

SENATE BILL No. 806

February 20, 2014, Introduced by Senators CASWELL, WARREN, HOPGOOD, MARLEAU, BOOHER, ROBERTSON, SCHUITMAKER, CASPERSON, ROCCA, ANDERSON, COLBECK, JANSEN, JONES, WHITMER, ANANICH, HANSEN, NOFS, EMMONS, PAPPAGEORGE, BIEDA, HILDENBRAND, KOWALL, MOOLENAAR and JOHNSON and referred to the Committee on Health Policy.

A bill to amend 1979 PA 218, entitled
"Adult foster care facility licensing act,"
by amending section 34b (MCL 400.734b), as amended by 2010 PA 292.

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 if the individual satisfies 1 or more of the
7 following:

8 (a) Has been convicted of a relevant crime described under 42
9 USC 1320a-7(a).

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

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

15 (ii) A felony involving cruelty or torture.

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

18 (iv) A felony involving criminal sexual conduct.

19 (v) A felony involving abuse or neglect.

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

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

24 (c) Has been convicted of a felony or an attempt or conspiracy
25 to commit a felony, other than a felony for a relevant crime
26 described under 42 USC 1320a-7(a) or a felony described under
27 subdivision (b), unless 10 years have lapsed since the individual

1 completed all of the terms and conditions of his or her sentencing,
2 parole, and probation for that conviction prior to the date of
3 application for employment or the date of the execution of the
4 independent contract.

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

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

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

19 (iii) A misdemeanor involving criminal sexual conduct.

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

22 (v) A misdemeanor involving abuse or neglect.

23 (e) Has been convicted of any of the following misdemeanors,
24 other than a misdemeanor for a relevant crime described under 42
25 USC 1320a-7(a), or a state or federal crime that is substantially
26 similar to the misdemeanors described in this subdivision, within
27 the 5 years immediately preceding the date of application for

1 employment or the date of the execution of the independent
2 contract:

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

5 (ii) A misdemeanor involving home invasion.

6 (iii) A misdemeanor involving embezzlement.

7 (iv) A misdemeanor involving negligent homicide or a violation
8 of section 601d(1) of the Michigan vehicle code, 1949 PA 300, MCL
9 257.601d.

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

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

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

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

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

27 (ii) A misdemeanor of retail fraud in the third degree unless

1 otherwise provided under subdivision (g).

2 (iii) A misdemeanor under part 74 of the public health code,
3 1978 PA 368, MCL 333.7401 to 333.7461, unless otherwise provided
4 under subdivision (g).

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

12 (i) A misdemeanor under part 74 of the public health code, 1978
13 PA 368, MCL 333.7401 to 333.7461, if the individual, at the time of
14 conviction, is under the age of 18.

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

18 (h) Is the subject of an order or disposition under section
19 16b of chapter IX of the code of criminal procedure, 1927 PA 175,
20 MCL 769.16b.

21 (i) Engages in conduct that becomes the subject of a
22 substantiated finding of neglect, abuse, or misappropriation of
23 property by a state or federal agency according to an investigation
24 conducted in accordance with 42 USC 1395i-3 or 1396r.

25 (2) Except as otherwise provided in this subsection or
26 subsection (6), an adult foster care facility shall not employ or
27 independently contract with an individual who has direct access to

1 residents until the adult foster care facility or staffing agency
2 has conducted a criminal history check in compliance with this
3 section or has received criminal history record information in
4 compliance with subsections (3) and (11). This subsection and
5 subsection (1) do not apply to an individual who is employed by or
6 under contract to an adult foster care facility before April 1,
7 2006. On or before April 1, 2011, an individual who is exempt under
8 this subsection and who has not been the subject of a criminal
9 history check conducted in compliance with this section shall
10 provide the department of state police a set of fingerprints and
11 the department of state police shall input those fingerprints into
12 the automated fingerprint identification system database
13 established under subsection (14). An individual who is exempt
14 under this subsection is not limited to working within the adult
15 foster care facility with which he or she is employed by or under
16 independent contract with on April 1, 2006 but may transfer to
17 another adult foster care facility, mental health facility, or
18 covered health facility. If an individual who is exempt under this
19 subsection is subsequently convicted of a crime or offense
20 described under subsection (1)(a) to (g) or found to be the subject
21 of a substantiated finding described under subsection (1)(i) or an
22 order or disposition described under subsection (1)(h), or is found
23 to have been convicted of a relevant crime described under 42 USC
24 1320a-7(a), he or she is no longer exempt and shall be terminated
25 from employment or denied employment.

