



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3212

by Rep. Camille Y. Lilly

SYNOPSIS AS INTRODUCED:

See Index

Amends the Health Care Worker Background Check Act. Replaces language prohibiting a health care employer to hire, employ, or retain any individual in a position with duties involving direct care for clients if the individual is convicted of committing specified offenses with language that allows health care employers to hire, employ, or retain any individual in a position involving direct care for clients, patients, or residents, or access to the living quarters or the financial, medical, or personal records of residents, who has been convicted of committing or attempting to commit specified offenses after specified time periods or within the time periods with a waiver under the Act. Adds 5 members to the Health Care Worker Task Force. Requires the Task Force to issue recommendations to the Department of Public Health, including (i) examining whether the relevant rules must be amended to reflect changes in Illinois law, (ii) determining whether the waiver procedures are effective, and (iii) connecting people with criminal records to employment with work in the health care industry. Requires the Department of Public Health to issue a report regarding waivers. Makes other changes. Amends the Code of Civil Procedure. Provides that evidence that an employee (1) has been granted a waiver or similar relief pursuant to the Health Care Worker Background Check Act or (2) has been convicted of a disqualifying offense is not admissible for the purpose of proving that an employer was negligent or otherwise liable for hiring the employee if the employee has received a waiver or has otherwise been determined eligible for hire pursuant to the Health Care Worker Background Check Act. Effective immediately.

LRB099 09433 AMC 29640 b

FISCAL NOTE ACT
MAY APPLY

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 25 and 65 as follows:

6 (225 ILCS 46/25)

7 Sec. 25. Hiring of people with criminal records ~~Persons~~
8 ~~ineligible to be hired~~ by health care employers and long-term
9 care facilities.

10 (a) A health care employer or long-term care facility may
11 hire, employ, or retain any individual in a position involving
12 direct care for clients, patients, or residents, or access to
13 the living quarters or the financial, medical, or personal
14 records of residents, who has been convicted of committing or
15 attempting to commit one or more of the offenses described in
16 this subsection (a), within 5 years after the date of
17 conviction, only with a waiver described in Section 40; if more
18 than 5 years have passed since the date of the last conviction
19 for the disqualifying offense, the applicant shall be deemed
20 eligible for hire without a waiver for that offense:

21 (1) a misdemeanor offense defined in Section 12-2,
22 12-3.1, 12-3.2, 12-21.6, 12C-5, 16-1, 16-25, 16A-3, or 24-1
23 of the Criminal Code of 1961 or the Criminal Code of 2012;

1 (2) an offense defined in Section 12-1, 19-4, 24-1.5,
2 16-2, 17-33, 17-34, 17-36, or 17-44 or in subsection (a) of
3 Section 12-3 or subsection (b) of Section 17-32 of the
4 Criminal Code of 1961 or the Criminal Code of 2012;

5 (3) an offense defined in the Methamphetamine Control
6 and Community Protection Act or an offense defined in
7 Section 401, 401.1, 404, 405, 405.1, 407, or 407.1 of the
8 Illinois Controlled Substances Act;

9 (4) an offense defined in Section 4, 5, 6, 8, or 17.02
10 of the Illinois Credit Card and Debit Card Act;

11 (5) an offense defined in Section 5.1 of the Wrongs to
12 Children Act; or

13 (6) a violation or violations of Section 50-50 of the
14 Nurse Practice Act.

15 (a-1) A health care employer or long-term care facility may
16 hire, employ, or retain any individual in a position involving
17 direct care for clients, patients, or residents, or access to
18 the living quarters or the financial, medical, or personal
19 records of residents, who has been convicted of committing or
20 attempting to commit on or more of the offenses described in
21 this subsection (a-1), within 10 years after the date of
22 conviction, only with a waiver described in Section 40; if more
23 than 10 years have passed since the date of the last conviction
24 for the disqualifying offense, the applicant shall be deemed
25 eligible for hire without a waiver for that offense:

26 (1) a felony offense described in Section 12-2, 12-3.1,

1 12-3.2, 12-21.6, 12C-5, 16-1, 16-25, 16A-3, or 24-1 of the
2 Criminal Code of 1961 or the Criminal Code of 2012;

3 (2) an offense described in Section 10-3, 10-3.1, 10-4,
4 10-5, 10-7, 11-9.1A, 12-3.3, 12-4.5, 12-7.4, 12-11, 12-32,
5 12-33, 16-30, 16G-15, 16G-20, 17-3, 18-1, 18-3, 19-1, 19-3,
6 19-6, 20-1, 20-1.1, 20-1.2, 24-1.1, 24-1.2, 24-1.2-5,
7 24-1.6, 24-3.2, 24-3.3, or 33A-2 or subdivision (a)(4) of
8 Section 11-14.4 or subsection (b) of Section 20-1 of the
9 Criminal Code of 1961 or the Criminal Code of 2012; or

10 (3) an offense described in Section 4 of the Wrongs to
11 Children Act.

