

House Study Bill 637

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
INSPECTIONS AND APPEALS
BILL)

Passed Senate, Date _____ Passed House, 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 5455DP 82
7 jp/nh/8

PAG LIN

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 through a criminal or abuse
1 19 registry record check or a person's own admission that, during
1 20 the preceding five-year period, the person was convicted of a
1 21 felony crime under a law of any state or had a record of
1 22 founded child or dependent adult abuse entered in the abuse
1 23 registry, the person shall not be employed in the hospital.
1 24 b. For applicants, the five-year period referenced in this
1 25 subsection ends on the date of the employment application.
1 26 For persons currently employed at the time the person is
1 27 convicted of a crime or a record of child or dependent adult
1 28 abuse is entered in the abuse registry, the five-year period
1 29 is not applicable.
1 30 c. If the person was convicted of a crime other than a
1 31 felony, convicted of a felony crime prior to the preceding
1 32 five-year period, or had a record of founded child or
1 33 dependent adult abuse entered in the abuse registry prior to
1 34 the preceding five-year period, the department of human
1 35 services shall, upon the hospital's request, perform an
2 1 evaluation to determine whether the crime or founded child or
2 2 dependent adult abuse warrants prohibition of employment in
2 3 the hospital. The evaluation shall be performed in accordance
2 4 with procedures adopted for this purpose by the department of
2 5 human services. If the person was convicted of a simple
2 6 misdemeanor crime prior to the preceding five-year period, in
2 7 lieu of the evaluation performed by the department of human
2 8 services, the hospital may apply the same criteria used for
2 9 the department of human services evaluation in determining
2 10 whether the hospital will employ or continue employing the
2 11 person.
2 12 d. (1) If a person owns or operates more than one
2 13 hospital, and an employee of one of such hospitals is
2 14 transferred to another such hospital without a lapse in
2 15 employment, the hospital is not required to request additional
2 16 criminal and child and dependent adult abuse records checks of

2 17 that employee.

2 18 (2) If the ownership of a hospital is transferred, at the
2 19 time of transfer the records checks required by this section
2 20 shall be performed for each employee for whom there is no
2 21 documentation that such records checks have been performed.
2 22 The hospital may continue to employ such employee pending the
2 23 performance of the records checks and any related evaluation.

2 24 3. In an evaluation, the department of human services
2 25 shall consider the nature and seriousness of the crime or
2 26 founded child or dependent adult abuse in relation to the
2 27 position sought or held, the time elapsed since the commission
2 28 of the crime or founded child or dependent adult abuse, the
2 29 circumstances under which the crime or founded child or
2 30 dependent adult abuse was committed, the degree of
2 31 rehabilitation, the likelihood that the person will commit the
2 32 crime or founded child or dependent adult abuse again, and the
2 33 number of crimes or founded child or dependent adult abuses
2 34 committed by the person involved. If the department of human
2 35 services performs an evaluation for the purposes of this
3 1 section, the department of human services has final authority
3 2 in determining whether prohibition of the person's employment
3 3 is warranted.

3 4 4. a. Except as provided in paragraph "b" and subsection
3 5 2, a person who has committed a crime or has a record of
3 6 founded child or dependent adult abuse shall not be employed
3 7 in a hospital licensed under this chapter unless an evaluation
3 8 has been performed by the department of human services.

3 9 b. A person with a criminal or abuse record who is
3 10 employed by a hospital licensed under this chapter and is
3 11 hired by another licensee without a lapse in employment shall
3 12 be subject to the criminal history and abuse record checks
3 13 required pursuant to subsection 1. If an evaluation was
3 14 previously performed by the department of human services
3 15 concerning the person's criminal or abuse record and it was
3 16 determined that the record did not warrant prohibition of the
3 17 person's employment and the latest record checks do not
3 18 indicate a crime was committed or founded abuse record was
3 19 entered subsequent to that evaluation, the person may commence
3 20 employment with the other licensee while the department of
3 21 human services' evaluation of the latest record checks is
3 22 pending. Otherwise, the requirements of paragraph "a" remain
3 23 applicable to the person's employment.