26 (3) An individual who applies for employment either as an
27 employee or as an independent contractor with an adult foster care

1 facility or staffing agency and who has not been the subject of a
2 criminal history check conducted in compliance with this section
3 shall give written consent at the time of application for the
4 department of state police to conduct a criminal history check
5 under this section, along with identification acceptable to the
6 department of state police. If the individual has been the subject
7 of a criminal history check conducted in compliance with this
8 section, the individual shall give written consent at the time of
9 application for the adult foster care facility or staffing agency
10 to obtain the criminal history record information as prescribed in
11 subsection (4) or (5) from the relevant licensing or regulatory
12 department and for the department of state police to conduct a
13 criminal history check under this section if the requirements of
14 subsection (11) are not met and a request to the federal bureau of
15 investigation to make a determination of the existence of any
16 national criminal history pertaining to the individual is
17 necessary, along with identification acceptable to the department
18 of state police. Upon receipt of the written consent to obtain the
19 criminal history record information and identification required
20 under this subsection, the adult foster care facility or staffing
21 agency that has made a good faith offer of employment or an
22 independent contract to the individual shall request the criminal
23 history record information from the relevant licensing or
24 regulatory department and shall make a request regarding that
25 individual to the relevant licensing or regulatory department to
26 conduct a check of all relevant registries in the manner required
27 in subsection (4). If the requirements of subsection (11) are not

1 met and a request to the federal bureau of investigation to make a
2 subsequent determination of the existence of any national criminal
3 history pertaining to the individual is necessary, the adult foster
4 care facility or staffing agency shall proceed in the manner
5 required in subsection (5). A staffing agency that employs an
6 individual who regularly has direct access to or provides direct
7 services to residents under an independent contract with an adult
8 foster care facility shall submit information regarding the
9 criminal history check conducted by the staffing agency to the
10 adult foster care facility that has made a good faith offer of
11 independent contract to that applicant.

12 (4) Upon receipt of the written consent to conduct a criminal
13 history check and identification required under subsection (3), the
14 adult foster care facility or staffing agency that has made a good
15 faith offer of employment or independent contract to the individual
16 shall make a request to the department of state police to conduct a
17 criminal history check on the individual and input the individual's
18 fingerprints into the automated fingerprint identification system
19 database, and shall make a request to the relevant licensing or
20 regulatory department to perform a check of all relevant registries
21 established according to federal and state law and regulations for
22 any substantiated findings of abuse, neglect, or misappropriation
23 of property. The request shall be made in a manner prescribed by
24 the department of state police and the relevant licensing or
25 regulatory department or agency. The adult foster care facility or
26 staffing agency shall make the written consent and identification
27 available to the department of state police and the relevant

1 licensing or regulatory department or agency. If the department of
2 state police or the federal bureau of investigation charges a fee
3 for conducting the criminal history check, the charge shall be paid
4 by or reimbursed by the department. The adult foster care facility
5 or staffing agency shall not seek reimbursement for a charge
6 imposed by the department of state police or the federal bureau of
7 investigation from the individual who is the subject of the
8 criminal history check. The department of state police shall
9 conduct a criminal history check on the individual named in the
10 request. The department of state police shall provide the
11 department with a written report of the criminal history check
12 conducted under this subsection. The report shall contain any
13 criminal history record information on the individual maintained by
14 the department of state police.

15 (5) Upon receipt of the written consent to conduct a criminal
16 history check and identification required under subsection (3), if
17 the individual has applied for employment either as an employee or
18 as an independent contractor with an adult foster care facility or
19 staffing agency, the adult foster care facility or staffing agency
20 that has made a good faith offer of employment or independent
21 contract shall comply with subsection (4) and shall make a request
22 to the department of state police to forward the individual's
23 fingerprints to the federal bureau of investigation. The department
24 of state police shall request the federal bureau of investigation
25 to make a determination of the existence of any national criminal
26 history pertaining to the individual. An individual described in
27 this subsection shall provide the department of state police with a

