A bill for an act

relating to data practices; regulating the collection, dissemination, disclosure, and use of data; classifying data; regulating informed consent requirements; defining terms; amending temporary classification provisions; providing access to certain data; regulating business screening services; amending human services background study provisions; making technical and conforming changes; amending Minnesota Statutes 2008, sections 13.05, subdivision 4, by adding a subdivision; 13.06, subdivisions 1, 3, 4, 5, 7, by adding subdivisions; 13.3215; 13.43, subdivisions 1, 2, by adding subdivisions; 13.46, subdivisions 3, 4; 13.64; 13.643, by adding a subdivision; 13.792; 13.7931, by adding a subdivision; 13.87, by adding a subdivision; 13.871, by adding a subdivision; 13D.05, subdivision 3; 16B.97, by adding a subdivision; 125A.21, subdivision 5; 241.065, subdivision 2; 245C.08; 245C.22, subdivision 7; 246B.04, by adding a subdivision; 270B.14, subdivision 16; 299C.156, subdivision 5; 332.70, subdivisions 1, 2, 3, 4; 626.557, subdivision 12b; proposing coding for new law in Minnesota Statutes, chapter 84; repealing Minnesota Statutes 2008, section 13.06, subdivision 2; Minnesota Rules, part 1205.1800.

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

ARTICLE 1
GENERAL

Section 1. Minnesota Statutes 2008, section 13.05, subdivision 4, is amended to read:

Subd. 4. **Limitations on collection and use of data.** Private or confidential data on an individual shall not be collected, stored, used, or disseminated by government entities for any purposes other than those stated to the individual at the time of collection in accordance with section 13.04, except as provided in this subdivision.

(a) Data collected prior to August 1, 1975, and which have not been treated as public data, may be used, stored, and disseminated for the purposes for which the data was originally collected or for purposes which are specifically approved by the commissioner as necessary to public health, safety, or welfare.

(b) Private or confidential data may be used and disseminated to individuals or entities specifically authorized access to that data by state, local, or federal law enacted or promulgated after the collection of the data.

(c) Private or confidential data may be used and disseminated to individuals or entities subsequent to the collection of the data when the responsible authority maintaining the data has requested approval for a new or different use or dissemination of the data and that request has been specifically approved by the commissioner as necessary to carry out a function assigned by law.

(d) Private data may be used by and disseminated to any person or entity if the individual subject or subjects of the data have given their informed consent. Whether a data subject has given informed consent shall be determined by rules of the commissioner. ~~The format for informed consent is as follows, unless otherwise prescribed by the HIPAA, Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. 82, 461 (2000) (to be codified as Code of Federal Regulations, title 45, section 164): informed consent shall not be deemed to have been given by an individual subject of the data by the signing of any statement authorizing any person or entity to disclose information about the individual to an insurer or its authorized representative, unless the statement is:~~

~~(1) in plain language;~~

~~(2) dated;~~

~~(3) specific in designating the particular persons or agencies the data subject is authorizing to disclose information about the data subject;~~

~~(4) specific as to the nature of the information the subject is authorizing to be disclosed;~~

~~(5) specific as to the persons or entities to whom the subject is authorizing information to be disclosed;~~

~~(6) specific as to the purpose or purposes for which the information may be used by any of the parties named in clause (5), both at the time of the disclosure and at any time in the future;~~

~~(7) specific as to its expiration date which should be within a reasonable period of time, not to exceed one year except in the case of authorizations given in connection with applications for (i) life insurance or noncancelable or guaranteed renewable health insurance and identified as such, two years after the date of the policy or (ii) medical assistance under chapter 256B or MinnesotaCare under chapter 256L, which shall be ongoing during all terms of eligibility, for individual education plan health-related services provided by a school district under section 125A.21, subdivision 2.~~

The responsible authority may require a person requesting copies of data under this paragraph to pay the actual costs of making~~,~~ and certifying~~, and compiling~~ the copies.

(e) Private or confidential data on an individual may be discussed at a meeting open to the public to the extent provided in section 13D.05.

Sec. 2. Minnesota Statutes 2008, section 13.05, is amended by adding a subdivision to read:

Subd. 4a. **Informed consent for insurance purposes.** Informed consent for insurance purposes must comply with this subdivision, unless otherwise prescribed by the HIPAA Standards for Privacy of Individually Identifiable Health Information, Code of Federal Regulations, title 45, section 164. Informed consent for insurance purposes is not considered to have been given by an individual subject of data by the signing of a statement authorizing a government entity to disclose information about the individual to an insurer or its authorized representative, unless the statement is:

(1) in plain language;

(2) dated;

(3) specific in designating the government entity the data subject is authorizing to disclose information about the data subject;

(4) specific as to the nature of the information the data subject is authorizing to be disclosed;

(5) specific as to the persons to whom the data subject is authorizing information to be disclosed;

(6) specific as to the purpose or purposes for which the information may be used by any of the persons named in clause (5), both at the time of the disclosure and at any time in the future; and

(7) specific as to its expiration date, which must be within a reasonable period of time, not to exceed one year.

Notwithstanding clause (7), in the case of authorizations given in connection with applications for life insurance or noncancelable or guaranteed renewable health insurance that is so identified, the expiration date must not exceed two years after the date of the policy. An authorization in connection with medical assistance under chapter 256B or MinnesotaCare under chapter 256L or for individual education plan health-related services provided by a school district under section 125A.21, subdivision 2, is valid during all terms of eligibility.

Sec. 3. Minnesota Statutes 2008, section 13.3215, is amended to read:

13.3215 UNIVERSITY OF MINNESOTA DATA.

Subdivision 1. **Definitions.** (a) For purposes of this section, the terms in this subdivision have the meanings given them.

(b) "Business data" is data described in section 13.591, subdivision 1, and includes the funded amount of the University of Minnesota's commitment to the investment to date, if any; the market value of the investment by the University of Minnesota; and the age of the investment in years.

(c) "Financial, business, or proprietary data" means data, as determined by the responsible authority for the University of Minnesota, that is of a financial, business, or proprietary nature, the release of which could cause competitive harm to the University of Minnesota, the legal entity in which the University of Minnesota has invested or has considered an investment, the managing entity of an investment, or a portfolio company in which the legal entity holds an interest.

(d) "Investment" means the investments by the University of Minnesota in the following private capital:

(1) venture capital and other private equity investment businesses through participation in limited partnerships, trusts, limited liability corporations, limited liability companies, limited liability partnerships, and corporations;

(2) real estate ownership interests or loans secured by mortgages or deeds of trust or shares of real estate investment trusts through investment in limited partnerships; and

(3) natural resource investments through limited partnerships, trusts, limited liability corporations, limited liability companies, limited liability partnerships, and corporations.

