

SENATE BILL No. 621

June 21, 2005, Introduced by Senators BIRKHOLZ, CROPSEY, GILBERT, PATTERSON, STAMAS, TOY and ALLEN and referred to the Committee on Senior Citizens and Veterans Affairs.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 20173 (MCL 333.20173), as added by 2002 PA 303.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20173. (1) Except as otherwise provided in subsection
2 (2), a health facility or agency that is a nursing home, county
3 medical care facility, or home for the aged shall not employ,
4 independently contract with, or grant clinical privileges to an
5 individual who ~~regularly provides direct services to patients or~~
6 ~~residents in the health facility or agency after the effective date~~
7 ~~of the amendatory act that added this section if the individual has~~
8 ~~been convicted of~~ **SATISFIES** 1 or more of the following:

1 (a) ~~—A—~~ **HAS BEEN CONVICTED OF A** felony or an attempt or
2 conspiracy to commit a felony within the 15 years immediately
3 preceding the date of application for employment or clinical
4 privileges or the date of the execution of the independent
5 contract.

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

15 (c) **IS THE SUBJECT OF AN ORDER OR DISPOSITION UNDER ANY OF THE**
16 **FOLLOWING:**

17 (i) **SECTION 464A OF THE MENTAL HEALTH CODE, 1974 PA 258, MCL**
18 **330.1464A.**

19 (ii) **SECTION 5107 OF THE ESTATES AND PROTECTED INDIVIDUALS**
20 **CODE, 1998 PA 386, MCL 700.5107.**

21 (iii) **SECTIONS 2950 AND 2950A OF THE REVISED JUDICATURE ACT OF**
22 **1961, 1961 PA 236, MCL 600.2950 AND 600.2950A.**

23 (iv) **SECTION 16B OF CHAPTER IX OF THE CODE OF CRIMINAL**
24 **PROCEDURE, 1927 PA 175, MCL 769.16B.**

25 (d) **HAS BEEN FOUND NOT GUILTY BUT MENTALLY ILL OF ANY CRIME**
26 **AND HAS OFFERED A PLEA OF NOT GUILTY OF, OR BEEN ACQUITTED OF, ANY**
27 **CRIME BY REASON OF INSANITY.**

1 (E) HAS BEEN SUBJECT TO AN ORDER OF INVOLUNTARY COMMITMENT IN
2 AN INPATIENT OR OUTPATIENT SETTING DUE TO MENTAL ILLNESS.

3 (F) HAS A DIAGNOSED MENTAL ILLNESS AT THE TIME THE APPLICATION
4 IS MADE REGARDLESS OF WHETHER HE OR SHE IS RECEIVING TREATMENT FOR
5 THAT ILLNESS.

6 (G) IS UNDER A COURT ORDER OF LEGAL INCAPACITY IN THIS STATE
7 OR ELSEWHERE.

8 (2) Except as otherwise provided in this subsection and
9 subsection (5), a health facility or agency that is a nursing home,
10 county medical care facility, or home for the aged shall not
11 employ, independently contract with, or grant privileges to an
12 individual ~~who regularly provides direct services to patients or~~
13 ~~residents in the health facility or agency after the effective date~~
14 ~~of the amendatory act that added this section~~ until the health
15 facility or agency complies with subsection (4) or (5), or both.
16 ~~This subsection and subsection (1) do not apply to an individual~~
17 ~~who is employed by, under independent contract to, or granted~~
18 ~~clinical privileges in a health facility or agency before the~~
19 ~~effective date of the amendatory act that added this section.~~

20 (3) An individual who applies for employment either as an
21 employee or as an independent contractor or for clinical privileges
22 with a health facility or agency that is a nursing home, county
23 medical care facility, or home for the aged and has received a good
24 faith offer of employment, an independent contract, or clinical
25 privileges from the health facility or agency shall give written
26 consent at the time of application for the department of state
27 police to conduct ~~a~~ **ANNUAL** criminal history ~~check~~ **CHECKS** under

subsection (4) or (5), or both, along with identification acceptable to the department of state police. If the department of state police has conducted a criminal history check on the applicant within the ~~24~~ 12 months immediately preceding the date of application and the applicant provides written consent for the release of information for the purposes of this section, the health facility or agency may use a copy of the results of that criminal history check instead of obtaining written consent and requesting a new criminal history check under this subsection, and under subsections (4) and (5), or both. If the applicant is using a prior criminal history check as described in this subsection, the health facility or agency shall accept the copy of the results of the criminal history check only from the health facility or agency or adult foster care facility that previously employed or granted clinical privileges to the applicant or from the firm or agency that independently contracts with the applicant.

(4) Upon receipt of the written consent and identification required under subsection (3), if an applicant has resided in this state for 3 or more years preceding the good faith offer of employment, an independent contract, or clinical privileges, a health facility or agency that is a nursing home, county medical care facility, or home for the aged that has made a good faith offer of employment or an independent contract or clinical privileges to the applicant shall make ~~a~~ **AN ANNUAL** request to the department of state police to conduct a criminal history check on the applicant. The request shall be made in a manner prescribed by the department of state police. The health facility or agency shall

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

17 (5) Upon receipt of the written consent and identification
18 required under subsection (3), if an applicant has resided in this
19 state for less than 3 years preceding the good faith offer of
20 employment, an independent contract, or clinical privileges, a
21 health facility or agency that is a nursing home, county medical
22 care facility, or home for the aged that has made a good faith
23 offer described in this subsection to the applicant shall comply
24 with subsection (4) and shall make a request to the department of
25 state police to forward the applicant's fingerprints to the federal
26 bureau of investigation. The department of state police shall
27 request the federal bureau of investigation to make a determination

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

19 (6) If a health facility or agency that is a nursing home,
20 county medical care facility, or home for the aged determines it
21 necessary to employ or grant clinical privileges to an applicant
22 before receiving the results of the applicant's criminal history
23 check under subsection (4) or (5), or both, the health facility or
24 agency may conditionally employ or grant conditional clinical
25 privileges to the individual if all of the following apply:

26 (a) The health facility or agency requests the criminal
27 history check under subsection (4) or (5), or both, upon

1 conditionally employing or conditionally granting clinical
2 privileges to the individual.

