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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 1396

02/22/2021

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The bill was read for the first time and referred to the Committee on Public Safety and Criminal Justice Reform Finance and Policy

1.1 A bill for an act

1.2 relating to public safety; modifying Minnesota Child Protection Background Check

1.3 Act to conform with federal law and inclusion of elderly and individuals with a

1.4 disability; extending criminal history check to certain licensees and county or city

1.5 employees and volunteers; amending Minnesota Statutes 2020, sections 299C.60;

1.6 299C.61, subdivisions 2, 4, by adding subdivisions; 299C.62, subdivisions 1, 2,

1.7 3, 4, 6; 299C.63; 299C.72.

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

1.9 Section 1. Minnesota Statutes 2020, section 299C.60, is amended to read:

1.10 **299C.60 CITATION.**

1.11 Sections 299C.60 to 299C.64 may be cited as the "Minnesota Child, Elder, and

1.12 Individuals with Disabilities Protection Background Check Act."

1.13 Sec. 2. Minnesota Statutes 2020, section 299C.61, is amended by adding a subdivision to

1.14 read:

1.15 Subd. 1a. **Authorized agency.** "Authorized agency" means the licensing agency or, if

1.16 one does not exist, the Bureau of Criminal Apprehension. Licensing agencies include but

1.17 are not limited to the:

1.18 (1) Minnesota Department of Human Services;

1.19 (2) Minnesota Department of Health; and

1.20 (3) Professional Educator Licensing and Standards Board.

2.1 Sec. 3. Minnesota Statutes 2020, section 299C.61, subdivision 2, is amended to read:

2.2 Subd. 2. **Background check crime.** "Background check crime" includes child abuse
2.3 crimes, murder, manslaughter, felony level assault or any assault crime committed against
2.4 a minor or vulnerable adult, kidnapping, arson, criminal sexual conduct, and
2.5 prostitution-related crimes.

2.6 Sec. 4. Minnesota Statutes 2020, section 299C.61, is amended by adding a subdivision to
2.7 read:

2.8 Subd. 2a. **Care.** "Care" means the provision of care, treatment, education, training,
2.9 instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.

2.10 Sec. 5. Minnesota Statutes 2020, section 299C.61, subdivision 4, is amended to read:

2.11 Subd. 4. **Child abuse crime.** "Child abuse crime" means:

2.12 (1) an act committed against a minor victim that constitutes a violation of section 609.185,
2.13 paragraph (a), clause (5); 609.221; 609.222; 609.223; 609.224; 609.2242; 609.322; 609.324;
2.14 609.342; 609.343; 609.344; 609.345; 609.352; 609.377; ~~or~~ 609.378; or 617.247; or

2.15 (2) a violation of section 152.021, subdivision 1, clause (4); 152.022, subdivision 1,
2.16 clause (5) or (6); 152.023, subdivision 1, clause (3) or (4); 152.023, subdivision 2, clause
2.17 (4) or (6); or 152.024, subdivision 1, clause (2), (3), or (4).

2.18 Sec. 6. Minnesota Statutes 2020, section 299C.61, is amended by adding a subdivision to
2.19 read:

2.20 Subd. 8b. **Covered individual.** "Covered individual" means an individual:

2.21 (1) who has, seeks to have, or may have access to children, the elderly, or individuals
2.22 with disabilities, served by a qualified entity; and

2.23 (2) who:

2.24 (i) is employed by or volunteers with, or seeks to be employed by or volunteer with, a
2.25 qualified entity; or

2.26 (ii) owns or operates, or seeks to own or operate, a qualified entity.

3.1 Sec. 7. Minnesota Statutes 2020, section 299C.61, is amended by adding a subdivision to
3.2 read:

3.3 Subd. 8c. **Individuals with disabilities.** "Individuals with disabilities" means persons
3.4 with a mental or physical impairment who require assistance to perform one or more daily
3.5 living tasks.

3.6 Sec. 8. Minnesota Statutes 2020, section 299C.61, is amended by adding a subdivision to
3.7 read:

3.8 Subd. 8d. **National criminal history background check system.** "National criminal
3.9 history background check system" means the criminal history record system maintained by
3.10 the Federal Bureau of Investigation based on fingerprint identification or any other method
3.11 of positive identification.

3.12 Sec. 9. Minnesota Statutes 2020, section 299C.61, is amended by adding a subdivision to
3.13 read:

3.14 Subd. 8e. **Qualified entity.** "Qualified entity" means a business or organization, whether
3.15 public, private, for-profit, not-for-profit, or voluntary, that provides care or care placement
3.16 services, including a business or organization that licenses or certifies others to provide care
3.17 or care placement services.