Subd. 2. **Claims experience data.** Claims experience and all related information received from carriers and claims administrators participating in a University of Minnesota group health, dental, life, or disability insurance plan or the University of Minnesota workers' compensation program, and survey information collected from employees or students participating in these plans and programs, except when the university determines that release of the data will not be detrimental to the plan or program, are classified as nonpublic data ~~not on individuals pursuant to~~ under section 13.02, subdivision 9.

Subd. 3. **Private equity investment data.** (a) Financial, business, or proprietary data collected, created, received, or maintained by the University of Minnesota in connection with investments are nonpublic data.

(b) The following data shall be public:

(1) the name of the general partners and the legal entity in which the University of Minnesota has invested;

(2) the amount of the University's initial commitment, and any subsequent commitments;

(3) quarterly reports which outline the aggregate investment performance achieved and the market value, and the fees and expenses paid in aggregate to general partner investment managers in each of the following specific asset classes: venture capital, private equity, distressed debt, private real estate, and natural resources;

(4) a description of all of the types of industry sectors the University of Minnesota is or has invested in, in each specific private equity asset class; and

(5) the portfolio performance of University of Minnesota investments overall, including the number of investments, the total amount of the University of Minnesota commitments, the total current market value, and the return on the total investment portfolio.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 4. Minnesota Statutes 2008, section 13D.05, subdivision 3, is amended to read:

Subd. 3. **What meetings may be closed.** (a) A public body may close a meeting to evaluate the performance of an individual who is subject to its authority. The public body shall identify the individual to be evaluated prior to closing a meeting. At its next open meeting, the public body shall summarize its conclusions regarding the evaluation. A meeting must be open at the request of the individual who is the subject of the meeting.

(b) Meetings may be closed if the closure is expressly authorized by statute or permitted by the attorney-client privilege.

(c) A public body may close a meeting:

(1) to determine the asking price for real or personal property to be sold by the government entity;

(2) to review confidential or protected nonpublic appraisal data under section 13.44, subdivision 3; and

(3) to develop or consider offers or counteroffers for the purchase or sale of real or personal property.

Before holding a closed meeting under this paragraph, the public body must identify on the record the particular real or personal property that is the subject of the closed meeting. The proceedings of a meeting closed under this paragraph must be tape recorded at the expense of the public body. The recording must be preserved for eight years after the date of the meeting and made available to the public after all real or personal property discussed at the meeting has been purchased or sold or the governing body has abandoned the purchase or sale. The real or personal property that is the subject of the closed meeting must be specifically identified on the tape. A list of members and all other persons present at the closed meeting must be made available to the public after the closed meeting. If an action is brought claiming that public business other than discussions allowed under this paragraph was transacted at a closed meeting held under this paragraph during the time when the tape is not available to the public, section 13D.03, subdivision 3, applies.

An agreement reached that is based on an offer considered at a closed meeting is contingent on approval of the public body at an open meeting. The actual purchase or sale must be approved at an open meeting after the notice period required by statute or the governing body's internal procedures, and the purchase price or sale price is public data.

(d) Meetings may be closed to receive security briefings and reports, to discuss issues related to security systems, to discuss emergency response procedures and to discuss security deficiencies in or recommendations regarding public services, infrastructure and facilities, if disclosure of the information discussed would pose a danger to public safety or compromise security procedures or responses. Financial issues related to security matters must be discussed and all related financial decisions must be made at an open meeting. Before closing a meeting under this paragraph, the public body, in describing the subject to be discussed, must refer to the facilities, systems, procedures, services, or infrastructures to be considered during the closed meeting. A closed meeting must be tape recorded at the expense of the governing body, and the recording must be preserved for at least four years.

Sec. 5. Minnesota Statutes 2008, section 125A.21, subdivision 5, is amended to read:

Subd. 5. **Informed consent.** When obtaining informed consent, consistent with sections 13.05, subdivision ~~4, paragraph (d)~~ 4a; and 256B.77, subdivision 2, paragraph (p), to bill health plans for covered services, the school district must notify the legal representative (1) that the cost of the person's private health insurance premium may increase due to providing the covered service in the school setting, (2) that the school district may pay certain enrollee health plan costs, including but not limited to, co-payments, coinsurance, deductibles, premium increases or other enrollee cost-sharing amounts for health and related services required by an individual service plan, or individual family service plan, and (3) that the school's billing for each type of covered service may affect service limits and prior authorization thresholds. The informed consent may be revoked in writing at any time by the person authorizing the billing of the health plan.

ARTICLE 2
TEMPORARY CLASSIFICATIONS

Section 1. Minnesota Statutes 2008, section 13.06, subdivision 1, is amended to read:

Subdivision 1. **Application to commissioner.** (a) Notwithstanding the provisions of section 13.03, the responsible authority of a government entity may apply to the commissioner for permission to classify data or types of data on individuals as private or confidential, or data not on individuals as nonpublic or protected nonpublic, for its own use and for the use of other similar government entities on a temporary basis until a proposed statute can be acted upon by the legislature. The application for temporary classification is public.

(b) Upon ~~the filing~~ receipt by the commissioner of an application for temporary classification, the data which is the subject of the application shall be deemed to be classified as set forth in the application for a period of 45 days, or until the application is disapproved, rejected, or granted by the commissioner, whichever is earlier.

(c) If the commissioner determines that an application has been submitted for purposes not consistent with this section, the commissioner may immediately reject the application, give notice of that rejection to the applicant, and return the application. When the applicant receives the notice of rejection from the commissioner, the data which was the subject of the application shall have the classification it had before the application was submitted to the commissioner.

Sec. 2. Minnesota Statutes 2008, section 13.06, subdivision 3, is amended to read:

Subd. 3. **Contents of application ~~for nonpublic or nonpublic protected data~~.** An application for temporary classification of government data ~~not on individuals~~ shall include and the applicant shall have the burden of clearly establishing that no statute currently exists which either allows or forbids classification as ~~nonpublic or protected nonpublic~~ not public; and ~~either~~ one or more of the following:

(1) that data similar to that for which the temporary classification is sought ~~has~~ have been ~~treated~~ classified as ~~nonpublic or protected nonpublic~~ not public by other government entities~~, and by the public~~; or

(2) public access to the data would render unworkable a program authorized by law~~; or~~.

~~(3)~~ The applicant must also clearly establish that a compelling need exists for immediate temporary classification, which if not granted could adversely affect the health, safety or welfare of the public, or data subject's well-being or reputation.

