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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 1087

03/14/2011 Authored by McElpatrick, Abeler, Gruenhagen, Kiffmeyer, Winkler and others
The bill was read for the first time and referred to the Committee on Health and Human Services Reform
04/14/2011 Committee Recommendation and Adoption of Report:
Amended and re-referred to the Committee on Civil Law without further recommendation

1.1 A bill for an act
1.2 relating to nursing; requiring a criminal history record check; appropriating
1.3 money; amending Minnesota Statutes 2010, section 364.09; proposing coding
1.4 for new law in Minnesota Statutes, chapter 148.

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

1.6 Section 1. **[148.192] REQUIREMENT FOR CRIMINAL HISTORY RECORD**
1.7 **CHECK.**

1.8 Subdivision 1. **Applicants.** The board shall complete a criminal background check
1.9 on each applicant for licensure prior to the board's issuance of a license. Each applicant
1.10 for licensure must:

1.11 (1) submit a full set of fingerprints to the board or its designee in a form and manner
1.12 specified by the board; and

1.13 (2) provide consent authorizing the board to obtain the applicant's state and national
1.14 criminal history record information for the purpose of determining the applicant's
1.15 suitability and eligibility for licensure.

1.16 Subd. 2. **Additional background check required.** An applicant shall be required
1.17 to complete a criminal background check if more than one year has elapsed since the
1.18 applicant last submitted a background check to the board.

1.19 Subd. 3. **Fees.** The applicant shall be responsible for all fees associated with
1.20 preparation of the fingerprints and the criminal background check. The fees for the
1.21 background check are determined by the Minnesota Bureau of Criminal Apprehension
1.22 (BCA) and the Federal Bureau of Investigation (FBI) and are not refundable.

1.23 Subd. 4. **Refusal to consent.** Refusal to consent to a criminal background check or
1.24 to submit fingerprints within 90 days after submission of an application for licensure is

2.1 grounds for the board to deny licensure to the applicant. If the application is denied under
2.2 this provision, any fees paid by the applicant shall be forfeited.

2.3 Subd. 5. **Submission of fingerprints to Minnesota BCA.** The board or its designee
2.4 shall submit all applicant fingerprints to the Minnesota BCA. The BCA shall perform a
2.5 check for state criminal justice information and shall forward the applicant's fingerprints
2.6 to the FBI to perform a check for national criminal justice information regarding the
2.7 applicant. The BCA shall report to the board the results of the state and national criminal
2.8 justice information checks.

2.9 Subd. 6. **Alternatives to fingerprint-based background check.** The board may
2.10 require an alternative method of criminal history check for an applicant who has submitted
2.11 at least three sets of fingerprints under this section that the BCA or FBI have been unable
2.12 to read.

2.13 Subd. 7. **Temporary permits.** An applicant who has submitted fingerprints,
2.14 consents to a background check, and meets all other requirements for issuance of a
2.15 temporary permit may be granted a nonrenewable permit prior to the board's receipt of the
2.16 criminal justice information, but shall not be issued a license until the board receives and
2.17 completes its review of the applicant's criminal justice information.

2.18 Subd. 8. **Opportunity to challenge accuracy of report.** Prior to taking disciplinary
2.19 action against an applicant based on a criminal conviction, the board shall provide the
2.20 applicant with the opportunity to complete, or challenge the accuracy of, the criminal
2.21 justice information reported to the board. The applicant shall have 30 calendar days
2.22 to correct or complete the record prior to the board taking disciplinary action based on
2.23 the report.

2.24 Subd. 9. **Denial of licensure.** The board shall deny licensure to an applicant who
2.25 has been convicted of any of the following crimes or an offense in any other state where
2.26 the elements of the offense are substantially similar:

2.27 (1) murder in the first degree (section 609.185), in the second degree (section
2.28 609.19), or in the third degree (section 609.195);

2.29 (2) manslaughter in the first degree (section 609.20);

2.30 (3) kidnapping (section 609.25);

2.31 (4) murder of an unborn child in the first degree (section 609.2661);

2.32 (5) criminal sexual conduct in the first degree (section 609.342), in the second
2.33 degree (section 609.343), in the third degree (section 609.344), in the fourth degree
2.34 (section 609.345), or in the fifth degree (section 609.3451);

2.35 (6) criminal sexual predatory conduct (section 609.3453);

