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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. **1050**

02/11/2019 Authored by Moran, Kresha, Lee, Schomacker, Pinto and others
The bill was read for the first time and referred to the Committee on Health and Human Services Policy

- 1.1 A bill for an act
- 1.2 relating to human services; modifying provisions governing child foster care;
- 1.3 amending Minnesota Statutes 2018, sections 245A.05; 245A.07, subdivision 1;
- 1.4 245A.16, by adding a subdivision; 245C.02, by adding a subdivision; 245C.05,
- 1.5 subdivision 4; 245C.14, subdivision 1; 245C.15, by adding a subdivision; 245C.24.
- 1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.7 Section 1. Minnesota Statutes 2018, section 245A.05, is amended to read:
- 1.8 **245A.05 DENIAL OF APPLICATION.**
- 1.9 (a) The commissioner may deny a license if an applicant or controlling individual:
- 1.10 (1) fails to submit a substantially complete application after receiving notice from the
- 1.11 commissioner under section 245A.04, subdivision 1;
- 1.12 (2) fails to comply with applicable laws or rules;
- 1.13 (3) knowingly withholds relevant information from or gives false or misleading
- 1.14 information to the commissioner in connection with an application for a license or during
- 1.15 an investigation;
- 1.16 (4) has a disqualification that has not been set aside under section 245C.22 and no
- 1.17 variance has been granted;
- 1.18 (5) has an individual living in the household who received a background study under
- 1.19 section 245C.03, subdivision 1, paragraph (a), clause (2), who has a disqualification that
- 1.20 has not been set aside under section 245C.22, and no variance has been granted;
- 1.21 (6) is associated with an individual who received a background study under section
- 1.22 245C.03, subdivision 1, paragraph (a), clause (6), who may have unsupervised access to

2.1 children or vulnerable adults, and who has a disqualification that has not been set aside
 2.2 under section 245C.22, and no variance has been granted; ~~or~~

2.3 (7) fails to comply with section 245A.04, subdivision 1, paragraph (f) or (g); or

2.4 (8) for family child foster care, has nondisqualifying background study information that
 2.5 reflects on the individual's ability to safely provide care to foster children.

2.6 (b) An applicant whose application has been denied by the commissioner must be given
 2.7 notice of the denial, which must state the reasons for the denial in plain language. Notice
 2.8 must be given by certified mail or personal service. The notice must state the reasons the
 2.9 application was denied and must inform the applicant of the right to a contested case hearing
 2.10 under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The applicant may
 2.11 appeal the denial by notifying the commissioner in writing by certified mail or personal
 2.12 service. If mailed, the appeal must be postmarked and sent to the commissioner within 20
 2.13 calendar days after the applicant received the notice of denial. If an appeal request is made
 2.14 by personal service, it must be received by the commissioner within 20 calendar days after
 2.15 the applicant received the notice of denial. Section 245A.08 applies to hearings held to
 2.16 appeal the commissioner's denial of an application.

2.17 **EFFECTIVE DATE.** This section is effective March 1, 2020.

2.18 Sec. 2. Minnesota Statutes 2018, section 245A.07, subdivision 1, is amended to read:

2.19 Subdivision 1. **Sanctions; appeals; license.** (a) In addition to making a license conditional
 2.20 under section 245A.06, the commissioner may suspend or revoke the license, impose a fine,
 2.21 or secure an injunction against the continuing operation of the program of a license holder
 2.22 who does not comply with applicable law or rule or who has nondisqualifying background
 2.23 study information that reflects on the license holder's ability to safely provide care to foster
 2.24 children. When applying sanctions authorized under this section, the commissioner shall
 2.25 consider the nature, chronicity, or severity of the violation of law or rule and the effect of
 2.26 the violation on the health, safety, or rights of persons served by the program.

