

SUBSTITUTE FOR
SENATE BILL NO. 622

A bill to amend 1979 PA 218, entitled
"Adult foster care facility licensing act,"
(MCL 400.701 to 400.737) by adding sections 34b and 34c; and to
repeal acts and parts of acts.

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 PROVIDES
5 DIRECT SERVICES TO RESIDENTS OF THE ADULT FOSTER CARE FACILITY
6 AFTER THE EFFECTIVE DATE OF THIS SECTION IF THE INDIVIDUAL
7 SATISFIES 1 OR MORE OF THE FOLLOWING:
8 (A) HAS BEEN CONVICTED OF A FELONY OR AN ATTEMPT OR CONSPIRACY

1 TO COMMIT A FELONY, OTHER THAN A FELONY FOR A RELEVANT CRIME
2 DESCRIBED UNDER 42 USC 1320A-7, UNLESS 15 YEARS HAVE LAPSED SINCE
3 THE INDIVIDUAL COMPLETED ALL OF THE TERMS AND CONDITIONS OF HIS OR
4 HER SENTENCING, PAROLE, AND PROBATION FOR THAT CONVICTION BEFORE
5 THE DATE OF APPLICATION FOR EMPLOYMENT OR THE DATE OF THE EXECUTION
6 OF THE INDEPENDENT CONTRACT.

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

15 (C) HAS BEEN CONVICTED OF AN OFFENSE LISTED UNDER R 400.1152
16 OF THE MICHIGAN ADMINISTRATIVE CODE.

17 (D) IS THE SUBJECT OF AN ORDER OR DISPOSITION UNDER SECTION
18 16B OF CHAPTER IX OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175,
19 MCL 769.16B.

20 (E) HAS BEEN CONVICTED OF A RELEVANT CRIME AS DESCRIBED UNDER
21 42 USC 1320A-7.

22 (F) HAS BEEN THE SUBJECT OF A SUBSTANTIATED FINDING BY A STATE
23 OR FEDERAL AGENCY UNDER 42 USC 1395I-3 OR 1396R.

24 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (6), AN ADULT
25 FOSTER CARE FACILITY SHALL NOT EMPLOY OR INDEPENDENTLY CONTRACT
26 WITH AN INDIVIDUAL WHO HAS DIRECT ACCESS TO RESIDENTS AFTER THE
27 EFFECTIVE DATE OF THIS SECTION UNTIL THE ADULT FOSTER CARE FACILITY

1 CONDUCTS A CRIMINAL HISTORY CHECK IN COMPLIANCE WITH SUBSECTIONS
2 (4) AND (5). THIS SUBSECTION AND SUBSECTION (1) DO NOT APPLY TO AN
3 INDIVIDUAL WHO IS EMPLOYED BY OR UNDER CONTRACT TO AN ADULT FOSTER
4 CARE FACILITY BEFORE THE EFFECTIVE DATE OF THIS SECTION. WITHIN 24
5 MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION, AN INDIVIDUAL WHO
6 IS EXEMPT UNDER THIS SUBSECTION SHALL PROVIDE THE DEPARTMENT OF
7 STATE POLICE A SET OF FINGERPRINTS AND THE DEPARTMENT OF STATE
8 POLICE SHALL INPUT THOSE FINGERPRINTS INTO THE AUTOMATED
9 FINGERPRINT IDENTIFICATION SYSTEM DATABASE ESTABLISHED UNDER
10 SUBSECTION (12). AN INDIVIDUAL WHO IS EXEMPT UNDER THIS SUBSECTION
11 IS NOT LIMITED TO WORKING WITHIN THE ADULT FOSTER CARE FACILITY
12 WITH WHICH HE OR SHE IS EMPLOYED BY OR UNDER INDEPENDENT CONTRACT
13 WITH ON THE EFFECTIVE DATE OF THIS SECTION. THAT INDIVIDUAL MAY
14 TRANSFER TO ANOTHER ADULT FOSTER CARE FACILITY PROVIDED THAT A
15 CRIMINAL HISTORY CHECK BEING CONDUCTED IN ACCORDANCE WITH THIS
16 SUBSECTION DOES NOT INDICATE A PROHIBITED OFFENSE AS DESCRIBED IN
17 SUBSECTION (1). IF AN INDIVIDUAL WHO IS EXEMPT UNDER THIS
18 SUBSECTION IS SUBSEQUENTLY CONVICTED OF A CRIME OR OFFENSE
19 DESCRIBED UNDER SUBSECTION (1) (A), (B), OR (C) OR FOUND TO BE THE
20 SUBJECT OF A SUBSTANTIATED FINDING DESCRIBED UNDER SUBSECTION
21 (1) (F) OR AN ORDER OR DISPOSITION DESCRIBED UNDER SUBSECTION
22 (1) (D), OR IS FOUND TO HAVE BEEN CONVICTED OF A RELEVANT CRIME
23 DESCRIBED UNDER SUBSECTION (1) (E), HE OR SHE IS NO LONGER EXEMPT
24 AND MAY BE DENIED EMPLOYMENT OR MAY BE TERMINATED FROM EMPLOYMENT.

