

**CCH-EXP, IL-EMPLOYMENT ¶14-9000, Illinois, Preemployment Inquiries Law Summaries**

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**Illinois, Preemployment Inquiries Law Summaries**

There are several laws in Illinois pertaining to criminal background checks in employment. Provisions pertaining to the employment of personnel in small and large school districts is at Ch. 105. Public institutions of higher education are required to conduct criminal background investigations for security-sensitive positions (Ch. 110).

Provisions concerning the employment of personnel in child care facilities and home health care providers are located at Ch. 225. Employees of residential youth care facilities, as a condition of employment, are required to undergo criminal background investigations (Ch. 730).

Public and private employers are prohibited from inquiring or using arrest or criminal history record information ordered expunged, sealed or impounded in their employment decisions. This law is part of Illinois' human rights law (Ch. 775, Act 5, Art. 2, Secs. 5/2-101 and 5/2-103).

Auxiliary state policemen are required to submit fingerprints prior to appointment (Ch. 20, Sec. 2610/23), and there are disclosure requirements for employees and independent contractors who will be performing certain work for public utilities (220 ILCS 5/8-501.5). There are also provisions relating to peace officers and police and firefighters.

For full text of these laws, see [Employment Practices Guide ¶14-23,600.01 et seq.](#)

Illinois' Employment Record Disclosure Act is located at Chapter 745. It was enacted by Ch. 89-470, L. 1995, effective June 13, 1996. For full text of this law, see [Wages-Hours ¶14-64,051 et seq.](#)

References are to the Illinois Compiled Statutes Annotated.

**WHAT THE EMPLOYER MUST DO**

**Background checks.** --*School personnel.* --Certified and noncertified applicants for employment with a school district, except school bus driver applicants, are required as a condition of employment to authorize a fingerprint-based criminal history records check to determine if they have been convicted of any of the enumerated criminal or drug offenses in Sec. 105 ILCS 5/10-21.9(c) or have been convicted, within seven years of the application for employment with the school district, of any other felony under the laws of Illinois or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in Illinois, would have been punishable as a felony under Illinois law. Authorization for the check must be furnished by the applicant to the school district, except that if the applicant is a substitute teacher seeking employment in more than one school district, a teacher seeking concurrent part-time employment positions with more than one school district, or an educational support personnel employee seeking employment positions with more than one district, any such district may require the applicant to furnish authorization for the check to the regional superintendent of the educational service region in which are located the school districts in which the applicant is seeking employment. Upon receipt of this authorization, the school district or the appropriate regional superintendent, as the case may be, must submit the applicant's name, sex, race, date of birth, social security number, fingerprint images, and other identifiers, as prescribed by the Department of State Police, to the Department. The regional superintendent submitting the requisite information to the Department of State Police must promptly notify the school districts in which the applicant is seeking employment as a substitute or concurrent part-time teacher or concurrent educational support personnel employee that the check of the applicant has been requested. The Department of State Police and the Federal Bureau of Investigation shall furnish, pursuant to a fingerprint-based criminal history records check, records of convictions, until expunged, to the president of the school board for the school district that requested the check, or to the regional superintendent who requested the check. The department will charge the school district or the appropriate regional superintendent a fee for conducting such check; and the applicant must not be charged a fee for such check by the school district or by the regional superintendent (Sec. 105 ILCS 5/10-21.9(a), as amended by H. 564, L. 2003, and H. 3977, L. 2004).

The school district or regional superintendent shall further perform a check of the Statewide Sex Offender Database, as authorized by the Sex Offender and Child Murderer Community Notification Law, for each applicant (Sec. 105 ILCS 5/10-21.9(a-5), as added by H. 3451, L. 2005).

Any information concerning the record of convictions obtained by the president of the school board or the regional superintendent is confidential and may only be transmitted to the superintendent of the school district or his or her designee, the appropriate regional superintendent if the check was requested by the school district, the presidents of the appropriate school boards if the check was requested from the Department of State Police by the regional superintendent, the State Superintendent

