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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 2039

03/09/2021 Authored by Raleigh
The bill was read for the first time and referred to the Committee on Education Policy

1.1 A bill for an act
1.2 relating to education; expanding background check requirements for school
1.3 employees, volunteers, and contractors; requiring drug and alcohol testing;
1.4 amending Minnesota Statutes 2020, sections 13.43, subdivision 16; 123B.03,
1.5 subdivisions 1, 1a, by adding a subdivision; 181.951, subdivisions 4, 7.
1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2020, section 13.43, subdivision 16, is amended to read:

1.8 Subd. 16. School district or charter school disclosure of violence or inappropriate
1.9 sexual contact. The superintendent of (a) A school district or the superintendent's designee,
1.10 or a person having administrative control of a charter school; must release to a requesting
1.11 school district or charter school private personnel data on a current or former employee
1.12 related to acts of violence toward or sexual contact with a student, if: the employee's job
1.13 performance and disciplinary record if the requesting school district or charter school affirms
1.14 in writing that it has offered the employee an interview as part of its hiring process. Data
1.15 relating to the employee's job performance includes performance evaluations and records
1.16 related to any complaints or charges against the employee. The employee's disciplinary
1.17 record includes any investigation conducted by, or on behalf of, the school district or charter
1.18 school, law enforcement, or the commissioner of education, regardless of whether the
1.19 investigation resulted in any disciplinary action. The school district or charter school
1.20 providing the personnel data must inform the requesting school district or charter school
1.21 whether the subject of the information had an opportunity to review and contest the accuracy
1.22 and completeness of the personnel data before it was released.

2.1 ~~(1) an investigation conducted by or on behalf of the school district or law enforcement~~
 2.2 ~~affirmed the allegations in writing prior to release and the investigation resulted in the~~
 2.3 ~~resignation of the subject of the data; or~~

2.4 ~~(2) the employee resigned while a complaint or charge involving the allegations was~~
 2.5 ~~pending, the allegations involved acts of sexual contact with a student, and the employer~~
 2.6 ~~informed the employee in writing, before the employee resigned, that if the employee resigns~~
 2.7 ~~while the complaint or charge is still pending, the employer must release private personnel~~
 2.8 ~~data about the employee's alleged sexual contact with a student to a school district or charter~~
 2.9 ~~school requesting the data after the employee applies for employment with that school~~
 2.10 ~~district or charter school and the data remain classified as provided in chapter 13.~~

2.11 (b) Data ~~that are~~ released under this subdivision must not include data on ~~the~~ a student.

2.12 Sec. 2. Minnesota Statutes 2020, section 123B.03, subdivision 1, is amended to read:

2.13 Subdivision 1. **Background check required.** (a) A school hiring authority ~~shall~~ must
 2.14 request a criminal history background check ~~from the superintendent of the Bureau of~~
 2.15 ~~Criminal Apprehension~~ and screening as described in paragraph (f) on all individuals who
 2.16 are offered employment in a school and on all individuals, except enrolled student volunteers,
 2.17 who are offered the opportunity to provide athletic coaching services or other extracurricular
 2.18 academic coaching services to a school, regardless of whether any compensation is paid.
 2.19 In order for an individual to be eligible for employment or to provide the services, the
 2.20 individual must provide an executed criminal history consent form, a fingerprint card, and
 2.21 a money order or check payable to either the Bureau of Criminal Apprehension or the school
 2.22 hiring authority, at the discretion of the school hiring authority, in an amount equal to the
 2.23 actual cost to the Bureau of Criminal Apprehension and the school district of conducting
 2.24 the criminal history background check. A school hiring authority deciding to receive payment
 2.25 may, at its discretion, accept payment in the form of a negotiable instrument other than a
 2.26 money order or check and ~~shall~~ must pay the superintendent of the Bureau of Criminal
 2.27 Apprehension directly to conduct the background check. ~~The superintendent of the Bureau~~
 2.28 ~~of Criminal Apprehension shall conduct the background check by retrieving criminal history~~
 2.29 ~~data as defined in section 13.87.~~ A school hiring authority, at its discretion, may decide not
 2.30 to request a criminal history background check and screening on an individual who holds
 2.31 an initial entrance license issued by the Professional Educator Licensing and Standards
 2.32 Board or the commissioner of education within the 12 months preceding an offer of
 2.33 employment if the criminal history background check satisfies the requirements of paragraph
 2.34 (f).