25 (3) AN INDIVIDUAL WHO APPLIES FOR EMPLOYMENT EITHER AS AN
26 EMPLOYEE OR AS AN INDEPENDENT CONTRACTOR WITH AN ADULT FOSTER CARE
27 FACILITY AND HAS RECEIVED A GOOD FAITH OFFER OF EMPLOYMENT OR

1 INDEPENDENT CONTRACT FROM THE ADULT FOSTER CARE FACILITY SHALL GIVE
2 WRITTEN CONSENT AT THE TIME OF APPLICATION FOR THE DEPARTMENT OF
3 STATE POLICE TO CONDUCT AN INITIAL CRIMINAL HISTORY CHECK UNDER
4 THIS SECTION. THE INDIVIDUAL, AT THE TIME OF INITIAL APPLICATION,
5 SHALL PROVIDE IDENTIFICATION ACCEPTABLE TO THE DEPARTMENT OF STATE
6 POLICE.

7 (4) UPON RECEIPT OF THE WRITTEN CONSENT AND IDENTIFICATION
8 REQUIRED UNDER SUBSECTION (3), THE ADULT FOSTER CARE FACILITY THAT
9 HAS MADE A GOOD FAITH OFFER OF EMPLOYMENT OR INDEPENDENT CONTRACT
10 SHALL MAKE A REQUEST TO THE DEPARTMENT OF STATE POLICE TO CONDUCT A
11 CRIMINAL HISTORY CHECK ON THE INDIVIDUAL AND INPUT THE INDIVIDUAL'S
12 FINGERPRINTS INTO THE AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM
13 DATABASE, AND SHALL MAKE A REQUEST TO THE RELEVANT LICENSING OR
14 REGULATORY DEPARTMENT TO PERFORM A CHECK OF ALL RELEVANT REGISTRIES
15 AS REQUIRED BY THE MEDICARE PRESCRIPTION DRUG, IMPROVEMENT AND
16 MODERNIZATION ACT OF 2003, PUBLIC LAW 108-173. THE REQUEST SHALL BE
17 MADE IN A MANNER PRESCRIBED BY THE DEPARTMENT OF STATE POLICE AND
18 THE RELEVANT LICENSING OR REGULATORY DEPARTMENT OR AGENCY. THE
19 ADULT FOSTER CARE FACILITY SHALL MAKE THE WRITTEN CONSENT AND
20 IDENTIFICATION AVAILABLE TO THE DEPARTMENT OF STATE POLICE AND THE
21 RELEVANT LICENSING OR REGULATORY DEPARTMENT OR AGENCY. IF THE
22 DEPARTMENT OF STATE POLICE OR THE FEDERAL BUREAU OF INVESTIGATION
23 CHARGES A FEE FOR CONDUCTING THE INITIAL CRIMINAL HISTORY CHECK,
24 THE CHARGE SHALL BE PAID BY OR REIMBURSED BY THE DEPARTMENT WITH
25 FEDERAL FUNDS AS PROVIDED TO IMPLEMENT A PILOT PROGRAM FOR NATIONAL
26 AND STATE BACKGROUND CHECKS ON DIRECT PATIENT ACCESS EMPLOYEES OF
27 LONG-TERM CARE FACILITIES OR PROVIDERS IN ACCORDANCE WITH SECTION