1 set of fingerprints. The department of state police shall complete
2 the criminal history check under subsection (4) and, except as
3 otherwise provided in this subsection, provide the results of its
4 determination under subsection (4) and the results of the federal
5 bureau of investigation determination to the department within 30
6 days after the request is made. If the requesting adult foster care
7 facility or staffing agency is not a state department or agency and
8 if criminal history record information is disclosed on the written
9 report of the criminal history check or the federal bureau of
10 investigation determination that resulted in a conviction, the
11 department shall notify the adult foster care facility or staffing
12 agency and the individual in writing of the type of crime disclosed
13 on the written report of the criminal history check or the federal
14 bureau of investigation determination without disclosing the
15 details of the crime. The notification shall inform the adult
16 foster care facility or staffing agency and the applicant regarding
17 the appeal process in section 34c and shall include a statement
18 that the individual has a right to appeal the information relied
19 upon by the adult foster care facility or staffing agency in making
20 its decision regarding his or her employment eligibility based on
21 the criminal history check. Any charges imposed by the department
22 of state police or the federal bureau of investigation for
23 conducting a criminal history check or making a determination under
24 this subsection shall be paid in the manner required under
25 subsection (4).

26 (6) If an adult foster care facility determines it necessary
27 to employ or independently contract with an individual before

1 receiving the results of the individual's criminal history check or
2 criminal history record information required under this section,
3 the adult foster care facility may conditionally employ the
4 individual if all of the following apply:

5 (a) The adult foster care facility requests the criminal
6 history check or criminal history record information required under
7 this section, upon conditionally employing the individual.

8 (b) The individual signs a written statement indicating all of
9 the following:

10 (i) That he or she has not been convicted of 1 or more of the
11 crimes that are described in subsection (1)(a) to (g) within the
12 applicable time period prescribed by subsection (1)(a) to (g).

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

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

17 (iv) The individual agrees that, if the information in the
18 criminal history check conducted under this section does not
19 confirm the individual's statement under subparagraphs (i) to (iii),
20 his or her employment will be terminated by the adult foster care
21 facility as required under subsection (1) unless and until the
22 individual can prove that the information is incorrect.

23 (v) That he or she understands the conditions described in
24 subparagraphs (i) to (iv) that result in the termination of his or
25 her employment and that those conditions are good cause for
26 termination.

27 (c) Except as otherwise provided in this subdivision, the

1 adult foster care facility does not permit the individual to have
2 regular direct access to or provide direct services to residents in
3 the adult foster care facility without supervision until the
4 criminal history check or criminal history record information is
5 obtained and the individual is eligible for that employment. If
6 required under this subdivision, the adult foster care facility
7 shall provide on-site supervision of an individual in the facility
8 on a conditional basis under this subsection by an individual who
9 has undergone a criminal history check conducted in compliance with
10 this section. An adult foster care facility may permit an
11 individual in the facility on a conditional basis under this
12 subsection to have regular direct access to or provide direct
13 services to residents in the adult foster care facility without
14 supervision if all of the following conditions are met:

15 (i) The adult foster care facility, at its own expense and
16 before the individual has direct access to or provides direct
17 services to residents of the facility, conducts a search of public
18 records on that individual through the internet criminal history
19 access tool maintained by the department of state police and the
20 results of that search do not uncover any information that would
21 indicate that the individual is not eligible to have regular direct
22 access to or provide direct services to residents under this
23 section.

24 (ii) Before the individual has direct access to or provides
25 direct services to residents of the adult foster care facility, the
26 individual signs a statement in writing that he or she has resided
27 in this state without interruption for at least the immediately

1 preceding 12-month period.

2 (iii) If applicable, the individual provides to the department
3 of state police a set of fingerprints on or before the expiration
4 of 10 business days following the date the individual was
5 conditionally employed under this subsection.

6 (7) The department shall develop and distribute the model form
7 for the statements required under subsection (6)(b) and (c). The
8 department shall make the model form available to adult foster care
9 facilities upon request at no charge.

10 (8) If an individual is conditionally employed under
11 subsection (6), and the information under subsection (3) or report
12 under subsection (4) or (5), if applicable, does not confirm the
13 individual's statement under subsection (6)(b)(i) to (iii), the adult
14 foster care facility shall terminate the individual's employment as
15 required by subsection (1).

16 (9) An individual who knowingly provides false information
17 regarding his or her identity, criminal convictions, or
18 substantiated findings on a statement described in subsection
19 (6)(b)(i) to (iii) is guilty of a misdemeanor punishable by
20 imprisonment for not more than 93 days or a fine of not more than
21 \$500.00, or both.

