

**SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION**

S.F. No. 3698

(SENATE AUTHORS: KIFFMEYER, Weber, Wiklund, Housley and Draheim)

DATE	D-PG	OFFICIAL STATUS
02/27/2020	5029	Introduction and first reading
		Referred to Family Care and Aging
03/09/2020		Comm report: To pass as amended and re-refer to Judiciary and Public Safety Finance and Policy

1.1 A bill for an act

1.2 relating to child care; establishing exemption from personal liability for family

1.3 day care inspectors; removing exception for counties to be liable for claims at

1.4 family day care where county had actual knowledge of risk that led to claims;

1.5 requiring counties to use uniform family child care variance application; directing

1.6 the commissioner of human services to issue a uniform variance application

1.7 developed by the Family Child Care Task Force for family day care providers;

1.8 amending Minnesota Statutes 2018, sections 245A.04, subdivision 9; 466.03,

1.9 subdivision 6d.

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

1.11 Section 1. Minnesota Statutes 2018, section 245A.04, subdivision 9, is amended to read:

1.12 Subd. 9. **Variances.** (a) The commissioner may grant variances to rules that do not affect

1.13 the health or safety of persons in a licensed program if the following conditions are met:

1.14 (1) the variance must be requested by an applicant or license holder on a form and in a

1.15 manner prescribed by the commissioner;

1.16 (2) the request for a variance must include the reasons that the applicant or license holder

1.17 cannot comply with a requirement as stated in the rule and the alternative equivalent measures

1.18 that the applicant or license holder will follow to comply with the intent of the rule; and

1.19 (3) the request must state the period of time for which the variance is requested.

1.20 The commissioner may grant a permanent variance when conditions under which the

1.21 variance is requested do not affect the health or safety of persons being served by the licensed

1.22 program, nor compromise the qualifications of staff to provide services. The permanent

1.23 variance shall expire as soon as the conditions that warranted the variance are modified in

1.24 any way. Any applicant or license holder must inform the commissioner of any changes or

2.1 modifications that have occurred in the conditions that warranted the permanent variance.
 2.2 Failure to advise the commissioner shall result in revocation of the permanent variance and
 2.3 may be cause for other sanctions under sections 245A.06 and 245A.07.

2.4 The commissioner's decision to grant or deny a variance request is final and not subject
 2.5 to appeal under the provisions of chapter 14.

2.6 (b) The commissioner shall consider variances for child care center staff qualification
 2.7 requirements under Minnesota Rules, parts 9503.0032 and 9503.0033, that do not affect
 2.8 the health and safety of children served by the center. A variance request must be submitted
 2.9 to the commissioner in accordance with paragraph (a) and must include a plan for the staff
 2.10 person to gain additional experience, education, or training, as requested by the commissioner.
 2.11 When reviewing a variance request under this section, the commissioner shall consider the
 2.12 staff person's level of professional development, including but not limited to steps completed
 2.13 on the Minnesota career lattice.

2.14 (c) Beginning January 1, 2021, counties shall use a uniform application form for variance
 2.15 requests by family child care license holders.

2.16 Sec. 2. Minnesota Statutes 2018, section 466.03, subdivision 6d, is amended to read:

2.17 Subd. 6d. **Licensing of providers.** A claim against a municipality based on the failure
 2.18 of a provider to meet the standards needed for a license to operate a day care facility under
 2.19 chapter 245A for children, ~~unless the municipality had actual knowledge of a failure to meet~~
 2.20 ~~licensing standards that resulted in a dangerous condition that foreseeably threatened the~~
 2.21 ~~plaintiff.~~ A municipality shall be immune from liability for a claim arising out of a provider's
 2.22 use of a swimming pool located at a family day care or group family day care home under
 2.23 section 245A.14, subdivision 10 ~~11, unless the municipality had actual knowledge of a~~
 2.24 ~~provider's failure to meet the licensing standards under section 245A.14, subdivision 10,~~
 2.25 ~~paragraph (a), clauses (1) to (3), that resulted in a dangerous condition that foreseeably~~
 2.26 ~~threatened the plaintiff.~~ An officer or employee of a municipality shall be immune from
 2.27 liability for a claim based on the failure of a provider to meet the necessary standards for a
 2.28 license to operate a day care facility for children under chapter 245A, unless the officer or
 2.29 employee is found guilty of malfeasance in office, willful neglect of duty, or bad faith.

2.30 Sec. 3. **DIRECTION TO COMMISSIONER OF HUMAN SERVICES; UNIFORM**
 2.31 **FAMILY CHILD CARE VARIANCE APPLICATION FORM.**

2.32 By October 1, 2020, the commissioner of human services shall issue to counties the
 2.33 uniform application form for family child care variance requests developed by the Family

- 3.1 Child Care Task Force. The commissioner shall also issue any necessary training or guidance
- 3.2 for counties to use the form. The Family Child Care Task Force shall develop the uniform
- 3.3 application form and provide the form to the commissioner no later than September 1, 2020.