



Rep. Kevin Joyce

Filed: 4/25/2007

09500HB1728ham002

LRB095 09794 RAS 35512 a

1 AMENDMENT TO HOUSE BILL 1728

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1728, AS AMENDED, by  
3 replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Health Care Worker Background Check Act is  
6 amended by changing Sections 15, 20, 25, 40, 45, 50, 55, and 60  
7 and by adding Section 33 as follows:

8 (225 ILCS 46/15)

9 Sec. 15. Definitions. ~~In For the purposes of this Act, the~~  
10 ~~following definitions apply:~~

11 "Applicant" means an individual seeking employment with a  
12 health care employer who has received a bona fide conditional  
13 offer of employment.

14 "Conditional offer of employment" means a bona fide offer  
15 of employment by a health care employer to an applicant, which  
16 is contingent upon the receipt of a report from the Department

1 of Public Health ~~State Police~~ indicating that the applicant  
2 does not have a record of conviction of any of the criminal  
3 offenses enumerated in Section 25.

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

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 to which this Act applies.

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

21 "Health care employer" means:

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

23 (i) a community living facility, as defined in the  
24 Community Living Facilities Act;

25 (ii) a life care facility, as defined in the Life  
26 Care Facilities Act;

1 (iii) a long-term care facility, ~~as defined in the~~  
2 ~~Nursing Home Care Act;~~

3 (iv) a home health agency, home services agency, or  
4 home nursing agency as defined in the Home Health, Home  
5 Services, and Home Nursing Agency Licensing Act;

6 (v) a ~~comprehensive~~ hospice care program or  
7 volunteer hospice program, as defined in the Hospice  
8 Program Licensing Act;

9 (vi) a hospital, as defined in the Hospital  
10 Licensing Act;

11 (vii) (blank); ~~a community residential~~  
12 ~~alternative, as defined in the Community Residential~~  
13 ~~Alternatives Licensing Act;~~

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 ~~the obtaining of the authorization for a~~  
21 ~~record check~~ from a student, applicant, or employee his or her  
22 social security number, demographics, a disclosure statement,  
23 and an authorization for the Department of Public Health or its  
24 designee to request a fingerprint-based criminal history  
25 records check; transmitting this information electronically to  
26 the Department of Public Health; conducting Internet searches

1 on certain web sites, including without limitation the Illinois  
2 Sex Offender Registry, the Department of Corrections' Sex  
3 Offender Search Engine, the Department of Corrections' Inmate  
4 Search Engine, the Department of Corrections Wanted Fugitives  
5 Search Engine, the National Sex Offender Public Registry, and  
6 the website of the Health and Human Services Office of  
7 Inspector General to determine if the applicant has been  
8 adjudicated a sex offender, has been a prison inmate, or has  
9 committed Medicare or Medicaid fraud, or conducting similar  
10 searches as defined by rule; and having the student, applicant,  
11 or employee's fingerprints collected and transmitted  
12 electronically to the Department of State Police. The  
13 educational entity or health care employer or its designee  
14 shall transmit all necessary information and fees to the  
15 Illinois State Police within 10 working days after receipt of  
16 the authorization.

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

1 transmitting fingerprints electronically to the Department of  
2 State Police and that the vendor can successfully transmit the  
3 required data in a manner prescribed by the Department of  
4 Public Health. Vendor authorization may be further defined by  
5 administrative rule.

6 "Long-term care facility" means a facility licensed by the  
7 State or certified under federal law as a long-term care  
8 facility, including without limitation facilities licensed  
9 under the Nursing Home Care Act, a supportive living facility,  
10 an assisted living establishment, or a shared housing  
11 establishment or registered as a board and care home.

12 (Source: P.A. 93-878, eff. 1-1-05; 94-379, eff. 1-1-06; 94-570,  
13 eff. 8-12-05; 94-665, eff. 1-1-06; revised 8-29-05.)

