

SENATE BILL No. 505

May 17, 2005, Introduced by Senators OLSHOVE, CHERRY, BRATER, BERNERO, GOSCHKA, JACOBS, BARCIA, SCOTT, SWITALSKI, SCHAUER and TOY and referred to the Committee on Families and Human Services.

A bill to amend 1979 PA 218, entitled
"Adult foster care facility licensing act,"
by amending section 13 (MCL 400.713), as amended by 2004 PA 281.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

1 investigate the activities and standards of care of the applicant
2 and shall make an on-site evaluation of the facility. On-site
3 inspections conducted in response to the application may be
4 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 years
13 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 the
18 daily operations of the facility and all employees of the facility.
19 The applicant shall be responsible for assessing the good moral
20 character of the employees of the facility. The person responsible
21 for the daily operation of the facility shall be not less than 18
22 years of age.

23 (4) The department shall require an applicant or a licensee to
24 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

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 from
8 the department.

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

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

1 purchaser of all licensure requirements.

2 (9) The department shall not issue a license to or renew the
3 license of ~~a person who~~ **AN APPLICANT IF THE INDIVIDUAL APPLICANT,**
4 **OR THE OWNER, PARTNER, OR DIRECTOR OF THE APPLICANT, IF OTHER THAN**
5 **AN INDIVIDUAL,** has been convicted of ~~a~~ **1 OR MORE OF THE**
6 **FOLLOWING:**

7 (A) A felony under this act or under chapter XXA of the
8 Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r. ~~The~~
9 ~~department shall not issue a license to or renew the license of a~~
10 ~~person who has been convicted of a~~

11 (B) A FELONY OR ATTEMPT OR CONSPIRACY TO COMMIT A FELONY
12 WITHIN THE 15 YEARS IMMEDIATELY PRECEDING THE APPLICATION.

13 (C) A misdemeanor under this act or under chapter XXA of the
14 Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r, ~~for a~~
15 ~~period of~~ **WITHIN THE 10 years after the conviction IMMEDIATELY**
16 **PRECEDING THE APPLICATION.**

17 (D) A MISDEMEANOR INVOLVING ABUSE, NEGLECT, ASSAULT, BATTERY,
18 OR CRIMINAL SEXUAL CONDUCT OR INVOLVING FRAUD OR THEFT AGAINST A
19 VULNERABLE ADULT AS THAT TERM IS DEFINED IN SECTION 145M OF THE
20 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.145M, OR A STATE OR
21 FEDERAL CRIME THAT IS SUBSTANTIALLY SIMILAR TO A MISDEMEANOR
22 DESCRIBED IN THIS SUBDIVISION WITHIN THE 10 YEARS IMMEDIATELY
23 PRECEDING THE APPLICATION.

24 (E) AN OFFENSE LISTED UNDER R 400.1152 OF THE MICHIGAN
25 ADMINISTRATIVE CODE.

26 (10) If the department has revoked, suspended, or refused to
27 renew a person's license for an adult foster care facility

1 according to section 22, the department may refuse to issue a
2 license to or renew a license of that person for a period of 5
3 years after the suspension, revocation, or nonrenewal of the
4 license.

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

17 (a) Participates in the administration or operation of the
18 facility.

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

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

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

23 (e) Is employed by the facility.

24 (f) Resides in the facility.

25 (12) If the department determines that an unlicensed facility
26 is an adult foster care facility, the department shall notify the
27 owner or operator of the facility that it is required to be

1 licensed under this act. A person receiving the notification
2 required under this section who does not apply for a license within
3 30 days is subject to the penalties described in subsection (13).

4 (13) Subject to subsection (12), a person who violates
5 subsection (1) is guilty of a misdemeanor, punishable by
6 imprisonment for not more than 2 years or a fine of not more than
7 \$50,000.00, or both. A person who has been convicted of a violation
8 of subsection (1) who commits a second or subsequent violation is
9 guilty of a felony, punishable by imprisonment for not more than 5
10 years or a fine of not more than \$75,000.00, or both.

11 (14) Beginning ~~the effective date of the amendatory act that~~
12 ~~added this subsection~~ **JULY 23, 2004**, the department shall issue an
13 initial or renewal license not later than 6 months after the
14 applicant files a completed application. Receipt of the application
15 is considered the date the application is received by any agency or
16 department of this state. If the application is considered
17 incomplete by the department, the department shall notify the
18 applicant in writing or make notice electronically available within
19 30 days after receipt of the incomplete application, describing the
20 deficiency and requesting additional information. If the department
21 identifies a deficiency or requires the fulfillment of a corrective
22 action plan, the 6-month period is tolled until either of the
23 following occurs:

24 (a) Upon notification by the department of a deficiency, until
25 the date the requested information is received by the department.

26 (b) Upon notification by the department that a corrective
27 action plan is required, until the date the department determines

1 the requirements of the corrective action plan have been met.

2 (15) The determination of the completeness of an application
3 does not operate as an approval of the application for the license
4 and does not confer eligibility of an applicant determined
5 otherwise ineligible for issuance of a license.

6 (16) If the department fails to issue or deny a license within
7 the time required by this section, the department shall return the
8 license fee and shall reduce the license fee for the applicant's
9 next renewal application, if any, by 15%. Failure to issue or deny
10 a license within the time period required under this section does
11 not allow the department to otherwise delay processing an
12 application. The completed application shall be placed in sequence
13 with other completed applications received at that same time. The
14 department shall not discriminate against an applicant in the
15 processing of an application based on the fact that the application
16 fee was refunded or discounted under this subsection.

17 (17) If, on a continual basis, inspections performed by a
18 local health department delay the department in issuing or denying
19 licenses under this act within the 6-month period, the department
20 may use department staff to complete the inspections instead of the
21 local health department causing the delays.

22 (18) Beginning October 1, 2005, the director of the department
23 shall submit a report by December 1 of each year to the standing
24 committees and appropriations subcommittees of the senate and house
25 of representatives concerned with human services issues. The
26 director shall include all of the following information in the
27 report concerning the preceding fiscal year:

1 (a) The number of initial and renewal applications the
2 department received and completed within the 6-month time period
3 described in subsection (14).

4 (b) The number of applications requiring a request for
5 additional information.

6 (c) The number of applications rejected.

7 (d) The number of licenses not issued within the 6-month
8 period.

9 (e) The average processing time for initial and renewal
10 licenses granted after the 6-month period.

11 (19) As used in this section, "completed application" means an
12 application complete on its face and submitted with any applicable
13 licensing fees as well as any other information, records, approval,
14 security, or similar item required by law or rule from a local unit
15 of government, a federal agency, or a private entity but not from
16 another department or agency of this state. Beginning October 1,
17 2005, a completed application does not include a health inspection
18 performed by a local health department.