1 307 OF THE MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND
2 MODERNIZATION ACT OF 2003, PUBLIC LAW 108-173. THE ADULT FOSTER
3 CARE FACILITY SHALL NOT SEEK REIMBURSEMENT FOR A CHARGE IMPOSED BY
4 THE DEPARTMENT OF STATE POLICE OR THE FEDERAL BUREAU OF
5 INVESTIGATION FROM THE INDIVIDUAL WHO IS THE SUBJECT OF THE INITIAL
6 CRIMINAL HISTORY CHECK. THE DEPARTMENT OF STATE POLICE SHALL
7 CONDUCT AN INITIAL CRIMINAL HISTORY CHECK ON THE INDIVIDUAL NAMED
8 IN THE REQUEST. THE DEPARTMENT OF STATE POLICE SHALL PROVIDE THE
9 DEPARTMENT WITH A WRITTEN REPORT OF THE CRIMINAL HISTORY CHECK
10 CONDUCTED UNDER THIS SUBSECTION THAT CONTAINS A CRIMINAL RECORD.
11 THE REPORT SHALL CONTAIN ANY CRIMINAL HISTORY RECORD INFORMATION ON
12 THE INDIVIDUAL MAINTAINED BY THE DEPARTMENT OF STATE POLICE.

13 (5) UPON RECEIPT OF THE WRITTEN CONSENT AND IDENTIFICATION
14 REQUIRED UNDER SUBSECTION (3), IF THE INDIVIDUAL HAS APPLIED FOR
15 EMPLOYMENT EITHER AS AN EMPLOYEE OR AS AN INDEPENDENT CONTRACTOR
16 WITH AN ADULT FOSTER CARE FACILITY, THE ADULT FOSTER CARE FACILITY
17 THAT HAS MADE A GOOD FAITH OFFER OF EMPLOYMENT OR INDEPENDENT
18 CONTRACT SHALL COMPLY WITH SUBSECTION (4) AND SHALL MAKE A REQUEST
19 TO THE DEPARTMENT OF STATE POLICE TO FORWARD THE INDIVIDUAL'S
20 FINGERPRINTS TO THE FEDERAL BUREAU OF INVESTIGATION. THE DEPARTMENT
21 OF STATE POLICE SHALL REQUEST THE FEDERAL BUREAU OF INVESTIGATION
22 TO MAKE A DETERMINATION OF THE EXISTENCE OF ANY NATIONAL CRIMINAL
23 HISTORY PERTAINING TO THE INDIVIDUAL. AN INDIVIDUAL DESCRIBED IN
24 THIS SUBSECTION SHALL PROVIDE THE DEPARTMENT OF STATE POLICE WITH A
25 SET OF FINGERPRINTS. THE DEPARTMENT OF STATE POLICE SHALL COMPLETE
26 THE CRIMINAL HISTORY CHECK UNDER SUBSECTION (4) AND, EXCEPT AS
27 OTHERWISE PROVIDED IN THIS SUBSECTION, PROVIDE THE RESULTS OF ITS

1 DETERMINATION UNDER SUBSECTION (4) AND THE RESULTS OF THE FEDERAL
2 BUREAU OF INVESTIGATION DETERMINATION TO THE DEPARTMENT WITHIN 30
3 DAYS AFTER THE REQUEST IS MADE. IF THE REQUESTING ADULT FOSTER CARE
4 FACILITY IS NOT A STATE DEPARTMENT OR AGENCY AND IF A CRIMINAL
5 CONVICTION IS DISCLOSED ON THE FEDERAL BUREAU OF INVESTIGATION
6 DETERMINATION, THE DEPARTMENT SHALL NOTIFY THE ADULT FOSTER CARE
7 FACILITY AND THE INDIVIDUAL IN WRITING OF THE TYPE OF CRIME
8 DISCLOSED ON THE FEDERAL BUREAU OF INVESTIGATION DETERMINATION
9 WITHOUT DISCLOSING THE DETAILS OF THE CRIME. THE NOTIFICATION SHALL
10 INFORM THE FACILITY OR AGENCY AND THE APPLICANT REGARDING THE
11 APPEAL PROCESS IN SECTION 34C. ANY CHARGES IMPOSED BY THE
12 DEPARTMENT OF STATE POLICE OR THE FEDERAL BUREAU OF INVESTIGATION
13 FOR CONDUCTING AN INITIAL CRIMINAL HISTORY CHECK OR MAKING A
14 DETERMINATION UNDER THIS SUBSECTION SHALL BE PAID IN THE MANNER
15 REQUIRED UNDER SUBSECTION (4).

