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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. **3573**

- 03/08/2018 Authored by Albright, Scott, Peterson and Howe
- 03/15/2018 The bill was read for the first time and referred to the Committee on Health and Human Services Reform
- 03/15/2018 Adoption of Report: Amended and re-referred to the Committee on Health and Human Services Finance
- 03/21/2018 Adoption of Report: Amended and re-referred to the Committee on Civil Law and Data Practices Policy
- 03/26/2018 Adoption of Report: 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 family child care and legal nonlicensed

1.3 child care program background study requirements; amending Minnesota Statutes

1.4 2017 Supplement, sections 245C.02, subdivision 6a; 245C.04, subdivision 1;

1.5 245C.05, subdivisions 2b, 5; 245C.15, subdivision 1; 245C.16, subdivision 1.

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

1.7 Section 1. Minnesota Statutes 2017 Supplement, section 245C.02, subdivision 6a, is

1.8 amended to read:

1.9 Subd. 6a. **Child care staff person.** "Child care staff person" means an individual other

1.10 than an individual who is related to all children for whom child care services are provided

1.11 and:

1.12 (1) who is employed by a child care provider for compensation;

1.13 (2) whose activities involve the care or supervision of a child for a child care provider

1.14 or unsupervised access to a child who is cared for or supervised by a child care provider;

1.15 or

1.16 (3) an individual ~~13~~ 18 years of age or older residing in a licensed family child care

1.17 home or legal nonlicensed child care program.

1.18 **EFFECTIVE DATE.** This section is effective upon the implementation of enhanced

1.19 child care background studies under NETStudy 2.0.

2.1 Sec. 2. Minnesota Statutes 2017 Supplement, section 245C.04, subdivision 1, is amended
2.2 to read:

2.3 Subdivision 1. **Licensed programs; other child care programs.** (a) The commissioner
2.4 shall conduct a background study of an individual required to be studied under section
2.5 245C.03, subdivision 1, at least upon application for initial license for all license types.

2.6 (b) The commissioner shall conduct a background study of an individual required to be
2.7 studied under section 245C.03, subdivision 1, including a child care staff person as defined
2.8 in section 245C.02, subdivision 6a, in a family child care program, licensed child care center,
2.9 certified license-exempt child care center, or legal nonlicensed child care provider, on a
2.10 schedule determined by the commissioner. The A child care background study, except for
2.11 a study on a subject who is 17 years of age or younger residing in a licensed family child
2.12 care home or legal nonlicensed child care program, who is not a child care staff person as
2.13 defined in section 245C.02, subdivision 6a, must include submission of fingerprints for a
2.14 national criminal history record check and a review of the information under section 245C.08.
2.15 The commissioner may require a subject who is 17 years of age or younger residing in a
2.16 licensed family child care home or legal nonlicensed child care program to submit fingerprints
2.17 and a photograph if the commissioner has reasonable cause to require a national criminal
2.18 history record check. A background study for a child care program must be repeated within
2.19 five years from the most recent study conducted under this paragraph.

2.20 (c) At reapplication for a family child care license:

2.21 (1) except as provided in paragraph (b), for a background study affiliated with a licensed
2.22 family child care center or legal nonlicensed child care provider, the individual shall provide
2.23 information required under section 245C.05, subdivision 1, paragraphs (a), (b), and (d), to
2.24 the county agency, and be fingerprinted and photographed under section 245C.05, subdivision
2.25 5;

2.26 (2) the county agency shall verify the information received under clause (1) and forward
2.27 the information to the commissioner to complete the background study; and

2.28 (3) the background study conducted by the commissioner under this paragraph must
2.29 include a review of the information required under section 245C.08.

