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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. **2780**

02/20/2018 Authored by Quam
The bill was read for the first time and referred to the Committee on Health and Human Services Reform
03/14/2018 Adoption of Report: Amended and re-referred to the Committee on Civil Law and Data Practices Policy
03/22/2018 Adoption of Report: Amended and re-referred to the Committee on Health and Human Services Finance

1.1 A bill for an act
1.2 relating to human services; modifying various background study provisions;
1.3 amending Minnesota Statutes 2016, sections 245C.03, by adding a subdivision;
1.4 245C.05, subdivision 2c; 245C.051; Minnesota Statutes 2017 Supplement, section
1.5 245C.05, subdivision 5.

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

1.7 Section 1. Minnesota Statutes 2016, section 245C.03, is amended by adding a subdivision
1.8 to read:

1.9 Subd. 13. **Minor children background studies.** For a minor affiliated with a child care
1.10 program, after receiving the privacy notice in section 245C.05, subdivision 2c, a parent may
1.11 opt to have the required background study for a child include the submission of a child's
1.12 fingerprints for a national criminal history record check as part of the review of information
1.13 under section 245C.08 if a child:

1.14 (1) is 13 to 17 years of age; and

1.15 (2) resides with a legal nonlicensed child care provider authorized under chapter 119B
1.16 or at a licensed family child care program.

1.17 A child's background study conducted under this subdivision is valid for five years.

1.18 **EFFECTIVE DATE.** This section is effective upon implementation of NETStudy 2.0
1.19 for family child care programs. The commissioner of human services shall notify the revisor
1.20 of statutes when this section is effective.

2.1 Sec. 2. Minnesota Statutes 2016, section 245C.05, subdivision 2c, is amended to read:

2.2 Subd. 2c. **Privacy notice to background study subject.** (a) Prior to initiating each
2.3 background study, the entity initiating the study must provide the commissioner's privacy
2.4 notice to the background study subject required under section 13.04, subdivision 2. The
2.5 notice must be available through the commissioner's electronic NETStudy and NETStudy
2.6 2.0 systems and shall include the information in paragraphs (b)₂ ~~and~~ (c), and (d).

2.7 (b) The background study subject shall be informed that any previous background studies
2.8 that received a set-aside will be reviewed, and without further contact with the background
2.9 study subject, the commissioner may notify the agency that initiated the subsequent
2.10 background study:

2.11 (1) that the individual has a disqualification that has been set aside for the program or
2.12 agency that initiated the study;

2.13 (2) the reason for the disqualification; and

2.14 (3) that information about the decision to set aside the disqualification will be available
2.15 to the license holder upon request without the consent of the background study subject.

2.16 (c) The background study subject must also be informed that:

2.17 (1) the subject's fingerprints collected for purposes of completing the background study
2.18 under this chapter must not be retained by the Department of Public Safety, Bureau of
2.19 Criminal Apprehension, or by the commissioner, ~~but will be retained by the Federal Bureau~~
2.20 ~~of Investigation;~~

2.21 (2) effective upon implementation of NETStudy 2.0, the subject's photographic image
2.22 will be retained by the commissioner, and if the subject has provided the subject's Social
2.23 Security number for purposes of the background study, the photographic image will be
2.24 available to prospective employers and agencies initiating background studies under this
2.25 chapter to verify the identity of the subject of the background study. The photographic image
2.26 shall not be shared with the Department of Public Safety, the Bureau of Criminal
2.27 Apprehension, or the Federal Bureau of Investigation;

2.28 (3) the commissioner's authorized fingerprint collection vendor shall, for purposes of
2.29 verifying the identity of the background study subject, be able to view the identifying
2.30 information entered into NETStudy 2.0 by the entity that initiated the background study,
2.31 but shall not retain the subject's fingerprints, photograph, or information from NETStudy
2.32 2.0. The authorized fingerprint collection vendor shall retain no more than the subject's

3.1 name and the date and time the subject's fingerprints were recorded and sent, only as
3.2 necessary for auditing and billing activities;

3.3 (4) the commissioner shall provide the subject notice, as required in section 245C.17,
3.4 subdivision 1, paragraph (a), when an entity initiates a background study on the individual;

3.5 (5) the subject may request in writing a report listing the entities that initiated a
3.6 background study on the individual as provided in section 245C.17, subdivision 1, paragraph
3.7 (b);

3.8 (6) the subject may request in writing that information used to complete the individual's
3.9 background study in NETStudy 2.0 be destroyed if the requirements of section 245C.051,
3.10 paragraph (a), are met; and

3.11 (7) notwithstanding clause (6), the commissioner shall destroy:

3.12 (i) the subject's photograph after a period of two years when the requirements of section
3.13 245C.051, paragraph (c), are met; and

3.14 (ii) any data collected on a subject under this chapter after a period of two years following
3.15 the individual's death as provided in section 245C.051, paragraph (d).

3.16 (d) The background study subject must also be informed of:

3.17 (1) all information that the subject is required to provide under subdivision 1 and
3.18 elsewhere in this chapter to ensure an accurate background study; and

3.19 (2) the entities with whom the commissioner may share data collected under this chapter
3.20 and which information used to complete the subject's background study may be shared with
3.21 these entities.

3.22 Sec. 3. Minnesota Statutes 2017 Supplement, section 245C.05, subdivision 5, is amended
3.23 to read:

3.24 Subd. 5. **Fingerprints and photograph.** (a) Before the implementation of NETStudy
3.25 2.0, except as provided in paragraph (c), for any background study completed under this
3.26 chapter, when the commissioner has reasonable cause to believe that further pertinent
3.27 information may exist on the subject of the background study, the subject shall provide the
3.28 commissioner with a set of classifiable fingerprints obtained from an authorized agency.

