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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 3640

03/12/2018 Authored by Albright and Liebling  
The bill was read for the first time and referred to the Committee on Health and Human Services Reform  
03/22/2018 Adoption of Report: Re-referred to the Committee on Civil Law and Data Practices Policy

1.1 A bill for an act  
1.2 relating to health; modifying temporary license suspensions and background checks  
1.3 for certain health-related professions; amending Minnesota Statutes 2016, sections  
1.4 214.075, subdivisions 1, 4, 5, 6; 214.077; 214.10, subdivision 8; Minnesota Statutes  
1.5 2017 Supplement, section 364.09; repealing Minnesota Statutes 2016, section  
1.6 214.075, subdivision 8.

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

1.8 Section 1. Minnesota Statutes 2016, section 214.075, subdivision 1, is amended to read:

1.9 Subdivision 1. **Applications.** ~~(a) By January 1, 2018,~~ Each health-related licensing  
1.10 board, as defined in section 214.01, subdivision 2, shall require ~~applicants for initial licensure,~~  
1.11 ~~licensure by endorsement, or reinstatement or other relicensure after a lapse in licensure,~~  
1.12 ~~as defined by the individual health-related licensing boards,~~ the following individuals to  
1.13 submit to a criminal history records check of state data completed by the Bureau of Criminal  
1.14 Apprehension (BCA) and a national criminal history records check, including a search of  
1.15 the records of the Federal Bureau of Investigation (FBI):

1.16 (1) applicants for initial licensure or licensure by endorsement. An applicant is exempt  
1.17 from this paragraph if the applicant submitted to a state and national criminal history records  
1.18 check as described in this paragraph for a license issued by the same board;

1.19 (2) applicants seeking reinstatement or relicensure, as defined by the individual  
1.20 health-related licensing board, if more than one year has elapsed since the applicant's license  
1.21 or registration expiration date; or

1.22 (3) licensees applying for eligibility to participate in an interstate licensure compact.

2.1 (b) ~~An applicant must complete a criminal background check if more than one year has~~  
 2.2 ~~elapsed since the applicant last submitted a background check to the board. An applicant's~~  
 2.3 criminal background check results are valid for one year from the date the background check  
 2.4 results were received by the board. If more than one year has elapsed since the results were  
 2.5 received by the board, then an applicant who has not completed the licensure, reinstatement,  
 2.6 or relicensure process must complete a new background check.

2.7 Sec. 2. Minnesota Statutes 2016, section 214.075, subdivision 4, is amended to read:

2.8 Subd. 4. **Refusal to consent.** (a) The health-related licensing boards shall not issue a  
 2.9 license to any applicant who refuses to consent to a criminal background check or fails to  
 2.10 submit fingerprints ~~within 90 days~~ after submission of an application for licensure. Any  
 2.11 fees paid by the applicant to the board shall be forfeited if the applicant refuses to consent  
 2.12 to the criminal background check or fails to submit the required fingerprints.

2.13 (b) The failure of a licensee to submit to a criminal background check as provided in  
 2.14 subdivision 3 is grounds for disciplinary action by the respective health-related licensing  
 2.15 board.

2.16 Sec. 3. Minnesota Statutes 2016, section 214.075, subdivision 5, is amended to read:

2.17 Subd. 5. **Submission of fingerprints to the Bureau of Criminal Apprehension.** The  
 2.18 health-related licensing board or designee shall submit applicant or licensee fingerprints to  
 2.19 the BCA. The BCA shall perform a check for state criminal justice information and shall  
 2.20 forward the applicant's or licensee's fingerprints to the FBI to perform a check for national  
 2.21 criminal justice information regarding the applicant or licensee. The BCA shall report to  
 2.22 the board the results of the state and national criminal ~~justice information~~ history records  
 2.23 checks.

2.24 Sec. 4. Minnesota Statutes 2016, section 214.075, subdivision 6, is amended to read:

2.25 Subd. 6. **Alternatives to fingerprint-based criminal background checks.** The  
 2.26 health-related licensing board may require an alternative method of criminal history checks  
 2.27 for an applicant or licensee who has submitted at least ~~three~~ two sets of fingerprints in  
 2.28 accordance with this section that have been unreadable by the BCA or the FBI.

2.29 Sec. 5. Minnesota Statutes 2016, section 214.077, is amended to read:

2.30 **214.077 TEMPORARY LICENSE SUSPENSION; IMMINENT RISK OF SERIOUS**  
 2.31 **HARM.**

3.1 (a) Notwithstanding any provision of a health-related professional practice act, when a  
3.2 health-related licensing board receives a complaint regarding a regulated person and has  
3.3 probable cause to believe that the regulated person has violated a statute or rule that the  
3.4 health-related licensing board is empowered to enforce, and continued practice by the  
3.5 regulated person presents an imminent risk of serious harm, the health-related licensing  
3.6 board shall issue an order temporarily suspending the regulated person's authority to practice.  
3.7 The temporary suspension order shall specify the reason for the suspension, including the  
3.8 statute or rule alleged to have been violated. The temporary suspension order shall take  
3.9 effect upon personal service on the regulated person or the regulated person's attorney, or  
3.10 upon the third calendar day after the order is served by first class mail to the most recent  
3.11 address provided to the health-related licensing board for the regulated person or the regulated  
3.12 person's attorney.

