



Rep. Camille Y. Lilly

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1 AMENDMENT TO SENATE BILL 42

2 AMENDMENT NO. _____. Amend Senate Bill 42 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Department of Professional Regulation Law
5 of the Civil Administrative Code of Illinois is amended by
6 changing Section 2105-165 as follows:

7 (20 ILCS 2105/2105-165)

8 Sec. 2105-165. Health care worker licensure actions; sex
9 crimes.

10 (a) When a licensed health care worker, as defined in the
11 Health Care Worker Self-Referral Act, (1) has been convicted of
12 a criminal act that requires registration under the Sex
13 Offender Registration Act; (1.5) has been convicted of
14 involuntary sexual servitude of a minor under subsection (c) of
15 Section 10-9 or subsection (b) of Section 10A-10 of the
16 Criminal Code of 1961 or the Criminal Code of 2012; (2) has

1 been convicted of a criminal battery against any patient in the
2 course of patient care or treatment, including any offense
3 based on sexual conduct or sexual penetration; (3) has been
4 convicted of a forcible felony; or (4) is required as a part of
5 a criminal sentence to register under the Sex Offender
6 Registration Act, then, notwithstanding any other provision of
7 law to the contrary, except as provided in this Section, the
8 license of the health care worker shall by operation of law be
9 permanently revoked without a hearing.

10 (a-1) If a licensed health care worker has been convicted
11 of a forcible felony, other than a forcible felony requiring
12 registration under the Sex Offender Registration Act or
13 involuntary sexual servitude of a minor that is a forcible
14 felony, and the health care worker has had his or her license
15 revoked, the health care worker may petition the Department to
16 restore his or her license so long as the conviction occurred
17 more than 5 years before the date the petition is filed. In
18 determining whether a license shall be restored, the Department
19 shall consider, but is not limited to, the following factors:

20 (1) the seriousness of the offense;

21 (2) the presence of multiple offenses;

22 (3) prior disciplinary history, including actions
23 taken by other agencies in this State or by other states or
24 jurisdictions, hospitals, health care facilities,
25 residency programs, employers, insurance providers, or any
26 of the armed forces of the United States or any state;

1 (4) the impact of the offense on any injured party;

2 (5) the vulnerability of any injured party, including,
3 but not limited to, consideration of the injured party's
4 age, disability, or mental illness;

5 (6) the motive for the offense;

6 (7) the lack of contrition for the offense;

7 (8) the lack of cooperation with the Department or
8 other investigative authorities;

9 (9) the lack of prior disciplinary action by the
10 Department or by other agencies in this State or by other
11 states or jurisdictions, hospitals, health care
12 facilities, residency programs, employers, insurance
13 providers, or any of the armed forces of the United States
14 or any state;

15 (10) contrition for the offense;

16 (11) cooperation with the Department or other
17 investigative authorities;

18 (12) restitution to injured parties;

19 (13) whether the misconduct was self-reported;

20 (14) any voluntary remedial actions taken; and

21 (15) the date of conviction.

22 (b) No person who has been convicted of any offense listed
23 in subsection (a) or required to register as a sex offender may
24 receive a license as a health care worker in Illinois. The
25 process for petition and review by the Department provided in
26 subsection (a-1) shall also apply to a person whose application

1 for licensure is denied under this Section for a conviction of
2 a forcible felony, other than a forcible felony requiring
3 registration under the Sex Offender Registration Act or
4 involuntary sexual servitude of a minor that is a forcible
5 felony.