14 (225 ILCS 46/20)

15 Sec. 20. Exceptions. ~~(1)~~ This Act shall not apply to:

16 (1) ~~(a)~~ an individual who is licensed by the Department  
17 of Financial and Professional Regulation or the Department  
18 of Public Health under another law of this State;

19 (2) ~~(b)~~ an individual employed or retained by a health  
20 care employer for whom a criminal background check is  
21 required by another law of this State; or

22 (3) ~~(c)~~ a student in a licensed health care field  
23 including, but not limited to, a student nurse, a physical  
24 therapy student, or a respiratory care student unless he or  
25 she is (i) employed by a health care employer in a position

1 with duties involving direct care for clients, patients, or  
2 residents or (ii) employed by a long-term care facility in  
3 a position that involves or may involve contact with  
4 residents or access to the living quarters or the  
5 financial, medical, or personal records of residents.

6 ~~(2) A UCIA criminal history records check need not be~~  
7 ~~redone by the University of Illinois Hospital, Chicago (U of I)~~  
8 ~~or a program funded by the Department on Aging through the~~  
9 ~~Community Care Program (CCP) if the U of I or the CCP: (i) has~~  
10 ~~done a UCIA check on the individual; (ii) has continuously~~  
11 ~~employed the individual since the UCIA criminal records check~~  
12 ~~was done; and (iii) has taken actions with respect to this Act~~  
13 ~~within 12 months after the effective date of this amendatory~~  
14 ~~Act of the 91st General Assembly.~~

15 (Source: P.A. 91-598, eff. 1-1-00.)

16 (225 ILCS 46/25)

17 Sec. 25. Persons ineligible to be hired by health care  
18 employers and long-term care facilities.

19 (a) In the discretion of the Director of Public Health, as  
20 soon after ~~After~~ January 1, 1996, January 1, 1997, January 1,  
21 2006, or October 1, 2007 ~~or the effective date of this~~  
22 ~~amendatory Act of the 94th General Assembly,~~ as applicable, and  
23 as is reasonably practical, no health care employer shall  
24 knowingly hire, employ, or retain any individual in a position  
25 with duties involving direct care for clients, patients, or

1 residents, and no long-term care facility shall knowingly hire,  
2 employ, or retain any individual in a position with duties that  
3 involve or may involve contact with residents or access to the  
4 living quarters or the financial, medical, or personal records  
5 of residents, who has been convicted of committing or  
6 attempting to commit one or more of the offenses defined in  
7 Sections 8-1.1, 8-1.2, 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1,  
8 9-3.2, 9-3.3, 10-1, 10-2, 10-3, 10-3.1, 10-4, 10-5, 10-7, 11-6,  
9 11-9.1, 11-9.5, 11-19.2, 11-20.1, 12-1, 12-2, 12-3, 12-3.1,  
10 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6,  
11 12-4.7, 12-7.4, 12-11, 12-13, 12-14, 12-14.1, 12-15, 12-16,  
12 12-19, 12-21, 12-21.6, 12-32, 12-33, 16-1, 16-1.3, 16A-3, 17-3,  
13 18-1, 18-2, 18-3, 18-4, 18-5, 19-1, 19-3, 19-4, 20-1, 20-1.1,  
14 24-1, 24-1.2, 24-1.5, or 33A-2 of the Criminal Code of 1961;  
15 those provided in Section 4 of the Wrongs to Children Act;  
16 those provided in Section 53 of the Criminal Jurisprudence Act;  
17 those defined in Section 5, 5.1, 5.2, 7, or 9 of the Cannabis  
18 Control Act; those defined in the Methamphetamine Control and  
19 Community Protection Act; or those defined in Sections 401,  
20 401.1, 404, 405, 405.1, 407, or 407.1 of the Illinois  
21 Controlled Substances Act, unless the applicant or employee  
22 obtains a waiver pursuant to Section 40.

