

# House File 2648 - Introduced

HOUSE FILE \_\_\_\_\_  
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO HSB 637)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to criminal and abuse records of prospective and  
2 current employees of licensed hospitals and health care  
3 facilities and certain health-related programs and services  
4 and providing penalties.  
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
6 TLSB 5455HV 82  
7 jp/nh/8

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1 1 Section 1. Section 135B.34, Code 2007, is amended by  
1 2 striking the section and inserting in lieu thereof the  
1 3 following:  
1 4 135B.34 HOSPITAL EMPLOYEES == CRIMINAL HISTORY AND ABUSE  
1 5 RECORD CHECKS == PENALTY.  
1 6 1. Prior to employment of a person in a hospital, the  
1 7 hospital shall request that the department of public safety  
1 8 perform a criminal history check and the department of human  
1 9 services perform child and dependent adult abuse record checks  
1 10 of the person in this state. A hospital shall inform all  
1 11 persons prior to employment regarding the performance of the  
1 12 records checks and shall obtain, from the persons, a signed  
1 13 acknowledgment of the receipt of the information. A hospital  
1 14 shall include the following inquiry in an application for  
1 15 employment: "Do you have a record of founded child or  
1 16 dependent adult abuse or have you ever been convicted of a  
1 17 crime, in this state or any other state?"  
1 18 2. a. If it is determined that a person being considered  
1 19 for employment in a hospital has committed a crime, the  
1 20 department of public safety shall notify the hospital that  
1 21 upon the request of the hospital the department of human  
1 22 services will perform an evaluation to determine whether the  
1 23 crime warrants prohibition of the person's employment in the  
1 24 hospital.  
1 25 b. If a department of human services child or dependent  
1 26 adult abuse record check shows that the person has a record of  
1 27 founded child or dependent adult abuse, the department of  
1 28 human services shall notify the hospital that upon the request  
1 29 of the hospital the department of human services will perform  
1 30 an evaluation to determine whether the founded child or  
1 31 dependent adult abuse warrants prohibition of the person's  
1 32 employment in the hospital.  
1 33 c. An evaluation performed under this subsection shall be  
1 34 performed in accordance with procedures adopted for this  
1 35 purpose by the department of human services.  
2 1 d. (1) If a person owns or operates more than one  
2 2 hospital, and an employee of one of such hospitals is  
2 3 transferred to another such hospital without a lapse in  
2 4 employment, the hospital is not required to request additional  
2 5 criminal and child and dependent adult abuse records checks of  
2 6 that employee.  
2 7 (2) If the ownership of a hospital is transferred, at the  
2 8 time of transfer the records checks required by this section  
2 9 shall be performed for each employee for whom there is no  
2 10 documentation that such records checks have been performed.  
2 11 The hospital may continue to employ such employee pending the  
2 12 performance of the records checks and any related evaluation.  
2 13 3. In an evaluation, the department of human services  
2 14 shall consider the nature and seriousness of the crime or  
2 15 founded child or dependent adult abuse in relation to the  
2 16 position sought or held, the time elapsed since the commission

2 17 of the crime or founded child or dependent adult abuse, the  
2 18 circumstances under which the crime or founded child or  
2 19 dependent adult abuse was committed, the degree of  
2 20 rehabilitation, the likelihood that the person will commit the  
2 21 crime or founded child or dependent adult abuse again, and the  
2 22 number of crimes or founded child or dependent adult abuses  
2 23 committed by the person involved. If the department of human  
2 24 services performs an evaluation for the purposes of this  
2 25 section, the department of human services has final authority  
2 26 in determining whether prohibition of the person's employment  
2 27 is warranted.

2 28 4. a. Except as provided in paragraph "b" and subsection  
2 29 2, a person who has committed a crime or has a record of  
2 30 founded child or dependent adult abuse shall not be employed  
2 31 in a hospital licensed under this chapter unless an evaluation  
2 32 has been performed by the department of human services.

2 33 b. A person with a criminal or abuse record who is  
2 34 employed by a hospital licensed under this chapter and is  
2 35 hired by another licensee without a lapse in employment shall  
3 1 be subject to the criminal history and abuse record checks  
3 2 required pursuant to subsection 1. If an evaluation was  
3 3 previously performed by the department of human services  
3 4 concerning the person's criminal or abuse record and it was  
3 5 determined that the record did not warrant prohibition of the  
3 6 person's employment and the latest record checks do not  
3 7 indicate a crime was committed or founded abuse record was  
3 8 entered subsequent to that evaluation, the person may commence  
3 9 employment with the other licensee while the department of  
3 10 human services' evaluation of the latest record checks is  
3 11 pending. Otherwise, the requirements of paragraph "a" remain  
3 12 applicable to the person's employment.

