

Senate File 2299 - Enrolled

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AN ACT

RELATING TO BACKGROUND CHECKS FOR EMPLOYEES AND STUDENTS OF
CERTAIN FACILITIES, PROVIDERS, PROGRAMS, AND AGENCIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 135B.34, subsection 1, Code 2020, is amended to read as follows:

1. a. Prior to employment of a person in a hospital, the hospital shall ~~request~~ do one of the following:

(1) Request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks of the person in this state.

(2) Access the single contact repository to perform the required record checks.

b. (1) If a hospital accesses the single contact repository to perform the required record checks pursuant to paragraph "a", the hospital may utilize a third-party vendor to perform a comprehensive preliminary background check and provisionally employ a person being considered for employment pending completion of the required record checks through the single contact repository and the evaluation by the department of human services, as applicable, subject to all of the following:

(a) If the comprehensive preliminary background check determines that the person being considered for employment has been convicted of a crime, but the crime does not constitute a felony as defined in section 701.7 and is not a crime specified

pursuant to chapter 708, 708A, 709, 709A, 710, 710A, 711, or 712 or pursuant to section 726.3, 726.7, or 726.8.

(b) If the comprehensive preliminary background check determines the person being considered for employment does not have a record of founded child abuse or dependent adult abuse or if an exception pursuant to subsection 4 is applicable to the person.

(c) If the hospital has requested an evaluation in accordance with subsection 2, paragraph "a", to determine whether the crime warrants prohibition of the person's employment in the hospital.

(2) The provisional employment under this paragraph "b" may continue until such time as the required record checks through the single contact repository and the evaluation by the department of human services, as applicable, are completed.

c. A hospital shall inform all persons prior to employment regarding the performance of the record checks and shall obtain, from the persons, a signed acknowledgment of the receipt of the information. A hospital shall include the following inquiry in an application for employment:

Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?

Sec. 2. Section 135B.34, subsection 4, paragraph a, Code 2020, is amended to read as follows:

a. Except as provided in subsection 1, paragraph "b", subsection 2, and paragraph "b" and ~~subsection 2~~ of this subsection, a person who has committed a crime or has a record of founded child or dependent adult abuse shall not be employed in a hospital licensed under this chapter unless an evaluation has been performed by the department of human services.

Sec. 3. Section 135B.34, Code 2020, is amended by adding the following new subsection:

NEW SUBSECTION. 7. For the purposes of this subsection, "comprehensive preliminary background check" means the same as defined in section 135C.1.

Sec. 4. Section 135C.1, Code 2020, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. "Comprehensive preliminary background

check” includes a criminal history check of all states in which the applicant has worked or resided over the seven-year period immediately prior to submitting an application for employment that is conducted by a third-party vendor.

Sec. 5. Section 135C.33, Code 2020, is amended to read as follows:

135C.33 Employees and certified nurse aide trainees — child or dependent adult abuse information and criminal record checks check options — evaluations — application to other providers — penalty.

1. *a.* For the purposes of [this section](#), the term “*crime*” does not include offenses under [chapter 321](#) classified as a simple misdemeanor or equivalent simple misdemeanor offenses from another jurisdiction.

b. Prior to employment of a person in a facility or with a provider as specified in subsection 5, the facility or provider shall request do one of the following:

(1) Request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks of the person in this state.

(2) Access the single contact repository to perform the required record checks.

c. (1) If a facility or a provider as specified in subsection 5 accesses the single contact repository to perform the required record checks pursuant to paragraph “b”, the facility or provider may utilize a third-party vendor to perform a comprehensive preliminary background check and provisionally employ a person being considered for employment pending completion of the required record checks through the single contact repository and the evaluation by the department of human services, as applicable, subject to all of the following:

(a) If the comprehensive preliminary background check determines that the person being considered for employment has been convicted of a crime, but the crime does not constitute a felony as defined in section 701.7 and is not a crime specified pursuant to chapter 708, 708A, 709, 709A, 710, 710A, 711, or 712, or pursuant to section 726.3, 726.7, or 726.8.

(b) If the comprehensive preliminary background check determines the person being considered for employment does not have a record of founded child abuse or dependent adult abuse or if an exception pursuant to subsection 4 is applicable to the person.

