



Rep. Jay Hoffman

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10200SB1836ham001

LRB102 15315 AMQ 42600 a

1 AMENDMENT TO SENATE BILL 1836

2 AMENDMENT NO. _____. Amend Senate Bill 1836 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Nurse Agency Licensing Act is amended by
5 changing Sections 3, 13, 14, and 14.3 as follows:

6 (225 ILCS 510/3) (from Ch. 111, par. 953)

7 Sec. 3. Definitions. As used in this Act:

8 "Certified nurse aide" means an individual certified as
9 defined in Section 3-206 of the Nursing Home Care Act, Section
10 3-206 of the ID/DD Community Care Act, or Section 3-206 of the
11 MC/DD Act, as now or hereafter amended.

12 "Covenant not to compete" means an agreement between a
13 nurse agency and an employee that restricts the employee from
14 performing:

15 (1) any work for another employer for a specified
16 period of time;

1 (2) any work in a specified geographic area; or

2 (3) any work for another employer that is similar to
3 the work the employee performs for the employer that is a
4 party to the agreement.

5 "Department" means the Department of Labor.

6 "Director" means the Director of Labor.

7 "Employee" means a nurse or a certified nurse aide.

8 "Health care facility" is defined as in Section 3 of the
9 Illinois Health Facilities Planning Act, as now or hereafter
10 amended. "Health care facility" also includes any facility
11 licensed, certified, or approved by any State agency and
12 subject to regulation under the Assisted Living and Shared
13 Housing Act or the Illinois Public Aid Code.

14 "Licensee" means any nurse ~~nursing~~ agency which is
15 properly licensed under this Act.

16 "Long-term basis" means the placement of a nurse or a
17 certified nurse aide at a health care facility for an initial
18 employment, assignment, or referral term of more than 24
19 continuous months by a nurse agency that incurs the following
20 expenses to place the nurse or certified nurse aide at the
21 health care facility: (i) educational material expenses, if
22 required; (ii) expenses for credentialing, licensure, or
23 certification; or (iii) expenses for airline travel, lodging,
24 meals, and ground transportation provided to a nurse or
25 certified nurse aide. "Long-term basis" does not include the
26 placement of a nurse or a certified nurse aide at a health care

1 facility for an initial employment, assignment, or referral
2 term of an undefined duration.

3 "Nurse" means a registered nurse, a licensed practical
4 nurse, an advanced practice registered nurse, or any
5 individual licensed under the Nurse Practice Act.

6 "Nurse agency" means any individual, firm, corporation,
7 partnership, or other legal entity that employs, assigns, or
8 refers nurses or certified nurse aides to a health care
9 facility for a fee. The term "nurse agency" includes nurses
10 registries. The term "nurse agency" does not include services
11 provided by home health agencies licensed and operated under
12 the Home Health, Home Services, and Home Nursing Agency
13 Licensing Act or a licensed or certified individual who
14 provides his or her own services as a regular employee of a
15 health care facility, nor does it apply to a health care
16 facility's organizing nonsalaried employees to provide
17 services only in that facility.

18 "Temporary basis" means an initial employment, assignment,
19 or referral term of an undefined duration or a duration of 24
20 continuous months or less exclusive of any extension.

21 (Source: P.A. 102-946, eff. 7-1-22.)

22 (225 ILCS 510/13) (from Ch. 111, par. 963)

23 Sec. 13. Application for employment.

24 (a) Every nurse agency shall cause each applicant for
25 employment, assignment, or referral, as a nurse to complete an

1 application form including the following information:

2 (1) name and address of the applicant;

3 (2) whether or not such applicant is a nurse currently
4 licensed by the Department of Financial and Professional
5 Regulation;

6 (3) if so licensed, the number and date of such
7 license; and

8 (4) references and dates and places of previous
9 employment.

10 Prior to employing, assigning, or referring a nurse, the
11 agency shall contact the Department of Financial and
12 Professional Regulation to determine whether the nurse's
13 license is valid and in good standing. Written verification
14 shall be sent by the Department of Financial and Professional
15 Regulation within 20 working days. At least biennially
16 thereafter, the nurse agency shall contact the Department of
17 Financial and Professional Regulation to verify this
18 information in writing. The nurse agency shall review the
19 disciplinary report published by the Department of Financial
20 and Professional Regulation on a monthly basis to determine
21 whether the nurse's license is valid and in good standing.

22 (b) Every nurse agency shall cause each applicant for
23 employment, assignment, or referral, as a certified nurse aide
24 to complete an application form including the following
25 information:

26 (1) name and address of the applicant;

1 (2) whether or not the nurse aide is registered as
2 having completed a certified course as approved by the
3 Department of Public Health; and

4 (3) references and dates and places of previous
5 employment.

