

REPORT OF THE ATTORNEY GENERAL
ON THE
STATUS OF OPEN GOVERNMENT IN SOUTH DAKOTA

APPENDIX B

STATE AND FEDERAL LAWS RESTRICTING PUBLIC ACCESS TO
DOCUMENTS

JUNE 30, 2007

TITLE 1 – STATE AFFAIRS AND GOVERNMENT
ECONOMIC DEVELOPMENT FINANCE AUTHORITY

1-16B-14.1. Exemption of documentary material and data involving trade secrets, etc., from disclosure--Consideration by authority in executive session. Any documentary material or data made or received by the Economic Development Finance Authority for the purpose of furnishing assistance to a business, to the extent that such material or data consists of trade secrets or commercial or financial information regarding the operation of such business, may not be considered public records, and shall be exempt from disclosure. Any discussion or consideration of such trade secrets or commercial or financial information may be held by the Economic Development Finance Authority in executive session.

VALUE ADDED FINANCE AUTHORITY

1-16E-31. Confidentiality of borrower information. All financial information submitted by the borrower to the board is confidential.

ECONOMIC DEVELOPMENT

1-16G-11. Documentary material consisting of trade secrets exempt from disclosure-- Discussion of or action on trade secrets at meeting closed to public. Any documentary material or data made or received by the Board of Economic Development or Governor's Office of Economic Development for the purpose of furnishing assistance to a business, to the extent that such material or data consists of trade secrets or commercial or financial information regarding the operation of such business, may not be considered public records, and is exempt from disclosure pursuant to the provisions of §§ 1-16G-3 to 1-16G-11, inclusive. Any discussion, consideration of, or action upon such trade secrets or commercial or financial information by the Board of Economic Development may be done in executive session closed to the public, notwithstanding the provisions of the open meeting laws of this state.

ARCHAEOLOGICAL EXPLORATION

1-20-21.2 Confidentiality of records pertaining to location of archaeological site-- Exceptions. Any records maintained pursuant to § 1-20-21 pertaining to the location of an archaeological site shall remain confidential to protect the integrity of the archaeological site. The state archaeologist may make the information from the records of an archeological site available to any agency of state government and any political subdivision of the state or to any tribe, which, in the opinion of the state archaeologist, may conduct an activity that affects any such site. The state archaeologist shall also make the information from the records of an archeological site available to the owner of the land that is an archeological site and may make the information available to any qualified researcher or research entity.

STATE FAIR

1-21-17. Confidentiality of contract terms and negotiations. The terms of any contract and the negotiations for any contract between the secretary of agriculture and any performers or entertainers may be kept confidential. However, sixty days after the expiration of such contract, the terms of such contract shall become a public record.

ADMINISTRATIVE PROCEDURE AND RULES

1-26-2. Agency materials available for public inspection--Derogatory materials. Each agency shall make available for public inspection all rules, final orders, decisions, opinions, intra-agency memoranda, together with all other materials, written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions. An agency shall hold confidential materials derogatory to a person but such information shall be made available to the person to whom it relates.

PUBLIC RECORDS AND FILES

1-27-1. Records open to inspection--Sale of lists. If the keeping of a record, or the preservation of a document or other instrument is required of an officer or public servant under any statute of this state, the officer or public servant shall keep the record, document, or other instrument available and open to inspection by any person during normal business hours. Any employment examination or performance appraisal record maintained by the Bureau of Personnel is excluded from this requirement.

Any subscription or license holder list maintained by the Department of Game, Fish and Parks may be made available to the public for a reasonable fee. State agencies are exempt from payment of this fee for approved state use. The Game, Fish and Parks Commission may promulgate rules pursuant to chapter 1-26 to establish criteria for the sale and to establish the fee for the sale of such lists.

Any automobile liability insurer licensed in the state, or its certified authorized agent, may have access to the name and address of any person licensed or permitted to drive a motor vehicle solely for the purpose of verifying insurance applicant and policyholder information. An insurer requesting any such name and address shall pay a reasonable fee to cover the costs of producing such name and address. The Department of Public Safety shall set such fee by rules promulgated pursuant to chapter 1-26.

