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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1602

03/18/2013 Authored by Moran

The bill was read for the first time and referred to the Committee on Rules and Legislative Administration

1.1 A bill for an act  
1.2 relating to human rights; establishing Criminal Background Check Act;  
1.3 proposing coding for new law in Minnesota Statutes, chapter 363A.

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

1.5 Section 1. 363A.50 CITATION.

1.6 Sections 363A.50 to 363A.55 shall be known as the Criminal Background Check Act.

1.7 Sec. 2. 363A.51 PUBLIC POLICY.

1.8 Subdivision 1. No legal obligation to conduct testing. Nothing in this chapter  
1.9 creates a legal duty for employers to request or require an individual to submit to a  
1.10 criminal background check as permitted in this section.

1.11 Subd. 2. Communicate possible bar to employment. Nothing in this chapter  
1.12 prohibits an employer from notifying candidates that law or the employer's policy will  
1.13 disqualify an individual with a particular criminal history background from employment  
1.14 in particular positions.

1.15 Subd. 3. Freedom to collectively bargain. Nothing herein shall be construed to limit  
1.16 parties to a collective bargaining agreement from bargaining and agreeing as to a criminal  
1.17 background check policy that meets or exceeds, and does not otherwise conflict with, the  
1.18 minimum standards and requirements for the protection of job applicants and employees.

1.19 Subd. 4. Severability. If any provision of this chapter is held invalid, the invalidity  
1.20 does not alter the other provisions or applications of the chapter that can be given effect  
1.21 without the invalid provision or application, and to this end the provisions of this chapter  
1.22 are severable.

2.1       Sec. 3. **[363A.52] PREEMPTION.**

2.2             Subdivision 1. **Federal law.** This chapter is not meant to preempt any federal law  
2.3 that requires, allows, or provides direction to an employer on how to conduct a criminal  
2.4 background check prior to hiring or promoting an individual.

2.5             Subd. 2. **State law.** This chapter is not meant to preempt chapter 364 or any state  
2.6 law that requires, allows, or provides direction to an employer on how to conduct a  
2.7 criminal background check prior to hiring or promoting an individual.

2.8             Subd. 3. **Practice of law exception.** This chapter shall not apply to the practice of  
2.9 law or judicial branch employment. Nothing in this section shall be construed to preclude  
2.10 the Supreme Court, in its discretion, from adopting the policies set forth in this chapter.

2.11       Sec. 4. **[363A.53] CRIMINAL BACKGROUND CHECK.**

2.12             Subdivision 1. **Applicable law.** Unless there is a federal or state law that preempts  
2.13 this statute, an employer may not request or require a job applicant to submit to a criminal  
2.14 background check except as authorized in this section.

2.15             Subd. 2. **Employer assessment.** An employer may not request or require an  
2.16 employee or job applicant to submit to a criminal background check unless the employer  
2.17 validates the criminal conduct ban or exclusion for the position in light of the Uniform  
2.18 Guidelines on Employee Selection Procedures or conducts an assessment consistent with  
2.19 the applicable provisions of this section and section 363A.54.

2.20             Subd. 3. **Reliability and fairness.** An employer who requests or requires a job  
2.21 applicant to submit to a criminal background check shall use the services of an agency that  
2.22 is accredited by the National Association of Professional Background Screeners or obtain  
2.23 information directly from the Minnesota Bureau of Criminal Apprehension.

2.24             Subd. 4. **Evidence of rehabilitation.** A person who has been convicted of a crime or  
2.25 crimes shall not be disqualified from employment by an employer if the person can show  
2.26 competent evidence of sufficient rehabilitation and present fitness to perform the duties of  
2.27 employment. Sufficient evidence of rehabilitation may be established by the production of:

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

2.29               (2) evidence showing that at least one year has elapsed since release from any local,  
2.30 state, or federal correctional institution without subsequent conviction of a crime;

2.31               (3) evidence showing compliance with all terms and conditions of probation, parole,  
2.32 or parole supervision;

2.33               (4) nature and seriousness of the crime or crimes;

2.34               (5) mitigating circumstances or social conditions surrounding the commission of  
2.35 the crime or crimes;

3.1 (6) the age of the person at the time the crime or crimes were committed;  
3.2 (7) the length of time elapsed since the crime or crimes were committed; and  
3.3 (8) all other competent evidence of rehabilitation and present fitness presented,  
3.4 including, but not limited to, letters of reference by persons who have been in contact with  
3.5 the applicant since the applicant's release from any local, state, or federal correctional  
3.6 institution.

3.7 Subd. 5. **Available records.** The following criminal records shall not be used by an  
3.8 employer or any of its agents in determining whether to extend an offer of employment to  
3.9 an individual interviewed:

3.10 (1) convictions which have been, pursuant to law, annulled or expunged;  
3.11 (2) misdemeanor convictions for which no jail sentence can be imposed; and  
3.12 (3) arrest records.

