

SENATE BILL No. 73

January 24, 2013, Introduced by Senators BIEDA, ROCCA and JONES and referred to the Committee on Families, Seniors and Human Services.

A bill to require the establishment of a vulnerable adult registry; to prescribe the duties and responsibilities of certain state departments and agencies; and to prescribe fees, penalties, and sanctions.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "vulnerable adult registry act".

3 Sec. 3. As used in this act:

4 (a) "Convicted" means 1 of the following:

5 (i) Having a judgment of conviction or a probation order
6 entered in any court having jurisdiction over criminal offenses,
7 including, but not limited to, a tribal court or a military court,
8 and including a conviction subsequently set aside under 1965 PA
9 213, MCL 780.621 to 780.624.

10 (ii) Either of the following:

1 (A) Being assigned to youthful trainee status under sections
2 11 to 15 of chapter II of the code of criminal procedure, 1927 PA
3 175, MCL 762.11 to 762.15, before October 1, 2004.

4 (B) Being assigned to youthful trainee status under sections
5 11 to 15 of chapter II of the code of criminal procedure, 1927 PA
6 175, MCL 762.11 to 762.15, on or after October 1, 2004 if the
7 individual's status of youthful trainee is revoked and an
8 adjudication of guilt is entered.

9 (iii) Having an order of disposition entered under section 18 of
10 chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18,
11 that is open to the general public under section 28 of chapter XIIA
12 of the probate code of 1939, 1939 PA 288, MCL 712A.28.

13 (iv) Having an order of disposition or other adjudication in a
14 juvenile matter in another state or country.

15 (b) "Department" means the department of human services.

16 (c) "Vulnerable adult" means that phrase as defined in section
17 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m.

18 (d) "Vulnerable adult abuse" means an offense under sections
19 145n to 145p of the Michigan penal code, 1931 PA 328, MCL 750.145n
20 to 750.145p.

21 (e) "Vulnerable adult abuse registry" or "registry" means the
22 registry created under section 5.

23 Sec. 5. (1) The department shall establish and maintain a
24 statewide electronic vulnerable adult abuse registry.

25 (2) If an individual is convicted of vulnerable adult abuse,
26 the department shall list that individual on the vulnerable adult
27 abuse registry.

1 (3) The department shall work with the department of
2 technology, management, and budget and any other entity the
3 department determines necessary to establish the vulnerable adult
4 abuse registry.

5 (4) The department shall work with the department of state
6 police and other law enforcement agencies to establish a reporting
7 procedure that allows the department to obtain the names and other
8 necessary information of individuals required to be listed on the
9 vulnerable adult abuse registry.

10 Sec. 7. (1) Unless made public under a law of this state or a
11 law of another state, a written report, document, or photograph
12 filed with the department as provided in this act is a confidential
13 record available only to 1 or more of the following:

14 (a) A legally mandated public or private agency investigating
15 a report of known or suspected vulnerable adult abuse or a legally
16 mandated public or private agency prosecuting a disciplinary action
17 against its own employee involving vulnerable adult services
18 records.

19 (b) A police or other law enforcement agency investigating a
20 report of known or suspected vulnerable adult abuse.

21 (c) A physician who is treating a vulnerable adult whom the
22 physician reasonably suspects may be abused.

23 (d) A person, agency, or organization, including a
24 multidisciplinary case consultation team, authorized to diagnose,
25 care for, treat, or supervise a vulnerable adult who is the subject
26 of a report or record under this act, or a person, agency, or
27 organization, including a multidisciplinary case consultation team,

1 that is responsible for the vulnerable adult's health or welfare.

2 (e) A person named in the report or record as a perpetrator or
3 alleged perpetrator of the vulnerable adult abuse.

4 (f) A court that determines the information is necessary to
5 decide an issue before the court.

6 (g) A grand jury that determines the information is necessary
7 to conduct the grand jury's official business.

8 (h) A person, agency, or organization engaged in a bona fide
9 research or evaluation project. The person, agency, or organization
10 shall not release information identifying a person named in the
11 report or record unless that person's written consent is obtained.
12 The person, agency, or organization shall not conduct a personal
13 interview with a family without the family's prior consent and
14 shall not disclose information that would identify the vulnerable
15 adult or his or her family or other identifying information. The
16 department director may authorize the release of information to a
17 person, agency, or organization described in this subdivision if
18 the release contributes to the purposes of this act and the person,
19 agency, or organization has appropriate controls to maintain the
20 confidentiality of personally identifying information for a person
21 named in a report or record made under this act.

22 (i) Subject to section 11, a standing or select committee or
23 appropriations subcommittee of either house of the legislature
24 having jurisdiction over vulnerable adult matters.

25 (j) A county medical examiner or deputy county medical
26 examiner appointed under 1953 PA 181, MCL 52.201 to 52.216, for the
27 purpose of carrying out his or her duties under that act.

1 (2) A person or entity to whom information described in
2 subsection (1) is disclosed shall make the information available
3 only to a person or entity described in subsection (1). This
4 subsection does not require a court proceeding to be closed that
5 otherwise would be open to the public.

6 Sec. 9. (1) Not less than 30 days after the department lists
7 an individual on the vulnerable adult abuse registry, the
8 department shall notify in writing the individual listed on the
9 registry. The notice shall set forth the individual's right to
10 request expunction of the record and the right to a hearing if the
11 department refuses the request.

