

# HOUSE BILL No. 6056

May 6, 2008, Introduced by Rep. Johnson and referred to the Committee on Appropriations.

A bill to amend 1978 PA 368, entitled  
 "Public health code,"  
 by amending section 20173a (MCL 333.20173a), as added by 2006 PA  
 28.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 20173a. (1) Except as otherwise provided in subsection  
 2           (2), a health facility or agency that is a nursing home, county  
 3           medical care facility, hospice, hospital that provides swing bed  
 4           services, home for the aged, or home health agency shall not  
 5           employ, independently contract with, or grant clinical privileges  
 6           to an individual who regularly has direct access to or provides  
 7           direct services to patients or residents in the health facility or  
 8           agency after ~~the effective date of this section~~ **APRIL 1, 2006** if  
 9           the individual satisfies 1 or more of the following:

10           (a) Has been convicted of a relevant crime described under 42

1 USC 1320a-7.

2 (b) Has been convicted of any of the following felonies, an  
3 attempt or conspiracy to commit any of those felonies, or any other  
4 state or federal crime that is similar to the felonies described in  
5 this subdivision, other than a felony for a relevant crime  
6 described under 42 USC 1320a-7, unless 15 years have lapsed since  
7 the individual completed all of the terms and conditions of his or  
8 her sentencing, parole, and probation for that conviction prior to  
9 the date of application for employment or clinical privileges or  
10 the date of the execution of the independent contract:

11 (i) A felony that involves the intent to cause death or serious  
12 impairment of a body function, that results in death or serious  
13 impairment of a body function, that involves the use of force or  
14 violence, or that involves the threat of the use of force or  
15 violence.

16 (ii) A felony involving cruelty or torture.

17 (iii) A felony under chapter XXA of the Michigan penal code,  
18 1931 PA 328, MCL 750.145m to 750.145r.

19 (iv) A felony involving criminal sexual conduct.

20 (v) A felony involving abuse or neglect.

21 (vi) A felony involving the use of a firearm or dangerous  
22 weapon.

23 (vii) A felony involving the diversion or adulteration of a  
24 prescription drug or other medications.

25 (c) Has been convicted of a felony or an attempt or conspiracy  
26 to commit a felony, other than a felony for a relevant crime  
27 described under 42 USC 1320a-7 or a felony described under

1 subdivision (b), unless 10 years have lapsed since the individual  
2 completed all of the terms and conditions of his or her sentencing,  
3 parole, and probation for that conviction prior to the date of  
4 application for employment or clinical privileges or the date of  
5 the execution of the independent contract.

6 (d) Has been convicted of any of the following misdemeanors,  
7 other than a misdemeanor for a relevant crime described under 42  
8 USC 1320a-7, or a state or federal crime that is substantially  
9 similar to the misdemeanors described in this subdivision, within  
10 the 10 years immediately preceding the date of application for  
11 employment or clinical privileges or the date of the execution of  
12 the independent contract:

13 (i) A misdemeanor involving the use of a firearm or dangerous  
14 weapon with the intent to injure, the use of a firearm or dangerous  
15 weapon that results in a personal injury, or a misdemeanor  
16 involving the use of force or violence or the threat of the use of  
17 force or violence.

18 (ii) A misdemeanor under chapter XXA of the Michigan penal  
19 code, 1931 PA 328, MCL 750.145m to 750.145r.

20 (iii) A misdemeanor involving criminal sexual conduct.

21 (iv) A misdemeanor involving cruelty or torture unless  
22 otherwise provided under subdivision (e).

23 (v) A misdemeanor involving abuse or neglect.

24 (e) Has been convicted of any of the following misdemeanors,  
25 other than a misdemeanor for a relevant crime described under 42  
26 USC 1320a-7, or a state or federal crime that is substantially  
27 similar to the misdemeanors described in this subdivision, within

1 the 5 years immediately preceding the date of application for  
2 employment or clinical privileges or the date of the execution of  
3 the independent contract:

4 (i) A misdemeanor involving cruelty if committed by an  
5 individual who is less than 16 years of age.

6 (ii) A misdemeanor involving home invasion.

7 (iii) A misdemeanor involving embezzlement.

8 (iv) A misdemeanor involving negligent homicide.

9 (v) A misdemeanor involving larceny unless otherwise provided  
10 under subdivision (g).

11 (vi) A misdemeanor of retail fraud in the second degree unless  
12 otherwise provided under subdivision (g).