(c) If the facility or provider has requested an evaluation in accordance with subsection 2, paragraph "a", to determine whether the crime warrants prohibition of the person's employment in the facility or with the provider.

(2) The provisional employment under this paragraph "c" may continue until such time as the required record checks through the single contact repository and the evaluation by the department of human services, as applicable, are completed.

d. A facility or provider shall inform all persons prior to employment regarding the performance of the record checks and shall obtain, from the persons, a signed acknowledgment of the receipt of the information. A facility or provider shall include the following inquiry in an application for employment:

Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime other than a simple misdemeanor offense relating to motor vehicles and laws of the road under [chapter 321](#) or equivalent provisions, in this state or any other state?

2. a. If it is determined that a person being considered for employment in a facility or with a provider has been convicted of a crime under a law of any state, the department of public safety shall notify the licensee facility or provider that upon the request of the licensee facility or provider the department of human services will perform an evaluation to determine whether the crime warrants prohibition of the person's employment in the facility or with the provider.

b. (1) If a person being considered for employment, other than employment involving the operation of a motor vehicle, has been convicted of a crime listed in subparagraph (2) but does not have a record of founded child or dependent adult abuse and the licensee facility or provider has requested an evaluation in accordance with paragraph "a" to determine whether the crime warrants prohibition of the person's employment, the licensee facility or provider may employ the person for not more than

sixty calendar days pending completion of the evaluation.

(2) Subparagraph (1) applies to a crime that is a simple misdemeanor offense under [section 123.47](#), and to a crime that is a first offense of operating a motor vehicle while intoxicated under [section 321J.2, subsection 1](#).

c. If a department of human services child or dependent adult abuse record check shows that such person has a record of founded child or dependent adult abuse, the department of human services shall notify the licensee facility or provider that upon the request of the licensee facility or provider the department of human services will perform an evaluation to determine whether the founded child or dependent adult abuse warrants prohibition of employment in the facility or with the provider.

d. An evaluation performed under [this subsection](#) shall be performed in accordance with procedures adopted for this purpose by the department of human services.

e. (1) If a person owns or operates more than one facility or a provider owns or operates more than one location, and an employee of one of such facilities or provider locations is transferred to another such facility or provider location without a lapse in employment, the facility or provider is not required to request additional criminal and child and dependent adult abuse record checks of that employee.

(2) If the ownership of a facility or provider is transferred, at the time of transfer the record checks required by [this section](#) shall be performed for each employee for whom there is no documentation that such record checks have been performed. The facility or provider may continue to employ such employee pending the performance of the record checks and any related evaluation.

3. In an evaluation, the department of human services shall consider the nature and seriousness of the crime or founded child or dependent adult abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child or dependent adult abuse, the circumstances under which the crime or founded child or dependent adult abuse was committed, the degree of rehabilitation, the likelihood that the person will commit

the crime or founded child or dependent adult abuse again, and the number of crimes or founded child or dependent adult abuses committed by the person involved. If the department of human services performs an evaluation for the purposes of this section, the department of human services has final authority in determining whether prohibition of the person's employment is warranted.

4. *a.* Except as provided in subsection 1, paragraph "c", subsection 2, and paragraph "b" and ~~subsection 2~~ of this subsection, a person who has committed a crime or has a record of founded child or dependent adult abuse shall not be employed in a facility ~~licensed under this chapter~~ or with a provider unless an evaluation has been performed by the department of human services.

b. A person with a criminal or abuse record who is or was employed by a facility ~~licensed under this chapter~~ or provider and is hired by another ~~licensee~~ facility or provider shall be subject to the criminal history and abuse record checks required pursuant to subsection 1. However, if an evaluation was previously performed by the department of human services concerning the person's criminal or abuse record and it was determined that the record did not warrant prohibition of the person's employment and the latest record checks do not indicate a crime was committed or founded abuse record was entered subsequent to that evaluation, the person may commence employment with the other ~~licensee~~ facility or provider in accordance with the department of human services' evaluation and an exemption from the requirements in paragraph "a" for reevaluation of the latest record checks is authorized. Otherwise, the requirements of paragraph "a" remain applicable to the person's employment. Authorization of an exemption under this paragraph "b" from requirements for reevaluation of the latest record checks by the department of human services is subject to all of the following provisions:

(1) The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.