3 24 5. a. If a person employed by a hospital that is subject
3 25 to this section is convicted of a crime or has a record of
3 26 founded child or dependent adult abuse entered in the abuse
3 27 registry after the person's employment application date, the
3 28 person shall inform the hospital of such information within
3 29 forty-eight hours of the criminal conviction or entry of the
3 30 record of founded child or dependent adult abuse. The
3 31 hospital shall act to verify the information within
3 32 forty-eight hours of notification. If the information is
3 33 verified, the requirements of subsections 2, 3, and 4
3 34 regarding employability and evaluations shall be applied by
3 35 the hospital to determine whether or not the person's
4 1 employment is continued. A person who is required by this
4 2 subsection to inform the person's employer of a conviction or
4 3 entry of an abuse record and fails to do so within the
4 4 required period commits a serious misdemeanor.

4 5 b. If a hospital receives credible information that a
4 6 person employed by the hospital has been convicted of a crime
4 7 or a record of founded child or dependent adult abuse has been
4 8 entered in the abuse registry after employment from a person
4 9 other than the employee and the employee has not informed the
4 10 hospital of such information within the period required under
4 11 paragraph "a", the hospital shall act to verify the credible
4 12 information within forty-eight hours of receipt of the
4 13 credible information. If the information is verified, the
4 14 requirements of subsections 2, 3, and 4 regarding
4 15 employability and evaluations shall be applied by the hospital
4 16 to determine whether or not the person's employment is
4 17 continued.

4 18 c. The hospital shall notify the county attorney for the
4 19 county where the hospital is located of any violation or
4 20 failure by an employee to notify the hospital of a criminal
4 21 conviction or entry of an abuse record within the period
4 22 required under paragraph "a".

4 23 6. A hospital licensed in this state may access the single
4 24 contact repository established by the department pursuant to
4 25 section 135C.33 as necessary for the hospital to perform
4 26 record checks of persons employed or being considered for
4 27 employment by the hospital.

4 28 Sec. 2. Section 135C.33, Code 2007, is amended to read as
4 29 follows:

4 30 135C.33 EMPLOYEES == CHILD OR DEPENDENT ADULT ABUSE
4 31 INFORMATION AND CRIMINAL RECORDS RECORD CHECKS == EVALUATIONS
4 32 == APPLICATION TO OTHER PROVIDERS == PENALTY.

4 33 1. ~~Beginning July 1, 1997, prior~~ Prior to employment of a
4 34 person in a facility, the facility shall request that the
4 35 department of public safety perform a criminal history check
5 1 and the department of human services perform a child and
5 2 dependent adult abuse record check checks of the person in
5 3 this state. ~~In addition, the facility may request that the~~
~~5 4 department of human services perform a child abuse record~~
~~5 5 check in this state. Beginning July 1, 1997, a~~ A facility
5 6 shall inform all persons prior to employment regarding the
5 7 performance of the records checks and shall obtain, from the
5 8 persons, a signed acknowledgment of the receipt of the
5 9 information. ~~Additionally, a~~ A facility shall include the
5 10 following inquiry in an application for employment: "Do you
5 11 have a record of founded child or dependent adult abuse or
5 12 have you ever been convicted of a crime, in this state or any
5 13 other state?"

5 14 2. a. ~~If it is determined through a criminal or abuse~~
5 15 registry record check or a person's own admission that, during
5 16 the preceding five-year period, the person has been was
5 17 convicted of a felony crime under a law of any state or has
5 18 had a record of founded child or dependent adult abuse entered
5 19 in the abuse registry, the department of human services shall,
5 20 upon the facility's request, perform an evaluation to
5 21 determine whether the crime or founded child or dependent
5 22 adult abuse warrants prohibition of employment person shall
5 23 not be employed in the facility.

5 24 b. For applicants, the five-year period referenced in this
5 25 subsection ends on the date of the employment application.
5 26 For persons currently employed at the time the person is
5 27 convicted of a crime or a record of child or dependent abuse
5 28 is entered in the abuse registry, the five-year period is not
5 29 applicable.