12 (a-2) A health care employer or long-term care facility may
13 hire, employ, or retain any individual in a position involving
14 direct care for clients, patients, or residents, or access to
15 the living quarters or the financial, medical, or personal
16 records of residents, who has been convicted of committing or
17 attempting to commit on or more of the offenses described in
18 this subsection (a-2), within 25 years of the date of
19 conviction, only with a waiver described in Section 40; if more
20 than 25 years have passed since the date of the last conviction
21 for the disqualifying offense, the applicant shall be deemed
22 eligible for hire without a waiver for that offense: Section
23 8-1.1, 8-1.2, 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, 9-3.3,
24 9-3.4, 10-1, 10-2, 11-1.20, 11-1.30, 11-1.40, 11-1.50,
25 11-1.60, 11-6, 11-9.1, 11-9.5, 11-19.2, 11-20.1, 11-20.1B,
26 11-20.3, 12-3.05, 12-3.3 12-4, 12-4.1, 12-4.2, 12-4.2-5,

1 12-4.3, 12-4.4, 12-4.6, 12-4.7, 12-13, 12-14, 12-14.1, 12-15,
2 12-16, 12-19, 12-21, 16-1.3, 17-56, 18-2, 18-4, or 18-5 or
3 subsection (b) of Section 8-1, subsection (a) or (b) of Section
4 12-4.4a, or subsection (b) of Section 18-1 of the Criminal Code
5 of 1961 or the Criminal Code of 2012.

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,~~
25 ~~12-33, 12C-5, 16-1, 16-1.3, 16-25, 16A-3, 17-3, 17-56, 18-1,~~
26 ~~18-2, 18-3, 18-4, 18-5, 19-1, 19-3, 19-4, 19-6, 20-1, 20-1.1,~~

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

12 ~~(a-1) In the discretion of the Director of Public Health,~~
13 ~~as soon after January 1, 2004 or October 1, 2007, as~~
14 ~~applicable, and as is reasonably practical, no health care~~
15 ~~employer shall knowingly hire any individual in a position with~~
16 ~~duties involving direct care for clients, patients, or~~
17 ~~residents, and no long term care facility shall knowingly hire~~
18 ~~any individual in a position with duties that involve or may~~
19 ~~involve contact with residents or access to the living quarters~~
20 ~~or the financial, medical, or personal records of residents,~~
21 ~~who has (i) been convicted of committing or attempting to~~
22 ~~commit one or more of the offenses defined in Section 12-3.3,~~
23 ~~12-4.2-5, 16-2, 16-30, 16G-15, 16G-20, 17-33, 17-34, 17-36,~~
24 ~~17-44, 18-5, 20-1.2, 24-1.1, 24-1.2-5, 24-1.6, 24-3.2, or~~
25 ~~24-3.3, or subsection (b) of Section 17-32, subsection (b) of~~
26 ~~Section 18-1, or subsection (b) of Section 20-1, of the~~

1 ~~Criminal Code of 1961 or the Criminal Code of 2012; Section 4,~~
2 ~~5, 6, 8, or 17.02 of the Illinois Credit Card and Debit Card~~
3 ~~Act; or Section 11-9.1A of the Criminal Code of 1961 or the~~
4 ~~Criminal Code of 2012 or Section 5.1 of the Wrongs to Children~~
5 ~~Act; or (ii) violated Section 50-50 of the Nurse Practice Act,~~
6 ~~unless the applicant or employee obtains a waiver pursuant to~~
7 ~~Section 40 of this Act.~~

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

17 (b) A health care employer shall not hire, employ, or
18 retain any individual in a position with duties involving
19 direct care of clients, patients, or residents, and no
20 long-term care facility shall knowingly hire, employ, or retain
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, if
24 the health care employer becomes aware that the individual has
25 been convicted in another state of committing or attempting to
26 commit an offense that has the same or similar elements as an

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

8 (Source: P.A. 96-710, eff. 1-1-10; 96-1551, Article 1, Section
9 930, eff. 7-1-11; 96-1551, Article 2, Section 995, eff. 7-1-11;
10 96-1551, Article 10, Section 10-40, eff. 7-1-11; 97-597, eff.
11 1-1-12; 97-1108, eff. 1-1-13; 97-1109, eff. 1-1-13; 97-1150,
12 eff. 1-25-13.)

13 (225 ILCS 46/65)

14 Sec. 65. Health Care Worker Task Force. A Health Care
15 Worker Task Force shall be appointed to study and make
16 recommendations on statutory and regulatory changes to this Act
17 and implementation of this Act.

18 (a) The Task Force shall monitor the status of the
19 implementation of this Act and monitor complaint
20 investigations relating to this Act by the Department on Aging,
21 Department of Public Health, Department of Professional
22 Regulation, and the Department of Human Services to determine
23 the criminal background, if any, of health care workers who
24 have had findings of abuse, theft, or exploitation.

