CHAPTER 364

CRIMINAL OFFENDERS; REHABILITATION

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364.01 POLICY.

The legislature declares that it is the policy of the state of Minnesota to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the resumption of the responsibilities of citizenship. The opportunity to secure employment or to pursue, practice, or engage in a meaningful and profitable trade, occupation, vocation, profession or business is essential to rehabilitation and the resumption of the responsibilities of citizenship.

History: *1974 c 298 s 1*

364.02 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 364.01 to 364.10, the terms defined in this section have the meanings given them.

Subd. 2. **Occupation.** "Occupation" includes all occupations, trades, vocations, professions, businesses, or employment of any kind for which a license is required to be issued by the state of Minnesota, its agencies, or political subdivisions.

Subd. 3. **License.** "License" includes all licenses, permits, certificates, registrations, or other means required to engage in an occupation which are granted or issued by the state of Minnesota, its agents or political subdivisions before a person can pursue, practice, or engage in any occupation.

Subd. 4. **Public employment.** "Public employment" includes all employment with the state of Minnesota, its agencies, or political subdivisions.

Subd. 5. **Conviction of crime or crimes.** "Conviction of crime or crimes" shall be limited to convictions of felonies, gross misdemeanors, and misdemeanors for which a jail sentence may be imposed. No other criminal conviction shall be considered.

Subd. 6. **Hiring or licensing authority.** "Hiring or licensing authority" shall mean the person, board, commission, or department of the state of Minnesota, its agencies or political subdivisions, responsible by law for the hiring of persons for public employment or the licensing of persons for occupations.

History: *1974 c 298 s 2*

364.021 PUBLIC AND PRIVATE EMPLOYMENT; CONSIDERATION OF CRIMINAL RECORDS.

(a) A public or private employer may not inquire into or consider or require disclosure of the criminal record or criminal history of an applicant for employment until the applicant has been selected for an interview

by the employer or, if there is not an interview, before a conditional offer of employment is made to the applicant.

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

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

(d) An appointing authority may not inquire into or consider or require disclosure of the criminal record or criminal history of an applicant for appointment to multimember agencies, including boards, commissions, agencies, committees, councils, authorities, advisory task forces, and advisory councils, on an application form or, until the applicant has been selected for an interview by the appointing authority or is otherwise selected as a final candidate for appointment.

History: *2009 c 59 art 5 s 11; 2013 c 61 s 3; 2023 c 52 art 19 s 19*

364.03 RELATION OF CONVICTION TO EMPLOYMENT OR OCCUPATION.

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

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

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

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

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

Subd. 3. **Evidence of rehabilitation.** (a) A person who has been convicted of a crime or crimes which directly relate to the public employment sought or to the occupation for which a license is sought shall not be disqualified from the employment or occupation if the person can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the public employment sought or the occupation for which the license is sought. Competent evidence of sufficient rehabilitation may be established by the production of the person's most recent certified copy of a United States Department of Defense form DD-214 showing the person's honorable discharge, or separation under honorable conditions, from the United States armed forces for military service rendered following conviction for any crime that would otherwise disqualify the person from the public employment sought or the occupation for which the license is sought, or:

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

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

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

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

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

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

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

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

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

(c) The certified copy of a person's United States Department of Defense form DD-214 showing the person's honorable discharge or separation under honorable conditions from the United States armed forces ceases to qualify as competent evidence of sufficient rehabilitation for purposes of this section upon the person's conviction for any gross misdemeanor or felony committed by the person subsequent to the effective date of that honorable discharge or separation from military service.

History: *1974 c 298 s 3; 1986 c 444; 2013 c 142 art 4 s 9*

364.04 AVAILABILITY OF RECORDS.

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

(1) Records of arrest not followed by a valid conviction.

(2) Convictions which have been, pursuant to law, annulled or expunged.

(3) Misdemeanor convictions for which no jail sentence can be imposed.

History: *1974 c 298 s 4*

364.05 NOTIFICATION UPON DENIAL OF EMPLOYMENT OR DISQUALIFICATION FROM OCCUPATION.

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

(1) the grounds and reasons for the denial or disqualification;

(2) the applicable complaint and grievance procedure as set forth in section 364.06;

(3) the earliest date the person may reapply for a position of public employment or a license; and

(4) that all competent evidence of rehabilitation presented will be considered upon reapplication.

History: *1974 c 298 s 5*

364.06 VIOLATIONS; PROCEDURE; REMEDIES.

Subdivision 1. **Public employers.** Any complaints or grievances concerning violations of sections 364.01 to 364.10 by public employers or violations of section 364.021 by public appointing authorities shall be processed and adjudicated in accordance with the procedures set forth in chapter 14, the Administrative Procedure Act.