Sec. 3. Minnesota Statutes 2008, section 13.06, subdivision 4, is amended to read:

Subd. 4. **Procedure when classification affects others.** If the commissioner determines that an application for temporary classification involves data which would reasonably be classified in the same manner by all government entities similar to the one which made the application, the commissioner may approve or disapprove the classification for data of the kind which is the subject of the application for the use of all government entities similar to the applicant. If requested in the application, the commissioner may also determine that the data classification affects similar government entities. On deeming this approach advisable, the commissioner shall provide notice of the proposed action by publication in the State Register within ~~ten~~ 15 days of receiving the application. Within 30 days after publication in the State Register an affected government entity or the public may submit comments on the ~~commissioner's proposal~~ application. The commissioner shall consider any comments received when granting or denying a classification for data of the kind which is the subject of the application, for the use of all government entities similar to the applicant. Within 45 days after the close of the period for submitting comment, the commissioner shall grant or disapprove the application. Applications processed under this subdivision shall be either approved or disapproved by the commissioner within 90 days of the receipt of the application. For purposes of subdivision 1, the data which is the subject of the classification shall be deemed to be classified as set forth in the application for a period of 90 days, or until the application is disapproved or granted by the commissioner, whichever is earlier. ~~If requested in the application, or determined to be necessary by the commissioner, the data in the application shall be so classified for all government entities similar to the applicant until the application is disapproved or granted by the commissioner, whichever is earlier.~~ Proceedings after the grant or disapproval shall be governed by the provisions of subdivision 5.

Sec. 4. Minnesota Statutes 2008, section 13.06, is amended by adding a subdivision to read:

Subd. 4a. **Withdrawal of application.** Except when an application is processed under subdivision 4, an application may be withdrawn by the responsible authority prior to the commissioner granting or disapproving the temporary classification. The responsible authority shall notify the commissioner in writing of the entity's intent to withdraw the application. The written withdrawal must state the reason the temporary classification is no longer necessary and must be signed by the responsible authority.

Sec. 5. Minnesota Statutes 2008, section 13.06, subdivision 5, is amended to read:

Subd. 5. **Determination.** (a) The commissioner shall either grant or disapprove the application for temporary classification within 45 days after it is ~~filed~~ received by the commissioner. On disapproving an application, the commissioner shall set forth in detail reasons for the disapproval, and shall include a statement of belief as to what classification is appropriate for the data which is the subject of the application. Twenty days after the date ~~of~~ <u>the responsible authority receives</u> the commissioner's disapproval of an application, the data which is the subject of the application shall become public data, unless the responsible authority submits an amended application for temporary classification which requests the classification deemed appropriate by the commissioner in the statement of disapproval or which sets forth additional information relating to the original proposed classification. Upon the filing of an amended application, the data which is the subject of the amended application shall be deemed to be classified as set forth in the amended application for a period of 20 days or until the amended application is granted or disapproved by the commissioner, whichever is earlier. The commissioner shall either grant or disapprove the amended application within 20 days after it is filed. Five working days after the date ~~of~~ <u>the responsible authority receives</u> the commissioner's disapproval of the amended application, the data which is the subject of the application shall become public data. No more than one amended application may be submitted for any single file or system.

(b) If the commissioner grants an application for temporary classification <u>under this section</u>, it shall become effective immediately, and the complete record relating to the application shall be submitted to the attorney general, who shall review the classification as to form and legality. Within 25 days <u>after receipt of the record</u>, the attorney general shall approve the classification, disapprove a classification as confidential <u>or protected nonpublic</u> but approve a classification as private <u>or nonpublic</u>, or disapprove the classification. If the attorney general disapproves a classification, the data which is the subject of the classification shall become public data five working days after the date of the attorney general's disapproval.

Sec. 6. Minnesota Statutes 2008, section 13.06, is amended by adding a subdivision to read:

<u>Subd. 6a.</u> <u>**Data use and dissemination.**</u> <u>During the period of the temporary classification, a responsible authority may request approval from the commissioner for a new or different use or dissemination of the data as provided in section 13.05, subdivision 4, for any data temporarily classified under this section.</u>

Sec. 7. Minnesota Statutes 2008, section 13.06, subdivision 7, is amended to read:

Subd. 7. **Legislative consideration of temporary classifications; expiration.** On or before January 15 of each year, the commissioner shall submit all temporary classifications in effect on January 1 in bill form to the legislature. The temporary classification expires ~~June~~ August 1 of the year ~~following its submission~~ it is submitted to the legislature.

ARTICLE 3
PERSONNEL DATA

Section 1. Minnesota Statutes 2008, section 13.43, subdivision 1, is amended to read:

Subdivision 1. **Definition.** As used in this section, "personnel data" means government data on individuals ~~collected~~ maintained because the individual is or was an employee of or an applicant for employment by, performs services on a voluntary basis for, or acts as an independent contractor with a government entity. Personnel data includes data submitted by an employee to a government entity as part of an organized self-evaluation effort by the government entity to request suggestions from all employees on ways to cut costs, make government more efficient, or improve the operation of government. An employee who is identified in a suggestion shall have access to all data in the suggestion except the identity of the employee making the suggestion.

Sec. 2. Minnesota Statutes 2008, section 13.43, subdivision 2, is amended to read:

Subd. 2. **Public data.** (a) Except for employees described in subdivision 5 and subject to the limitations described in subdivision 5a, the following personnel data on current and former employees, volunteers, and independent contractors of a government entity is public:

(1) name; employee identification number, which must not be the employee's Social Security number; actual gross salary; salary range; terms and conditions of employment relationship; contract fees; actual gross pension; the value and nature of employer paid fringe benefits; and the basis for and the amount of any added remuneration paid by the employer or a person other than the employer, including expense reimbursement, in addition to salary;

(2) job title and bargaining unit; job description; education and training background; and previous work experience;

(3) date of first and last employment;

(4) the existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action;

(5) the final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the public body;

(6) the terms of any agreement settling any dispute arising out of an employment relationship, including a buyout agreement as defined in section 123B.143, subdivision 2, paragraph (a); except that the agreement must include specific reasons for the agreement if it involves the payment of more than $10,000 of public money;

(7) work location; a work telephone number; employer-provided e-mail address; badge number; work-related continuing education; and honors and awards received; and

(8) payroll time sheets or other comparable data that are only used to account for employee's work time for payroll purposes, except to the extent that release of time sheet data would reveal the employee's reasons for the use of sick or other medical leave or other not public data.

(b) For purposes of this subdivision, a final disposition occurs when the government entity makes its final decision about the disciplinary action, regardless of the possibility of any later proceedings or court proceedings. In the case of arbitration proceedings arising under collective bargaining agreements, a final disposition occurs at the conclusion of the arbitration proceedings, or upon the failure of the employee to elect arbitration within the time provided by the collective bargaining agreement. Final disposition includes a resignation by an individual when the resignation occurs after the final decision of the government entity, or arbitrator. A disciplinary action does not become public data if an arbitrator sustains a grievance and reverses all aspects of any disciplinary action.

(c) The government entity may display a photograph of a current or former employee to a prospective witness as part of the government entity's investigation of any complaint or charge against the employee.

(d) A complainant has access to a statement provided by the complainant to a government entity in connection with a complaint or charge against an employee.

