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State of Minnesota  
HOUSE OF REPRESENTATIVES  
NINETIETH SESSION

H. F. No. 3863

03/15/2018 Authored by Clark and Allen  
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; modifying background study disqualifications for  
1.3 relative child foster care providers; amending Minnesota Statutes 2016, section  
1.4 245C.22, subdivision 4; proposing coding for new law in Minnesota Statutes,  
1.5 chapter 245C.

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

1.7 Section 1. 245C.155] DISQUALIFYING CRIMES OR CONDUCT; RELATIVE  
1.8 FOSTER CARE.

1.9 Subdivision 1. Relative. For the purposes of this section, "relative" has the meaning  
1.10 given in section 260C.007, subdivision 27, or means "relative of an Indian child" according  
1.11 to section 260C.007, subdivision 26b.

1.12 Subd. 2. Permanent disqualification. An individual seeking a license to provide child  
1.13 foster care is disqualified under section 245C.14 according to section 245C.15, subdivision  
1.14 1.

1.15 Subd. 3. Nonviolent controlled substance offender. The commissioner must not  
1.16 disqualify an individual seeking a license to provide child foster care if the individual: (1)  
1.17 resides in the home where child foster care services would be provided; (2) is a relative of  
1.18 the child; and (3) is a nonviolent controlled substance offender who meets the criteria under  
1.19 section 244.0513, subdivision 2, clauses (1), (2), and (6), and more than two years have  
1.20 passed since the discharge of the sentence imposed, if any, for the offense.

1.21 Subd. 4. Ten-year disqualification. (a) The commissioner must not disqualify an  
1.22 individual seeking a license to provide child foster care who resides in the home where child  
1.23 foster care services would be provided, and who is a relative of the child, if the individual

2.1 committed and would otherwise be disqualified for committing a felony-level violation of  
2.2 any of the offenses listed in section 245C.15, subdivision 2, paragraph (a), if more than ten  
2.3 years have passed since the discharge of the sentence imposed, if any, for the offenses listed  
2.4 in section 245C.15, subdivision 2, paragraph (a).

2.5 (b) An individual is disqualified under this subdivision if less than ten years has passed  
2.6 since the individual's aiding and abetting, attempt, or conspiracy to commit any of the  
2.7 offenses listed in paragraph (a), as each of these offenses is defined in Minnesota Statutes.

2.8 (c) An individual is disqualified under this subdivision if less than ten years has passed  
2.9 since the termination of the individual's parental rights under section 260C.301, subdivision  
2.10 1, paragraph (b).

2.11 (d) An individual is disqualified under this subdivision if less than ten years has passed  
2.12 since the discharge of the sentence imposed for an offense in any other state or country, the  
2.13 elements of which are substantially similar to the elements of the offenses listed in paragraph  
2.14 (a).

2.15 (e) If the individual studied commits one of the offenses listed in paragraph (a), but the  
2.16 sentence or level of offense is a gross misdemeanor or misdemeanor disposition, the  
2.17 individual is disqualified but the disqualification lookback period for the offense is the  
2.18 period applicable to the gross misdemeanor or misdemeanor under this subdivision.

2.19 (f) When a disqualification is based on a judicial determination other than a conviction,  
2.20 the disqualification period begins from the date of the court order. When a disqualification  
2.21 is based on an admission, the disqualification period begins from the date of an admission  
2.22 in court. When a disqualification is based on an Alford Plea, the disqualification period  
2.23 begins from the date the Alford Plea is entered in court. When a disqualification is based  
2.24 on a preponderance of evidence of a disqualifying act, the disqualification date begins from  
2.25 the date of the dismissal, the date of discharge of the sentence imposed for a conviction for  
2.26 a disqualifying crime of similar elements, or the date of the incident, whichever occurs last.

2.27 Subd. 5. **Five-year disqualification.** (a) The commissioner must not disqualify an  
2.28 individual seeking a license to provide child foster care who resides in the home where child  
2.29 foster care services would be provided, and who is a relative of the child, if the individual  
2.30 committed and would otherwise be disqualified for committing a gross misdemeanor-level  
2.31 violation of any of the offenses listed in section 245C.15, subdivision 3, paragraph (a), if  
2.32 more than five years have passed since the discharge of the sentence imposed, if any, for  
2.33 the offenses listed in section 245C.15, subdivision 3, paragraph (a).

3.1 (b) An individual is disqualified under this subdivision if less than five years has passed  
3.2 since the individual's aiding and abetting, attempt, or conspiracy to commit any of the  
3.3 offenses listed in paragraph (a), as each of these offenses is defined in Minnesota Statutes.

3.4 (c) An individual is disqualified under this subdivision if less than five years has passed  
3.5 since the discharge of the sentence imposed for an offense in any other state or country, the  
3.6 elements of which are substantially similar to the elements of any of the offenses listed in  
3.7 paragraph (a).

