

SENATE BILL No. 1139

March 14, 2006, Introduced by Senators OLSHOVE, PRUSI, GEORGE, CLARKE, KUIPERS, GARCIA, BARCIA and SCHAUER and referred to the Committee on Economic Development, Small Business and Regulatory Reform.

A bill to amend 1979 PA 218, entitled
"Adult foster care facility licensing act,"
by amending sections 10, 11, and 20 (MCL 400.710, 400.711, and
400.720), sections 10 and 20 as amended by 1986 PA 257 and section
11 as amended by 1992 PA 176.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10. (1) The department shall promulgate rules pursuant to
2 the administrative procedures act of 1969, ~~Act No. 306 of the~~
3 ~~Public Acts of 1969, as amended, being sections 24.201 to 24.328 of~~
4 ~~the Michigan Compiled Laws 1969 PA 306, MCL 24.201 TO 24.328, in~~
5 the areas provided under subsection (4).

6 (2) The ~~state fire safety board~~ **BUREAU OF FIRE SERVICES**
7 created ~~under~~ **IN SECTION 1B OF** the fire prevention code, ~~Act No.~~
8 ~~207 of the Public Acts of 1941, as amended, being sections 29.1 to~~

1 ~~29.33 of the Michigan Compiled Laws~~ **1941 PA 207, MCL 29.1B**, shall
2 promulgate rules providing for adequate fire prevention and safety
3 in an adult foster care facility licensed or proposed to be
4 licensed for more than 6 adults. The rules shall be promulgated in
5 cooperation with the department **AND THE STATE FIRE SAFETY BOARD** and
6 shall provide for the protection of the health, safety, and welfare
7 of the adults residing in a facility. The ~~state fire safety board~~
8 **BUREAU OF FIRE SERVICES** shall promulgate **THE** rules pursuant to ~~Act~~
9 ~~No. 306 of the Public Acts of 1969, as amended~~ **THE ADMINISTRATIVE**
10 **PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328**. A person
11 may request a variance from the application of a rule promulgated
12 pursuant to this subsection by application to the state fire
13 marshal. The state fire marshal may make a variance upon a finding
14 that the variance does not result in a hazard to life or property.
15 The finding shall be transmitted to the person requesting the
16 variance and shall be entered into the records of the ~~department~~
17 ~~of state police~~ **BUREAU OF FIRE SERVICES**. If the variance requested
18 concerns a building, the finding shall also be transmitted to the
19 governing body of the city, village, or township in which the
20 building is located. The entire state fire safety board shall act
21 as a hearing body in accordance with ~~Act No. 306 of the Public~~
22 ~~Acts of 1969~~ **THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA**
23 **306, MCL 24.201 TO 24.328**, to review and render decisions on ~~a~~
24 ~~rule promulgated pursuant to this subsection or~~ a ruling of the
25 state fire marshal ~~in the marshal's interpretation or application~~
26 ~~of~~ **INTERPRETING OR APPLYING** these rules. After a hearing, the
27 state fire safety board may ~~vary the application of a rule or may~~

1 modify the ruling or interpretation of the state fire marshal if
2 the enforcement of the ruling or interpretation would do manifest
3 injustice and would be contrary to the spirit and purpose of the
4 rules or the public interest. A decision of the state fire safety
5 board to ~~vary the application of a rule, or to~~ modify or change a
6 ruling of the state fire marshal, shall specify in what manner the
7 ~~variance,~~ modification ~~—~~ or change is made, the conditions upon
8 which it is made, and the reasons for the ~~variance,~~ modification
9 ~~—~~ or change.

10 (3) The department of ~~mental~~ **COMMUNITY** health shall
11 promulgate rules for the certification of specialized programs
12 offered in an adult foster care facility to a mentally ill or
13 developmentally disabled resident. The rules shall include
14 provision for an appeal of a denial or limitation of the terms of
15 certification to the department pursuant to chapter 4 of the
16 administrative procedures act of 1969, ~~being sections 24.271 to~~
17 ~~24.287 of the Michigan Compiled Laws~~ **1969 PA 306, MCL 24.271 TO**
18 **24.287.**

19 (4) The rules promulgated by the department under this act
20 shall be restricted to the following:

21 (a) The operation and conduct of adult foster care facilities.

