

HOUSE BILL No. 4158

January 31, 2013, Introduced by Reps. Brunner, Slavens, Smiley and Geiss and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 20142, 20199, and 21755 (MCL 333.20142, 333.20199, and 333.21755).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20142. (1) ~~A~~ **TO OBTAIN A LICENSE TO ESTABLISH OR MAINTAIN**
2 **AND OPERATE A** health facility or agency **IN THIS STATE, A PERSON**
3 shall apply for ~~license~~ **AN INITIAL LICENSE, FOR A NEW LICENSE DUE**
4 **TO A CHANGE OF OWNERSHIP IF APPLICABLE, FOR A LICENSE RENEWAL, or**
5 **FOR TITLE XVIII OR FOR TITLE XIX** certification on a form authorized
6 and provided by the department. The ~~application~~ **APPLICANT** shall
7 include **WITH THE APPLICATION ALL** attachments, additional data, and
8 information **THAT IS** required by **THIS SECTION AND BY** the department.
9 (2) An applicant shall certify the accuracy of information
10 supplied in the application and supplemental statements.

1 (3) An applicant ~~or a licensee~~ **FOR A LICENSE** under part 213 or
2 217 shall disclose the names, addresses, ~~principal occupations,~~ and
3 official positions of all ~~persons~~ **INDIVIDUALS** who have an ownership
4 interest in the ~~health facility or agency~~ **HOME FOR THE AGED OR**
5 **NURSING HOME. IF THE APPLICANT FOR A LICENSE UNDER PART 213 OR 217**
6 **IS NOT AN INDIVIDUAL, THE APPLICANT SHALL DISCLOSE THE NAME OF EACH**
7 **ENTITY THAT HAS AN OWNERSHIP INTEREST IN THE HOME FOR THE AGED OR**
8 **NURSING HOME, THE NAMES, ADDRESSES, AND OFFICIAL POSITIONS OF ALL**
9 **OFFICERS AND DIRECTORS OF THE ENTITY, AND A DESCRIPTION OF THE**
10 **RELATIONSHIP, IF ANY, BETWEEN INDIVIDUALS WHO HAVE AN OWNERSHIP**
11 **INTEREST IN THE HOME FOR THE AGED OR NURSING HOME.** If the ~~health~~
12 ~~facility or agency~~ **HOME FOR THE AGED OR NURSING HOME** is located on
13 or in leased real estate, the applicant ~~or licensee~~ shall disclose
14 the name of the lessor and any direct or indirect interest the
15 applicant ~~or licensee~~ has in the lease other than as lessee. A
16 **LICENSEE UNDER PART 213 OR 217 PROPOSING A change in-OF** ownership
17 shall ~~be reported~~ **REPORT THAT PROPOSAL IN WRITING** to the director
18 not less than ~~15~~ **60** days before the **PROPOSED** change occurs, ~~except~~
19 ~~that a person purchasing stock of a company registered pursuant to~~
20 ~~the securities exchange act of 1934, 15 U.S.C. 78a to 78kk, is~~
21 ~~exempt from disclosing ownership in the facility. A person~~ **IS TO**
22 **OCCUR. AN APPLICANT** required to file a beneficial ownership report
23 ~~pursuant to~~ **UNDER** section 16(a) of the securities exchange act of
24 1934, 15 U.S.C. ~~USC~~ 78p shall file with the department information
25 relating to securities ownership required by ~~the~~ department rule or
26 order. ~~An applicant or licensee proposing a sale of a nursing home~~
27 ~~to another person shall provide the department with written,~~

1 ~~advance notice of the proposed sale.~~ **A LICENSE ISSUED UNDER PART**
2 **213 OR 217 IS NOT TRANSFERABLE TO ANY OTHER PERSON. THE DEPARTMENT**
3 **MAY REVOKE A LICENSE UPON VERIFICATION OF A TRANSFER OF ANY**
4 **OWNERSHIP INTEREST TO ANY OTHER PERSON WITHOUT OBTAINING A NEW**
5 **LICENSE AS REQUIRED IN THIS SUBSECTION.** The applicant ~~or licensee~~
6 and the other parties to the ~~sale~~ **CHANGE OF OWNERSHIP** shall arrange
7 to meet with specified department representatives ~~and shall~~ **TO**
8 ~~obtain before the sale~~ a determination of the items of
9 noncompliance ~~with applicable law and rules which shall~~ **AND**
10 **CONDITIONS OF PARTICIPATION THAT ARE TO** be corrected **BEFORE THE**
11 **CHANGE OF OWNERSHIP OCCURS.** The department shall notify the
12 respective parties of the items of noncompliance ~~prior to~~ **WITH**
13 **APPLICABLE LICENSING LAWS AND RULES AND ANY MEDICARE OR MEDICAID**
14 **CONDITIONS OF PARTICIPATION BEFORE** the change of ownership and
15 ~~shall indicate that the items of noncompliance must be corrected as~~
16 ~~a condition of issuance of~~ **NOT ISSUE** a license to the new owner
17 **UNTIL ALL OF THE ITEMS OF NONCOMPLIANCE OR CONDITIONS OF**
18 **PARTICIPATION HAVE BEEN CORRECTED OR, AT THE OPTION OF THE**
19 **DEPARTMENT, THE NEW OWNER HAS AN APPROVED PLAN OF CORRECTION.** The
20 department may accept reports filed with the securities and
21 exchange commission relating to the filings. A person who violates
22 this subsection is guilty of a misdemeanor, punishable by a fine of
23 not more than ~~\$1,000.00~~ **\$10,000.00** for each violation.