3.8 (d) If the individual studied commits one of the offenses listed in paragraph (a), but the  
3.9 sentence or level of offense is a misdemeanor disposition, the individual is disqualified but  
3.10 the disqualification lookback period for the offense is the period applicable to misdemeanors  
3.11 under this subdivision.

3.12 (e) When a disqualification is based on a judicial determination other than a conviction,  
3.13 the disqualification period begins from the date of the court order. When a disqualification  
3.14 is based on an admission, the disqualification period begins from the date of an admission  
3.15 in court. When a disqualification is based on an Alford Plea, the disqualification period  
3.16 begins from the date the Alford Plea is entered in court. When a disqualification is based  
3.17 on a preponderance of evidence of a disqualifying act, the disqualification date begins from  
3.18 the date of the dismissal, the date of discharge of the sentence imposed for a conviction for  
3.19 a disqualifying crime of similar elements, or the date of the incident, whichever occurs last.

3.20 **Subd. 6. Three-year disqualification.** (a) The commissioner must not disqualify an  
3.21 individual seeking a license to provide child foster care who resides in the home where child  
3.22 foster care services would be provided, and who is a relative of the child, if the individual  
3.23 committed and would otherwise be disqualified for committing a misdemeanor-level violation  
3.24 of any of the offenses listed in section 245C.15, subdivision 4, paragraph (a), if more than  
3.25 three years have passed since the discharge of the sentence imposed, if any, for the offenses  
3.26 listed in section 245C.15, subdivision 4, paragraph (a).

3.27 (b) An individual is disqualified under this subdivision if less than three years has passed  
3.28 since the individual's aiding and abetting, attempt, or conspiracy to commit any of the  
3.29 offenses listed in paragraph (a), as each of these offenses is defined in Minnesota Statutes.

3.30 (c) An individual is disqualified under section 245C.14 if less than three years has passed  
3.31 since the discharge of the sentence imposed for an offense in any other state or country, the  
3.32 elements of which are substantially similar to the elements of any of the offenses listed in  
3.33 paragraph (a).

4.1 (d) When a disqualification is based on a judicial determination other than a conviction,  
4.2 the disqualification period begins from the date of the court order. When a disqualification  
4.3 is based on an admission, the disqualification period begins from the date of an admission  
4.4 in court. When a disqualification is based on an Alford Plea, the disqualification period  
4.5 begins from the date the Alford Plea is entered in court. When a disqualification is based  
4.6 on a preponderance of evidence of a disqualifying act, the disqualification date begins from  
4.7 the date of the dismissal, the date of discharge of the sentence imposed for a conviction for  
4.8 a disqualifying crime of similar elements, or the date of the incident, whichever occurs last.

4.9 (e) An individual is disqualified under this subdivision if less than three years has passed  
4.10 since the individual was disqualified under section 256.98, subdivision 8.

4.11 Sec. 2. Minnesota Statutes 2016, section 245C.22, subdivision 4, is amended to read:

4.12 Subd. 4. **Risk of harm; set aside.** (a) The commissioner may set aside the disqualification  
4.13 if the commissioner finds that the individual has submitted sufficient information to  
4.14 demonstrate that the individual does not pose a risk of harm to any person served by the  
4.15 applicant, license holder, or other entities as provided in this chapter.

4.16 (b) In determining whether the individual has met the burden of proof by demonstrating  
4.17 the individual does not pose a risk of harm, the commissioner shall consider:

4.18 (1) the nature, severity, and consequences of the event or events that led to the  
4.19 disqualification;

4.20 (2) whether there is more than one disqualifying event;

4.21 (3) the age and vulnerability of the victim at the time of the event;

4.22 (4) the harm suffered by the victim;

4.23 (5) vulnerability of persons served by the program;

4.24 (6) the similarity between the victim and persons served by the program;

4.25 (7) the time elapsed without a repeat of the same or similar event;

4.26 (8) documentation of successful completion by the individual studied of training or  
4.27 rehabilitation pertinent to the event; and

4.28 (9) any other information relevant to reconsideration.

4.29 (c) If the individual requested reconsideration on the basis that the information relied  
4.30 upon to disqualify the individual was incorrect or inaccurate and the commissioner determines  
4.31 that the information relied upon to disqualify the individual is correct, the commissioner

5.1 must also determine if the individual poses a risk of harm to persons receiving services in  
5.2 accordance with paragraph (b).

5.3 (d) If an individual seeking a license to provide child foster care who resides in the home  
5.4 where child foster care services would be provided, and who is a relative of the child,  
5.5 requests reconsideration of a disqualification pursuant to section 245C.21, the commissioner  
5.6 shall set aside the disqualification if the individual did not commit a violent crime as defined  
5.7 in section 609.1095, subdivision 1, paragraph (d), and does not pose a risk of harm.