

sary and is the least intrusive method for alleviating the problem presented, and whether it is in the best interests of the ward or conservatee. The medical report shall specifically consider the medical risks of sterilization, the consequences of not performing the sterilization, and whether alternative methods of contraception could be used to protect the best interests of the ward or conservatee.

(d) Any conservatee whose right to consent to a sterilization has not been restricted under this section or article 1, section 21, may be sterilized only if the conservatee consents in writing or there is a sworn acknowledgment by an interested person of a nonwritten consent by the conservatee. The consent must certify that the conservatee has received a full explanation from a physician or registered nurse of the nature and irreversible consequences of the sterilization operation.

(e) A guardian or conservator or the public guardian's designee who acts within the scope of authority conferred by letters of guardianship under article 1, section 21, subdivision 7, and according to the standards established in this chapter or in chapter 252A shall not be civilly or criminally liable for the provision of any necessary medical care, including but not limited to, the administration of psychotropic medication or the implementation of aversive and deprivation procedures to which the guardian or conservator or the public guardian's designee has consented.

(5) The power to approve or withhold approval of any contract, except for necessities, which the ward or conservatee may make or wish to make.

(6) The duty and power to exercise supervisory authority over the ward or conservatee in a manner which limits civil rights and restricts personal freedom only to the extent necessary to provide needed care and services.

#### Sec. 5. REPEALER.

Minnesota Statutes 1986, sections 252A.08; 252A.10; 252A.11; 252A.13; 252A.15; and 252A.18, are repealed.

Approved May 20, 1987

### CHAPTER 186—H.F.No. 948

*An act relating to state government; providing for affirmative action improvements; regulating job eligibility lists; providing for the title of state agency heads; giving the commissioner of health access to private or confidential data on individual state employees for purposes of epidemiologic studies; setting a mandatory age for certain employees and abolishing it for others; regulating hiring and personnel practices; amending Minnesota Statutes 1986, sections 15.06, subdivision 1; 15.46; 43A.08, subdivision 1; 43A.13, subdivisions 1 and 7; 43A.18, subdivision 4; 43A.191, subdivision 3; 43A.24, subdivision 2; 43A.30, subdivision 4;*

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43A.33, subdivision 3; 43A.34, subdivisions 1, 3, and 4; repealing Minnesota Statutes 1986, sections 15.45, subdivision 3; 15.47; and 43A.34, subdivision 2.

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

Section 1. Minnesota Statutes 1986, section 15.06, subdivision 1, is amended to read:

Subdivision 1. **APPLICABILITY.** This section applies to the following departments or agencies: the departments of administration, agriculture, commerce, corrections, jobs and training, education, employee relations, energy and economic development, finance, health, human rights, labor and industry, natural resources, public safety, ~~public welfare~~ public service, human services, revenue, transportation, and veterans affairs; the housing finance, state planning, and pollution control agencies; the office of commissioner of iron range resources and rehabilitation; the bureau of mediation services; and their successor departments and agencies. The heads of the foregoing departments or agencies are referred to in this section as "commissioners."

Sec. 2. Minnesota Statutes 1986, section 15.46, is amended to read:

**15.46 PREVENTIVE HEALTH SERVICES FOR STATE EMPLOYEES.**

The commissioner of the department of employee relations may establish and operate a program of preventive health services for state employees, and shall provide such staff, equipment, and facilities as are necessary therefor. The commissioner shall develop these services in accordance with ~~and limited to~~ the accepted practices of and standards for occupational preventive health services in the state of Minnesota. Specific services shall be directed to the work environment and to the health of the employee in relation to the job. The commissioner shall cooperate with the department of health as well as other private and public community agencies providing health, safety, employment, and welfare services.

Sec. 3. Minnesota Statutes 1986, section 43A.08, subdivision 1, is amended to read:

Subdivision 1. **UNCLASSIFIED POSITIONS.** Unclassified positions are held by employees who are:

(a) chosen by election or appointed to fill an elective office;

(b) heads of agencies required by law to be appointed by the governor or other elective officers, and the executive or administrative heads of departments, bureaus, divisions and institutions specifically established by law in the unclassified service;

(c) deputy and assistant agency heads, and one confidential secretary in the agencies listed in subdivision 1a;

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(d) the confidential secretary to each of the elective officers of this state and, for the secretary of state, state auditor, and state treasurer, an additional deputy, clerk, or employee;

(e) intermittent help employed by the commissioner of public safety to assist in the issuance of vehicle licenses;