23 (a-1) In the discretion of the Director of Public Health,  
24 as soon after ~~After~~ January 1, 2004 or October 1, 2007, as  
25 applicable, and as is reasonably practical, no health care  
26 employer shall knowingly hire any individual in a position with



1 duties involving direct care for clients, patients, or  
2 residents, and no long-term care facility shall knowingly hire  
3 any individual in a position with duties that involve or may  
4 involve contact with residents or access to the living quarters  
5 or the financial, medical, or personal records of residents,  
6 who has (i) been convicted of committing or attempting to  
7 commit one or more of the offenses defined in Section 12-3.3,  
8 12-4.2-5, 16-2, 16G-15, 16G-20, 18-5, 20-1.2, 24-1.1,  
9 24-1.2-5, 24-1.6, 24-3.2, or 24-3.3 of the Criminal Code of  
10 1961; Section 4, 5, 6, 8, or 17.02 of the Illinois Credit Card  
11 and Debit Card Act; or Section 5.1 of the Wrongs to Children  
12 Act; or (ii) violated Section 10-5 of the Nursing and Advanced  
13 Practice Nursing Act, unless the applicant or employee obtains  
14 a waiver pursuant to Section 40 of this Act.

15 ~~A UCIA criminal history record check need not be redone for~~  
16 ~~health care employees who have been continuously employed by a~~  
17 ~~health care employer since January 1, 2004, but nothing in this~~  
18 ~~Section prohibits a health care employer from initiating a~~  
19 ~~criminal history check for these employees.~~

20 A health care employer is not required to retain an  
21 individual in a position with duties involving direct care for  
22 clients, patients, or residents, and no long-term care facility  
23 is required to retain an individual in a position with duties  
24 that involve or may involve contact with residents or access to  
25 the living quarters or the financial, medical, or personal  
26 records of residents, who has been convicted of committing or

1 attempting to commit one or more of the offenses enumerated in  
2 this subsection.

3 (b) A health care employer shall not hire, employ, or  
4 retain any individual in a position with duties involving  
5 direct care of clients, patients, or residents, and no  
6 long-term care facility shall knowingly hire, employ, or retain  
7 any individual in a position with duties that involve or may  
8 involve contact with residents or access to the living quarters  
9 or the financial, medical, or personal records of residents, if  
10 the health care employer becomes aware that the individual has  
11 been convicted in another state of committing or attempting to  
12 commit an offense that has the same or similar elements as an  
13 offense listed in subsection (a) or (a-1), as verified by court  
14 records, records from a state agency, or an FBI criminal  
15 history record check, unless the applicant or employee obtains  
16 a waiver pursuant to Section 40 of this Act. This shall not be  
17 construed to mean that a health care employer has an obligation  
18 to conduct a criminal history records check in other states in  
19 which an employee has resided.

20 (Source: P.A. 93-224, eff. 7-18-03; 94-556, eff. 9-11-05;  
21 94-665, eff. 1-1-06; 94-1053, eff. 7-24-06.)

22 (225 ILCS 46/33 new)

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

24 (a) A fingerprint-based criminal history records check is  
25 not required for health care employees who have been

1 continuously employed by a health care employer since October  
2 1, 2007, have met the requirements for criminal history  
3 background checks prior to October 1, 2007, and have no  
4 disqualifying convictions or requested and received a waiver of  
5 those disqualifying convictions. These employees shall be  
6 retained on the Health Care Worker Registry as long as they  
7 remain active. Nothing in this subsection (a) shall be  
8 construed to prohibit a health care employer from initiating a  
9 criminal history records check for these employees. Should  
10 these employees seek a new position with a different health  
11 care employer, then a fingerprint-based criminal history  
12 records check shall be required.

13 (b) 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, any student, applicant, or  
16 employee who desires to be included on the Department of Public  
17 Health's Health Care Worker Registry must authorize the  
18 Department of Public Health or its designee to request a  
19 fingerprint-based criminal history records check to determine  
20 if the individual has a conviction for a disqualifying offense.  
21 This authorization shall allow the Department of Public Health  
22 to request and receive information and assistance from any  
23 State or local governmental agency. Each individual shall  
24 submit his or her fingerprints to the Department of State  
25 Police in an electronic format that complies with the form and  
26 manner for requesting and furnishing criminal history record