(e) Notwithstanding paragraph (a), clause (5), upon completion of an investigation of a complaint or charge against a public official, or if a public official resigns or is terminated from employment while the complaint or charge is pending, all data relating to the complaint or charge are public, unless access to the data would jeopardize an active investigation or reveal confidential sources. For purposes of this paragraph, "public official" means:

(1) the head of a state agency and deputy and assistant state agency heads;

(2) members of boards or commissions required by law to be appointed by the governor or other elective officers; and

(3) executive or administrative heads of departments, bureaus, divisions, or institutions within state government.

Sec. 3. Minnesota Statutes 2008, section 13.43, is amended by adding a subdivision to read:

Subd. 17. **Continuity of operations.** Personal home contact information may be used to ensure that an employee can be reached in the event of an emergency or other disruption affecting continuity of operation of a government entity. An employee's personal home contact information may be shared with another government entity to prepare for or in the event of an emergency or other disruption and to ensure continuity of operation of either government entity.

Sec. 4. Minnesota Statutes 2008, section 13.43, is amended by adding a subdivision to read:

Subd. 18. **Private personnel data.** Private personnel data of state employees must be disclosed to the Department of Administration for the purpose of administration of the workers' compensation program as provided in chapter 176.

Sec. 5. Minnesota Statutes 2008, section 13.64, is amended to read:

13.64 DEPARTMENT OF ADMINISTRATION DATA.

(a) Notes and preliminary drafts of reports created, collected, or maintained by the Management Analysis Division, Department of Administration, and prepared during management studies, audits, reviews, consultations, or investigations are classified as confidential or protected nonpublic data until the final report has been published or preparation of the report is no longer being actively pursued.

(b) Data that support the conclusions of the report and that the commissioner of administration reasonably believes will result in litigation are confidential or protected nonpublic until the litigation has been completed or until the litigation is no longer being actively pursued.

(c) Data on individuals that could reasonably be used to determine the identity of an individual supplying data for a report are private if:

(1) the data supplied by the individual were needed for a report; and

(2) the data would not have been provided to the Management Analysis Division without an assurance to the individual that the individual's identity would remain private, or the Management Analysis Division reasonably believes that the individual would not have provided the data.

(d) Security features of building plans, building specifications, and building drawings of state-owned facilities and nonstate-owned facilities leased by the state are classified as nonpublic data when maintained by the Department of Administration and may be shared with anyone as needed to perform duties of the commissioner.

Sec. 6. Minnesota Statutes 2008, section 16B.97, is amended by adding a subdivision to read:

Subd. 5. **Data classification.** Data maintained by the commissioner that identify a person providing comments to the commissioner under subdivision 4, paragraph (a), clauses (6) and (7), are private and nonpublic data but may be shared with the executive agency that is the subject of the comments.

Sec. 7. **REPEALER.**

(a) Minnesota Statutes 2008, section 13.06, subdivision 2, is repealed.

(b) Minnesota Rules, part 1205.1800, is repealed.

ARTICLE 4
MISCELLANEOUS PROVISIONS

Section 1. Minnesota Statutes 2008, section 13.643, is amended by adding a subdivision to read:

Subd. 7. **Research, monitoring, or assessment data.** (a) Except as provided in paragraph (b), the following data created, collected, and maintained by the Department of Agriculture during research, monitoring, or the assessment of farm practices and related to natural resources, the environment, agricultural facilities, or agricultural practices are classified as private or nonpublic:

(1) names, addresses, telephone numbers, and e-mail addresses of study participants or cooperators; and

(2) location of research, study site, and global positioning system data.

(b) The following data are public:

(1) location data and unique well numbers for wells and springs unless protected under section 18B.10 or another statute or rule; and

(2) data from samples collected from a public water supply as defined in Minnesota Rules, part 4720.5100.

(c) The Department of Agriculture may disclose data collected under paragraph (a) if the commissioner determines that there is a substantive threat to human health and safety or to the environment, or to aid in the law enforcement process.

Sec. 2. Minnesota Statutes 2008, section 13.792, is amended to read:

13.792 PRIVATE DONOR GIFT DATA.

The following data maintained by the Minnesota Zoological Garden, the University of Minnesota, the Minnesota State Colleges and Universities, the Regional Parks Foundation of the Twin Cities, and any related entity subject to chapter 13 are classified as private or nonpublic:

(1) research information about prospects and donors gathered to aid in determining appropriateness of solicitation and level of gift request;

(2) specific data in prospect lists that would identify prospects to be solicited, dollar amounts to be requested, and name of solicitor;

(3) portions of solicitation letters and proposals that identify the prospect being solicited and the dollar amount being requested;

(4) letters, pledge cards, and other responses received from donors regarding prospective gifts in response to solicitations;

(5) portions of thank-you letters and other gift acknowledgment communications that would identify the name of the donor and the specific amount of the gift, pledge, or pledge payment;

(6) donor financial or estate planning information, or portions of memoranda, letters, or other documents commenting on any donor's financial circumstances; and

(7) data detailing dates of gifts, payment schedule of gifts, form of gifts, and specific gift amounts made by donors.

Names of donors and gift ranges are public data.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 3. Minnesota Statutes 2008, section 13.7931, is amended by adding a subdivision to read:

Subd. 6. **Electronic licensing system data.** Data on individuals created, collected, stored, or maintained by the department for the purposes of obtaining a noncommercial game and fish license, cross-country ski pass, horse trail pass, or snowmobile trail sticker; registering a recreational motor vehicle; or any other electronic licensing transaction are classified under section 84.0874.

EFFECTIVE DATE. This section is effective March 1, 2010.

Sec. 4. Minnesota Statutes 2008, section 13.87, is amended by adding a subdivision to read:

Subd. 5. **Parole and probation authority access to records.** Parole and county probation authorities may access data identified in subdivision 2 on an applicant or permit holder who is also a defendant, parolee, or probationer of a district court.

Sec. 5. Minnesota Statutes 2008, section 13.871, is amended by adding a subdivision to read:

Subd. 12. **Forensic Laboratory Advisory Board.** Reports and complaints of the Forensic Laboratory Advisory Board are classified under section 299C.156, subdivision 5.

Sec. 6. **[84.0874] ELECTRONIC LICENSING SYSTEM DATA.**

(a) Data created, collected, stored, or maintained by the department for purposes of obtaining a noncommercial game and fish license, cross-country ski pass, horse trail pass, or snowmobile trail sticker; registering a recreational motor vehicle; or any other electronic licensing transaction are private data on individuals, as defined in section 13.02, subdivision 12, except that an individual's name, address, and type of license applied for shall be public. Data made public by this paragraph shall be classified as private upon the request of the individual subject of the data.

(b) Data classified under this section may be disclosed for law enforcement purposes. The data, other than an individual's driver's license number, may be disclosed to a government entity and for natural resources management purposes, including recruitment, retention, and training certification and verification.

EFFECTIVE DATE. This section is effective March 1, 2010.