5 30 c. If the person was convicted of a crime other than a
5 31 felony, convicted of a felony crime prior to the preceding
5 32 five-year period, or had a record of founded child or
5 33 dependent adult abuse entered prior to the preceding five-year
5 34 period, the department of human services shall, upon the
5 35 facility's request, perform an evaluation to determine whether
6 1 the crime or founded child or dependent adult abuse warrants
6 2 prohibition of employment in the facility. The evaluation
6 3 shall be performed in accordance with procedures adopted for
6 4 this purpose by the department of human services. If the
6 5 person was convicted of a simple misdemeanor crime prior to
6 6 the preceding five-year period, in lieu of the evaluation
6 7 performed by the department of human services, the facility
6 8 may apply the same criteria used for the department of human
6 9 services evaluation in determining whether the facility will
6 10 employ or continue employing the person.

6 11 d. (1) If a person owns or operates more than one
6 12 facility, and an employee of one of such facilities is
6 13 transferred to another such facility without a lapse in
6 14 employment, the facility is not required to request additional
6 15 criminal and child and dependent adult abuse record checks of
6 16 that employee.

6 17 (2) If the ownership of a facility is transferred, at the
6 18 time of transfer the records checks required by this section
6 19 shall be performed for each employee for whom there is no
6 20 documentation that such records checks have been performed.
6 21 The facility may continue to employ such employee pending the
6 22 performance of the records checks and any related evaluation.

6 23 2. ~~If the department of public safety determines that a~~
~~6 24 person has committed a crime and is to be employed in a~~
~~6 25 facility licensed under this chapter, the department of public~~
~~6 26 safety shall notify the licensee that an evaluation, if~~
~~6 27 requested by the facility, will be conducted by the department~~
~~6 28 of human services to determine whether prohibition of the~~
~~6 29 person's employment is warranted. If a department of human~~
~~6 30 services child or dependent adult abuse record check shows~~
~~6 31 that the person has a record of founded child or dependent~~
~~6 32 adult abuse, the department of human services shall inform the~~
~~6 33 licensee that an evaluation, if requested by the facility,~~
~~6 34 will be conducted to determine whether prohibition of the~~
~~6 35 person's employment is warranted.~~

7 1 3. In an evaluation, the department of human services
7 2 shall consider the nature and seriousness of the crime or
7 3 founded child or dependent adult abuse in relation to the

7 4 position sought or held, the time elapsed since the commission
7 5 of the crime or founded child or dependent adult abuse, the
7 6 circumstances under which the crime or founded child or
7 7 dependent adult abuse was committed, the degree of
7 8 rehabilitation, the likelihood that the person will commit the
7 9 crime or founded child or dependent adult abuse again, and the
7 10 number of crimes or founded child or dependent adult abuses
7 11 committed by the person involved. ~~The~~ If the department of
7 12 human services performs an evaluation for the purposes of this
7 13 section, the department of human services has final authority
7 14 in determining whether prohibition of the person's employment
7 15 is warranted.

7 16 4. a. Except as provided in paragraph "b" and subsection
7 17 2, a person who has committed a crime or has a record of
7 18 founded child or dependent adult abuse shall not be employed
7 19 in a facility licensed under this chapter unless an evaluation
7 20 has been performed by the department of human services. ~~If~~
7 21 ~~the department of human services determines from the~~
7 22 ~~evaluation that the person has committed a crime or has a~~
7 23 ~~record of founded child or dependent adult abuse which~~
7 24 ~~warrants prohibition of employment, the person shall not be~~
7 25 ~~employed in a facility licensed under this chapter.~~

7 26 b. A person with a criminal or abuse record who is
7 27 employed by a facility licensed under this chapter and is
7 28 hired by another licensee without a lapse in employment shall
7 29 be subject to the criminal history and abuse record checks
7 30 required pursuant to subsection 1. If an evaluation was
7 31 previously performed by the department of human services
7 32 concerning the person's criminal or abuse record and it was
7 33 determined that the record did not warrant prohibition of the
7 34 person's employment and the latest record checks do not
7 35 indicate a crime was committed or founded abuse record was
8 1 entered subsequent to that evaluation, the person may commence
8 2 employment with the other licensee while the department of
8 3 human services' evaluation of the latest record checks is
8 4 pending. Otherwise, the requirements of paragraph "a" remain
8 5 applicable to the person's employment.