6 (c) Immediately after a licensed health care worker, as
7 defined in the Health Care Worker Self-Referral Act, has been
8 charged with any offense for which the sentence includes
9 registration as a sex offender; involuntary sexual servitude of
10 a minor; a criminal battery against a patient, including any
11 offense based on sexual conduct or sexual penetration, in the
12 course of patient care or treatment; or a forcible felony; then
13 the prosecuting attorney shall provide notice to the Department
14 of the health care worker's name, address, practice address,
15 and license number and the patient's name and a copy of the
16 criminal charges filed. Within 5 business days after receiving
17 notice from the prosecuting attorney of the filing of criminal
18 charges against the health care worker, the Secretary shall
19 issue an administrative order that the health care worker shall
20 immediately practice only with a chaperone during all patient
21 encounters pending the outcome of the criminal proceedings. The
22 chaperone must be a licensed health care worker. The chaperone
23 shall provide written notice to all of the health care worker's
24 patients explaining the Department's order to use a chaperone.
25 Each patient shall sign an acknowledgement that they received
26 the notice. The notice to the patient of criminal charges shall

1 include, in 14-point font, the following statement: "The health
2 care worker is presumed innocent until proven guilty of the
3 charges.". The licensed health care worker shall provide a
4 written plan of compliance with the administrative order that
5 is acceptable to the Department within 5 days after receipt of
6 the administrative order. Failure to comply with the
7 administrative order, failure to file a compliance plan, or
8 failure to follow the compliance plan shall subject the health
9 care worker to temporary suspension of his or her professional
10 license until the completion of the criminal proceedings.

11 (d) Nothing contained in this Section shall act in any way
12 to waive or modify the confidentiality of information provided
13 by the prosecuting attorney to the extent provided by law. Any
14 information reported or disclosed shall be kept for the
15 confidential use of the Secretary, Department attorneys, the
16 investigative staff, and authorized clerical staff and shall be
17 afforded the same status as is provided information under Part
18 21 of Article VIII of the Code of Civil Procedure, except that
19 the Department may disclose information and documents to (1) a
20 federal, State, or local law enforcement agency pursuant to a
21 subpoena in an ongoing criminal investigation or (2) an
22 appropriate licensing authority of another state or
23 jurisdiction pursuant to an official request made by that
24 authority. Any information and documents disclosed to a
25 federal, State, or local law enforcement agency may be used by
26 that agency only for the investigation and prosecution of a

1 criminal offense. Any information or documents disclosed by the
2 Department to a professional licensing authority of another
3 state or jurisdiction may only be used by that authority for
4 investigations and disciplinary proceedings with regards to a
5 professional license.

6 (e) Any licensee whose license was revoked or who received
7 an administrative order under this Section shall have the
8 revocation or administrative order vacated and completely
9 removed from the licensee's records and public view and the
10 revocation or administrative order shall be afforded the same
11 status as is provided information under Part 21 of Article VIII
12 of the Code of Civil Procedure if (1) the charges upon which
13 the revocation or administrative order is based are dropped;
14 (2) the licensee is not convicted of the charges upon which the
15 revocation or administrative order is based; or (3) any
16 conviction for charges upon which the revocation or
17 administrative order was based have been vacated, overturned,
18 or reversed.

19 (f) Nothing contained in this Section shall prohibit the
20 Department from initiating or maintaining a disciplinary
21 action against a licensee independent from any criminal
22 charges, conviction, or sex offender registration.

23 (g) The Department may adopt rules necessary to implement
24 this Section.

25 (Source: P.A. 97-156, eff. 8-20-11; 97-484, eff. 9-21-11;
26 97-873, eff. 7-31-12.).

1 Section 10. The Health Care Worker Background Check Act is
2 amended by changing Sections 25, 33, and 40 as follows:

3 (225 ILCS 46/25)