2.27 (b) If a license holder appeals the suspension or revocation of a license and the license
 2.28 holder continues to operate the program pending a final order on the appeal, the commissioner
 2.29 shall issue the license holder a temporary provisional license. Unless otherwise specified
 2.30 by the commissioner, variances in effect on the date of the license sanction under appeal
 2.31 continue under the temporary provisional license. If a license holder fails to comply with
 2.32 applicable law or rule while operating under a temporary provisional license, the
 2.33 commissioner may impose additional sanctions under this section and section 245A.06, and

3.1 may terminate any prior variance. If a temporary provisional license is set to expire, a new
3.2 temporary provisional license shall be issued to the license holder upon payment of any fee
3.3 required under section 245A.10. The temporary provisional license shall expire on the date
3.4 the final order is issued. If the license holder prevails on the appeal, a new nonprovisional
3.5 license shall be issued for the remainder of the current license period.

3.6 (c) If a license holder is under investigation and the license is due to expire before
3.7 completion of the investigation, the program shall be issued a new license upon completion
3.8 of the reapplication requirements and payment of any applicable license fee. Upon completion
3.9 of the investigation, a licensing sanction may be imposed against the new license under this
3.10 section, section 245A.06, or 245A.08.

3.11 (d) Failure to reapply or closure of a license by the license holder prior to the completion
3.12 of any investigation shall not preclude the commissioner from issuing a licensing sanction
3.13 under this section, section 245A.06, or 245A.08 at the conclusion of the investigation.

3.14 **EFFECTIVE DATE.** This section is effective March 1, 2020.

3.15 Sec. 3. Minnesota Statutes 2018, section 245A.16, is amended by adding a subdivision to
3.16 read:

3.17 **Subd. 9. Licensed family child foster care.** (a) Before recommending to deny a license
3.18 under section 245A.05 or revoke a license under section 245A.07 for nondisqualifying
3.19 background study information received under section 245C.05, subdivision 4, paragraph
3.20 (a), clause (3), a county agency or private agency that has been designated or licensed by
3.21 the commissioner must review the following:

3.22 (1) the type of crime;

3.23 (2) the number of crimes;

3.24 (3) the nature of the offenses;

3.25 (4) the age of the individual at the time of conviction;

3.26 (5) the length of time that has elapsed since the last conviction;

3.27 (6) the relationship of the crime and the capacity to care for a child;

3.28 (7) evidence of rehabilitation;

3.29 (8) information or knowledge from community members regarding the individual's
3.30 capacity to provide foster care;

3.31 (9) a statement from the study subject;

4.1 (10) a statement from the license holder; and

4.2 (11) other aggravating and mitigating factors.

4.3 (b) The county or private licensing agency must send a summary of the review completed
 4.4 according to paragraph (a), on a form developed by the commissioner, to the commissioner
 4.5 and include any recommendation for licensing action.

4.6 **EFFECTIVE DATE.** This section is effective March 1, 2020.

4.7 Sec. 4. Minnesota Statutes 2018, section 245C.02, is amended by adding a subdivision to
 4.8 read:

4.9 Subd. 12a. **Licensed family child foster care.** "Licensed family child foster care"
 4.10 includes providers who have submitted an application for family child foster care licensure
 4.11 under section 245A.04, subdivision 1.

4.12 **EFFECTIVE DATE.** This section is effective March 1, 2020.

4.13 Sec. 5. Minnesota Statutes 2018, section 245C.05, subdivision 4, is amended to read:

4.14 **Subd. 4. Electronic transmission.** (a) For background studies conducted by the
 4.15 Department of Human Services, the commissioner shall implement a secure system for the
 4.16 electronic transmission of:

4.17 (1) background study information to the commissioner;

4.18 (2) background study results to the license holder;

4.19 (3) background study results to county and private agencies for background studies
 4.20 conducted by the commissioner for child foster care, including a summary of
 4.21 nondisqualifying results; and

4.22 (4) background study results to county agencies for background studies conducted by
 4.23 the commissioner for adult foster care and family adult day services and, upon
 4.24 implementation of NETStudy 2.0, family child care and legal nonlicensed child care
 4.25 authorized under chapter 119B.

4.26 (b) Unless the commissioner has granted a hardship variance under paragraph (c), a
 4.27 license holder or an applicant must use the electronic transmission system known as
 4.28 NETStudy or NETStudy 2.0 to submit all requests for background studies to the
 4.29 commissioner as required by this chapter.