8 6 5. ~~a. Beginning July 1, 1998, this~~ This section shall
8 7 also apply to prospective employees of all of the following,
8 8 if the provider is regulated by the state or receives any
8 9 state or federal funding:

8 10 ~~a. (1)~~ An employee of a homemaker, home=health aide,
8 11 home=care aide, adult day services, or other provider of
8 12 in=home services if the employee provides direct services to
8 13 consumers.

8 14 ~~b. (2)~~ An employee of a hospice, if the employee provides
8 15 direct services to consumers.

8 16 ~~c. (3)~~ An employee who provides direct services to
8 17 consumers under a federal home and community=based services
8 18 waiver.

8 19 ~~d. (4)~~ An employee of an elder group home certified under
8 20 chapter 231B, if the employee provides direct services to
8 21 consumers.

8 22 ~~e. (5)~~ An employee of an assisted living program
8 23 certified under chapter 231C, if the employee provides direct
8 24 services to consumers.

8 25 b. In substantial conformance with the provisions of this
8 26 section, prior to the employment of such an employee, the
8 27 provider shall request the performance of the criminal and
8 28 child and dependent adult abuse record checks ~~and may request~~
8 29 ~~the performance of the child abuse record checks.~~ The
8 30 provider shall inform the prospective employee and obtain the
8 31 prospective employee's signed acknowledgment. The department
8 32 of human services shall perform the evaluation of any criminal
8 33 record or founded child or dependent adult abuse record and
8 34 shall make the determination of whether a prospective employee
8 35 of a provider shall not be employed by the provider.

9 1 6. a. The department of inspections and appeals, in
9 2 conjunction with other departments and agencies of state
9 3 government involved with criminal history and abuse registry
9 4 information, shall establish a single contact repository for
9 5 facilities and other providers to have electronic access to
9 6 data to perform background checks for purposes of employment,
9 7 as required of the facilities and other providers under this
9 8 section.

9 9 b. The department may access the single contact repository
9 10 for any of the following purposes:

9 11 (1) To verify data transferred from the department's nurse
9 12 aide registry to the repository.

9 13 (2) To conduct record checks of applicants for employment
9 14 with the department.

9 15 7. a. If a person employed by a facility, service, or
9 16 program employer that is subject to this section is convicted
9 17 of a crime or has a record of founded child or dependent adult
9 18 abuse entered in the abuse registry after the person's
9 19 employment application date, the person shall inform the
9 20 employer of such information within forty-eight hours of the
9 21 criminal conviction or entry of the record of founded child or
9 22 dependent adult abuse. The employer shall act to verify the
9 23 information within forty-eight hours of notification. If the
9 24 information is verified, the requirements of subsections 2, 3,
9 25 and 4 regarding employability and evaluations shall be applied
9 26 by the employer to determine whether or not the person's
9 27 employment is continued. A person who is required by this
9 28 subsection to inform the person's employer of a conviction or
9 29 entry of an abuse record and fails to do so within the
9 30 required period commits a serious misdemeanor.

9 31 b. If a facility, service, or program employer receives
9 32 credible information that a person employed by the employer
9 33 has been convicted of a crime or a record of founded child or
9 34 dependent adult abuse has been entered in the abuse registry
9 35 after employment from a person other than the employee and the
10 1 employee has not informed the employer of such information
10 2 within the period required under paragraph "a", the employer
10 3 shall act to verify the credible information within
10 4 forty-eight hours of receipt of the credible information. If
10 5 the information is verified, the requirements of subsections
10 6 2, 3, and 4 regarding employability and evaluations shall be
10 7 applied to determine whether or not the person's employment is
10 8 continued.

10 9 c. The employer shall notify the county attorney for the
10 10 county where the employer is located of any violation or
10 11 failure by an employee to notify the employer of a criminal
10 12 conviction or entry of an abuse record within the period
10 13 required under paragraph "a".