13 (vii) Any other misdemeanor involving assault, fraud, theft, or  
14 the possession or delivery of a controlled substance unless  
15 otherwise provided under subdivision (d), (f), or (g).

16 (f) Has been convicted of any of the following misdemeanors,  
17 other than a misdemeanor for a relevant crime described under 42  
18 USC 1320a-7, or a state or federal crime that is substantially  
19 similar to the misdemeanors described in this subdivision, within  
20 the 3 years immediately preceding the date of application for  
21 employment or clinical privileges or the date of the execution of  
22 the independent contract:

23 (i) A misdemeanor for assault if there was no use of a firearm  
24 or dangerous weapon and no intent to commit murder or inflict great  
25 bodily injury.

26 (ii) A misdemeanor of retail fraud in the third degree unless  
27 otherwise provided under subdivision (g).

1           (iii) A misdemeanor under part 74 unless otherwise provided  
2 under subdivision (g).

3           (g) Has been convicted of any of the following misdemeanors,  
4 other than a misdemeanor for a relevant crime described under 42  
5 USC 1320a-7, or a state or federal crime that is substantially  
6 similar to the misdemeanors described in this subdivision, within  
7 the year immediately preceding the date of application for  
8 employment or clinical privileges or the date of the execution of  
9 the independent contract:

10           (i) A misdemeanor under part 74 if the individual, at the time  
11 of conviction, is under the age of 18.

12           (ii) A misdemeanor for larceny or retail fraud in the second or  
13 third degree if the individual, at the time of conviction, is under  
14 the age of 16.

15           (h) Is the subject of an order or disposition under section  
16 16b of chapter IX of the code of criminal procedure, 1927 PA 175,  
17 MCL 769.16b.

18           (i) Has been the subject of a substantiated finding of  
19 neglect, abuse, or misappropriation of property by a state or  
20 federal agency pursuant to an investigation conducted in accordance  
21 with 42 USC 1395i-3 or 1396r.

22           (2) Except as otherwise provided in subsection (5), a health  
23 facility or agency that is a nursing home, county medical care  
24 facility, hospice, hospital that provides swing bed services, home  
25 for the aged, or home health agency shall not employ, independently  
26 contract with, or grant privileges to an individual who regularly  
27 has direct access to or provides direct services to patients or

1 residents in the health facility or agency after ~~the effective date~~  
2 ~~of this section~~ **APRIL 1, 2006** until the health facility or agency  
3 conducts a criminal history check in compliance with subsection  
4 (4). This subsection and subsection (1) do not apply to any of the  
5 following:

6 (a) An individual who is employed by, under independent  
7 contract to, or granted clinical privileges in a health facility or  
8 agency before ~~the effective date of this section~~ **APRIL 1, 2006**.  
9 ~~Within 24 months after the effective date of this section~~ **BEGINNING**  
10 **APRIL 1, 2008**, an individual who is exempt under this subdivision  
11 shall provide the department of state police with a set of  
12 fingerprints and the department of state police shall input those  
13 fingerprints into the automated fingerprint identification system  
14 database established under subsection (12). An individual who is  
15 exempt under this subdivision is not limited to working within the  
16 health facility or agency with which he or she is employed by,  
17 under independent contract to, or granted clinical privileges on  
18 ~~the effective date of this section~~ **APRIL 1, 2006**. That individual  
19 may transfer to another health facility or agency that is under the  
20 same ownership with which he or she was employed, under contract,  
21 or granted privileges. If that individual wishes to transfer to  
22 another health facility or agency that is not under the same  
23 ownership, he or she may do so provided that a criminal history  
24 check is conducted by the new health facility or agency in  
25 accordance with subsection (4). If an individual who is exempt  
26 under this subdivision is subsequently convicted of a crime  
27 described under subsection (1) (a) ~~through~~ **TO** (g) or found to be the

1 subject of a substantiated finding described under subsection  
2 (1) (i) or an order or disposition described under subsection  
3 (1) (h), or is found to have been convicted of a relevant crime  
4 described under subsection (1) (a), then he or she is no longer  
5 exempt and shall be terminated from employment or denied  
6 employment.

7 (b) An individual who is an independent contractor with a  
8 health facility or agency that is a nursing home, county medical  
9 care facility, hospice, hospital that provides swing bed services,  
10 home for the aged, or home health agency if the services for which  
11 he or she is contracted is not directly related to the provision of  
12 services to a patient or resident or if the services for which he  
13 or she is contracted allows for direct access to the patients or  
14 residents but is not performed on an ongoing basis. This exception  
15 includes, but is not limited to, an individual who independently  
16 contracts with the health facility or agency to provide utility,  
17 maintenance, construction, or communications services.