of Education, the State Teacher Certification Board or any other person necessary to the decision of hiring the applicant. A copy of the record of convictions obtained from the Department of State Police must be provided to the applicant. Upon the check of the Statewide Sex Offender Database, the school district or regional superintendent shall notify an applicant as to whether or not the applicant has been identified in the Database as a sex offender. If a check of an applicant for employment as a substitute or concurrent part-time teacher or concurrent educational support personnel employee in more than one school district was requested by the regional superintendent, and the Department of State Police upon a check ascertains that the applicant has not been convicted of any of the enumerated criminal or drug offenses in Sec. 105 ILCS 5/10-21.9(c) below or has been convicted, within seven years of the application for employment with the school district, of any other felony under the laws of Illinois or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in Illinois, would have been punishable as a felony under Illinois law and so notifies the regional superintendent and if the regional superintendent upon a check ascertains that the applicant has not been identified in the Sex Offender Database as a sex offender, then the regional superintendent will issue to the applicant a certificate evidencing that as of the date specified by the Department of State Police, the applicant has not been convicted of any such criminal or drug offenses or has not been convicted, within seven years of the application for employment with the school district, of any other felony under the laws of Illinois or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in Illinois, would have been punishable as a felony under Illinois law and evidencing that as of the date that the regional superintendent conducted a check of the Statewide Sex Offender Database, the applicant has not been identified in the Database as a sex offender. The school board of any school district located in the educational service region served by the regional superintendent who issues such a certificate to an applicant for employment as a substitute teacher in more than one such district may rely on the certificate issued by the regional superintendent to that applicant, or may initiate its own criminal history records check of the applicant through the Department of State Police and its own check of the Statewide Sex Offender Database as provided in Sec. 105 ILCS 5/10-21.9(a) above. Any person who releases any confidential information concerning any criminal convictions of an applicant will be guilty of a Class A misdemeanor, unless the release of such information is authorized by this section (Sec. 105 ILCS 5/10-21.9(b), as amended by H. 3451, L. 2005).

No school board may knowingly employ a person who has been convicted for committing attempted first degree murder or for committing or attempting to commit first degree murder or a Class X felony or any one or more of the following offenses: (1) those defined in Secs. 11-6, 11-9, 11-14, 11-15, 11-15.1, 11-16, 11-17, 11-18, 11-19, 11-19.1, 11-19.2, 11-20, 11-20.1, 11-21, 12-13, 12-14, 12-14.1, 12-15 and 12-16 of the Criminal Code of 1961; (2) those defined in the Cannabis Control Act, except those defined in Secs. 4(a), 4(b) and 5(a) of that law; (3) those defined in the Illinois Controlled Substances Act; and (4) any offense committed or attempted in any other state or against the laws of the U.S., which if committed or attempted in Illinois, would have been punishable as one or more of the foregoing offenses. Further, no school board may knowingly employ a person who has been found to be the perpetrator of sexual or physical abuse of any minor under 18 (Sec. 105 ILCS 5/10-21.9(c)).

No school board may knowingly employ a person for whom a criminal history records check and a Statewide Sex Offender Database check has not been initiated (Sec. 105 ILCS 5/10-21.9(d), as amended by H. 3451, L. 2005).

Upon receipt of the record of a conviction of or a finding of child abuse by a holder of any certificate issued pursuant to Art. 21 or Secs. 34-8.1 or 34-83 of the School Code, the appropriate regional superintendent of schools or the State Superintendent of Education must initiate the certificate suspension and revocation proceedings authorized by law (Sec. 105 ILCS 5/10-21.9(e)).

After January 1, 1990, this section applies to all employees of persons or firms holding contracts with any school district including, but not limited to, food service workers, school bus drivers and other transportation employees, who have direct, daily contact with pupils. For purposes of criminal history records checks and checks of the Statewide Sex Offender Database on employees of persons or firms holding contracts with more than one school district and assigned to more than one school district, the regional superintendent of the educational service region in which the contracting school districts are located may, at the request of any such school district, be responsible for receiving the authorization for a criminal history records check prepared by each such employee and submitting the same to the Department of State Police and for conducting a check of the Statewide Sex Offender Database for each employee. Any information concerning the record of conviction and identification as a sex offender of any such employee obtained by the regional superintendent must be promptly reported to the president of the appropriate school board(s) (Sec. 105 ILCS 5/10-21.9(f), as amended by H. 3451, L. 2005).

Certified and noncertified applicants for employment with school districts in cities of over 500,000 inhabitants are required as a condition of employment to authorize a fingerprint-based criminal history records check to determine if they have been convicted of any of the enumerated criminal or drug offenses in Sec. 105 ILCS 5/34-18.5(c) below or have been convicted, within seven years of the application for employment with the school district, of any other felony under the laws of Illinois or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in Illinois, would have been punishable as a felony under the laws of Illinois. Authorization for the check must be furnished by the applicant to the school district, except that if the applicant is a substitute teacher seeking employment in more than one school district, or a teacher seeking concurrent part-time employment positions with more than one school district, or an educational support personnel employee seeking employment positions with more than one district, any such district may require the applicant to furnish authorization for the check to the regional superintendent of the educational service region in which are located the school districts in which the applicant is seeking employment. Upon receipt of this authorization, the school district or the appropriate regional superintendent, as the case may be, must submit the applicant's name, sex, race, date of birth, social security number,