22 (b) The character, suitability, training, and qualifications
23 of applicants and other persons directly responsible for the care
24 and welfare of adults served.

25 (c) The general financial ability and competence of applicants
26 to provide necessary care for adults and to maintain prescribed
27 standards.

(d) The number of individuals or staff required to ~~insure~~
ENSURE adequate supervision and care of the adults served.

(e) The appropriateness, safety, cleanliness, and general
adequacy of the premises, including maintenance of adequate health
standards to provide for the physical comfort, care, protection,
and well-being of the adults received and maintenance of adequate
fire protection for adult foster care facilities licensed to
receive 6 or fewer adults. Rules promulgated in the areas provided
by this subdivision shall be promulgated in cooperation with the
state fire safety board.

(f) Provisions for food, clothing, educational opportunities,
equipment, and individual supplies to assure the healthy physical,
emotional, and mental development of adults served.

(g) The type of programs and services necessary to provide
appropriate care to each resident admitted.

(h) Provisions to safeguard the rights of adults served,
including cooperation with rights protection systems established by
law.

(i) Provisions to prescribe the rights of licensees.

(j) Maintenance of records pertaining to admission, progress,
health, and discharge of adults. The rules promulgated under this
subdivision shall include a method by which a licensee promptly
shall notify the appropriate placement agency or responsible agent
of any indication that a resident's assessment plan is not
appropriate for that resident.

(k) Filing of reports with the department.

(l) Transportation safety.

1 (5) ~~—(4)—~~ The rules shall be reviewed by the council not less
2 than once every 5 years.

3 Sec. 11. (1) The director, the director's agent, or personnel
4 of another department or agency, acting at the request of the
5 director, may enter upon the premises of an applicant or licensee
6 at a reasonable time to make inspections, as permitted by
7 applicable law, to determine whether the applicant or licensee is
8 complying with this act and the rules promulgated under this act.
9 On-site inspections may be conducted without prior notice to the
10 adult foster care facility. A health and sanitation inspection of
11 an adult foster care facility shall be conducted upon the request
12 of the department by 1 of the following:

13 (a) Department staff.

14 (b) The department of ~~—public—~~ **COMMUNITY** health.

15 (c) A local health department.

16 (2) The department of ~~—public—~~ **COMMUNITY** health, the ~~—fire~~
17 ~~marshal division of the department of state police,~~ **BUREAU OF FIRE**
18 **SERVICES CREATED IN SECTION 1B OF THE FIRE PREVENTION CODE, 1941 PA**
19 **207, MCL 29.1B,** or local authorities, in carrying out this act, may
20 visit an adult foster care facility more often than annually to
21 advise in matters affecting health or fire protection. Inspections
22 shall be made as permitted by law.

23 (3) An adult foster care facility shall be inspected for fire
24 safety by 1 of the following:

25 (a) Department staff, if the facility is licensed or proposed
26 to be licensed for 6 or fewer adults. The department may request
27 that a fire safety inspection be ~~—completed or caused to be~~

1 ~~completed~~ **PERFORMED** by **OR AT THE DIRECTION OF** the ~~state fire~~
 2 ~~marshal~~ **BUREAU OF FIRE SERVICES**, for a facility licensed or
 3 proposed to be licensed for 6 or fewer adults, ~~when~~ **IF** such an
 4 inspection would result in the efficient administration of this
 5 act.

