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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 1401

03/04/2015 Authored by Erickson

The bill was read for the first time and referred to the Committee on Education Innovation Policy

1.1 A bill for an act
1.2 relating to education; requiring school districts to unseal expunged criminal
1.3 records for prospective teachers; amending Minnesota Statutes 2014, sections
1.4 122A.18, subdivision 8; 123B.03, subdivisions 1, 1a; 609A.03, subdivision 7a.

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

1.6 Section 1. Minnesota Statutes 2014, section 122A.18, subdivision 8, is amended to read:

1.7 Subd. 8. **Background checks.** (a) The Board of Teaching and the commissioner
1.8 of education must request a criminal history background check from the superintendent
1.9 of the Bureau of Criminal Apprehension on all applicants for initial licenses under their
1.10 jurisdiction. An application for a license under this section must be accompanied by:

- 1.11 (1) an executed criminal history consent form, including fingerprints; and
- 1.12 (2) a money order or cashier's check payable to the Bureau of Criminal Apprehension
- 1.13 for the fee for conducting the criminal history background check.

1.14 (b) The superintendent of the Bureau of Criminal Apprehension shall perform the
1.15 background check required under paragraph (a) by retrieving criminal history data as
1.16 defined in section 13.87 and shall also conduct a search of the national criminal records
1.17 repository. The superintendent is authorized to exchange fingerprints with the Federal
1.18 Bureau of Investigation for purposes of the criminal history check. The superintendent
1.19 shall recover the cost to the bureau of a background check through the fee charged to
1.20 the applicant under paragraph (a).

1.21 (c) The Board of Teaching or the commissioner of education may issue a license
1.22 pending completion of a background check under this subdivision, but must notify
1.23 the individual that the individual's license may be revoked based on the result of the
1.24 background check.

2.1 (d) When a background check of an applicant reveals an expunged record, the board
2.2 must, pursuant to section 609A.03, subdivision 7a, paragraph (b), clause (8), request that
2.3 the record be unsealed and consider the content of the expunged record prior to issuing a
2.4 license to the subject of the record.

2.5 Sec. 2. Minnesota Statutes 2014, section 123B.03, subdivision 1, is amended to read:

2.6 Subdivision 1. **Background check required.** (a) A school hiring authority shall
2.7 request a criminal history background check from the superintendent of the Bureau of
2.8 Criminal Apprehension on all individuals who are offered employment in a school and
2.9 on all individuals, except enrolled student volunteers, who are offered the opportunity to
2.10 provide athletic coaching services or other extracurricular academic coaching services to a
2.11 school, regardless of whether any compensation is paid. In order for an individual to be
2.12 eligible for employment or to provide the services, the individual must provide an executed
2.13 criminal history consent form and a money order or check payable to either the Bureau of
2.14 Criminal Apprehension or the school hiring authority, at the discretion of the school hiring
2.15 authority, in an amount equal to the actual cost to the Bureau of Criminal Apprehension and
2.16 the school district of conducting the criminal history background check. A school hiring
2.17 authority deciding to receive payment may, at its discretion, accept payment in the form of
2.18 a negotiable instrument other than a money order or check and shall pay the superintendent
2.19 of the Bureau of Criminal Apprehension directly to conduct the background check. The
2.20 superintendent of the Bureau of Criminal Apprehension shall conduct the background
2.21 check by retrieving criminal history data as defined in section 13.87. A school hiring
2.22 authority, at its discretion, may decide not to request a criminal history background check
2.23 on an individual who holds an initial entrance license issued by the State Board of Teaching
2.24 or the commissioner of education within the 12 months preceding an offer of employment.

2.25 (b) A school hiring authority may use the results of a criminal background check
2.26 conducted at the request of another school hiring authority if:

2.27 (1) the results of the criminal background check are on file with the other school
2.28 hiring authority or otherwise accessible;

2.29 (2) the other school hiring authority conducted a criminal background check within
2.30 the previous 12 months;

2.31 (3) the individual who is the subject of the criminal background check executes a
2.32 written consent form giving a school hiring authority access to the results of the check; and

2.33 (4) there is no reason to believe that the individual has committed an act subsequent
2.34 to the check that would disqualify the individual for employment.