(f) employees in the offices of the governor and of the lieutenant governor, and one confidential employee for the governor in the office of the adjutant general;

(g) employees of the legislature and of legislative committees or commissions; provided that employees of the legislative audit commission, except for the legislative auditor, the deputy legislative auditors, and their confidential secretaries, shall be employees in the classified service;

(h) presidents, vice presidents, deans, other managers and professionals in academic and academic support programs, administrative or service faculty, teachers, research assistants and student employees eligible under terms of the federal economic opportunity act work study program in the state universities and community colleges. This paragraph shall not be construed to include the custodial, clerical or maintenance employees, or any professional or managerial employee performing duties in connection with the business administration of these institutions.

(i) officers and enlisted persons in the national guard;

(j) attorneys, legal assistants, examiners, and three confidential employees appointed by the attorney general or employed with the attorney general's authorization;

(k) judges and all employees of the judicial branch, referees, receivers, jurors, and notaries public, except referees and adjusters employed by the department of labor and industry;

(l) members of the state patrol; provided that selection and appointment of state patrol troopers shall be made in accordance with applicable laws governing the classified service;

(m) chaplains employed by the state;

(n) examination monitors and intermittent training instructors employed by the departments of employee relations and commerce and by professional examining boards;

(o) student workers; and

(p) employees unclassified pursuant to other statutory authority.

Sec. 4. Minnesota Statutes 1986, section 43A.13, subdivision 1, is amended to read:

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#### 43A.13 CERTIFICATION OF ELIGIBLES.

Subdivision 1. **GENERAL.** Upon request of an appointing authority the commissioner shall certify eligibles from an eligible list determined appropriate by the commissioner, or as provided in collective bargaining agreements, rules or section 43A.04, subdivision 4. The commissioner may limit certification to those eligibles who meet special qualifications documented by an appointing authority and approved by the commissioner as essential job-related and necessary for satisfactory performance of a specific vacant position. The commissioner shall certify qualified available eligibles as provided in this section. Where the vacancy to be filled is in a position covered by a collective bargaining agreement, the list of certified eligibles shall be made available upon request to the exclusive representative as defined in sections 179A.01 to 179A.25.

Sec. 5. Minnesota Statutes 1986, section 43A.13, subdivision 7, is amended to read:

Subd. 7. **EXPANDED CERTIFICATION.** When the commissioner determines that a disparity as defined in rules exists between an agency's work force and its affirmative action plan approved in accordance with section 43A.19, the commissioner shall ensure to the extent possible that eligibles who are members of the protected groups for which the disparity exists are certified for appointment. When fewer than ~~three~~ two eligibles of ~~all~~ each protected ~~groups~~ group for which a disparity has been determined to exist would be certified under subdivisions 4 and 5, the commissioner shall certify as many additional two eligibles ~~from all of the protected groups for which disparities have been determined to exist as are necessary to bring the number of such protected group eligibles certified to an aggregate total of three~~ from each protected group for which a disparity exists. Implementation of this subdivision shall not be deemed a violation of other provisions of Laws 1981, chapter 210 or 363.

Sec. 6. Minnesota Statutes 1986, section 43A.18, subdivision 4, is amended to read:

Subd. 4. **PLANS NOT ESTABLISHED BUT APPROVED BY COMMISSIONER.** Notwithstanding any other law to the contrary, total compensation for employees listed in this subdivision shall be set by appointing authorities within the limits of compensation plans that have been approved by the commissioner before becoming effective.

(a) Total compensation for employees who are not covered by a collective bargaining agreement in the offices of the governor, lieutenant governor, attorney general, secretary of state, state auditor and state treasurer shall be determined by the governor, lieutenant governor, attorney general, secretary of state, state auditor and state treasurer, respectively.

(b) Total compensation for unclassified positions pursuant to section 43A.08, subdivision 1, clause (h), in the higher education coordinating board, and in the state board of vocational technical education shall be determined by the state

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university board and the state board for community colleges, the higher education coordinating board, and the state board of vocational technical education, respectively.

(c) Total compensation for classified administrative law judges in the office of administrative hearings shall be determined by the chief administrative law judge.

Sec. 7. Minnesota Statutes 1986, section 43A.191, subdivision 3, is amended to read:

Subd. 3. **SANCTIONS AND INCENTIVES.** (a) The director of equal employment opportunity shall annually audit the record of each agency to determine the rate of compliance with annual hiring goals of each goal unit and to evaluate the agency's overall progress toward its affirmative action goals and objectives.