- 3.1 (7) solicitation of children to engage in sexual conduct; communication of sexually
3.2 explicit materials to children (section 609.352);
- 3.3 (8) incest (section 609.365);
- 3.4 (9) felony malicious punishment of a child (section 609.377);
- 3.5 (10) felony neglect or endangerment of a child (section 609.378);
- 3.6 (11) arson in the first degree (section 609.561);
- 3.7 (12) felony stalking (section 609.749, subdivision 3, 4, or 5);
- 3.8 (13) controlled substance crimes in the first degree (section 152.021) or in the
3.9 second degree (section 152.022);
- 3.10 (14) violation of predatory offender registration law (section 243.166);
- 3.11 (15) indecent exposure involving a minor (section 617.23, subdivision 2, clause
3.12 (1), or subdivision 3, clause (1));
- 3.13 (16) use of minors in sexual performance (section 617.246);
- 3.14 (17) possession of pornographic work involving minors (section 617.247);
- 3.15 (18) manslaughter in the second degree (section 609.205);
- 3.16 (19) assault in the first degree (section 609.221) or in the second degree (section
3.17 609.222);
- 3.18 (20) assault in the fifth degree (section 609.224, subdivision 2, paragraph (c),
3.19 or subdivision 4);
- 3.20 (21) felony domestic assault (section 609.2242, subdivision 4);
- 3.21 (22) domestic assault by strangulation (section 609.2247);
- 3.22 (23) great bodily harm caused by distribution of drugs (section 609.228);
- 3.23 (24) mistreatment of persons confined (section 609.23);
- 3.24 (25) mistreatment of residents or patients (section 609.231);
- 3.25 (26) criminal abuse (section 609.2325);
- 3.26 (27) criminal neglect (section 609.233);
- 3.27 (28) financial exploitation of a vulnerable adult (section 609.2335);
- 3.28 (29) failure to report (section 609.234);
- 3.29 (30) simple robbery (section 609.24);
- 3.30 (31) aggravated robbery (section 609.245);
- 3.31 (32) false imprisonment (section 609.255);
- 3.32 (33) murder of unborn child in the second degree (section 609.2662) or in the third
3.33 degree (section 609.2663);
- 3.34 (34) solicitation, inducement, and promotion of prostitution (section 609.322);
- 3.35 (35) patrons, prostitutes, housing individuals engaged in prostitution (minors)
3.36 (section 609.324, subdivision 1);

- 4.1 (36) presenting false claims to a public officer or body (section 609.465);
4.2 (37) medical assistance fraud (section 609.466);
4.3 (38) felony theft (section 609.52);
4.4 (39) felony fraud in obtaining credit (section 609.82);
4.5 (40) felony identity theft (section 609.527);
4.6 (41) arson in the second degree (section 609.562) or in the third degree (section
4.7 609.563);
4.8 (42) felony burglary (section 609.582);
4.9 (43) felony insurance fraud (section 609.611);
4.10 (44) aggravated forgery (section 609.625);
4.11 (45) forgery (section 609.63);
4.12 (46) felony check forgery (section 609.631);
4.13 (47) felony drive-by shooting (section 609.66, subdivision 1e);
4.14 (48) felony riot (section 609.71);
4.15 (49) terroristic threats (section 609.713);
4.16 (50) disorderly conduct (section 609.72, subdivision 3);
4.17 (51) felony financial transaction card fraud (section 609.821);
4.18 (52) shooting at or in a public transit vehicle or facility (section 609.855, subdivision
4.19 5);
4.20 (53) controlled substance crimes in the third degree (section 152.023), fourth degree
4.21 (section 152.024), or fifth degree (section 152.025); or
4.22 (54) aiding and abetting, attempting, or conspiring to commit any of the offenses
4.23 in this subdivision.

4.24 Subd. 10. **Conviction.** For purposes of this section, an applicant is considered to
4.25 have been convicted of a crime if the applicant:

- 4.26 (1) was convicted or otherwise found guilty;
4.27 (2) was found guilty by a jury but the adjudication of guilt was withheld; or
4.28 (3) was convicted but the imposition or execution of a sentence was stayed.

4.29 Subd. 11. **Consideration of other crimes.** Nothing in this section shall preclude the
4.30 board from considering an applicant's conviction of a crime that is not listed in subdivision
4.31 9 when determining an applicant's suitability and eligibility for nurse licensure.

4.32 Subd. 12. **Order of denial.** When an applicant is denied licensure based on
4.33 conviction of a crime listed in subdivision 9, the board may issue a public order of denial
4.34 and is not required to provide the applicant a hearing before the board prior to denying
4.35 licensure.

5.1 Subd. 13. **Reconsideration of denial.** (a) An applicant denied licensure based
5.2 on a conviction of a crime listed in subdivision 9, clauses (1) to (17), may not request
5.3 reconsideration of the denial of licensure and may not reapply for licensure by the board.

5.4 (b) An applicant denied licensure based on a conviction of a crime listed in
5.5 subdivision 9, clauses (18) to (54), may request reconsideration of the board's decision
5.6 to deny licensure. The applicant requesting reconsideration has the burden of showing
5.7 to the satisfaction of the board that the applicant has been sufficiently rehabilitated and
5.8 does not pose a risk of harm to the public.