18 (3) An individual who applies for employment either as an  
19 employee or as an independent contractor or for clinical privileges  
20 with a health facility or agency that is a nursing home, county  
21 medical care facility, hospice, hospital that provides swing bed  
22 services, home for the aged, or home health agency and has received  
23 a good faith offer of employment, an independent contract, or  
24 clinical privileges from the health facility or agency shall give  
25 written consent at the time of application for the department of  
26 state police to conduct an initial criminal history check under  
27 this section, along with identification acceptable to the

1 department of state police.

2 (4) Upon receipt of the written consent and identification  
3 required under subsection (3), a health facility or agency that is  
4 a nursing home, county medical care facility, hospice, hospital  
5 that provides swing bed services, home for the aged, or home health  
6 agency that has made a good faith offer of employment or an  
7 independent contract or clinical privileges to the applicant shall  
8 make a request to the department of state police to conduct a  
9 criminal history check on the applicant, to input the applicant's  
10 fingerprints into the automated fingerprint identification system  
11 database, and to forward the applicant's fingerprints to the  
12 federal bureau of investigation. The department of state police  
13 shall request the federal bureau of investigation to make a  
14 determination of the existence of any national criminal history  
15 pertaining to the applicant. The applicant shall provide the  
16 department of state police with a set of fingerprints. The request  
17 shall be made in a manner prescribed by the department of state  
18 police. The health facility or agency shall make the written  
19 consent and identification available to the department of state  
20 police. The health facility or agency shall make a request to the  
21 relevant licensing or regulatory department to conduct a check of  
22 all relevant registries established pursuant to federal and state  
23 law and regulations for any substantiated findings of abuse,  
24 neglect, or misappropriation of property. If the department of  
25 state police or the federal bureau of investigation charges a fee  
26 for conducting the initial criminal history check, ~~the charge shall~~  
27 ~~be paid by or reimbursed by the department with federal funds as~~

1 ~~provided to implement a pilot program for national and state~~  
2 ~~background checks on direct patient access employees of long term~~  
3 ~~care facilities or providers in accordance with section 307 of the~~  
4 ~~medicare prescription drug, improvement, and modernization act of~~  
5 ~~2003, Public Law 108-173~~ **A HEALTH FACILITY OR AGENCY THAT IS A**  
6 **NURSING HOME, COUNTY MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT**  
7 **PROVIDES SWING BED SERVICES, OR HOME HEALTH AGENCY SHALL PAY THE**  
8 **COST OF THE CHARGE. IF THE DEPARTMENT OF STATE POLICE OR THE**  
9 **FEDERAL BUREAU OF INVESTIGATION CHARGES A FEE FOR CONDUCTING THE**  
10 **INITIAL CRIMINAL HISTORY CHECK, THE DEPARTMENT SHALL PAY THE COST**  
11 **OF OR REIMBURSE THE CHARGE FOR A HEALTH FACILITY OR AGENCY THAT IS**  
12 **A HOME FOR THE AGED.** The health facility or agency shall not seek  
13 reimbursement for a charge imposed by the department of state  
14 police or the federal bureau of investigation from the individual  
15 who is the subject of the initial criminal history check. A health  
16 ~~facility or agency, a prospective employee, or a prospective~~  
17 independent contractor covered under this section may not be  
18 charged for the cost of an initial criminal history check required  
19 under this section. The department of state police shall conduct a  
20 criminal history check on the applicant named in the request. The  
21 department of state police shall provide the department with a  
22 written report of the criminal history check conducted under this  
23 subsection if the criminal history check contains any criminal  
24 history record information. The report shall contain any criminal  
25 history record information on the applicant maintained by the  
26 department of state police. The department of state police shall  
27 provide the results of the federal bureau of investigation

1 determination to the department within 30 days after the request is  
2 made. If the requesting health facility or agency is not a state  
3 department or agency and if a criminal conviction is disclosed on  
4 the written report of the criminal history check or the federal  
5 bureau of investigation determination, the department shall notify  
6 the health facility or agency and the applicant in writing of the  
7 type of crime disclosed on the written report of the criminal  
8 history check or the federal bureau of investigation determination  
9 without disclosing the details of the crime. Any charges imposed by  
10 the department of state police or the federal bureau of  
11 investigation for conducting an initial criminal history check or  
12 making a determination under this subsection shall be paid in the  
13 manner required under this subsection. The notice shall include a  
14 statement that the applicant has a right to appeal a decision made  
15 by the health facility or agency regarding his or her employment  
16 eligibility based on the criminal background check. The notice  
17 shall also include information regarding where to file and  
18 describing the appellate procedures established under section  
19 20173b.