3.1 (b) A school hiring authority may use the results of a criminal background check
 3.2 conducted at the request of another school hiring authority if:

3.3 (1) the results of the criminal background check are on file with the other school hiring
 3.4 authority or otherwise accessible;

3.5 (2) the other school hiring authority conducted a criminal background check within the
 3.6 previous 12 months;

3.7 (3) the individual who is the subject of the criminal background check executes a written
 3.8 consent form giving a school hiring authority access to the results of the check; and

3.9 (4) there is no reason to believe that the individual has committed an act subsequent to
 3.10 the check that would disqualify the individual for employment.

3.11 (c) A school hiring authority ~~may, at its discretion,~~ must request a criminal history
 3.12 background check ~~from the superintendent of the Bureau of Criminal Apprehension and~~
 3.13 screening on any individual who seeks to enter a school or its grounds for the purpose of
 3.14 serving as a school volunteer or working as an independent contractor or student employee,
 3.15 and who is likely to have either unsupervised contact or regular contact with students. A
 3.16 school hiring authority may, at its discretion, request a criminal background check from the
 3.17 superintendent of the Bureau of Criminal Apprehension on any other individual who seeks
 3.18 to enter a school or its grounds for purposes of serving as a school volunteer or working as
 3.19 an independent contractor or student employee. In order for an individual to enter a school
 3.20 or its grounds under this paragraph when the school hiring authority ~~decides to request~~
 3.21 requests a criminal history background check on the individual, the individual first must
 3.22 provide an executed criminal history consent form and a money order, check, or other
 3.23 negotiable instrument payable to the school district in an amount equal to the actual cost to
 3.24 the Bureau of Criminal Apprehension and the school district of conducting the criminal
 3.25 history background check. Notwithstanding section 299C.62, subdivision 1, the cost of the
 3.26 criminal history background check under this paragraph is the responsibility of the individual
 3.27 unless a school hiring authority decides to pay the costs of conducting a background check
 3.28 under this paragraph. If the school hiring authority pays the costs, the individual who is the
 3.29 subject of the background check need not pay for it.

3.30 (d) For all nonstate residents who are offered employment in a school, a school hiring
 3.31 authority ~~shall~~ must request a criminal history background check and screening as described
 3.32 in paragraph (f) on such individuals ~~from the superintendent of the Bureau of Criminal~~
 3.33 ~~Apprehension and from the government agency performing the same function in the resident~~
 3.34 ~~state or, if no government entity performs the same function in the resident state, from the~~

4.1 ~~Federal Bureau of Investigation~~. Such individuals must provide an executed criminal history
4.2 consent form and a money order, check, or other negotiable instrument payable to the school
4.3 hiring authority in an amount equal to the actual cost to the government agencies and the
4.4 school district of conducting the criminal history background check and screening.

4.5 Notwithstanding section 299C.62, subdivision 1, the cost of the criminal history background
4.6 check and screening under this paragraph is the responsibility of the individual.

4.7 (e) At the beginning of each school year or when a student enrolls, a school hiring
4.8 authority must notify parents and guardians about the school hiring authority's policy
4.9 requiring a criminal history background check and screening on employees and other
4.10 individuals who provide services to the school, and identify those positions subject to a
4.11 background check and screening and the extent of the hiring authority's discretion in requiring
4.12 a background check and screening. The school hiring authority may include the notice in
4.13 the student handbook, a school policy guide, or other similar communication. Nothing in
4.14 this paragraph affects a school hiring authority's ability to request a criminal history
4.15 background check on an individual under paragraph (c).