3.1 (c) A school hiring authority may, at its discretion, request a criminal history
3.2 background check from the superintendent of the Bureau of Criminal Apprehension on
3.3 any individual who seeks to enter a school or its grounds for the purpose of serving as a
3.4 school volunteer or working as an independent contractor or student employee. In order
3.5 for an individual to enter a school or its grounds under this paragraph when the school
3.6 hiring authority decides to request a criminal history background check on the individual,
3.7 the individual first must provide an executed criminal history consent form and a money
3.8 order, check, or other negotiable instrument payable to the school district in an amount
3.9 equal to the actual cost to the Bureau of Criminal Apprehension and the school district
3.10 of conducting the criminal history background check. Notwithstanding section 299C.62,
3.11 subdivision 1, the cost of the criminal history background check under this paragraph is
3.12 the responsibility of the individual unless a school hiring authority decides to pay the costs
3.13 of conducting a background check under this paragraph. If the school hiring authority pays
3.14 the costs, the individual who is the subject of the background check need not pay for it.

3.15 (d) For all nonstate residents who are offered employment in a school, a school
3.16 hiring authority shall request a criminal history background check on such individuals
3.17 from the superintendent of the Bureau of Criminal Apprehension and from the government
3.18 agency performing the same function in the resident state or, if no government entity
3.19 performs the same function in the resident state, from the Federal Bureau of Investigation.
3.20 Such individuals must provide an executed criminal history consent form and a money
3.21 order, check, or other negotiable instrument payable to the school hiring authority in an
3.22 amount equal to the actual cost to the government agencies and the school district of
3.23 conducting the criminal history background check. Notwithstanding section 299C.62,
3.24 subdivision 1, the cost of the criminal history background check under this paragraph is
3.25 the responsibility of the individual.

3.26 (e) At the beginning of each school year or when a student enrolls, a school hiring
3.27 authority must notify parents and guardians about the school hiring authority's policy
3.28 requiring a criminal history background check on employees and other individuals who
3.29 provide services to the school, and identify those positions subject to a background check
3.30 and the extent of the hiring authority's discretion in requiring a background check. The
3.31 school hiring authority may include the notice in the student handbook, a school policy
3.32 guide, or other similar communication. Nothing in this paragraph affects a school hiring
3.33 authority's ability to request a criminal history background check on an individual under
3.34 paragraph (c).

3.35 (f) When a background check of a prospective employee reveals an expunged
3.36 record, the school board or hiring authority must, pursuant to section 609A.03, subdivision

4.1 7a, paragraph (b), clause (7), request that the record be unsealed and consider the content
 4.2 of the expunged record prior to hiring the subject of the record.

4.3 Sec. 3. Minnesota Statutes 2014, section 123B.03, subdivision 1a, is amended to read:

4.4 Subd. 1a. **Investigation of disciplinary actions taken against prospective**
 4.5 **teachers.** (a) At the time a school board or other hiring authority conducts the criminal
 4.6 history background check required under subdivision 1 on an individual offered
 4.7 employment as a teacher, the school board or other hiring authority must contact the
 4.8 Board of Teaching to determine whether the board has taken disciplinary action against
 4.9 the teacher. The school board or other hiring authority must obtain access to data that are
 4.10 public under section 13.41, subdivision 5, from the Board of Teaching that relate to the
 4.11 substance of the disciplinary action. In addition, the school board or other hiring authority
 4.12 must require the individual to provide information in the employment application
 4.13 regarding all current and previous disciplinary actions in Minnesota and other states taken
 4.14 against the individual's teaching license and the existence of an expunged record of a
 4.15 criminal conviction, and indicate to the applicant that intentionally submitting false or
 4.16 incomplete information is a ground for dismissal.

4.17 (b) For purposes of this subdivision, "disciplinary action" does not include an action
 4.18 based on court-ordered child support or maintenance payment arrearages under section
 4.19 214.101 or delinquent state taxes under section 270C.72.