24 (4) ~~An~~ **UPON REQUEST, AN** applicant ~~or licensee~~ under part 217
25 shall disclose **TO THE DEPARTMENT** the names and business addresses
26 of suppliers who furnish goods or services to an individual nursing
27 home or a group of nursing homes under common ownership, the

1 aggregate charges for which exceed \$5,000.00 in a 12-month period
2 ~~which~~ **THAT** includes a month in a nursing home's current fiscal
3 year. ~~An~~ **UPON REQUEST, AN** applicant ~~or licensee~~ shall disclose **TO**
4 **THE DEPARTMENT** the names, addresses, principal occupations, and
5 official positions of all persons who have an ownership interest in
6 a business ~~which~~ **THAT** furnishes goods or services to an individual
7 nursing home or to a group of nursing homes under common ownership,
8 if both of the following apply:

9 (a) The person, or the person's spouse, parent, sibling, or
10 child has an ownership interest in the nursing home purchasing the
11 goods or services.

12 (b) The aggregate charges for the goods or services purchased
13 exceeds \$5,000.00 in a 12-month period ~~which~~ **THAT** includes a month
14 in the nursing home's current fiscal year.

15 (5) An applicant ~~or licensee~~ who makes a false statement in an
16 application or statement required by the department pursuant to
17 this article is guilty of a felony, punishable by imprisonment for
18 not more than 4 years, or a fine of not more than \$30,000.00, or
19 both.

20 (6) **UPON REQUEST, AN APPLICANT OR LICENSEE UNDER PART 217**
21 **SHALL DISCLOSE TO THE DEPARTMENT ANY INFORMATION THE DEPARTMENT**
22 **CONSIDERS RELEVANT TO ITS DUTIES UNDER SECTION 21755.**

23 (7) **FOR THE PURPOSES OF THIS SECTION:**

24 (A) **"APPLICANT" MEANS A PERSON THAT FILES AN APPLICATION UNDER**
25 **THIS SECTION FOR AN INITIAL LICENSE, FOR A NEW LICENSE BECAUSE OF A**
26 **CHANGE IN OWNERSHIP IF APPLICABLE, FOR A LICENSE RENEWAL, OR FOR**
27 **TITLE XVIII OR TITLE XIX CERTIFICATION.**

1 (B) "CHANGE OF OWNERSHIP" MEANS ANY OF THE FOLLOWING:

2 (i) A SALE OF THE ENTITY TO ANY OTHER PERSON.

3 (ii) A CHANGE IN A SOLE PROPRIETORSHIP.

4 (iii) A TRANSFER OF THE TITLE AND PROPERTY TO ANOTHER PERSON IN
5 AN UNINCORPORATED SOLE PROPRIETORSHIP.

6 (iv) A REMOVAL, ADDITION, OR SUBSTITUTION OF A PARTNER IN A
7 PARTNERSHIP.

8 (v) A MERGER OF A CORPORATION INTO ANOTHER CORPORATION.

9 (vi) THE CONSOLIDATION OF 2 OR MORE CORPORATIONS RESULTING IN A
10 NEW CORPORATION.

11 (vii) A CHANGE IN THE MEMBERSHIP OF A LIMITED LIABILITY
12 COMPANY.

13 (viii) A TRANSFER OF AN ENTITY TO A TRUST OR A CHANGE IN A
14 TRUST.

15 (ix) A CHANGE OF OWNERSHIP OF 30% OR MORE OF THE STOCK OF A
16 CORPORATION.

