

SUBSTITUTE FOR
SENATE BILL NO. 621

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding sections 20173a and 20173b;
and to repeal acts and parts of acts.

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 IF THE INDIVIDUAL

1 SATISFIES 1 OR MORE OF THE FOLLOWING:

2 (A) HAS BEEN CONVICTED OF A FELONY OR AN ATTEMPT OR CONSPIRACY
3 TO COMMIT A FELONY, OTHER THAN A FELONY FOR A RELEVANT CRIME
4 DESCRIBED UNDER 42 USC 1320A-7, UNLESS 15 YEARS HAVE LAPSED SINCE
5 THE INDIVIDUAL COMPLETED ALL OF THE TERMS AND CONDITIONS OF HIS OR
6 HER SENTENCING, PAROLE, AND PROBATION FOR THAT CONVICTION PRIOR TO
7 THE DATE OF APPLICATION FOR EMPLOYMENT OR CLINICAL PRIVILEGES OR
8 THE DATE OF THE EXECUTION OF THE INDEPENDENT CONTRACT.

9 (B) HAS BEEN CONVICTED OF A MISDEMEANOR UNDER PART 74, A
10 MISDEMEANOR, OTHER THAN A MISDEMEANOR FOR A RELEVANT CRIME
11 DESCRIBED UNDER 42 USC 1320A-7, INVOLVING ABUSE, NEGLIGENCE, ASSAULT,
12 BATTERY, CRIMINAL SEXUAL CONDUCT, FRAUD, OR THEFT, OR A STATE OR
13 FEDERAL CRIME THAT IS SUBSTANTIALLY SIMILAR TO A MISDEMEANOR
14 DESCRIBED IN THIS SUBDIVISION, WITHIN THE 10 YEARS IMMEDIATELY
15 PRECEDING THE DATE OF APPLICATION FOR EMPLOYMENT OR CLINICAL
16 PRIVILEGES OR THE DATE OF THE EXECUTION OF THE INDEPENDENT
17 CONTRACT.

18 (C) HAS BEEN CONVICTED OF A RELEVANT CRIME DESCRIBED UNDER 42
19 USC 1320A-7.

20 (D) IS THE SUBJECT OF AN ORDER OR DISPOSITION UNDER SECTION
21 16B OF CHAPTER IX OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175,
22 MCL 769.16B.

23 (E) HAS BEEN THE SUBJECT OF A SUBSTANTIATED FINDING OF
24 NEGLIGENCE, ABUSE, OR MISAPPROPRIATION OF PROPERTY BY A STATE OR
25 FEDERAL AGENCY PURSUANT TO AN INVESTIGATION CONDUCTED IN ACCORDANCE
26 WITH 42 USC 1395I-3 OR 1396R.

27 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5), A HEALTH

1 FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY MEDICAL CARE
2 FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED SERVICES, HOME
3 FOR THE AGED, OR HOME HEALTH AGENCY SHALL NOT EMPLOY, INDEPENDENTLY
4 CONTRACT WITH, OR GRANT PRIVILEGES TO AN INDIVIDUAL WHO REGULARLY
5 HAS DIRECT ACCESS TO OR PROVIDES DIRECT SERVICES TO PATIENTS OR
6 RESIDENTS IN THE HEALTH FACILITY OR AGENCY AFTER THE EFFECTIVE DATE
7 OF THIS SECTION UNTIL THE HEALTH FACILITY OR AGENCY CONDUCTS A
8 CRIMINAL HISTORY CHECK IN COMPLIANCE WITH SUBSECTION (4). THIS
9 SUBSECTION AND SUBSECTION (1) DO NOT APPLY TO ANY OF THE FOLLOWING:

10 (A) AN INDIVIDUAL WHO IS EMPLOYED BY, UNDER INDEPENDENT
11 CONTRACT TO, OR GRANTED CLINICAL PRIVILEGES IN A HEALTH FACILITY OR
12 AGENCY BEFORE THE EFFECTIVE DATE OF THIS SECTION. WITHIN 24 MONTHS
13 AFTER THE EFFECTIVE DATE OF THIS SECTION, AN INDIVIDUAL WHO IS
14 EXEMPT UNDER THIS SUBDIVISION SHALL PROVIDE THE DEPARTMENT OF STATE
15 POLICE WITH A SET OF FINGERPRINTS AND THE DEPARTMENT OF STATE
16 POLICE SHALL INPUT THOSE FINGERPRINTS INTO THE AUTOMATED
17 FINGERPRINT IDENTIFICATION SYSTEM DATABASE ESTABLISHED UNDER
18 SUBSECTION (12). AN INDIVIDUAL WHO IS EXEMPT UNDER THIS SUBDIVISION
19 IS NOT LIMITED TO WORKING WITHIN THE HEALTH FACILITY OR AGENCY WITH
20 WHICH HE OR SHE IS EMPLOYED BY, UNDER INDEPENDENT CONTRACT TO, OR
21 GRANTED CLINICAL PRIVILEGES ON THE EFFECTIVE DATE OF THIS SECTION.
22 THAT INDIVIDUAL MAY TRANSFER TO ANOTHER HEALTH FACILITY OR AGENCY
23 PROVIDED THAT A CRIMINAL HISTORY CHECK BEING CONDUCTED IN
24 ACCORDANCE WITH THIS SUBDIVISION DOES NOT INDICATE A PROHIBITED
25 OFFENSE AS DESCRIBED UNDER SUBSECTION (1). IF AN INDIVIDUAL WHO IS
26 EXEMPT UNDER THIS SUBDIVISION IS SUBSEQUENTLY CONVICTED OF A CRIME
27 DESCRIBED UNDER SUBSECTION (1) (A) OR (B) OR FOUND TO BE THE SUBJECT

1 OF A SUBSTANTIATED FINDING DESCRIBED UNDER SUBSECTION (1) (E) OR AN
2 ORDER OR DISPOSITION DESCRIBED UNDER SUBSECTION (1) (D), OR IS FOUND
3 TO HAVE BEEN CONVICTED OF A RELEVANT CRIME DESCRIBED UNDER
4 SUBSECTION (1) (C), THEN HE OR SHE IS NO LONGER EXEMPT AND MAY BE
5 DENIED EMPLOYMENT OR MAY BE TERMINATED FROM EMPLOYMENT.

6 (B) AN INDIVIDUAL WHO IS AN INDEPENDENT CONTRACTOR WITH A
7 HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY MEDICAL
8 CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED SERVICES,
9 HOME FOR THE AGED, OR HOME HEALTH AGENCY IF THE WORK FOR WHICH HE
10 OR SHE IS CONTRACTED IS NOT DIRECTLY RELATED TO THE PROVISION OF
11 SERVICES TO A PATIENT OR RESIDENT OR IF THE WORK FOR WHICH HE OR
12 SHE IS CONTRACTED ALLOWS FOR DIRECT ACCESS TO THE PATIENTS OR
13 RESIDENTS BUT IS NOT PERFORMED ON AN ONGOING BASIS. THIS EXCEPTION
14 INCLUDES, BUT IS NOT LIMITED TO, AN INDIVIDUAL WHO INDEPENDENTLY
15 CONTRACTS WITH THE HEALTH FACILITY OR AGENCY TO PROVIDE UTILITY,
16 MAINTENANCE, CONSTRUCTION, OR COMMUNICATIONS SERVICES.

17 (3) AN INDIVIDUAL WHO APPLIES FOR EMPLOYMENT EITHER AS AN
18 EMPLOYEE OR AS AN INDEPENDENT CONTRACTOR OR FOR CLINICAL PRIVILEGES
19 WITH A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY
20 MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED
21 SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY AND HAS RECEIVED
22 A GOOD FAITH OFFER OF EMPLOYMENT, AN INDEPENDENT CONTRACT, OR
23 CLINICAL PRIVILEGES FROM THE HEALTH FACILITY OR AGENCY SHALL GIVE
24 WRITTEN CONSENT AT THE TIME OF APPLICATION FOR THE DEPARTMENT OF
25 STATE POLICE TO CONDUCT AN INITIAL CRIMINAL HISTORY CHECK UNDER
26 SUBSECTION (4), ALONG WITH IDENTIFICATION ACCEPTABLE TO THE
27 DEPARTMENT OF STATE POLICE.

