

(e) Costs, disbursements, and reasonable attorney fees may be awarded to a party awarded damages for a violation of this section. No class action shall be brought under this section.

(f) Except as otherwise provided in this subdivision, the remedies in this subdivision are in addition to remedies available under section 8.31, 325F.70, or other law.

Subd. 8. RELATIONSHIP TO FEDERAL LAW. If federal law is enacted that regulates false, misleading, or unsolicited commercial electronic mail messages but does not preempt state law on the subject, the federal law supersedes any conflicting provisions of this section.

Sec. 2. EFFECTIVE DATE; EXPIRATION.

Article 2 is effective March 1, 2003.

Article 2 expires on the effective date of federal legislation that preempts state regulation of false, misleading, or unsolicited commercial electronic mail messages.

Presented to the governor May 20, 2002

Signed by the governor May 22, 2002, 1:29 p.m.

CHAPTER 396—H.F.No. 3092

An act relating to health; allowing release of data on school employee violence or sexual contact toward student; modifying provisions relating to human services licensing sanctions; providing employer immunity for reference checks for certain health care providers and facilities; amending Minnesota Statutes 2000, section 13.43, by adding a subdivision; Minnesota Statutes 2001 Supplement, section 245A.07, subdivisions 2, 3; proposing coding for new law in Minnesota Statutes, chapter 604A.

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

Section 1. Minnesota Statutes 2000, section 13.43, is amended by adding a subdivision to read:

Subd. 16. SCHOOL DISTRICT OR CHARTER SCHOOL DISCLOSURE OF VIOLENCE OR INAPPROPRIATE CONTACT. With the written, informed consent of the subject of the data, the superintendent of a school district or the superintendent's designee, or a person having administrative control of a charter school, must release to a school district or charter school private personnel data on a current or former employee related to documented violence toward or sexual contact with a student. Nothing in this subdivision affects or restricts the general requirements of this chapter governing the release of private data with the informed consent of the subject.

EFFECTIVE DATE. This section is effective July 1, 2002.

New language is indicated by underline, deletions by strikeout.

Sec. 2. Minnesota Statutes 2001 Supplement, section 245A.07, subdivision 2, is amended to read:

Subd. 2. **TEMPORARY IMMEDIATE SUSPENSION.** If the license holder's actions or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program, the commissioner shall act immediately to temporarily suspend the license. No state funds shall be made available or be expended by any agency or department of state, county, or municipal government for use by a license holder regulated under this chapter while a license is under immediate suspension. A notice stating the reasons for the immediate suspension and informing the license holder of the right to an expedited hearing under chapter 14 and Minnesota Rules, parts 1400.8510 to 1400.8612 and successor rules, must be delivered by personal service to the address shown on the application or the last known address of the license holder. The license holder may appeal an order immediately suspending a license. The appeal of an order immediately suspending a license must be made in writing by certified mail and must be ~~received by~~ postmarked and sent to the commissioner within five calendar days after the license holder receives notice that the license has been immediately suspended. A license holder and any controlling individual shall discontinue operation of the program upon receipt of the commissioner's order to immediately suspend the license.

Sec. 3. Minnesota Statutes 2001 Supplement, section 245A.07, subdivision 3, is amended to read:

Subd. 3. **LICENSE SUSPENSION, REVOCATION, OR FINE.** The commissioner may suspend or revoke a license, or impose a fine if a license holder fails to comply fully with applicable laws or rules, or knowingly withholds relevant information from or gives false or misleading information to the commissioner in connection with an application for a license or during an investigation. A license holder who has had a license suspended, revoked, or has been ordered to pay a fine must be given notice of the action by certified mail. The notice must be mailed to the address shown on the application or the last known address of the license holder. The notice must state the reasons the license was suspended, revoked, or a fine was ordered.

(a) If the license was suspended or revoked, the notice must inform the license holder of the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8510 to 1400.8612 and successor rules. The license holder may appeal an order suspending or revoking a license. The appeal of an order suspending or revoking a license must be made in writing by certified mail and must be ~~received by~~ postmarked and sent to the commissioner within ten calendar days after the license holder receives notice that the license has been suspended or revoked.

(b)(1) If the license holder was ordered to pay a fine, the notice must inform the license holder of the responsibility for payment of fines and the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8510 to 1400.8612 and successor rules. The appeal of an order to pay a fine must be made in writing by certified mail and must be ~~received by~~ postmarked and sent to the commissioner within ten calendar days after the license holder receives notice that the fine has been ordered.