17 (x) A TRANSACTION THAT RESULTS IN THE CHANGE OF THE PERSON WHO
18 IS THE LEGAL HOLDER OF A CERTIFICATE OF NEED FOR THE HEALTH
19 FACILITY OR AGENCY.

20 (C) A PERSON IS CONSIDERED TO HAVE AN OWNERSHIP INTEREST IF
21 THE PERSON IS ANY OF THE FOLLOWING:

22 (i) AN OFFICER OF A CORPORATION.

23 (ii) A MEMBER OF THE BOARD OF DIRECTORS OF A CORPORATION.

24 (iii) A PERSON THAT OWNS OR ACQUIRES 5% OR MORE OF THE STOCK OF
25 A CORPORATION.

26 (iv) A SOLE PROPRIETORSHIP.

27 (v) A PARTNER.

- 1 (vi) A MEMBER OF A LIMITED LIABILITY COMPANY.
- 2 (vii) A MANAGER OF A LIMITED LIABILITY COMPANY.
- 3 (viii) A TRUSTEE OF AN ENTITY ORGANIZED AS A TRUST.
- 4 (ix) AN INDIVIDUAL OR A CORPORATION, PARTNERSHIP, SOLE
- 5 PROPRIETORSHIP, LIMITED LIABILITY COMPANY, TRUST, OR ANY OTHER
- 6 ENTITY, WHICH INDIVIDUAL OR ENTITY OPERATES THE HEALTH FACILITY OR
- 7 AGENCY UNDER A MANAGEMENT AGREEMENT.

8 Sec. 20199. (1) Except as **OTHERWISE** provided in subsection (2)

9 or section 20142, a person who violates this article or a rule

10 promulgated or an order issued under this article is guilty of a

11 misdemeanor ~~—~~punishable by **A** fine of not more than \$1,000.00 for

12 each day the violation continues or, in case of a violation of

13 sections 20551 to 20554, a fine of not more than \$1,000.00 for each

14 occurrence.

15 (2) A person who violates sections 20181 to 20184 is guilty of

16 a misdemeanor ~~—~~punishable by imprisonment for not more than 6

17 months ~~—~~or a fine of not more than \$2,000.00, or both.

18 (3) **IN ADDITION TO ANY OTHER PENALTY PRESCRIBED OR REMEDY**

19 **PROVIDED FOR IN THIS ACT, A PERSON WHO VIOLATES SECTION 20141 IS**

20 **SUBJECT TO AN ADMINISTRATIVE FINE OF \$1,000.00 PER DAY FOR EACH DAY**

21 **IN VIOLATION OF THAT SECTION. A PERSON SHALL NOT CHARGE OR COLLECT**

22 **FROM ANOTHER PERSON OR OTHERWISE COLLECT FOR SERVICES PROVIDED**

23 **WHILE IN VIOLATION OF SECTION 20141. A PERSON WHO HAS COLLECTED**

24 **FEES FOR SERVICES WHILE IN VIOLATION OF SECTION 20141 SHALL WITHOUT**

25 **DEMAND REFUND THE FEES COLLECTED TO THE PERSON CHARGED FOR SERVICES**

26 **OR, IF UNDELIVERABLE, SHALL PAY THE FEES COLLECTED TO THE STATE**

27 **TREASURER FOR DEPOSIT INTO THE GENERAL FUND.**

1 Sec. 21755. The department may refuse to issue a license to
2 establish or maintain and operate, or both, a nursing home to an
3 applicant **THAT FILES AN APPLICATION UNDER SECTION 20142 IF ANY OF**
4 **THE FOLLOWING APPLY:**

5 (a) ~~Whose~~**THE** occupational, professional, or health **FACILITY**
6 **OR** agency license **OF THE APPLICANT OR PERSON WITH AN OWNERSHIP**
7 **INTEREST** has been revoked during the 5 years preceding the date of
8 application.

9 (b) ~~Whom the~~**THE** department finds ~~is~~**THE APPLICANT OR PERSON**
10 **WITH AN OWNERSHIP INTEREST** not suitable to operate a nursing home
11 because of financial incapacity or a lack of good moral character
12 or appropriate business or professional experience. ~~As used in this~~
13 ~~subdivision, "good moral character" means that term as defined in~~
14 ~~Act No. 381 of the Public Acts of 1974, as amended, being sections~~
15 ~~338.41 to 338.47 of the Michigan Compiled Laws.~~

16 (c) **THE APPLICANT OR PERSON WITH AN OWNERSHIP INTEREST HAS**
17 **FILED BANKRUPTCY OR BEEN DETERMINED BANKRUPT DURING THE 5 YEARS**
18 **PRECEDING THE DATE OF APPLICATION.**