10 14 EXPLANATION

10 15 This bill relates to criminal and abuse records of
10 16 prospective and current employees of licensed hospitals and
10 17 health care facilities and certain health-related programs and
10 18 services and provides penalties.

10 19 Under current law, Code section 135B.34 authorizes
10 20 hospitals licensed in this state to access the single contact
10 21 repository established by the department of inspections and
10 22 appeals in order for the hospital to perform record checks of
10 23 persons employed by or being considered for employment by the
10 24 hospital. The bill retains this authorization and requires
10 25 criminal history and child and dependent adult abuse record
10 26 checks to be made in Iowa. Under current law, performing the
10 27 checks and prohibition of employment are optional for
10 28 hospitals but required for facilities, services, and programs
10 29 under Code section 135C.33.

10 30 The bill amends Code section 135C.33, relating to required
10 31 criminal history and child and dependent adult abuse record
10 32 checks relating to employment by licensed health care
10 33 facilities (a residential care facility, a nursing facility,
10 34 an intermediate care facility for persons with mental illness,
10 35 or an intermediate care facility for persons with mental
11 1 retardation) and various other listed programs providing
11 2 health-related services or programs that are accredited by the
11 3 state or paid for with public funds.

11 4 The bill applies the same requirements for hospitals under
11 5 Code section 135B.34 and for the health care facilities and
11 6 other services and programs that are subject to Code section
11 7 135C.33. This explanation describes the requirements
11 8 applicable under both Code sections, noting where changes are
11 9 made to current law.

11 10 In addition to criminal history and dependent adult abuse
11 11 record checks, child abuse record checks are required by the
11 12 bill. Under current law, child abuse record checks are
11 13 optional under Code section 135C.33.

11 14 The bill provides a new contingent requirement in the event
11 15 the ownership of a licensee is transferred. The records
11 16 checks are required at the time of the ownership transfer for
11 17 any employee for whom there is no documentation that the
11 18 records checks have been performed. The employee may continue
11 19 to be employed pending the performance of the records checks
11 20 and any related evaluation.

11 21 Current law in Code section 135C.33 allows an evaluation to
11 22 be performed by the department of human services for any crime
11 23 or type of abuse to determine whether prohibition of a
11 24 person's employment is warranted. The bill prohibits
11 25 employment of any person with a felony criminal conviction or

11 26 record of founded child or dependent adult abuse entered in
11 27 the abuse registry during the period within five years prior
11 28 to the date of the employment application. For felony crime
11 29 convictions and founded abuse records entered before the five=
11 30 year period and crimes other than a felony, the department of
11 31 human services (DHS) can be requested to perform an evaluation
11 32 by the employer. For misdemeanor criminal convictions that
11 33 were prior to the five-year period, the employer may perform
11 34 the evaluation using DHS criteria and determine whether or not
11 35 to employ the person.

12 1 Once a person is employed, if after the employment
12 2 application date the employee is convicted of a crime or a
12 3 founded abuse record is entered, the employee is required to
12 4 inform the employer within 48 hours. The employer is required
12 5 to verify the information, and if verified, the bill's
12 6 employment prohibitions and evaluation requirements are
12 7 applicable. An employee who fails to inform the employer
12 8 within the required 48-hour period commits a serious
12 9 misdemeanor. A serious misdemeanor is punishable by
12 10 confinement for no more than one year and a fine of at least
12 11 \$315 but not more than \$1,875.

12 12 If the employer is provided credible information by someone
12 13 other than the employee that the employee has committed a
12 14 crime or has a record of founded abuse and the employee had
12 15 not informed the employer within the 48-hour period, the
12 16 employer must verify the information within 48 hours of being
12 17 informed. If verified, the bill's employment prohibitions and
12 18 evaluation requirements are applicable. The employer is
12 19 required to notify the county attorney concerning an employee
12 20 who fails to notify an employer within the 48-hour period.

12 21 LSB 5455DP 82

12 22 jp/nh/8.1