1 (4) UPON RECEIPT OF THE WRITTEN CONSENT AND IDENTIFICATION
2 REQUIRED UNDER SUBSECTION (3), A HEALTH FACILITY OR AGENCY THAT IS
3 A NURSING HOME, COUNTY MEDICAL CARE FACILITY, HOSPICE, HOSPITAL
4 THAT PROVIDES SWING BED SERVICES, HOME FOR THE AGED, OR HOME HEALTH
5 AGENCY THAT HAS MADE A GOOD FAITH OFFER OF EMPLOYMENT OR AN
6 INDEPENDENT CONTRACT OR CLINICAL PRIVILEGES TO THE APPLICANT SHALL
7 MAKE A REQUEST TO THE DEPARTMENT OF STATE POLICE TO CONDUCT A
8 CRIMINAL HISTORY CHECK ON THE APPLICANT, TO INPUT THE APPLICANT'S
9 FINGERPRINTS INTO THE AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM
10 DATABASE, AND TO FORWARD THE APPLICANT'S FINGERPRINTS TO THE
11 FEDERAL BUREAU OF INVESTIGATION. THE DEPARTMENT OF STATE POLICE
12 SHALL REQUEST THE FEDERAL BUREAU OF INVESTIGATION TO MAKE A
13 DETERMINATION OF THE EXISTENCE OF ANY NATIONAL CRIMINAL HISTORY
14 PERTAINING TO THE APPLICANT. THE APPLICANT SHALL PROVIDE THE
15 DEPARTMENT OF STATE POLICE WITH A SET OF FINGERPRINTS. THE REQUEST
16 SHALL BE MADE IN A MANNER PRESCRIBED BY THE DEPARTMENT OF STATE
17 POLICE. THE HEALTH FACILITY OR AGENCY SHALL MAKE THE WRITTEN
18 CONSENT AND IDENTIFICATION AVAILABLE TO THE DEPARTMENT OF STATE
19 POLICE. THE HEALTH FACILITY OR AGENCY SHALL MAKE A REQUEST TO THE
20 RELEVANT LICENSING OR REGULATORY DEPARTMENT TO CONDUCT A CHECK OF
21 ALL RELEVANT REGISTRIES ESTABLISHED PURSUANT TO FEDERAL AND STATE
22 LAW AND REGULATIONS. IF THE DEPARTMENT OF STATE POLICE OR THE
23 FEDERAL BUREAU OF INVESTIGATION CHARGES A FEE FOR CONDUCTING THE
24 INITIAL CRIMINAL HISTORY CHECK, THE CHARGE SHALL BE PAID BY OR
25 REIMBURSED BY THE DEPARTMENT WITH FEDERAL FUNDS AS PROVIDED TO
26 IMPLEMENT A PILOT PROGRAM FOR NATIONAL AND STATE BACKGROUND CHECKS
27 ON DIRECT PATIENT ACCESS EMPLOYEES OF LONG-TERM CARE FACILITIES OR