16 (6) IF AN ADULT FOSTER CARE FACILITY DETERMINES IT NECESSARY
17 TO EMPLOY OR INDEPENDENTLY CONTRACT WITH AN INDIVIDUAL BEFORE
18 RECEIVING THE RESULTS OF THE INDIVIDUAL'S CRIMINAL HISTORY CHECK
19 REQUIRED UNDER THIS SECTION, THE ADULT FOSTER CARE FACILITY MAY
20 CONDITIONALLY EMPLOY THE INDIVIDUAL IF BOTH OF THE FOLLOWING APPLY:

21 (A) THE ADULT FOSTER CARE FACILITY REQUESTS THE CRIMINAL
22 HISTORY CHECK REQUIRED UNDER THIS SECTION, UPON CONDITIONALLY
23 EMPLOYING THE INDIVIDUAL.

24 (B) THE INDIVIDUAL SIGNS A WRITTEN STATEMENT INDICATING ALL OF
25 THE FOLLOWING:

26 (i) THAT HE OR SHE HAS NOT BEEN CONVICTED OF 1 OR MORE OF THE
27 CRIMES THAT ARE DESCRIBED IN SUBSECTION (1) (A) TO (F) WITHIN THE

1 APPLICABLE TIME PERIOD PRESCRIBED BY SUBSECTION (1) (A) TO (F) .

2 (ii) THE INDIVIDUAL AGREES THAT, IF THE INFORMATION IN THE
3 CRIMINAL HISTORY CHECK CONDUCTED UNDER THIS SECTION DOES NOT
4 CONFIRM THE INDIVIDUAL'S STATEMENT UNDER SUBPARAGRAPH (i) , HIS OR
5 HER EMPLOYMENT WILL BE TERMINATED BY THE ADULT FOSTER CARE FACILITY
6 AS REQUIRED UNDER SUBSECTION (1) UNLESS AND UNTIL THE INDIVIDUAL
7 CAN PROVE THAT THE INFORMATION IS INCORRECT. THE ADULT FOSTER CARE
8 FACILITY SHALL PROVIDE A COPY OF THE RESULTS OF THE CRIMINAL
9 HISTORY CHECK CONDUCTED UNDER THIS SECTION, TO THE INDIVIDUAL UPON
10 REQUEST.

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

15 (7) THE DEPARTMENT SHALL MAKE THE MODEL FORM FOR THE WRITTEN
16 STATEMENT REQUIRED UNDER SUBSECTION (6) (B) AVAILABLE TO ADULT
17 FOSTER CARE FACILITIES UPON REQUEST AT NO CHARGE.

18 (8) IF AN INDIVIDUAL IS CONDITIONALLY EMPLOYED UNDER
19 SUBSECTION (6) , AND THE REPORT DESCRIBED IN SUBSECTION (4) OR (5) ,
20 IF APPLICABLE, DOES NOT CONFIRM THE INDIVIDUAL'S STATEMENT UNDER
21 SUBSECTION (6) (B) (i) , THE ADULT FOSTER CARE FACILITY SHALL TERMINATE
22 THE INDIVIDUAL'S EMPLOYMENT AS REQUIRED BY SUBSECTION (1) .

23 (9) AN INDIVIDUAL WHO KNOWINGLY PROVIDES FALSE INFORMATION
24 REGARDING A CRIMINAL CONVICTION ON A STATEMENT DESCRIBED IN
25 SUBSECTION (6) (B) (i) IS GUILTY OF A MISDEMEANOR PUNISHABLE BY
26 IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN
27 \$500.00, OR BOTH.