1 information prescribed by the Department of State Police. The  
2 fingerprints submitted under this Section shall be checked  
3 against the fingerprint records now and hereafter filed in the  
4 Department of State Police criminal history record databases.  
5 The Department of State Police shall charge a fee for  
6 conducting the criminal history records check, which shall not  
7 exceed the actual cost of the records check. The livescan  
8 vendor may act as the designee for individuals, educational  
9 entities, or health care employers in the collection of  
10 Department of State Police fees and deposit those fees into the  
11 State Police Services Fund. The Department of State Police  
12 shall provide information concerning any criminal convictions,  
13 now or hereafter filed, against the individual.

14 (c) On October 1, 2007 or as soon thereafter as is  
15 reasonably practical, in the discretion of the Director of  
16 Public Health, and thereafter, an educational entity, other  
17 than a secondary school, conducting a nurse aide training  
18 program must initiate a fingerprint-based criminal history  
19 records check requested by the Department of Public Health  
20 prior to entry of an individual into the training program.

21 (d) On October 1, 2007 or as soon thereafter as is  
22 reasonably practical, in the discretion of the Director of  
23 Public Health, and thereafter, a health care employer who makes  
24 a conditional offer of employment to an applicant for a  
25 position as an employee must initiate a fingerprint-based  
26 criminal history record check, requested by the Department of

1 Public Health, on the applicant, if such a background check has  
2 not been previously conducted.

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

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

26 (g) As long as the employee has had a fingerprint-based

1 criminal history record check requested by the Department of  
2 Public Health and stays active on the Health Care Worker  
3 Registry, no further criminal history record checks shall be  
4 deemed necessary, as the Department of State Police shall  
5 notify the Department of Public Health of any additional  
6 convictions associated with the fingerprints previously  
7 submitted. Health care employers are required to check the  
8 Health Care Worker Registry before hiring an employee to  
9 determine that the individual has had a fingerprint-based  
10 record check requested by the Department of Public Health and  
11 has no disqualifying convictions or has been granted a waiver  
12 pursuant to Section 40 of this Act. If the individual has not  
13 had such a background check or is not active on the Health Care  
14 Worker Registry, then the health care employer must initiate a  
15 fingerprint-based record check requested by the Department of  
16 Public Health. If an individual is inactive on the Health Care  
17 Worker Registry, that individual is prohibited from being hired  
18 to work as a certified nurse aide if, since the individual's  
19 most recent completion of a competency test, there has been a  
20 period of 24 consecutive months during which the individual has  
21 not provided nursing or nursing-related services for pay. If  
22 the 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 nurse  
25 aide and that employment information shall be entered into the  
26 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 must provide an employment verification for each  
17 employee no less than annually. The direct care employer or its  
18 designee must log into the Health Care Worker Registry through  
19 a secure login. The health care employer or its designee must  
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. For health care employers  
24 that are not licensed or certified, a fine of up to \$500 may be  
25 imposed for failure to maintain these records. This information  
26 shall be used by the Department of Public Health to notify the

1 last known employer of any disqualifying offenses that are  
2 reported by the Department of State Police.

3 (j) The Department of Public Health shall notify each  
4 health care employer or long-term care facility inquiring as to  
5 the information on the Health Care Worker Registry if the  
6 applicant or employee listed on the registry has a  
7 disqualifying offense and is therefore ineligible to work or  
8 has a waiver pursuant to Section 40 of this Act.

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

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

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 (225 ILCS 46/40)

2 Sec. 40. Waiver.

3 (a) Any student, applicant, or employee listed on the  
4 Health Care Worker Registry ~~An applicant, employee, or nurse~~  
5 ~~aide~~ may request a waiver of the prohibition against employment  
6 by ~~submitting the following information to the entity~~  
7 ~~responsible for inspecting, licensing, certifying, or~~  
8 ~~registering the health care employer within 5 working days~~  
9 ~~after the receipt of the criminal records report:~~

