADULT FOSTER CARE
13 FACILITY AS REQUIRED UNDER SUBSECTION (1) UNLESS AND UNTIL THE
14 INDIVIDUAL APPEALS AND CAN PROVE THAT THE INFORMATION IS INCORRECT.
15 THE ADULT FOSTER CARE FACILITY SHALL PROVIDE A COPY OF THE RESULTS
16 OF THE CRIMINAL HISTORY CHECK CONDUCTED UNDER THIS SECTION TO THE
17 INDIVIDUAL.

18 (iv) THAT HE OR SHE UNDERSTANDS THE CONDITIONS DESCRIBED IN
19 SUBPARAGRAPHS (i), (ii), AND (iii) THAT RESULT IN THE TERMINATION OF
20 HIS OR HER EMPLOYMENT AND THAT THOSE CONDITIONS ARE GOOD CAUSE FOR
21 TERMINATION.

22 (6) ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
23 THIS SECTION, THE DEPARTMENT SHALL DEVELOP AND DISTRIBUTE A MODEL
24 FORM FOR THE STATEMENT REQUIRED UNDER SUBSECTION (5)(B). THE
25 DEPARTMENT SHALL MAKE THE MODEL FORM AVAILABLE TO ADULT FOSTER CARE
26 FACILITIES UPON REQUEST AT NO CHARGE.

27 (7) IF AN INDIVIDUAL IS CONDITIONALLY EMPLOYED UNDER THIS

1 SECTION, AND THE REPORT DESCRIBED IN SUBSECTION (4), IF APPLICABLE,
2 DOES NOT CONFIRM THE INDIVIDUAL'S STATEMENT UNDER SUBSECTION
3 (5)(B)(i) OR (ii), THE ADULT FOSTER CARE FACILITY SHALL TERMINATE THE
4 INDIVIDUAL'S EMPLOYMENT AS REQUIRED BY SUBSECTION (1).

5 (8) AN INDIVIDUAL WHO KNOWINGLY PROVIDES FALSE INFORMATION
6 REGARDING A CRIMINAL CONVICTION ON A STATEMENT DESCRIBED IN
7 SUBSECTION (5)(B)(i) OR (ii) IS GUILTY OF A MISDEMEANOR PUNISHABLE BY
8 IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN
9 \$1,000.00, OR BOTH.

10 (9) AN ADULT FOSTER CARE FACILITY SHALL USE CRIMINAL HISTORY
11 RECORD INFORMATION OBTAINED UNDER THIS SECTION ONLY FOR THE PURPOSE
12 OF EVALUATING AN INDIVIDUAL'S QUALIFICATIONS FOR EMPLOYMENT IN THE
13 POSITION FOR WHICH HE OR SHE HAS APPLIED AND FOR THE PURPOSES OF
14 SUBSECTIONS (5) AND (7). AN ADULT FOSTER CARE FACILITY OR AN
15 EMPLOYEE OF THE ADULT FOSTER CARE FACILITY SHALL NOT DISCLOSE
16 CRIMINAL HISTORY RECORD INFORMATION OBTAINED UNDER THIS SECTION TO
17 A PERSON WHO IS NOT DIRECTLY INVOLVED IN EVALUATING THE
18 INDIVIDUAL'S QUALIFICATIONS FOR EMPLOYMENT OR INDEPENDENT CONTRACT.
19 AN INDIVIDUAL WHO KNOWINGLY USES OR DISSEMINATES THE CRIMINAL
20 HISTORY RECORD INFORMATION OBTAINED UNDER THIS SECTION IN VIOLATION
21 OF THIS SUBSECTION IS GUILTY OF A MISDEMEANOR PUNISHABLE BY
22 IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN
23 \$1,000.00, OR BOTH. AN INDIVIDUAL WHO SUFFERS INJURY AS A RESULT OF
24 A VIOLATION OF THIS SUBSECTION MAY BRING A CIVIL CAUSE OF ACTION
25 FOR DAMAGES AGAINST THE PERSON WHO VIOLATES THIS SUBSECTION. UPON
26 WRITTEN REQUEST FROM ANOTHER ADULT FOSTER CARE FACILITY OR HEALTH
27 FACILITY OR AGENCY THAT IS CONSIDERING EMPLOYING OR INDEPENDENTLY