1 (10) AN ADULT FOSTER CARE FACILITY SHALL USE CRIMINAL HISTORY
2 RECORD INFORMATION OBTAINED UNDER SUBSECTION (4) OR (5) ONLY FOR
3 THE PURPOSE OF EVALUATING AN INDIVIDUAL'S QUALIFICATIONS FOR
4 EMPLOYMENT IN THE POSITION FOR WHICH HE OR SHE HAS APPLIED AND FOR
5 THE PURPOSES OF SUBSECTIONS (6) AND (8). AN ADULT FOSTER CARE
6 FACILITY OR AN EMPLOYEE OF THE ADULT FOSTER CARE FACILITY SHALL NOT
7 DISCLOSE CRIMINAL HISTORY RECORD INFORMATION OBTAINED UNDER THIS
8 SECTION TO A PERSON WHO IS NOT DIRECTLY INVOLVED IN EVALUATING THE
9 INDIVIDUAL'S QUALIFICATIONS FOR EMPLOYMENT OR INDEPENDENT CONTRACT.
10 UPON WRITTEN REQUEST FROM ANOTHER ADULT FOSTER CARE FACILITY OR
11 HEALTH FACILITY OR AGENCY THAT IS CONSIDERING EMPLOYING OR
12 INDEPENDENTLY CONTRACTING WITH AN INDIVIDUAL, AN ADULT FOSTER CARE
13 FACILITY THAT HAS OBTAINED CRIMINAL HISTORY RECORD INFORMATION
14 UNDER THIS SECTION ON THAT INDIVIDUAL SHALL SHARE THE INFORMATION
15 WITH THE REQUESTING ADULT FOSTER CARE FACILITY OR HEALTH FACILITY
16 OR AGENCY. EXCEPT FOR A KNOWING OR INTENTIONAL RELEASE OF FALSE
17 INFORMATION, AN ADULT FOSTER CARE FACILITY HAS NO LIABILITY IN
18 CONNECTION WITH A BACKGROUND CHECK CONDUCTED UNDER THIS SECTION OR
19 THE RELEASE OF CRIMINAL HISTORY RECORD INFORMATION UNDER THIS
20 SUBSECTION.

21 (11) AS A CONDITION OF CONTINUED EMPLOYMENT, EACH EMPLOYEE OR
22 INDEPENDENT CONTRACTOR SHALL DO BOTH OF THE FOLLOWING:

23 (A) AGREE IN WRITING TO REPORT TO THE ADULT FOSTER CARE
24 FACILITY IMMEDIATELY UPON BEING ARRAIGNED ON 1 OR MORE OF THE
25 CRIMINAL OFFENSES LISTED IN SUBSECTION (1) (A), (B), (C), AND (E),
26 UPON BEING CONVICTED OF 1 OR MORE OF THE CRIMINAL OFFENSES LISTED
27 IN SUBSECTION (1) (A), (B), (C), AND (E), UPON BECOMING THE SUBJECT

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1 OF AN ORDER OR DISPOSITION DESCRIBED UNDER SUBSECTION (1) (D), AND
2 UPON BECOMING THE SUBJECT OF A SUBSTANTIATED FINDING DESCRIBED
3 UNDER SUBSECTION (1) (F).

4 (B) PROVIDE THE DEPARTMENT OF STATE POLICE WITH A SET OF
5 FINGERPRINTS.

6 (12) IN ADDITION TO SANCTIONS SET FORTH IN THIS ACT, A
7 LICENSEE, OWNER, ADMINISTRATOR, OR OPERATOR OF AN ADULT FOSTER CARE
8 FACILITY WHO KNOWINGLY AND WILLFULLY FAILS TO CONDUCT THE CRIMINAL
9 HISTORY CHECKS AS REQUIRED UNDER THIS SECTION IS GUILTY OF A
10 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR
11 A FINE OF 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 WITH THAT 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>>.