fingerprint images and other identifiers, as prescribed by the Department of State Police, to the department. The regional superintendent submitting the requisite information to the Department of State Police must promptly notify the school districts in which the applicant is seeking employment as a substitute or concurrent part-time teacher or concurrent educational support personnel employee that the check of the applicant has been requested. The Department of State Police and the Federal Bureau of Investigation shall furnish, pursuant to a fingerprint-based criminal history records check, records of convictions, until expunged, to the president of the school board for the school district that requested the check, or to the regional superintendent who requested the check. The Department will charge the school district or the appropriate regional superintendent a fee for conducting such check; and the applicant must not be charged a fee for such investigation by the school district or by the regional superintendent (Sec. 105 ILCS 5/34-18.5(a), as amended by H. 564, L. 2003, and H. 3977, L. 2004).

The school district or regional superintendent shall further perform a check of the Statewide Sex Offender Database, as authorized by the Sex Offender and Child Murderer Community Notification Law, for each applicant (Sec. 105 ILCS 5/34-18.5(a-5), as amended by H. 3451, L. 2005).

Any information concerning the record of convictions obtained by the president or superintendent is confidential and may only be transmitted to the general superintendent of the school district or his or her designee, the appropriate regional superintendent if the check was requested by the board of education for the school district, the presidents of the appropriate board of education or school boards if the check was requested from the Department of State Police by the regional superintendent, the State Superintendent of Education, the State Teacher Certification Board or any other person necessary to the hiring decision. A copy of the record of convictions obtained from the Department of State Police must be provided to the applicant. Upon the check of the Statewide Sex Offender Database, the school district or regional superintendent shall notify an applicant as to whether or not the applicant has been identified in the Database as a sex offender. If a check of an applicant as a substitute or concurrent part-time teacher or concurrent educational support personnel employee in more than one school district was requested by the regional superintendent, and the Department of State Police upon check ascertains that the applicant has not been convicted of any of the enumerated criminal or drug offenses in Sec. 105 ILCS 5/34-18.5(c) below or has not been convicted, within seven years of the application for employment with the school district, of any other felony under the laws of Illinois or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in Illinois, would have been punishable as a felony under the laws of Illinois and so notifies the regional superintendent and if the regional superintendent upon a check ascertains that the applicant has not been identified in the Sex Offender Database as a sex offender, then the regional superintendent must issue to the applicant a certificate evidencing that as of the date specified by the Department of State Police, the applicant has not been convicted of any such offenses or has not been convicted, within seven years of the application for employment with the school district, of any other felony under the laws of Illinois or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in Illinois, would have been punishable as a felony under Illinois law and evidencing that as of the date that the regional superintendent conducted a check of the Statewide Sex Offender Database, the applicant has not been identified in the Database as a sex offender. The school board of any school district located in the educational service region served by the regional superintendent who issues such a certificate to an applicant for employment as a substitute or concurrent part-time teacher or concurrent educational support personnel employee in more than one such district may rely on the certificate issued by the regional superintendent to that applicant, or may initiate its own criminal history records check of the applicant through the Department of State Police and its own check of the Statewide Sex Offender Database. Any person who releases any confidential information concerning any criminal convictions of an applicant will be guilty of a Class A misdemeanor, unless the release of such information is authorized by this section (Sec. 105 ILCS 5/34-18.5(b), as amended by H. 3451, L. 2005).

The board of education may not knowingly employ a person who has been convicted for committing attempted first degree murder or for committing or attempting to commit first degree murder or a Class X felony or any one or more of the following offenses: (1) those defined in Secs. 11-6, 11-9, 11-14, 11-15, 11-15.1, 11-16, 11-17, 11-18, 11-19, 11-19.1, 11-19.2, 11-20, 11-20.1, 11-21, 12-13, 12-14, 12-14.1, 12-15 and 12-16 of the Criminal Code of 1961; (2) those defined in the Cannabis Control Act, except those defined in Secs. 4(a), 4(b) and 5(a) of that law; (3) those defined in the Illinois Controlled Substances Act; and (4) any offense committed or attempted in any other state or against the laws of the U.S., which if committed or attempted in Illinois, would have been punishable as one or more of the foregoing offenses. Further, the board of education may not knowingly employ a person who has been found to be the perpetrator of sexual or physical abuse of any minor under 18 (Sec. 105 ILCS 5/34-18.5(c)).

The board of education may not knowingly employ a person for whom a criminal history records check and a Statewide Sex Offender Database check has not been initiated (Sec. 105 ILCS 5/34-18.5(d), as amended by H. 451, L. 2005).