19 (d) **A HEALTH FACILITY OR AGENCY OR OTHER ENTITY ESTABLISHED,**
20 **MAINTAINED, OR OPERATED BY THE APPLICANT OR PERSON WITH AN**
21 **OWNERSHIP INTEREST WAS INVOLUNTARILY CLOSED OR WAS TERMINATED FROM**
22 **PARTICIPATION UNDER TITLE XVIII OR TITLE XIX.**

23 (e) **A HEALTH FACILITY OR AGENCY OR OTHER ENTITY ESTABLISHED,**
24 **MAINTAINED, OR OPERATED BY THE APPLICANT OR PERSON WITH AN**
25 **OWNERSHIP INTEREST IS EXCLUDED FROM PARTICIPATION AS A MEDICARE OR**
26 **MEDICAID PROVIDER.**

27 (f) **THE APPLICANT OR PERSON WITH AN OWNERSHIP INTEREST IS**

1 DISQUALIFIED FROM BEING EMPLOYED BY, UNDER INDEPENDENT CONTRACT
2 WITH, OR GRANTED CLINICAL PRIVILEGES BY A HEALTH FACILITY OR AGENCY
3 UNDER SECTION 20173A.

4 (G) THE APPLICANT OR PERSON WITH AN OWNERSHIP INTEREST IS A
5 PRINCIPAL OF A NURSING HOME THAT HAS BEEN PLACED IN RECEIVERSHIP
6 DURING THE 5 YEARS PRECEDING THE DATE OF APPLICATION.

7 (H) THE APPLICANT OR PERSON WITH AN OWNERSHIP INTEREST IS A
8 PRINCIPAL OF A NURSING HOME THAT HAS HAD A LICENSE DENIED,
9 SUSPENDED, OR REVOKED DURING THE 5 YEARS PRECEDING THE DATE OF
10 APPLICATION.

11 (I) THE APPLICANT OR PERSON WITH AN OWNERSHIP INTEREST HAS
12 BEEN THE SUBJECT OF AN ORDER ENJOINING AN ACT OR PRACTICE UNDER OR
13 AN ORDER DIRECTING COMPLIANCE WITH ANY OF THE FOLLOWING:

14 (i) FEDERAL CONDITIONS OF PARTICIPATION AS A MEDICARE OR
15 MEDICAID PROVIDER.

16 (ii) THIS ACT OR RULES PROMULGATED UNDER THIS ACT TO ESTABLISH,
17 MAINTAIN, OR OPERATE A NURSING HOME.

18 (J) THE APPLICANT OR PERSON WITH AN OWNERSHIP INTEREST HAS
19 BEEN ADJUDGED TO BE ADMINISTRATIVELY, CIVILLY, OR CRIMINALLY LIABLE
20 FOR PROFESSIONAL NEGLIGENCE, WRONGFUL DEATH, OR FOR VIOLATING AN
21 INDIVIDUAL'S CIVIL RIGHTS UNDER ANY STATE OR FEDERAL LAW.

22 (K) THE APPLICANT OR PERSON WITH AN OWNERSHIP INTEREST HAS AN
23 UNPAID DEBT TO THIS STATE, EXCEPT ANY DEBT SUBJECT TO A FORMAL
24 ADJUDICATION PROCESS.

25 (L) THE APPLICANT OR PERSON WITH AN OWNERSHIP INTEREST HAS AN
26 UNPAID DEBT TO THE FEDERAL GOVERNMENT FOR A CIVIL MONETARY PENALTY,
27 EXCEPT ANY CIVIL MONETARY PENALTY SUBJECT TO A FORMAL ADJUDICATION

1 PROCESS.

2 (M) THE APPLICANT OR PERSON WITH AN OWNERSHIP INTEREST HAS AN
3 UNPAID DEBT OR ASSESSMENT LEVIED BY THE INTERNAL REVENUE SERVICE
4 DURING THE 5 YEARS PRECEDING THE DATE OF APPLICATION.

5 (N) THE APPLICANT OR PERSON WITH AN OWNERSHIP INTEREST HAS AN
6 UNPAID DETERMINATION FOR THE PAYMENT OF WAGES AND BENEFITS UNDER
7 1978 PA 390, MCL 408.471 TO 408.490, EXCEPT FOR A DETERMINATION
8 THAT IS UNDER REVIEW AS PRESCRIBED IN SECTION 11 OF 1978 PA 390,
9 MCL 408.481.

10 Enacting section 1. This amendatory act does not take effect
11 unless Senate Bill No. ____ or House Bill No. 4159 (request no.
12 01296'13) of the 97th Legislature is enacted into law.