12 (13) IN COLLABORATION WITH THE DEPARTMENT OF STATE POLICE, THE
13 DEPARTMENT OF INFORMATION TECHNOLOGY SHALL ESTABLISH AN AUTOMATED
14 FINGERPRINT IDENTIFICATION SYSTEM DATABASE THAT WOULD ALLOW THE
15 DEPARTMENT OF STATE POLICE TO STORE AND MAINTAIN ALL FINGERPRINTS
16 SUBMITTED UNDER THIS SECTION AND WOULD PROVIDE FOR AN AUTOMATIC
17 NOTIFICATION AT THE TIME A SUBSEQUENT CRIMINAL ARREST FINGERPRINT
18 CARD SUBMITTED INTO THE SYSTEM MATCHES A SET OF FINGERPRINTS
19 PREVIOUSLY SUBMITTED IN ACCORDANCE WITH THIS SECTION. UPON SUCH
20 NOTIFICATION, THE DEPARTMENT OF STATE POLICE SHALL IMMEDIATELY
21 NOTIFY THE DEPARTMENT AND THE DEPARTMENT SHALL IMMEDIATELY CONTACT
22 THE RESPECTIVE ADULT FOSTER CARE FACILITY WITH WHICH THAT
23 INDIVIDUAL IS ASSOCIATED.

24 (14) IF AN INDIVIDUAL INDEPENDENTLY CONTRACTS WITH AN ADULT
25 FOSTER CARE FACILITY, SUBSECTIONS (1) AND (2) DO NOT APPLY IF THE
26 CONTRACTUAL WORK PERFORMED BY THE INDIVIDUAL IS NOT DIRECTLY
27 RELATED TO THE CLINICAL, HEALTH CARE, OR PERSONAL SERVICES

1 DELIVERED BY THE ADULT FOSTER CARE FACILITY OR IF THE INDIVIDUAL'S
2 DUTIES ARE NOT PERFORMED ON AN ONGOING BASIS WITH DIRECT ACCESS TO
3 PATIENTS. THIS EXCEPTION INCLUDES, BUT IS NOT LIMITED TO, AN
4 INDIVIDUAL WHO INDEPENDENTLY CONTRACTS WITH THE ADULT FOSTER CARE
5 FACILITY TO PROVIDE UTILITY, MAINTENANCE, CONSTRUCTION, OR
6 COMMUNICATION SERVICES.

7 (15) THE DEPARTMENT SHALL STUDY THE EFFECT CRIMINAL HISTORY
8 CHECKS WOULD HAVE ON VOLUNTEERS AND STATE AGENCY EMPLOYEES, THE
9 POTENTIAL FOR ABUSE IN ADULT FOSTER CARE FACILITIES, AND THE STATUS
10 OF THE FEDERAL FUNDS BEING USED TO PERFORM THE CRIMINAL HISTORY
11 CHECKS, AND REPORT TO THE LEGISLATURE 1 YEAR AFTER THE EFFECTIVE
12 DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION.

13 (16) THE DEPARTMENT SHALL SUBMIT TO THE LEGISLATURE NOT LATER
14 THAN 3 YEARS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
15 ADDED THIS SUBSECTION A WRITTEN REPORT REGARDING THE DEPARTMENT'S
16 PLAN TO CONTINUE PERFORMING CRIMINAL HISTORY CHECKS IF ADEQUATE
17 FEDERAL FUNDING IS NOT AVAILABLE TO CONTINUE PERFORMING FUTURE
18 CRIMINAL HISTORY CHECKS.

19 (17) AN ADULT FOSTER CARE FACILITY OR A PROSPECTIVE EMPLOYEE
20 COVERED UNDER THIS SECTION MAY NOT BE CHARGED FOR THE COST OF AN
21 INITIAL CRIMINAL HISTORY CHECK REQUIRED UNDER THIS ACT.

22 (18) AS USED IN THIS SECTION:

23 (A) "DIRECT ACCESS" MEANS ACCESS TO A RESIDENT OR RESIDENT'S
24 PROPERTY, FINANCIAL INFORMATION, MEDICAL RECORDS, TREATMENT
25 INFORMATION, OR ANY OTHER IDENTIFYING INFORMATION.