1 PROVIDERS IN ACCORDANCE WITH SECTION 307 OF THE MEDICARE
2 PRESCRIPTION DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF 2003,
3 PUBLIC LAW 108-173. THE HEALTH FACILITY OR AGENCY SHALL NOT SEEK
4 REIMBURSEMENT FOR A CHARGE IMPOSED BY THE DEPARTMENT OF STATE
5 POLICE OR THE FEDERAL BUREAU OF INVESTIGATION FROM THE INDIVIDUAL
6 WHO IS THE SUBJECT OF THE INITIAL CRIMINAL HISTORY CHECK. A HEALTH
7 FACILITY OR AGENCY, A PROSPECTIVE EMPLOYEE, OR A PROSPECTIVE
8 INDEPENDENT CONTRACTOR COVERED UNDER THIS SECTION MAY NOT BE
9 CHARGED FOR THE COST OF AN INITIAL CRIMINAL HISTORY CHECK REQUIRED
10 UNDER THIS SECTION. THE DEPARTMENT OF STATE POLICE SHALL CONDUCT A
11 CRIMINAL HISTORY CHECK ON THE APPLICANT NAMED IN THE REQUEST. THE
12 DEPARTMENT OF STATE POLICE SHALL PROVIDE THE DEPARTMENT WITH A
13 WRITTEN REPORT OF THE CRIMINAL HISTORY CHECK CONDUCTED UNDER THIS
14 SUBSECTION IF THE REPORT CONTAINS ANY CRIMINAL HISTORY RECORD
15 INFORMATION. THE REPORT SHALL CONTAIN ANY CRIMINAL HISTORY RECORD
16 INFORMATION ON THE APPLICANT MAINTAINED BY THE DEPARTMENT OF STATE
17 POLICE. THE DEPARTMENT OF STATE POLICE SHALL PROVIDE THE RESULTS OF
18 THE FEDERAL BUREAU OF INVESTIGATION DETERMINATION TO THE DEPARTMENT
19 WITHIN 30 DAYS AFTER THE REQUEST IS MADE. IF THE REQUESTING HEALTH
20 FACILITY OR AGENCY IS NOT A STATE DEPARTMENT OR AGENCY AND IF A
21 CRIMINAL CONVICTION IS DISCLOSED ON THE FEDERAL BUREAU OF
22 INVESTIGATION DETERMINATION, THE DEPARTMENT SHALL NOTIFY THE HEALTH
23 FACILITY OR AGENCY AND THE APPLICANT IN WRITING OF THE TYPE OF
24 CRIME DISCLOSED ON THE FEDERAL BUREAU OF INVESTIGATION
25 DETERMINATION WITHOUT DISCLOSING THE DETAILS OF THE CRIME. ANY
26 CHARGES IMPOSED BY THE DEPARTMENT OF STATE POLICE OR THE FEDERAL
27 BUREAU OF INVESTIGATION FOR CONDUCTING AN INITIAL CRIMINAL HISTORY

1 CHECK OR MAKING A DETERMINATION UNDER THIS SUBSECTION SHALL BE PAID
2 IN THE MANNER REQUIRED UNDER THIS SUBSECTION. THE NOTICE SHALL
3 INCLUDE A STATEMENT THAT THE APPLICANT HAS A RIGHT TO APPEAL A
4 DECISION MADE BY THE HEALTH FACILITY OR AGENCY REGARDING HIS OR HER
5 EMPLOYMENT ELIGIBILITY BASED ON THE CRIMINAL BACKGROUND CHECK. THE
6 NOTICE SHALL ALSO INCLUDE INFORMATION REGARDING WHERE TO FILE AND
7 DESCRIBING THE APPELLATE PROCEDURES ESTABLISHED UNDER SECTION
8 20173B.

9 (5) IF A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME,
10 COUNTY MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING
11 BED SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY DETERMINES
12 IT NECESSARY TO EMPLOY OR GRANT CLINICAL PRIVILEGES TO AN APPLICANT
13 BEFORE RECEIVING THE RESULTS OF THE APPLICANT'S CRIMINAL HISTORY
14 CHECK UNDER SUBSECTION (4), THE HEALTH FACILITY OR AGENCY MAY
15 CONDITIONALLY EMPLOY OR GRANT CONDITIONAL CLINICAL PRIVILEGES TO
16 THE INDIVIDUAL IF ALL OF THE FOLLOWING APPLY:

17 (A) THE HEALTH FACILITY OR AGENCY REQUESTS THE CRIMINAL
18 HISTORY CHECK UNDER SUBSECTION (4) UPON CONDITIONALLY EMPLOYING OR
19 CONDITIONALLY GRANTING CLINICAL PRIVILEGES TO THE INDIVIDUAL.

20 (B) THE INDIVIDUAL SIGNS A STATEMENT IN WRITING THAT INDICATES
21 ALL OF THE FOLLOWING:

22 (i) THAT HE OR SHE HAS NOT BEEN CONVICTED OF 1 OR MORE OF THE
23 CRIMES THAT ARE DESCRIBED IN SUBSECTION (1) (A), (B), AND (C) WITHIN
24 THE APPLICABLE TIME PERIOD PRESCRIBED BY SUBSECTION (1) (A) AND (B).

25 (ii) THAT HE OR SHE IS NOT THE SUBJECT OF AN ORDER OR
26 DISPOSITION DESCRIBED IN SUBSECTION (1) (D).