3 (b) The individual signs a statement in writing that indicates
4 all of the following:

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

8 **(ii) THAT HE OR SHE HAS NOT BEEN THE SUBJECT OF AN ORDER OR**
9 **DISPOSITION DESCRIBED IN SUBSECTION (1)(C).**

10 **(iii) THAT HE OR SHE DOES NOT FALL WITHIN ANY OF THE CATEGORIES**
11 **DESCRIBED UNDER SUBSECTION (1)(D), (E), (F), OR (G).**

12 (iv) ~~—(ii)—~~ The individual agrees that, if the information in
13 the criminal history check conducted under subsection (4) or (5),
14 or both, does not confirm the individual's ~~statement under~~
15 ~~subparagraph (i)—~~ **STATEMENTS UNDER SUBPARAGRAPHS (i), (ii), AND (iii),**
16 his or her employment or clinical privileges will be terminated by
17 the health facility or agency as required under subsection (1)
18 unless and until the individual can prove that the information is
19 incorrect. The health facility or agency shall provide a copy of
20 the results of the criminal history check conducted under
21 subsection (4) or (5), or both, to the applicant upon request.

22 (v) ~~—(iii)—~~ That he or she understands the conditions described
23 in subparagraphs (i), ~~and~~ (ii), (iii), **AND (iv)** that result in the
24 termination of his or her employment or clinical privileges and
25 that those conditions are good cause for termination.

26 (7) On ~~the effective date of the amendatory act that added~~
27 ~~this section~~ **MAY 10, 2002**, the department shall develop and

1 distribute a model form for the statement required under subsection
2 (6)(b). The department shall make the model form available to
3 health facilities or agencies subject to this section upon request
4 at no charge.

5 (8) If an individual is employed as a conditional employee or
6 is granted conditional clinical privileges under subsection (6),
7 and the report described in subsection (4) or (5), or both, does
8 not confirm the individual's ~~statement under subsection (6)(b)(i)~~
9 **STATEMENTS UNDER SUBSECTION (6)(B)(i), (ii), AND (iii)**, the health
10 facility or agency shall terminate the individual's employment or
11 clinical privileges as required by subsection (1).

12 (9) An individual who knowingly provides false information
13 regarding criminal convictions on a statement described in
14 subsection (6)(b)(i) is guilty of a misdemeanor punishable by
15 imprisonment for not more than 90 days or a fine of not more than
16 \$500.00, or both.

17 (10) A health facility or agency that is a nursing home,
18 county medical care facility, or home for the aged shall use
19 criminal history record information obtained under subsection (4),
20 (5), or (6) only for the purpose of evaluating an applicant's
21 qualifications for employment, an independent contract, or clinical
22 privileges in the position for which he or she has applied and for
23 the purposes of subsections (6) and (8). A health facility or
24 agency or an employee of the health facility or agency shall not
25 disclose criminal history record information obtained under
26 subsection (4) or (5) to a person who is not directly involved in
27 evaluating the applicant's qualifications for employment, an

1 independent contract, or clinical privileges. Upon written request
2 from another health facility or agency or adult foster care
3 facility that is considering employing, independently contracting
4 with, or granting clinical privileges to an individual, a health
5 facility or agency that has obtained criminal history record
6 information under this section on that individual shall share the
7 information with the requesting health facility or agency or adult
8 foster care facility. Except for a knowing or intentional release
9 of false information, a health facility or agency has no liability
10 in connection with a criminal background check conducted under this
11 section or the release of criminal history record information under
12 this subsection.

13 (11) As a condition of continued employment, each employee,
14 independent contractor, or individual granted clinical privileges
15 shall agree in writing to ~~report~~ **DO EACH OF THE FOLLOWING:**

16 **(A) REPORT** to the health facility or agency immediately upon
17 being arrested for or convicted of 1 or more of the criminal
18 offenses listed in subsection (1)(a) and (b) **OR UPON BECOMING THE**
19 **SUBJECT OF AN ORDER OR DISPOSITION LISTED IN SUBSECTION (1)(C),**
20 **(D), AND (E).**

21 **(B) CONSENT TO THE PERFORMANCE OF AN ANNUAL CRIMINAL HISTORY**
22 **CHECK AS PROVIDED UNDER SUBSECTION (4).**

23 **(12) IN ADDITION TO SANCTIONS SET FORTH IN SECTION 20165, A**
24 **LICENSEE, OWNER, ADMINISTRATOR, OR OPERATOR OF A NURSING HOME,**
25 **COUNTY MEDICAL CARE FACILITY, OR HOME FOR THE AGED WHO FAILS TO**
26 **CONDUCT THE CRIMINAL HISTORY CHECKS AS REQUIRED UNDER THIS SECTION**
27 **IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN**

1 4 YEARS OR A FINE OF NOT MORE THAN \$50,000.00, OR BOTH.

2 (13) ~~—(12)—~~ As used in this section:

3 (a) "Adult foster care facility" means an adult foster care
4 facility licensed under the adult foster care facility licensing
5 act, 1979 PA 218, MCL 400.701 to 400.737.

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