20 (5) If a health facility or agency that is a nursing home,  
21 county medical care facility, hospice, hospital that provides swing  
22 bed services, home for the aged, or home health agency determines  
23 it necessary to employ or grant clinical privileges to an applicant  
24 before receiving the results of the applicant's criminal history  
25 check under this section, the health facility or agency may  
26 conditionally employ or grant conditional clinical privileges to  
27 the individual if all of the following apply:

1 (a) The health facility or agency requests the criminal  
2 history check under this section upon conditionally employing or  
3 conditionally granting clinical privileges to the individual.

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

6 (i) That he or she has not been convicted of 1 or more of the  
7 crimes that are described in subsection (1)(a) ~~through~~ **TO** (g)  
8 within the applicable time period prescribed by each subdivision  
9 respectively.

10 (ii) That he or she is not the subject of an order or  
11 disposition described in subsection (1)(h).

12 (iii) That he or she has not been the subject of a substantiated  
13 finding as described in subsection (1)(i).

14 (iv) The individual agrees that, if the information in the  
15 criminal history check conducted under this section does not  
16 confirm the individual's statements under subparagraphs (i) ~~through~~  
17 **TO** (iii), his or her employment or clinical privileges will be  
18 terminated by the health facility or agency as required under  
19 subsection (1) unless and until the individual appeals and can  
20 prove that the information is incorrect.

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

25 (6) The department shall develop and distribute a model form  
26 for the statement required under subsection (5)(b). The department  
27 shall make the model form available to health facilities or

1 agencies subject to this section upon request at no charge.

2 (7) If an individual is employed as a conditional employee or  
3 is granted conditional clinical privileges under subsection (5),  
4 and the report described in subsection (4) does not confirm the  
5 individual's statement under subsection (5) (b) (i) ~~through~~ **TO** (iii),  
6 the health facility or agency shall terminate the individual's  
7 employment or clinical privileges as required by subsection (1).

8 (8) An individual who knowingly provides false information  
9 regarding his or her identity, criminal convictions, or  
10 substantiated findings on a statement described in subsection  
11 (5) (b) (i) ~~through~~ **TO** (iii) is guilty of a misdemeanor punishable by  
12 imprisonment for not more than 93 days or a fine of not more than  
13 \$500.00, or both.

14 (9) A health facility or agency that is a nursing home, county  
15 medical care facility, hospice, hospital that provides swing bed  
16 services, home for the aged, or home health agency shall use  
17 criminal history record information obtained under subsection (4)  
18 only for the purpose of evaluating an applicant's qualifications  
19 for employment, an independent contract, or clinical privileges in  
20 the position for which he or she has applied and for the purposes  
21 of subsections (5) and (7). A health facility or agency or an  
22 employee of the health facility or agency shall not disclose  
23 criminal history record information obtained under subsection (4)  
24 to a person who is not directly involved in evaluating the  
25 applicant's qualifications for employment, an independent contract,  
26 or clinical privileges. An individual who knowingly uses or  
27 disseminates the criminal history record information obtained under

1 subsection (4) in violation of this subsection is guilty of a  
2 misdemeanor punishable by imprisonment for not more than 93 days or  
3 a fine of not more than \$1,000.00, or both. Upon written request  
4 from another health facility or agency, psychiatric facility or  
5 intermediate care facility for people with mental retardation, or  
6 adult foster care facility that is considering employing,  
7 independently contracting with, or granting clinical privileges to  
8 an individual, a health facility or agency that has obtained  
9 criminal history record information under this section on that  
10 individual shall, with the consent of the applicant, share the  
11 information with the requesting health facility or agency,  
12 psychiatric facility or intermediate care facility for people with  
13 mental retardation, or adult foster care facility. Except for a  
14 knowing or intentional release of false information, a health  
15 facility or agency has no liability in connection with a criminal  
16 background check conducted under this section or the release of  
17 criminal history record information under this subsection.

18 (10) As a condition of continued employment, each employee,  
19 independent contractor, or individual granted clinical privileges  
20 shall do each of the following:

21 (a) Agree in writing to report to the health facility or  
22 agency immediately upon being arraigned for 1 or more of the  
23 criminal offenses listed in subsection (1)(a) ~~through~~ **TO** (g), upon  
24 being convicted of 1 or more of the criminal offenses listed in  
25 subsection (1)(a) ~~through~~ **TO** (g), upon becoming the subject of an  
26 order or disposition described under subsection (1)(h), and upon  
27 being the subject of a substantiated finding of neglect, abuse, or

1 misappropriation of property as described in subsection (1)(i).  
2 Reporting of an arraignment under this subdivision is not cause for  
3 termination or denial of employment.

