

**SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH LEGISLATURE**

S.F. No. 361

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DATE	D-PG	OFFICIAL STATUS
02/11/2013	192	Introduction and first reading Referred to Judiciary

A bill for an act

relating to employment; limiting reliance on criminal history for employment purposes; applying criminal offender rehabilitation requirements to private employers; providing for remedies; amending Minnesota Statutes 2012, sections 181.981, subdivision 1; 364.02, subdivisions 4, 6; 364.021; 364.03; 364.04; 364.05; 364.06; 364.07; 364.09; 364.10.

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

Section 1. Minnesota Statutes 2012, section 181.981, subdivision 1, is amended to read:

Subdivision 1. **Limitation on admissibility of criminal history.** Information regarding a criminal history record of an employee or former employee may not be introduced as evidence in a civil action against a private employer or its employees or agents that is based on the conduct of the employee or former employee, if:

(1) the duties of the position of employment did not expose others to a greater degree of risk than that created by the employee or former employee interacting with the public outside of the duties of the position or that might be created by being employed in general;

(2) before the occurrence of the act giving rise to the civil action, a court order sealed any record of the criminal case or the employee or former employee received a pardon; or

(3) the record is of an arrest or charge that did not result in a criminal conviction; or

(4) the action is based solely upon the employer's compliance with chapter 364.

Sec. 2. Minnesota Statutes 2012, section 364.02, subdivision 4, is amended to read:

Subd. 4. **Public Employment.** "~~Public Employment~~" ~~includes all employment with~~ means the retention of an individual for pay by:

(1) the state of Minnesota, its agencies, or political subdivisions; or

2.1 (2) a private employer hiring an individual who will conduct the majority of the
 2.2 individual's work in this state.

2.3 Sec. 3. Minnesota Statutes 2012, section 364.02, subdivision 6, is amended to read:

2.4 Subd. 6. **Hiring or licensing authority.** "Hiring or licensing authority" ~~shall~~
 2.5 ~~mean~~ means:

2.6 (1) the person, board, commission, or department of the state of Minnesota, its
 2.7 agencies or political subdivisions, responsible by law for the hiring of persons for public
 2.8 employment or the licensing of persons for occupations; or

2.9 (2) the representative of a private business that is hiring a person for employment.

2.10 Sec. 4. Minnesota Statutes 2012, section 364.021, is amended to read:

2.11 **364.021 PUBLIC AND PRIVATE EMPLOYMENT; CONSIDERATION OF**
 2.12 **CRIMINAL RECORDS.**

2.13 (a) A public or private employer may not inquire into or consider the criminal record
 2.14 or criminal history of an applicant for ~~public~~ employment until the applicant has been
 2.15 selected for an interview by the employer.

2.16 (b) This section does not apply to the Department of Corrections or to ~~public~~
 2.17 employers who have a statutory duty to conduct a criminal history background check
 2.18 or otherwise take into consideration a potential employee's criminal history during the
 2.19 hiring process.

2.20 (c) This section does not prohibit a ~~public~~ an employer from notifying applicants
 2.21 that law or the employer's policy will disqualify an individual with a particular criminal
 2.22 history background from employment in particular positions.

2.23 Sec. 5. Minnesota Statutes 2012, section 364.03, is amended to read:

2.24 **364.03 RELATION OF CONVICTION TO EMPLOYMENT OR**
 2.25 **OCCUPATION.**

2.26 Subdivision 1. **No disqualification from employment or licensed occupations.**
 2.27 Notwithstanding any other provision of law to the contrary, no person shall be disqualified
 2.28 from ~~public~~ employment, nor shall a person be disqualified from pursuing, practicing, or
 2.29 engaging in any occupation for which a license is required solely or in part because of
 2.30 a prior conviction of a crime or crimes, unless the crime or crimes for which convicted
 2.31 directly relate to the position of employment sought or the occupation for which the
 2.32 license is sought.

3.1 Subd. 2. **Conviction relating to public employment sought.** In determining if a
3.2 conviction directly relates to the position of public employment sought or the occupation
3.3 for which the license is sought, the hiring or licensing authority shall consider:

3.4 (1) the nature and seriousness of the crime or crimes for which the individual was
3.5 convicted;

3.6 (2) the relationship of the crime or crimes to the purposes of regulating the position
3.7 of public employment sought or the occupation for which the license is sought;

3.8 (3) the relationship of the crime or crimes to the ability, capacity, and fitness required
3.9 to perform the duties and discharge the responsibilities of the position of employment
3.10 or occupation.

3.11 Subd. 3. **Evidence of rehabilitation.** (a) A person who has been convicted of a
3.12 crime or crimes which directly relate to the public employment sought or to the occupation
3.13 for which a license is sought shall not be disqualified from the employment or occupation
3.14 if the person can show competent evidence of sufficient rehabilitation and present fitness to
3.15 perform the duties of the public employment sought or the occupation for which the license
3.16 is sought. Sufficient evidence of rehabilitation may be established by the production of:

3.17 (1) a copy of the local, state, or federal release order; and

3.18 (2) evidence showing that at least one year has elapsed since release from any local,
3.19 state, or federal correctional institution without subsequent conviction of a crime; and
3.20 evidence showing compliance with all terms and conditions of probation or parole; or

3.21 (3) a copy of the relevant Department of Corrections discharge order or other
3.22 documents showing completion of probation or parole supervision.