27 (iii) THAT HE OR SHE HAS NOT BEEN THE SUBJECT OF A SUBSTANTIATED

1 FINDING AS DESCRIBED IN SUBSECTION (1) (E) .

2 (iv) THE INDIVIDUAL AGREES THAT, IF THE INFORMATION IN THE
3 CRIMINAL HISTORY CHECK CONDUCTED UNDER SUBSECTION (4) DOES NOT
4 CONFIRM THE INDIVIDUAL'S STATEMENTS UNDER SUBPARAGRAPHS (i) THROUGH
5 (iii) , HIS OR HER EMPLOYMENT OR CLINICAL PRIVILEGES WILL BE
6 TERMINATED BY THE HEALTH FACILITY OR AGENCY AS REQUIRED UNDER
7 SUBSECTION (1) UNLESS AND UNTIL THE INDIVIDUAL APPEALS AND CAN
8 PROVE THAT THE INFORMATION IS INCORRECT. THE HEALTH FACILITY OR
9 AGENCY SHALL PROVIDE A COPY OF THE RESULTS OF THE CRIMINAL HISTORY
10 CHECK CONDUCTED UNDER SUBSECTION (4) TO THE APPLICANT.

11 (v) THAT HE OR SHE UNDERSTANDS THE CONDITIONS DESCRIBED IN
12 SUBPARAGRAPHS (i) THROUGH (iv) THAT RESULT IN THE TERMINATION OF HIS
13 OR HER EMPLOYMENT OR CLINICAL PRIVILEGES AND THAT THOSE CONDITIONS
14 ARE GOOD CAUSE FOR TERMINATION.

15 (6) ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
16 THIS SECTION, THE DEPARTMENT SHALL DEVELOP AND DISTRIBUTE A MODEL
17 FORM FOR THE STATEMENT REQUIRED UNDER SUBSECTION (5) (B) . THE
18 DEPARTMENT SHALL MAKE THE MODEL FORM AVAILABLE TO HEALTH FACILITIES
19 OR AGENCIES SUBJECT TO THIS SECTION UPON REQUEST AT NO CHARGE.

20 (7) IF AN INDIVIDUAL IS EMPLOYED AS A CONDITIONAL EMPLOYEE OR
21 IS GRANTED CONDITIONAL CLINICAL PRIVILEGES UNDER SUBSECTION (5) ,
22 AND THE REPORT DESCRIBED IN SUBSECTION (4) DOES NOT CONFIRM THE
23 INDIVIDUAL'S STATEMENT UNDER SUBSECTION (5) (B) (i) THROUGH (iii) , THE
24 HEALTH FACILITY OR AGENCY SHALL TERMINATE THE INDIVIDUAL'S
25 EMPLOYMENT OR CLINICAL PRIVILEGES AS REQUIRED BY SUBSECTION (1) .

26 (8) AN INDIVIDUAL WHO KNOWINGLY PROVIDES FALSE INFORMATION
27 REGARDING HIS OR HER IDENTITY, CRIMINAL CONVICTIONS, OR

1 SUBSTANTIATED FINDINGS ON A STATEMENT DESCRIBED IN SUBSECTION
2 (5) (B) (i) THROUGH (iii) IS GUILTY OF A MISDEMEANOR PUNISHABLE BY
3 IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN
4 \$500.00, OR BOTH.

5 (9) A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY
6 MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED
7 SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY SHALL USE
8 CRIMINAL HISTORY RECORD INFORMATION OBTAINED UNDER SUBSECTION (4)
9 ONLY FOR THE PURPOSE OF EVALUATING AN APPLICANT'S QUALIFICATIONS
10 FOR EMPLOYMENT, AN INDEPENDENT CONTRACT, OR CLINICAL PRIVILEGES IN
11 THE POSITION FOR WHICH HE OR SHE HAS APPLIED AND FOR THE PURPOSES
12 OF SUBSECTIONS (5) AND (7). A HEALTH FACILITY OR AGENCY OR AN
13 EMPLOYEE OF THE HEALTH FACILITY OR AGENCY SHALL NOT DISCLOSE
14 CRIMINAL HISTORY RECORD INFORMATION OBTAINED UNDER SUBSECTION (4)
15 TO A PERSON WHO IS NOT DIRECTLY INVOLVED IN EVALUATING THE
16 APPLICANT'S QUALIFICATIONS FOR EMPLOYMENT, AN INDEPENDENT CONTRACT,
17 OR CLINICAL PRIVILEGES. UPON WRITTEN REQUEST FROM ANOTHER HEALTH
18 FACILITY OR AGENCY OR ADULT FOSTER CARE FACILITY THAT IS
19 CONSIDERING EMPLOYING, INDEPENDENTLY CONTRACTING WITH, OR GRANTING
20 CLINICAL PRIVILEGES TO AN INDIVIDUAL, A HEALTH FACILITY OR AGENCY
21 OR ADULT FOSTER CARE FACILITY THAT HAS OBTAINED CRIMINAL HISTORY
22 RECORD INFORMATION UNDER THIS SECTION ON THAT INDIVIDUAL SHALL
23 SHARE THE INFORMATION WITH THE REQUESTING HEALTH FACILITY OR AGENCY
24 OR ADULT FOSTER CARE FACILITY. EXCEPT FOR A KNOWING OR INTENTIONAL
25 RELEASE OF FALSE INFORMATION, A HEALTH FACILITY OR AGENCY HAS NO
26 LIABILITY IN CONNECTION WITH A CRIMINAL BACKGROUND CHECK CONDUCTED
27 UNDER THIS SECTION OR THE RELEASE OF CRIMINAL HISTORY RECORD

