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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 2302

02/15/2012 Authored by Kriesel, Greiling, Lohmer and Lenczewski

The bill was read for the first time and referred to the Committee on Public Safety and Crime Prevention Policy and Finance

1.1 A bill for an act
1.2 relating to public safety; prohibiting predatory offenders from serving as hotel or
1.3 motel employees; requiring background checks; amending Minnesota Statutes
1.4 2010, sections 299C.67, by adding subdivisions; 299C.68; 299C.69; 299C.70;
1.5 proposing coding for new law in Minnesota Statutes, chapter 609.

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

1.7 Section 1. Minnesota Statutes 2010, section 299C.67, is amended by adding a
1.8 subdivision to read:

1.9 Subd. 2a. **Employee.** "Employee" means an individual who is hired or applying to
1.10 be hired by a public accommodation operator who has or would have the means, within
1.11 the scope of the individual's duties, to enter a room where a guest is present.

1.12 Sec. 2. Minnesota Statutes 2010, section 299C.67, is amended by adding a subdivision
1.13 to read:

1.14 Subd. 4a. **Operator.** "Operator" means an individual who owns or manages a hotel,
1.15 motel, or other form of public accommodation.

1.16 Sec. 3. Minnesota Statutes 2010, section 299C.68, is amended to read:

1.17 **299C.68 BACKGROUND CHECK ON RESIDENTIAL BUILDING**
1.18 **MANAGER.**

1.19 Subdivision 1. **When required; apartment manager.** Before hiring a manager, an
1.20 owner shall request the superintendent to conduct a background check under this section.
1.21 An owner may employ a manager after requesting a background check under this section
1.22 before receipt of the background check report, provided that the owner complies with

2.1 section 299C.69. An owner may request a background check for a currently employed
2.2 manager under this section. By July 1, 1996, an owner shall request the superintendent to
2.3 conduct a background check under this section for managers hired before July 1, 1995,
2.4 who are currently employed.

2.5 Subd. 1a. **When required; public accommodation employee.** Before hiring an
2.6 employee, an operator shall request the superintendent to conduct a background check
2.7 under this section. An operator may employ an employee after requesting a background
2.8 check under this section before receipt of the background check report, provided that the
2.9 operator complies with section 299C.69. An operator may request a background check
2.10 for a current employee under this section. By July 1, 2012, an operator shall request the
2.11 superintendent to conduct a background check under this section for employees hired
2.12 before July 1, 2011, who are currently employed.

2.13 **Subd. 2. Procedures.** The superintendent shall develop procedures to enable an
2.14 owner or operator to request a background check to determine whether a manager or
2.15 employee is the subject of a reported conviction for a background check crime. The
2.16 superintendent shall perform the background check by retrieving and reviewing data
2.17 on background check crimes. The superintendent shall notify the owner or operator
2.18 in writing of the results of the background check. If the manager or employee has
2.19 resided in Minnesota for less than ten years or upon request of the owner or operator,
2.20 the superintendent shall also either: (1) conduct a search of the national criminal
2.21 records repository, including the criminal justice data communications network; or (2)
2.22 conduct a search of the criminal justice data communications network records in the
2.23 state or states where the manager or employee has resided for the preceding ten years.
2.24 The superintendent is authorized to exchange fingerprints with the Federal Bureau of
2.25 Investigation for purposes of the criminal history check. The superintendent shall recover
2.26 the cost of a background check through a fee charged to the owner or operator.

2.27 **Subd. 3. Form.** (a) The superintendent shall develop a standardized form to be used
2.28 for requesting a background check, which must include:

2.29 (1) a notification to the manager or employee that the owner or operator will request
2.30 the superintendent to perform a background check under this section;

2.31 (2) a notification to the manager or employee of the ~~manager's~~ individual's rights
2.32 under subdivision 4; and

2.33 (3) a signed consent by the manager or employee to conduct the background check.

2.34 (b) If the manager or employee has resided in Minnesota for less than ten years, or if
2.35 the owner or operator is requesting a search of the national criminal records repository,

3.1 the form must be accompanied by the fingerprints of the ~~manager~~ individual on whom
3.2 the background check is to be performed.

3.3 Subd. 4. **Manager's or employee's rights.** (a) The owner or operator shall notify
3.4 the manager or employee of the ~~manager's~~ individual's rights under paragraph (b).