Any list released or distributed under this section may not be resold or redistributed. Violation of this section by the resale or redistribution of any such list is a Class 2 misdemeanor.

1-27-3. Records declared confidential or secret. Section 1-27-1 shall not apply to such records as are specifically enjoined to be held confidential or secret by the laws requiring them to be so kept.

1-27-29. Disclosure of information concerning private entity restricted. No state agency may disclose that it is conducting a financial investigation, examination, or audit

of a private entity while the financial investigation, examination, or audit is ongoing, except as provided by § 1-27-31.

1-27-30. Confidentiality of proprietary or trade information of private entity. All proprietary or trade secret information obtained by a state agency from or concerning a private entity is confidential, except as provided by § 1-27-31.

DEPARTMENT OF EXECUTIVE MANAGEMENT

1-33-19.2. Confidentiality of certain information. The secretary shall maintain the confidentiality of any information given to GOED or the Economic Development Finance Authority, the South Dakota Development Corporation, and the Board of Economic Development.

DEPARTMENT OF HEALTH

1-43-11. Cancer data collection system. The Department of Health shall establish and maintain a central cancer data collection system for cancer cases in South Dakota in accordance with the confidentiality provisions of § 34-14-1 and the terms of §§ 1-43-11 to 1-43-17, inclusive.

1-43-13. Rules for establishment, maintenance, and use of cancer data collection system. The Department of Health shall promulgate rules pursuant to chapter 1-26 to provide for the establishment, maintenance, and use of a cancer data collection system pursuant to §§ 1-43-11 and 1-43-12. The rules shall include:

- (1) Provisions requiring the reporting of cancer cases or specifying circumstances under which cancer cases shall be reported;
- (2) Criteria for authorizing persons or entities to undertake cancer data collection;
- (3) Criteria and procedures for maintaining confidentiality as required in § 1-43-11; and
- (4) Procedures and requirements governing the structure and objectives of the cancer data collection system and the reporting, collection, analysis, and dissemination of data and information related to the cancer data collection system.

CAREER SERVICE PERSONNEL MANAGEMENT SYSTEM

3-6A-31. Records on employees. The personnel commissioner shall establish and maintain appropriate records on all career service employees relating to the several provisions of this chapter. The Career Service Commission may adopt rules pursuant to chapter 1- 26 to regulate the records maintained by the Bureau of Personnel. Any records required or maintained by the Bureau of Personnel, including performance appraisals, that pertain to an employee must be available and open to inspection by the employee during normal business hours.

55:01:16:04. Personnel records. All personnel records pertaining to applications for employment, to personnel investigations, to performance appraisals, to donation or receipt of vested leave, and to competitive examination materials are confidential. An employee's name, classification, and salary may be released to an individual upon written request. Additional information may be released if the request is accompanied by an authorization signed by the employee. Lists of employees with their home or office locations or other statistical compilations may only be released for legitimate state government purposes.

RETIREMENT

3-12-58.1. Confidentiality of records--Exceptions. Any information contained in any record pertaining to a member of the system is confidential and shall be used for the sole purpose of carrying into effect the provisions of this chapter. Any record containing the information is not open to inspection by any person or entity except the member, the board, the employees of the system, or the member's employer. The information and records may be released to the member or with the member's consent. The information and records may also be released pursuant to a court order or subpoena.

PUBLIC CONTRACTS AWARDED ON COMPETITIVE BIDS

5-18-40. Ownership of drawings, specifications, etc.. Until a proposal is accepted, the drawings, specifications, and other information in the proposal remain the property of the person making the proposal. The public corporation shall make reasonable efforts to maintain the secrecy and confidentiality of any proposal and all information contained in any proposal and may not disclose any proposal or the information contained in a proposal to the design-builder's competitors. To the extent permitted by the provisions of chapter 1-25, the public corporation may not disclose confidential and proprietary information contained in any proposal to the public until such time as the public corporation takes final action to accept a proposal.