25 (b) The Task Force shall make recommendations concerning

1 modifications to the list of offenses enumerated in Section 25,
2 including time limits on all or some of the disqualifying
3 offenses, and any other necessary or desirable changes to the
4 Act.

5 (c) In the event that proposed rules or changes are
6 properly submitted to the Task Force and the Task Force fails
7 to advise the Department within 90 days after receipt of the
8 proposed rules or changes, final action shall be deemed to have
9 been taken by the Task Force concerning the proposed rules or
10 changes.

11 (d) The Task Force shall be composed of the following
12 members, who shall serve without pay:

13 (1) a chairman knowledgeable about health care issues,
14 who shall be appointed by the Governor;

15 (2) the Director of Public Health or his or her
16 designee;

17 (3) the Director of State Police or his or her
18 designee;

19 (3.5) the Director of Healthcare and Family Services or
20 his or her designee;

21 (3.6) the Secretary of Human Services or his or her
22 designee;

23 (3.7) the Director of Aging or his or her designee;

24 (4) 2 representatives of health care providers, who
25 shall be appointed by the Governor;

26 (5) 2 representatives of health care employees, who

1 shall be appointed by the Governor;

2 (5.5) a representative of a Community Care homemaker
3 program, who shall be appointed by the Governor;

4 (5.6) 2 individuals with criminal records who work with
5 a community organization that works with people with
6 criminal records;

7 (5.7) an individual from a legal services agency that
8 represents people with criminal records;

9 (5.8) an individual from an organization that
10 advocates for improved opportunity for people with
11 criminal records;

12 (5.9) a representative from a provider that helps
13 connect people with criminal records with employment;

14 (6) a representative of the general public who has an
15 interest in health care, who shall be appointed by the
16 Governor; and

17 (7) 4 members of the General Assembly, one appointed by
18 the Speaker of the House, one appointed by the House
19 Minority Leader, one appointed by the President of the
20 Senate, and one appointed by the Senate Minority Leader.

21 (e) The Task Force shall meet at least quarterly, and more
22 frequently at the discretion of the chairperson, or as provided
23 in subsection (f). Task Force members shall serve until a
24 replacement is sworn and qualified. Ten ~~Nine~~ members appointed
25 to the Task Force constitutes a quorum.

26 (f) On or before January 1, 2017, the Task Force shall

1 issue recommendations to the Department of Public Health. In
2 making its recommendations, the Task Force shall (i) examine
3 whether the relevant rules must be amended to reflect changes
4 in Illinois law and (ii) determine whether the waiver
5 procedures are effective in providing opportunity for persons
6 with criminal records to gain employment in health care and
7 long-term care facilities while also meeting the needs of
8 residents of those facilities. The procedures to be examined
9 include the timeframes regarding when an applicant may seek a
10 waiver, the information provided on the health care worker
11 registry, the factors considered by the Department in
12 determining whether to grant a waiver, and the waiver
13 application procedures and materials themselves.

14 (g) Beginning January 1, 2016, the Task Force shall make
15 recommendations to the Department of Public Health regarding
16 connecting people with criminal records to employment with work
17 in the health care industry.

18 (h) On or before January 1 of each year, the Department of
19 Public Health shall report to the Task Force, the Governor, and
20 both houses of the General Assembly the following information
21 for the previous fiscal year:

22 (1) the number of waiver petitions filed;

23 (2) the number of waiver petitions granted;

24 (3) the number of waiver petitions denied; and

25 (4) the number of individuals with a waiver who are
26 employed by a health care employer or long term care

1 facility.

2 The information reported under this Section shall be made
3 available to the public at the time it is reported on the
4 official website of the Department of Public Health.

5 (Source: P.A. 95-331, eff. 8-21-07; 95-987, eff. 10-3-08.)

6 Section 10. The Code of Civil Procedure is amended by
7 adding Part 29 to Article VIII as follows:

8 (735 ILCS 5/Art. VIII Pt. 29 heading new)

9 Part 29. Background Checks

10 (735 ILCS 5/8-2901 new)

11 Sec. 8-2901. Admissibility of evidence of a disqualifying
12 defense under the Health Care Worker Background Check
13 Act. Evidence that an employee (1) has been granted a waiver or
14 similar relief pursuant to the Health Care Worker Background
15 Check Act or (2) has been convicted of a disqualifying offense,
16 as defined under the Health Care Worker Background Check Act,
17 is not admissible for the purpose of proving that an employer
18 subject to the Health Care Worker Background Check Act was
19 negligent or otherwise liable for hiring the employee if the
20 employee has received a waiver or has otherwise been determined
21 eligible for hire pursuant to the Health Care Worker Background
22 Check Act. This Section does not bar admission of such evidence
23 for another lawful purpose, including, but not limited to,

1 impeachment.

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 225 ILCS 46/25

4 225 ILCS 46/65

5 735 ILCS 5/Art. VIII Pt.

6 29 heading new

7 735 ILCS 5/8-2901 new