

HOUSE BILL No. 5452

January 25, 2018, Introduced by Reps. VanderWall, Noble and Kesto and referred to the Committee on Law and Justice.

A bill to amend 1979 PA 218, entitled "Adult foster care facility licensing act," by amending section 34b (MCL 400.734b), as amended by 2014 PA 73.

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).

10 (b) Has been convicted of any of the following felonies, an

1 attempt or conspiracy to commit any of those felonies, or any other
2 state or federal crime that is similar to the felonies described in
3 this subdivision, other than a felony for a relevant crime
4 described under 42 USC 1320a-7(a), unless ~~15~~**10** years have lapsed
5 since the individual completed all of the terms and conditions of
6 his or her sentencing, parole, and probation for that conviction
7 ~~prior to~~**BEFORE** the date of application for employment or the date
8 of the execution of the independent contract:

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

14 (ii) A felony involving cruelty or torture.

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

17 (iv) A felony involving criminal sexual conduct.

18 (v) A felony involving abuse or neglect.

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

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

23 ~~—— (c) Has been convicted of a felony or an attempt or conspiracy~~
24 ~~to commit a felony, other than a felony for a relevant crime~~
25 ~~described under 42 USC 1320a-7(a) or a felony described under~~
26 ~~subdivision (b), unless 10 years have lapsed since the individual~~
27 ~~completed all of the terms and conditions of his or her sentencing,~~

1 ~~parole, and probation for that conviction prior to the date of~~
2 ~~application for employment or the date of the execution of the~~
3 ~~independent contract.~~

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

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

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

18 (iii) A misdemeanor involving criminal sexual conduct.

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

21 (v) A misdemeanor involving abuse or neglect.

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

1 ~~contract:~~

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

4 ~~(vi) (ii) A misdemeanor involving home invasion.~~

5 ~~(vii) (iii) A misdemeanor involving embezzlement.~~

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

9 ~~—— (v) A misdemeanor involving larceny unless otherwise provided~~
 10 ~~under subdivision (g).~~

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

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

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

22 ~~contract:~~

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

26 ~~—— (ii) A misdemeanor of retail fraud in the third degree unless~~
 27 ~~otherwise provided under subdivision (g).~~

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

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

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

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

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

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

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

1 has conducted a criminal history check in compliance with this
2 section or has received criminal history record information in
3 compliance with subsections (3) and (11). This subsection and
4 subsection (1) do not apply to an individual who is employed by or
5 under contract to an adult foster care facility before April 1,
6 2006. On or before April 1, 2011, an individual who is exempt under
7 this subsection and who has not been the subject of a criminal
8 history check conducted in compliance with this section shall
9 provide the department of state police a set of fingerprints and
10 the department of state police shall input those fingerprints into
11 the automated fingerprint identification system database
12 established under subsection (14). An individual who is exempt
13 under this subsection is not limited to working within the adult
14 foster care facility with which he or she is employed by or under
15 independent contract with on April 1, 2006 but may transfer to
16 another adult foster care facility, mental health facility, or
17 covered health facility. If an individual who is exempt under this
18 subsection is subsequently convicted of a crime or offense
19 described under subsection (1) (a) to ~~(g)~~ **(C)** or found to be the
20 subject of a substantiated finding described under subsection
21 ~~(1) (i)~~ **(1) (E)** or an order or disposition described under subsection
22 ~~(1) (h)~~ **(1) (D)**, or is found to have been convicted of a relevant
23 crime described under 42 USC 1320a-7(a), he or she is no longer
24 exempt and shall be terminated from employment or denied
25 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~~ **FEDERAL BUREAU OF INVESTIGATION** to make a
16 determination of the existence of any national criminal history
17 pertaining to the individual is necessary, along with
18 identification acceptable to the department of state police. Upon
19 receipt of the written consent to obtain the criminal history
20 record information and identification required under this
21 subsection, the adult foster care facility or staffing agency that
22 has made a ~~good faith~~ **GOOD-FAITH** offer of employment or an
23 independent contract to the individual shall request the criminal
24 history record information from the relevant licensing or
25 regulatory department and shall make a request regarding that
26 individual to the relevant licensing or regulatory department to
27 conduct a check of all relevant registries in the manner required

