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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 2491

03/23/2017 Authored by Olson; Mahoney; Dehn, R.; Ward; Fischer and others
The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act
1.2 relating to employment; limiting reliance on criminal history for employment
1.3 purposes; amending Minnesota Statutes 2016, sections 181.53; 181.981, subdivision
1.4 1; 364.02, subdivisions 4, 6; 364.03; 364.04; 364.05; 364.06, subdivision 2; 364.07.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2016, section 181.53, is amended to read:

1.7 181.53 CONDITIONS PRECEDENT TO EMPLOYMENT NOT REQUIRED.

1.8 No person, whether acting directly or through an agent, or as the agent or employee of
1.9 another, shall require as a condition precedent to employment any written statement as to
1.10 the participation of the applicant in a strike, or as to a personal record, for more than one
1.11 year immediately preceding the date of application; nor shall any person, acting in any of
1.12 these capacities, use or require blanks or forms of application for employment in
1.13 contravention of this section. Nothing in this section precludes an employer from requesting
1.14 or considering an applicant's criminal history pursuant to section 364.021 chapter 364 or
1.15 other applicable law.

1.16 Sec. 2. Minnesota Statutes 2016, section 181.981, subdivision 1, is amended to read:

1.17 Subdivision 1. Limitation on admissibility of criminal history. Information regarding
1.18 a criminal history record of an employee or former employee may not be introduced as
1.19 evidence in a civil action against a private employer or its employees or agents that is based
1.20 on the conduct of the employee or former employee, if:

2.1 (1) the duties of the position of employment did not expose others to a greater degree
 2.2 of risk than that created by the employee or former employee interacting with the public
 2.3 outside of the duties of the position or that might be created by being employed in general;

2.4 (2) before the occurrence of the act giving rise to the civil action, a court order sealed
 2.5 any record of the criminal case or the employee or former employee received a pardon;

2.6 (3) the record is of an arrest or charge that did not result in a criminal conviction; or

2.7 (4) the action is based solely upon the employer's compliance with ~~section 364.021~~
 2.8 chapter 364.

2.9 Sec. 3. Minnesota Statutes 2016, section 364.02, subdivision 4, is amended to read:

2.10 Subd. 4. **Public Employment.** "Public Employment" ~~includes all employment with~~
 2.11 means the retention of an individual for pay by:

2.12 (1) the state of Minnesota, its agencies, or political subdivisions; or

2.13 (2) a private employer hiring an individual who will conduct the majority of the
 2.14 individual's work in this state.

2.15 Sec. 4. Minnesota Statutes 2016, section 364.02, subdivision 6, is amended to read:

2.16 Subd. 6. **Hiring or licensing authority.** "Hiring or licensing authority" ~~shall mean~~
 2.17 means:

2.18 (1) the person, board, commission, or department of the state of Minnesota, its agencies
 2.19 or political subdivisions, responsible by law for the hiring of persons for public employment
 2.20 or the licensing of persons for occupations; or

2.21 (2) the representative of a private business that is hiring a person for employment.

2.22 Sec. 5. Minnesota Statutes 2016, section 364.03, is amended to read:

2.23 **364.03 RELATION OF CONVICTION TO EMPLOYMENT OR OCCUPATION.**

2.24 Subdivision 1. **No disqualification from employment or licensed occupations.**

2.25 Notwithstanding any other provision of law to the contrary, no person shall be disqualified
 2.26 from ~~public~~ employment, nor shall a person be disqualified from pursuing, practicing, or
 2.27 engaging in any occupation for which a license is required solely or in part because of a
 2.28 prior conviction of a crime or crimes, unless the crime or crimes for which convicted directly
 2.29 relate to the position of employment sought or the occupation for which the license is sought.

3.1 Subd. 2. **Conviction relating to public employment sought.** In determining if a
3.2 conviction directly relates to the position of public employment sought or the occupation
3.3 for which the license is sought, the hiring or licensing authority shall consider:

3.4 (1) the nature and seriousness of the crime or crimes for which the individual was
3.5 convicted;

3.6 (2) the relationship of the crime or crimes to the purposes of regulating the position of
3.7 public employment sought or the occupation for which the license is sought;

3.8 (3) the relationship of the crime or crimes to the ability, capacity, and fitness required
3.9 to perform the duties and discharge the responsibilities of the position of employment or
3.10 occupation.

3.11 Subd. 3. **Evidence of rehabilitation.** (a) A person who has been convicted of a crime
3.12 or crimes which directly relate to the public employment sought or to the occupation for
3.13 which a license is sought shall not be disqualified from the employment or occupation if
3.14 the person can show competent evidence of sufficient rehabilitation and present fitness to
3.15 perform the duties of the public employment sought or the occupation for which the license
3.16 is sought. Competent evidence of sufficient rehabilitation may be established by the
3.17 production of the person's most recent certified copy of a United States Department of
3.18 Defense form DD-214 showing the person's honorable discharge, or separation under
3.19 honorable conditions, from the United States armed forces for military service rendered
3.20 following conviction for any crime that would otherwise disqualify the person from the
3.21 public employment sought or the occupation for which the license is sought, or:

3.22 (1) a copy of the local, state, or federal release order; and

3.23 (2) evidence showing that at least one year has elapsed since release from any local,
3.24 state, or federal correctional institution without subsequent conviction of a crime; and
3.25 evidence showing compliance with all terms and conditions of probation or parole; or

3.26 (3) a copy of the relevant Department of Corrections discharge order or other documents
3.27 showing completion of probation or parole supervision.