(b) By ~~January~~ February 1 of each year, the commissioner shall submit a report on affirmative action progress of each agency and the state as a whole to the governor and to the finance committee of the senate, the appropriations committee of the house of representatives, and the governmental operations committees of both houses of the legislature. The report must include each agency's rate of compliance with annual hiring goals. In addition, any agency in which less than 75 percent of the interim hiring goals in any goal unit were met that has not met its affirmative action hiring goals, that fails to make an affirmative action hire, or fails to justify its nonaffirmative action hire in 25 percent or more of the appointments made in the previous calendar year must be designated in the report as an agency not in compliance with affirmative action requirements.

(c) The commissioner shall study methods to improve the performance of agencies not in compliance with affirmative action requirements. By January 15, 1986, the commissioner shall submit to the legislature a proposal for improving compliance rates. This proposal must include penalties for noncompliance.

(d) The commissioner shall establish a program to recognize agencies that have made significant and measurable progress toward achieving affirmative action objectives.

Sec. 8. Minnesota Statutes 1986, section 43A.24, subdivision 2, is amended to read:

Subd. 2. **OTHER ELIGIBLE PERSONS.** The following persons are eligible for state paid life insurance and hospital, medical and dental benefits as determined in applicable collective bargaining agreements or by the commissioner or by plans pursuant to section 43A.18, subdivision 6, or by the board of regents for employees of the University of Minnesota not covered by collective bargaining agreements. Coverages made available, including optional coverages, are as contained in the plan established pursuant to section 43A.18, subdivision 2.

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(a) A member of the state legislature, provided that changes in benefits resulting in increased costs to the state shall not be effective until expiration of the term of the members of the existing house of representatives. An eligible member of the state legislature may decline to be enrolled for state paid coverages by filing a written waiver with the commissioner. The waiver shall not prohibit the member from enrolling the member or dependents for optional coverages, without cost to the state, as provided for in section 43A.26. A member of the state legislature who returns from a leave of absence to a position previously occupied in the civil service shall be eligible to receive the life insurance and hospital, medical and dental benefits to which the position is entitled;

(b) a permanent employee of the legislature or a permanent employee of a permanent study or interim committee or commission or a state employee on leave of absence to work for the legislature, during a regular or special legislative session;

(c) a judge of the appellate courts or an officer or employee of these courts; a judge of the district court, a judge of county court, a judge of county municipal court, or a judge of probate court; a district administrator; and an employee of the office of the district administrator of the fifth or the eighth judicial districts;

(d) A salaried employee of the public employees retirement association;

(e) a full-time military or civilian officer or employee in the unclassified service of the department of military affairs whose salary is paid from state funds;

(f) a salaried employee of the Minnesota historical society, whether paid from state funds or otherwise, who is not a member of the governing board;

(g) an employee of the regents of the University of Minnesota; and

(h) notwithstanding section 43A.27, subdivision 3, an employee of the state of Minnesota or the regents of the University of Minnesota who is at least 60 and not yet 65 years of age on July 1, 1982 who is otherwise eligible for employee and dependent insurance and benefits pursuant to section 43A.18 or other law, who has at least 20 years of service and retires, earlier than required, within 60 days of March 23, 1982; or an employee who is at least 60 and not yet 65 years of age on July 1, 1982 who has at least 20 years of state service and retires, earlier than required, from employment at Rochester state hospital after July 1, 1981; or an employee who is at least 55 and not yet 65 years of age on July 1, 1982 and is covered by the Minnesota state retirement system correctional employee retirement plan or the state patrol retirement fund, who has at least 20 years of state service and retires, earlier than required, within 60 days of March 23, 1982. For purposes of this clause, a person retires when the person terminates active employment in state or University of Minnesota service and applies for a retirement annuity. Eligibility shall cease when the retired employee attains the age of 65, or when the employee chooses not to receive the annuity that the employee has applied for. The retired employee shall be eligible for

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coverages to which the employee was entitled at the time of retirement, subject to any changes in coverage through collective bargaining or plans established pursuant to section 43A.18, for employees in positions equivalent to that from which retired, provided that the retired employee shall not be eligible for state-paid life insurance. Coverages shall be coordinated with relevant health insurance benefits provided through the federally sponsored medicare program.

