

Presented to the governor May 5, 1994

Signed by the governor May 6, 1994, 11:55 a.m.

CHAPTER 597—H.F.No. 2951

VETOED

CHAPTER 598—S.F.No. 1735

An act relating to children; modifying certain provisions concerning foster care and adoption; amending Minnesota Statutes 1992, section 260.141, subdivision 1; Minnesota Statutes 1993 Supplement, sections 245A.03, subdivisions 2 and 2a; 257.071, subdivision 3; 257.072, subdivision 9; 259.255; and 260.191, subdivision 3b.

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

Section 1. Minnesota Statutes 1993 Supplement, section 245A.03, subdivision 2, is amended to read:

Subd. 2. **EXCLUSION FROM LICENSURE.** Sections 245A.01 to 245A.16 do not apply to:

(1) residential or nonresidential programs that are provided to a person by an individual who is related unless the residential program is a foster care placement made by a county welfare board or agency, or a licensed child placing agency, except as provided in subdivision 2a;

(2) nonresidential programs that are provided by an unrelated individual to persons from a single related family;

(3) residential or nonresidential programs that are provided to adults who do not abuse chemicals or who do not have a chemical dependency, a mental illness, mental retardation or a related condition, a functional impairment, or a physical handicap;

(4) sheltered workshops or work activity programs that are certified by the commissioner of jobs and training;

(5) programs for children enrolled in kindergarten to the 12th grade and prekindergarten special education in a school as defined in section 120.101, subdivision 4, and programs serving children in combined special education and regular prekindergarten programs that are operated or assisted by the commissioner of education;

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(6) nonresidential programs primarily for children that provide care or supervision, without charge for ten or fewer days a year, and for periods of less than three hours a day while the child's parent or legal guardian is in the same building as the nonresidential program or present within another building that is directly contiguous to the building in which the nonresidential program is located;

(7) nursing homes or hospitals licensed by the commissioner of health except as specified under section 245A.02;

(8) board and lodge facilities licensed by the commissioner of health that provide services for five or more persons whose primary diagnosis is mental illness who have refused an appropriate residential program offered by a county agency. This exclusion expires on July 1, 1990;

(9) homes providing programs for persons placed there by a licensed agency for legal adoption, unless the adoption is not completed within two years;

(10) programs licensed by the commissioner of corrections;

(11) recreation programs for children or adults that operate for fewer than 40 calendar days in a calendar year;

(12) programs whose primary purpose is to provide, for adults or school-age children, including children who will be eligible to enter kindergarten within not more than four months, social and recreational activities, such as scouting, boys clubs, girls clubs, sports, or the arts; except that a program operating in a school building is not excluded unless it is approved by the district's school board;

(13) head start nonresidential programs which operate for less than 31 days in each calendar year;

(14) noncertified boarding care homes unless they provide services for five or more persons whose primary diagnosis is mental illness or mental retardation;

(15) nonresidential programs for nonhandicapped children provided for a cumulative total of less than 30 days in any 12-month period;

(16) residential programs for persons with mental illness, that are located in hospitals, until the commissioner adopts appropriate rules;

(17) the religious instruction of school-age children; Sabbath or Sunday schools; or the congregate care of children by a church, congregation, or religious society during the period used by the church, congregation, or religious society for its regular worship;

(18) camps licensed by the commissioner of health under Minnesota Rules, chapter 4630;

(19) mental health outpatient services for adults with mental illness or children with emotional disturbance;

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(20) residential programs serving school-age children whose sole purpose is cultural or educational exchange, until the commissioner adopts appropriate rules;

(21) unrelated individuals who provide out-of-home respite care services to persons with mental retardation or related conditions from a single related family for no more than 90 days in a 12-month period and the respite care services are for the temporary relief of the person's family or legal representative;

(22) respite care services provided as a home and community-based service to a person with mental retardation or a related condition, in the person's primary residence; or

(23) community support services programs as defined in section 245.462, subdivision 6, and family community support services as defined in section 245.4871, subdivision 17.