12 (2) A person who is the subject of a report or record made
13 under this act may request the department to amend an inaccurate
14 report or record from the registry and local office file. A person
15 who is the subject of a report or record made under this act may
16 request the department to expunge from the registry a report or
17 record in which no relevant and accurate evidence of vulnerable
18 adult abuse is found to exist. A report or record filed in a local
19 office file is not subject to expunction except as the department
20 authorizes, if considered in the vulnerable adult's best interest.

21 (3) If the department refuses a request for amendment or
22 expunction under subsection (2), or fails to act within 30 days
23 after receiving the request, the department shall hold a hearing to
24 determine by a preponderance of the evidence whether the report or
25 record in whole or in part should be amended or expunged from the
26 registry on the grounds that the report or record is not relevant
27 or accurate evidence of vulnerable adult abuse. The hearing shall

1 be held before a hearing officer appointed by the department and
2 shall be conducted as prescribed by the administrative procedures
3 act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

4 (4) If the investigation of a report conducted under this act
5 fails to disclose evidence of vulnerable adult abuse, the
6 information identifying the subject of the report shall be expunged
7 from the registry. If evidence of abuse exists, the department
8 shall maintain the information in the registry until the department
9 receives reliable information that the perpetrator of the
10 vulnerable adult abuse is dead.

11 (5) In releasing information under this act, the department
12 shall not include a report compiled by a police agency or other law
13 enforcement agency related to an ongoing investigation of suspected
14 vulnerable adult abuse. This subsection does not prevent the
15 department from releasing reports of convictions of crimes related
16 to vulnerable adult abuse.

17 (6) An agency obtaining a confidential record under section
18 7(1)(a) may seek an order from the court having jurisdiction over
19 the vulnerable adult that allows the agency to disseminate
20 confidential information to pursue sanctions for alleged
21 dereliction, malfeasance, or misfeasance of duty against an
22 employee of the agency, to a recognized labor union representative
23 of the employee's bargaining unit, or to an arbitrator or an
24 administrative law judge who conducts a hearing involving the
25 employee's alleged dereliction, malfeasance, or misfeasance of duty
26 to be used solely in connection with that hearing. Information
27 released under this subsection shall be released in a manner that

1 maintains the greatest degree of confidentiality while allowing
2 review of employee performance.

3 Sec. 11. (1) The department shall make information contained
4 in the vulnerable adult abuse registry and reports and records made
5 under this act available to a standing or select committee or
6 appropriations subcommittee of either house of the legislature
7 having jurisdiction over protective services matters for vulnerable
8 adults subject to all of the following:

9 (a) The department shall not provide confidential information
10 protected by section 7 to the committee unless the committee
11 members appointed and serving agree by roll call vote that the
12 information is essential for the protection of Michigan vulnerable
13 adults or for legislative oversight of the protective services
14 program and that the confidential information will only be
15 considered at a closed session of the committee. The affirmative
16 vote required by this subdivision shall be by not less than the
17 supermajority required by section 7 of the open meetings act, 1976
18 PA 267, MCL 15.267, and may serve as the vote required under that
19 section for holding a closed session.

20 (b) In addition to compliance with the open meetings act, 1976
21 PA 267, MCL 15.261 to 15.275, a closed session held under this
22 section shall comply with all of the following:

23 (i) Tape recording, camera, or other electronic equipment for
24 documenting the proceedings shall not be permitted in the closed
25 session.

26 (ii) Attendance at the closed session shall be limited to
27 committee members, other members of the legislature and legislative

1 staff at the discretion of the chairperson, and staff members from
2 the department designated by the director.

3 (2) A person who discloses or causes to be disclosed
4 confidential information to which the person has gained access at a
5 meeting held under this section is guilty of a misdemeanor. A
6 person who keeps a confidential record or file, or a copy of a
7 confidential record or file, at the conclusion of a closed session
8 held under this section, which record or file is obtained at that
9 meeting, is guilty of a misdemeanor.

10 Sec. 13. (1) Upon written request, the department may provide
11 to an individual, or whoever is appropriate, documentation stating
12 that the individual is not named in the vulnerable adult abuse
13 registry as the perpetrator of vulnerable adult abuse.

14 (2) An individual or the department may share the document
15 provided in subsection (1) with whoever is appropriate for the
16 purpose of seeking employment or serving as a volunteer if that
17 employment or volunteer work will include contact with vulnerable
18 adults.

19 (3) An employer, a person or agency to whom an individual is
20 applying for employment, or a volunteer agency, with appropriate
21 authorization and identification from the individual, may request
22 and receive vulnerable adult abuse registry clearance information
23 if that employment or volunteer work will include contact with
24 vulnerable adults.

25 (4) The department may develop an automated system that lists
26 individuals who have not been named in the vulnerable adult abuse
27 registry as the perpetrator of vulnerable adult abuse. An

1 individual applying for vulnerable adult-related employment or
2 seeking to volunteer in a capacity that would allow unsupervised
3 access to a vulnerable adult whose health or welfare the individual
4 is not responsible for may be listed in that system if a screening
5 of the individual finds that he or she has not been named in the
6 vulnerable adult abuse registry as the perpetrator of vulnerable
7 adult abuse. The automated system developed under this section
8 shall provide for public access to the list of individuals who have
9 been screened for the purposes of complying with this section. An
10 automated system developed under this section shall have
11 appropriate safeguards and procedures to ensure that information
12 that is confidential under this act, state law, or federal law is
13 not accessible or disclosed through that system.