

SB1965



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1965

Introduced 2/15/2019, by Sen. Elgie R. Sims, Jr.

SYNOPSIS AS INTRODUCED:

225 ILCS 46/33
225 ILCS 46/40

Amends the Health Care Worker Background Check Act. Provides that an individual otherwise qualified for and intending to apply for a direct care position who has a disqualifying conviction may initiate a fingerprint-based criminal history record check where a conditional offer of employment has not been made and such a background check has not been previously conducted, and allows those individuals to request a waiver of the prohibition of employment. Effective immediately.

LRB101 10223 JRG 55327 b

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

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

6 (225 ILCS 46/33)

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

8 (a) A fingerprint-based criminal history records check is
9 not required for health care employees who have been
10 continuously employed by a health care employer since October
11 1, 2007, have met the requirements for criminal history
12 background checks prior to October 1, 2007, and have no
13 disqualifying convictions or requested and received a waiver of
14 those disqualifying convictions. These employees shall be
15 retained on the Health Care Worker Registry as long as they
16 remain active. Nothing in this subsection (a) shall be
17 construed to prohibit a health care employer from initiating a
18 criminal history records check for these employees. Should
19 these employees seek a new position with a different health
20 care employer, then a fingerprint-based criminal history
21 records check shall be required.

22 (b) On October 1, 2007 or as soon thereafter as is
23 reasonably practical, in the discretion of the Director of

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

26 (c) On October 1, 2007 or as soon thereafter as is

1 reasonably practical, in the discretion of the Director of
2 Public Health, and thereafter, an educational entity, other
3 than a secondary school, conducting a nurse aide training
4 program shall initiate a fingerprint-based criminal history
5 records check required by this Act prior to entry of an
6 individual into the training program.

7 (d) On October 1, 2007 or as soon thereafter as is
8 reasonably practical, in the discretion of the Director of
9 Public Health, and thereafter, a health care employer who makes
10 a conditional offer of employment to an applicant for a
11 position as an employee shall initiate a fingerprint-based
12 criminal history record check, requested by the Department of
13 Public Health, on the applicant, if such a background check has
14 not been previously conducted. An individual otherwise
15 qualified for and intending to apply for a direct care position
16 who has a disqualifying conviction may also initiate a
17 fingerprint-based criminal history record check where a
18 conditional offer of employment has not been made and such a
19 background check has not been previously conducted.

20 (e) When initiating a background check requested by the
21 Department of Public Health, an educational entity or health
22 care employer shall electronically submit to the Department of
23 Public Health the student's, applicant's, or employee's social
24 security number, demographics, disclosure, and authorization
25 information in a format prescribed by the Department of Public
26 Health within 2 working days after the authorization is

1 secured. The student, applicant, or employee shall have his or
2 her fingerprints collected electronically and transmitted to
3 the Department of State Police within 10 working days. The
4 educational entity or health care employer shall transmit all
5 necessary information and fees to the livescan vendor and
6 Department of State Police within 10 working days after receipt
7 of the authorization. This information and the results of the
8 criminal history record checks shall be maintained by the
9 Department of Public Health's Health Care Worker Registry.

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

16 (g) As long as the employee has had a fingerprint-based
17 criminal history record check required by this Act and stays
18 active on the Health Care Worker Registry, no further criminal
19 history record checks are required, as the Department of State
20 Police shall notify the Department of Public Health of any
21 additional convictions associated with the fingerprints
22 previously submitted. Health care employers shall check the
23 Health Care Worker Registry before hiring an employee to
24 determine that the individual has had a fingerprint-based
25 record check required by this Act and has no disqualifying
26 convictions or has been granted a waiver pursuant to Section 40

1 of this Act. If the individual has not had such a background
2 check or is not active on the Health Care Worker Registry, then
3 the health care employer shall initiate a fingerprint-based
4 record check requested by the Department of Public Health. If
5 an individual is inactive on the Health Care Worker Registry,
6 that individual is prohibited from being hired to work as a
7 certified nursing assistant if, since the individual's most
8 recent completion of a competency test, there has been a period
9 of 24 consecutive months during which the individual has not
10 provided nursing or nursing-related services for pay. If the
11 individual can provide proof of having retained his or her
12 certification by not having a 24-consecutive-month break in
13 service for pay, he or she may be hired as a certified nursing
14 assistant and that employment information shall be entered into
15 the Health Care Worker Registry.

16 (h) On October 1, 2007 or as soon thereafter as is
17 reasonably practical, in the discretion of the Director of
18 Public Health, and thereafter, if the Department of State
19 Police notifies the Department of Public Health that an
20 employee has a new conviction of a disqualifying offense, based
21 upon the fingerprints that were previously submitted, then (i)
22 the Health Care Worker Registry shall notify the employee's
23 last known employer of the offense, (ii) a record of the
24 employee's disqualifying offense shall be entered on the Health
25 Care Worker Registry, and (iii) the individual shall no longer
26 be eligible to work as an employee unless he or she obtains a

1 waiver pursuant to Section 40 of this Act.

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

17 (j) In the event that an applicant or employee has a waiver
18 for one or more disqualifying offenses pursuant to Section 40
19 of this Act and he or she is otherwise eligible to work, the
20 Health Care Worker Registry shall indicate that the applicant
21 or employee is eligible to work and that additional information
22 is available on the Health Care Worker Registry. The Health
23 Care Worker Registry may indicate that the applicant or
24 employee has received a waiver.

25 (k) The student, applicant, or employee shall be notified
26 of each of the following whenever a fingerprint-based criminal

1 history records check is required:

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

6 (2) That the student, applicant, or employee has a
7 right to obtain a copy of the criminal records report that
8 indicates a conviction for a disqualifying offense and
9 challenge the accuracy and completeness of the report
10 through an established Department of State Police
11 procedure of Access and Review.

12 (3) That the applicant, if hired conditionally, may be
13 terminated if the criminal records report indicates that
14 the applicant has a record of a conviction of any of the
15 criminal offenses enumerated in Section 25, unless the
16 applicant obtains a waiver pursuant to Section 40 of this
17 Act.

18 (4) That the applicant, if not hired conditionally,
19 shall not be hired if the criminal records report indicates
20 that the applicant has a record of a conviction of any of
21 the criminal offenses enumerated in Section 25, unless the
22 applicant obtains a waiver pursuant to Section 40 of this
23 Act.

24 (5) That the employee shall be terminated if the
25 criminal records report indicates that the employee has a
26 record of a conviction of any of the criminal offenses

1 enumerated in Section 25.

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

7 (1) A health care employer or long-term care facility may
8 conditionally employ an applicant for up to 3 months pending
9 the results of a fingerprint-based criminal history record
10 check requested by the Department of Public Health.

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

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

17 (225 ILCS 46/40)

18 Sec. 40. Waiver.

19 (a) Any student, applicant, individual otherwise qualified
20 for and intending to apply for a direct care position, or
21 employee listed on the Health Care Worker Registry may request
22 a waiver of the prohibition against employment by:

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

25 (2) providing a written explanation of each conviction

1 to include (i) what happened, (ii) how many years have
2 passed since the offense, (iii) the individuals involved,
3 (iv) the age of the applicant at the time of the offense,
4 and (v) any other circumstances surrounding the offense;
5 and

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

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

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

1 which the waiver is being granted or denied. The Department
2 shall issue additional copies of this written notification upon
3 the applicant's, student's, or employee's request.

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

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

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

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

18 Section 99. Effective date. This Act takes effect upon
19 becoming law.