

SENATE BILL No. 788

November 1, 2011, Introduced by Senators NOFS, PAPPAGEORGE, BOOHER, GREGORY, JONES, PROOS, ROCCA, EMMONS, CASPERSON, JANSEN and MARLEAU 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 13 (MCL 400.713), as amended by 2010 PA 380.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 13. (1) A person, partnership, corporation, association,
2 or a department or agency of the state, county, city, or other
3 political subdivision shall not establish or maintain an adult
4 foster care facility unless licensed by the department.

5 (2) Application for a license shall be made on forms provided
6 and in the manner prescribed by the department. The application
7 shall be accompanied by the fee prescribed in section 13a.

8 (3) Before issuing or renewing a license, the department shall
9 investigate the activities and standards of care of the applicant
10 and shall make an on-site evaluation of the facility. On-site
11 inspections conducted in response to the application may be

1 conducted without prior notice to the applicant. Subject to
2 subsections (9), (10), and (11), the department shall issue or
3 renew a license if satisfied as to all of the following:

4 (a) The financial stability of the facility.

5 (b) The applicant's compliance with this act and rules
6 promulgated under this act.

7 (c) The good moral character of the applicant, or owners,
8 partners, or directors of the facility, if other than an
9 individual. Each of these persons shall be not less than 18 years
10 of age.

11 (d) The physical and emotional ability of the applicant, and
12 the person responsible for the daily operation of the facility to
13 operate an adult foster care facility.

14 (e) The good moral character of the person responsible for the
15 daily operations of the facility and all employees of the facility.
16 The applicant shall be responsible for assessing the good moral
17 character of the employees of the facility. The person responsible
18 for the daily operation of the facility shall be not less than 18
19 years of age.

20 (4) The department shall require an applicant or a licensee to
21 disclose the names, addresses, and official positions of all
22 persons who have an ownership interest in the adult foster care
23 facility. If the adult foster care facility is located on or in
24 real estate that is leased, the applicant or licensee shall
25 disclose the name of the lessor of the real estate and any direct
26 or indirect interest that the applicant or licensee has in the
27 lease other than as lessee.

1 (5) Each license shall state the maximum number of persons to
2 be received for foster care at 1 time.

3 (6) If applicable, a license shall state the type of
4 specialized program for which certification has been received from
5 the department.

6 (7) A license shall be issued to a specific person for a
7 facility at a specific location, is nontransferable, and remains
8 the property of the department. The prohibition against transfer of
9 a license to another location does not apply if a licensee's adult
10 foster care facility or home is closed as a result of eminent
11 domain proceedings, if the facility or home, as relocated,
12 otherwise meets the requirements of this act and the rules
13 promulgated under this act.

14 (8) An applicant or licensee proposing a sale of an adult
15 foster care facility or home to another owner shall provide the
16 department with advance notice of the proposed sale in writing. The
17 applicant or licensee and other parties to the sale shall arrange
18 to meet with specified department representatives and shall obtain
19 before the sale a determination of the items of noncompliance with
20 applicable law and rules that shall be corrected. The department
21 shall notify the respective parties of the items of noncompliance
22 before the change of ownership, shall indicate that the items of
23 noncompliance shall be corrected as a condition of issuance of a
24 license to the new owner, and shall notify the prospective
25 purchaser of all licensure requirements.

26 (9) The department shall not issue a license to or renew the
27 license of an owner, partner, or director of the applicant, who has

1 regular direct access to residents or who has on-site facility
2 operational responsibilities, or an applicant or the licensee
3 designee, if any of those individuals have been convicted of 1 or
4 more of the following:

5 (a) A felony under this act or under chapter XXA of the
6 Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r.

7 (b) A misdemeanor under this act or under chapter XXA of the
8 Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r, within
9 the 10 years immediately preceding the application.

10 (c) A misdemeanor involving abuse, neglect, assault, battery,
11 or criminal sexual conduct or involving fraud or theft against a
12 vulnerable adult as that term is defined in section 145m of the
13 Michigan penal code, 1931 PA 328, MCL 750.145m, or a state or
14 federal crime that is substantially similar to a misdemeanor
15 described in this subdivision within the 10 years immediately
16 preceding the application.

17 (10) If the department has revoked, suspended, or refused to
18 renew a person's license for an adult foster care facility
19 according to section 22, the department may refuse to issue a
20 license to or renew a license of that person for a period of 5
21 years after the suspension, revocation, or nonrenewal of the
22 license.