3.5 (b) A manager or employee who is the subject of a background check request has
3.6 the following rights:

3.7 (1) the right to be informed that the owner or operator will request a background
3.8 check on the manager or employee to determine whether the ~~manager~~ individual has been
3.9 convicted of a crime specified in section 299C.67, subdivision 2;

3.10 (2) the right to be informed by the owner or operator of the superintendent's
3.11 response to the background check and to obtain from the owner or operator a copy of the
3.12 background check report;

3.13 (3) the right to obtain from the superintendent any record that forms the basis for
3.14 the report;

3.15 (4) the right to challenge the accuracy and completeness of information contained in
3.16 the report or record under section 13.04, subdivision 4; and

3.17 (5) the right to be informed by the owner or operator if the ~~manager's~~ individual's
3.18 application to be employed by the owner ~~or to continue as an employee~~ or operator has
3.19 been denied or if the individual's employment is terminated because of the result of the
3.20 background check.

3.21 Subd. 5. **Response of bureau.** The superintendent shall respond in writing to
3.22 a background check request within a reasonable time not to exceed ten working days
3.23 after receiving the signed form under subdivision 3. The superintendent's response from
3.24 the search of the Minnesota computerized criminal history system must clearly indicate
3.25 whether the ~~manager~~ individual has ever been convicted of a background check crime
3.26 and, if so, a description of the crime, date and jurisdiction of the conviction, and date of
3.27 discharge of sentence. If a search is being done of the national criminal records repository,
3.28 the superintendent shall determine eligibility based upon national records received. The
3.29 superintendent shall reply to the owner or operator in writing indicating whether the
3.30 ~~manager~~ individual is or is not eligible for employment.

3.31 Subd. 6. **Equivalent background check.** (a) An owner or operator may satisfy the
3.32 requirements of this section: (1) by obtaining a copy of a completed background check that
3.33 was required to be performed by the Department of Human Services as provided for under
3.34 section 144.057 and chapter 245C, and then placing the copy on file with the owner or
3.35 operator; (2) in the case of a background check performed on a manager for one residential
3.36 setting when multiple residential settings are operated by one owner, by placing the results

4.1 in a central location; or (3) by obtaining a background check from a private business or a
 4.2 local law enforcement agency rather than the superintendent if the scope of the background
 4.3 check provided by the private business or local law enforcement agency is at least as
 4.4 broad as that of a background check performed by the superintendent and the response to
 4.5 the background check request occurs within a reasonable time not to exceed ten working
 4.6 days after receiving the signed form described in subdivision 3. Local law enforcement
 4.7 agencies may access the criminal justice data network to perform the background check.

4.8 (b) A private business or local law enforcement agency providing a background
 4.9 check under this section must use a notification form similar to the form described in
 4.10 subdivision 3, except that the notification form must indicate that the background check
 4.11 will be performed by the private business or local law enforcement agency using records
 4.12 of the superintendent and other data sources.

4.13 Sec. 4. Minnesota Statutes 2010, section 299C.69, is amended to read:

4.14 **299C.69 OWNER OR OPERATOR DUTIES IF MANAGER OR EMPLOYEE**
 4.15 **CONVICTED OF CRIME.**

4.16 (a) If the superintendent's response indicates that the manager or employee has
 4.17 been convicted of a background check crime defined in section 299C.67, subdivision
 4.18 2, paragraph (a), the owner or operator may not hire the ~~manager~~ individual or, if the
 4.19 ~~manager~~ individual was hired pending completion of the background check, shall
 4.20 terminate the ~~manager's~~ individual's employment. Except as provided in paragraph (c), if
 4.21 an owner or operator otherwise knows that a manager or employee has been convicted of
 4.22 a background check crime defined in section 299C.67, subdivision 2, paragraph (a), the
 4.23 owner or operator shall terminate the ~~manager's~~ individual's employment.