3.13 (b) The temporary suspension shall remain in effect until the health-related licensing  
3.14 board or the commissioner completes an investigation, holds a contested case hearing  
3.15 pursuant to the Administrative Procedure Act, and issues a final order in the matter as  
3.16 provided for in this section.

3.17 (c) At the time it issues the temporary suspension order, the health-related licensing  
3.18 board shall schedule a contested case hearing, on the merits of whether discipline is  
3.19 warranted, to be held pursuant to the Administrative Procedure Act. The regulated person  
3.20 shall be provided with at least ten days' notice of any contested case hearing held pursuant  
3.21 to this section. The contested case hearing shall be scheduled to begin no later than 30 days  
3.22 after the effective service of the temporary suspension order.

3.23 (d) The administrative law judge presiding over the contested case hearing shall issue  
3.24 a report and recommendation to the health-related licensing board no later than 30 days  
3.25 after the final day of the contested case hearing. If the administrative law judge's report and  
3.26 recommendations are for no action, the health-related licensing board shall issue a final  
3.27 order pursuant to sections 14.61 and 14.62 within 30 days of receipt of the administrative  
3.28 law judge's report and recommendations. If the administrative law judge's report and  
3.29 recommendations are for action, the health-related licensing board shall issue a final order  
3.30 pursuant to sections 14.61 and 14.62 within 60 days of receipt of the administrative law  
3.31 judge's report and recommendations. Except as provided in paragraph (e), if the health-related  
3.32 licensing board has not issued a final order pursuant to sections 14.61 and 14.62 within 30  
3.33 days of receipt of the administrative law judge's report and recommendations for no action  
3.34 or within 60 days of receipt of the administrative law judge's report and recommendations  
3.35 for action, the temporary suspension shall be lifted.

4.1 (e) If the regulated person requests a delay in the contested case proceedings provided  
4.2 for in paragraphs (c) and (d) for any reason, the temporary suspension shall remain in effect  
4.3 until the health-related licensing board issues a final order pursuant to sections 14.61 and  
4.4 14.62.

4.5 (f) This section shall not apply to the Office of Unlicensed Complementary and  
4.6 Alternative Health Practice established under section 146A.02. The commissioner of health  
4.7 shall conduct temporary suspensions for complementary and alternative health care  
4.8 practitioners in accordance with section 146A.09.

4.9 Sec. 6. Minnesota Statutes 2016, section 214.10, subdivision 8, is amended to read:

4.10 Subd. 8. **Special requirements for health-related licensing boards.** In addition to the  
4.11 provisions of this section that apply to all examining and licensing boards, the requirements  
4.12 in this subdivision apply to all health-related licensing boards, except the Board of Veterinary  
4.13 Medicine.

4.14 (a) If the executive director or consulted board member determines that a communication  
4.15 received alleges a violation of statute or rule that involves sexual contact with a patient or  
4.16 client, the communication shall be forwarded to the designee of the attorney general for an  
4.17 investigation of the facts alleged in the communication. If, after an investigation it is the  
4.18 opinion of the executive director or consulted board member that there is sufficient evidence  
4.19 to justify disciplinary action, the board shall conduct a disciplinary conference or hearing.  
4.20 If, after a hearing or disciplinary conference the board determines that misconduct involving  
4.21 sexual contact with a patient or client occurred, the board shall take disciplinary action.  
4.22 Notwithstanding subdivision 2, a board may not attempt to correct improper activities or  
4.23 redress grievances through education, conciliation, and persuasion, unless in the opinion of  
4.24 the executive director or consulted board member there is insufficient evidence to justify  
4.25 disciplinary action. The board may settle a case by stipulation prior to, or during, a hearing  
4.26 if the stipulation provides for disciplinary action.

4.27 (b) A board member who has a direct current or former financial connection or  
4.28 professional relationship to a person who is the subject of board disciplinary activities must  
4.29 not participate in board activities relating to that case.

4.30 (c) Each health-related licensing board shall establish procedures for exchanging  
4.31 information with other Minnesota state boards, agencies, and departments responsible for  
4.32 regulating health-related occupations, facilities, and programs, and for coordinating  
4.33 investigations involving matters within the jurisdiction of more than one regulatory body.  
4.34 The procedures must provide for the forwarding to other regulatory bodies of all information

5.1 and evidence, including the results of investigations, that are relevant to matters within that  
 5.2 licensing body's regulatory jurisdiction. Each health-related licensing board shall have access  
 5.3 to any data of the Department of Human Services relating to a person subject to the  
 5.4 jurisdiction of the licensing board. The data shall have the same classification under chapter  
 5.5 13, the Minnesota Government Data Practices Act, in the hands of the agency receiving the  
 5.6 data as it had in the hands of the Department of Human Services.

