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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 968

02/10/2021

Authored by Edelson

The bill was read for the first time and referred to the Committee on Human Services Finance and Policy

1.1 A bill for an act

1.2 relating to human services; modifying human services background study

1.3 disqualification provisions for acts committed by minors; amending Minnesota

1.4 Statutes 2020, sections 245C.14, subdivisions 1, 2; 245C.24, subdivisions 2, 3, 4.

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

1.6 Section 1. Minnesota Statutes 2020, section 245C.14, subdivision 1, is amended to read:

1.7 Subdivision 1. **Disqualification from direct contact.** (a) The commissioner shall

1.8 disqualify an individual who is the subject of a background study from any position allowing

1.9 direct contact with persons receiving services from the license holder or entity identified in

1.10 section 245C.03, upon receipt of information showing, or when a background study

1.11 completed under this chapter shows any of the following:

1.12 (1) a conviction of, admission to, or Alford plea to one or more crimes listed in section

1.13 245C.15, regardless of whether the conviction or admission is a felony, gross misdemeanor,

1.14 or misdemeanor level crime;

1.15 (2) a preponderance of the evidence indicates the individual has committed an act or

1.16 acts that meet the definition of any of the crimes listed in section 245C.15, regardless of

1.17 whether the preponderance of the evidence is for a felony, gross misdemeanor, or

1.18 misdemeanor level crime; or

1.19 (3) an investigation results in an administrative determination listed under section

1.20 245C.15, subdivision 4, paragraph (b).

1.21 (b) No individual who is disqualified following a background study under section

1.22 245C.03, subdivisions 1 and 2, may be retained in a position involving direct contact with

2.1 persons served by a program or entity identified in section 245C.03, unless the commissioner  
2.2 has provided written notice under section 245C.17 stating that:

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

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

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

2.9 (c) No offense or act that occurred when the individual was a minor shall be the basis  
2.10 for a disqualification from direct contact if:

2.11 (1) five or more years have passed since the date of a conviction, admission, or act that  
2.12 constituted a felony level crime; or

2.13 (2) three or more years have passed since the date of a conviction, admission, or act that  
2.14 constituted a gross misdemeanor or misdemeanor level crime.

2.15 (d) Paragraph (c) does not apply to an individual who was convicted of the disqualifying  
2.16 crime following certification under section 260B.125, nor does it apply to an individual  
2.17 who was adjudicated delinquent for a violation of section 609.342, 609.343, 609.344,  
2.18 609.345, or 609.3451, subdivision 3.

2.19 Sec. 2. Minnesota Statutes 2020, section 245C.14, subdivision 2, is amended to read:

2.20 Subd. 2. **Disqualification from access.** (a) If an individual who is studied under section  
2.21 245C.03, subdivision 1, paragraph (a), clauses (2), (5), and (6), is disqualified from direct  
2.22 contact under subdivision 1, the commissioner shall also disqualify the individual from  
2.23 access to a person receiving services from the license holder.

2.24 (b) No individual who is disqualified following a background study under section  
2.25 245C.03, subdivision 1, paragraph (a), clauses (2), (5), and (6), or as provided elsewhere  
2.26 in statute who is disqualified as a result of this section, may be allowed access to persons  
2.27 served by the program unless the commissioner has provided written notice under section  
2.28 245C.17 stating that:

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

3.1 (2) the commissioner has set aside the individual's disqualification for that licensed  
3.2 program or entity identified in section 245C.03 as provided in section 245C.22, subdivision  
3.3 4; or

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

3.6 (c) No offense or act that occurred when the individual was a minor shall be the basis  
3.7 for a disqualification from access if:

3.8 (1) five or more years have passed since the date of a conviction, admission, or act that  
3.9 constituted a felony level crime; or

3.10 (2) three or more years have passed since the date of a conviction, admission, or act that  
3.11 constituted a gross misdemeanor or misdemeanor level crime.

3.12 (d) Paragraph (c) does not apply to an individual who was convicted of the disqualifying  
3.13 crime following certification under section 260B.125, nor does it apply to an individual  
3.14 who was adjudicated delinquent for a violation of section 609.342, 609.343, 609.344,  
3.15 609.345, or 609.3451, subdivision 3.

