

## CONFIDENTIALITY OF CERTAIN RECORDS - SURVEY OF OTHER STATES

This memorandum contains the results of a survey of neighboring Midwestern states regarding the confidentiality of certain information. At the last meeting of the Judicial Process Committee, several examples were provided of statutory provisions in this state which could result in severe penalties for sharing information that previously has been public information that may seem rather harmless to disclosure. In order to see how North Dakota law compares with other states on these issues, contact was made with legislative service personnel in Nebraska, South Dakota, Iowa, Wisconsin, and Minnesota. It should be noted that, with a few exceptions, the information provided by these states does not address the applicability of the federal Health Insurance Portability and Accountability Act (HIPAA), as that is a federal law that applies equally in all states. Following are the questions and responses of each of the states polled.

**Is it against the law in your state to disclose whether a public employee or official (such as a legislator) participates in the state's health insurance plan? If that is not a public record, what is the penalty for knowingly disclosing that information?**

- **Iowa** - Iowa Code provides that records containing names or addresses of members or their beneficiaries maintained under the Iowa Public Employees' Retirement System are not public records and may only be released under certain circumstances. The penalties for the release of the information include injunctive and civil relief as well as a criminal penalty. Iowa law provides that a knowing violation of the law is a simple misdemeanor.
- **Minnesota** - Generally, personnel data is confidential; however, exceptions exist for information relating to the value and nature of employer-paid fringe benefits. The fact of participation in a state health insurance plan and a retirement plan, as far as the state's contribution to these expenditures, is public information. For information that is confidential, the civil penalties for the release of the information include damages and attorneys' fees. State law also provides that the release of the information is a misdemeanor; however, this penalty is rarely, if ever, used.
- **Nebraska** - The state provides no contribution for legislators. If legislators choose to participate they pay both the employee and employer portions.

- **South Dakota** - There are no specific state statutes applicable here; however, HIPAA guidelines would prohibit the release of information regarding health coverage. The South Dakota Bureau of Personnel will only confirm if someone is an employee of the state. The penalties for the disclosure of health information would be those provided under the federal Act.
- **Wisconsin** - State law provides that all individual personal information in the records of the Department of Employee Trust Funds is confidential. All state employees and state officials are covered under the state health plans unless they refuse coverage. There is no penalty for disclosing the information.

State	Open or Closed Record	Type of Violation for Disclosure	Penalty
Iowa	Closed	Civil and criminal	Civil - Damages and attorneys' fees Criminal - Simple misdemeanor
Minnesota	General information open; specific closed	Civil and criminal	Civil - Damages and attorneys' fees Criminal - Misdemeanor
Nebraska	Not applicable	Not applicable	Not applicable
South Dakota	No specific statute but would be closed under HIPAA	None	Federal penalties
Wisconsin	Closed	None	None
North Dakota	Closed	Criminal	Class C felony - Up to 5 years' imprisonment or \$5,000 fine or both

**Is it against the law in your state to disclose whether a public employee or official participates in the state's retirement plan, and if a person can choose between two or more plans, is it against the law to disclose which plan a particular person is in? If it is against the law to disclose that information, what is the penalty for knowingly doing so?**

- **Iowa** - Iowa Code provides that records containing Social Security numbers or the names or addresses of members or their beneficiaries maintained under the Iowa Public Employees' Retirement System are not public records and may only be released under certain circumstances. The penalties for the release of the information include injunctive and civil relief as well as a criminal penalty. Iowa law provides that a knowing violation of the law is a simple misdemeanor.
- **Minnesota** - Participation in the state retirement plan is public data; however, more detailed information regarding the employee's election as to how to invest the funds would not be public. For information that is confidential, the civil penalties for the release of the information include damages and attorneys' fees. State law also provides that the release of the information is a misdemeanor; however, this penalty is rarely, if ever, used.
- **Nebraska** - Legislators cannot participate in the state's retirement plan.
- **South Dakota** - State law provides that this information may only be released with the member's consent or pursuant to a court subpoena; however, there is no criminal penalty for a violation of the statute. Violations are dealt with within the personnel system.
- **Wisconsin** - Generally, state law provides that all individual personal information in the records of the Department of Employee Trust Funds is confidential; however, public officials and public employees may not opt out of the plan. Thus, it is open knowledge that all public employees and public officials participate in the plan. There is no penalty for disclosing the information.