23 (11) The department may refuse to issue a license to or renew
24 the license of an applicant if the department determines that the
25 applicant has a relationship with a former licensee whose license
26 under this act has been suspended, revoked, or nonrenewed under
27 subsection (9) or section 22 or a convicted person to whom a

1 license has been denied under subsection (9). This subsection
2 applies for 5 years after the suspension, revocation, or nonrenewal
3 of the former licensee's license or the denial of the convicted
4 person's license. For purposes of this subsection, an applicant has
5 a relationship with a former licensee or convicted person if the
6 former licensee or convicted person is involved with the facility
7 in 1 or more of the following ways:

8 (a) Participates in the administration or operation of the
9 facility.

10 (b) Has a financial interest in the operation of the facility.

11 (c) Provides care to residents of the facility.

12 (d) Has contact with residents or staff on the premises of the
13 facility.

14 (e) Is employed by the facility.

15 (f) Resides in the facility.

16 (12) If the department determines that an unlicensed facility
17 is an adult foster care facility, the department shall notify the
18 owner or operator of the facility that it is required to be
19 licensed under this act. A person receiving the notification
20 required under this section who does not apply for a license within
21 30 days is subject to the penalties described in subsection (13).

22 (13) Subject to subsection (12), a person who violates
23 subsection (1) is guilty of a misdemeanor, punishable by
24 imprisonment for not more than 2 years or a fine of not more than
25 \$50,000.00, or both. A person who has been convicted of a violation
26 of subsection (1) who commits a second or subsequent violation is
27 guilty of a felony, punishable by imprisonment for not more than 5

1 years or a fine of not more than \$75,000.00, or both.

2 (14) The department shall issue an initial or renewal license
3 not later than 6 months after the applicant files a completed
4 application. Receipt of the application is considered the date the
5 application is received by any agency or department of this state.
6 If the application is considered incomplete by the department, the
7 department shall notify the applicant in writing or make notice
8 electronically available within 30 days after receipt of the
9 incomplete application, describing the deficiency and requesting
10 additional information. If the department identifies a deficiency
11 or requires the fulfillment of a corrective action plan, the 6-
12 month period is tolled until either of the following occurs:

13 (a) Upon notification by the department of a deficiency, until
14 the date the requested information is received by the department.

15 (b) Upon notification by the department that a corrective
16 action plan is required, until the date the department determines
17 the requirements of the corrective action plan have been met.

18 (15) The determination of the completeness of an application
19 does not operate as an approval of the application for the license
20 and does not confer eligibility of an applicant determined
21 otherwise ineligible for issuance of a license.

22 (16) If the department fails to issue or deny a license within
23 the time required by this section, the department shall return the
24 license fee and shall reduce the license fee for the applicant's
25 next renewal application, if any, by 15%. Failure to issue or deny
26 a license within the time period required under this section does
27 not allow the department to otherwise delay processing an

1 application. The completed application shall be placed in sequence
2 with other completed applications received at that same time. The
3 department shall not discriminate against an applicant in the
4 processing of an application based on the fact that the application
5 fee was refunded or discounted under this subsection.

6 (17) If, on a continual basis, inspections performed by a
7 local health department delay the department in issuing or denying
8 licenses under this act within the 6-month period, the department
9 may use department staff to complete the inspections instead of the
10 local health department causing the delays.

11 (18) The **DEPARTMENT** director ~~of the department~~ shall submit a
12 report by December 1 of each year to the standing committees and
13 appropriations subcommittees of the senate and house of
14 representatives concerned with human services issues. The
15 **DEPARTMENT** director shall include all of the following information
16 in the report concerning the preceding fiscal year:

17 (a) The number of initial and renewal applications the
18 department received and completed within the 6-month time period
19 described in subsection (14).

20 (b) The number of applications requiring a request for
21 additional information.

22 (c) The number of applications rejected.

23 (d) The number of licenses not issued within the 6-month
24 period.

25 (e) The average processing time for initial and renewal
26 licenses granted after the 6-month period.

27 ~~(19) An applicant, if an individual, shall give written~~

~~consent at the time of original license application for the department of state police to conduct the criminal history check and criminal records check required under this section. A licensee designee shall give written consent at the time of appointment for the department of state police to conduct the criminal history check and criminal records check required under this section.~~

~~—— (20) Unless already submitted under subsection (19), an owner, partner, or director of the applicant who has regular direct access to residents or who has on-site facility operational responsibilities shall give written consent at the time of original license application for the department of state police to conduct the criminal history check and criminal records check required under this section.~~

(19) EACH PERSON APPLYING FOR A LICENSE TO OPERATE AN ADULT FOSTER CARE FACILITY UNDER THIS ACT SHALL, AT THE TIME OF APPLYING FOR THE LICENSE, GIVE WRITTEN CONSENT FOR THE DEPARTMENT OF STATE POLICE TO CONDUCT BOTH OF THE FOLLOWING ON THE APPLICANT:

(A) A CRIMINAL HISTORY CHECK.