Upon receipt of the record of a conviction of or a finding of child abuse by a holder of any certificate issued pursuant to Art. 21 or Secs. 34-8.1 or 34-83 of the School Code, the board of education or the State Superintendent of Education must initiate the certificate suspension and revocation proceedings authorized by law (Sec. 105 ILCS 5/34-18.5(e)).

This section applies to all employees of persons or firms holding contracts with any school district including, but not limited to, food service workers, school bus drivers and other transportation employees, who have direct, daily contact with pupils. For purposes of criminal history records checks and checks of the Statewide Sex Offender Database on employees of persons or firms holding contracts with more than one school district and assigned to more than one school district, the regional

superintendent of the educational service region in which the contracting school districts are located may, at the request of any such school district, be responsible for receiving the authorization for a criminal history records check prepared by each such employee and submitting the same to the Department of State Police and for conducting a check of the Statewide Sex Offender Database for each employee. Any information concerning the record of conviction and identification as a sex offender of any such employee obtained by the regional superintendent must be promptly reported to the president of the appropriate school board(s) (Sec. 105 ILCS 5/34-18.5(f), as amended by H. 3451, L. 2005).

Each public institution of higher education must, through written policy and procedures, identify security-sensitive positions and make provision for the completion of criminal background investigations prior to employing individuals in those positions (Sec. 110 ILCS 12/5).

*Charter bus services.* --All contracts for providing charter bus services for the sole purpose of transporting students regularly enrolled in grade 12 or below to or from interscholastic athletic or interscholastic or school sponsored activities must contain clause (A) as set forth below, except that a contract with an out-of-state company may contain clause (B), as set forth below, or clause (A). The clause must be set forth in the body of the contract in typeface of at least 12 points and all upper case letters (105 ILCS 5/10-20.21a, as added by S. 150, L. 2003):

(A)

"ALL OF THE CHARTER BUS DRIVERS WHO WILL BE PROVIDING SERVICES UNDER THIS CONTRACT HAVE, OR WILL HAVE BEFORE ANY SERVICES ARE PROVIDED: (1) SUBMITTED THEIR FINGERPRINTS TO THE DEPARTMENT OF STATE POLICE IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT OF STATE POLICE. THESE FINGERPRINTS SHALL BE CHECKED AGAINST THE FINGERPRINT RECORDS NOW AND HEREAFTER FILED IN THE DEPARTMENT OF STATE POLICE AND FEDERAL BUREAU OF INVESTIGATION CRIMINAL HISTORY RECORDS DATABASES. THE FINGERPRINT CHECK HAS RESULTED IN A DETERMINATION THAT THEY HAVE NOT BEEN CONVICTED OF COMMITTING ANY OF THE OFFENSES SET FORTH IN SUBDIVISION (C-1)(4) OF SECTION 6-508 OF THE ILLINOIS VEHICLE CODE; AND (2) DEMONSTRATED PHYSICAL FITNESS TO OPERATE SCHOOL BUSES BY SUBMITTING THE RESULTS OF A MEDICAL EXAMINATION, INCLUDING TESTS FOR DRUG USE, TO A STATE REGULATORY AGENCY."

(B)

"NOT ALL OF THE CHARTER BUS DRIVERS WHO WILL BE PROVIDING SERVICES UNDER THIS CONTRACT HAVE, OR WILL HAVE BEFORE ANY SERVICES ARE PROVIDED: (1) SUBMITTED THEIR FINGERPRINTS TO THE DEPARTMENT OF STATE POLICE IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT OF STATE POLICE. THESE FINGERPRINTS SHALL BE CHECKED AGAINST THE FINGERPRINT RECORDS NOW AND HEREAFTER FILED IN THE DEPARTMENT OF STATE POLICE AND FEDERAL BUREAU OF INVESTIGATION CRIMINAL HISTORY RECORDS DATABASES. THE FINGERPRINT CHECK HAS RESULTED IN A DETERMINATION THAT THEY HAVE NOT BEEN CONVICTED OF COMMITTING ANY OF THE OFFENSES SET FORTH IN SUBDIVISION (C-1)(4) OF SECTION 6-508 OF THE ILLINOIS VEHICLE CODE; AND (2) DEMONSTRATED PHYSICAL FITNESS TO OPERATE SCHOOL BUSES BY SUBMITTING THE RESULTS OF A MEDICAL EXAMINATION, INCLUDING TESTS FOR DRUG USE, TO A STATE REGULATORY AGENCY."