For purposes of clause (6), a building is directly contiguous to a building in which a nonresidential program is located if it shares a common wall with the building in which the nonresidential program is located or is attached to that building by skyway, tunnel, atrium, or common roof.

Sec. 2. Minnesota Statutes 1993 Supplement, section 245A.03, subdivision 2a, is amended to read:

Subd. 2a. **LICENSING OF AN INDIVIDUAL RELATED TO A QUALIFYING CHILD.** Notwithstanding subdivision 2, clause (1), the commissioner ~~may~~ must license or approve an individual who is related to a qualifying child, ~~as defined in title IV-E of the Social Security Act, in order to provide foster care for that qualifying child.~~ The commissioner may issue ~~such a~~ the license or approval retroactive to the date the qualifying child was placed in the applicant's home, so long as no more than 90 days have elapsed since the placement. If more than 90 days have elapsed since the placement, the commissioner may issue the license or approval retroactive 90 days. The granting of a license or approval to an individual who is related to a child shall be according to standards set forth by foster care rule. The commissioner shall consider the importance of maintaining the child's relationship to family as an additional significant factor in determining whether to set aside a licensing disqualifier under section 245A.04, subdivision 3b, or to grant a variance of licensing requirements under section 245A.04, subdivision 9 in licensing or approving an individual related to a child.

Sec. 3. Minnesota Statutes 1993 Supplement, section 257.071, subdivision 3, is amended to read:

Subd. 3. **REVIEW OF VOLUNTARY PLACEMENTS.** Except as provided in subdivision 4, if the child has been placed in a residential facility pursuant to a voluntary release by the parent or parents, and is not returned home within six months after initial placement in the residential facility, the social service agency responsible for the placement shall:

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- (1) return the child to the home of the parent or parents; or
- (2) file an appropriate petition pursuant to section 260.131; ~~subdivision 1;~~ or 260.231.

The case plan must be updated when a petition is filed and must include a specific plan for permanency.

Sec. 4. Minnesota Statutes 1993 Supplement, section 257.072, subdivision 9, is amended to read:

Subd. 9. **RULES.** The commissioner of human services shall adopt rules to establish standards for ~~relative foster care placement~~, conducting relative searches, and recruiting foster and adoptive families of the same racial or ethnic heritage as the child, and evaluating the role of relative status in the reconsideration of disqualifications under section 245A.04, subdivision 3b, and granting variances of licensing requirements under section 245A.04, subdivision 9, in licensing or approving an individual related to a child.

Sec. 5. Minnesota Statutes 1993 Supplement, section 259.255, is amended to read:

259.255 PROTECTION OF HERITAGE OR BACKGROUND.

The policy of the state of Minnesota is to ensure that the best interests of the child are met by requiring due, not sole, consideration of the child's race or ethnic heritage in adoption placements. For purposes of intercountry adoptions, due consideration is deemed to have occurred if the appropriate authority in the child's country of birth has approved the placement of the child.

The authorized child placing agency shall give preference, in the absence of good cause to the contrary, to placing the child with (a) a relative or relatives of the child, or, if that would be detrimental to the child or a relative is not available, (b) a family with the same racial or ethnic heritage as the child, or, if that is not feasible, (c) a family of different racial or ethnic heritage from the child which is knowledgeable and appreciative of the child's racial or ethnic heritage. In implementing the order of preference, an authorized child placing agency may disclose private or confidential data, as defined in section 13.02, to relatives of the child for the purpose of locating a suitable adoptive home. The agency shall disclose only data that is necessary to facilitate implementing the preference.

If the child's genetic parent or parents explicitly request that the preference described in clause (a) or clauses (a) and (b) not be followed, the authorized child placing agency shall honor that request consistent with the best interests of the child.