1 CONTRACTING WITH AN INDIVIDUAL, AN ADULT FOSTER CARE FACILITY THAT
2 HAS OBTAINED CRIMINAL HISTORY RECORD INFORMATION UNDER THIS SECTION
3 ON THAT INDIVIDUAL SHALL SHARE, WITH THE INDIVIDUAL'S CONSENT, THE
4 INFORMATION WITH THE REQUESTING ADULT FOSTER CARE FACILITY OR
5 HEALTH FACILITY OR AGENCY. EXCEPT FOR A KNOWING OR INTENTIONAL
6 RELEASE OF FALSE INFORMATION, AN ADULT FOSTER CARE FACILITY HAS NO
7 LIABILITY IN CONNECTION WITH THE RELEASE OF CRIMINAL HISTORY RECORD
8 INFORMATION UNDER THIS SUBSECTION.

9 (10) AS A CONDITION OF CONTINUED EMPLOYMENT, EACH EMPLOYEE OR
10 INDEPENDENT CONTRACTOR SHALL AGREE IN WRITING TO REPORT TO THE
11 ADULT FOSTER CARE FACILITY IMMEDIATELY UPON EITHER OF THE
12 FOLLOWING:

13 (A) BEING CONVICTED OF 1 OR MORE OF THE CRIMINAL OFFENSES
14 LISTED IN SUBSECTION (1)(A), (B), (C), AND (D).

15 (B) BEING THE SUBJECT OF A SUBSTANTIATED FINDING OF NEGLECT,
16 ABUSE, OR MISAPPROPRIATION OF PROPERTY AS DESCRIBED IN SUBSECTION
17 (1)(E).

18 (11) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY
19 ACT THAT ADDED THIS SECTION, THE DEPARTMENT SHALL SUBMIT A WRITTEN
20 REPORT TO THE LEGISLATURE REGARDING THE IMPACT AND EFFECTIVENESS OF
21 THIS AMENDATORY ACT AND ON THE FEASIBILITY OF IMPLEMENTING CRIMINAL
22 HISTORY CHECKS ON VOLUNTEERS WHO WORK IN ADULT FOSTER CARE
23 FACILITIES AND ON STATE AGENCY EMPLOYEES WHO ARE INVOLVED IN THE
24 LICENSING OF ADULT FOSTER CARE FACILITIES AND REGULATION OF THOSE
25 EMPLOYEES.

26 (12) 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, 1978
2 PA 368, MCL 333.20106.

3 (B) "INDEPENDENT CONTRACT" MEANS A CONTRACT ENTERED INTO BY AN
4 ADULT FOSTER CARE FACILITY WITH AN INDIVIDUAL WHO PROVIDES THE
5 CONTRACTED SERVICES INDEPENDENTLY OR A CONTRACT ENTERED INTO BY AN
6 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 TO
9 THE ADULT FOSTER CARE FACILITY ON BEHALF OF THE ORGANIZATION OR
10 AGENCY.

11 Enacting section 1. Section 34a is repealed effective 60 days
12 after the department secures the necessary waiver, and files a
13 written notice, as provided under enacting section 2.

14 Enacting section 2. Section 34b of the adult foster care
15 facility licensing act, 1979 PA 218, MCL 400.734b, as added by this
16 amendatory act, takes effect 60 days after the department secures
17 federal approval of the necessary waivers to utilize federal funds
18 to reimburse adult foster care facilities for the costs incurred
19 for requesting a national criminal history check to be conducted by
20 the federal bureau of investigation and files with the secretary of
21 state a written notice that the federal approval has been secured.

22 Enacting section 3. This amendatory act does not take effect
23 unless Senate Bill No.____ or House Bill No. 5168(request no.
24 03756'05) of the 93rd Legislature is enacted into law.