2.30 (d) The commissioner is not required to conduct a study of an individual at the time of
2.31 reapplication for a license if the individual's background study was completed by the
2.32 commissioner of human services and the following conditions are met:

3.1 (1) a study of the individual was conducted either at the time of initial licensure or when
3.2 the individual became affiliated with the license holder;

3.3 (2) the individual has been continuously affiliated with the license holder since the last
3.4 study was conducted; and

3.5 (3) the last study of the individual was conducted on or after October 1, 1995.

3.6 (e) The commissioner of human services shall conduct a background study of an
3.7 individual specified under section 245C.03, subdivision 1, paragraph (a), clauses (2) to (6),
3.8 who is newly affiliated with a child foster care license holder:

3.9 (1) the county or private agency shall collect and forward to the commissioner the
3.10 information required under section 245C.05, subdivisions 1 and 5, when the child foster
3.11 care applicant or license holder resides in the home where child foster care services are
3.12 provided;

3.13 (2) the child foster care license holder or applicant shall collect and forward to the
3.14 commissioner the information required under section 245C.05, subdivisions 1 and 5, when
3.15 the applicant or license holder does not reside in the home where child foster care services
3.16 are provided; and

3.17 (3) the background study conducted by the commissioner of human services under this
3.18 paragraph must include a review of the information required under section 245C.08,
3.19 subdivisions 1, 3, and 4.

3.20 (f) The commissioner shall conduct a background study of an individual specified under
3.21 section 245C.03, subdivision 1, paragraph (a), clauses (2) to (6), who is newly affiliated
3.22 with an adult foster care or family adult day services and with a family child care license
3.23 holder or a legal nonlicensed child care provider authorized under chapter 119B: (1) the
3.24 county shall collect and forward to the commissioner the information required under section
3.25 245C.05, subdivision 1, paragraphs (a) and (b), and subdivision 5, paragraphs (a), (b), and
3.26 (d), for background studies conducted by the commissioner for all family adult day services,
3.27 for adult foster care when the adult foster care license holder resides in the adult foster care
3.28 residence, and for family child care and legal nonlicensed child care authorized under chapter
3.29 119B; (2) the license holder shall collect and forward to the commissioner the information
3.30 required under section 245C.05, subdivisions 1, paragraphs (a) and (b); and 5, paragraphs
3.31 (a) and (b), for background studies conducted by the commissioner for adult foster care
3.32 when the license holder does not reside in the adult foster care residence; and (3) the
3.33 background study conducted by the commissioner under this paragraph must include a

4.1 review of the information required under section 245C.08, subdivision 1, paragraph (a),
4.2 and subdivisions 3 and 4.

4.3 (g) Applicants for licensure, license holders, and other entities as provided in this chapter
4.4 must submit completed background study requests to the commissioner using the electronic
4.5 system known as NETStudy before individuals specified in section 245C.03, subdivision
4.6 1, begin positions allowing direct contact in any licensed program.

4.7 (h) For an individual who is not on the entity's active roster, the entity must initiate a
4.8 new background study through NETStudy when:

4.9 (1) an individual returns to a position requiring a background study following an absence
4.10 of 120 or more consecutive days; or

4.11 (2) a program that discontinued providing licensed direct contact services for 120 or
4.12 more consecutive days begins to provide direct contact licensed services again.

4.13 The license holder shall maintain a copy of the notification provided to the commissioner
4.14 under this paragraph in the program's files. If the individual's disqualification was previously
4.15 set aside for the license holder's program and the new background study results in no new
4.16 information that indicates the individual may pose a risk of harm to persons receiving
4.17 services from the license holder, the previous set-aside shall remain in effect.

4.18 (i) For purposes of this section, a physician licensed under chapter 147 is considered to
4.19 be continuously affiliated upon the license holder's receipt from the commissioner of health
4.20 or human services of the physician's background study results.

4.21 (j) For purposes of family child care, a substitute caregiver must receive repeat
4.22 background studies at the time of each license renewal.

4.23 (k) A repeat background study at the time of license renewal is not required if the family
4.24 child care substitute caregiver's background study was completed by the commissioner on
4.25 or after October 1, 2017, and the substitute caregiver is on the license holder's active roster
4.26 in NETStudy 2.0.