22 (10) An adult foster care facility or staffing agency shall
23 use criminal history record information obtained under subsection
24 (3), (4), or (5) only for the purpose of evaluating an individual's
25 qualifications for employment in the position for which he or she
26 has applied and for the purposes of subsections (6) and (8). An
27 adult foster care facility or staffing agency or an employee of the

1 adult foster care facility or staffing agency shall not disclose
2 criminal history record information obtained under this section to
3 a person who is not directly involved in evaluating the
4 individual's qualifications for employment or independent contract.
5 An individual who knowingly uses or disseminates the criminal
6 history record information obtained under subsection (3), (4), or
7 (5) in violation of this subsection is guilty of a misdemeanor
8 punishable by imprisonment for not more than 93 days or a fine of
9 not more than \$1,000.00, or both. Except for a knowing or
10 intentional release of false information, an adult foster care
11 facility or staffing agency has no liability in connection with a
12 criminal history check conducted in compliance with this section or
13 the release of criminal history record information under this
14 subsection.

15 (11) Upon consent of an individual as required in subsection
16 (3) and upon request from an adult foster care facility or staffing
17 agency that has made a good faith offer of employment or an
18 independent contract to the individual, the relevant licensing or
19 regulatory department shall review the criminal history record
20 information, if any, and notify the requesting adult foster care
21 facility or staffing agency of the information in the manner
22 prescribed in subsection (4) or (5). Until the federal bureau of
23 investigation implements an automatic notification system similar
24 to the system required of the state police under subsection (14)
25 and federal regulations allow the federal criminal record to be
26 used for subsequent authorized uses, as determined in an order
27 issued by the department, an adult foster care facility or staffing

1 agency may rely on the criminal history record information provided
2 by the relevant licensing or regulatory department under this
3 subsection and a request to the federal bureau of investigation to
4 make a subsequent determination of the existence of any national
5 criminal history pertaining to the individual is not necessary if
6 all of the following requirements are met:

7 (a) The criminal history check was conducted during the
8 immediately preceding 12-month period.

9 (b) The individual has been continuously employed by an adult
10 foster care facility, mental health facility, or covered health
11 facility, or the staffing agency since the criminal history check
12 was conducted in compliance with this section or meets the
13 continuous employment requirement of this subdivision other than
14 being on layoff status for less than 1 year from an adult foster
15 care facility, mental health facility, or covered health facility.

16 (c) The individual can provide evidence acceptable to the
17 relevant licensing or regulatory department that he or she has been
18 a resident of this state for the immediately preceding 12-month
19 period.

20 (12) As a condition of continued employment, each employee or
21 independent contractor shall do both of the following:

22 (a) Agree in writing to report to the adult foster care
23 facility or staffing agency immediately upon being arraigned on 1
24 or more of the criminal offenses listed in subsection (1)(a) to
25 (g), upon being convicted of 1 or more of the criminal offenses
26 listed in subsection (1)(a) to (g), upon becoming the subject of an
27 order or disposition described under subsection (1)(h), and upon

1 becoming the subject of a substantiated finding described under
2 subsection (1)(i). Reporting of an arraignment under this
3 subdivision is not cause for 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 (13) In addition to sanctions set forth in this act, a
8 licensee, owner, administrator, or operator of an adult foster care
9 facility or staffing agency who knowingly and willfully fails to
10 conduct the criminal history checks as required under this section
11 is guilty of a misdemeanor punishable by imprisonment for not more
12 than 1 year or a fine of not more than \$5,000.00, or both.

13 (14) In collaboration with the department of state police, the
14 department of technology, management, and budget shall establish
15 and maintain an automated fingerprint identification system
16 database that would allow the department of state police to store
17 and maintain all fingerprints submitted under this section and
18 would provide for an automatic notification at the time a
19 subsequent criminal arrest fingerprint card submitted into the
20 system matches a set of fingerprints previously submitted under
21 this section. Upon such notification, the department of state
22 police shall immediately notify the department and the department
23 shall immediately contact each respective adult foster care
24 facility or staffing agency with which that individual is
25 associated. Information in the database established under this
26 subsection is confidential, is not subject to disclosure under the
27 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and

1 shall not be disclosed to any person except for purposes of this
2 act or for law enforcement purposes.