(2) Any restrictions placed on the person's employment in the previous evaluation by the department of human services

shall remain applicable in the person's subsequent employment.

(3) The person subject to the record checks has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer or the previous employer provides the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, the record checks shall be reevaluated.

(4) Although an exemption under this paragraph "b" may be authorized, the subsequent employer may instead request a reevaluation of the record checks and may employ the person while the reevaluation is being performed.

5. a. This section shall also apply to prospective employees of all of the following, if the provider is regulated by the state or receives any state or federal funding:

(1) An employee of a homemaker-home health aide, home care aide, adult day services, or other provider of in-home services if the employee provides direct services to consumers.

(2) An employee of a hospice, if the employee provides direct services to consumers.

(3) An employee who provides direct services to consumers under a federal home and community-based services waiver.

(4) An employee of an elder group home certified under chapter 231B, if the employee provides direct services to consumers.

(5) An employee of an assisted living program certified under chapter 231C, if the employee provides direct services to consumers.

b. In substantial conformance with the provisions of this section, including the provision authorizing provisional employment following completion of a comprehensive preliminary background check, prior to the employment of such an employee, the provider shall request the performance of the criminal and child and dependent adult abuse record checks. The provider shall inform the prospective employee and obtain the prospective employee's signed acknowledgment. The department of human services shall perform the evaluation of any criminal record or founded child or dependent adult abuse record and shall make the determination of whether a prospective employee

of a provider shall not be employed by the provider.

6. *a.* [This section](#) shall also apply to an employee of a temporary staffing agency that provides staffing for a facility, service, program, or other provider regulated by this section if the employee provides direct services to consumers.

b. In substantial conformance with the provisions of this section, including the provision authorizing provisional employment following completion of a comprehensive preliminary background check, prior to the employment of such an employee, the temporary staffing agency shall request the performance of the criminal and child and dependent adult abuse record checks. The temporary staffing agency shall inform the prospective employee and obtain the prospective employee's signed acknowledgment. The department of human services shall perform the evaluation of any criminal record or founded child or dependent adult abuse record and shall make the determination of whether a prospective employee of a temporary staffing agency shall not be employed by the assisted living program as defined in [section 231C.2](#), the Medicare certified home health agency, or the facility, service, program, or other provider regulated by [this section](#).

c. If a person employed by a temporary staffing agency that is subject to [this section](#) is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the person's employment application date, the person shall inform the temporary staffing agency within forty-eight hours and the temporary staffing agency shall inform the facility, service, program, or other provider within two hours.

d. If a temporary staffing agency fails to comply with the requirements of [this section](#), the temporary staffing agency shall be liable to the facility, service, program, or other provider for any actual damages, including civil penalties, and reasonable attorney fees.

e. [This section](#) shall not apply to employees employed by a temporary staffing agency for a position that does not provide direct services to consumers.

7. *a.* The department of inspections and appeals, in conjunction with other departments and agencies of state

government involved with criminal history and abuse registry information, shall establish a single contact repository for facilities and other providers to have electronic access to data to perform background checks for purposes of employment, as required of the facilities and other providers under this section.

b. The department may access the single contact repository for any of the following purposes:

(1) To verify data transferred from the department's nurse aide registry to the repository.

(2) To conduct record checks of applicants for employment with the department.

8. a. If a person employed by a facility, service, or program employer that is subject to [this section](#) is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the person's employment application date, the person shall inform the employer of such information within forty-eight hours of the criminal conviction or entry of the record of founded child or dependent adult abuse. The employer shall act to verify the information within seven calendar days of notification. If the information is verified, the requirements of subsections 2, 3, and 4 regarding employability and evaluations shall be applied by the employer to determine whether or not the person's employment is continued. The employer may continue to employ the person pending the performance of an evaluation by the department of human services to determine whether prohibition of the person's employment is warranted. A person who is required by [this subsection](#) to inform the person's employer of a conviction or entry of an abuse record and fails to do so within the required period commits a serious misdemeanor.

b. If a facility, service, or program employer receives credible information, as determined by the employer, that a person employed by the employer has been convicted of a crime or a record of founded child or dependent adult abuse has been entered in the abuse registry after employment from a person other than the employee and the employee has not informed the employer of such information within the period required under paragraph "a", the employer shall act to verify the

credible information within seven calendar days of receipt of the credible information. If the information is verified, the requirements of [subsections 2, 3, and 4](#) regarding employability and evaluations shall be applied to determine whether or not the person's employment is continued.

c. The employer may notify the county attorney for the county where the employer is located of any violation or failure by an employee to notify the employer of a criminal conviction or entry of an abuse record within the period required under paragraph "a".