4.27 (l) Before and after school programs authorized under chapter 119B, are exempt from
4.28 the background study requirements under section 123B.03, for an employee for whom a
4.29 background study under this chapter has been completed.

4.30 **EFFECTIVE DATE.** This section is effective upon the implementation of enhanced
4.31 child care background studies under NETStudy 2.0.

5.1 Sec. 3. Minnesota Statutes 2017 Supplement, section 245C.05, subdivision 2b, is amended
5.2 to read:

5.3 Subd. 2b. **County agency to collect and forward information to commissioner.** (a)
5.4 For background studies related to all family adult day services and to adult foster care when
5.5 the adult foster care license holder resides in the adult foster care residence, the county
5.6 agency must collect the information required under subdivision 1 and forward it to the
5.7 commissioner.

5.8 (b) Upon implementation of NETStudy 2.0, for background studies related to family
5.9 child care and legal nonlicensed child care authorized under chapter 119B, the county agency
5.10 must collect the information required under subdivision 1 and provide the information to
5.11 the commissioner. For a background study on a subject who is 17 years of age or younger
5.12 residing in a licensed family child care home or legal nonlicensed child care program, who
5.13 is not a child care staff person as defined in section 245C.02, subdivision 6a, the subject
5.14 shall submit the information required under subdivision 1, paragraph (a), and shall not be
5.15 required to be fingerprinted and photographed, unless the commissioner has reasonable
5.16 cause to require a national criminal history record check.

5.17 **EFFECTIVE DATE.** This section is effective upon the implementation of enhanced
5.18 child care background studies under NETStudy 2.0.

5.19 Sec. 4. Minnesota Statutes 2017 Supplement, section 245C.05, subdivision 5, is amended
5.20 to read:

5.21 Subd. 5. **Fingerprints and photograph.** (a) Before the implementation of NETStudy
5.22 2.0, except as provided in paragraph (c), for any background study completed under this
5.23 chapter, when the commissioner has reasonable cause to believe that further pertinent
5.24 information may exist on the subject of the background study, the subject shall provide the
5.25 commissioner with a set of classifiable fingerprints obtained from an authorized agency.

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

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

5.30 (2) information from the Bureau of Criminal Apprehension indicates that multistate
5.31 offender status is undetermined; ~~or~~

5.32 (3) commissioner has received a report from the subject or a third party indicating that
5.33 the subject has a criminal history in a jurisdiction other than Minnesota; or

6.1 (4) information from the Bureau of Criminal Apprehension indicates that the subject
6.2 has a criminal history, for a state-based name and date of birth background study on a subject
6.3 who is a minor.

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

6.9 (d) For background studies initiated on or after the implementation of NETStudy 2.0,
6.10 every subject of a background study must provide the commissioner with a set of the
6.11 background study subject's classifiable fingerprints and photograph. The photograph and
6.12 fingerprints must be recorded at the same time by the commissioner's authorized fingerprint
6.13 collection vendor and sent to the commissioner through the commissioner's secure data
6.14 system described in section 245C.32, subdivision 1a, paragraph (b). The fingerprints shall
6.15 not be retained by the Department of Public Safety, Bureau of Criminal Apprehension, or
6.16 the commissioner, but will be retained by the Federal Bureau of Investigation. The
6.17 commissioner's authorized fingerprint collection vendor shall, for purposes of verifying the
6.18 identity of the background study subject, be able to view the identifying information entered
6.19 into NETStudy 2.0 by the entity that initiated the background study, but shall not retain the
6.20 subject's fingerprints, photograph, or information from NETStudy 2.0. The authorized
6.21 fingerprint collection vendor shall retain no more than the name and date and time the
6.22 subject's fingerprints were recorded and sent, only as necessary for auditing and billing
6.23 activities. A background study subject who is 17 years of age or younger residing in a
6.24 licensed family child care home or legal nonlicensed child care program, who is not a child
6.25 care staff person as defined in section 245C.02, subdivision 6a, shall not be required to
6.26 submit fingerprints and a photograph, unless the commissioner has reasonable cause to
6.27 require a national criminal history record check.