26 (B) "HEALTH FACILITY OR AGENCY" MEANS A HEALTH FACILITY OR
27 AGENCY AS DEFINED IN SECTION 20106 OF THE PUBLIC HEALTH CODE, 1978

1 PA 368, MCL 333.20106.

2 (C) "INDEPENDENT CONTRACT" MEANS A CONTRACT ENTERED INTO BY AN
3 ADULT FOSTER CARE FACILITY WITH AN INDIVIDUAL WHO PROVIDES THE
4 CONTRACTED SERVICES INDEPENDENTLY OR A CONTRACT ENTERED INTO BY AN
5 ADULT FOSTER CARE FACILITY WITH AN ORGANIZATION OR AGENCY THAT
6 EMPLOYS OR CONTRACTS WITH AN INDIVIDUAL AFTER COMPLYING WITH THE
7 REQUIREMENTS OF THIS SECTION TO PROVIDE THE CONTRACTED SERVICES TO
8 THE ADULT FOSTER CARE FACILITY ON BEHALF OF THE ORGANIZATION OR
9 AGENCY.

10 (D) "TITLE XIX" MEANS TITLE XIX OF THE SOCIAL SECURITY ACT, 42
11 USC 1396 TO 1396R-6 AND 1396R-8 TO 1396V.

12 SEC. 34C. AN INDIVIDUAL WHO HAS BEEN DISQUALIFIED FROM OR
13 DENIED EMPLOYMENT BY AN ADULT FOSTER CARE FACILITY BASED ON A
14 CRIMINAL HISTORY CHECK CONDUCTED PURSUANT TO SECTION 34A OR 34B MAY
15 APPEAL TO THE DEPARTMENT ON A FORM PROVIDED BY THE DEPARTMENT IF HE
16 OR SHE BELIEVES THAT THE CRIMINAL HISTORY REPORT IS INACCURATE. THE
17 INDIVIDUAL SHALL FILE THE APPEAL WITH THE DIRECTOR OF THE
18 DEPARTMENT WITHIN 15 DAYS AFTER RECEIVING THE WRITTEN REPORT OF THE
19 CRIMINAL HISTORY CHECK UNLESS THE CONVICTION CONTAINED IN THE
20 CRIMINAL HISTORY REPORT IS ONE THAT MAY BE EXPUNGED OR SET ASIDE.
21 IF AN INDIVIDUAL HAS BEEN DISQUALIFIED OR DENIED EMPLOYMENT BASED
22 ON A CONVICTION THAT MAY BE EXPUNGED OR SET ASIDE, THEN HE OR SHE
23 SHALL FILE THE APPEAL WITHIN 15 DAYS AFTER A COURT ORDER GRANTING
24 OR DENYING HIS OR HER APPLICATION TO EXPUNGE OR SET ASIDE THAT
25 CONVICTION IS GRANTED. IF THE ORDER IS GRANTED AND THE CONVICTION
26 IS EXPUNGED OR SET ASIDE, THEN THE INDIVIDUAL SHALL NOT BE
27 DISQUALIFIED OR DENIED EMPLOYMENT BASED SOLELY ON THAT CONVICTION.

1 THE DIRECTOR SHALL REVIEW THE APPEAL AND ISSUE A WRITTEN DECISION
2 WITHIN 30 DAYS AFTER RECEIVING THE APPEAL. THE DECISION OF THE
3 DIRECTOR IS FINAL.

4 Enacting section 1. Section 34a of the adult foster care
5 facility licensing act, 1979 PA 218, MCL 400.734a, is repealed
6 effective 60 days after the department secures the necessary
7 federal approval or waiver, and files a written notice, as provided
8 under enacting section 2.

9 Enacting section 2. Sections 34b and 34c of the adult foster
10 care facility licensing act, 1979 PA 218, MCL 400.734b, as added by
11 this amendatory act, take effect 60 days after the department
12 secures the necessary federal approval or waivers to utilize
13 federal funds to reimburse adult foster care facilities for the
14 costs incurred for requesting a national criminal history check to
15 be conducted by the federal bureau of investigation and files with
16 the secretary of state a written notice that the federal approval,
17 if necessary, has been secured and written notice that the
18 department has issued a medicaid policy bulletin regarding the
19 payment and reimbursement for the criminal history checks.

20 Enacting section 3. This amendatory act does not take effect
21 unless all of the following bills of the 93rd Legislature are
22 enacted into law:

- 23 (a) Senate Bill No. 621.
24 (b) House Bill No. 5168.
25 (c) House Bill No. 5448.