9. a. For the purposes of [this subsection](#), unless the context otherwise requires:

(1) "*Certified nurse aide training program*" means a program approved in accordance with the rules for such programs adopted by the department of human services for the training of persons seeking to be a certified nurse aide for employment in any of the facilities or programs [this section](#) applies to or in a hospital, as defined in [section 135B.1](#).

(2) "*Student*" means a person applying for, enrolled in, or returning to a certified nurse aide training program.

b. (1) Prior to a student beginning or returning to a certified nurse aide training program, the program shall ~~request~~ do one of the following:

(a) Request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks, in this state, of the student. ~~The program may access~~

(b) Access the single contact repository ~~established pursuant to [this section](#) as necessary for the program to initiate~~ perform the required record checks.

(2) If a program accesses the single contact repository to perform the required record checks pursuant to subparagraph (1), the program may utilize a third-party vendor to perform a comprehensive preliminary background check to allow a person to provisionally participate in the clinical component of the certified nurse aide training program pending completion of the required record checks through the single contact repository and the evaluation by the department of human services, as applicable, subject to all of the following:

(a) If the comprehensive preliminary background check determines that the person being considered for provisional participation has been convicted of a crime but the crime does not constitute a felony as defined in section 701.7 and is not a crime specified pursuant to chapter 708, 708A, 709, 709A, 710, 710A, 711, or 712, or pursuant to section 726.3, 726.7, or 726.8.

(b) If the comprehensive preliminary background check determines the person being considered for provisional participation does not have a record of founded child abuse or dependent adult abuse or if an exception pursuant to subsection 4 is applicable to the person.

(c) If the program has requested an evaluation in accordance with subsection 2, paragraph "a", to determine whether the crime warrants prohibition of the person's provisional participation.

(d) The provisional participation under this subparagraph (2) may continue until such time as the required record checks through the single contact repository and the evaluation by the department of human services, as applicable, are completed.

c. If a student has a criminal record or a record of founded child or dependent adult abuse, the student shall not be involved in a clinical education component of the certified nurse aide training program involving children or dependent adults unless an evaluation has been performed by the department of human services. Upon request of the certified nurse aide training program, the department of human services shall perform an evaluation to determine whether the record warrants prohibition of the student's involvement in a clinical education component of the certified nurse aide training program involving children or dependent adults. The evaluation shall be performed in accordance with the criteria specified in subsection 3, and the department of human services shall report the results of the evaluation to the certified nurse aide training program. The department of human services has final authority in determining whether prohibition of the student's involvement in the clinical education component is warranted.

d. (1) If a student's clinical education component of the training program involves children or dependent adults but does not involve operation of a motor vehicle, and the student

has been convicted of a crime listed in subparagraph (2), but does not have a record of founded child or dependent adult abuse, and the training program has requested an evaluation in accordance with paragraph "c" to determine whether the crime warrants prohibition of the student's involvement in such clinical education component, the training program may allow the student's participation in the component for not more than sixty days pending completion of the evaluation.

(2) Subparagraph (1) applies to a crime that is a simple misdemeanor offense under [section 123.47](#), and to a crime that is a first offense of operating a motor vehicle while intoxicated under [section 321J.2, subsection 1](#).

e. (1) If a student is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the record checks and any evaluation have been performed, the student shall inform the certified nurse aide training program of such information within forty-eight hours of the criminal conviction or entry of the record of founded child or dependent adult abuse. The program shall act to verify the information within seven calendar days of notification. If the information is verified, the requirements of paragraph "c" shall be applied by the program to determine whether or not the student's involvement in a clinical education component may continue. The program may allow the student involvement to continue pending the performance of an evaluation by the department of human services. A student who is required by this subparagraph to inform the program of a conviction or entry of an abuse record and fails to do so within the required period commits a serious misdemeanor.