If the child's genetic parent or parents express a preference for placing the child in an adoptive home of the same or a similar religious background to that of the genetic parent or parents, in following the preferences in clause (a) or (b),

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the agency shall place the child with a family that also meets the genetic parent's religious preference. Only if no family is available that is described in clause (a) or (b) may the agency give preference to a family described in clause (c) that meets the parent's religious preference.

Sec. 6. Minnesota Statutes 1992, section 260.141, subdivision 1, is amended to read:

Subdivision 1. (a) Service of summons or notice required by section 260.135 or 260.191, subdivision 3b, shall be made upon the following persons in the same manner in which personal service of summons in civil actions is made:

(1) in all delinquency matters, upon the person having custody or control of the child and upon the child; and

(2) in all other matters, upon the person having custody or control of the child, and upon the child if more than 12 years of age.

Personal service shall be effected at least 24 hours before the time of the hearing; however, it shall be sufficient to confer jurisdiction if service is made at any time before the day fixed in the summons or notice for the hearing, except that the court, if so requested, shall not proceed with the hearing earlier than the second day after the service. If personal service cannot well be made within the state, a copy of the summons or notice may be served on the person to whom it is directed by delivering a copy thereof to such person personally outside the state. Such service if made personally outside the state shall be sufficient to confer jurisdiction; providing however it be made at least five days before the date fixed for hearing in such summons or notice.

(b) If the court is satisfied that personal service of the summons or notice cannot well be made, it shall make an order providing for the service of summons or notice by certified mail addressed to the last known addresses of such persons, and by one week published notice as provided in section 645.11. A copy of the notice shall be sent by certified mail at least five days before the time of the hearing or 14 days if mailed to addresses outside the state.

(c) Notification to the county welfare board required by section 260.135, subdivision 3, shall be in such manner as the court may direct.

Sec. 7. Minnesota Statutes 1993 Supplement, section 260.191, subdivision 3b, is amended to read:

Subd. 3b. **REVIEW OF COURT ORDERED PLACEMENTS; PERMANENT PLACEMENT DETERMINATION.** (a) If the court places a child in a residential facility, as defined in section 257.071, subdivision 1, the court shall conduct a hearing to determine the permanent status of the child not later than 12 months after the child was placed out of the home of the parent. Not later than 30 ten days prior to this hearing, the responsible social service agency shall file pleadings to establish the basis for the permanent placement determination.

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Notice of the hearing and copies of the pleadings must be provided pursuant to ~~sections 260.135 and~~ section 260.141. If a termination of parental rights petition is filed before the date required for the permanency planning determination, no hearing need be conducted under this section. The court shall determine whether the child is to be returned home or, if not, what permanent placement is consistent with the child's best interests. The "best interests of the child" means all relevant factors to be considered and evaluated.

If the child is not returned to the home, the dispositions available for permanent placement determination are:

(1) permanent legal and physical custody to a relative; pursuant to the standards and procedures applicable under chapter 257 or 518. The social service agency may petition on behalf of the proposed custodian;

(2) termination of parental rights and adoption; ~~or permanent;~~ the social service agency shall file a petition for termination of parental rights under section 260.231 and all the requirements of sections 260.221 to 260.245 remain applicable; or

(3) long-term foster care; transfer of legal custody and adoption are preferred permanency options for a child who cannot return home. The court may order a child into ~~permanent~~ long-term foster care only if it finds that neither an award of legal and physical custody to a relative, nor termination of parental rights; nor adoption is in the child's best interests. Further, the court may only order long-term foster care for the child under this section if it finds the following:

(i) the child has reached age 12 and reasonable efforts by the responsible social service agency have failed to locate an adoptive family for the child; or

(ii) the child is a sibling of a child described in clause (i) and the siblings have a significant positive relationship and are ordered into the same long-term foster care home.