6 Prior to employing, assigning, or referring a certified
7 nurse aide, the agency shall review the information provided
8 on the Health Care Worker Registry to verify that the
9 certification is valid. Prior to employing, assigning, or
10 referring a certified nurse aide to a position at a health care
11 employer or long-term facility as defined in the Health Care
12 Worker Background Check Act, the nurse agency shall review the
13 information provided on the Health Care Worker Registry to
14 verify that the certified nurse aide is not ineligible for the
15 position pursuant to Section 25 of the Health Care Worker
16 Background Check Act.

17 (c) Every nurse agency shall check at least 2 recent
18 references and the dates of employment provided by the
19 applicant, unless the applicant has not had 2 previous
20 employers.

21 (d) Knowingly employing, assigning, or referring to a
22 health care facility a nurse or certified nurse aide with an
23 illegally or fraudulently obtained or issued diploma,
24 registration, license, certificate, or background study
25 constitutes negligent hiring by a nurse agency and is a
26 violation of this Act.

1 (e) Nurses or certified nurses aides employed, assigned,
2 or referred to a health care facility by a nurse agency shall
3 be deemed to be employees of the nurse agency while working for
4 the nurse agency or on nurse agency employment, assignment, or
5 referral and may only be terminated by the nurse agency for
6 cause.

7 (Source: P.A. 102-946, eff. 7-1-22; revised 8-22-22.)

8 (225 ILCS 510/14) (from Ch. 111, par. 964)

9 Sec. 14. Minimum Standards.

10 (a) The Department, by rule, shall establish minimum
11 standards for the operation of nurse agencies. Those standards
12 shall include, but are not limited to:

13 (1) the maintenance of written policies and
14 procedures;

15 (2) the maintenance and submission to the Department
16 of copies of all contracts between the nurse agency and
17 health care facility to which it assigns or refers nurses
18 or certified nurse aides and copies of all invoices to
19 health care facilities personnel. Executed contracts must
20 be sent to the Department within 5 business days of their
21 effective date; and

22 (3) the development of personnel policies for nurses
23 or certified nurse aides employed, assigned, or referred
24 to health care facilities, including a personal interview,
25 a reference check, an annual evaluation of each employee

1 (which may be based in part upon information provided by
2 health care facilities utilizing nurse agency personnel),
3 and periodic health examinations. Executed contracts must
4 be sent to the Department within 5 business days of their
5 effective date and are not subject to disclosure under the
6 Freedom of Information Act.

7 No less than 100% of the nurse or certified nurse aide
8 hourly rate shall be paid to the nurse or certified nurse
9 aide employee.

10 (b) Each nurse agency shall have a nurse serving as a
11 manager or supervisor of all nurses and certified nurses
12 aides.

13 (c) Each nurse agency shall ensure that its employees meet
14 the minimum licensing, training, continuing education, and
15 orientation standards for which those employees are licensed
16 or certified.

17 (d) A nurse agency shall not employ, assign, or refer for
18 use in an Illinois health care facility a nurse or certified
19 nurse aide unless certified or licensed under applicable
20 provisions of State and federal law or regulations. Each
21 certified nurse aide shall comply with all pertinent
22 regulations of the Illinois Department of Public Health
23 relating to the health and other qualifications of personnel
24 employed in health care facilities.

25 (e) The Department may adopt rules to monitor the usage of
26 nurse agency services to determine their impact.

1 (f) Nurse agencies are prohibited from recruiting
2 potential employees on the premises of a health care facility
3 or requiring, as a condition of employment, assignment, or
4 referral, that their employees recruit new employees for the
5 nurse agency from among the permanent employees of the health
6 care facility to which the nurse agency employees have been
7 employed, assigned, or referred, and the health care facility
8 to which such employees are employed, assigned, or referred is
9 prohibited from requiring, as a condition of employment, that
10 their employees recruit new employees from these nurse agency
11 employees. Violation of this provision is a business offense.

12 (g) Nurse agencies are prohibited from entering into
13 covenants not to compete with nurses and certified nurse aides
14 if the nurse is employed, assigned, or referred by a nurse
15 agency to a health care facility on a temporary basis or the
16 certified nurse aide is employed, assigned, or referred by a
17 nurse agency to a health care facility on a temporary basis. A
18 covenant not to compete entered into on or after July 1, 2022
19 (the effective date of Public Act 102-946) ~~this amendatory Act~~
20 ~~of the 102nd General Assembly~~ between a nurse agency and a
21 nurse or a certified nurse aide is illegal and void if (i) the
22 nurse is employed, assigned, or referred by a nurse agency to a
23 health care facility on a temporary basis or (ii) the
24 certified nurse aide is employed, assigned, or referred by a
25 nurse agency to a health care facility on a temporary basis ~~is~~
26 ~~illegal and void.~~ In ~~The nursing agency shall not, in any~~

1 contract on a temporary basis with any nurse, certified nurse
2 aide, ~~employee~~ or health care facility, a nurse agency is
3 prohibited from requiring ~~require~~ the payment of liquidated
4 damages, conversion fees, employment fees, buy-out fees,
5 placement fees, or other compensation if the nurse or
6 certified nurse aide ~~employee~~ is hired as a permanent employee
7 of a health care facility.