4 (b) If a set of fingerprints is not already on file with the  
5 department of state police, provide the department of state police  
6 with a set of fingerprints.

7 (11) In addition to sanctions set forth in section 20165, a  
8 licensee, owner, administrator, or operator of a nursing home,  
9 county medical care facility, hospice, hospital that provides swing  
10 bed services, home for the aged, or home health agency who  
11 knowingly and willfully fails to conduct the criminal history  
12 checks as required under this section is guilty of a misdemeanor  
13 punishable by imprisonment for not more than 1 year or a fine of  
14 not more than \$5,000.00, or both.

15 (12) In collaboration with the department of state police, the  
16 department of information technology shall establish an automated  
17 fingerprint identification system database that would allow the  
18 department of state police to store and maintain all fingerprints  
19 submitted under this section and would provide for an automatic  
20 notification if and when a subsequent criminal arrest fingerprint  
21 card submitted into the system matches a set of fingerprints  
22 previously submitted in accordance with this section. Upon such  
23 notification, the department of state police shall immediately  
24 notify the department and the department shall immediately contact  
25 the respective health facility or agency with which that individual  
26 is associated. Information in the database established under this  
27 subsection is confidential, is not subject to disclosure under the

1 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and  
2 shall not be disclosed to any person except for purposes of this  
3 act or for law enforcement purposes.

4 ~~—— (13) Within 1 year after the effective date of the amendatory~~  
5 ~~act that added this section, the department shall submit a written~~  
6 ~~report to the legislature regarding each of the following:~~

7 ~~—— (a) The impact and effectiveness of this amendatory act.~~

8 ~~—— (b) The feasibility of implementing criminal history checks on~~  
9 ~~volunteers who work in those health facilities or agencies and on~~  
10 ~~state agency employees who are involved in the licensing of those~~  
11 ~~health facilities or agencies and regulation of those employees.~~

12 ~~—— (c) The amount of federal funds provided to implement a pilot~~  
13 ~~program for national and state background checks on direct access~~  
14 ~~employees of long term care facilities or providers, the amount of~~  
15 ~~those funds expended to date, and the amount of those funds~~  
16 ~~remaining.~~

17 (13) ~~(14) Within 3 years after the effective date of this~~  
18 ~~section~~ **ON OR BEFORE APRIL 1, 2009**, the department shall submit a  
19 written report to the legislature outlining a plan to cover the  
20 costs of the criminal history checks required under this section if  
21 federal funding is no longer available or is inadequate to cover  
22 those costs.

23 (14) ~~(15) By March 1, 2007, the~~ **THE** department and the  
24 department of state police shall ~~develop and implement~~ **MAINTAIN** an  
25 electronic web-based system to assist those health facilities and  
26 agencies required to check relevant registries and conduct criminal  
27 history checks of its employees and independent contractors and to

1 provide for an automated notice to those health facilities or  
2 agencies for those individuals inputted in the system who, since  
3 the initial check, have been convicted of a disqualifying offense  
4 or have been the subject of a substantiated finding of abuse,  
5 neglect, or misappropriation of property.

6 (15) ~~(16)~~—As used in this section:

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

10 (b) "Direct access" means access to a patient or resident or  
11 to a patient's or resident's property, financial information,  
12 medical records, treatment information, or any other identifying  
13 information.

14 (c) "Home health agency" means a person certified by medicare  
15 whose business is to provide to individuals in their places of  
16 residence other than in a hospital, nursing home, or county medical  
17 care facility 1 or more of the following services: nursing  
18 services, therapeutic services, social work services, homemaker  
19 services, home health aide services, or other related services.

20 (d) "Independent contract" means a contract entered into by a  
21 health facility or agency with an individual who provides the  
22 contracted services independently or a contract entered into by a  
23 health facility or agency with an organization or agency that  
24 employs or contracts with an individual after complying with the  
25 requirements of this section to provide the contracted services to  
26 the health facility or agency on behalf of the organization or  
27 agency.

1           (e) "Medicare" means benefits under the federal medicare  
2 program established under title XVIII of the social security act,  
3 42 USC 1395 to ~~1395ggg~~1395HHH.