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(2) The license holder shall pay the fines assessed on or before the payment date specified. If the license holder fails to fully comply with the order, the commissioner may issue a second fine or suspend the license until the license holder complies. If the license holder receives state funds, the state, county, or municipal agencies or departments responsible for administering the funds shall withhold payments and recover any payments made while the license is suspended for failure to pay a fine. A timely appeal shall stay payment of the fine until the commissioner issues a final order.

(3) A license holder shall promptly notify the commissioner of human services, in writing, when a violation specified in the order to forfeit a fine is corrected. If upon reinspection the commissioner determines that a violation has not been corrected as indicated by the order to forfeit a fine, the commissioner may issue a second fine. The commissioner shall notify the license holder by certified mail that a second fine has been assessed. The license holder may appeal the second fine as provided under this subdivision.

(4) Fines shall be assessed as follows: the license holder shall forfeit \$1,000 for each determination of maltreatment of a child under section 626.556 or the maltreatment of a vulnerable adult under section 626.557; the license holder shall forfeit \$200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including but not limited to the provision of adequate staff-to-child or adult ratios, and failure to submit a background study; and the license holder shall forfeit \$100 for each occurrence of a violation of law or rule other than those subject to a \$1,000 or \$200 fine above. For purposes of this section, "occurrence" means each violation identified in the commissioner's fine order.

(5) When a fine has been assessed, the license holder may not avoid payment by closing, selling, or otherwise transferring the licensed program to a third party. In such an event, the license holder will be personally liable for payment. In the case of a corporation, each controlling individual is personally and jointly liable for payment.

Sec. 4. [604A.33] REFERENCE CHECKS BY CERTAIN HEALTH CARE PROVIDERS AND FACILITIES.

Subdivision 1. APPLICATION. This section applies to residential treatment programs for children or group homes for children licensed under chapter 245A, residential services and programs for juveniles licensed under section 241.021, providers licensed pursuant to sections 144A.01 to 144A.33 or sections 144A.43 to 144A.48, personal care provider organizations under section 256B.0627, subdivision 1, paragraph (j), providers of day training and habilitation services under sections 252.40 to 252.46, board and lodging facilities licensed under chapter 157, intermediate care facilities for persons with mental retardation or related conditions, and other facilities licensed to provide residential services to persons with developmental disabilities.

Subd. 2. CAUSES OF ACTION. (a) No action may be brought against a provider or facility listed in subdivision 1 or a designated employee or agent of the provider or facility who discloses information regarding a former or current employee to a prospective employer as provided under this section. This subdivision does not preclude a charge or action under chapter 363, or an action arising from a disclosure

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that is proved, by a preponderance of the evidence, was made fraudulently or with deliberate disregard as to its truth or falsity.

(b) This subdivision does not preclude an action against a prospective employer for disclosing information received under this section.

Subd. 3. REFERENCE CHECKS. (a) Upon written request, a provider or facility listed in subdivision 1 or a designated employee or agent of the provider or facility may disclose in writing the following information about a current or former employee to a prospective employer:

(1) dates of employment;

(2) compensation and wage history;

(3) job description and duties;

(4) training and education provided by the employer; and

(5) all acts of violence, theft, harassment, or illegal conduct by the employee documented in the personnel record which resulted in disciplinary action or resignation, and the employee's written response, if necessary, contained in the personnel record.

(b) With the written authorization of the current or former employee, a provider or facility listed in subdivision 1 or a designated employee or agent of the provider or facility may also disclose the following information in writing to a prospective employer:

(1) written employee evaluations conducted prior to the employee's separation from the employer and the employee's written response, if any, contained in the employee's personnel record;

(2) disciplinary warnings and actions in the five years before the date of the authorization and the employee's written response, if any, contained in the employee's personnel record; and

(3) reasons for separation from employment.

(c) The provider, facility, designated employee, or agent must provide a written copy of a disclosure made under this subdivision and information on to whom the disclosure was made to the current or former employee upon request.

EFFECTIVE DATE. This section is effective July 1, 2002, and applies to causes of action arising on or after that date.

Presented to the governor May 20, 2002

Signed by the governor May 22, 2002, 1:23 p.m.

CHAPTER 397—H.F.No. 2214

An act relating to sports facilities; providing for financing of a major league baseball park; authorizing state and municipal revenue bonds; establishing funds in the state treasury;

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