8 (g-5) Beginning on the effective date of this amendatory
9 Act of the 102nd General Assembly and ending on December 31,
10 2027, a nurse agency may enter into a covenant not to compete
11 with a nurse or a certified nurse aide if (i) the nurse is
12 employed, assigned, or referred by a nurse agency to a health
13 care facility on a long-term basis or (ii) the certified nurse
14 aide is employed, assigned, or referred by a nurse agency to a
15 health care facility on a long-term basis. However, if a
16 covenant not to compete that was entered into on or before
17 December 31, 2027 expires on or after January 1, 2028, the
18 covenant not to compete shall remain in effect until its
19 expiration date. To be enforceable, the term of a covenant not
20 to compete entered into under this subsection must be
21 concurrent with the term of the initial employment,
22 assignment, or referral of the nurse or certified nurse aide
23 to a health care facility. A contract on a long-term basis
24 between any nurse, certified nurse aide, or health care
25 facility and a nurse agency may provide for the payment of
26 actual damages, conversion fees, employment fees, buy-out

1 fees, placement fees, or other reasonable expenses resulting
2 from a violation of the contract that occurred during the
3 initial employment, assignment, or referral term.

4 (h) A nurse agency shall submit a report quarterly to the
5 Department for each health care entity with whom the agency
6 contracts that includes all of the following by provider type
7 and county in which the work was performed:

8 (1) A list of the average amount charged to the health
9 care facility for each individual employee category.

10 (2) A list of the average amount paid by the agency to
11 employees in each individual employee category.

12 (3) A list of the average amount of labor-related
13 costs paid by the agency for each employee category,
14 including payroll taxes, workers' compensation insurance,
15 professional liability coverage, credentialing and
16 testing, and other employee related costs.

17 The Department shall publish by county in which the work
18 was performed the average amount charged to the health care
19 facilities by nurse agencies for each individual worker
20 category and the average amount paid by the agency to each
21 individual worker category.

22 (i) The Department shall publish on its website the
23 reports yearly by county.

24 (j) The Department of Labor shall compel production of the
25 maintained records, as required under this Section, by the
26 nurse agencies.

1 (Source: P.A. 102-946, eff. 7-1-22.)

2 (225 ILCS 510/14.3)

3 Sec. 14.3. Contracts between nurse agencies and health
4 care facilities.

5 (a) A contract entered into on or after the effective date
6 of this amendatory Act of the 102nd General Assembly between
7 the nurse agency and health care facility must contain the
8 following provisions:

9 (1) A full disclosure of charges and compensation. The
10 disclosure shall include a schedule of all hourly bill
11 rates per category of employee, a full description of
12 administrative charges, and a schedule of rates of all
13 compensation per category of employee, including, but not
14 limited to, hourly regular pay rate, shift differential,
15 weekend differential, hazard pay, charge nurse add-on,
16 overtime, holiday pay, and travel or mileage pay.

17 (2) A commitment that nurses or certified nurse aides
18 employed, assigned, or referred to a health care facility
19 by the nurse agency perform any and all duties called for
20 within the full scope of practice for which the nurse or
21 certified nurse aide is licensed or certified.

22 (3) No less than 100% of the nurse or certified nurse
23 aide hourly rate shall be paid to the nurse or certified
24 nurse aide employee.

25 (b) A party's failure to comply with the requirements of

1 subsection (a) shall be a defense to the enforcement of a
2 contract between a nurse agency and a health care facility.
3 Any health care facility or nurse agency aggrieved by a
4 violation of subsection (a) shall have a right of action in a
5 State court against the offending party. A prevailing party
6 may recover for each violation:

7 (1) liquidated damages of \$1,500 or actual damages,
8 whichever is greater;

9 (2) reasonable attorney's fees and costs, including
10 expert witness fees and other litigation expenses; and

11 (3) other relief, including an injunction, as the
12 court may deem appropriate.

13 (c) This Section does not apply to contracts on a
14 long-term basis between a nurse agency and a health care
15 facility providing for the employment, assignment, or referral
16 of nurses or certified nurse aides to the health care
17 facility.

18 (Source: P.A. 102-946, eff. 7-1-22.)

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