*Child care facilities.* --The Department of Children and Family Services requires that each child care facility license applicant as part of the application process, and each employee of a child care facility as a condition of employment, authorize an investigation to determine if such applicant or employee has ever been charged with a crime and if so, the disposition of those charges; this authorization must indicate the scope of the inquiry and the agencies that may be contacted. Upon this authorization, the Director will request and receive information and assistance from any federal, state or local governmental agency as part of the investigation. Each applicant shall submit his or her fingerprints to the Department of State Police. These fingerprints shall be checked against the fingerprint records now and hereafter filed in the Department of State Police and FBI criminal history records databases. The Department of State Police must provide information concerning any criminal charges, and their disposition, now or hereafter filed, against an applicant or child care facility employee upon request of the Department of Children and Family Services when the request is made as required (Sec. 225 ILCS 10/4.1, as amended by H. 564, L. 2003).

Information concerning convictions of a license applicant investigated under this section must be provided, upon request, to such applicant prior to final action by the Department on the application. State conviction information provided by the Department of State Police regarding employees or prospective employees of child care facilities licensed under the Child Care Act of 1969 must be provided to the operator of such facility, and, upon request, to the employee or prospective employee. Any information concerning criminal charges and the disposition of such charges obtained by the Department is confidential and may not be transmitted outside the Department, except as required herein, and may not be transmitted to anyone within the Department except as needed for the purpose of evaluating an application or a child care facility employee. Only information and standards that bear a reasonable and rational relation to the performance of a child care facility may be used by the Department or any licensee. Any employee of the Department of Children and Family Services, Department of State Police, or a child care facility receiving confidential information under this section who gives or causes to be given any confidential information concerning any

criminal convictions of a child care facility applicant, or child care facility employee, will be guilty of a Class A misdemeanor unless release of such information is authorized by this section (Sec. 225 ILCS 10/4.1, as amended by H. 564, L. 2003).

A child care facility may hire, on a probationary basis, any employee authorizing a criminal background investigation under this section, pending the result of such investigation. Employees must be notified prior to hiring that employment may be terminated on the basis of criminal background information obtained by the facility (Sec. 225 ILCS 10/4.1).

*Health care.* --The Health Care Worker Background Check Act applies to all individuals employed or retained by a health care employer (see definition just below) as home health care aides, nurse aides, personal care assistants, private duty nurse aides, day training personnel, or an individual working in any similar health-related occupation where he or she provides direct care or has access to long-term care residents or the living quarters or financial, medical, or personal records of long-term care residents. The law also applies to all employees or licensed or certified long-term care facilities who have or may have contact with residents or access to the living quarters or the financial, medical, or personal records of residents (Sec. 225 ILCS 46/10, as amended by H. 2531, L. 2005).

"Health care employer" means (Sec. 225 ILCS 46/15, as amended by S. 2726, L. 2003, effective January 1, 2005):

(1)

the owner or licensee of any of the following: (a) a community living facility; (b) a life care facility; (c) a long-term care facility; (d) a home health agency; (e) a full hospice; (f) a hospital; (g) a community residential alternative; (h) a nurse agency; (i) a respite care provider; (j) an establishment licensed under the Assisted Living and Shared Housing Act; (k) a supportive living program; (l) early childhood intervention programs; (m) the University of Illinois Hospital, Chicago; (n) programs funded by the Department on Aging through the Community Care Program; (o) programs certified to participate in the Supportive Living Program authorized pursuant to Sec. 5-5.01a of the Illinois Public Aid Code; (p) programs listed by the Emergency Medical Services (EMS) Systems Act as Freestanding Emergency Centers; (q) locations licensed under the Alternative Health Care Delivery Act;

(2)

a day training program certified by the Department of Human Services;

(3)

a community integrated living arrangement operated by a community mental health and developmental service agency;  
or

(4)

the State Long Term Care Ombudsman Program, including any regional long term care ombudsman programs under Sec. 4.04 of the Illinois Act on the Aging, only for the purpose of securing background checks.

The Health Care Worker Background Check Act does not apply to (225 ILCS 46/20(1), as amended by P.A. 91-598 (S. 1114), L. 1999, effective January 1, 2000):

(1)

an individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another Illinois law;

(2)

an individual employed or retained by a health care employer for whom a criminal background check is required by another Illinois law; or

(3)

a student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health care employer in a position with duties involving direct care for clients, patients, or residents.

A UCIA criminal history records check need not be redone by the University of Illinois Hospital, Chicago (U of I) or a program

funded by the Department on Aging through the Community Care Program (CCP) if the U of I or the CCP: (1) has done a UCIA check on the individual; (2) has continuously employed the individual since the UCIA criminal records check was done; and (3) has taken actions with respect to this act within 12 months after January 1, 2000 (Sec. 225 ILCS 46/20(2), as amended by P.A. 91-598 (S. 1114), L. 1999, effective January 1, 2000).