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

6.30 Sec. 5. Minnesota Statutes 2017 Supplement, section 245C.15, subdivision 1, is amended
6.31 to read:

6.32 Subdivision 1. **Permanent disqualification.** (a) An individual is disqualified under
6.33 section 245C.14 if: (1) regardless of how much time has passed since the discharge of the
6.34 sentence imposed, if any, for the offense; and (2) unless otherwise specified, regardless of

7.1 the level of the offense, the individual has committed any of the following offenses: sections
7.2 243.166 (violation of predatory offender registration law); 609.185 (murder in the first
7.3 degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20
7.4 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); a felony
7.5 offense under 609.221 or 609.222 (assault in the first or second degree); a felony offense
7.6 under sections 609.2242 and 609.2243 (domestic assault), spousal abuse, child abuse or
7.7 neglect, or a crime against children; 609.2247 (domestic assault by strangulation); 609.228
7.8 (great bodily harm caused by distribution of drugs); 609.245 (aggravated robbery); 609.25
7.9 (kidnapping); 609.2661 (murder of an unborn child in the first degree); 609.2662 (murder
7.10 of an unborn child in the second degree); 609.2663 (murder of an unborn child in the third
7.11 degree); 609.322 (solicitation, inducement, and promotion of prostitution); 609.324,
7.12 subdivision 1 (other prohibited acts); 609.342 (criminal sexual conduct in the first degree);
7.13 609.343 (criminal sexual conduct in the second degree); 609.344 (criminal sexual conduct
7.14 in the third degree); 609.345 (criminal sexual conduct in the fourth degree); 609.3451
7.15 (criminal sexual conduct in the fifth degree); 609.3453 (criminal sexual predatory conduct);
7.16 609.352 (solicitation of children to engage in sexual conduct); 609.365 (incest); a felony
7.17 offense under 609.377 (malicious punishment of a child); a felony offense under 609.378
7.18 (neglect or endangerment of a child); 609.561 (arson in the first degree); 609.66, subdivision
7.19 1e (drive-by shooting); 609.749, subdivision 3, 4, or 5 (felony-level stalking); 609.855,
7.20 subdivision 5 (shooting at or in a public transit vehicle or facility); 617.23, subdivision 2,
7.21 clause (1), or subdivision 3, clause (1) (indecent exposure involving a minor); 617.246 (use
7.22 of minors in sexual performance prohibited); 617.247 (possession of pictorial representations
7.23 of minors); or, for a child care staff person or an individual 13 years of age or older residing
7.24 in a licensed family child care home or legal nonlicensed child care program, conviction of
7.25 a crime that would make the individual ineligible for employment under United States Code,
7.26 title 42, section 9858f, regardless of whether a period of disqualification under subdivisions
7.27 2 to 4, would apply if the individual were not a child care staff person or an individual living
7.28 in a licensed family child care home or legal nonlicensed child care program.

7.29 (b) An individual's aiding and abetting, attempt, or conspiracy to commit any of the
7.30 offenses listed in paragraph (a), as each of these offenses is defined in Minnesota Statutes,
7.31 permanently disqualifies the individual under section 245C.14.

7.32 (c) An individual's offense in any other state or country, where the elements of the offense
7.33 are substantially similar to any of the offenses listed in paragraph (a), permanently disqualifies
7.34 the individual under section 245C.14.