3.16 Sec. 3. Minnesota Statutes 2020, section 245C.24, subdivision 2, is amended to read:

3.17 Subd. 2. **Permanent bar to set aside a disqualification.** (a) Except as provided in  
3.18 paragraphs (b) to (e), the commissioner may not set aside the disqualification of any  
3.19 individual disqualified pursuant to this chapter, regardless of how much time has passed,  
3.20 if the individual was disqualified for a crime or conduct listed in section 245C.15, subdivision  
3.21 1.

3.22 (b) For an individual in the chemical dependency or corrections field who was disqualified  
3.23 for a crime or conduct listed under section 245C.15, subdivision 1, and whose disqualification  
3.24 was set aside prior to July 1, 2005, the commissioner must consider granting a variance  
3.25 pursuant to section 245C.30 for the license holder for a program dealing primarily with  
3.26 adults. A request for reconsideration evaluated under this paragraph must include a letter  
3.27 of recommendation from the license holder that was subject to the prior set-aside decision  
3.28 addressing the individual's quality of care to children or vulnerable adults and the  
3.29 circumstances of the individual's departure from that service.

3.30 (c) If an individual who requires a background study for nonemergency medical  
3.31 transportation services under section 245C.03, subdivision 12, was disqualified for a crime  
3.32 or conduct listed under section 245C.15, subdivision 1, and if more than 40 years have  
3.33 passed since the discharge of the sentence imposed, the commissioner may consider granting

4.1 a set-aside pursuant to section 245C.22. A request for reconsideration evaluated under this  
4.2 paragraph must include a letter of recommendation from the employer. This paragraph does  
4.3 not apply to a person disqualified based on a violation of sections 243.166; 609.185 to  
4.4 609.205; 609.25; 609.342 to 609.3453; 609.352; 617.23, subdivision 2, clause (1), or 3,  
4.5 clause (1); 617.246; or 617.247.

4.6 (d) When a licensed foster care provider adopts an individual who had received foster  
4.7 care services from the provider for over six months, and the adopted individual is required  
4.8 to receive a background study under section 245C.03, subdivision 1, paragraph (a), clause  
4.9 (2) or (6), the commissioner may grant a variance to the license holder under section 245C.30  
4.10 to permit the adopted individual with a permanent disqualification to remain affiliated with  
4.11 the license holder under the conditions of the variance when the variance is recommended  
4.12 by the county of responsibility for each of the remaining individuals in placement in the  
4.13 home and the licensing agency for the home.

4.14 (e) This subdivision shall not apply to any crime or conduct committed by a minor.

4.15 Sec. 4. Minnesota Statutes 2020, section 245C.24, subdivision 3, is amended to read:

4.16 Subd. 3. **Ten-year bar to set aside disqualification.** (a) The commissioner may not set  
4.17 aside the disqualification of an individual in connection with a license to provide family  
4.18 child care for children, foster care for children in the provider's home, or foster care or day  
4.19 care services for adults in the provider's home if: (1) less than ten years has passed since  
4.20 the discharge of the sentence imposed, if any, for the offense; or (2) when disqualified based  
4.21 on a preponderance of evidence determination under section 245C.14, subdivision 1,  
4.22 paragraph (a), clause (2), or an admission under section 245C.14, subdivision 1, paragraph  
4.23 (a), clause (1), and less than ten years has passed since the individual committed the act or  
4.24 admitted to committing the act, whichever is later; and (3) the individual has committed a  
4.25 violation of any of the following offenses: sections 609.165 (felon ineligible to possess  
4.26 firearm); criminal vehicular homicide or criminal vehicular operation causing death under  
4.27 609.2112, 609.2113, or 609.2114 (criminal vehicular homicide or injury); 609.215 (aiding  
4.28 suicide or aiding attempted suicide); felony violations under 609.223 or 609.2231 (assault  
4.29 in the third or fourth degree); 609.229 (crimes committed for benefit of a gang); 609.713  
4.30 (terroristic threats); 609.235 (use of drugs to injure or to facilitate crime); 609.24 (simple  
4.31 robbery); 609.255 (false imprisonment); 609.562 (arson in the second degree); 609.71 (riot);  
4.32 609.498, subdivision 1 or 1b (aggravated first-degree or first-degree tampering with a  
4.33 witness); burglary in the first or second degree under 609.582 (burglary); 609.66 (dangerous  
4.34 weapon); 609.665 (spring guns); 609.67 (machine guns and short-barreled shotguns);

