



Sen. Elgie R. Sims, Jr.

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10100SB1965sam001

LRB101 10223 RAB 57687 a

1 AMENDMENT TO SENATE BILL 1965

2 AMENDMENT NO. _____. Amend Senate Bill 1965 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Health Care Worker Background Check Act is
5 amended by changing Sections 15, 33, and 40 as follows:

6 (225 ILCS 46/15)

7 Sec. 15. Definitions. In this Act:

8 "Applicant" means an individual enrolling in a training
9 program, seeking employment, whether paid or on a volunteer
10 basis, with a health care employer who has received a bona fide
11 conditional offer of employment.

12 "Conditional offer of employment" means a bona fide offer
13 of employment by a health care employer to an applicant, which
14 is contingent upon the receipt of a report from the Department
15 of Public Health indicating that the applicant does not have a
16 record of conviction of any of the criminal offenses enumerated

1 in Section 25.

2 "Department" means the Department of Public Health.

3 "Direct care" means the provision of nursing care or
4 assistance with feeding, dressing, movement, bathing,
5 toileting, or other personal needs, including home services as
6 defined in the Home Health, Home Services, and Home Nursing
7 Agency Licensing Act. The entity responsible for inspecting and
8 licensing, certifying, or registering the health care employer
9 may, by administrative rule, prescribe guidelines for
10 interpreting this definition with regard to the health care
11 employers that it licenses.

12 "Director" means the Director of Public Health.

13 "Disqualifying offenses" means those offenses set forth in
14 Section 25 of this Act.

15 "Employee" means any individual hired, employed, or
16 retained, whether paid or on a volunteer basis, to which this
17 Act applies.

18 "Finding" means the Department's determination of whether
19 an allegation is verified and substantiated.

20 "Fingerprint-based criminal history records check" means a
21 livescan fingerprint-based criminal history records check
22 submitted as a fee applicant inquiry in the form and manner
23 prescribed by the Department of State Police.

24 "Health care employer" means:

25 (1) the owner or licensee of any of the following:

26 (i) a community living facility, as defined in the

1 Community Living Facilities Act;

2 (ii) a life care facility, as defined in the Life

3 Care Facilities Act;

4 (iii) a long-term care facility;

5 (iv) a home health agency, home services agency, or

6 home nursing agency as defined in the Home Health, Home

7 Services, and Home Nursing Agency Licensing Act;

8 (v) a hospice care program or volunteer hospice

9 program, as defined in the Hospice Program Licensing

10 Act;

11 (vi) a hospital, as defined in the Hospital

12 Licensing Act;

13 (vii) (blank);

14 (viii) a nurse agency, as defined in the Nurse

15 Agency Licensing Act;

16 (ix) a respite care provider, as defined in the

17 Respite Program Act;

18 (ix-a) an establishment licensed under the

19 Assisted Living and Shared Housing Act;

20 (x) a supportive living program, as defined in the

21 Illinois Public Aid Code;

22 (xi) early childhood intervention programs as

23 described in 59 Ill. Adm. Code 121;

24 (xii) the University of Illinois Hospital,

25 Chicago;

26 (xiii) programs funded by the Department on Aging

1 through the Community Care Program;

2 (xiv) programs certified to participate in the
3 Supportive Living Program authorized pursuant to
4 Section 5-5.01a of the Illinois Public Aid Code;

5 (xv) programs listed by the Emergency Medical
6 Services (EMS) Systems Act as Freestanding Emergency
7 Centers;

8 (xvi) locations licensed under the Alternative
9 Health Care Delivery Act;

10 (2) a day training program certified by the Department
11 of Human Services;

12 (3) a community integrated living arrangement operated
13 by a community mental health and developmental service
14 agency, as defined in the Community-Integrated Living
15 Arrangements Licensing and Certification Act; or

16 (4) the State Long Term Care Ombudsman Program,
17 including any regional long term care ombudsman programs
18 under Section 4.04 of the Illinois Act on the Aging, only
19 for the purpose of securing background checks.

20 "Initiate" means obtaining from a student, applicant, or
21 employee his or her social security number, demographics, a
22 disclosure statement, and an authorization for the Department
23 of Public Health or its designee to request a fingerprint-based
24 criminal history records check; transmitting this information
25 electronically to the Department of Public Health; conducting
26 Internet searches on certain web sites, including without

1 limitation the Illinois Sex Offender Registry, the Department
2 of Corrections' Sex Offender Search Engine, the Department of
3 Corrections' Inmate Search Engine, the Department of
4 Corrections Wanted Fugitives Search Engine, the National Sex
5 Offender Public Registry, and the List of Excluded Individuals
6 and Entities database on the website of the Health and Human
7 Services Office of Inspector General to determine if the
8 applicant has been adjudicated a sex offender, has been a
9 prison inmate, or has committed Medicare or Medicaid fraud, or
10 conducting similar searches as defined by rule; and having the
11 student, applicant, or employee's fingerprints collected and
12 transmitted electronically to the Department of State Police.