(b) The court may extend the time period for determination of permanent placement to 18 months after the child was placed in a residential facility if:

(1) there is a substantial probability that the child will be returned home within the next six months;

(2) the agency has not made reasonable, or, in the case of an Indian child, active efforts, to correct the conditions that form the basis of the out-of-home placement; or

(3) extraordinary circumstances exist precluding a permanent placement determination, in which case the court shall make written findings documenting the extraordinary circumstances and order one subsequent review after six months to determine permanent placement. A court finding that extraordinary circumstances exist precluding a permanent placement determination must be supported by detailed factual findings regarding those circumstances.

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~~(e)~~ If the court determines that an adoptive placement is in the best interests of the child, the social service agency shall file a petition for termination of parental rights under section 260.231. Nothing in this subdivision waives the requirements of sections 260.221 to 260.245 with respect to termination of parental rights.

~~(d)~~ (c) In ordering a permanent placement of a child, the court must be governed by the best interests of the child, including a review of the relationship between the child and relatives and the child and other important persons with whom the child has resided or had significant contact.

~~(e)~~ (d) Once a permanent placement determination has been made and permanent placement has been established, further reviews are only necessary if otherwise required by federal law, an adoption has not yet been finalized, or there is a disruption of the permanent or long-term placement. These If required, reviews must take place no less frequently than every six months.

~~(f)~~ (e) An order under this subdivision must include the following detailed findings:

(1) how the child's best interests are served by the order;

(2) the nature and extent of the responsible social service agency's reasonable efforts, or, in the case of an Indian child, active efforts, to reunify the child with the parent or parents;

(3) the parent's or parents' efforts and ability to use services to correct the conditions which led to the out-of-home placement;

(4) whether the conditions which led to the out-of-home placement have been corrected so that the child can return home; and

(5) if the child cannot be returned home, whether there is a substantial probability of the child being able to return home in the next six months.

~~If the court orders the child placed in permanent foster care, the court shall make findings that neither an award of legal and physical custody to a relative, termination of parental rights, nor adoption is in the child's best interests.~~

(f) An order for permanent legal and physical custody of a child may be modified under sections 518.18 and 518.185. The social service agency is a party to the proceeding and must receive notice. An order for long-term foster care is reviewable upon motion and a showing by the parent of a substantial change in the parent's circumstances such that the parent could provide appropriate care for the child and that removal of the child from the child's permanent placement and the return to the parent's care would be in the best interest of the child.

A court finding that extraordinary circumstances exist precluding a permanent placement determination must be supported by detailed factual findings regarding those circumstances.

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Presented to the governor May 5, 1994

Signed by the governor May 6, 1994, 4:58 p.m.

CHAPTER 599—H.F.No. 1919

VETOED

CHAPTER 600—H.F.No. 2365

An act relating to traffic regulations; making technical changes; removing requirement for auxiliary low beam lights to be removed or covered when snowplow blade removed; requiring seat belts for commercial motor vehicles; allowing transportation within state of raw farm and forest products exceeding maximum weight limitation by not more than ten percent; amending Minnesota Statutes 1992, sections 169.743; and 169.851, subdivision 5; Minnesota Statutes 1993 Supplement, sections 169.122, subdivision 5; 169.47, subdivision 1; 169.522, subdivision 1; 169.56, subdivision 5; 169.686, subdivision 1; and 221.0314, subdivision 10.

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

Section 1. Minnesota Statutes 1993 Supplement, section 169.122, subdivision 5, is amended to read:

Subd. 5. **EXCEPTION.** This section does not apply to the possession or consumption of alcoholic beverages by passengers in:

(1) a bus operated under a charter as defined in section 221.011, subdivision 20; or

(2) a vehicle providing limousine service as defined in section ~~168.011, subdivision 35~~ 221.84, subdivision 1.

Sec. 2. Minnesota Statutes 1993 Supplement, section 169.47, subdivision 1, is amended to read:

Subdivision 1. **MISDEMEANOR; EXCEPTIONS.** (a) It is unlawful and punishable as hereinafter provided for any person to drive or for the owner to cause or knowingly permit to be driven on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter, or which is equipped in any manner in violation of this chapter, or for any person to do any act forbidden or fail to perform any act required under this chapter.

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