5.1 609.749, subdivision 2 (gross misdemeanor harassment); 152.021 or 152.022 (controlled  
 5.2 substance crime in the first or second degree); 152.023, subdivision 1, clause (3) or (4) or  
 5.3 subdivision 2, clause (4) (controlled substance crime in the third degree); 152.024,  
 5.4 subdivision 1, clause (2), (3), or (4) (controlled substance crime in the fourth degree);  
 5.5 609.224, subdivision 2, paragraph (c) (fifth-degree assault by a caregiver against a vulnerable  
 5.6 adult); 609.23 (mistreatment of persons confined); 609.231 (mistreatment of residents or  
 5.7 patients); 609.2325 (criminal abuse of a vulnerable adult); 609.233 (criminal neglect of a  
 5.8 vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure  
 5.9 to report); 609.265 (abduction); 609.2664 to 609.2665 (manslaughter of an unborn child in  
 5.10 the first or second degree); 609.267 to 609.2672 (assault of an unborn child in the first,  
 5.11 second, or third degree); 609.268 (injury or death of an unborn child in the commission of  
 5.12 a crime); repeat offenses under 617.23 (indecent exposure); 617.293 (disseminating or  
 5.13 displaying harmful material to minors); a felony-level conviction involving alcohol or drug  
 5.14 use, a gross misdemeanor offense under 609.324, subdivision 1 (other prohibited acts); a  
 5.15 gross misdemeanor offense under 609.378 (neglect or endangerment of a child); a gross  
 5.16 misdemeanor offense under 609.377 (malicious punishment of a child); 609.72, subdivision  
 5.17 3 (disorderly conduct against a vulnerable adult); or 624.713 (certain persons not to possess  
 5.18 firearms); or Minnesota Statutes 2012, section 609.21.

5.19 (b) The commissioner may not set aside the disqualification of an individual if less than  
 5.20 ten years have passed since the individual's aiding and abetting, attempt, or conspiracy to  
 5.21 commit any of the offenses listed in paragraph (a) as each of these offenses is defined in  
 5.22 Minnesota Statutes.

5.23 (c) The commissioner may not set aside the disqualification of an individual if less than  
 5.24 ten years have passed since the discharge of the sentence imposed for an offense in any  
 5.25 other state or country, the elements of which are substantially similar to the elements of any  
 5.26 of the offenses listed in paragraph (a).

5.27 (d) This subdivision shall not apply to any crime or conduct committed by a minor.

5.28 Sec. 5. Minnesota Statutes 2020, section 245C.24, subdivision 4, is amended to read:

5.29 Subd. 4. **Seven-year bar to set aside disqualification.** (a) The commissioner may not  
 5.30 set aside the disqualification of an individual in connection with a license to provide family  
 5.31 child care for children, foster care for children in the provider's home, or foster care or day  
 5.32 care services for adults in the provider's home if within seven years preceding the study:

5.33 (1) the individual committed an act that constitutes maltreatment of a child under sections  
 5.34 260E.24, subdivisions 1, 2, and 3, and 260E.30, subdivisions 1, 2, and 4, and the maltreatment

6.1 resulted in substantial bodily harm as defined in section 609.02, subdivision 7a, or substantial  
6.2 mental or emotional harm as supported by competent psychological or psychiatric evidence;  
6.3 or

6.4 (2) the individual was determined under section 626.557 to be the perpetrator of a  
6.5 substantiated incident of maltreatment of a vulnerable adult that resulted in substantial  
6.6 bodily harm as defined in section 609.02, subdivision 7a, or substantial mental or emotional  
6.7 harm as supported by competent psychological or psychiatric evidence.

6.8 (b) This subdivision shall not apply to any crime or conduct committed by a minor.