3.23 (b) In addition to the documentary evidence presented, the licensing or hiring
3.24 authority shall consider any evidence presented by the applicant regarding:

3.25 (1) the nature and seriousness of the crime or crimes for which convicted;

3.26 (2) all circumstances relative to the crime or crimes, including mitigating
3.27 circumstances or social conditions surrounding the commission of the crime or crimes;

3.28 (3) the age of the person at the time the crime or crimes were committed;

3.29 (4) the length of time elapsed since the crime or crimes were committed; and

3.30 (5) all other competent evidence of rehabilitation and present fitness presented,
3.31 including, but not limited to, letters of reference by persons who have been in contact with
3.32 the applicant since the applicant's release from any local, state, or federal correctional
3.33 institution.

3.34 Sec. 6. Minnesota Statutes 2012, section 364.04, is amended to read:

3.35 **364.04 AVAILABILITY OF RECORDS.**

4.1 The following criminal records shall not be used, ~~distributed, or disseminated by the~~
 4.2 ~~state of Minnesota, its agents or political subdivisions~~ in connection with any application
 4.3 for ~~public~~ employment nor in connection with an application for a license:

- 4.4 (1) records of arrest not followed by a valid conviction;
 4.5 (2) convictions which have been, pursuant to law, annulled or expunged; and
 4.6 (3) misdemeanor convictions for which no jail sentence can be imposed.

4.7 Sec. 7. Minnesota Statutes 2012, section 364.05, is amended to read:

4.8 **364.05 NOTIFICATION UPON DENIAL OF EMPLOYMENT OR**
 4.9 **DISQUALIFICATION FROM OCCUPATION.**

4.10 If a hiring or licensing authority denies an individual a position of ~~public~~
 4.11 employment or disqualifies the individual from pursuing, practicing, or engaging in any
 4.12 occupation for which a license is required, solely or in part because of the individual's
 4.13 prior conviction of a crime, the hiring or licensing authority shall notify the individual in
 4.14 writing of the following:

- 4.15 (1) the grounds and reasons for the denial or disqualification;
 4.16 (2) the applicable complaint and grievance procedure as set forth in section 364.06;
 4.17 (3) the earliest date the person may reapply for a position of ~~public~~ employment or
 4.18 a license; and
 4.19 (4) that all competent evidence of rehabilitation presented will be considered upon
 4.20 reapplication.

4.21 Sec. 8. Minnesota Statutes 2012, section 364.06, is amended to read:

4.22 **364.06 VIOLATIONS; PROCEDURE; REMEDIES.**

4.23 Subdivision 1. **Public employers.** Any complaints or grievances concerning
 4.24 violations of sections 364.01 to 364.10 by public employers shall be processed and
 4.25 adjudicated in accordance with the procedures set forth in chapter 14, the Administrative
 4.26 Procedure Act.

4.27 Subd. 2. **Private employers.** In addition to other remedies provided by law, an
 4.28 individual injured by a violation of this chapter by a private employer may bring a civil
 4.29 action to recover damages and obtain injunctive or equitable relief. If the court finds
 4.30 that the private employer violated section 364.021, the court shall award the individual
 4.31 reasonable attorney fees. For other violations of this chapter by a private employer, the
 4.32 court shall award reasonable attorney fees if the court finds that the employer knowingly
 4.33 or recklessly violated this chapter.

5.1 Sec. 9. Minnesota Statutes 2012, section 364.07, is amended to read:

5.2 **364.07 APPLICATION.**

5.3 The provisions of sections 364.01 to 364.10 shall prevail over any other laws and
5.4 rules which purport to govern the granting, denial, renewal, suspension, or revocation of a
5.5 license or the initiation, suspension, or termination of public employment on the grounds
5.6 of conviction of a crime or crimes. In deciding to grant, deny, revoke, suspend, or renew a
5.7 license, or to deny, suspend, or terminate public employment for a lack of good moral
5.8 character or the like, the hiring or licensing authority may consider evidence of conviction
5.9 of a crime or crimes but only in the same manner and to the same effect as provided for
5.10 in sections 364.01 to 364.10. Nothing in sections 364.01 to 364.10 shall be construed to
5.11 otherwise affect relevant proceedings involving the granting, denial, renewal, suspension,
5.12 or revocation of a license or the initiation, suspension, or termination of public employment.

5.13 Sec. 10. Minnesota Statutes 2012, section 364.09, is amended to read:

5.14 **364.09 EXCEPTIONS.**

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

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

5.27 (2) any provision of chapter 152 that is punishable by a maximum sentence of
5.28 15 years or more; or

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

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

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

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

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

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

6.10 (f) This chapter does not supersede a statutory requirement to conduct a criminal
6.11 history background investigation or consider criminal history records in hiring for
6.12 particular types of employment.

6.13 Sec. 11. Minnesota Statutes 2012, section 364.10, is amended to read:

6.14 **364.10 VIOLATION OF CIVIL RIGHTS.**

6.15 Violation of the rights established in sections 364.01 to 364.10 by a public employer
6.16 shall constitute a violation of a person's civil rights.