3 13 5. a. If a person employed by a hospital that is subject  
3 14 to this section is convicted of a crime or has a record of  
3 15 founded child or dependent adult abuse entered in the abuse  
3 16 registry after the person's employment application date, the  
3 17 person shall inform the hospital of such information within  
3 18 forty-eight hours of the criminal conviction or entry of the  
3 19 record of founded child or dependent adult abuse. The  
3 20 hospital shall act to verify the information within  
3 21 forty-eight hours of notification. If the information is  
3 22 verified, the requirements of subsections 2, 3, and 4  
3 23 regarding employability and evaluations shall be applied by  
3 24 the hospital to determine whether or not the person's  
3 25 employment is continued. The hospital may continue to employ  
3 26 the person pending the performance of an evaluation by the  
3 27 department of human services to determine whether prohibition  
3 28 of the person's employment is warranted. A person who is  
3 29 required by this subsection to inform the person's employer of  
3 30 a conviction or entry of an abuse record and fails to do so  
3 31 within the required period commits a serious misdemeanor.

3 32 b. If a hospital receives credible information, as  
3 33 determined by the hospital, that a person employed by the  
3 34 hospital has been convicted of a crime or a record of founded  
3 35 child or dependent adult abuse has been entered in the abuse  
4 1 registry after employment from a person other than the  
4 2 employee and the employee has not informed the hospital of  
4 3 such information within the period required under paragraph  
4 4 "a", the hospital shall act to verify the credible information  
4 5 within forty-eight hours of receipt of the credible  
4 6 information. If the information is verified, the requirements  
4 7 of subsections 2, 3, and 4 regarding employability and  
4 8 evaluations shall be applied by the hospital to determine  
4 9 whether or not the person's employment is continued.

4 10 c. The hospital may notify the county attorney for the  
4 11 county where the hospital is located of any violation or  
4 12 failure by an employee to notify the hospital of a criminal  
4 13 conviction or entry of an abuse record within the period  
4 14 required under paragraph "a".

4 15 6. A hospital licensed in this state may access the single  
4 16 contact repository established by the department pursuant to  
4 17 section 135C.33 as necessary for the hospital to perform  
4 18 record checks of persons employed or being considered for  
4 19 employment by the hospital.

4 20 Sec. 2. Section 135C.33, Code 2007, is amended to read as  
4 21 follows:

4 22 135C.33 EMPLOYEES == CHILD OR DEPENDENT ADULT ABUSE  
4 23 INFORMATION AND CRIMINAL RECORDS RECORD CHECKS == EVALUATIONS  
4 24 == APPLICATION TO OTHER PROVIDERS == PENALTY.

4 25 1. ~~Beginning July 1, 1997, prior~~ Prior to employment of a  
4 26 person in a facility, the facility shall request that the  
4 27 department of public safety perform a criminal history check

4 28 and the department of human services perform ~~a child and~~  
4 29 dependent adult abuse record ~~check checks~~ of the person in  
4 30 this state. ~~In addition, the facility may request that the~~  
~~4 31 department of human services perform a child abuse record~~  
~~4 32 check in this state. Beginning July 1, 1997, a A facility~~  
4 33 shall inform all persons prior to employment regarding the  
4 34 performance of the records checks and shall obtain, from the  
4 35 persons, a signed acknowledgment of the receipt of the  
5 1 information. ~~Additionally, a A facility shall include the~~  
5 2 following inquiry in an application for employment: "Do you  
5 3 have a record of founded child or dependent adult abuse or  
5 4 have you ever been convicted of a crime, in this state or any  
5 5 other state?"