3.29 (b) Before the implementation of NETStudy 2.0, for purposes of requiring fingerprints,
3.30 the commissioner has reasonable cause when, but not limited to, the:

4.1 (1) information from the Bureau of Criminal Apprehension indicates that the subject is
4.2 a multistate offender;

4.3 (2) information from the Bureau of Criminal Apprehension indicates that multistate
4.4 offender status is undetermined; or

4.5 (3) commissioner has received a report from the subject or a third party indicating that
4.6 the subject has a criminal history in a jurisdiction other than Minnesota.

4.7 (c) Notwithstanding paragraph (d), for background studies conducted by the commissioner
4.8 for child foster care, adoptions, or a transfer of permanent legal and physical custody of a
4.9 child, the subject of the background study, who is 18 years of age or older, shall provide
4.10 the commissioner with a set of classifiable fingerprints obtained from an authorized agency
4.11 for a national criminal history record check.

4.12 (d) For background studies initiated on or after the implementation of NETStudy 2.0,
4.13 every subject of a background study must provide the commissioner with a set of the
4.14 background study subject's classifiable fingerprints and photograph. The photograph and
4.15 fingerprints must be recorded at the same time by the commissioner's authorized fingerprint
4.16 collection vendor and sent to the commissioner through the commissioner's secure data
4.17 system described in section 245C.32, subdivision 1a, paragraph (b). The photographic image
4.18 shall not be shared with the Department of Public Safety, the Bureau of Criminal
4.19 Apprehension, or the Federal Bureau of Investigation. The fingerprints shall not be retained
4.20 by the Department of Public Safety, Bureau of Criminal Apprehension, or the commissioner;
4.21 ~~but will be retained by the Federal Bureau of Investigation.~~ The commissioner's authorized
4.22 fingerprint collection vendor shall, for purposes of verifying the identity of the background
4.23 study subject, be able to view the identifying information entered into NETStudy 2.0 by
4.24 the entity that initiated the background study, but shall not retain the subject's fingerprints,
4.25 photograph, or information from NETStudy 2.0. The authorized fingerprint collection vendor
4.26 shall retain no more than the name and date and time the subject's fingerprints were recorded
4.27 and sent, only as necessary for auditing and billing activities.

4.28 (e) When specifically required by law, fingerprints collected under this section must be
4.29 submitted for a national criminal history record check.

4.30 Sec. 4. Minnesota Statutes 2016, section 245C.051, is amended to read:

4.31 **245C.051 DESTRUCTION OF BACKGROUND STUDY SUBJECT**
4.32 **INFORMATION.**

5.1 (a) A background study subject may request in writing to the commissioner that
5.2 information used to complete the individual's study in NETStudy 2.0 be destroyed if the
5.3 individual:

5.4 (1) has not been affiliated with any entity for the previous two years; and

5.5 (2) has no current disqualifying characteristic.

5.6 (b) After receiving the request and verifying the information in paragraph (a), the
5.7 commissioner shall destroy the information used to complete the subject's background study
5.8 and shall keep a record of the subject's name and a notation of the date that the information
5.9 was destroyed. The commissioner shall notify the study subject when the information used
5.10 to complete the subject's background study is destroyed. The commissioner shall notify the
5.11 superintendent of the Bureau of Criminal Apprehension that the commissioner has verified
5.12 the information in paragraph (a) and destroyed the information used to complete the subject's
5.13 background study. The superintendent of the Bureau of Criminal Apprehension shall then
5.14 request that the Federal Bureau of Investigation not retain the fingerprints used to complete
5.15 a national criminal history check on a background study subject who was a child care staff
5.16 person, as defined in section 245C.02, subdivision 6a.

5.17 (c) When a previously studied individual has not been on the master roster for two years,
5.18 the commissioner shall destroy the photographic image of the individual obtained under
5.19 section 245C.05, subdivision 5, paragraph (d).

5.20 (d) Any data collected on an individual under this chapter that is maintained by the
5.21 commissioner that has not been destroyed according to paragraph (b) or (c) shall be destroyed
5.22 when two years have elapsed from the individual's actual death that is reported to the
5.23 commissioner or when 90 years have elapsed since the individual's birth except when readily
5.24 available data indicate that the individual is still living.

5.25 **Sec. 5. DIRECTION TO COMMISSIONER; UNIFYING BACKGROUND STUDIES.**

5.26 (a) The commissioner of human services shall work with stakeholders and affected
5.27 agencies and boards to unify the background studies process required by the Departments
5.28 of Human Services and Health, health-related licensing board as defined in Minnesota
5.29 Statutes, section 214.01, subdivision 2, and Professional Educator Licensing and Standards
5.30 Board as defined in Minnesota Statutes, section 122A.06, subdivision 3, to:

5.31 (1) establish a single background study process that satisfies the requirements for all
5.32 background studies required by the Departments of Human Services and Health,
5.33 health-related licensing board, and Professional Educator Licensing and Standards Board;

6.1 (2) establish a background study process that is transferable across different professions,
6.2 between counties, and between provider types;

6.3 (3) simplify the fee structure for background studies; and

6.4 (4) identify any federal waivers necessary to implement a unified background studies
6.5 process.

6.6 (b) The commissioner shall propose legislation in the 2019 legislative session to establish
6.7 a unified background studies process.

6.8 **EFFECTIVE DATE.** This section is effective the day following final enactment.