Senate Bill No. 621 as amended December 13, 2005

1 INFORMATION UNDER THIS SUBSECTION.

2 (10) AS A CONDITION OF CONTINUED EMPLOYMENT, EACH EMPLOYEE,
3 INDEPENDENT CONTRACTOR, OR INDIVIDUAL GRANTED CLINICAL PRIVILEGES
4 SHALL DO EACH OF THE FOLLOWING:

5 (A) AGREE IN WRITING TO REPORT TO THE HEALTH FACILITY OR
6 AGENCY IMMEDIATELY UPON BEING ARRAIGNED FOR 1 OR MORE OF THE
7 CRIMINAL OFFENSES LISTED IN SUBSECTION (1) (A), (B), AND (C), UPON
8 BEING CONVICTED OF 1 OR MORE OF THE CRIMINAL OFFENSES LISTED IN
9 SUBSECTION (1) (A), (B), AND (C), UPON BECOMING THE SUBJECT OF AN
10 ORDER OR DISPOSITION DESCRIBED UNDER SUBSECTION (1) (D), AND UPON
11 BEING THE SUBJECT OF A SUBSTANTIATED FINDING OF NEGLIGENCE, ABUSE, OR
12 MISAPPROPRIATION OF PROPERTY AS DESCRIBED IN SUBSECTION (1) (E).

13 (B) PROVIDE THE DEPARTMENT OF STATE POLICE WITH A SET OF
14 FINGERPRINTS.

15 (11) IN ADDITION TO SANCTIONS SET FORTH IN SECTION 20165, A
16 LICENSEE, OWNER, ADMINISTRATOR, OR OPERATOR OF A NURSING HOME,
17 COUNTY MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING
18 BED SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY WHO
19 KNOWINGLY AND WILLFULLY FAILS TO CONDUCT THE CRIMINAL HISTORY
20 CHECKS AS REQUIRED UNDER THIS SECTION IS GUILTY OF A MISDEMEANOR
21 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A FINE OF
22 NOT MORE THAN \$5,000.00, OR BOTH<<, AND MAY BE SUBJECT TO CIVIL LIABILITY
FOR PERSONAL INJURY OR DEATH OF ANOTHER RESIDENT CAUSED BY AN INDIVIDUAL
EMPLOYED, INDEPENDENTLY CONTRACTED WITH, OR GRANTED CLINICAL PRIVILEGES
WITHIN A HEALTH FACILITY OR AGENCY WHO WOULD HAVE BEEN TERMINATED OR
DENIED EMPLOYMENT IF THE LICENSEE, OWNER, ADMINISTRATOR, OR OPERATOR OF
THAT FACILITY WOULD HAVE CONDUCTED THE CRIMINAL HISTORY CHECK AS REQUIRED
UNDER THIS SECTION>>.