5.7 (d) Each health-related licensing board shall establish procedures for exchanging  
 5.8 information with other states regarding disciplinary actions against licensees. The procedures  
 5.9 must provide for the collection of information from other states about disciplinary actions  
 5.10 taken against persons who are licensed to practice in Minnesota or who have applied to be  
 5.11 licensed in this state and the dissemination of information to other states regarding  
 5.12 disciplinary actions taken in Minnesota. In addition to any authority in chapter 13 permitting  
 5.13 the dissemination of data, the board may, in its discretion, disseminate data to other states  
 5.14 regardless of its classification under chapter 13. Criminal history record information shall  
 5.15 not be exchanged. Before transferring any data that is not public, the board shall obtain  
 5.16 reasonable assurances from the receiving state that the data will not be made public.

5.17 Sec. 7. Minnesota Statutes 2017 Supplement, section 364.09, is amended to read:

5.18 **364.09 EXCEPTIONS.**

5.19 (a) This chapter does not apply to the licensing process for peace officers; to law  
 5.20 enforcement agencies as defined in section 626.84, subdivision 1, paragraph (f); to fire  
 5.21 protection agencies; to eligibility for a private detective or protective agent license; to the  
 5.22 licensing and background study process under chapters 245A and 245C; to the licensing  
 5.23 and background investigation process under chapter 240; to eligibility for school bus driver  
 5.24 endorsements; to eligibility for special transportation service endorsements; to eligibility  
 5.25 for a commercial driver training instructor license, which is governed by section 171.35  
 5.26 and rules adopted under that section; to emergency medical services personnel, or to the  
 5.27 licensing by political subdivisions of taxicab drivers, if the applicant for the license has  
 5.28 been discharged from sentence for a conviction within the ten years immediately preceding  
 5.29 application of a violation of any of the following:

5.30 (1) sections 609.185 to 609.2114, 609.221 to 609.223, 609.342 to 609.3451, or 617.23,  
 5.31 subdivision 2 or 3; or Minnesota Statutes 2012, section 609.21;

5.32 (2) any provision of chapter 152 that is punishable by a maximum sentence of 15 years  
 5.33 or more; or

6.1 (3) a violation of chapter 169 or 169A involving driving under the influence, leaving  
6.2 the scene of an accident, or reckless or careless driving.

6.3 This chapter also shall not apply to eligibility for juvenile corrections employment, where  
6.4 the offense involved child physical or sexual abuse or criminal sexual conduct.

6.5 (b) This chapter does not apply to a school district or to eligibility for a license issued  
6.6 or renewed by the Professional Educator Licensing and Standards Board or the commissioner  
6.7 of education.

6.8 (c) Nothing in this section precludes the Minnesota Police and Peace Officers Training  
6.9 Board or the state fire marshal from recommending policies set forth in this chapter to the  
6.10 attorney general for adoption in the attorney general's discretion to apply to law enforcement  
6.11 or fire protection agencies.

6.12 ~~(d) This chapter does not apply to a license to practice medicine that has been denied or~~  
6.13 ~~revoked by the Board of Medical Practice pursuant to section 147.091, subdivision 1a.~~

6.14 ~~(e) This chapter does not apply to any person who has been denied a license to practice~~  
6.15 ~~chiropractic or whose license to practice chiropractic has been revoked by the board in~~  
6.16 ~~accordance with section 148.10, subdivision 7.~~

6.17 ~~(f) This chapter does not apply to any license, registration, or permit that has been denied~~  
6.18 ~~or revoked by the Board of Nursing in accordance with section 148.261, subdivision 1a.~~

6.19 ~~(g)~~ (d) This chapter does not apply to any license, registration, permit, or certificate that  
6.20 has been denied or revoked by the commissioner of health according to section 148.5195,  
6.21 subdivision 5; or 153A.15, subdivision 2.

6.22 ~~(h)~~ (e) This chapter does not supersede a requirement under law to conduct a criminal  
6.23 history background investigation or consider criminal history records in hiring for particular  
6.24 types of employment.

6.25 (f) This chapter does not apply to any license, registration, or permit that has been denied  
6.26 or revoked by a health licensing board listed in section 214.01, subdivision 2.

6.27 Sec. 8. **REPEALER.**

6.28 Minnesota Statutes 2016, section 214.075, subdivision 8, is repealed.

6.29 Sec. 9. **EFFECTIVE DATE.**

6.30 Sections 1 to 8 are effective the day following final enactment.

**214.075 HEALTH-RELATED LICENSING BOARDS; CRIMINAL BACKGROUND CHECKS.**

Subd. 8. **Instructions to the board; plans.** The health-related licensing boards, in collaboration with the commissioner of human services and the BCA, shall establish a plan for completing criminal background checks of all licensees who were licensed before the effective date requirement under subdivision 1. The plan must seek to minimize duplication of requirements for background checks of licensed health professionals. The plan for background checks of current licensees shall be developed no later than January 1, 2017, and may be contingent upon the implementation of a system by the BCA or FBI in which any new crimes that an applicant or licensee commits after an initial background check are flagged in the BCA's or FBI's database and reported back to the board. The plan shall include recommendations for any necessary statutory changes.