1 in subsection (4). If the requirements of subsection (11) are not
2 met and a request to the ~~federal bureau of investigation~~ **FEDERAL**
3 **BUREAU OF INVESTIGATION** to make a subsequent determination of the
4 existence of any national criminal history pertaining to the
5 individual is necessary, the adult foster care facility or staffing
6 agency shall proceed in the manner required in subsection (5). A
7 staffing agency that employs an individual who regularly has direct
8 access to or provides direct services to residents under an
9 independent contract with an adult foster care facility shall
10 submit information regarding the criminal history check conducted
11 by the staffing agency to the adult foster care facility that has
12 made a ~~good faith~~ **GOOD-FAITH** offer of independent contract to that
13 applicant.

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

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

18 (5) Upon receipt of the written consent to conduct a criminal
19 history check and identification required under subsection (3), if
20 the individual has applied for employment either as an employee or
21 as an independent contractor with an adult foster care facility or
22 staffing agency, the adult foster care facility or staffing agency
23 that has made a ~~good faith~~ **GOOD-FAITH** offer of employment or
24 independent contract shall comply with subsection (4) and shall
25 make a request to the department of state police to forward the
26 individual's fingerprints to the ~~federal bureau of investigation~~.
27 **FEDERAL BUREAU OF INVESTIGATION**. The department of state police

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

1 check. Any charges imposed by the department of state police or the
2 ~~federal bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** for
3 conducting a criminal history check or making a determination under
4 this subsection shall be paid in the manner required under
5 subsection (4).

6 (6) If an adult foster care facility determines it necessary
7 to employ or independently contract with an individual before
8 receiving the results of the individual's criminal history check or
9 criminal history record information required under this section,
10 the adult foster care facility may conditionally employ the
11 individual if all of the following apply:

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

15 (b) The individual signs a written statement indicating all of
16 the following:

17 (i) That he or she has not been convicted of 1 or more of the
18 crimes that are described in subsection (1)(a) to ~~(g)~~ **(C)** within
19 the applicable time period prescribed by subsection (1)(a) to
20 ~~(g)~~ **(C)**.

21 (ii) That he or she is not the subject of an order or
22 disposition described in subsection ~~(1)(h)~~ **(1)(D)**.

23 (iii) That he or she has not been the subject of a
24 substantiated finding as described in subsection ~~(1)(i)~~ **(1)(E)**.

25 (iv) The individual agrees that, if the information in the
26 criminal history check conducted under this section does not
27 confirm the individual's statement under subparagraphs (i) to

1 (iii), his or her employment will be terminated by the adult foster
2 care facility as required under subsection (1) unless and until the
3 individual can prove that the information is incorrect.

4 (v) That he or she understands the conditions described in
5 subparagraphs (i) to (iv) that result in the termination of his or
6 her employment and that those conditions are good cause for
7 termination.

8 (c) Except as otherwise provided in this subdivision, the
9 adult foster care facility does not permit the individual to have
10 regular direct access to or provide direct services to residents in
11 the adult foster care facility without supervision until the
12 criminal history check or criminal history record information is
13 obtained and the individual is eligible for that employment. If
14 required under this subdivision, the adult foster care facility
15 shall provide on-site supervision of an individual in the facility
16 on a conditional basis under this subsection by an individual who
17 has undergone a criminal history check conducted in compliance with
18 this section. An adult foster care facility may permit an
19 individual in the facility on a conditional basis under this
20 subsection to have regular direct access to or provide direct
21 services to residents in the adult foster care facility without
22 supervision if all of the following conditions are met:

23 (i) The adult foster care facility, at its own expense and
24 before the individual has direct access to or provides direct
25 services to residents of the facility, conducts a search of public
26 records on that individual through the internet criminal history
27 access tool maintained by the department of state police and the

1 results of that search do not uncover any information that would
2 indicate that the individual is not eligible to have regular direct
3 access to or provide direct services to residents under this
4 section.