23 (12) IN COLLABORATION WITH THE DEPARTMENT OF STATE POLICE, THE
24 DEPARTMENT OF INFORMATION TECHNOLOGY SHALL ESTABLISH AN AUTOMATED
25 FINGERPRINT IDENTIFICATION SYSTEM DATABASE THAT WOULD ALLOW THE
26 DEPARTMENT OF STATE POLICE TO STORE AND MAINTAIN ALL FINGERPRINTS
27 SUBMITTED UNDER THIS SECTION AND WOULD PROVIDE FOR AN AUTOMATIC

1 NOTIFICATION IF AND WHEN A SUBSEQUENT CRIMINAL ARREST FINGERPRINT
2 CARD SUBMITTED INTO THE SYSTEM MATCHES A SET OF FINGERPRINTS
3 PREVIOUSLY SUBMITTED IN ACCORDANCE WITH THIS SECTION. UPON SUCH
4 NOTIFICATION, THE DEPARTMENT OF STATE POLICE SHALL IMMEDIATELY
5 NOTIFY THE DEPARTMENT AND THE DEPARTMENT SHALL IMMEDIATELY CONTACT
6 THE RESPECTIVE HEALTH FACILITY OR AGENCY WITH WHICH THAT INDIVIDUAL
7 IS ASSOCIATED.

8 (13) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY
9 ACT THAT ADDED THIS SECTION, THE DEPARTMENT SHALL SUBMIT A WRITTEN
10 REPORT TO THE LEGISLATURE REGARDING EACH OF THE FOLLOWING:

11 (A) THE IMPACT AND EFFECTIVENESS OF THIS AMENDATORY ACT.

12 (B) THE FEASIBILITY OF IMPLEMENTING CRIMINAL HISTORY CHECKS ON
13 VOLUNTEERS WHO WORK IN THOSE HEALTH FACILITIES OR AGENCIES AND ON
14 STATE AGENCY EMPLOYEES WHO ARE INVOLVED IN THE LICENSING OF THOSE
15 HEALTH FACILITIES OR AGENCIES AND REGULATION OF THOSE EMPLOYEES.

16 (C) THE AMOUNT OF MEDICAID AND MEDICARE FUNDING UTILIZED TO
17 PAY FOR AND REIMBURSE CHARGES FOR CONDUCTING CRIMINAL HISTORY
18 CHECKS IN ACCORDANCE WITH THIS SECTION AND THE AMOUNT REMAINING OF
19 THOSE FUNDS.

20 (14) WITHIN 3 YEARS AFTER THE EFFECTIVE DATE OF THIS SECTION,
21 THE DEPARTMENT SHALL SUBMIT A WRITTEN REPORT TO THE LEGISLATURE
22 OUTLINING A PLAN TO COVER THE COSTS OF THE CRIMINAL HISTORY CHECKS
23 REQUIRED UNDER THIS SECTION IF FEDERAL FUNDING IS NO LONGER
24 AVAILABLE OR IS INADEQUATE TO COVER THOSE COSTS.

25 (15) AS USED IN THIS SECTION:

26 (A) "ADULT FOSTER CARE FACILITY" MEANS AN ADULT FOSTER CARE
27 FACILITY LICENSED UNDER THE ADULT FOSTER CARE FACILITY LICENSING

1 ACT, 1979 PA 218, MCL 400.701 TO 400.737.

2 (B) "DIRECT ACCESS" MEANS ACCESS TO A PATIENT OR RESIDENT OR
3 TO A PATIENT'S OR RESIDENT'S PROPERTY, FINANCIAL INFORMATION,
4 MEDICAL RECORDS, TREATMENT INFORMATION, OR ANY OTHER IDENTIFYING
5 INFORMATION.

6 (C) "HOME HEALTH AGENCY" MEANS A PERSON CERTIFIED BY MEDICARE
7 WHOSE BUSINESS IS TO PROVIDE TO INDIVIDUALS IN THEIR PLACES OF
8 RESIDENCE OTHER THAN IN A HOSPITAL, NURSING HOME, OR COUNTY MEDICAL
9 CARE FACILITY 1 OR MORE OF THE FOLLOWING SERVICES: NURSING
10 SERVICES, THERAPEUTIC SERVICES, SOCIAL WORK SERVICES, HOMEMAKER
11 SERVICES, HOME HEALTH AIDE SERVICES, OR OTHER RELATED SERVICES.