(2) If a program receives credible information, as determined by the program, that a student has been convicted of a crime or a record of founded child or dependent adult abuse has been entered in the abuse registry after the record checks and any evaluation have been performed, from a person other than the student and the student has not informed the program of such information within the period required under subparagraph (1), the program shall act to verify the credible information within seven calendar days of receipt of the credible information. If the information is verified, the

requirements of paragraph "c" shall be applied to determine whether or not the student's involvement in a clinical education component may continue.

(3) The program may notify the county attorney for the county where the program is located of any violation or failure by a student to notify the program of a criminal conviction or entry of an abuse record within the period required under subparagraph (1).

f. If a certified nurse aide training program is conducted by a health care facility and a student of that program subsequently accepts and begins employment with the facility within thirty days of completing the program, the criminal history and abuse registry checks of the student performed pursuant to this subsection shall be deemed to fulfill the requirements for such checks prior to employment pursuant to subsection 1.

Sec. 6. Section 152.5A, Code 2020, is amended to read as follows:

152.5A Student record checks.

1. For the purposes of [this section](#):

a. "Comprehensive preliminary background check" means the same as defined in section 135C.1.

~~a.~~ b. "Nursing program" means a nursing program that is approved by the board pursuant to [section 152.5](#).

~~b.~~ c. "Student" means a person applying for, enrolled in, or returning to the clinical education component of a nursing program.

2. A Prior to a student beginning or returning to a nursing program, the nursing program may access the single contact repository established pursuant to [section 135C.33](#) as necessary for the nursing program to initiate record checks of students.

~~3. A nursing program shall request~~ shall do one of the following in substantial conformance with the provisions of section 135C.33:

a. Request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks of the student in this state on the nursing program's students.

b. Access the single contact repository to perform the

required record checks.

3. a. If a program accesses the single contact repository to perform the required record checks pursuant to subsection 2, the program may utilize a third-party vendor to perform a comprehensive preliminary background check to allow a student to provisionally participate in the clinical education component of the nursing program pending completion of the required record checks through the single contact repository and the evaluation by the department of human services, as applicable, subject to all of the following:

(1) If the comprehensive preliminary background check determines that the student being considered for provisional participation has been convicted of a crime, but the crime does not constitute a felony as defined in section 701.7 and is not a crime specified pursuant to chapter 708, 708A, 709, 709A, 710, 710A, 711, or 712 or pursuant to section 726.3, 726.7, or 726.8.

(2) If the comprehensive preliminary background check determines the student being considered for provisional participation does not have a record of founded child abuse or dependent adult abuse, or if an exception pursuant to section 135C.33, subsection 4, is applicable to the student.

(3) If the program has requested an evaluation in accordance with section 135C.33, subsection 2, paragraph "a", to determine whether the crime warrants prohibition of the student's provisional participation.

b. The provisional participation under this subsection 3 may continue until such time as the required record checks through the single contact repository and the evaluation by the department of human services, as applicable, are completed.

4. If a student has a criminal record or a record of founded child or dependent adult abuse, upon request of the nursing program, the department of human services shall perform an evaluation to determine whether the record warrants prohibition of the ~~person's~~ student's involvement in a clinical education component of a nursing program involving children or dependent adults. The department of human services shall utilize the criteria provided in [section 135C.33](#) in performing the evaluation and shall report the results of the evaluation

to the nursing program. The department of human services has final authority in determining whether prohibition of the person's student's involvement in a clinical education component is warranted.

Sec. 7. THIRD-PARTY VENDOR — COMPREHENSIVE PRELIMINARY BACKGROUND CHECKS FOR PROVISIONAL EMPLOYMENT OR PROVISIONAL PARTICIPATION. The department of inspections and appeals shall post on the department's internet site a listing of third-party vendors vetted, approved, and provided to the department by statewide associations of hospitals, health care facilities, programs, and providers described in this Act from which a hospital, health care facility, program, or provider, respectively, may select a third-party vendor to conduct the comprehensive preliminary background checks for provisional employment of employees or provisional participation by students as provided in this Act.

CHARLES SCHNEIDER
President of the Senate

PAT GRASSLEY
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2299, Eighty-eighth General Assembly.

W. CHARLES SMITHSON
Secretary of the Senate

Approved _____, 2020

KIM REYNOLDS
Governor