4.24 (b) If the superintendent's response indicates that the ~~manager~~ individual has been
 4.25 convicted of a background check crime defined in section 299C.67, subdivision 2,
 4.26 paragraph (b), the owner or operator may not hire the ~~manager~~ individual unless more
 4.27 than ten years have elapsed since the date of discharge of the sentence. If the ~~manager~~
 4.28 individual was hired pending completion of the background check, the owner or operator
 4.29 shall terminate the ~~manager's~~ individual's employment unless more than ten years have
 4.30 elapsed since the date of discharge of the sentence. Except as provided in paragraph (c), if
 4.31 an owner or operator otherwise knows that ~~a manager~~ an individual has been convicted of
 4.32 a background check crime defined in section 299C.67, subdivision 2, paragraph (b), the
 4.33 owner or operator shall terminate the ~~manager's~~ individual's employment unless more than
 4.34 ten years have elapsed since the date of discharge of the sentence.

5.1 (c) If an owner knows that a manager hired before July 1, 1995, was convicted
 5.2 of a background check crime for an offense committed before July 1, 1995, the owner
 5.3 may continue to employ the manager. However, the owner shall notify all tenants and
 5.4 prospective tenants whose dwelling units would be accessible to the manager of the
 5.5 crime for which the manager has been convicted and of the right of a current tenant to
 5.6 terminate the tenancy under this paragraph, if the manager was convicted of a background
 5.7 check crime defined in:

5.8 (1) section 299C.67, subdivision 2, paragraph (a); or

5.9 (2) section 299C.67, subdivision 2, paragraph (b), unless more than ten years have
 5.10 elapsed since the sentence was discharged.

5.11 Notwithstanding a lease provision to the contrary, a current tenant who receives a notice
 5.12 under this paragraph may terminate the tenancy within 60 days of receipt of the notice by
 5.13 giving the owner at least 14 days' advance notice of the termination date.

5.14 (d) The owner or operator shall notify the manager or employee of any action taken
 5.15 under this subdivision.

5.16 (e) If an owner or operator is required to terminate ~~a manager's~~ an individual's
 5.17 employment under paragraph (a) or (b), or terminates a manager's employment in lieu
 5.18 of notifying tenants under paragraph (c), the owner or operator is not liable under any
 5.19 law, contract, or agreement, including liability for unemployment insurance claims, for
 5.20 terminating the ~~manager's~~ individual's employment in accordance with this section.

5.21 Notwithstanding a lease or agreement governing termination of the tenancy, if the
 5.22 manager whose employment is terminated is also a tenant, the owner may terminate the
 5.23 tenancy immediately upon giving notice to the manager. An eviction action to enforce
 5.24 the termination of the tenancy must be treated as a priority writ under sections 504B.321;
 5.25 504B.335; 504B.345, subdivision 1; 504B.361, subdivision 2; and 504B.365, subdivision
 5.26 2.

5.27 Sec. 5. Minnesota Statutes 2010, section 299C.70, is amended to read:

5.28 **299C.70 PENALTY.**

5.29 An owner or operator who knowingly fails to comply with the requirements of
 5.30 section 299C.68 or 299C.69 is guilty of a ~~petty~~ misdemeanor.

5.31 Sec. 6. **[609.354] RESTRICTIONS ON OWNERSHIP OR MANAGEMENT**
 5.32 **OF PUBLIC ACCOMMODATIONS BY PERSONS CONVICTED OF CERTAIN**
 5.33 **CRIMES AND PREDATORY OFFENDERS.**

6.1 Subdivision 1. **Prohibition.** A person who has been convicted of one of the
6.2 following offenses, or a similar offense in another state or jurisdiction, or who is required
6.3 to register as a predatory offender, may not operate or manage a hotel, motel, or other
6.4 form of public accommodation:

6.5 (1) prostitution under section 609.321, 609.324, or 609.3242;

6.6 (2) criminal sexual conduct under sections 609.342 to 609.3451;

6.7 (3) solicitation of children under section 609.352;

6.8 (4) indecent exposure under section 617.23;

6.9 (5) distribution or exhibition of obscene materials and performances under section
6.10 617.241;

6.11 (6) use of a minor in a sexual performance under section 617.246; or

6.12 (7) possession of pornographic work involving minors under section 617.247.

6.13 Subd. 2. **Penalty.** A person who violates this section is guilty of a felony.

6.14 Sec. 7. **REVISOR'S INSTRUCTION.**

6.15 The revisor shall update Minnesota Statutes, chapter 609B, to reflect the changes to
6.16 law contained in this act.