Sec. 7. Minnesota Statutes 2008, section 241.065, subdivision 2, is amended to read:

Subd. 2. **Establishment.** The Department of Corrections shall administer and maintain a computerized data system for the purpose of assisting criminal justice agencies in monitoring and enforcing the conditions of conditional release imposed on criminal offenders by a sentencing court or the commissioner of corrections. The adult data and juvenile data as defined in section 260B.171 in the statewide supervision system are private data as defined in section 13.02, subdivision 12, but are accessible to criminal justice agencies as defined in section 13.02, subdivision 3a, to the Minnesota sex offender program as provided in section 246B.04, subdivision 3, to public defenders as provided in section 611.272, to all trial courts and appellate courts, and to criminal justice agencies in other states in the conduct of their official duties.

Sec. 8. Minnesota Statutes 2008, section 246B.04, is amended by adding a subdivision to read:

Subd. 3. **Access to data.** The Minnesota sex offender program shall have access to private data contained in the statewide supervision system under section 241.065, as necessary for the administration and management of current Minnesota sex offender clients for the purposes of admissions, treatment, security, and supervision. The program shall develop a policy to allow individuals who conduct assessments, develop treatment plans, oversee security, or develop reintegration plans to have access to the data. The commissioner of corrections shall conduct periodic audits to determine whether the policy is being followed.

Sec. 9. Minnesota Statutes 2008, section 270B.14, subdivision 16, is amended to read:

Subd. 16. **Disclosure to law enforcement authorities.** Under circumstances involving threat of death or physical injury to any individual, or harassment of a Department of Revenue employee, the commissioner may disclose return information to the extent necessary to apprise appropriate federal, state, or local law enforcement authorities of such circumstances. For purposes of this subdivision, "harassment" is purposeful conduct directed at an individual and causing an individual to feel frightened, threatened, oppressed, persecuted, or intimidated. For purposes of harassment, the return information that initially can be disclosed is limited to the name, address, and phone number of the harassing individual, the name of the employee being harassed, and the nature and circumstances of the harassment. Data disclosed under this subdivision are classified under section 13.82 once they are received by the law enforcement authority.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 10. Minnesota Statutes 2008, section 299C.156, subdivision 5, is amended to read:

Subd. 5. ~~**Reviews and reports are public**~~ **Data practices; use of reports.** ~~The board shall make all~~ (a) Investigation reports completed under subdivision 3, paragraph (a), clause (1), ~~available to the public~~ are private data on individuals or nonpublic data as defined in section 13.02, unless the board finds there was negligence or misconduct. A report or complaint received under this section is private data on individuals or nonpublic data. This paragraph does not affect the classification of data on employees under section 13.43.

(b) A report completed under subdivision 3, paragraph (a), clause (1), in a subsequent civil or criminal proceeding is not prima facie evidence of the information or findings contained in the report.

Sec. 11. Minnesota Statutes 2008, section 332.70, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** For purposes of this section:

(a) "Business screening service" means a person regularly engaged in the business of collecting, assembling, evaluating, or disseminating criminal ~~record information~~ records on individuals for a fee. Business screening service does not include a government entity, as defined in section 13.02, or the news media.

(b) "Conviction" has the meaning given in section 609.02, subdivision 5.

(c) "Criminal record" means a public record originating from a Minnesota agency or court of an arrest, citation, prosecution, criminal proceeding, or conviction. For the purposes of this definition, "criminal proceeding" does not include judicial opinions.

Sec. 12. Minnesota Statutes 2008, section 332.70, subdivision 2, is amended to read:

Subd. 2. **Criminal records.** ~~A business screening service must not disseminate a criminal record unless the record has been updated within the previous month.~~ A business screening service shall make all updates to Minnesota criminal records as most recently provided by the agencies or courts in a timely manner, and make a good faith effort to ensure the records are accurate, current, and complete as provided by those agencies and courts. Business screening services shall not be liable for inaccurate data which is the result of a good faith attempt to comply with this section.

Sec. 13. Minnesota Statutes 2008, section 332.70, subdivision 3, is amended to read:

Subd. 3. **Correction and deletion of records.** (a) If the completeness or accuracy of a criminal record maintained by a business screening service is disputed by the individual who is the subject of the record, the screening service shall, without charge, investigate the disputed record. In conducting an investigation, the business screening service shall review and consider all relevant information submitted by the subject of the record with respect to the disputed record to determine whether the record maintained by the screening service accurately reflects the content of the official record, as maintained by the official government custodian.

(b) ~~If the disputed record is found to be inaccurate or incomplete, the business screening service shall promptly correct the record. If the disputed record is found to be sealed, expunged, or the subject of a pardon, the business screening service shall promptly delete the record.~~ If, upon investigation, the screening service determines that the record does not accurately reflect the content of the official record, the screening service shall correct the disputed record so as to accurately reflect the content of the official record.

If the disputed record is found to be sealed, expunged, or the subject of a pardon, the business screening service shall promptly delete the record.

(c) A business screening service may terminate an investigation of a disputed record if the business screening agency reasonably determines that the dispute is frivolous, which may be based on the failure of the subject of the record to provide sufficient information to investigate the disputed record. Upon making a determination that the dispute is frivolous, the business screening service shall inform the subject of the record of the specific reasons why it has determined that the dispute is frivolous and provide a description of any information required to investigate the disputed record.

(d) The business screening service shall notify the subject of the disputed record of the correction or deletion of the record or of the termination or completion of the investigation related to the record within 30 days of the date when the agency receives notice of the dispute from the subject of the record.

Sec. 14. Minnesota Statutes 2008, section 332.70, subdivision 4, is amended to read:

Subd. 4. **Date and notice required.** A business screening service that disseminates a criminal record must include the date when the record was collected by the business screening service and a notice that the information may include criminal records that have been expunged, sealed, or otherwise have become inaccessible to the public since that date.

EFFECTIVE DATE; APPLICABILITY. This section only applies to criminal records collected by a business screening service on or after the date this section becomes effective.

ARTICLE 5
HUMAN SERVICES DATA

Section 1. Minnesota Statutes 2008, section 13.46, subdivision 3, is amended to read:

Subd. 3. **Investigative data.** (a) Data on persons, including data on vendors of services ~~and data on~~, licensees, and applicants, that is collected, maintained, used, or disseminated by the welfare system in an investigation, authorized by statute and relating to the enforcement of rules or law, is confidential data on individuals pursuant to section 13.02, subdivision 3, or protected nonpublic data not on individuals pursuant to section 13.02, subdivision 13, and shall not be disclosed except:

(1) pursuant to section 13.05;

(2) pursuant to statute or valid court order;

(3) to a party named in a civil or criminal proceeding, administrative or judicial, for preparation of defense; or

(4) to provide notices required or permitted by statute.

The data referred to in this subdivision shall be classified as public data upon its submission to an administrative law judge or court in an administrative or judicial proceeding. Inactive welfare investigative data shall be treated as provided in section 13.39, subdivision 3.