(B) A CRIMINAL RECORDS CHECK THROUGH THE FEDERAL BUREAU OF INVESTIGATION.

(20) UNLESS ALREADY SUBMITTED UNDER SUBSECTION (19), IF AN ORGANIZATION APPLIES FOR OR APPLIES TO RENEW A LICENSE FOR AN ADULT FOSTER CARE FACILITY UNDER THIS ACT, THE DEPARTMENT SHALL REQUEST THAT THE DEPARTMENT OF STATE POLICE CONDUCT A CRIMINAL HISTORY CHECK AND CRIMINAL RECORDS CHECK DESCRIBED IN SUBSECTION (19). THE DEPARTMENT SHALL REQUIRE THE OWNER, PARTNER, OR DIRECTOR OF THE APPLICANT OR ANY INDIVIDUAL WHO HAS ON-SITE OPERATIONAL

1 RESPONSIBILITIES TO SUBMIT HIS OR HER FINGERPRINTS TO THE
2 DEPARTMENT OF STATE POLICE FOR THE CRIMINAL HISTORY CHECK AND
3 CRIMINAL RECORDS CHECK DESCRIBED IN SUBSECTION (19).

4 (21) The department shall request a criminal history check and
5 criminal records check required under this section in the manner
6 prescribed by the department of state police. The department of
7 state police shall conduct the criminal history check and provide a
8 report of the results to the licensing or regulatory bureau of the
9 department. The report shall contain any criminal history
10 information on the person maintained by the department of state
11 police and the results of the criminal records check from the
12 federal bureau of investigation. The department of state police may
13 charge the person on whom the criminal history check and criminal
14 records check are performed under this section a fee that does not
15 exceed the actual and reasonable cost of conducting the checks.

16 (22) Not later than 1 year after the effective date of the
17 ~~2010-2011~~ amendatory act that ~~added~~ **AMENDED** this subsection, all
18 licensees and licensee designees of facilities licensed on the
19 effective date of the amendatory act that ~~added~~ **AMENDED** this
20 subsection and all persons described in subsection (20) shall
21 comply with the requirements of this section.

22 (23) Beginning the effective date of the ~~2010-2011~~ amendatory
23 act that ~~added~~ **AMENDED** this subsection, if an applicant or licensee
24 designee or person described in subsection (20) applies for a
25 license or to renew a license to operate an adult foster care
26 facility and he or she or the licensee designee previously
27 underwent a criminal history check and criminal records check

1 required under subsection (19) or (20) **OR UNDER SECTION 134A OF THE**
2 **MENTAL HEALTH CODE, 1974 PA 258, MCL 330.1134A,** and has remained
3 continuously licensed **OR CONTINUOUSLY EMPLOYED UNDER SECTION 34B OR**
4 **UNDER SECTION 20173A OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL**
5 **333.20173A,** after the criminal history check and criminal records
6 check have been performed, that person is not required to submit to
7 another criminal history check or criminal records check upon
8 renewal of the license obtained under subsection (3).

9 (24) The department of state police shall store and maintain
10 all fingerprints submitted under this act in an automated
11 fingerprint identification system database that provides for an
12 automatic notification at the time of a subsequent criminal arrest
13 fingerprint card submitted into the system that matches a set of
14 fingerprints previously submitted in accordance with this act. Upon
15 notification, the department of state police shall immediately
16 notify the department and the department shall take the appropriate
17 action.

18 (25) A licensee, licensee designee, owner, partner, or
19 director of the licensee shall not be permitted on the premises of
20 an adult foster care facility if he or she has been convicted of
21 any of the following: adult abuse, neglect, or financial
22 exploitation; or listed offenses as defined in section 2 of the sex
23 offenders registration act, ~~1943~~**1994** PA 295, MCL 28.722.

24 (26) As used in this section, "completed application" means an
25 application complete on its face and submitted with any applicable
26 licensing fees as well as any other information, records, approval,
27 security, or similar item required by law or rule from a local unit

1 of government, a federal agency, or a private entity but not from
2 another department or agency of this state. A completed application
3 does not include a health inspection performed by a local health
4 department.