5.1 (c) A license holder or applicant whose program is located in an area in which high-speed
 5.2 Internet is inaccessible may request the commissioner to grant a variance to the electronic
 5.3 transmission requirement.

5.4 **EFFECTIVE DATE.** This section is effective March 1, 2020.

5.5 Sec. 6. Minnesota Statutes 2018, section 245C.14, subdivision 1, is amended to read:

5.6 Subdivision 1. **Disqualification from direct contact.** (a) The commissioner shall
 5.7 disqualify an individual who is the subject of a background study from any position allowing
 5.8 direct contact with persons receiving services from the license holder or entity identified in
 5.9 section 245C.03, upon receipt of information showing, or when a background study
 5.10 completed under this chapter shows any of the following:

5.11 (1) a conviction of, admission to, or Alford plea to one or more crimes listed in section
 5.12 245C.15, regardless of whether the conviction or admission is a felony, gross misdemeanor,
 5.13 or misdemeanor level crime;

5.14 (2) a preponderance of the evidence indicates the individual has committed an act or
 5.15 acts that meet the definition of any of the crimes listed in section 245C.15, regardless of
 5.16 whether the preponderance of the evidence is for a felony, gross misdemeanor, or
 5.17 misdemeanor level crime; or

5.18 (3) an investigation results in an administrative determination listed under section
 5.19 245C.15, subdivision 4, paragraph (b).

5.20 (b) No individual who is disqualified following a background study under section
 5.21 245C.03, subdivisions 1 and 2, may be retained in a position involving direct contact with
 5.22 persons served by a program or entity identified in section 245C.03, unless the commissioner
 5.23 has provided written notice under section 245C.17 stating that:

5.24 (1) the individual may remain in direct contact during the period in which the individual
 5.25 may request reconsideration as provided in section 245C.21, subdivision 2;

5.26 (2) the commissioner has set aside the individual's disqualification for that program or
 5.27 entity identified in section 245C.03, as provided in section 245C.22, subdivision 4; or

5.28 (3) the license holder has been granted a variance for the disqualified individual under
 5.29 section 245C.30.

5.30 (c) Notwithstanding paragraph (a), for the purposes of a background study affiliated
 5.31 with a licensed family child foster care provider, the commissioner shall disqualify an
 5.32 individual who is the subject of a background study from any position allowing direct contact

6.1 with persons receiving services from the license holder or entity identified in section 245C.03,
6.2 upon receipt of information showing, or when a background study completed under this
6.3 chapter is disqualifying under section 245C.15, subdivision 6.

6.4 **EFFECTIVE DATE.** This section is effective March 1, 2020.

6.5 Sec. 7. Minnesota Statutes 2018, section 245C.15, is amended by adding a subdivision to
6.6 read:

6.7 Subd. 6. **Licensed family child foster care disqualifications.** (a) Notwithstanding
6.8 subdivisions 1 to 5, for a background study affiliated with a licensed family child foster
6.9 care, regardless of how much time has passed, an individual is disqualified under section
6.10 245C.14 if the individual:

6.11 (1) committed an action under paragraph (c) that (i) resulted in the death of a minor, or
6.12 (ii) involved the sexual abuse of a minor; or

6.13 (2) committed an act that resulted in a felony-level conviction for: 609.185 (murder in
6.14 the first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree);
6.15 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree);
6.16 609.2112 (criminal vehicular homicide); 609.223, subdivision 2 (assault in the third degree,
6.17 past pattern of child abuse); 609.223, subdivision 3 (assault in the third degree, victim under
6.18 four); a felony offense under sections 609.2242 and 609.2243 (domestic assault), spousal
6.19 abuse, child abuse or neglect, or a crime against children; 609.2247 (domestic assault by
6.20 strangulation); 609.25 (kidnapping); 609.255 (false imprisonment); 609.265 (abduction);
6.21 609.2661 (murder of an unborn child in the first degree); 609.2662 (murder of an unborn
6.22 child in the second degree); 609.2663 (murder of an unborn child in the third degree);
6.23 609.2664 (manslaughter of an unborn child in the first degree); 609.2665 (manslaughter of
6.24 an unborn child in the second degree); 609.267 (assault of an unborn child in the first degree);
6.25 609.2671 (assault of an unborn child in the second degree); 609.268 (injury or death of an
6.26 unborn child in the commission of a crime); 609.324, subdivision 1 (other prohibited acts;
6.27 engaging in, hiring, or agreeing to hire minor to engage in prostitution); 609.342 (criminal
6.28 sexual conduct in the first degree); 609.343 (criminal sexual conduct in the second degree);
6.29 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal sexual conduct in
6.30 the fourth degree); 609.3451 (criminal sexual conduct in the fifth degree); 609.3453 (criminal
6.31 sexual predatory conduct); 609.352 (solicitation of children to engage in sexual conduct);
6.32 609.377 (malicious punishment of a child); 609.378 (neglect or endangerment of a child);
6.33 617.246 (use of minors in sexual performance prohibited); or 617.247 (possession of pictorial
6.34 representations of minors).