5 6 2. a. If ~~the it is determined that a person being~~  
5 7 ~~considered for employment in a facility has been convicted of~~  
5 8 ~~a crime under a law of any state or has a record of founded~~  
~~5 9 child or dependent adult abuse, the department of public~~  
5 10 ~~safety shall notify the licensee that upon the request of the~~  
5 11 ~~licensee the department of human services shall, upon the~~  
~~5 12 facility's request, perform an evaluation will perform an~~  
5 13 ~~evaluation to determine whether the crime or founded child or~~  
~~5 14 dependent adult abuse warrants prohibition of the person's~~  
5 15 ~~employment in the facility. The~~  
5 16 ~~b. If a department of human services child or dependent~~  
5 17 ~~adult abuse record check shows that such person has a record~~  
5 18 ~~of founded child or dependent adult abuse, the department of~~  
5 19 ~~human services shall notify the licensee that upon the request~~  
5 20 ~~of the licensee the department of human services will perform~~  
5 21 ~~an evaluation to determine whether the founded child or~~  
5 22 ~~dependent adult abuse warrants prohibition of employment in~~  
5 23 ~~the facility.~~

5 24 ~~c. An evaluation performed under this subsection shall be~~  
5 25 ~~performed in accordance with procedures adopted for this~~  
5 26 ~~purpose by the department of human services.~~

5 27 ~~d. (1) If a person owns or operates more than one~~  
5 28 ~~facility, and an employee of one of such facilities is~~  
5 29 ~~transferred to another such facility without a lapse in~~  
5 30 ~~employment, the facility is not required to request additional~~  
5 31 ~~criminal and child and dependent adult abuse record checks of~~  
5 32 ~~that employee.~~

5 33 ~~(2) If the ownership of a facility is transferred, at the~~  
5 34 ~~time of transfer the records checks required by this section~~  
5 35 ~~shall be performed for each employee for whom there is no~~  
6 1 ~~documentation that such records checks have been performed.~~  
6 2 ~~The facility may continue to employ such employee pending the~~  
6 3 ~~performance of the records checks and any related evaluation.~~

6 4 ~~2. If the department of public safety determines that a~~  
6 5 ~~person has committed a crime and is to be employed in a~~  
6 6 ~~facility licensed under this chapter, the department of public~~  
6 7 ~~safety shall notify the licensee that an evaluation, if~~  
6 8 ~~requested by the facility, will be conducted by the department~~  
6 9 ~~of human services to determine whether prohibition of the~~  
6 10 ~~person's employment is warranted. If a department of human~~  
6 11 ~~services child or dependent adult abuse record check shows~~  
6 12 ~~that the person has a record of founded child or dependent~~  
6 13 ~~adult abuse, the department of human services shall inform the~~  
6 14 ~~licensee that an evaluation, if requested by the facility,~~  
6 15 ~~will be conducted to determine whether prohibition of the~~  
6 16 ~~person's employment is warranted.~~

6 17 ~~3. In an evaluation, the department of human services~~  
6 18 ~~shall consider the nature and seriousness of the crime or~~  
6 19 ~~founded child or dependent adult abuse in relation to the~~  
6 20 ~~position sought or held, the time elapsed since the commission~~  
6 21 ~~of the crime or founded child or dependent adult abuse, the~~  
6 22 ~~circumstances under which the crime or founded child or~~  
6 23 ~~dependent adult abuse was committed, the degree of~~  
6 24 ~~rehabilitation, the likelihood that the person will commit the~~  
6 25 ~~crime or founded child or dependent adult abuse again, and the~~  
6 26 ~~number of crimes or founded child or dependent adult abuses~~  
6 27 ~~committed by the person involved. The If the department of~~  
6 28 ~~human services performs an evaluation for the purposes of this~~  
6 29 ~~section, the department of human services has final authority~~  
6 30 ~~in determining whether prohibition of the person's employment~~  
6 31 ~~is warranted.~~

6 32 ~~4. a. Except as provided in paragraph "b" and subsection~~  
6 33 ~~2, a person who has committed a crime or has a record of~~  
6 34 ~~founded child or dependent adult abuse shall not be employed~~  
6 35 ~~in a facility licensed under this chapter unless an evaluation~~  
7 1 ~~has been performed by the department of human services. If~~  
7 2 ~~the department of human services determines from the~~  
7 3 ~~evaluation that the person has committed a crime or has a~~

~~7 4 record of founded child or dependent adult abuse which~~  
~~7 5 warrants prohibition of employment, the person shall not be~~  
~~7 6 employed in a facility licensed under this chapter.~~

7 7 b. A person with a criminal or abuse record who is  
7 8 employed by a facility licensed under this chapter and is  
7 9 hired by another licensee without a lapse in employment shall  
7 10 be subject to the criminal history and abuse record checks  
7 11 required pursuant to subsection 1. If an evaluation was  
7 12 previously performed by the department of human services  
7 13 concerning the person's criminal or abuse record and it was  
7 14 determined that the record did not warrant prohibition of the  
7 15 person's employment and the latest record checks do not  
7 16 indicate a crime was committed or founded abuse record was  
7 17 entered subsequent to that evaluation, the person may commence  
7 18 employment with the other licensee while the department of  
7 19 human services' evaluation of the latest record checks is  
7 20 pending. Otherwise, the requirements of paragraph "a" remain  
7 21 applicable to the person's employment.