3.28 (b) In addition to the documentary evidence presented, the licensing or hiring authority
3.29 shall consider any evidence presented by the applicant regarding:

3.30 (1) the nature and seriousness of the crime or crimes for which convicted;

3.31 (2) all circumstances relative to the crime or crimes, including mitigating circumstances
3.32 or social conditions surrounding the commission of the crime or crimes;

- 4.1 (3) the age of the person at the time the crime or crimes were committed;
- 4.2 (4) the length of time elapsed since the crime or crimes were committed; and
- 4.3 (5) all other competent evidence of rehabilitation and present fitness presented, including,
- 4.4 but not limited to, letters of reference by persons who have been in contact with the applicant
- 4.5 since the applicant's release from any local, state, or federal correctional institution.

4.6 (c) The certified copy of a person's United States Department of Defense form DD-214

4.7 showing the person's honorable discharge or separation under honorable conditions from

4.8 the United States armed forces ceases to qualify as competent evidence of sufficient

4.9 rehabilitation for purposes of this section upon the person's conviction for any gross

4.10 misdemeanor or felony committed by the person subsequent to the effective date of that

4.11 honorable discharge or separation from military service.

4.12 Sec. 6. Minnesota Statutes 2016, section 364.04, is amended to read:

4.13 **364.04 AVAILABILITY OF RECORDS.**

4.14 The following criminal records shall not be used, ~~distributed, or disseminated by the~~

4.15 ~~state of Minnesota, its agents or political subdivisions~~ in connection with any application

4.16 for ~~public~~ employment nor in connection with an application for a license:

- 4.17 (1) records of arrest not followed by a valid conviction;₂
- 4.18 (2) convictions which have been, pursuant to law, annulled or expunged; and
- 4.19 (3) misdemeanor convictions for which no jail sentence can be imposed.

4.20 Sec. 7. Minnesota Statutes 2016, section 364.05, is amended to read:

4.21 **364.05 NOTIFICATION UPON DENIAL OF EMPLOYMENT OR**

4.22 **DISQUALIFICATION FROM OCCUPATION.**

4.23 If a hiring or licensing authority denies an individual a position of ~~public~~ employment

4.24 or disqualifies the individual from pursuing, practicing, or engaging in any occupation for

4.25 which a license is required, solely or in part because of the individual's prior conviction of

4.26 a crime, the hiring or licensing authority shall notify the individual in writing of the following:

- 4.27 (1) the grounds and reasons for the denial or disqualification;
- 4.28 (2) the applicable complaint and grievance procedure as set forth in section 364.06;
- 4.29 (3) the earliest date the person may reapply for a position of ~~public~~ employment or a
- 4.30 license; and

5.1 (4) that all competent evidence of rehabilitation presented will be considered upon
5.2 reapplication.

5.3 Sec. 8. Minnesota Statutes 2016, section 364.06, subdivision 2, is amended to read:

5.4 Subd. 2. **Private employers.** (a) The commissioner of human rights shall investigate
5.5 violations of ~~section 364.021~~ this chapter by a private employer. If the commissioner finds
5.6 that a violation of this chapter has occurred, the commissioner may impose penalties as
5.7 provided in paragraphs (b) and (c).

5.8 (b) For violations of section 364.021 that occur before January 1, 2015, or violations of
5.9 other provisions of this chapter that occur before January 1, 2019, the penalties are as
5.10 follows:

5.11 (1) for the first violation, the commissioner shall issue a written warning to the employer
5.12 that includes a notice regarding the penalties for subsequent violations;

5.13 (2) if a first violation is not remedied within 30 days of the issuance of a warning under
5.14 clause (1), the commissioner may impose up to a \$500 fine; and

5.15 (3) subsequent violations of section 364.021 before January 1, 2015, or subsequent
5.16 violations of other provisions of this chapter that occur before January 1, 2019, are subject
5.17 to a fine of up to \$500 per violation, not to exceed \$500 in a calendar month.

5.18 (c) For violations of section 364.021 that occur after December 31, 2014, or violations
5.19 of other provisions of this chapter that occur after December 31, 2018, the penalties are as
5.20 follows:

5.21 (1) for employers that employ ten or fewer persons at a site in this state, the penalty is
5.22 up to \$100 for each violation, not to exceed \$100 in a calendar month;

5.23 (2) for employers that employ 11 to 20 persons at a site in this state, the penalty is up
5.24 to \$500 for each violation, not to exceed \$500 in a calendar month; and

5.25 (3) for employers that employ more than 20 persons at one or more sites in this state,
5.26 the penalty is up to \$500 for each violation, not to exceed \$2,000 in a calendar month.

5.27 (d) The remedies under this subdivision are exclusive. A private employer is not otherwise
5.28 liable for complying with or failing to comply with ~~section 364.021~~ this chapter.

5.29 Sec. 9. Minnesota Statutes 2016, section 364.07, is amended to read:

5.30 **364.07 APPLICATION.**

6.1 The provisions of sections 364.01 to 364.10 shall prevail over any other laws and rules
6.2 which purport to govern the granting, denial, renewal, suspension, or revocation of a license
6.3 or the initiation, suspension, or termination of ~~pub~~lie employment on the grounds of
6.4 conviction of a crime or crimes. In deciding to grant, deny, revoke, suspend, or renew a
6.5 license, or to deny, suspend, or terminate ~~pub~~lie employment for a lack of good moral
6.6 character or the like, the hiring or licensing authority may consider evidence of conviction
6.7 of a crime or crimes but only in the same manner and to the same effect as provided for in
6.8 sections 364.01 to 364.10. Nothing in sections 364.01 to 364.10 shall be construed to
6.9 otherwise affect relevant proceedings involving the granting, denial, renewal, suspension,
6.10 or revocation of a license or the initiation, suspension, or termination of ~~pub~~lie employment.