4.20 **EFFECTIVE DATE.** This section is effective the day following final enactment
 4.21 and applies to all individuals applying for employment as a teacher after that date.

4.22 Sec. 4. Minnesota Statutes 2014, section 609A.03, subdivision 7a, is amended to read:

4.23 Subd. 7a. **Limitations of order effective January 1, 2015, and later.** (a) Upon
 4.24 issuance of an expungement order related to a charge supported by probable cause, the
 4.25 DNA samples and DNA records held by the Bureau of Criminal Apprehension and
 4.26 collected under authority other than section 299C.105 shall not be sealed, returned to the
 4.27 subject of the record, or destroyed.

4.28 (b) Notwithstanding the issuance of an expungement order:

4.29 (1) except as provided in clause (2), an expunged record may be opened, used,
 4.30 or exchanged between criminal justice agencies without a court order for the purposes
 4.31 of initiating, furthering, or completing a criminal investigation or prosecution or for
 4.32 sentencing purposes or providing probation or other correctional services;

4.33 (2) when a criminal justice agency seeks access to a record that was sealed under
 4.34 section 609A.02, subdivision 3, paragraph (a), clause (1), after an acquittal or a court order

5.1 dismissing for lack of probable cause, for purposes of a criminal investigation, prosecution,
5.2 or sentencing, the requesting agency must obtain an ex parte court order after stating a
5.3 good-faith basis to believe that opening the record may lead to relevant information;

5.4 (3) an expunged record of a conviction may be opened for purposes of evaluating a
5.5 prospective employee in a criminal justice agency without a court order;

5.6 (4) an expunged record of a conviction may be opened for purposes of a background
5.7 study under section 245C.08 unless the commissioner had been properly served with
5.8 notice of the petition for expungement and the court order for expungement is directed
5.9 specifically to the commissioner of human services;

5.10 (5) an expunged record of a conviction may be opened for purposes of a background
5.11 check required under section 122A.18, subdivision 8, unless the court order for
5.12 expungement is directed specifically to the Board of Teaching or the licensing division of
5.13 the Department of Education; ~~and~~

5.14 (6) the court may order an expunged record opened upon request by the victim of
5.15 the underlying offense if the court determines that the record is substantially related to a
5.16 matter for which the victim is before the court;

5.17 (7) an expunged record of a conviction shall be opened for purposes of a background
5.18 check of a prospective employee required under section 123B.03, subdivision 1; and

5.19 (8) an expunged record of a conviction shall be opened for purposes of a background
5.20 check of an applicant for a teaching license required under section 122A.18, subdivision 8.

5.21 (c) An agency or jurisdiction subject to an expungement order shall maintain the
5.22 record in a manner that provides access to the record by a criminal justice agency under
5.23 paragraph (b), clause (1) or (2), but notifies the recipient that the record has been sealed.
5.24 The Bureau of Criminal Apprehension shall notify the commissioner of human services,
5.25 the Board of Teaching, or the licensing division of the Department of Education of the
5.26 existence of a sealed record and of the right to obtain access under paragraph (b), clause
5.27 (4) or (5). Upon request, the agency or jurisdiction subject to the expungement order
5.28 shall provide access to the record to the commissioner of human services, the Board
5.29 of Teaching, or the licensing division of the Department of Education under paragraph
5.30 (b), clause (4) or (5).

5.31 (d) An expunged record that is opened or exchanged under this subdivision remains
5.32 subject to the expungement order in the hands of the person receiving the record.

5.33 (e) A criminal justice agency that receives an expunged record under paragraph (b),
5.34 clause (1) or (2), must maintain and store the record in a manner that restricts the use of
5.35 the record to the investigation, prosecution, or sentencing for which it was obtained.

6.1 (f) For purposes of this section, a "criminal justice agency" means a court or
6.2 government agency that performs the administration of criminal justice under statutory
6.3 authority.

6.4 (g) This subdivision applies to expungement orders subject to its limitations and
6.5 effective on or after January 1, 2015.