No health care employer may knowingly hire, employ, or retain any individual in a position with duties involving direct care for clients, patients, or residents, and no long-term care facility shall knowingly hire, employ, or retain any individual in a position with duties that involve or may involve contact with 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 one or more of the offenses defined in Secs. 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, 10-1, 10-2, 10-3, 10-3.1, 10-4, 10-5, 10-7, 11-6, 11-9.1, 11-19.2, 11-20.1, 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, 12-4.7, 12-7.4, 12-11, 12-13, 12-14, 12-14.1, 12-15, 12-16, 12-19, 12-21, 12-21.6, 12-32, 12-33, 16-1, 16-1.3, 16A-3, 17-3, 18-1, 18-2, 18-3, 18-4, 18-5, 19-1, 19-3, 19-4, 20-1, 20-1.1, 24-1, 24-1.2, 24-1.5, or 33A-2 of the Criminal Code of 1961; those provided in Sec. 4 of the Wrongs to Children Act; those provided in Sec. 53 of the Criminal Jurisprudence Act; those defined in Secs. 5, 5.1, 5.2, 7, or 9 of the Cannabis Control Act; or those defined in Secs. 401, 401.1, 404, 405, 405.1, 407, or 407.1 of the Illinois Controlled Substances Act, unless the applicant or employee obtains a waiver (225 ILCS 46/25(a), as amended by H. 2531, L. 2005).

After January 1, 2004, no health care employer shall knowingly hire any individual in a position with duties involving direct care for clients, patients, or residents, and no long-term care facility shall knowingly hire any individual in a position with duties that involve or may involve contact with residents or access to the living quarters or the financial, medical, or personal records of residents, who has (1) been convicted of committing or attempting to commit one or more of the offenses defined in Sec. 12-3.3, 12-4.2-5, 16-2, 16G-15, 16G-20, 18-5, 20-1.2, 24-1.1, 24-1.2-5, 24-1.6, 24-3.2, or 24-3.3 of the Criminal Code of 1961; Sec. 4, 5, 6, 8, or 17.02 of the Illinois Credit Card and Debit Card Act; or Sec. 5.1 of the Wrongs to Children Act; or (2) violated Sec. 10-5 of the Nursing and Advanced Practice Nursing Act (225 ILCS 46/25(a-1), as amended by H. 2531, L. 2005).

A UCIA criminal history record check need not be redone for health care employees who have been continuously employed by a health care employer since January 1, 2004, but nothing in this section prohibits a health care employer from initiating a criminal history check for these employees (225 ILCS 46/25(a-1), as added by S. 1912, L. 2003).

A health care employer is not required to retain an individual in a position with duties involving direct care for clients, patients, or residents, and no long-term care facility is required to retain an individual in a position with duties that involve or may involve contact with 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 one or more of the offenses enumerated in this subsection (225 ILCS 46/25(a-1), as amended by H. 2531, L. 2005).

A health care employer may not hire, employ, or retain any individual in a position with duties involving direct care of clients, patients, or residents, and no long-term care facility shall knowingly hire, employ, or retain any individual in a position with duties that involve or may involve contact with residents or access to the living quarters or the financial, medical, or personal records of residents, if the employer becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as an offense listed in Sec. 225 ILCS 46/25(a) or (a-1) above, as verified by court records, records from a state agency, or an FBI criminal history record check (225 ILCS 46/25(b), as amended by H. 2531, L. 2005).

An employer need not initiate an additional criminal background check for an employee if the employer initiated a criminal background check for the employee after January 1, 1996, and prior to January 1, 1998. This subsection applies only to persons employed prior to January 1, 1998 (Sec. 225 ILCS 46/25.1(a)).

Any person newly employed on or after January 1, 1998, must receive a background check as required by law (Sec. 225 ILCS 46/25.1(b)).

The health care employer must retain on file for a period of five years records of criminal records requests for all employees. The health care employer must retain the results of the UCIA criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files are subject to inspection by the agency responsible for inspecting, licensing, or certifying the health care employer. A fine of up to \$500 may be imposed by the appropriate agency for failure to maintain these records (Sec. 225 ILCS 46/50).

A health care employer will not be liable for the failure to hire or to retain an applicant or employee who has been convicted of committing or attempting to commit one or more of the offenses enumerated in 225 ILCS 46/25(a) above. However, if a health care worker is suspended from employment based on the results of a criminal background check conducted under the Health Care Worker Background Check Act and the results prompting the suspension are subsequently found to be inaccurate, the worker is entitled to recover back pay from his or her employer for the suspension period, provided that the employer is the cause of the inaccuracy (Sec. 225 ILCS 46/55, as amended by P.A. 91-598 (S. 1114), L. 1999, effective January 1, 2000).