7.1 (b) Notwithstanding subdivisions 1 to 5, for a background study affiliated with a licensed
7.2 family child foster care license, an individual is disqualified under section 245C.14 if:

7.3 (1) less than five years have passed since the termination of parental rights under section
7.4 260C.301, subdivision 1, paragraph (a) or (b); or

7.5 (2) less than five years have passed since committing an act that resulted in a felony-level
7.6 conviction for: 152.021 (controlled substance crime in the first degree); 152.022 (controlled
7.7 substance crime in the second degree); 152.023 (controlled substance crime in the third
7.8 degree); 152.024 (controlled substance crime in the fourth degree); 152.025 (controlled
7.9 substance crime in the fifth degree); 152.0261 (importing controlled substances across state
7.10 borders); 152.0262, subdivision 1, paragraph (b) (possession of substance with intent to
7.11 manufacture methamphetamine); 152.027, subdivision 6, paragraph (c) (sale or possession
7.12 of synthetic cannabinoids); 152.096 (conspiracies prohibited); 152.097 (simulated controlled
7.13 substances); 152.136 (anhydrous ammonia; prohibited conduct; criminal penalties; civil
7.14 liabilities); 152.137 (methamphetamine-related crimes involving children or vulnerable
7.15 adults); 169A.24 (felony first-degree driving while impaired); 609.2113 (criminal vehicular
7.16 operation; bodily harm); 609.2114 (criminal vehicular operation; unborn child); 609.221
7.17 (assault in the first degree); 609.222 (assault in the second degree); 609.223, subdivision 1
7.18 (assault in the third degree); 609.2231, subdivision 1, paragraph (c) (assault in the fourth
7.19 degree, secure treatment personnel); 609.224, subdivision 4 (felony assault in the fifth
7.20 degree); 609.228 (great bodily harm caused by distribution of drugs); 609.2325 (criminal
7.21 abuse of a vulnerable adult); 609.235 (use of drugs to injure or facilitate a crime); 609.66,
7.22 subdivision 1e (felony drive-by shooting); 609.687 (adulteration); or 609.855, subdivision
7.23 5 (shooting at or in a public transit vehicle or facility).

7.24 (c) Notwithstanding subdivisions 1 to 5, except as provided in paragraph (a), for a
7.25 background study affiliated with a licensed family child foster care license, an individual
7.26 is disqualified under section 245C.14 if less than five years have passed since a determination
7.27 or disposition of the individual's:

7.28 (1) failure to make required reports under section 626.556, subdivision 3, or 626.557,
7.29 subdivision 3, for incidents in which the final disposition under section 626.556 or 626.557
7.30 was substantiated maltreatment and the maltreatment was recurring or serious; or

7.31 (2) substantiated serious or recurring maltreatment of a minor under section 626.556, a
7.32 vulnerable adult under section 626.557, or serious or recurring maltreatment in any other
7.33 state, the elements of which are substantially similar to the elements of maltreatment under

8.1 section 626.556 or 626.557 for which there is a preponderance of evidence that the
8.2 maltreatment occurred and the subject was responsible for the maltreatment.

8.3 **EFFECTIVE DATE.** This section is effective March 1, 2020.