13 "Livescan vendor" means an entity whose equipment has been
14 certified by the Department of State Police to collect an
15 individual's demographics and inkless fingerprints and, in a
16 manner prescribed by the Department of State Police and the
17 Department of Public Health, electronically transmit the
18 fingerprints and required data to the Department of State
19 Police and a daily file of required data to the Department of
20 Public Health. The Department of Public Health shall negotiate
21 a contract with one or more vendors that effectively
22 demonstrate that the vendor has 2 or more years of experience
23 transmitting fingerprints electronically to the Department of
24 State Police and that the vendor can successfully transmit the
25 required data in a manner prescribed by the Department of
26 Public Health. Vendor authorization may be further defined by

1 administrative rule.

2 "Long-term care facility" means a facility licensed by the
3 State or certified under federal law as a long-term care
4 facility, including without limitation facilities licensed
5 under the Nursing Home Care Act, the Specialized Mental Health
6 Rehabilitation Act of 2013, the ID/DD Community Care Act, or
7 the MC/DD Act, a supportive living facility, an assisted living
8 establishment, or a shared housing establishment or registered
9 as a board and care home.

10 "Resident" means a person, individual, or patient under the
11 direct care of a health care employer or who has been provided
12 goods or services by a health care employer.

13 (Source: P.A. 99-180, eff. 7-29-15; 100-432, eff. 8-25-17.)

14 (225 ILCS 46/33)

15 Sec. 33. Fingerprint-based criminal history records check.

16 (a) A fingerprint-based criminal history records check is
17 not required for health care employees who have been
18 continuously employed by a health care employer since October
19 1, 2007, have met the requirements for criminal history
20 background checks prior to October 1, 2007, and have no
21 disqualifying convictions or requested and received a waiver of
22 those disqualifying convictions. These employees shall be
23 retained on the Health Care Worker Registry as long as they
24 remain active. Nothing in this subsection (a) shall be
25 construed to prohibit a health care employer from initiating a

1 criminal history records check for these employees. Should
2 these employees seek a new position with a different health
3 care employer, then a fingerprint-based criminal history
4 records check shall be required.

5 (b) On October 1, 2007 or as soon thereafter as is
6 reasonably practical, in the discretion of the Director of
7 Public Health, and thereafter, any student, applicant, or
8 employee who desires to be included on the Department of Public
9 Health's Health Care Worker Registry shall authorize the
10 Department of Public Health or its designee to request a
11 fingerprint-based criminal history records check to determine
12 if the individual has a conviction for a disqualifying offense.
13 This authorization shall allow the Department of Public Health
14 to request and receive information and assistance from any
15 State or governmental agency. Each individual shall submit his
16 or her fingerprints to the Department of State Police in an
17 electronic format that complies with the form and manner for
18 requesting and furnishing criminal history record information
19 prescribed by the Department of State Police. The fingerprints
20 submitted under this Section shall be checked against the
21 fingerprint records now and hereafter filed in the Department
22 of State Police criminal history record databases. The
23 Department of State Police shall charge a fee for conducting
24 the criminal history records check, which shall not exceed the
25 actual cost of the records check. The livescan vendor may act
26 as the designee for individuals, educational entities, or

1 health care employers in the collection of Department of State
2 Police fees and deposit those fees into the State Police
3 Services Fund. The Department of State Police shall provide
4 information concerning any criminal convictions, now or
5 hereafter filed, against the individual.

6 (c) On October 1, 2007 or as soon thereafter as is
7 reasonably practical, in the discretion of the Director of
8 Public Health, and thereafter, an educational entity, other
9 than a secondary school, conducting a nurse aide training
10 program shall initiate a fingerprint-based criminal history
11 records check required by this Act prior to entry of an
12 individual into the training program.

13 (d) On October 1, 2007 or as soon thereafter as is
14 reasonably practical, in the discretion of the Director of
15 Public Health, and thereafter, a health care employer who makes
16 a conditional offer of employment to an applicant for a
17 position as an employee shall initiate a fingerprint-based
18 criminal history record check, requested by the Department of
19 Public Health, on the applicant, if such a background check has
20 not been previously conducted. Workforce intermediaries and
21 organizations providing pro bono legal services may initiate a
22 fingerprint-based criminal history record check if a
23 conditional offer of employment has not been made and a
24 background check has not been previously conducted for an
25 individual who has a disqualifying conviction and is receiving
26 services from a workforce intermediary or an organization

1 providing pro bono legal services.