No health care employer will be chargeable for any benefit charges that result from the payment of unemployment benefits to any claimant when the claimant's separation occurred because the claimant's criminal background included an offense enumerated in Sec. 225 ILCS 46/25(a) above, or the claimant's separation from that employer occurred as a result of the claimant violating a policy that the employer was required to maintain pursuant to the Drug Free Workplace Act (Sec. 225 ILCS 46/55, as amended by P.A. 91-598 (S. 1114), L. 1999, effective January 1, 2000).

*Residential youth care facilities.* --The Department of Corrections requires that each secure residential youth care facility license applicant as part of the application process, and each employee of a facility as a condition of employment, authorize an investigation to determine if the applicant or employee has ever been charged with a crime and, if so, the disposition of those charges. The authorization must indicate the scope of the inquiry and the agencies that may be contacted. Upon receiving an authorization, the Director may request and receive information and assistance from any federal, state, or local governmental agency as part of the investigation. The Department of State Police must provide information concerning any criminal charges, and their disposition, now or hereafter filed, against an applicant or facility employee upon request of the Department when the request is made in the form and manner required by the Department of State Police. Information concerning convictions of a license applicant investigated under this section, including the source of the information and any conclusions or recommendations derived from the information, must be provided, upon written request, to the applicant before final action by the Department on the application. Information on convictions of employees or prospective employees of facilities licensed under the Secure Residential Youth Carefacility Licensing Act must be provided to the operator of the facility, and, upon written request, to the employee or prospective employee. Information concerning criminal charges and the disposition of charges obtained by the department is confidential and may not be transmitted outside the department, except as required by this section, and may not be transmitted to anyone within the Department except as needed to evaluate an application or a facility employee. Only information and standards that bear a reasonable and rational relation to the performance of a facility may be used by the Department or any licensee. Any employee of the Department, Department of State Police, or a facility receiving confidential information under this section who gives or causes to be given any confidential information concerning any criminal convictions of a facility applicant or facility employee is guilty of a Class A misdemeanor unless release of that information is authorized by this section (Sec. 730 ILCS 175/45-25).

No applicant may receive a license from the Department and no person may be employed by a licensed facility who refuses to authorize an investigation as required by Sec. 730 ILCS 175/45-25 above (Sec. 730 ILCS 175/45-30(a)).

No applicant may receive a license from the Department and no person may be employed by a secure residential youth care facility licensed by the Department who has been declared a sexually dangerous person under the Sexually Dangerous Persons Act or convicted of committing or attempting to commit any of the following offenses under the Criminal Code of 1961 (Sec. 730 ILCS 175/45-30(b)):

(1)

First degree murder.

(2)

A sex offense under Article 11, except offenses described in Secs. 725 ILCS 5/11-7, 725 ILCS 5/11-8, 725 ILCS 5/11-12, 725 ILCS 5/11-13 and 725 ILCS 5/11-18.

(3)

Kidnapping.

(4)

Aggravated kidnapping.

(5)

Child abduction.

(6)

Aggravated battery of a child.

(7)

Criminal sexual assault.

(8)

Aggravated criminal sexual assault.

(9)

Predatory criminal sexual assault of a child.

(10)

Criminal sexual abuse.

(11)

Aggravated criminal sexual abuse.

(12)

A federal offense or an offense in any other state the elements of which are similar to any of the foregoing offenses.

*Arrest records.* --Unless otherwise authorized by law, it is a civil rights violation for an employer (see definition below) to inquire into or to use the fact of an arrest or criminal history record information ordered expunged, sealed or impounded under Sec. 5 of the Criminal Identification Act as a basis to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment. This provision does not prohibit a state agency, unit of local government or school district, or private organization from utilizing conviction information obtained from the Department of State Police under Sec. 3 of the Criminal Identification Act in evaluating the qualifications and character of an employee (see definition below) or a prospective employee (Sec. 775 ILCS 5/2-103(A)).

The prohibition against the use of the fact of an arrest as described above shall not be construed to prohibit an employer from obtaining or using other information which indicates that a person actually engaged in the conduct for which he or she was arrested (Sec. 775 ILCS 5/2-103(B)).

"Employer," for purposes of Sec. 775 ILCS 5/2-103 above, includes (Sec. 775 ILCS 5/2-101(B)):

(1)

Any person employing 15 or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation;

(2)

Any person employing one or more employees when a complainant alleges civil rights violation due to unlawful discrimination based upon his or her physical or mental handicap unrelated to ability or sexual harassment;

(3)

The state and any political subdivision, municipal corporation or other governmental unit or agency, without regard to the number of employees;

(4)

Any party to a public contract without regard to the number of employees;

(5)

A joint apprenticeship or training committee without regard to the number of employees.