5.9 (c) An applicant seeking reconsideration of a denial of licensure under this chapter
5.10 shall present evidence to the board addressing the following factors, which the board may
5.11 consider in determining whether to grant a license to the previously denied applicant:

5.12 (1) the number of crimes for which the applicant has been convicted;

5.13 (2) the nature and seriousness of the crimes and vulnerability of the victims of the
5.14 crimes, including whether the commission of the crimes involved the abuse of trust or the
5.15 exploitation of a unique position or knowledge;

5.16 (3) the relationship between the crimes and the practice of nursing;

5.17 (4) the age of the applicant at the time the crimes were committed;

5.18 (5) the amount of time that has elapsed since the crimes occurred and since the
5.19 completion of the terms of any sentence imposed;

5.20 (6) steps taken by the applicant to address substance abuse or mental or physical
5.21 health issues present at the time of the crimes or subsequent to the crimes;

5.22 (7) evidence of the applicant's work history; and

5.23 (8) evidence demonstrating the applicant does not pose a threat to the health or
5.24 safety of the public.

5.25 (d) The board may impose limitations and conditions on an applicant's license if the
5.26 board grants the applicant a license following reconsideration.

5.27 Subd. 14. **Data practices.** All state or national criminal history record information
5.28 obtained by the board from the BCA or the FBI is private data on individuals under section
5.29 13.02, subdivision 12, and restricted to the exclusive use of the board, its members,
5.30 officers, investigative staff, agents, and attorneys for the purpose of evaluating an
5.31 applicant's eligibility or qualification for licensure.

5.32 Subd. 15. **Current licensees.** The board may request that a licensee who is the
5.33 subject of an investigation by the board submit to a criminal background check if there
5.34 is reason to believe the licensee has been charged with or convicted of a crime in this
5.35 or any other jurisdiction.

6.1 Subd. 16. Instructions to the board; plan. (a) The board shall establish a plan
6.2 for completing criminal background checks of all licensees who were licensed before the
6.3 effective date of this section. The plan for background checks of current licensees shall be
6.4 developed no later than 2016 and may be contingent upon the BCA's implementation of
6.5 a rap back system in which any new crimes that an applicant or licensee commits after
6.6 an initial background check are flagged in the BCA's database and reported back to the
6.7 board. The plan shall require the licensee to:

6.8 (1) submit a full set of fingerprints to the board or its designee in a form and manner
6.9 specified by the board; and

6.10 (2) provide consent authorizing the board to obtain the licensee's state and national
6.11 criminal history record information for the purpose of determining the licensee's suitability
6.12 for continued licensure.

6.13 (b) The board or its designee shall submit all licensee fingerprints to the BCA.
6.14 The BCA shall perform a check for state criminal justice information and shall forward
6.15 the licensee's fingerprints to the FBI to perform a check for national criminal justice
6.16 information regarding the licensee. The BCA shall report the results of the state and
6.17 national criminal justice information checks to the board.

6.18 (c) The licensee shall be responsible for all fees associated with the preparation of
6.19 the fingerprints and criminal background checks. The fees for the criminal background
6.20 checks are determined by the BCA and the FBI. The fees are not refundable.

6.21 Sec. 2. Minnesota Statutes 2010, section 364.09, is amended to read:

6.22 **364.09 EXCEPTIONS.**

6.23 (a) This chapter does not apply to the licensing process for peace officers; to law
6.24 enforcement agencies as defined in section 626.84, subdivision 1, paragraph (f); to fire
6.25 protection agencies; to eligibility for a private detective or protective agent license; to the
6.26 licensing and background study process under chapters 245A and 245C; to eligibility
6.27 for school bus driver endorsements; to eligibility for special transportation service
6.28 endorsements; to eligibility for a commercial driver training instructor license, which is
6.29 governed by section 171.35 and rules adopted under that section; to emergency medical
6.30 services personnel, or to the licensing by political subdivisions of taxicab drivers, if the
6.31 applicant for the license has been discharged from sentence for a conviction within the ten
6.32 years immediately preceding application of a violation of any of the following:

6.33 (1) sections 609.185 to 609.21, 609.221 to 609.223, 609.342 to 609.3451, or 617.23,
6.34 subdivision 2 or 3;

7.1 (2) any provision of chapter 152 that is punishable by a maximum sentence of
7.2 15 years or more; or

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

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

7.7 (b) This chapter does not apply to a school district or to eligibility for a license
7.8 issued or renewed by the Board of Teaching or the commissioner of education.

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

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

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

7.18 (f) This chapter does not apply to a person who has been denied a license to practice
7.19 nursing by the board or whose license has been revoked by the board pursuant to section
7.20 148.192.

7.21 Sec. 3. **APPROPRIATION.**

7.22 \$..... is appropriated from the fund to the Board of Nursing for implementation
7.23 of section 1.

7.24 Sec. 4. **EFFECTIVE DATE.**

7.25 Sections 1 and 2 are effective July 1, 2012, or as soon as the necessary interagency
7.26 infrastructure and related business processes are operational, whichever is later.