3.13 Subd. 6. **Criminal background check limited to candidates interviewed.** An  
3.14 employer may not require a job applicant to submit to a criminal background check until  
3.15 the employer has decided to interview the job applicant.

3.16 Subd. 7. **Limit withdrawal of job offer, discipline, and discharge.** (a) An  
3.17 employer may not withdraw a job offer, discipline, or discharge an individual based on  
3.18 information obtained from a criminal background check until the individual has been  
3.19 provided with an opportunity to respond to the information obtained or the information  
3.20 has been verified by a second criminal background check.

3.21 (b) Nothing in this section limits the ability of the employer to rescind a job offer,  
3.22 discipline, or discharge an individual upon discovering that the individual has provided  
3.23 false or misleading information.

3.24 (c) Nothing in this section requires an employer to extend a conditional job offer  
3.25 prior to requesting an individual to submit to a criminal background check.

3.26 Subd. 8. **Informing interview candidates of denial of employment.** If an  
3.27 employer, after interviewing a candidate, denies an employment opportunity solely or in  
3.28 part because of the individual's prior conviction of a crime, the employer shall notify  
3.29 the individual in writing of the following:

3.30 (1) the reasons for the denial of employment;  
3.31 (2) the process to explain the negative criminal background history information; and  
3.32 (3) the process to request and pay for a second criminal background check.

3.33 Subd. 9. **Refusal by individual.** An employer may decline to hire or promote an  
3.34 individual on the basis of the individual's refusal to submit to a criminal background check  
3.35 provided that the employer has a legitimate business justification to have candidates  
3.36 submit to a criminal background check.

4.1        **Sec. 5. [363A.54] CRIMINAL BACKGROUND CHECK POLICY.**

4.2        **Subdivision 1. Contents of policy.** An employer's criminal background check  
4.3 policy must, at a minimum, set forth the following information:

4.4            (1) the job positions subject to a criminal background check;

4.5            (2) the circumstances under which an interview candidate will be rejected;

4.6            (3) the process that will be afforded for an interview candidate to explain a negative  
4.7 criminal background check;

4.8            (4) the process that will be afforded for an interview candidate to request and pay for  
4.9 a second criminal background check; and

4.10          (5) any other appeal procedures available.

4.11        **Subd. 2. Notice.** An employer shall post notice in an appropriate and conspicuous  
4.12 location on the employer's premises that the employer has adopted a criminal background  
4.13 check policy and that copies of the policy are available for inspection during regular  
4.14 business hours by employees or job applicants.

4.15        **Subd. 3. Notice to interview candidates.** An employer shall require all individuals  
4.16 subjected to a criminal background check to sign a form, developed by the employer,  
4.17 that acknowledges that:

4.18            (1) the individual has given permission;

4.19            (2) the individual has seen the employer's criminal background check policy;

4.20            (3) the individual will be provided with a copy of the report and the opportunity  
4.21 to explain any negative criminal background history information obtained prior to the  
4.22 employer using the information;

4.23            (4) the employer will forward information obtained from the criminal history  
4.24 background check to the individual within three working days of receipt of the information  
4.25 by the employer; and

4.26            (5) the individual will be afforded an opportunity to request and pay for a second  
4.27 criminal background check within three working days.

4.28        **Subd. 4. Confirmatory study.** If the confirmatory study does not confirm the original  
4.29 information received from the criminal background check, no adverse personnel action  
4.30 based on the original information may be taken against the employee or job applicant.

4.31        **Subd. 5. Confidentiality.** (a) All information obtained by an employer from a  
4.32 criminal background check is confidential information and may not be disclosed without  
4.33 the written consent of the employee or job applicant unless the information is used in  
4.34 an alternative dispute proceeding, administrative hearing, or judicial tribunal and the  
4.35 information is relevant to the proceeding, hearing, or court proceeding.

5.1 (b) None of the information obtained by an employer from a criminal background  
5.2 check shall constitute personnel record information pursuant to section 181.960,  
5.3 subdivision 4.

5.4 Subd. 6. **Right to review information.** An individual has the right to request  
5.5 and receive from the employer a copy of any information obtained through a criminal  
5.6 background check.

5.7 Sec. 6. **[363A.55] REMEDIES.**

5.8 Subdivision 1. **Civil right.** Violation of the rights established in this chapter shall  
5.9 constitute a violation of a person's civil rights.

5.10 Subd. 2. **Damages.** In addition to any other remedies provided by law, an employer  
5.11 that violates this chapter is liable in a civil action for any damages allowable at law to an  
5.12 employee or job applicant injured. If a violation is found and damages awarded, the court  
5.13 may also award reasonable attorney fees if the court finds that the employer knowingly or  
5.14 recklessly violated this chapter.

5.15 Subd. 3. **Equitable relief.** A court, in its discretion, may enjoin or grant any other  
5.16 equitable relief it considers appropriate when it finds that an employer has committed or  
5.17 proposes to commit an act in violation of this chapter.

5.18 Subd. 4. **Retaliation.** An employer may not retaliate against an individual for  
5.19 pursuing their civil rights within this chapter.