Sec. 9. Minnesota Statutes 1986, section 43A.30, subdivision 4, is amended to read:

Subd. 4. **EMPLOYEE INSURANCE TRUST FUND.** The commissioner of employee relations may direct that all or a part of the amounts paid for life insurance, hospital, medical, and dental benefits, and optional coverages authorized for eligible employees and other eligible persons be deposited by the state in an employee insurance trust fund in the state treasury, from which the approved claims of eligibles are to be paid. Investment income and investment losses attributable to the investment of the fund shall be credited to the fund. There is appropriated from the fund to the commissioner of ~~finance~~ amounts needed to pay the approved claims of eligibles, related service charges, insurance premiums, and refunds. The commissioner shall not market or self-insure life insurance or optional coverages. Nothing in this subdivision precludes the commissioner from determining plan design, providing informational materials, or communicating with employees about coverages.

Sec. 10. Minnesota Statutes 1986, section 43A.33, subdivision 3, is amended to read:

Subd. 3. **PROCEDURES.** Procedures for discipline and discharge of employees covered by collective bargaining agreements shall be governed by the agreements. Procedures for employees not covered by a collective bargaining agreement shall be governed by this subdivision and by the commissioner's and managerial plans.

(a) For discharge, suspension without pay or demotion, no later than the effective date of such action, a permanent classified employee not covered by a collective bargaining agreement shall be given written notice by the appointing authority. ~~The written notice shall include a statement of the nature of the disciplinary action, the specific reasons for the action, the effective date of the action and a statement informing the employee of the employee's right to reply within five working days following the receipt of the notice in writing or, upon request, in person, to the appointing authority or the authority's designee. The appointing authority shall respond within ten working days following receipt of the employee's reply or of the personal meeting. If the employee receives a negative reply or no reply from the appointing authority, the employee shall have 30 calendar days following the expiration of the ten working day response period to appeal the action to the office of administrative hearings. The content of that notice as well as the employee's right to reply to the appointing authority shall be as prescribed in the grievance procedure contained in the applicable~~

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plan established pursuant to section 43A.18. The notice shall also include a statement that the employee may elect to appeal the action to the office of administrative hearings within 30 calendar days following the effective date of the disciplinary action. A copy of the notice and the employee's reply, if any, shall be filed by the appointing authority with the commissioner no later than ten calendar days following the effective date of the disciplinary action. The commissioner shall have final authority to decide whether the appointing authority shall settle the dispute prior to the hearing provided under subdivision 4.

(b) For discharge, suspension or demotion of an employee serving an initial probationary period, and for noncertification in any subsequent probationary period, grievance procedures shall be as provided in the plan established pursuant to section 43A.18.

(c) Any permanent employee who is covered by a collective bargaining agreement may elect to appeal to the chief administrative law judge within 30 days following the effective date of the discharge, suspension or demotion if the collective bargaining agreement provides that option. In no event may an employee use both the procedure under this section and the grievance procedure available pursuant to sections 179A.01 to 179A.25.

Sec. 11. Minnesota Statutes 1986, section 43A.34, subdivision 1, is amended to read:

Subdivision 1. MANDATORY RETIREMENT AGE. Employees in the executive branch who are subject to the provisions of the Minnesota state retirement system or the teacher's retirement association and who are serving as faculty members or administrators under a contract of unlimited terms or similar arrangement providing for unlimited tenure at an institution of higher education, as defined in section 1201(a) of the federal Higher Education Act of 1965, as amended through January 1, 1987, must retire from employment by the state upon reaching the age of 70, except as provided in other law. Other employees in the executive branch who are subject to the provisions of the Minnesota state retirement system or the teacher's retirement association, except as provided in subdivision 3 or 4, or as provided in section 354.44, subdivision 1a, shall not be subject to a mandatory retirement age provision.

Sec. 12. Minnesota Statutes 1986, section 43A.34, subdivision 3, is amended to read:

Subd. 3. CORRECTIONAL PERSONNEL EXEMPTED. ~~Notwithstanding the provisions of subdivision 4,~~ Any employee of the state of Minnesota in a covered classification as defined in section 352.91, who is a member of the special retirement program for correctional personnel established pursuant to sections 352.90 to 352.95, may elect or be required to retire from employment in the covered correctional position upon reaching the age of 55 years.