12 (D) "INDEPENDENT CONTRACT" MEANS A CONTRACT ENTERED INTO BY A
13 HEALTH FACILITY OR AGENCY WITH AN INDIVIDUAL WHO PROVIDES THE
14 CONTRACTED SERVICES INDEPENDENTLY OR A CONTRACT ENTERED INTO BY A
15 HEALTH FACILITY OR AGENCY WITH AN ORGANIZATION OR AGENCY THAT
16 EMPLOYS OR CONTRACTS WITH AN INDIVIDUAL AFTER COMPLYING WITH THE
17 REQUIREMENTS OF THIS SECTION TO PROVIDE THE CONTRACTED SERVICES TO
18 THE HEALTH FACILITY OR AGENCY ON BEHALF OF THE ORGANIZATION OR
19 AGENCY.

20 (E) "MEDICARE" MEANS BENEFITS UNDER THE FEDERAL MEDICARE
21 PROGRAM ESTABLISHED UNDER TITLE XVIII OF THE SOCIAL SECURITY ACT,
22 42 USC 1395 TO 1395GGG.

23 SEC. 20173B. AN INDIVIDUAL WHO HAS BEEN DISQUALIFIED FROM OR
24 DENIED EMPLOYMENT BY A HEALTH FACILITY OR AGENCY THAT IS A NURSING
25 HOME, COUNTY MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES
26 SWING BED SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY BASED
27 ON A CRIMINAL HISTORY CHECK CONDUCTED PURSUANT TO SECTION 20173 OR

1 20173A MAY APPEAL TO THE DEPARTMENT IF HE OR SHE BELIEVES THAT THE
2 CRIMINAL HISTORY REPORT IS INACCURATE. THE INDIVIDUAL SHALL FILE
3 THE APPEAL WITH THE DIRECTOR OF THE DEPARTMENT WITHIN 15 DAYS AFTER
4 RECEIVING THE WRITTEN REPORT OF THE CRIMINAL HISTORY CHECK UNLESS
5 THE CONVICTION CONTAINED IN THE CRIMINAL HISTORY REPORT IS ONE THAT
6 MAY BE EXPUNGED OR SET ASIDE. IF AN INDIVIDUAL HAS BEEN
7 DISQUALIFIED OR DENIED EMPLOYMENT BASED ON A CONVICTION THAT MAY BE
8 EXPUNGED OR SET ASIDE, THEN HE OR SHE SHALL FILE THE APPEAL ON A
9 FORM PROVIDED BY THE DEPARTMENT WITHIN 15 DAYS AFTER A COURT ORDER
10 GRANTING OR DENYING HIS OR HER APPLICATION TO EXPUNGE OR SET ASIDE
11 THAT CONVICTION IS GRANTED. IF THE ORDER IS GRANTED AND THE
12 CONVICTION IS EXPUNGED OR SET ASIDE, THEN THE INDIVIDUAL SHALL NOT
13 BE DISQUALIFIED OR DENIED EMPLOYMENT BASED SOLELY ON THAT
14 CONVICTION. THE DIRECTOR SHALL REVIEW THE APPEAL AND ISSUE A
15 WRITTEN DECISION WITHIN 30 DAYS AFTER RECEIVING THE APPEAL. THE
16 DECISION OF THE DIRECTOR IS FINAL.

17 Enacting section 1. (1) Section 20173 of the public health
18 code, 1978 PA 368, MCL 333.20173, is repealed effective 60 days
19 after the department secures the necessary federal approval or
20 waiver, and files a written notice, as provided under subsection
21 (2).

22 (2) Section 20173a of the public health code, 1978 PA 368, MCL
23 333.20173a, as added by this amendatory act, takes effect 60 days
24 after the department secures the necessary federal approval or
25 waiver to utilize federal funds to reimburse those facilities for
26 the costs incurred for requesting a national criminal history check
27 to be conducted by the federal bureau of investigation and files

1 with the secretary of state a written notice that the federal
2 approval or waiver, if necessary, has been secured and written
3 notice that the department has issued a medicaid policy bulletin
4 regarding the payment and reimbursement for the criminal history
5 checks.

6 (3) Section 20173b of the public health code, 1978 PA 368, MCL
7 333.20173b, as added by this amendatory act, takes effect the date
8 this amendatory act is enacted.

9 Enacting section 2. This amendatory act does not take effect
10 unless all of the following bills of the 93rd Legislature are
11 enacted into law:

12 (a) Senate Bill No. 622.

13 (b) House Bill No. 5168.

14 (c) House Bill No. 5448.