

Minnesota State Legislature

Minnesota Senate

SF 523

2nd Engrossment - 88th Legislature (2013 - 2014) Posted on 05/17/2013 02:14pm

KEY: ~~stricken~~ = removed, old language. underscored = added, new language.

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1.1 A bill for an act
1.2 relating to employment; limiting reliance on criminal history for employment
1.3 purposes; providing for remedies; amending Minnesota Statutes 2012, sections
1.4 181.53; 181.981, subdivision 1; 364.021; 364.06; 364.09; 364.10.
1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2012, section 181.53, is amended to read:

1.7 **181.53 CONDITIONS PRECEDENT TO EMPLOYMENT NOT REQUIRED.**

1.8 No person, whether acting directly or through an agent, or as the agent or employee
1.9 of another, shall require as a condition precedent to employment any written statement
1.10 as to the participation of the applicant in a strike, or as to a personal record, ~~save as to~~
1.11 ~~conviction of a public offense~~; for more than one year immediately preceding the date of
1.12 application ~~therefor~~; nor shall any person, acting in any of the ~~aforsaid~~ these capacities,
1.13 use or require blanks or forms of application for employment in contravention of this
1.14 section. Nothing in this section precludes an employer from requesting or considering an
1.15 applicant's criminal history pursuant to section 364.021 or other applicable law.

1.16 Sec. 2. Minnesota Statutes 2012, section 181.981, subdivision 1, is amended to read:

1.17 Subdivision 1. **Limitation on admissibility of criminal history.** Information
1.18 regarding a criminal history record of an employee or former employee may not be
1.19 introduced as evidence in a civil action against a private employer or its employees or
1.20 agents that is based on the conduct of the employee or former employee, if:

- 1.21 (1) the duties of the position of employment did not expose others to a greater degree
1.22 of risk than that created by the employee or former employee interacting with the public
1.23 outside of the duties of the position or that might be created by being employed in general;
2.1 (2) before the occurrence of the act giving rise to the civil action, a court order sealed
2.2 any record of the criminal case or the employee or former employee received a pardon; ~~or~~
2.3 (3) the record is of an arrest or charge that did not result in a criminal conviction; or
2.4 (4) the action is based solely upon the employer's compliance with section 364.021.

2.5 Sec. 3. Minnesota Statutes 2012, section 364.021, is amended to read:

2.6 **364.021 PUBLIC AND PRIVATE EMPLOYMENT; CONSIDERATION OF** 2.7 **CRIMINAL RECORDS.**

2.8 (a) A public or private employer may not inquire into or consider or require
2.9 disclosure of the criminal record or criminal history of an applicant for ~~public~~ employment
2.10 until the applicant has been selected for an interview by the employer or, if there is not an
2.11 interview, before a conditional offer of employment is made to the applicant.

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

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

2.19 Sec. 4. Minnesota Statutes 2012, section 364.06, is amended to read:

2.20 **364.06 VIOLATIONS; PROCEDURE; REMEDIES.**

2.21 Subdivision 1. Public employers. Any complaints or grievances concerning

2.22 violations of sections [364.01](#) to [364.10](#) by public employers shall be processed and
2.23 adjudicated in accordance with the procedures set forth in chapter 14, the Administrative
2.24 Procedure Act.

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

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

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

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

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

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

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

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

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

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

3.12 Sec. 5. Minnesota Statutes 2012, section 364.09, is amended to read:

3.13 **364.09 EXCEPTIONS.**

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

3.24 (1) sections [609.185](#) to [609.21](#), [609.221](#) to [609.223](#), [609.342](#) to [609.3451](#), or [617.23](#),
3.25 subdivision 2 or 3;

3.26 (2) any provision of chapter 152 that is punishable by a maximum sentence of
3.27 15 years or more; or

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

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

3.32 (b) This chapter does not apply to a school district or to eligibility for a license
3.33 issued or renewed by the Board of Teaching or the commissioner of education.

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

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

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

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

4.11 Sec. 6. Minnesota Statutes 2012, section 364.10, is amended to read:

4.12 **364.10 VIOLATION OF CIVIL RIGHTS.**

4.13 Violation of the rights established in sections [364.01](#) to [364.10](#) by a public employer
4.14 shall constitute a violation of a person's civil rights.

4.15
4.16

Sec. 7. **EFFECTIVE DATE.**
This act is effective January 1, 2014.