7 22 5. ~~a. Beginning July 1, 1998, this~~ This section shall  
7 23 ~~also~~ apply to prospective employees of all of the following,  
7 24 if the provider is regulated by the state or receives any  
7 25 state or federal funding:

7 26 a. (1) An employee of a homemaker, home=health aide,  
7 27 home=care aide, adult day services, or other provider of  
7 28 in=home services if the employee provides direct services to  
7 29 consumers.

7 30 b. (2) An employee of a hospice, if the employee provides  
7 31 direct services to consumers.

7 32 c. (3) An employee who provides direct services to  
7 33 consumers under a federal home and community=based services  
7 34 waiver.

7 35 d. (4) An employee of an elder group home certified under  
8 1 chapter 231B, if the employee provides direct services to  
8 2 consumers.

8 3 e. (5) An employee of an assisted living program  
8 4 certified under chapter 231C, if the employee provides direct  
8 5 services to consumers.

8 6 b. In substantial conformance with the provisions of this  
8 7 section, prior to the employment of such an employee, the  
8 8 provider shall request the performance of the criminal and  
8 9 ~~child and dependent adult abuse record checks and may request~~  
~~8 10 the performance of the child abuse record checks.~~ The  
8 11 provider shall inform the prospective employee and obtain the  
8 12 prospective employee's signed acknowledgment. The department  
8 13 of human services shall perform the evaluation of any criminal  
8 14 record or founded child or dependent adult abuse record and  
8 15 shall make the determination of whether a prospective employee  
8 16 of a provider shall not be employed by the provider.

8 17 6. a. The department of inspections and appeals, in  
8 18 conjunction with other departments and agencies of state  
8 19 government involved with criminal history and abuse registry  
8 20 information, shall establish a single contact repository for  
8 21 facilities and other providers to have electronic access to  
8 22 data to perform background checks for purposes of employment,  
8 23 as required of the facilities and other providers under this  
8 24 section.

8 25 b. The department may access the single contact repository  
8 26 for any of the following purposes:

8 27 (1) To verify data transferred from the department's nurse  
8 28 aide registry to the repository.

8 29 (2) To conduct record checks of applicants for employment  
8 30 with the department.

8 31 7. a. If a person employed by a facility, service, or  
8 32 program employer that is subject to this section is convicted  
8 33 of a crime or has a record of founded child or dependent adult  
8 34 abuse entered in the abuse registry after the person's  
8 35 employment application date, the person shall inform the  
9 1 employer of such information within forty=eight hours of the  
9 2 criminal conviction or entry of the record of founded child or  
9 3 dependent adult abuse. The employer shall act to verify the  
9 4 information within forty=eight hours of notification. If the  
9 5 information is verified, the requirements of subsections 2, 3,  
9 6 and 4 regarding employability and evaluations shall be applied  
9 7 by the employer to determine whether or not the person's  
9 8 employment is continued. The employer may continue to employ  
9 9 the person pending the performance of an evaluation by the  
9 10 department of human services to determine whether prohibition  
9 11 of the person's employment is warranted. A person who is  
9 12 required by this subsection to inform the person's employer of  
9 13 a conviction or entry of an abuse record and fails to do so  
9 14 within the required period commits a serious misdemeanor.

9 15 b. If a facility, service, or program employer receives  
9 16 credible information, as determined by the employer, that a  
9 17 person employed by the employer has been convicted of a crime  
9 18 or a record of founded child or dependent adult abuse has been  
9 19 entered in the abuse registry after employment from a person  
9 20 other than the employee and the employee has not informed the  
9 21 employer of such information within the period required under  
9 22 paragraph "a", the employer shall act to verify the credible  
9 23 information within forty-eight hours of receipt of the  
9 24 credible information. If the information is verified, the  
9 25 requirements of subsections 2, 3, and 4 regarding  
9 26 employability and evaluations shall be applied to determine  
9 27 whether or not the person's employment is continued.  
9 28 c. The employer may notify the county attorney for the  
9 29 county where the employer is located of any violation or  
9 30 failure by an employee to notify the employer of a criminal  
9 31 conviction or entry of an abuse record within the period  
9 32 required under paragraph "a".