(b) Notwithstanding any other provision in law, the commissioner of human services shall provide all active and inactive investigative data, including the name of the reporter of alleged maltreatment under section 626.556 or 626.557, to the ombudsman for mental health and developmental disabilities upon the request of the ombudsman.

Sec. 2. Minnesota Statutes 2008, section 13.46, subdivision 4, is amended to read:

Subd. 4. **Licensing data.** (a) As used in this subdivision:

(1) "licensing data" means all data collected, maintained, used, or disseminated by the welfare system pertaining to persons licensed or registered or who apply for licensure or registration or who formerly were licensed or registered under the authority of the commissioner of human services;

(2) "client" means a person who is receiving services from a licensee or from an applicant for licensure; and

(3) "personal and personal financial data" means Social Security numbers, identity of and letters of reference, insurance information, reports from the Bureau of Criminal Apprehension, health examination reports, and social/home studies.

(b)(1) Except as provided in paragraph (c), the following data on applicants, license holders, and former licensees are public: name, address, telephone number of licensees, date of receipt of a completed application, dates of licensure, licensed capacity, type of client preferred, variances granted, record of training and education in child care and child development, type of dwelling, name and relationship of other family members, previous license history, class of license, the existence and status of complaints, and the number of serious injuries to or deaths of individuals in the licensed program as reported to the commissioner of human services, the local social services agency, or any other county welfare agency. For purposes of this clause, a serious injury is one that is treated by a physician. When a correction order ~~or~~<u>, an order to forfeit a</u> fine<u>, an order of license suspension, an order of temporary immediate suspension, an order of license revocation, an order of license denial, or an order of conditional license</u> has been issued~~, a license is suspended, immediately suspended, revoked, denied, or made conditional,~~ or a complaint is resolved, the following data on current and former licensees and applicants are public: the substance and investigative findings of the licensing or maltreatment complaint, licensing violation, or substantiated maltreatment; the record of informal resolution of a licensing violation; orders of hearing; findings of fact; conclusions of law; specifications of the final correction order, fine, suspension, temporary immediate suspension, revocation, denial, or conditional license contained in the record of licensing action; whether a fine has been paid; and the status of any appeal of these actions. If a licensing sanction under section 245A.07, or a license denial under section 245A.05, is based on a determination that the license holder or applicant is responsible for maltreatment or is disqualified under chapter 245C, the identity of the license holder or applicant as the individual responsible for maltreatment or as the disqualified individual is public data at the time of the issuance of the licensing sanction or denial.

(2) Notwithstanding sections 626.556, subdivision 11, and 626.557, subdivision 12b, when any person subject to disqualification under section 245C.14 in connection with a license to provide family day care for children, child care center services, foster care for children in the provider's home, or foster care or day care services for adults in the provider's home is a substantiated perpetrator of maltreatment, and the substantiated maltreatment is a reason for a licensing action, the identity of the substantiated perpetrator of maltreatment is public data. For purposes of this clause, a person is a substantiated perpetrator if the maltreatment determination has been upheld under section 256.045; 626.556, subdivision 10i; 626.557, subdivision 9d; or chapter 14, or if an individual or facility has not timely exercised appeal rights under these sections, except as provided under clause (1).

(3) For applicants who withdraw their application prior to licensure or denial of a license, the following data are public: the name of the applicant, the city and county in which the applicant was seeking licensure, the dates of the commissioner's receipt of the initial application and completed application, the type of license sought, and the date of withdrawal of the application.

(4) For applicants who are denied a license, the following data are public: the name and address of the applicant, the city and county in which the applicant was seeking licensure, the dates of the commissioner's receipt of the initial application and completed application, the type of license sought, the date of denial of the application, the nature of the basis for the denial, the record of informal resolution of a denial, orders of hearings, findings of fact, conclusions of law, specifications of the final order of denial, and the status of any appeal of the denial.

(5) The following data on persons subject to disqualification under section 245C.14 in connection with a license to provide family day care for children, child care center services, foster care for children in the provider's home, or foster care or day care services for adults in the provider's home, are public: the nature of any disqualification set aside under section 245C.22, subdivisions 2 and 4, and the reasons for setting aside the disqualification; the nature of any disqualification for which a variance was granted under sections 245A.04, subdivision 9; and 245C.30, and the reasons for granting any variance under section 245A.04, subdivision 9; and, if applicable, the disclosure that any person subject to a background study under section 245C.03, subdivision 1, has successfully passed a background study. If a licensing sanction under section 245A.07, or a license denial under section 245A.05, is based on a determination that an individual subject to disqualification under chapter 245C is disqualified, the disqualification as a basis for the licensing sanction or denial is public data. As specified in clause (1), if the disqualified individual is the license holder or applicant, the identity of the license holder or applicant is public data. If the disqualified individual is an individual other than the license holder or applicant, the identity of the disqualified individual shall remain private data.

(6) When maltreatment is substantiated under section 626.556 or 626.557 and the victim and the substantiated perpetrator are affiliated with a program licensed under chapter 245A, the commissioner of human services, local social services agency, or county welfare agency may inform the license holder where the maltreatment occurred of the identity of the substantiated perpetrator and the victim.

(7) Notwithstanding clause (1), for child foster care, only the name of the license holder and the status of the license are public if the county attorney has requested that data otherwise classified as public data under clause (1) be considered private data based on the best interests of a child in placement in a licensed program.

(c) The following are private data on individuals under section 13.02, subdivision 12, or nonpublic data under section 13.02, subdivision 9: personal and personal financial data on family day care program and family foster care program applicants and licensees and their family members who provide services under the license.

(d) The following are private data on individuals: the identity of persons who have made reports concerning licensees or applicants that appear in inactive investigative data, and the records of clients or employees of the licensee or applicant for licensure whose records are received by the licensing agency for purposes of review or in anticipation of a contested matter. The names of reporters of complaints or alleged violations of licensing standards under chapters 245A, 245B, and 245C, and applicable rules and alleged maltreatment under sections 626.556 and 626.557, are confidential data and may be disclosed only as provided in section 626.556, subdivision 11, or 626.557, subdivision 12b.

(e) Data classified as private, confidential, nonpublic, or protected nonpublic under this subdivision become public data if submitted to a court or administrative law judge as part of a disciplinary proceeding in which there is a public hearing concerning a license which has been suspended, immediately suspended, revoked, or denied.

(f) Data generated in the course of licensing investigations that relate to an alleged violation of law are investigative data under subdivision 3.

(g) Data that are not public data collected, maintained, used, or disseminated under this subdivision that relate to or are derived from a report as defined in section 626.556, subdivision 2, or 626.5572, subdivision 18, are subject to the destruction provisions of sections 626.556, subdivision 11c, and 626.557, subdivision 12b.