8.1 (d) When a disqualification is based on a judicial determination other than a conviction,
8.2 the disqualification period begins from the date of the court order. When a disqualification
8.3 is based on an admission, the disqualification period begins from the date of an admission
8.4 in court. When a disqualification is based on an Alford Plea, the disqualification period
8.5 begins from the date the Alford Plea is entered in court. When a disqualification is based
8.6 on a preponderance of evidence of a disqualifying act, the disqualification date begins from
8.7 the date of the dismissal, the date of discharge of the sentence imposed for a conviction for
8.8 a disqualifying crime of similar elements, or the date of the incident, whichever occurs last.

8.9 (e) If the individual studied commits one of the offenses listed in paragraph (a) that is
8.10 specified as a felony-level only offense, but the sentence or level of offense is a gross
8.11 misdemeanor or misdemeanor, the individual is disqualified, but the disqualification
8.12 look-back period for the offense is the period applicable to gross misdemeanor or
8.13 misdemeanor offenses.

8.14 (f) A child care staff person or an individual 13 years of age or older residing in a licensed
8.15 family child care home or legal nonlicensed child care program shall be disqualified as long
8.16 as the individual is registered, or required to be registered, on a state sex offender registry
8.17 or repository or the National Sex Offender Registry.

8.18 **EFFECTIVE DATE.** This section is effective upon the implementation of enhanced
8.19 child care background studies under NETStudy 2.0.

8.20 Sec. 6. Minnesota Statutes 2017 Supplement, section 245C.16, subdivision 1, is amended
8.21 to read:

8.22 Subdivision 1. **Determining immediate risk of harm.** (a) If the commissioner determines
8.23 that the individual studied has a disqualifying characteristic, the commissioner shall review
8.24 the information immediately available and make a determination as to the subject's immediate
8.25 risk of harm to persons served by the program where the individual studied will have direct
8.26 contact with, or access to, people receiving services.

8.27 (b) The commissioner shall consider all relevant information available, including the
8.28 following factors in determining the immediate risk of harm:

8.29 (1) the recency of the disqualifying characteristic;

8.30 (2) the recency of discharge from probation for the crimes;

8.31 (3) the number of disqualifying characteristics;

8.32 (4) the intrusiveness or violence of the disqualifying characteristic;

9.1 (5) the vulnerability of the victim involved in the disqualifying characteristic;

9.2 (6) the similarity of the victim to the persons served by the program where the individual
9.3 studied will have direct contact;

9.4 (7) whether the individual has a disqualification from a previous background study that
9.5 has not been set aside; and

9.6 (8) if the individual has a disqualification which may not be set aside because it is a
9.7 permanent bar under section 245C.24, subdivision 1, or the individual is a child care staff
9.8 person or is 13 years of age or older residing in a licensed family child care home or legal
9.9 nonlicensed child care program who has a felony-level conviction for a drug-related offense
9.10 in the last five years, the commissioner may order the immediate removal of the individual
9.11 from any position allowing direct contact with, or access to, persons receiving services from
9.12 the program.

9.13 (c) This section does not apply when the subject of a background study is regulated by
9.14 a health-related licensing board as defined in chapter 214, and the subject is determined to
9.15 be responsible for substantiated maltreatment under section 626.556 or 626.557.

9.16 (d) This section does not apply to a background study related to an initial application
9.17 for a child foster care license.

9.18 (e) Except for paragraph (f), this section does not apply to a background study that is
9.19 also subject to the requirements under section 256B.0659, subdivisions 11 and 13, for a
9.20 personal care assistant or a qualified professional as defined in section 256B.0659,
9.21 subdivision 1.

9.22 (f) If the commissioner has reason to believe, based on arrest information or an active
9.23 maltreatment investigation, that an individual poses an imminent risk of harm to persons
9.24 receiving services, the commissioner may order that the person be continuously supervised
9.25 or immediately removed pending the conclusion of the maltreatment investigation or criminal
9.26 proceedings.

9.27 **EFFECTIVE DATE.** This section is effective upon the implementation of enhanced
9.28 child care background studies under NETStudy 2.0.