2 (e) When initiating a background check requested by the
3 Department of Public Health, an educational entity, ~~or~~ health
4 care employer, workforce intermediary, or organization that
5 provides pro bono legal services shall electronically submit to
6 the Department of Public Health the student's, applicant's, or
7 employee's social security number, demographics, disclosure,
8 and authorization information in a format prescribed by the
9 Department of Public Health within 2 working days after the
10 authorization is secured. The student, applicant, or employee
11 shall have his or her fingerprints collected electronically and
12 transmitted to the Department of State Police within 10 working
13 days. The educational entity, ~~or~~ health care employer,
14 workforce intermediary, or organization that provides pro bono
15 legal services shall transmit all necessary information and
16 fees to the livescan vendor and Department of State Police
17 within 10 working days after receipt of the authorization. This
18 information and the results of the criminal history record
19 checks shall be maintained by the Department of Public Health's
20 Health Care Worker Registry.

21 (f) A direct care employer may initiate a fingerprint-based
22 background check required by this Act for any of its employees,
23 but may not use this process to initiate background checks for
24 residents. The results of any fingerprint-based background
25 check that is initiated with the Department as the requester
26 shall be entered in the Health Care Worker Registry.

1 (g) As long as the employee or trainee has had a
2 fingerprint-based criminal history record check required by
3 this Act and stays active on the Health Care Worker Registry,
4 no further criminal history record checks are required, as the
5 Department of State Police shall notify the Department of
6 Public Health of any additional convictions associated with the
7 fingerprints previously submitted. Health care employers shall
8 check the Health Care Worker Registry before hiring an employee
9 to determine that the individual has had a fingerprint-based
10 record check required by this Act and has no disqualifying
11 convictions or has been granted a waiver pursuant to Section 40
12 of this Act. If the individual has not had such a background
13 check or is not active on the Health Care Worker Registry, then
14 the health care employer shall initiate a fingerprint-based
15 record check requested by the Department of Public Health. If
16 an individual is inactive on the Health Care Worker Registry,
17 that individual is prohibited from being hired to work as a
18 certified nursing assistant if, since the individual's most
19 recent completion of a competency test, there has been a period
20 of 24 consecutive months during which the individual has not
21 provided nursing or nursing-related services for pay. If the
22 individual can provide proof of having retained his or her
23 certification by not having a 24-consecutive-month break in
24 service for pay, he or she may be hired as a certified nursing
25 assistant and that employment information shall be entered into
26 the Health Care Worker Registry.

1 (h) On October 1, 2007 or as soon thereafter as is
2 reasonably practical, in the discretion of the Director of
3 Public Health, and thereafter, if the Department of State
4 Police notifies the Department of Public Health that an
5 employee has a new conviction of a disqualifying offense, based
6 upon the fingerprints that were previously submitted, then (i)
7 the Health Care Worker Registry shall notify the employee's
8 last known employer of the offense, (ii) a record of the
9 employee's disqualifying offense shall be entered on the Health
10 Care Worker Registry, and (iii) the individual shall no longer
11 be eligible to work as an employee unless he or she obtains a
12 waiver pursuant to Section 40 of this Act.

13 (i) On October 1, 2007, or as soon thereafter, in the
14 discretion of the Director of Public Health, as is reasonably
15 practical, and thereafter, each direct care employer or its
16 designee shall provide an employment verification for each
17 employee no less than annually. The direct care employer or its
18 designee shall log into the Health Care Worker Registry through
19 a secure login. The health care employer or its designee shall
20 indicate employment and termination dates within 30 days after
21 hiring or terminating an employee, as well as the employment
22 category and type. Failure to comply with this subsection (i)
23 constitutes a licensing violation. A fine of up to \$500 may be
24 imposed for failure to maintain these records. This information
25 shall be used by the Department of Public Health to notify the
26 last known employer of any disqualifying offenses that are

1 reported by the Department of State Police.

2 (j) In the event that an applicant or employee has a waiver
3 for one or more disqualifying offenses pursuant to Section 40
4 of this Act and he or she is otherwise eligible to work, the
5 Health Care Worker Registry shall indicate that the applicant
6 or employee is eligible to work and that additional information
7 is available on the Health Care Worker Registry. The Health
8 Care Worker Registry may indicate that the applicant or
9 employee has received a waiver.

10 (k) The student, applicant, or employee shall be notified
11 of each of the following whenever a fingerprint-based criminal
12 history records check is required:

13 (1) That the educational entity, health care employer,
14 or long-term care facility shall initiate a
15 fingerprint-based criminal history record check required
16 by this Act of the student, applicant, or employee.