(h) Upon request, not public data collected, maintained, used, or disseminated under this subdivision that relate to or are derived from a report of substantiated maltreatment as defined in section 626.556 or 626.557 may be exchanged with the Department of Health for purposes of completing background studies pursuant to section 144.057 and with the Department of Corrections for purposes of completing background studies pursuant to section 241.021.

(i) Data on individuals collected according to licensing activities under chapters 245A and 245C, and data on individuals collected by the commissioner of human services according to maltreatment investigations under sections 626.556 and 626.557, may be shared with the Department of Human Rights, the Department of Health, the Department of Corrections, the ombudsman for mental health and developmental disabilities, and the individual's professional regulatory board when there is reason to believe that laws or standards under the jurisdiction of those agencies may have been violated. Unless otherwise specified in this chapter, the identity of a reporter of alleged maltreatment or licensing violations may not be disclosed.

(j) In addition to the notice of determinations required under section 626.556, subdivision 10f, if the commissioner or the local social services agency has determined that an individual is a substantiated perpetrator of maltreatment of a child based on sexual abuse, as defined in section 626.556, subdivision 2, and the commissioner or local social services agency knows that the individual is a person responsible for a child's care in another facility, the commissioner or local social services agency shall notify the head of that facility of this determination. The notification must include an explanation of the individual's available appeal rights and the status of any appeal. If a notice is given under this paragraph, the government entity making the notification shall provide a copy of the notice to the individual who is the subject of the notice.

(k) All not public data collected, maintained, used, or disseminated under this subdivision and subdivision 3 may be exchanged between the Department of Human Services, Licensing Division, and the Department of Corrections for purposes of regulating services for which the Department of Human Services and the Department of Corrections have regulatory authority.

Sec. 3. Minnesota Statutes 2008, section 245C.08, is amended to read:

245C.08 BACKGROUND STUDY; COMMISSIONER REVIEWS.

Subdivision 1. **Background studies conducted by ~~commissioner~~ the Department of Human Services.** (a) For a background study conducted by the ~~commissioner~~ Department of Human Services, the commissioner shall review:

(1) information related to names of substantiated perpetrators of maltreatment of vulnerable adults that has been received by the commissioner as required under section 626.557, subdivision 9c, paragraph (i);

(2) the commissioner's records relating to the maltreatment of minors in licensed programs, and from findings of maltreatment of minors as indicated through the social service information system;

(3) information from juvenile courts as required in subdivision 4 for individuals listed in section 245C.03, subdivision 1, ~~clauses (2), (5), and (6)~~ when there is reasonable cause;

(4) information from the Bureau of Criminal Apprehension;

(5) except as provided in clause (6), information from the national crime information system when the commissioner has reasonable cause as defined under section 245C.05, subdivision 5; and

(6) for a background study related to a child foster care application for licensure or adoptions, the commissioner shall also review:

(i) information from the child abuse and neglect registry for any state in which the background study subject has resided for the past five years; and

(ii) information from national crime information databases, when the background study ~~object~~ subject is 18 years of age or older.

(b) Notwithstanding expungement by a court, the commissioner may consider information obtained under paragraph (a), clauses (3) and (4), unless the commissioner received notice of the petition for expungement and the court order for expungement is directed specifically to the commissioner.

Subd. 2. **Background studies conducted by a county agency.** (a) For a background study conducted by a county agency for adult foster care, family adult day services, and family child care services, the commissioner shall review:

(1) information from the county agency's record of substantiated maltreatment of adults and the maltreatment of minors;

(2) information from juvenile courts as required in subdivision 4 for ~~individuals listed in section 245C.03, subdivision 1, clauses (2), (5), and (6)~~:

(i) individuals listed in section 245C.03, subdivision 1, who are ages 13 through 23 living in the household where the licensed services will be provided; and

(ii) any other individual listed under section 245C.03, subdivision 1, when there is reasonable cause; and

(3) information from the Bureau of Criminal Apprehension.

(b) If the individual has resided in the county for less than five years, the study shall include the records specified under paragraph (a) for the previous county or counties of residence for the past five years.

(c) Notwithstanding expungement by a court, the county agency may consider information obtained under paragraph (a), clause (3), unless the commissioner received notice of the petition for expungement and the court order for expungement is directed specifically to the commissioner.

Subd. 3. **Arrest and investigative information.** (a) For any background study completed under this section, if the commissioner has reasonable cause to believe the information is pertinent to the disqualification of an individual, the commissioner also may review arrest and investigative information from:

(1) the Bureau of Criminal Apprehension;

(2) the commissioner of health;

(3) a county attorney;

(4) a county sheriff;

(5) a county agency;

(6) a local chief of police;

(7) other states;

(8) the courts;

(9) the Federal Bureau of Investigation;

(10) the National Criminal Records Repository; and

(11) criminal records from other states.

(b) The commissioner is not required to conduct more than one review of a subject's records from the Federal Bureau of Investigation if a review of the subject's criminal history with the Federal Bureau of Investigation has already been completed by the commissioner and there has been no break in the subject's affiliation with the license holder who initiated the background study.

Subd. 4. **Juvenile court records.** (a) For a background study conducted by the Department of Human Services, the commissioner shall review records from the juvenile courts for an individual studied under section 245C.03, subdivision 1, ~~clauses (2) and (5)~~ when the commissioner has reasonable cause.

(b) For ~~individuals studied under section 245C.03, subdivision 1, clauses (1), (3), (4), and (6), and subdivision 2, who are ages 13 to 17, the commissioner shall review records from the juvenile courts~~ a background study conducted by a county agency, the commissioner shall review records from the juvenile courts for individuals listed in section 245C.03, subdivision 1, who are ages 13 through 23 living in the household where the licensed services will be provided. The commissioner shall also review records from juvenile courts for any other individual listed under section 245C.03, subdivision 1, when the commissioner has reasonable cause.

(c) The juvenile courts shall help with the study by giving the commissioner existing juvenile court records relating to delinquency proceedings held on individuals described in section 245C.03, subdivision 1, ~~clauses (2), (5), and (6), relating to delinquency proceedings held within either the five years immediately preceding the background study or the five years immediately preceding the individual's 18th birthday, whichever time period is longer~~ when requested pursuant to this subdivision.

(d) For purposes of this chapter, a finding that a delinquency petition is proven in juvenile court shall be considered a conviction in state district court.

(e) Juvenile courts shall provide orders of involuntary and voluntary termination of parental rights under section 260C.301 to the commissioner upon request for purposes of conducting a background study under this chapter.

Sec. 4. Minnesota Statutes 2008, section 245C.22, subdivision 7, is amended to read:

Subd. 7. **Classification of certain data.** (a) Notwithstanding section 13.46, upon setting aside a disqualification under this section, the identity of the disqualified individual who received the set-aside and the individual's disqualifying characteristics are public data if the set-aside was:

(1) for any disqualifying characteristic under section 245C.15, when the set-aside relates to a child care center or a family child care provider licensed under chapter 245A; or

(2) for a disqualifying characteristic under section 245C.15, subdivision 2.