9 33 EXPLANATION

9 34 This bill relates to criminal and abuse records of  
9 35 prospective and current employees of licensed hospitals and  
10 1 health care facilities and certain health-related programs and  
10 2 services and provides penalties.

10 3 Under current law, Code section 135B.34 authorizes  
10 4 hospitals licensed in this state to access the single contact  
10 5 repository established by the department of inspections and  
10 6 appeals in order for the hospital to perform record checks of  
10 7 persons employed by or being considered for employment by the  
10 8 hospital. The bill retains this authorization and requires  
10 9 criminal history and child and dependent adult abuse record  
10 10 checks to be made in Iowa. Under current law, performing the  
10 11 checks and prohibition of employment are optional for  
10 12 hospitals but required for facilities, services, and programs  
10 13 under Code section 135C.33.

10 14 The bill amends Code section 135C.33, relating to required  
10 15 criminal history and child and dependent adult abuse record  
10 16 checks relating to employment by licensed health care  
10 17 facilities (a residential care facility, a nursing facility,  
10 18 an intermediate care facility for persons with mental illness,  
10 19 or an intermediate care facility for persons with mental  
10 20 retardation) and various other listed programs providing  
10 21 health-related services or programs that are accredited by the  
10 22 state or paid for with public funds.

10 23 The bill applies the same requirements for hospitals under  
10 24 Code section 135B.34 and for the health care facilities and  
10 25 other services and programs that are subject to Code section  
10 26 135C.33. This explanation describes the requirements  
10 27 applicable under both Code sections, noting where changes are  
10 28 made to current law.

10 29 In addition to criminal history and dependent adult abuse  
10 30 record checks, child abuse record checks are required by the  
10 31 bill. Under current law, child abuse record checks are  
10 32 optional under Code section 135C.33.

10 33 The bill provides a new contingent requirement in the event  
10 34 the ownership of a licensee is transferred. The records  
10 35 checks are required at the time of the ownership transfer for  
11 1 any employee for whom there is no documentation that the  
11 2 records checks have been performed. The employee may continue  
11 3 to be employed pending the performance of the records checks  
11 4 and any related evaluation.

11 5 Current law in Code section 135C.33 allows an evaluation to  
11 6 be performed by the department of human services for any crime  
11 7 or type of abuse to determine whether prohibition of a  
11 8 person's employment is warranted. The bill requires the  
11 9 department of public safety to notify employees concerning a  
11 10 prospective employee's criminal record and the department of  
11 11 human services to notify employers concerning a prospective  
11 12 employee's child or dependent adult abuse record, and of the  
11 13 employer's option to request the evaluation to be performed.

11 14 Once a person is employed, if after the employment  
11 15 application date the employee is convicted of a crime or a  
11 16 founded abuse record is entered, the employee is required to  
11 17 inform the employer within 48 hours. The employer is required  
11 18 to verify the information, and if verified, the bill's  
11 19 employment prohibitions and evaluation requirements are  
11 20 applicable. An employee may continue to be employed while the  
11 21 evaluation is being performed. An employee who fails to  
11 22 inform the employer within the required 48-hour period commits  
11 23 a serious misdemeanor. A serious misdemeanor is punishable by  
11 24 confinement for no more than one year and a fine of at least  
11 25 \$315 but not more than \$1,875.

11 26 If the employer is provided credible information, as  
11 27 determined by the employer, by someone other than the employee  
11 28 that the employee has committed a crime or has a record of  
11 29 founded abuse and the employee had not informed the employer  
11 30 within the 48-hour period, the employer must verify the  
11 31 information within 48 hours of being informed. If verified,  
11 32 the bill's employment prohibitions and evaluation requirements  
11 33 are applicable. An employee may continue to be employed while  
11 34 the evaluation is being performed. The employer may notify  
11 35 the county attorney concerning an employee who fails to notify  
12 1 an employer within the 48-hour period.  
12 2 LSB 5455HV 82  
12 3 jp/nh/8