3 (15) If an individual independently contracts with an adult
4 foster care facility, subsections (1) and (2) do not apply if the
5 individual is not under the adult foster care facility's control
6 and the contractual work performed by the individual is not
7 directly related to the clinical, health care, or personal services
8 delivered by the adult foster care facility or if the individual's
9 duties are not performed on an ongoing basis with direct access to
10 residents. This exception includes, but is not limited to, an
11 individual who independently contracts with the adult foster care
12 facility to provide utility, maintenance, construction, or
13 communication services.

14 (16) The department shall maintain an electronic web-based
15 system to assist the adult foster care facilities and staffing
16 agencies required to check relevant registries and conduct criminal
17 history checks of its employees and independent contractors and to
18 provide for an automated notice to the adult foster care facilities
19 and staffing agencies for the individuals entered in the system
20 who, since the initial criminal history check, have been convicted
21 of a disqualifying offense or have been the subject of a
22 substantiated finding of abuse, neglect, or misappropriation of
23 property. The department may charge a staffing agency a 1-time set-
24 up fee of up to \$100.00 for access to the electronic web-based
25 system under this section.

26 (17) An adult foster care facility, staffing agency, or a
27 prospective employee covered under this section may not be charged

1 for the cost of a criminal history check required under this act.

2 (18) As used in this section:

3 (a) "Convicted" means either of the following:

4 (i) For a crime that is not a relevant crime, a final
5 conviction, the payment of a fine, a plea of guilty or nolo
6 contendere if accepted by the court, or a finding of guilt for a
7 criminal law violation or a juvenile adjudication or disposition by
8 the juvenile division of probate court or family division of
9 circuit court for a violation that if committed by an adult would
10 be a crime.

11 (ii) For a relevant crime described under 42 USC 1320a-7(a),
12 convicted means that term as defined in 42 USC 1320a-7.

13 (b) "Covered health facility" means a nursing home, county
14 medical care facility, hospice, hospital that provides swing bed
15 services, home for the aged, or home health agency licensed under
16 article 17 of the public health code, 1978 PA 368, MCL 333.20101 to
17 333.22260.

18 (c) "Criminal history check conducted in compliance with this
19 section" includes a criminal history check conducted under this
20 section, under section 134a of the mental health code, 1974 PA 258,
21 MCL 330.1134a, or under section 20173a of the public health code,
22 1978 PA 368, MCL 333.20173a.

23 (d) "Direct access" means access to a resident or resident's
24 property, financial information, medical records, treatment
25 information, or any other identifying information.

26 (e) "Home health agency" means that term as defined in section
27 20173a of the public health code, 1978 PA 368, MCL 333.20173a.

1 (f) "Independent contract" means a contract entered into by an
2 adult foster care facility with an individual who provides the
3 contracted services independently or a contract entered into by an
4 adult foster care facility with a staffing agency that complies
5 with the requirements of this section to provide the contracted
6 services to the adult foster care facility on behalf of the
7 staffing agency.

8 (g) "Mental health facility" means a psychiatric facility or
9 ~~intermediate care facility for people with mental retardation~~ **OTHER**
10 **FACILITY DEFINED IN 42 USC 1396D(D) AS DESCRIBED** under the mental
11 health code, 1974 PA 258, MCL 330.1001 to 330.2106.

12 (h) "Staffing agency" means an entity that recruits candidates
13 and provides temporary and permanent qualified staffing for adult
14 foster care facilities, including independent contractors.

15 (i) "Title XIX" means title XIX of the social security act, 42
16 USC 1396 to 1396w-5.

17 (j) "Under the adult foster care facility's control" means an
18 individual employed by or under independent contract with an adult
19 foster care facility for whom the adult foster care facility does
20 both of the following:

21 (i) Determines whether the individual who has access to
22 residents may provide care, treatment, or other similar support
23 service functions to residents served by the adult foster care
24 facility.

25 (ii) Directs or oversees 1 or more of the following:

26 (A) The policy or procedures the individual must follow in
27 performing his or her duties.

1 (B) The tasks performed by the individual.

2 (C) The individual's work schedule.

3 (D) The supervision or evaluation of the individual's work or
4 job performance, including imposing discipline or granting
5 performance awards.

6 (E) The compensation the individual receives for performing
7 his or her duties.

8 (F) The conditions under which the individual performs his or
9 her duties.