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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 3508

03/08/2018 Authored by Moran; Zerwas; Carlson, A.; Lee; Hamilton and others
The bill was read for the first time and referred to the Committee on Health and Human Services Reform

1.1 A bill for an act
1.2 relating to human services; prohibiting disqualification of individuals subject to
1.3 human services background studies with expunged criminal records; amending
1.4 Minnesota Statutes 2016, sections 245C.14; 245C.15, by adding a subdivision;
1.5 245C.24, by adding a subdivision; Minnesota Statutes 2017 Supplement, section
1.6 245C.16, subdivision 1.

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

1.8 Section 1. Minnesota Statutes 2016, section 245C.14, is amended to read:

1.9 245C.14 DISQUALIFICATION.

1.10 Subdivision 1. Disqualification from direct contact. (a) The commissioner shall
1.11 disqualify an individual who is the subject of a background study from any position allowing
1.12 direct contact with persons receiving services from the license holder or entity identified in
1.13 section 245C.03, upon receipt of information showing, or when a background study
1.14 completed under this chapter shows any of the following:

1.15 (1) a conviction of, admission to, or Alford plea to one or more crimes listed in section
1.16 245C.15, regardless of whether the conviction or admission is a felony, gross misdemeanor,
1.17 or misdemeanor level crime;

1.18 (2) a preponderance of the evidence indicates the individual has committed an act or
1.19 acts that meet the definition of any of the crimes listed in section 245C.15, regardless of
1.20 whether the preponderance of the evidence is for a felony, gross misdemeanor, or
1.21 misdemeanor level crime; or

1.22 (3) an investigation results in an administrative determination listed under section
1.23 245C.15, subdivision 4, paragraph (b).

2.1 (b) No individual who is disqualified following a background study under section
2.2 245C.03, subdivisions 1 and 2, may be retained in a position involving direct contact with
2.3 persons served by a program or entity identified in section 245C.03, unless the commissioner
2.4 has provided written notice under section 245C.17 stating that:

2.5 (1) the individual may remain in direct contact during the period in which the individual
2.6 may request reconsideration as provided in section 245C.21, subdivision 2;

2.7 (2) the commissioner has set aside the individual's disqualification for that program or
2.8 entity identified in section 245C.03, as provided in section 245C.22, subdivision 4; or

2.9 (3) the license holder has been granted a variance for the disqualified individual under
2.10 section 245C.30.

2.11 (c) The commissioner shall not disqualify an individual under this subdivision based on
2.12 (1) a record of conviction that was expunged under chapter 609A and directed specifically
2.13 to the commissioner, or (2) any underlying fact of an element of the expunged conviction.

2.14 **Subd. 2. Disqualification from access.** (a) If an individual who is studied under section
2.15 245C.03, subdivision 1, paragraph (a), clauses (2), (5), and (6), is disqualified from direct
2.16 contact under subdivision 1, the commissioner shall also disqualify the individual from
2.17 access to a person receiving services from the license holder.

2.18 (b) No individual who is disqualified following a background study under section
2.19 245C.03, subdivision 1, paragraph (a), clauses (2), (5), and (6), or as provided elsewhere
2.20 in statute who is disqualified as a result of this section, may be allowed access to persons
2.21 served by the program unless the commissioner has provided written notice under section
2.22 245C.17 stating that:

2.23 (1) the individual may remain in direct contact during the period in which the individual
2.24 may request reconsideration as provided in section 245C.21, subdivision 2;

2.25 (2) the commissioner has set aside the individual's disqualification for that licensed
2.26 program or entity identified in section 245C.03 as provided in section 245C.22, subdivision
2.27 4; or

2.28 (3) the license holder has been granted a variance for the disqualified individual under
2.29 section 245C.30.

2.30 (c) The commissioner shall not disqualify an individual under this subdivision based on
2.31 (1) a record of conviction that was expunged under chapter 609A and directed specifically
2.32 to the commissioner, or (2) any underlying fact of an element of the expunged conviction.

3.1 Sec. 2. Minnesota Statutes 2016, section 245C.15, is amended by adding a subdivision to
3.2 read:

3.3 Subd. 6. **Expunged criminal records.** The commissioner shall not disqualify an
3.4 individual subject to a background study under this chapter based on (1) a record of
3.5 conviction that was expunged under chapter 609A and directed specifically to the
3.6 commissioner, or (2) any underlying fact of an element of the expunged conviction.

3.7 Sec. 3. Minnesota Statutes 2017 Supplement, section 245C.16, subdivision 1, is amended
3.8 to read:

3.9 Subdivision 1. **Determining immediate risk of harm.** (a) If the commissioner determines
3.10 that the individual studied has a disqualifying characteristic, the commissioner shall review
3.11 the information immediately available and make a determination as to the subject's immediate
3.12 risk of harm to persons served by the program where the individual studied will have direct
3.13 contact with, or access to, people receiving services.

3.14 (b) The commissioner shall consider all relevant information available, including the
3.15 following factors in determining the immediate risk of harm:

3.16 (1) the recency of the disqualifying characteristic;

3.17 (2) the recency of discharge from probation for the crimes;

3.18 (3) the number of disqualifying characteristics;

3.19 (4) the intrusiveness or violence of the disqualifying characteristic;

3.20 (5) the vulnerability of the victim involved in the disqualifying characteristic;

3.21 (6) the similarity of the victim to the persons served by the program where the individual
3.22 studied will have direct contact;

3.23 (7) whether the individual has a disqualification from a previous background study that
3.24 has not been set aside; and

3.25 (8) if the individual has a disqualification which may not be set aside because it is a
3.26 permanent bar under section 245C.24, subdivision 1, or the individual is a child care staff
3.27 person who has a felony-level conviction for a drug-related offense in the last five years,
3.28 the commissioner may order the immediate removal of the individual from any position
3.29 allowing direct contact with, or access to, persons receiving services from the program.

4.1 (c) This section does not apply when the subject of a background study is regulated by
4.2 a health-related licensing board as defined in chapter 214, and the subject is determined to
4.3 be responsible for substantiated maltreatment under section 626.556 or 626.557.

4.4 (d) This section does not apply to a background study related to an initial application
4.5 for a child foster care license.

4.6 (e) Except for paragraph ~~(f)~~ (g), this section does not apply to a background study that
4.7 is also subject to the requirements under section 256B.0659, subdivisions 11 and 13, for a
4.8 personal care assistant or a qualified professional as defined in section 256B.0659,
4.9 subdivision 1.

4.10 (f) This section does not apply if the subject of a background study has a conviction that
4.11 was expunged under chapter 609A and directed specifically to the commissioner, or for any
4.12 underlying fact of an element of the expunged conviction.

4.13 ~~(f)~~ (g) If the commissioner has reason to believe, based on arrest information or an active
4.14 maltreatment investigation, that an individual poses an imminent risk of harm to persons
4.15 receiving services, the commissioner may order that the person be continuously supervised
4.16 or immediately removed pending the conclusion of the maltreatment investigation or criminal
4.17 proceedings.

4.18 Sec. 4. Minnesota Statutes 2016, section 245C.24, is amended by adding a subdivision to
4.19 read:

4.20 Subd. 5. **Expunged criminal records.** The commissioner shall not disqualify an
4.21 individual subject to a background study under this chapter based on (1) a record of
4.22 conviction that was expunged under chapter 609A and directed specifically to the
4.23 commissioner, or (2) any underlying fact of an element of the expunged conviction.