(b) Notwithstanding section 13.46, upon granting a variance to a license holder under section 245C.30, the identity of the disqualified individual who is the subject of the variance, the individual's disqualifying characteristics under section 245C.15, and the terms of the variance are public data, when the variance:

(1) is issued to a child care center or a family child care provider licensed under chapter 245A; or

(2) relates to an individual with a disqualifying characteristic under section 245C.15, subdivision 2.

(c) The identity of a disqualified individual and the reason for disqualification remain private data when:

(1) a disqualification is not set aside and no variance is granted, except as provided under section 13.46, subdivision 4;

(2) the data are not public under paragraph (a) or (b);

(3) the disqualification is rescinded because the information relied upon to disqualify the individual is incorrect; or

(4) the disqualification relates to a license to provide relative child foster care. As used in this clause, "relative" has the meaning given it under section 260C.007, subdivision 27.

(d) Licensed family child care providers and child care centers must provide notices as required under section 245C.301.

(e) Notwithstanding paragraphs (a) and (b), the identity of household members who are the subject of a disqualification related set-aside or variance is not public data if:

(1) the household member resides in the residence where the family child care is provided;

(2) the subject of the set-aside or variance is under the age of 18 years; and

(3) the set-aside or variance only relates to a disqualification under section 245C.15, subdivision 4, for a misdemeanor-level theft crime as defined in section 609.52.

Sec. 5. Minnesota Statutes 2008, section 626.557, subdivision 12b, is amended to read:

Subd. 12b. **Data management.** (a) In performing any of the duties of this section as a lead agency, the county social service agency shall maintain appropriate records. Data collected by the county social service agency under this section are welfare data under section 13.46. Notwithstanding section 13.46, subdivision 1, paragraph (a), data under this paragraph that are inactive investigative data on an individual who is a vendor of services are private data on individuals, as defined in section 13.02. The identity of the reporter may only be disclosed as provided in paragraph (c).

Data maintained by the common entry point are confidential data on individuals or protected nonpublic data as defined in section 13.02. Notwithstanding section 138.163, the common entry point shall destroy data three calendar years after date of receipt.

(b) The commissioners of health and human services shall prepare an investigation memorandum for each report alleging maltreatment investigated under this section. County social service agencies must maintain private data on individuals but are not required to prepare an investigation memorandum. During an investigation by the commissioner of health or the commissioner of human services, data collected under this section are confidential data on individuals or protected nonpublic data as defined in section 13.02. Upon completion of the investigation, the data are classified as provided in clauses (1) to (3) and paragraph (c).

(1) The investigation memorandum must contain the following data, which are public:

(i) the name of the facility investigated;

(ii) a statement of the nature of the alleged maltreatment;

(iii) pertinent information obtained from medical or other records reviewed;

(iv) the identity of the investigator;

(v) a summary of the investigation's findings;

(vi) statement of whether the report was found to be substantiated, inconclusive, false, or that no determination will be made;

(vii) a statement of any action taken by the facility;

(viii) a statement of any action taken by the lead agency; and

(ix) when a lead agency's determination has substantiated maltreatment, a statement of whether an individual, individuals, or a facility were responsible for the substantiated maltreatment, if known.

The investigation memorandum must be written in a manner which protects the identity of the reporter and of the vulnerable adult and may not contain the names or, to the extent possible, data on individuals or private data listed in clause (2).

(2) Data on individuals collected and maintained in the investigation memorandum are private data, including:

(i) the name of the vulnerable adult;

(ii) the identity of the individual alleged to be the perpetrator;

(iii) the identity of the individual substantiated as the perpetrator; and

(iv) the identity of all individuals interviewed as part of the investigation.

(3) Other data on individuals maintained as part of an investigation under this section are private data on individuals upon completion of the investigation.

(c) After the assessment or investigation is completed, the name of the reporter must be confidential. The subject of the report may compel disclosure of the name of the reporter only with the consent of the reporter or upon a written finding by a court that the report was false and there is evidence that the report was made in bad faith. This subdivision does not alter disclosure responsibilities or obligations under the Rules of Criminal Procedure, except that where the identity of the reporter is relevant to a criminal prosecution, the district court shall do an in-camera review prior to determining whether to order disclosure of the identity of the reporter.

(d) Notwithstanding section 138.163, data maintained under this section by the commissioners of health and human services must be destroyed under the following schedule:

(1) data from reports determined to be false, two years after the finding was made;

(2) data from reports determined to be inconclusive, four years after the finding was made;

(3) data from reports determined to be substantiated, seven years after the finding was made; and

(4) data from reports which were not investigated by a lead agency and for which there is no final disposition, two years from the date of the report.

(e) The commissioners of health and human services shall each annually report to the legislature and the governor on the number and type of reports of alleged maltreatment involving licensed facilities reported under this section, the number of those requiring investigation under this section, and the resolution of those investigations. The report shall identify:

(1) whether and where backlogs of cases result in a failure to conform with statutory time frames;

(2) where adequate coverage requires additional appropriations and staffing; and

(3) any other trends that affect the safety of vulnerable adults.

(f) Each lead agency must have a record retention policy.

(g) Lead agencies, prosecuting authorities, and law enforcement agencies may exchange not public data, as defined in section 13.02, if the agency or authority requesting the data determines that the data are pertinent and necessary to the requesting agency in initiating, furthering, or completing an investigation under this section. Data collected under this section must be made available to prosecuting authorities and law enforcement officials, local county agencies, and licensing agencies investigating the alleged maltreatment under this section. The lead agency shall exchange not public data with the vulnerable adult maltreatment review panel established in section 256.021 if the data are pertinent and necessary for a review requested under that section. Upon completion of the review, not public data received by the review panel must be returned to the lead agency.

(h) Each lead agency shall keep records of the length of time it takes to complete its investigations.

(i) A lead agency may notify other affected parties and their authorized representative if the agency has reason to believe maltreatment has occurred and determines the information will safeguard the well-being of the affected parties or dispel widespread rumor or unrest in the affected facility.

(j) Under any notification provision of this section, where federal law specifically prohibits the disclosure of patient identifying information, a lead agency may not provide any notice unless the vulnerable adult has consented to disclosure in a manner which conforms to federal requirements.

APPENDIX

Article locations in H1083-1

13.06 TEMPORARY CLASSIFICATION.

Subd. 2. **Contents of application for private or confidential data.** An application for temporary classification of data on individuals shall include and the applicant shall have the burden of clearly establishing that no statute currently exists which either allows or forbids classification as private or confidential; and either

(1) that data similar to that for which the temporary classification is sought has been treated as either private or confidential by other government entities, and by the public; or

(2) that a compelling need exists for immediate temporary classification, which if not granted could adversely affect the public interest or the health, safety, well being or reputation of the data subject.