4.16 (f) A background check and screening under this subdivision must include:

4.17 (1) a criminal history background check by the superintendent of the Bureau of Criminal
4.18 Apprehension that is conducted by retrieving criminal history data as defined in section
4.19 13.87 and, notwithstanding section 243.166, subdivision 7, indicates whether the subject
4.20 of the background check has registered as a predatory offender in accordance with section
4.21 243.166, subdivision 1b;

4.22 (2) a national criminal history check based on the individual's fingerprints; and

4.23 (3) drug and alcohol testing in accordance with section 181.951, subdivision 2.

4.24 (g) The superintendent of the Bureau of Criminal Apprehension must accept the national
4.25 criminal history check request and the fingerprints of the applicant under paragraph (f). The
4.26 superintendent of the Bureau of Criminal Apprehension may exchange fingerprints with
4.27 the Federal Bureau of Investigation and request the Federal Bureau of Investigation to
4.28 conduct a criminal history check.

4.29 (h) A school hiring authority that is required to conduct a background check and screening
4.30 under this subdivision must repeat the background check and screening at least every three
4.31 years. A school hiring authority may request employees, volunteers, and contractors to
4.32 undergo drug and alcohol testing on a random selection basis.

5.1 Sec. 3. Minnesota Statutes 2020, section 123B.03, subdivision 1a, is amended to read:

5.2 Subd. 1a. **Investigation of background checks, screenings, and disciplinary actions**
5.3 **taken against prospective teachers.** (a) At the time a school board or other hiring authority
5.4 conducts the criminal history background check and screening required under subdivision
5.5 1 on an individual offered employment as a teacher, the school board or other hiring authority
5.6 must contact the Professional Educator Licensing and Standards Board to determine whether
5.7 the board has taken disciplinary action against the teacher. The school board or other hiring
5.8 authority must obtain access to data that are public under section 13.41, subdivision 5, from
5.9 the Professional Educator Licensing and Standards Board that relate to the substance of the
5.10 disciplinary action. In addition, the school board or other hiring authority must require the
5.11 individual to provide information in the employment application regarding all current and
5.12 previous disciplinary actions in Minnesota and other states taken against the individual's
5.13 teaching license and indicate to the applicant that intentionally submitting false or incomplete
5.14 information is a ground for dismissal.

5.15 (b) At the time a school board or other hiring authority conducts the criminal history
5.16 background check and screening required under subdivision 1 on an individual offered
5.17 employment as a teacher, the school board or other hiring authority must request a record
5.18 of the individual's job performance and a record of disciplinary action from a school district
5.19 or charter school that previously employed the individual.

5.20 ~~(b)~~ (c) For purposes of this subdivision, "disciplinary action" does not include an action
5.21 based on court-ordered child support or maintenance payment arrearages under section
5.22 214.101 or delinquent state taxes under section 270C.72.

5.23 Sec. 4. Minnesota Statutes 2020, section 123B.03, is amended by adding a subdivision to
5.24 read:

5.25 Subd. 1b. **Transportation contractor.** A school board that contracts with a carrier for
5.26 the transportation of students must require the carrier to request at least every three years a
5.27 criminal history background check and screening consistent with section 123B.03, subdivision
5.28 1, paragraph (f), on all operators and other carrier employees present when students are
5.29 being transported.

5.30 Sec. 5. Minnesota Statutes 2020, section 181.951, subdivision 4, is amended to read:

5.31 Subd. 4. **Random testing.** An employer may request or require employees to undergo
5.32 drug and alcohol testing on a random selection basis only if:

- 6.1 (1) they are employed in safety-sensitive positions,~~or~~₂
- 6.2 (2) they are employed as professional athletes if the professional athlete is subject to a
- 6.3 collective bargaining agreement permitting random testing but only to the extent consistent
- 6.4 with the collective bargaining agreement; or
- 6.5 (3) they are employed or volunteer in a school as defined in section 123B.03, subdivision
- 6.6 3.

6.7 Sec. 6. Minnesota Statutes 2020, section 181.951, subdivision 7, is amended to read:

6.8 Subd. 7. **No legal duty to test.** Employers, except for school hiring authorities under

6.9 section 123B.03, subdivision 3, do not have a legal duty to request or require an employee

6.10 or job applicant to undergo drug or alcohol testing as authorized in this section.