10 (1) completing a waiver application on a form  
11 prescribed by the Department of Public Health; ~~Information~~  
12 ~~necessary to initiate a fingerprint-based UCIA criminal~~  
13 ~~records check in a form and manner prescribed by the~~  
14 ~~Department of State Police; and~~

15 (2) providing a written explanation of each conviction  
16 to include (i) what happened, (ii) how many years have  
17 passed since the offense, (iii) the individuals involved,  
18 (iv) the age of the applicant at the time of the offense,  
19 and (v) any other circumstances surrounding the offense;  
20 and

21 (3) providing official documentation showing that all  
22 finances have been paid, if applicable, and the date probation  
23 or parole was satisfactorily completed, if applicable. ~~The~~  
24 ~~fee for a fingerprint based UCIA criminal records check,~~  
25 ~~which shall not exceed the actual cost of the record check.~~

1       ~~(a-5) The entity responsible for inspecting, licensing,~~  
2 ~~certifying, or registering the health care employer may accept~~  
3 ~~the results of the fingerprint-based UCIA criminal records~~  
4 ~~check instead of the items required by paragraphs (1) and (2)~~  
5 ~~of subsection (a).~~

6       (b) The applicant may, but is not required to, submit  
7 employment and character references and any other evidence  
8 demonstrating the ability of the applicant or employee to  
9 perform the employment responsibilities competently and  
10 evidence that the applicant or employee does not pose a threat  
11 to the health or safety of residents, patients, or clients. The  
12 ~~entity responsible for inspecting, licensing, certifying, or~~  
13 ~~registering the health care employer may grant a waiver based~~  
14 ~~upon any mitigating circumstances, which may include, but need~~  
15 ~~not be limited to:~~

16       ~~(1) The age of the individual at which the crime was~~  
17 ~~committed;~~

18       ~~(2) The circumstances surrounding the crime;~~

19       ~~(3) The length of time since the conviction;~~

20       ~~(4) The applicant or employee's criminal history since~~  
21 ~~the conviction;~~

22       ~~(5) The applicant or employee's work history;~~

23       ~~(6) The applicant or employee's current employment~~  
24 ~~references;~~

25       ~~(7) The applicant or employee's character references;~~

26       ~~(8) Nurse aide registry records; and~~

1           ~~(9) Other evidence demonstrating the ability of the~~  
2           ~~applicant or employee to perform the employment~~  
3           ~~responsibilities competently and evidence that the~~  
4           ~~applicant or employee does not pose a threat to the health~~  
5           ~~or safety of residents, patients, or clients.~~

6           (c) The Department of Public Health ~~entity responsible for~~  
7           ~~inspecting, licensing, certifying, or registering a health~~  
8           ~~care employer must inform the health care employer~~ must inform  
9           health care employers if a waiver is being sought by entering a  
10           record on the Health Care Worker Registry that a waiver is  
11           pending and must act upon the waiver request within 30 days of  
12           receipt of all necessary information, as defined by rule.  
13           Except in cases where a rehabilitation waiver is granted, a  
14           letter shall be sent to the applicant notifying the applicant  
15           that he or she has received an automatic waiver.

16           (d) An individual shall not be employed from the time that  
17           the employer receives a notification from the Department of  
18           Public Health based upon the results of a fingerprint-based  
19           criminal history records ~~non fingerprint~~ check containing  
20           disqualifying conditions until the time that the individual  
21           receives a waiver ~~from the Department. If the individual~~  
22           ~~challenges the results of the non fingerprint check, the~~  
23           ~~employer may continue to employ the individual if the~~  
24           ~~individual presents convincing evidence to the employer that~~  
25           ~~the non fingerprint check is invalid. If the individual~~  
26           ~~challenges the results of the non fingerprint check, his or her~~

1 ~~identity shall be validated by a fingerprint based records~~  
2 ~~check in accordance with Section 35.~~

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

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

10 (Source: P.A. 94-665, eff. 1-1-06.)