3.18 Sec. 10. Minnesota Statutes 2020, section 299C.62, subdivision 1, is amended to read:

3.19 Subdivision 1. **Generally.** The superintendent shall develop procedures in accordance
3.20 with United States Code, title 34, section 40102, to enable a children's service provider
3.21 qualified entity to request a background check to determine whether a children's service
3.22 worker covered worker is the subject of any reported conviction for a background check
3.23 crime. The superintendent shall perform the background check by retrieving and reviewing
3.24 data on background check crimes. The superintendent is authorized to exchange fingerprints
3.25 with the Federal Bureau of Investigation for purposes of a criminal history the background
3.26 check. The superintendent shall recover the cost of a background check through a fee charged
3.27 the children's service provider to the qualified entity and make reasonable efforts to respond
3.28 to the inquiry within 15 business days.

3.29 Sec. 11. Minnesota Statutes 2020, section 299C.62, subdivision 2, is amended to read:

3.30 Subd. 2. **Background check; requirements.** ~~(a) The superintendent may not perform~~
3.31 ~~a background check under this section unless the children's service provider submits a~~

~~written document, signed by the children's service worker on whom the background check is to be performed, containing the following:~~

~~(1) a question asking whether the children's service worker has ever been convicted of a background check crime and if so, requiring a description of the crime and the particulars of the conviction;~~

~~(2) a notification to the children's service worker that the children's service provider will request the superintendent to perform a background check under this section; and~~

~~(3) a notification to the children's service worker of the children's service worker's rights under subdivision 3.~~

~~(b) Background checks performed under this section may only be requested by and provided to authorized representatives of a children's service provider who have a need to know the information and may be used only for the purposes of sections 299C.60 to 299C.64. Background checks may be performed pursuant to this section not later than one year after the document is submitted under this section.~~

The superintendent may not perform a background check of a covered individual under this section unless the covered individual:

(1) completes and signs a statement that:

(i) contains the name, address, and date of birth appearing on a valid identification document, as defined in United States Code, title 18, section 1028, of the covered individual;

(ii) the covered individual has not been convicted of a crime and, if the covered individual has been convicted of a crime, contains a description of the crime and the particulars of the conviction;

(iii) notifies the covered individual that the entity may request a background check under subdivision 1;

(iv) notifies the covered individual of the covered individual's rights under subdivision 3; and

(v) notifies the covered individual that prior to the completion of the background check the qualified entity may choose to deny the covered individual access to a person to whom the qualified entity provides care; and

(2) if requesting a national criminal history background check, provides a set of fingerprints.

5.1 Sec. 12. Minnesota Statutes 2020, section 299C.62, subdivision 3, is amended to read:

5.2 Subd. 3. ~~Children's service worker~~ Covered individuals rights. ~~(a) The children's~~
5.3 ~~service provider shall notify the children's service worker of the children's service worker's~~
5.4 ~~rights under paragraph (b).~~

5.5 ~~(b) A children's service worker who is the subject of a background check request has~~
5.6 ~~the following rights:~~

5.7 ~~(1) the right to be informed that a children's service provider will request a background~~
5.8 ~~check on the children's service worker;~~

5.9 ~~(i) for purposes of the children's service worker's application to be employed by, volunteer~~
5.10 ~~with, be an independent contractor for, or be an owner of a children's service provider or~~
5.11 ~~for purposes of continuing as an employee, volunteer, independent contractor, or owner;~~
5.12 ~~and~~

5.13 ~~(ii) to determine whether the children's service worker has been convicted of any crime~~
5.14 ~~specified in section 299C.61, subdivision 2 or 4;~~

5.15 ~~(2) the right to be informed by the children's service provider of the superintendent's~~
5.16 ~~response to the background check and to obtain from the children's service provider a copy~~
5.17 ~~of the background check report;~~

5.18 ~~(3) the right to obtain from the superintendent any record that forms the basis for the~~
5.19 ~~report;~~

5.20 ~~(4) the right to challenge the accuracy and completeness of any information contained~~
5.21 ~~in the report or record pursuant to section 13.04, subdivision 4;~~

5.22 ~~(5) the right to be informed by the children's service provider if the children's service~~
5.23 ~~worker's application to be employed with, volunteer with, be an independent contractor for,~~
5.24 ~~or be an owner of a children's service provider, or to continue as an employee, volunteer,~~
5.25 ~~independent contractor, or owner, has been denied because of the superintendent's response;~~
5.26 ~~and~~

5.27 ~~(6) the right not to be required directly or indirectly to pay the cost of the background~~
5.28 ~~check.~~

5.29 The qualified entity shall notify the covered individual who is subjected to a background
5.30 check under subdivision 1 that the individual has the right to:

5.31 (1) obtain a copy of any background check report;

6.1 (2) challenge the accuracy or completeness of the information contained in the background
6.2 report or record pursuant to section 13.04, subdivision 4, or applicable federal authority;
6.3 and

6.4 (3) be given notice of the opportunity to appeal and instructions on how to complete the
6.5 appeals process.