State	Open or Closed Record	Type of Violation for Disclosure	Penalty
Iowa	Closed	Civil and criminal	Civil - Injunction and damages  Criminal - Simple misdemeanor
Minnesota	General information open; specific information closed	Civil and criminal	Civil - Damages and attorneys' fees  Criminal - Misdemeanor
Nebraska	Not applicable	Not applicable	Not applicable
South Dakota	Closed	Dealt with within personnel system	No criminal penalty
Wisconsin	Closed	None	None
North Dakota	Closed	Criminal	Class C felony - Up to 5 years'

			imprisonment or \$5,000 fine or both
--	--	--	--------------------------------------

**Is it against the law in your state to disclose whether a public employee or official participates in the flexcomp plan, if your state has one, under which a person can shield certain medical expenses and other costs from income taxes? If it is against the law to disclose that information, what is the penalty for knowingly doing so?**

- **Iowa** - Iowa Code provides that records containing names or addresses of members or their beneficiaries maintained under the Iowa Public Employees' Retirement System are not public records and may only be released under certain circumstances. The penalties for the release of the information include injunctive and civil relief as well as a criminal penalty. Iowa law provides that a knowing violation of the law is a simple misdemeanor.
- **Minnesota** - The fact that a person participates in the state's flexcomp plan would be public data, but more specific information such as the amount set aside or the types of expenses that it was used to reimburse would be confidential. For information that is confidential, the civil penalties for the release of the information include damages and attorneys' fees. State law also provides that the release of the information is a misdemeanor; however, this penalty is rarely, if ever, used.
- **Nebraska** - No response
- **South Dakota** - There is no specific law regarding the confidentiality of flexcomp plan participation. The Bureau of Personnel has a policy of nonrelease, but there are no criminal penalties for the unauthorized release of the information.
- **Wisconsin** - State law provides that all individual personal information in the records of the Department of Employee Trust Funds is confidential. There is no penalty for disclosing the information.

State	Open or Closed Record	Type of Violation for Disclosure	Penalty
Iowa	Closed	Civil and criminal	Civil - Injunction and damages  Criminal - Simple misdemeanor
Minnesota	General information open; specific information closed	Civil and criminal	Civil - Damages and attorneys' fees  Criminal - Misdemeanor
Nebraska	No response	No response	No response

South Dakota	Closed	None	None	Dakota			Up to 5 years' imprisonment or \$5,000 fine or both
Wisconsin	Closed	None	None				
North	Closed	Criminal	Class C felony -				

**Is it against the law in your state to provide a document that has a person's Social Security number on it, assuming there is no law specifically authorizing the person receiving the document to get Social Security numbers? If it is against the law to disclose that information, what is the penalty for knowingly doing so?**

- **Iowa** - Iowa law provides that Social Security numbers contained on certain documents are considered confidential and are not subject to public disclosure. The penalties for the release of the information include injunctive and civil relief as well as a criminal penalty. Iowa law provides that a knowing violation of the law is a simple misdemeanor.
- **Minnesota** - There is a general rule that all Social Security numbers maintained by government entities are private data. For information that is confidential, the civil penalties for the release of the information include damages and attorneys' fees. State law also provides that the release of the information is a misdemeanor; however, this penalty is rarely, if ever, used.
- **Nebraska** - Even though a document might be a public record, Social Security numbers are never disclosed. As a matter of policy, Social Security numbers are redacted.
- **South Dakota** - South Dakota provides for the confidentiality of Social Security numbers within

the context of social services and federal law. The state has also adopted identity theft statutes that involve Social Security numbers, but the state code does not have any other specific confidentiality statutes regarding Social Security numbers.

- **Wisconsin** - There is a general statutory provision prohibiting the release of a public employee or public official's Social Security number. There is no general penalty for disclosing this information.

State	Open or Closed Record	Type of Violation for Disclosure	Penalty
Iowa	Closed	Criminal	Simple misdemeanor
Minnesota	Closed	Civil and criminal	Civil - Damages and attorneys' fees Criminal - Misdemeanor
Nebraska	Closed	No response	No response
South Dakota	Closed	None	None
Wisconsin	Closed	None	None
North Dakota	Closed	Criminal	Class C felony - Up to 5 years' imprisonment or \$5,000 fine or both