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

6 (a) In the discretion of the Director of Public Health, as
7 soon after January 1, 1996, January 1, 1997, January 1, 2006,
8 or October 1, 2007, as applicable, and as is reasonably
9 practical, no health care employer shall knowingly hire,
10 employ, or retain any individual in a position with duties
11 involving direct care for clients, patients, or residents, and
12 no long-term care facility shall knowingly hire, employ, or
13 retain any individual in a position with duties that involve or
14 may involve contact with residents or access to the living
15 quarters or the financial, medical, or personal records of
16 residents, who has been convicted of committing or attempting
17 to commit one or more of the following offenses: those defined
18 in Sections 8-1(b), 8-1.1, 8-1.2, 9-1, 9-1.2, 9-2, 9-2.1, 9-3,
19 9-3.1, 9-3.2, 9-3.3, 9-3.4, 10-1, 10-2, 10-3, 10-3.1, 10-4,
20 10-5, 10-7, 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-6,
21 11-9.1, 11-9.5, 11-19.2, 11-20.1, 11-20.1B, 11-20.3, 12-1,
22 12-2, 12-3.05, 12-3.1, 12-3.2, 12-3.3, 12-4, 12-4.1, 12-4.2,
23 12-4.3, 12-4.4, 12-4.5, 12-4.6, 12-4.7, 12-7.4, 12-11, 12-13,
24 12-14, 12-14.1, 12-15, 12-16, 12-19, 12-21, 12-21.6, 12-32,

1 12-33, 12C-5, 16-1, 16-1.3, 16-25, 16A-3, 17-3, 17-56, 18-1,
2 18-2, 18-3, 18-4, 18-5, 19-1, 19-3, 19-4, 19-6, 20-1, 20-1.1,
3 24-1, 24-1.2, 24-1.5, or 33A-2, or subdivision (a)(4) of
4 Section 11-14.4, or in subsection (a) of Section 12-3 or
5 subsection (a) or (b) of Section 12-4.4a, of the Criminal Code
6 of 1961 or the Criminal Code of 2012; those provided in Section
7 4 of the Wrongs to Children Act; those provided in Section 53
8 of the Criminal Jurisprudence Act; those defined in subsection
9 (c), (d), (e), (f), or (g) of Section 5 or Section 5, 5.1, 5.2,
10 7, or 9 of the Cannabis Control Act; those defined in the
11 Methamphetamine Control and Community Protection Act; or those
12 defined in Sections 401, 401.1, 404, 405, 405.1, 407, or 407.1
13 of the Illinois Controlled Substances Act, unless the applicant
14 or employee obtains a waiver pursuant to Section 40.

15 (a-1) In the discretion of the Director of Public Health,
16 as soon after January 1, 2004 or October 1, 2007, as
17 applicable, and as is reasonably practical, no health care
18 employer shall knowingly hire any individual in a position with
19 duties involving direct care for clients, patients, or
20 residents, and no long-term care facility shall knowingly hire
21 any individual in a position with duties that involve or may
22 involve contact with residents or access to the living quarters
23 or the financial, medical, or personal records of residents,
24 who has (i) been convicted of committing or attempting to
25 commit one or more of the offenses defined in Section 12-3.3,
26 12-4.2-5, 16-2, 16-30, 16G-15, 16G-20, 17-33, 17-34, 17-36,

1 17-44, 18-5, 20-1.2, 24-1.1, 24-1.2-5, 24-1.6, 24-3.2, or
2 24-3.3, or subsection (b) of Section 17-32, subsection (b) of
3 Section 18-1, or subsection (b) of Section 20-1, of the
4 Criminal Code of 1961 or the Criminal Code of 2012; Section 4,
5 5, 6, 8, or 17.02 of the Illinois Credit Card and Debit Card
6 Act; or Section 11-9.1A of the Criminal Code of 1961 or the
7 Criminal Code of 2012 or Section 5.1 of the Wrongs to Children
8 Act; or (ii) violated Section 50-50 of the Nurse Practice Act,
9 unless the applicant or employee obtains a waiver pursuant to
10 Section 40 of this Act.

11 A health care employer is not required to retain an
12 individual in a position with duties involving direct care for
13 clients, patients, or residents, and no long-term care facility
14 is required to retain an individual in a position with duties
15 that involve or may involve contact with residents or access to
16 the living quarters or the financial, medical, or personal
17 records of residents, who has been convicted of committing or
18 attempting to commit one or more of the offenses enumerated in
19 this subsection.