5 (ii) Before the individual has direct access to or provides
6 direct services to residents of the adult foster care facility, the
7 individual signs a statement in writing that he or she has resided
8 in this state without interruption for at least the immediately
9 preceding 12-month period.

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

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

18 (8) If an individual is conditionally employed under
19 subsection (6), and the information under subsection (3) or report
20 under subsection (4) or (5), if applicable, does not confirm the
21 individual's statement under subsection (6) (b) (i) to (iii), the
22 adult foster care facility shall terminate the individual's
23 employment as required by subsection (1).

24 (9) An individual who knowingly provides false information
25 regarding his or her identity, criminal convictions, or
26 substantiated findings on a statement described in subsection
27 (6) (b) (i) to (iii) is guilty of a misdemeanor punishable by

1 imprisonment for not more than 93 days or a fine of not more than
2 \$500.00, or both.

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

23 (11) Upon consent of an individual as required in subsection
24 (3) and upon request from an adult foster care facility or staffing
25 agency that has made a ~~good faith~~ **GOOD-FAITH** offer of employment or
26 an independent contract to the individual, the relevant licensing
27 or regulatory department shall review the criminal history record

1 information, if any, and notify the requesting adult foster care
2 facility or staffing agency of the information in the manner
3 prescribed in subsection (4) or (5). Until the ~~federal bureau of~~
4 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** implements an
5 automatic notification system similar to the system required of the
6 state police under subsection (14) and federal regulations allow
7 the federal criminal record to be used for subsequent authorized
8 uses, as determined in an order issued by the department, an adult
9 foster care facility or staffing agency may rely on the criminal
10 history record information provided by the relevant licensing or
11 regulatory department under this subsection and a request to the
12 ~~federal bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** to
13 make a subsequent determination of the existence of any national
14 criminal history pertaining to the individual is not necessary if
15 all of the following requirements are met:

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

18 (b) The individual has been continuously employed by an adult
19 foster care facility, mental health facility, or covered health
20 facility, or the staffing agency since the criminal history check
21 was conducted in compliance with this section or meets the
22 continuous employment requirement of this subdivision other than
23 being on layoff status for less than 1 year from an adult foster
24 care facility, mental health facility, or covered health facility.

25 (c) The individual can provide evidence acceptable to the
26 relevant licensing or regulatory department that he or she has been
27 a resident of this state for the immediately preceding 12-month

1 period.

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

4 (a) Agree in writing to report to the adult foster care
5 facility or staffing agency immediately upon being arraigned on 1
6 or more of the criminal offenses listed in subsection (1)(a) to
7 ~~(g), (C)~~, upon being convicted of 1 or more of the criminal
8 offenses listed in subsection (1)(a) to ~~(g), (C)~~, upon becoming the
9 subject of an order or disposition described under subsection
10 ~~(1)(h), (1)(D)~~, and upon becoming the subject of a substantiated
11 finding described under subsection ~~(1)(i), (1)(E)~~. Reporting of an
12 arraignment under this subdivision is not cause for termination or
13 denial of employment.

14 (b) If a set of fingerprints is not already on file with the
15 department of state police, provide the department of state police
16 with a set of fingerprints.

17 (13) In addition to sanctions set forth in this act, a
18 licensee, owner, administrator, or operator of an adult foster care
19 facility or staffing agency who knowingly and willfully fails to
20 conduct the criminal history checks as required under this section
21 is guilty of a misdemeanor punishable by imprisonment for not more
22 than 1 year or a fine of not more than \$5,000.00, or both.

23 (14) In collaboration with the department of state police, the
24 department of technology, management, and budget shall establish
25 and maintain an automated fingerprint identification system
26 database that would allow the department of state police to store
27 and maintain all fingerprints submitted under this section and

1 would provide for an automatic notification at the time a
2 subsequent criminal arrest fingerprint card submitted into the
3 system matches a set of fingerprints previously submitted under
4 this section. Upon ~~such~~ notification, the department of state
5 police shall immediately notify the department and the department
6 shall immediately contact each respective adult foster care
7 facility or staffing agency with which that individual is
8 associated. Information in the database established under this
9 subsection is confidential, is not subject to disclosure under the
10 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and
11 shall not be disclosed to any person except for purposes of this
12 act or for law enforcement purposes.