Subd. 2. **Private employers.** (a) The commissioner of human rights shall investigate violations of section 364.021 by a private employer. If the commissioner finds that a violation has occurred, the commissioner may impose penalties as provided in paragraphs (b) and (c).

(b) For violations that occur before January 1, 2015, the penalties are as follows:

(1) for the first violation, the commissioner shall issue a written warning to the employer that includes a notice regarding the penalties for subsequent violations;

(2) if a first violation is not remedied within 30 days of the issuance of a warning under clause (1), the commissioner may impose up to a $500 fine; and

(3) subsequent violations before January 1, 2015, are subject to a fine of up to $500 per violation, not to exceed $500 in a calendar month.

(c) For violations that occur after December 31, 2014, the penalties are as follows:

(1) for employers that employ ten or fewer persons at a site in this state, the penalty is up to $100 for each violation, not to exceed $100 in a calendar month;

(2) for employers that employ 11 to 20 persons at a site in this state, the penalty is up to $500 for each violation, not to exceed $500 in a calendar month; and

(3) for employers that employ more than 20 persons at one or more sites in this state, the penalty is up to $500 for each violation, not to exceed $2,000 in a calendar month.

(d) The remedies under this subdivision are exclusive. A private employer is not otherwise liable for complying with or failing to comply with section 364.021.

History: *1974 c 298 s 6; 1982 c 424 s 130; 2013 c 61 s 4; 2023 c 52 art 19 s 20*

364.07 APPLICATION.

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

involving the granting, denial, renewal, suspension, or revocation of a license or the initiation, suspension, or termination of public employment.

History: *1974 c 298 s 7; 1985 c 248 s 70*

364.08 PRACTICE OF LAW; EXCEPTION.

This chapter shall not apply to the practice of law or judicial branch employment; but nothing in this section shall be construed to preclude the supreme court, in its discretion, from adopting the policies set forth in this chapter.

History: *1974 c 298 s 8; 2009 c 83 art 2 s 26*

364.09 EXCEPTIONS.

(a) This chapter does not apply to the licensing process for peace officers; to law enforcement agencies as defined in section 626.84, subdivision 1, paragraph (f); to fire protection agencies; to eligibility for a private detective or protective agent license; to the licensing and background study process under chapters 245A and 245C; to the licensing and background investigation process under chapter 240; to eligibility for school bus driver endorsements; to eligibility for special transportation service endorsements; to eligibility for a commercial driver training instructor license, which is governed by section 171.35 and rules adopted under that section; to emergency medical services personnel, or to the licensing by political subdivisions of taxicab drivers, if the applicant for the license has been discharged from sentence for a conviction within the ten years immediately preceding application of a violation of any of the following:

(1) sections 609.185 to 609.2114, 609.221 to 609.223, 609.342 to 609.3451, or 617.23, subdivision 2 or 3; or Minnesota Statutes 2012, section 609.21;

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

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

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

(b) This chapter does not apply to a school district or to eligibility for a license issued or renewed by the Professional Educator Licensing and Standards Board or the commissioner of education.

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

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

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

(f) This chapter does not apply to any license, registration, or permit that has been denied or revoked by the Board of Nursing in accordance with section 148.261, subdivision 1a.

(g) This chapter does not apply to any license, registration, permit, or certificate that has been denied or revoked by the commissioner of health according to section 148.5195, subdivision 5; or 153A.15, subdivision 2.

(h) This chapter does not supersede a requirement under law to conduct a criminal history background investigation or consider criminal history records in hiring for particular types of employment.

History: *1974 c 298 s 9; 1983 c 304 s 5; 1986 c 444; 1Sp1986 c 1 art 9 s 28; 1987 c 378 s 16; 1989 c 85 s 1; 1989 c 171 s 8; 1989 c 290 art 8 s 2; 1990 c 542 s 16; 1991 c 265 art 9 s 69; 1992 c 499 art 8 s 24; 1992 c 578 s 54; 1993 c 159 s 1; 1995 c 18 s 12; 1995 c 226 art 3 s 45; 1997 c 248 s 44; 1Sp1997 c 2 s 58; 1998 c 398 art 5 s 55; 1999 c 191 s 1; 2000 c 478 art 2 s 7; 2001 c 144 s 1; 2003 c 15 art 1 s 33; 2003 c 130 s 12; 2005 c 10 art 2 s 4; 2010 c 349 s 2; 2013 c 61 s 5; 2014 c 180 s 9; 2014 c 291 art 4 s 57; 2015 c 77 art 4 s 21; 1Sp2017 c 5 art 12 s 22; 1Sp2017 c 6 art 10 s 136*

364.10 VIOLATION OF CIVIL RIGHTS.

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

History: *1974 c 298 s 10; 2013 c 61 s 6*