17 (2) That the student, applicant, or employee has a
18 right to obtain a copy of the criminal records report that
19 indicates a conviction for a disqualifying offense and
20 challenge the accuracy and completeness of the report
21 through an established Department of State Police
22 procedure of Access and Review.

23 (3) That the applicant, if hired conditionally, may be
24 terminated if the criminal records report indicates that
25 the applicant has a record of a conviction of any of the
26 criminal offenses enumerated in Section 25, unless the

1 applicant obtains a waiver pursuant to Section 40 of this
2 Act.

3 (4) That the applicant, if not hired conditionally,
4 shall not be hired if the criminal records report indicates
5 that the applicant has a record of a conviction of any of
6 the criminal offenses enumerated in Section 25, unless the
7 applicant obtains a waiver pursuant to Section 40 of this
8 Act.

9 (5) That the employee shall be terminated if the
10 criminal records report indicates that the employee has a
11 record of a conviction of any of the criminal offenses
12 enumerated in Section 25.

13 (6) If, after the employee has originally been
14 determined not to have disqualifying offenses, the
15 employer is notified that the employee has a new
16 conviction(s) of any of the criminal offenses enumerated in
17 Section 25, then the employee shall be terminated.

18 (l) A health care employer or long-term care facility may
19 conditionally employ an applicant for up to 3 months pending
20 the results of a fingerprint-based criminal history record
21 check requested by the Department of Public Health.

22 (m) The Department of Public Health or an entity
23 responsible for inspecting, licensing, certifying, or
24 registering the health care employer or long-term care facility
25 shall be immune from liability for notices given based on the
26 results of a fingerprint-based criminal history record check.

1 (n) As used in this Section:

2 "Workforce intermediaries" means organizations that
3 function to provide job training and employment services.
4 Workforce intermediaries include institutions of higher
5 education, faith-based and community organizations, and
6 workforce investment boards.

7 "Organizations providing pro bono legal services" means
8 legal services performed without compensation or at a
9 significantly reduced cost to the recipient that provide
10 services designed to help individuals overcome statutory
11 barriers that would prevent them from entering positions in the
12 healthcare industry.

13 (Source: P.A. 99-872, eff. 1-1-17; 100-432, eff. 8-25-17.)

14 (225 ILCS 46/40)

15 Sec. 40. Waiver.

16 (a) Any student, applicant, enrollee in a training program,
17 individual receiving services from a workforce intermediary or
18 organization providing pro bono legal services, or employee
19 listed on the Health Care Worker Registry may request a waiver
20 of the prohibition against employment by:

21 (1) completing a waiver application on a form
22 prescribed by the Department of Public Health;

23 (2) providing a written explanation of each conviction
24 to include (i) what happened, (ii) how many years have
25 passed since the offense, (iii) the individuals involved,

1 (iv) the age of the applicant at the time of the offense,
2 and (v) any other circumstances surrounding the offense;
3 and

4 (3) providing official documentation showing that all
5 fines have been paid, if applicable and except for in the
6 instance of payment of court-imposed fines or restitution
7 in which the applicant is adhering to a payment schedule,
8 and the date probation or parole was satisfactorily
9 completed, if applicable.

10 (b) The applicant may, but is not required to, submit
11 employment and character references and any other evidence
12 demonstrating the ability of the applicant or employee to
13 perform the employment responsibilities competently and
14 evidence that the applicant or employee does not pose a threat
15 to the health or safety of residents, patients, or clients.

16 (c) The Department of Public Health may, at the discretion
17 of the Director of Public Health, grant a waiver to an
18 applicant, student, or employee listed on the Health Care
19 Worker Registry. The Department of Public Health shall act upon
20 the waiver request within 30 days of receipt of all necessary
21 information, as defined by rule. The Department of Public
22 Health shall send an applicant, student, or employee written
23 notification of its decision whether to grant a waiver,
24 including listing the specific disqualifying offenses for
25 which the waiver is being granted or denied. The Department
26 shall issue additional copies of this written notification upon

1 the applicant's, student's, or employee's request.

2 (d) An individual shall not be employed from the time that
3 the employer receives a notification from the Department of
4 Public Health based upon the results of a fingerprint-based
5 criminal history records check containing disqualifying
6 conditions until the time that the individual receives a
7 waiver.

8 (e) The entity responsible for inspecting, licensing,
9 certifying, or registering the health care employer and the
10 Department of Public Health shall be immune from liability for
11 any waivers granted under this Section.

12 (f) A health care employer is not obligated to employ or
13 offer permanent employment to an applicant, or to retain an
14 employee who is granted a waiver under this Section.

15 (Source: P.A. 99-872, eff. 1-1-17; 100-432, eff. 8-25-17.)

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.".