13 (15) If an individual independently contracts with an adult
14 foster care facility, subsections (1) and (2) do not apply if the
15 individual is not under the adult foster care facility's control
16 and the contractual work performed by the individual is not
17 directly related to the clinical, health care, or personal services
18 delivered by the adult foster care facility or if the individual's
19 duties are not performed on an ongoing basis with direct access to
20 residents. This exception includes, but is not limited to, an
21 individual who independently contracts with the adult foster care
22 facility to provide utility, maintenance, construction, or
23 communication services.

24 (16) The department shall maintain an electronic web-based
25 system to assist the adult foster care facilities and staffing
26 agencies required to check relevant registries and conduct criminal
27 history checks of its employees and independent contractors and to

1 provide for an automated notice to the adult foster care facilities
2 and staffing agencies for the individuals entered in the system
3 who, since the initial criminal history check, have been convicted
4 of a disqualifying offense or have been the subject of a
5 substantiated finding of abuse, neglect, or misappropriation of
6 property. The department may charge a staffing agency a 1-time set-
7 up fee of up to \$100.00 for access to the electronic web-based
8 system under this section.

9 (17) An adult foster care facility, staffing agency, or a
10 prospective employee covered under this section may not be charged
11 for the cost of a criminal history check required under this act.

12 (18) As used in this section:

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

14 (i) For a crime that is not a relevant crime **DESCRIBED UNDER**
15 **42 USC 1320A-7(A)**, a final conviction, the payment of a fine, a
16 plea of guilty or nolo contendere if accepted by the court, or a
17 finding of guilt for a criminal law violation or a juvenile
18 adjudication or disposition by the juvenile division of probate
19 court or family division of circuit court for a violation that if
20 committed by an adult would be a crime.

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

23 (b) "Covered health facility" means a nursing home, county
24 medical care facility, hospice, hospital that provides swing bed
25 services, home for the aged, or home health agency licensed under
26 article 17 of the public health code, 1978 PA 368, MCL 333.20101 to
27 333.22260.

1 (c) "Criminal history check conducted in compliance with this
2 section" includes a criminal history check conducted under this
3 section, under section 134a of the mental health code, 1974 PA 258,
4 MCL 330.1134a, or under section 20173a of the public health code,
5 1978 PA 368, MCL 333.20173a.

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

9 (e) "Home health agency" means that term as defined in section
10 20173a of the public health code, 1978 PA 368, MCL 333.20173a.

11 (f) "Independent contract" means a contract entered into by an
12 adult foster care facility with an individual who provides the
13 contracted services independently or a contract entered into by an
14 adult foster care facility with a staffing agency that complies
15 with the requirements of this section to provide the contracted
16 services to the adult foster care facility on behalf of the
17 staffing agency.

18 (g) "Mental health facility" means a psychiatric facility or
19 other facility defined in 42 USC 1396d(d) as described under the
20 mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

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

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

26 (j) "Under the adult foster care facility's control" means an
27 individual employed by or under independent contract with an adult

1 foster care facility for whom the adult foster care facility does
2 both of the following:

3 (i) Determines whether the individual who has access to
4 residents may provide care, treatment, or other similar support
5 service functions to residents served by the adult foster care
6 facility.

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

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

10 (B) The tasks performed by the individual.

11 (C) The individual's work schedule.

12 (D) The supervision or evaluation of the individual's work or
13 job performance, including imposing discipline or granting
14 performance awards.

15 (E) The compensation the individual receives for performing
16 his or her duties.

17 (F) The conditions under which the individual performs his or
18 her duties.

19 Enacting section 1. This amendatory act takes effect 90 days
20 after the date it is enacted into law.

21 Enacting section 2. This amendatory act does not take effect
22 unless all of the following bills of the 99th Legislature are
23 enacted into law:

24 (a) Senate Bill No. _____ or House Bill No. 5450 (request no.
25 03413'17).

26 (b) Senate Bill No. _____ or House Bill No. 5451 (request no.
27 04033'17).