20 (b) A health care employer shall not hire, employ, or
21 retain any individual in a position with duties involving
22 direct care of clients, patients, or residents, and no
23 long-term care facility shall knowingly hire, employ, or retain
24 any individual in a position with duties that involve or may
25 involve contact with residents or access to the living quarters
26 or the financial, medical, or personal records of residents, if

1 the health care employer becomes aware that the individual has
2 been convicted in another state of committing or attempting to
3 commit an offense that has the same or similar elements as an
4 offense listed in subsection (a) or (a-1), as verified by court
5 records, records from a state agency, or an FBI criminal
6 history record check, unless the applicant or employee obtains
7 a waiver pursuant to Section 40 of this Act. This shall not be
8 construed to mean that a health care employer has an obligation
9 to conduct a criminal history records check in other states in
10 which an employee has resided.

11 (Source: P.A. 96-710, eff. 1-1-10; 96-1551, Article 1, Section
12 930, eff. 7-1-11; 96-1551, Article 2, Section 995, eff. 7-1-11;
13 96-1551, Article 10, Section 10-40, eff. 7-1-11; 97-597, eff.
14 1-1-12; 97-1108, eff. 1-1-13; 97-1109, eff. 1-1-13; 97-1150,
15 eff. 1-25-13.)

16 (225 ILCS 46/33)

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

18 (a) A fingerprint-based criminal history records check is
19 not required for health care employees who have been
20 continuously employed by a health care employer since October
21 1, 2007, have met the requirements for criminal history
22 background checks prior to October 1, 2007, and have no
23 disqualifying convictions or requested and received a waiver of
24 those disqualifying convictions. These employees shall be
25 retained on the Health Care Worker Registry as long as they

1 remain active. Nothing in this subsection (a) shall be
2 construed to prohibit a health care employer from initiating a
3 criminal history records check for these employees. Should
4 these employees seek a new position with a different health
5 care employer, then a fingerprint-based criminal history
6 records check shall be required.

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

1 exceed the actual cost of the records check. The livescan
2 vendor may act as the designee for individuals, educational
3 entities, or health care employers in the collection of
4 Department of State Police fees and deposit those fees into the
5 State Police Services Fund. The Department of State Police
6 shall provide information concerning any criminal convictions,
7 now or hereafter filed, against the individual.

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

15 (d) On October 1, 2007 or as soon thereafter as is
16 reasonably practical, in the discretion of the Director of
17 Public Health, and thereafter, a health care employer who makes
18 a conditional offer of employment to an applicant for a
19 position as an employee must initiate a fingerprint-based
20 criminal history record check, requested by the Department of
21 Public Health, on the applicant, if such a background check has
22 not been previously conducted.

23 (e) When initiating a background check requested by the
24 Department of Public Health, an educational entity or health
25 care employer shall electronically submit to the Department of
26 Public Health the student's, applicant's, or employee's social

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

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

20 (g) As long as the employee has had a fingerprint-based
21 criminal history record check requested by the Department of
22 Public Health and stays active on the Health Care Worker
23 Registry, no further criminal history record checks shall be
24 deemed necessary, as the Department of State Police shall
25 notify the Department of Public Health of any additional
26 convictions associated with the fingerprints previously

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

21 (h) 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, if the Department of State
24 Police notifies the Department of Public Health that an
25 employee has a new conviction of a disqualifying offense, based
26 upon the fingerprints that were previously submitted, then (i)

1 the Health Care Worker Registry shall notify the employee's
2 last known employer of the offense, (ii) a record of the
3 employee's disqualifying offense shall be entered on the Health
4 Care Worker Registry, and (iii) the individual shall no longer
5 be eligible to work as an employee unless he or she obtains a
6 waiver pursuant to Section 40 of this Act.