8.4 Sec. 8. Minnesota Statutes 2018, section 245C.24, is amended to read:

8.5 **245C.24 DISQUALIFICATION; BAR TO SET ASIDE A DISQUALIFICATION;**
8.6 **REQUEST FOR VARIANCE.**

8.7 Subdivision 1. **Minimum disqualification periods.** The disqualification periods under
8.8 subdivisions 3 ~~and 4~~ to 5 are the minimum applicable disqualification periods. The
8.9 commissioner may determine that an individual should continue to be disqualified from
8.10 licensure because the individual continues to pose a risk of harm to persons served by that
8.11 individual, even after the minimum disqualification period has passed.

8.12 Subd. 2. **Permanent bar to set aside a disqualification.** (a) Except as provided in
8.13 ~~paragraph~~ paragraphs (b); to (d), the commissioner may not set aside the disqualification
8.14 of any individual disqualified pursuant to this chapter, regardless of how much time has
8.15 passed, if the individual was disqualified for a crime or conduct listed in section 245C.15,
8.16 subdivision 1.

8.17 (b) For an individual in the chemical dependency or corrections field who was disqualified
8.18 for a crime or conduct listed under section 245C.15, subdivision 1, and whose disqualification
8.19 was set aside prior to July 1, 2005, the commissioner must consider granting a variance
8.20 pursuant to section 245C.30 for the license holder for a program dealing primarily with
8.21 adults. A request for reconsideration evaluated under this paragraph must include a letter
8.22 of recommendation from the license holder that was subject to the prior set-aside decision
8.23 addressing the individual's quality of care to children or vulnerable adults and the
8.24 circumstances of the individual's departure from that service.

8.25 (c) When a licensed foster care provider adopts an individual who had received foster
8.26 care services from the provider for over six months, and the adopted individual is required
8.27 to receive a background study under section 245C.03, subdivision 1, paragraph (a), clause
8.28 (2) or (6), the commissioner may grant a variance to the license holder under section 245C.30
8.29 to permit the adopted individual with a permanent disqualification to remain affiliated with
8.30 the license holder under the conditions of the variance when the variance is recommended
8.31 by the county of responsibility for each of the remaining individuals in placement in the
8.32 home and the licensing agency for the home.

9.1 (d) For an individual 18 years of age or older affiliated with a licensed family child foster
 9.2 care program, the commissioner must not set aside the disqualification of any individual
 9.3 disqualified pursuant to this chapter, regardless of how much time has passed, if the individual
 9.4 was disqualified for a crime or conduct listed in section 245C.15, subdivision 6, paragraph
 9.5 (a). This paragraph does not apply to an individual younger than 18 years of age.