11 (225 ILCS 46/45)

12 Sec. 45. Application fees. Except as otherwise provided in  
13 this Act, the student, applicant, or employee, other than a  
14 nurse aide, may be required to pay all related application and  
15 fingerprinting fees including, but not limited to, the amounts  
16 established ~~by the UCIA to conduct UCIA criminal history record~~  
17 ~~checks and the amounts established~~ by the Department of State  
18 Police to process fingerprint-based ~~UCIA~~ criminal history  
19 records checks. If a health care employer certified to  
20 participate in the Medicaid program pays the fees, the fees  
21 shall be a direct pass-through on the cost report submitted by  
22 the employer to the Medicaid agency.

23 (Source: P.A. 89-197, eff. 7-21-95.)

24 (225 ILCS 46/50)

1           Sec. 50. Health care employer files. The health care  
2 employer shall retain on file for a period of 5 years records  
3 of criminal records requests for all employees. The health care  
4 employer shall retain a copy of the disclosure and  
5 authorization forms, a copy of the livescan request form, all  
6 notifications resulting from the ~~results of the UCIA~~  
7 fingerprint-based criminal history records check and waiver,  
8 if appropriate, for the duration of the individual's  
9 employment. The files shall be subject to inspection by the  
10 agency responsible for inspecting, licensing, or certifying  
11 the health care employer. A fine of up to \$500 may be imposed  
12 by the appropriate agency for failure to maintain these  
13 records. The Department of Public Health must keep an  
14 electronic record of criminal history background checks for an  
15 individual for as long as the individual remains active on the  
16 Health Care Worker Registry.

17 (Source: P.A. 89-197, eff. 7-21-95; 89-674, eff. 8-14-96.)

18 (225 ILCS 46/55)

19           Sec. 55. Immunity from liability. A health care employer  
20 shall not be liable for the failure to hire or to retain an  
21 applicant or employee who has been convicted of committing or  
22 attempting to commit one or more of the offenses enumerated in  
23 subsection (a) of Section 25 of this Act. However, if an  
24 employee ~~a health care worker~~ is suspended from employment  
25 based on the results of a criminal background check conducted

1 under this Act and the results prompting the suspension are  
2 subsequently found to be inaccurate, the employee ~~health care~~  
3 ~~worker~~ is entitled to recover backpay from his or her health  
4 care employer for the suspension period provided that the  
5 employer is the cause of the inaccuracy. The Department of  
6 Public Health is not liable for any hiring decisions,  
7 suspensions, or terminations.

8 No health care employer shall be chargeable for any benefit  
9 charges that result from the payment of unemployment benefits  
10 to any claimant when the claimant's separation from that  
11 employer occurred because the claimant's criminal background  
12 included an offense enumerated in subsection (a) of Section 25,  
13 or the claimant's separation from that health care employer  
14 occurred as a result of the claimant violating a policy that  
15 the employer was required to maintain pursuant to the Drug Free  
16 Workplace Act.

17 (Source: P.A. 90-441, eff. 1-1-98; 91-598, eff. 1-1-00.)

18 (225 ILCS 46/60)

19 Sec. 60. Offense.

20 (a) Any person whose profession is job counseling who  
21 knowingly counsels any person who has been convicted of  
22 committing or attempting to commit any of the offenses  
23 enumerated in subsection (a) of Section 25 to apply for a  
24 position with duties involving direct contact with a client,  
25 patient, or resident of a health care employer or a position

1 with duties that involve or may involve contact with residents  
2 or access to the living quarters or the financial, medical, or  
3 personal records of residents of a long-term care facility  
4 shall be guilty of a Class A misdemeanor unless a waiver is  
5 granted pursuant to Section 40 of this Act.

6 (b) Subsection (a) does not apply to an individual  
7 performing official duties in connection with the  
8 administration of the State employment service described in  
9 Section 1705 of the Unemployment Insurance Act.

10 (Source: P.A. 91-598, eff. 1-1-00.)

11 (225 ILCS 46/25.1 rep.)

12 (225 ILCS 46/30 rep.)

13 (225 ILCS 46/35 rep.)

14 Section 10. The Health Care Worker Background Check Act is  
15 amended by repealing Sections 25.1, 30, and 35.

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