7 (i) On October 1, 2007, or as soon thereafter, in the
8 discretion of the Director of Public Health, as is reasonably
9 practical, and thereafter, each direct care employer or its
10 designee must provide an employment verification for each
11 employee no less than annually. The direct care employer or its
12 designee must log into the Health Care Worker Registry through
13 a secure login. The health care employer or its designee must
14 indicate employment and termination dates within 30 days after
15 hiring or terminating an employee, as well as the employment
16 category and type. Failure to comply with this subsection (i)
17 constitutes a licensing violation. For health care employers
18 that are not licensed or certified, a fine of up to \$500 may be
19 imposed for failure to maintain these records. This information
20 shall be used by the Department of Public Health to notify the
21 last known employer of any disqualifying offenses that are
22 reported by the Department of State Police.

23 (j) The Department of Public Health shall notify each
24 health care employer or long-term care facility inquiring as to
25 the information on the Health Care Worker Registry if the
26 applicant or employee listed on the registry has a

1 disqualifying offense and is therefore ineligible to work ~~or~~
2 ~~has a waiver pursuant to Section 40 of this Act. If an~~
3 applicant or employee has a waiver for one or more
4 disqualifying offenses pursuant to this Section and he or she
5 is otherwise eligible to work, the Department of Public Health
6 shall report that the applicant or employee is eligible to
7 work. The Department shall not report information regarding the
8 waiver, nor shall the Department list the specific
9 disqualifying offenses, if any.

10 (k) The student, applicant, or employee must be notified of
11 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 requested
16 by the Department of Public Health of the student,
17 applicant, or employee pursuant to this Act.

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

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

1 criminal offenses enumerated in Section 25, unless the
2 applicant obtains a waiver pursuant to Section 40 of this
3 Act.

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

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

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

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

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

1 results of a fingerprint-based criminal history record check.

2 (Source: P.A. 95-120, eff. 8-13-07.)

3 (225 ILCS 46/40)

4 Sec. 40. Waiver.

5 (a) Any student, applicant, or employee listed on the
6 Health Care Worker Registry may request a waiver of the
7 prohibition against employment by:

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

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

16 (3) providing official documentation showing that all
17 fines have been paid, if applicable and except for in the
18 instance of payment of court-imposed fines or restitution
19 in which the applicant is adhering to a payment schedule,
20 and the date probation or parole was satisfactorily
21 completed, if applicable.

22 (b) The applicant may, but is not required to, submit
23 employment and character references and any other evidence
24 demonstrating the ability of the applicant or employee to
25 perform the employment responsibilities competently and

1 evidence that the applicant or employee does not pose a threat
2 to the health or safety of residents, patients, or clients.

3 (c) Upon inquiry of a health care employer and subject to
4 subsection (j) of Section 33 of this Act, the ~~The~~ Department of
5 Public Health shall ~~must~~ inform the inquiring party ~~health care~~
6 ~~employers~~ if a ~~waiver is being sought by entering a record on~~
7 ~~the Health Care Worker Registry that a waiver is pending.~~ The
8 Department shall ~~and must~~ act upon the waiver request within 30
9 days of receipt of all necessary information, as defined by
10 rule. The Department shall send an applicant written
11 notification of its decision whether to grant a waiver, except
12 in cases where a rehabilitation waiver is granted. ~~Except in~~
13 ~~cases where a rehabilitation waiver is granted, a letter shall~~
14 ~~be sent to the applicant notifying the applicant that he or she~~
15 ~~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 check containing disqualifying
20 conditions until the time that the individual receives a
21 waiver.

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

26 (f) A health care employer is not obligated to employ or

1 offer permanent employment to an applicant, or to retain an
2 employee who is granted a waiver under this Section.

3 (g) After June 30, 2016, if an applicant or employee has a
4 waiver for one or more disqualifying offenses pursuant to this
5 Section and he or she is otherwise eligible to work, the
6 Department of Public Health shall report that the applicant or
7 employee is eligible to work on the Health Care Worker
8 Registry. The Department shall not publish information
9 regarding the waiver on the Health Care Worker Registry, nor
10 shall the Department list the specific disqualifying offenses,
11 if any.

12 (Source: P.A. 95-120, eff. 8-13-07; 95-545, eff. 8-28-07;
13 95-876, eff. 8-21-08; 96-565, eff. 8-18-09.)".