A correctional employee occupying a position covered by provisions of section 352.91, desiring employment beyond the conditional mandatory retire-

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ment age shall, at least 30 days prior to the date of reaching the conditional mandatory retirement age of 55 years, and annually thereafter, request in writing to the employee's appointing authority authorization to continue in employment in the covered position. Upon receiving the request, the appointing authority shall have a medical examination made of the employee. If the results of the medical examination establish the mental and physical ability of the employee to continue the duties of employment, the employee shall be continued in employment for the following year. If the determination of the appointing authority based upon the results of the physical examination is adverse, the disposition of the matter shall be decided by the commissioner of corrections or, for employees of the Minnesota security hospital, the commissioner of human services. Based on the information provided, the decision of the applicable commissioner shall be made in writing and shall be final.

Sec. 13. Minnesota Statutes 1986, section 43A.34, subdivision 4, is amended to read:

**Subd. 4. STATE PATROL, CONSERVATION AND CRIME BUREAU OFFICERS EXEMPTED.** Notwithstanding any provision to the contrary, (a) conservation officers and crime bureau officers who were first employed on or after July 1, 1973 and who are members of the state patrol retirement fund by reason of their employment, and members of the Minnesota state patrol division of the department of public safety who are members of the state patrol retirement association by reason of their employment, shall not continue employment after attaining the age of 60 years, except for a fractional portion of one year that will enable the employee to complete the employee's next full year of allowable service as defined pursuant to section 352B.01, subdivision 3; and (b) conservation officers and crime bureau officers who were first employed and are members of the state patrol retirement fund by reason of their employment before July 1, 1973, shall not continue employment after attaining the age ~~specified in subdivision 4~~ of 70 years.

**Sec. 14. WAIVER OF STATUTES, RULES, AND ADMINISTRATIVE PROCEDURES FOR EXPERIMENTAL OR RESEARCH PROJECTS.**

The commissioner of employee relations may conduct experimental or research projects designed to improve recruitment, selection, referral, or appointment processes for the filling of state classified positions.

The commissioner of employee relations shall meet and confer with the exclusive bargaining representatives of state employees concerning the design and implementation of experimental and research projects under this section.

Any provision of Minnesota Statutes, sections 43A.09 to 43A.15, associated personnel rules adopted under section 43A.04, subdivision 3, or administrative procedures established under section 43A.04, subdivision 4, is waived for the purpose of these projects. This waiver is limited to no more than five percent of appointments made under the waived provisions in the preceding fiscal year. The commissioner shall report by March 1, 1988, and January 15, 1989, to the legislative commission on employee relations the results of the experimental or research projects.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Sec. 15. INSTRUCTION TO REVISOR.

In the next edition of Minnesota Statutes, the revisor of statutes shall substitute the term "commissioner" for the term "director" whenever used to refer to the head of the state planning agency, housing finance agency, pollution control agency, department of public service, or bureau of mediation services. No substantive change is intended by the substitution of terms.

Sec. 16. REPEALER.

Minnesota Statutes 1986, sections 15.45, subdivision 3; 15.47; and 43A.34, subdivision 2, are repealed. Section 14 is repealed July 1, 1989.

Approved May 20, 1987

CHAPTER 187—H.F.No. 1041

*An act relating to adoption; requiring certain notifications to parents placing a child for adoption and to proposed adoptive parents; specifying that adoptive parents may not voluntarily terminate parental rights for any reason not available to birth parents; amending Minnesota Statutes 1986, sections 259.24, subdivision 5; 259.25, subdivision 1; and 260.221; proposing coding for new law in Minnesota Statutes, chapter 259.*

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

Section 1. Minnesota Statutes 1986, section 259.24, subdivision 5, is amended to read:

Subd. 5. EXECUTION. All consents to an adoption, except those by the commissioner, the commissioner's agent, a licensed child-placing agency, or the child's parent when that parent is either a copetitioner in the adoption proceeding or does not have custody of the child, shall be executed before a representative of the commissioner, the commissioner's agent or a licensed child-placing agency. In addition all consents to an adoption shall be in writing and shall contain notice to the parent of the substance of subdivision 6a, providing for the right to withdraw consent. The consent must contain the following written notice in all capital letters at least one-eighth inch high:

"This agency will submit your consent to adoption to the court. The consent itself does not terminate your parental rights. Parental rights to a child may be terminated only by an adoption decree or by a court order terminating parental rights. Unless the child is adopted or your parental rights are terminated, you may be asked to support the child."

Consents shall be executed before two competent witnesses and acknowledged by the consenting party. Consents shall be filed in the adoption proceedings at any time before the matter is heard provided, however, that a consent exe-

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