"Employee," for purposes of Sec. 775 ILCS 5/2-103 above, includes (Sec. 775 ILCS 5/2-101):

(1)

Any individual performing services for remuneration within Illinois for an employer;

(2)

An apprentice;

(3)

An applicant for any apprenticeship.

"Employee" does not include (Sec. 775 ILCS 5/2-101):

(1)

Domestic servants in private homes;

(2)

Individuals employed by persons who are not "employers" as defined just above;

(3)

Elected public officials or the members of their immediate personal staffs;

(4)

Principal administrative officers of the state or of any political subdivision, municipal corporation or other governmental unit or agency;

(5)

A person in a vocational rehabilitation facility certified under federal law who has been designated an evacuee, trainee, or work activity client.

**Peace officers.** --An applicant for employment as a peace officer must authorize an investigation to determine if the applicant has been convicted of any criminal offense that disqualifies the person as a peace officer. No law enforcement agency may knowingly employ a person unless (1) a criminal background investigation of that person has been completed and (2) that investigation reveals no convictions of offenses specified in subsection (a) of Section 6.1 of this Act (50 ILCS 705/10.2, as added by H. 148, L. 2001, effective March 14, 2002).

**Auxiliary state policemen.** --Prior to the appointment of any auxiliary state policeman, his or her fingerprints must be taken and no person may be appointed as such auxiliary state policeman if he or she has been convicted of a felony or other crime involving moral turpitude (20 ILCS 2610/23).

**Fire departments.** --No person with a record of misdemeanor convictions except those under Secs. 11-6, 11-7, 11-9, 11-14, 11-15, 11-17, 11-18, 11-19, 12-2, 12-6, 12-15, 14-4, 16-1, 21.1-3, 24-3.1, 24-5, 25-1, 28-3, 31-1, 31-4, 31-6, 31-7, 32-1, 32-2, 32-4, 32-8, and subsections (1), (6) and (8) of Sec. 24-1 of the Criminal Code of 1961 or arrested for any cause but not convicted on that cause shall be disqualified from taking the examination to qualify for a position in the fire department on grounds of habits or moral character (65 ILCS 5/10-2.1-6(c), as amended by H. 148, L. 2001, effective March 14, 2002).

No person shall be appointed to the police or fire department unless he or she is a person of good character and not an habitual drunkard, gambler, or a person who has been convicted of a felony or a crime involving moral turpitude. No person, however, shall be disqualified from appointment to the fire department because of his or her record of misdemeanor convictions except those under Secs. 11-6, 11-7, 11-9, 11-14, 11-15, 11-17, 11-18, 11-19, 12-2, 12-6, 12-15, 14-4, 16-1, 21.1-3, 24-3.1, 24-5, 25-1, 28-3, 31-1, 31-4, 31-6, 31-7, 32-1, 32-2, 32-3, 32-4, 32-8, and subsections (1), (6) and (8) of Sec. 24-1 of the Criminal Code of 1961 or arrest for any cause without conviction on that cause. Any such person who is in the department may be removed on charges brought and after a trial as provided in this Division 2.1 (65 ILCS 5/10-2.1-6(j), as amended by H. 148, L. 2001, effective March 14, 2002).

**Public utilities.** --Before hiring an employee or independent contractor to perform work involving facilities used for the distribution of natural gas to customers, a public utility must require the proposed employee or independent contractor to complete a certificate listing the proposed employee's or contractor's violations of pertinent safety or environmental laws (220 ILCS 5/8-501.5, as added by S. 683, L. 2001, effective July 12, 2001).

**Expunged juvenile records.** --Except with respect to law enforcement agencies, the Department of Corrections, State's Attorneys, or other prosecutors, an expunged juvenile record may not be considered by any private or public entity in employment matters. Applications for employment must contain specific language that states that the applicant is not obligated to disclose expunged juvenile records of conviction or arrest. Employers may not ask if an applicant has had a juvenile record expunged. Effective January 1, 2005, the Department of Labor shall develop a link on its website to inform employers that employers may not ask if an applicant had a juvenile record expunged and that application for employment must contain specific language that states that the applicant is not obligated to disclose expunged juvenile records of arrest or conviction (705 ILCS 405/5-915(8), as added by H. 4566, L. 2003, enacted August 12, 2004).

**Job reference liability.** --Any employer or authorized employee or agent acting on behalf of an employer who, upon inquiry by a prospective employer, provides truthful written or verbal information, or information that it believes in good faith is truthful, about a current or former employee's job performance is presumed to be acting in good faith and is immune from civil liability for the disclosure and the consequences of the disclosure (745 ILCS 46/10).

The presumption of good faith may be rebutted by a preponderance of evidence that the information disclosed was knowingly false or in violation of a civil right of the employee or former employee (745 ILCS 46/10).

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