9.6 Subd. 3. **Ten-year bar to set aside disqualification.** (a) The commissioner may not set
 9.7 aside the disqualification of an individual in connection with a license to provide family
 9.8 child care for children, ~~foster care for children in the provider's home~~, or foster care or day
 9.9 care services for adults in the provider's home if: (1) less than ten years has passed since
 9.10 the discharge of the sentence imposed, if any, for the offense; or (2) when disqualified based
 9.11 on a preponderance of evidence determination under section 245C.14, subdivision 1,
 9.12 paragraph (a), clause (2), or an admission under section 245C.14, subdivision 1, paragraph
 9.13 (a), clause (1), and less than ten years has passed since the individual committed the act or
 9.14 admitted to committing the act, whichever is later; and (3) the individual has committed a
 9.15 violation of any of the following offenses: sections 609.165 (felon ineligible to possess
 9.16 firearm); criminal vehicular homicide or criminal vehicular operation causing death under
 9.17 609.2112, 609.2113, or 609.2114 (criminal vehicular homicide or injury); 609.215 (aiding
 9.18 suicide or aiding attempted suicide); felony violations under 609.223 or 609.2231 (assault
 9.19 in the third or fourth degree); 609.229 (crimes committed for benefit of a gang); 609.713
 9.20 (terroristic threats); 609.235 (use of drugs to injure or to facilitate crime); 609.24 (simple
 9.21 robbery); 609.255 (false imprisonment); 609.562 (arson in the second degree); 609.71 (riot);
 9.22 609.498, subdivision 1 or 1b (aggravated first-degree or first-degree tampering with a
 9.23 witness); burglary in the first or second degree under 609.582 (burglary); 609.66 (dangerous
 9.24 weapon); 609.665 (spring guns); 609.67 (machine guns and short-barreled shotguns);
 9.25 609.749, subdivision 2 (gross misdemeanor stalking); 152.021 or 152.022 (controlled
 9.26 substance crime in the first or second degree); 152.023, subdivision 1, clause (3) or (4) or
 9.27 subdivision 2, clause (4) (controlled substance crime in the third degree); 152.024,
 9.28 subdivision 1, clause (2), (3), or (4) (controlled substance crime in the fourth degree);
 9.29 609.224, subdivision 2, paragraph (c) (fifth-degree assault by a caregiver against a vulnerable
 9.30 adult); 609.23 (mistreatment of persons confined); 609.231 (mistreatment of residents or
 9.31 patients); 609.2325 (criminal abuse of a vulnerable adult); 609.233 (criminal neglect of a
 9.32 vulnerable adult); 609.2335 (financial exploitation of a vulnerable adult); 609.234 (failure
 9.33 to report); 609.265 (abduction); 609.2664 to 609.2665 (manslaughter of an unborn child in
 9.34 the first or second degree); 609.267 to 609.2672 (assault of an unborn child in the first,
 9.35 second, or third degree); 609.268 (injury or death of an unborn child in the commission of
 9.36 a crime); repeat offenses under 617.23 (indecent exposure); 617.293 (disseminating or

10.1 displaying harmful material to minors); a felony-level conviction involving alcohol or drug
10.2 use, a gross misdemeanor offense under 609.324, subdivision 1 (other prohibited acts); a
10.3 gross misdemeanor offense under 609.378 (neglect or endangerment of a child); a gross
10.4 misdemeanor offense under 609.377 (malicious punishment of a child); 609.72, subdivision
10.5 3 (disorderly conduct against a vulnerable adult); or 624.713 (certain persons not to possess
10.6 firearms); or Minnesota Statutes 2012, section 609.21.

10.7 (b) The commissioner may not set aside the disqualification of an individual if less than
10.8 ten years have passed since the individual's aiding and abetting, attempt, or conspiracy to
10.9 commit any of the offenses listed in paragraph (a) as each of these offenses is defined in
10.10 Minnesota Statutes.

10.11 (c) The commissioner may not set aside the disqualification of an individual if less than
10.12 ten years have passed since the discharge of the sentence imposed for an offense in any
10.13 other state or country, the elements of which are substantially similar to the elements of any
10.14 of the offenses listed in paragraph (a).

10.15 Subd. 4. **Seven-year bar to set aside disqualification.** The commissioner may not set
10.16 aside the disqualification of an individual in connection with a license to provide family
10.17 child care for children, ~~foster care for children in the provider's home~~, or foster care or day
10.18 care services for adults in the provider's home if within seven years preceding the study:

10.19 (1) the individual committed an act that constitutes maltreatment of a child under section
10.20 626.556, subdivision 10e, and the maltreatment resulted in substantial bodily harm as defined
10.21 in section 609.02, subdivision 7a, or substantial mental or emotional harm as supported by
10.22 competent psychological or psychiatric evidence; or

10.23 (2) the individual was determined under section 626.557 to be the perpetrator of a
10.24 substantiated incident of maltreatment of a vulnerable adult that resulted in substantial
10.25 bodily harm as defined in section 609.02, subdivision 7a, or substantial mental or emotional
10.26 harm as supported by competent psychological or psychiatric evidence.

10.27 Subd. 5. **Five-year bar to set aside disqualification.** The commissioner must not set
10.28 aside the disqualification of an individual 18 years of age or older in connection with a
10.29 license for foster care for children in the provider's home if within five years preceding the
10.30 study the individual is convicted of a felony in section 245C.15, subdivision 6, paragraph
10.31 (b). This paragraph does not apply to an individual younger than 18 years of age.

10.32 **EFFECTIVE DATE.** This section is effective March 1, 2020.