6 (b) The ~~state fire marshal~~ **BUREAU OF FIRE SERVICES** or the
 7 designated representative of the ~~state fire marshal~~ **BUREAU OF**
 8 **FIRE SERVICES**, if the facility is licensed or proposed to be
 9 licensed for more than 6 adults. The ~~state fire marshal~~ **BUREAU OF**
 10 **FIRE SERVICES** shall inspect or ~~cause to be~~ **HAVE** inspected for
 11 fire safety an adult foster care facility licensed or proposed to
 12 be licensed for 6 or fewer adults upon request by the department.
 13 The ~~state fire marshal~~ **BUREAU OF FIRE SERVICES** may contract with
 14 the fire marshal of a city having a population of not less than
 15 1,000,000 to inspect adult foster care facilities licensed or
 16 proposed to be licensed for more than 6 adults if the facility is
 17 located within that city. The fire marshal of a city shall conduct
 18 an inspection in compliance with procedures established and on
 19 forms provided by the ~~state fire marshal~~ **BUREAU OF FIRE SERVICES**.

20 (4) Except as provided in subsection (3)(b) and section 10(2),
 21 the inspector shall administer and enforce the rules promulgated by
 22 the department.

23 (5) Upon receipt of a request from an adult foster care
 24 facility for certification of a specialized program for
 25 developmentally disabled or mentally ill adults, the department of
 26 ~~mental~~ **COMMUNITY** health shall inspect the facility to determine
 27 whether the proposed specialized program conforms with the

1 requirements of applicable law and rules. The department of ~~mental~~
2 **COMMUNITY** health shall provide the department with an inspection
3 report and a certification, denial of certification, or
4 certification with limited terms for the proposed specialized
5 program. The department of ~~mental~~ **COMMUNITY** health shall
6 reinspect a certified specialized program not less than once
7 biennially and notify the department ~~of social services~~ in the
8 same manner as for the initial certification. In carrying out this
9 subsection, the department of ~~mental~~ **COMMUNITY** health may
10 contract with a county community mental health board or any other
11 agency for services.

12 (6) Inspection reports required by this section shall be
13 furnished to the department and shall be used in the evaluation for
14 licensing of an adult foster care facility. The department shall
15 consider the reports carefully and may make special consultations
16 if necessary. The department shall be responsible for the final
17 determination of the issuance, denial, or revocation and the
18 temporary or provisional nature of a license issued to an adult
19 foster care facility. A report of the department's findings shall
20 be furnished to the licensee or applicant.

21 (7) The inspection reports required by this section shall be
22 available for public inspection during reasonable business hours.

23 Sec. 20. (1) The department shall not issue a temporary,
24 provisional, or regular license to an adult foster care facility
25 ~~whose~~ **WITH A** capacity ~~is~~ **OF** more than 6 adults until the
26 facility receives a certificate of approval from the ~~state fire~~
27 ~~marshal division of the department of state police~~ **BUREAU OF FIRE**

1 SERVICES CREATED IN SECTION 1B OF THE FIRE PREVENTION CODE, 1941 PA
2 207, MCL 29.1B, after compliance with fire safety standards
3 prescribed in rules promulgated by the ~~state fire safety board~~
4 BUREAU OF FIRE SERVICES pursuant to section 10(2).

5 (2) The department shall not issue a license to an adult
6 foster care facility indicating approval to operate a specialized
7 program for developmentally disabled adults or mentally ill adults
8 until the facility receives a certificate of approval from the
9 ~~state~~ department of ~~mental~~ COMMUNITY health as required under
10 section 11(5).

11 (3) A licensee or applicant who is denied a certificate of
12 approval by the ~~state fire marshal division of the department of~~
13 ~~state police~~ BUREAU OF FIRE SERVICES or who is denied or certified
14 with limitations for a specialized program by the department of
15 ~~mental~~ COMMUNITY health may request a hearing. The hearing shall
16 be conducted by the state fire safety board or the department of
17 ~~mental~~ COMMUNITY health, as applicable, pursuant to chapter 4 of
18 the administrative procedures act of 1969, ~~Act No. 306 of the~~
19 ~~Public Acts of 1969, as amended, being sections 24.271 to 24.287 of~~
20 ~~the Michigan Compiled Laws~~ 1969 PA 306, MCL 24.271 TO 24.287.

21 Enacting section 1. This amendatory act does not take effect
22 unless Senate Bill No. 1133

23 of the 93rd Legislature is enacted into law.