6.6 Sec. 13. Minnesota Statutes 2020, section 299C.62, subdivision 4, is amended to read:

6.7 Subd. 4. **Response of bureau.** The superintendent shall respond to a background check
6.8 request within a reasonable time after receiving a request from a qualified entity or the
6.9 signed, written document described in subdivision 2. The superintendent shall provide the
6.10 ~~children's service provider~~ qualified entity with a copy of the ~~applicant's~~ covered individual's
6.11 criminal record or a statement that the ~~applicant~~ covered individual is not the subject of a
6.12 criminal history record at the bureau. It is the responsibility of the ~~service provider~~ qualified
6.13 entity to determine if the ~~applicant~~ covered individual qualifies as an employee, volunteer,
6.14 or independent contractor under this section.

6.15 Sec. 14. Minnesota Statutes 2020, section 299C.62, subdivision 6, is amended to read:

6.16 Subd. 6. **Admissibility of evidence.** Evidence or proof that a background check of a
6.17 volunteer was not requested under sections 299C.60 to 299C.64 by a ~~children's service~~
6.18 ~~provider~~ qualified entity is not admissible in evidence in any litigation against a nonprofit
6.19 or charitable organization.

6.20 Sec. 15. Minnesota Statutes 2020, section 299C.63, is amended to read:

6.21 **299C.63 EXCEPTION; OTHER LAWS.**

6.22 The superintendent is not required to respond to a background check request concerning
6.23 a ~~children's service worker~~ covered individual who, as a condition of occupational licensure
6.24 or employment, is subject to the background study requirements imposed by any statute or
6.25 rule other than sections 299C.60 to 299C.64. ~~A background check performed on a licensee,~~
6.26 ~~license applicant, or employment applicant under this section does not satisfy the~~
6.27 ~~requirements of any statute or rule other than sections 299C.60 to 299C.64, that provides~~
6.28 ~~for background study of members of an individual's particular occupation.~~

Sec. 16. Minnesota Statutes 2020, section 299C.72, is amended to read:

299C.72 MINNESOTA CRIMINAL HISTORY CHECKS.

Subdivision 1. **Definitions.** For purposes of this section, the following terms have the meanings given.

(a) "Applicant for employment" means an individual who seeks either county or city employment or has applied to serve as a volunteer in the county or city.

(b) "Applicant for licensure" means the individual seeks a license issued by the county or city which is not subject to a federal- or state-mandated background check.

(c) "Authorized law enforcement agency" means the county sheriff for checks conducted for county purposes, the police department for checks conducted for city purposes, or the county sheriff for checks conducted for city purposes where there is no police department.

(d) "Criminal history check" means retrieval of criminal history data via the secure network described in section 299C.46.

(e) "Criminal history data" means adult convictions and adult open arrests less than one year old found in the Minnesota computerized criminal history repository.

(f) "Current employee" means an individual presently employed by either a county or city or who presently serves as a volunteer in the county or city.

(g) "Current licensee" means an individual who has previously sought and received a license, which is still presently valid, issued by a county or city.

~~(f)~~ (h) "Informed consent" has the meaning given in section 13.05, subdivision 4, paragraph (d).

Subd. 2. **Criminal history check authorized.** (a) The criminal history check authorized by this section shall not be used in place of a statutorily mandated or authorized background check.

(b) An authorized law enforcement agency may conduct a criminal history check of an individual who is an applicant for employment ~~or~~ current employee, applicant for licensure, or current licensee. Prior to conducting the criminal history check, the authorized law enforcement agency must receive the informed consent of the individual.

(c) The authorized law enforcement agency shall not disseminate criminal history data and must maintain it securely with the agency's office. The authorized law enforcement agency can indicate whether the applicant for employment or applicant for licensure has a

- 8.1 criminal history that would prevent hire, acceptance as a volunteer to a hiring authority, or
- 8.2 would prevent the issuance of a license to the department that issues the license.