STATE DEPARTMENT OF REVENUE AND REGULATION

10-1-28.2. Lists compiled by department confidential--Unauthorized disclosure as misdemeanor. All lists of taxpayers, licensees, or applicants compiled by the Department of Revenue and Regulation are confidential except licensees which were licensed under the provisions of chapter 10-47B, 32-6B, 32-6C, or 32-7A. It is a Class 2 misdemeanor to disclose any such list except to the extent necessary to carry out the official duties of the department.

10-1-28.3. Return information confidential--Unauthorized disclosure as misdemeanor. Returns and return information are confidential. It is a Class 1 misdemeanor to disclose such information except in accordance with §§ 10-1-28.4 and 10-1-28.5.

10-1-28.4. Persons to whom return information may be disclosed--Purposes.

Returns and return information may be disclosed to the following:

- (1) The taxpayer who is required to submit the information to the department, or his designee appointed in writing;
- (2) Other states, in accordance with agreements executed pursuant to § 10-1-13.1;
- (3) Any agency, body, commission, or legal representative of the United States charged with the administration of the United States tax laws for the purpose of, and only to the extent necessary in, the administration of such laws;
- (4) Officers, employees or legal representatives of the Department of Revenue and Regulation, but only to the extent necessary to carry out their official duties;
- (5) Officers, employees or legal representatives of any other state agency or department or political subdivision of the state for a civil or criminal law enforcement activity, if the head of the agency, department or political subdivision desiring such information has made a written request to the secretary specifying the particular information desired and the law enforcement activity for which the information is sought;
- (6) Officers, employees or legal representatives of the commission on gaming and the lottery commission for the purpose of, and only to the extent necessary for, the administration of chapters 42-7A and 42-7B.

10-1-28.5. Disclosure of return information in judicial or administrative proceedings.

Returns and return information may be disclosed in a judicial or administrative proceeding:

- (1) If the information is directly related to the resolution of an issue in the proceeding; or
- (2) To the extent required by a proper judicial or administrative order.

SOUTH DAKOTA HOUSING DEVELOPMENT AUTHORITY

11-11-114. Confidentiality of applications and financial information. All applications for a mortgage under the single-family homeownership program, and all financial statements, income statements, income tax returns, and other information, if any, required to accompany such applications under regulations of the authority shall be confidential, except for official purposes in the same manner and subject to the same penalty for unlawful disclosure as are provided for tax returns in §§ 10-1-28.1 to 10-1-28.9, inclusive.

DISCOVERY PENDING ACTION

15-6-26(b). Scope of discovery (Attorney Work Product). Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

- (3) Trial preparation: materials. Subject to the provisions of subdivision (4) of this section, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (1) of this section and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including such other party's attorney, consultant, surety, indemnitor, insurer, or agent)

only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of subdivision 15-6-37(a)(4) apply to award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

UNIFIED JUDICIAL SYSTEM COURT RECORDS RULE

15-15A-9. Filing confidential number and financial documents in the court record.

(1) Social security numbers, employer or taxpayer identification numbers, and financial account numbers of a party or party's child, where required to be filed with the court shall be submitted on a separate Confidential Information Form, appended to these rules, and filed with the pleading or other document required to be filed. The Confidential Information Form is not accessible to the public.

(2) Financial documents named in subdivision 15-15A-8(2) that are required to be filed with the court shall be submitted as a confidential document and designated as such to the clerk upon filing. The Confidential Financial Documents Information Form appended to these rules shall be attached to financial documents being filed with the court. The Confidential Financial Documents Information Form is not accessible to the public. The confidential financial documents will not be publicly accessible, even if admitted as a trial or hearing exhibit, unless the court permits access pursuant to § 15-15A-10. The court may, on its own motion, protect financial documents that have been submitted without the Confidential Financial Documents Information Form.

PRIVILEGES

19-13-3. (Rule 502(b)) Client's privilege on confidential communications with lawyer. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

- (1) Between himself or his representative and his lawyer or his lawyer's representative;
- (2) Between his lawyer and the lawyer's representative;
- (3) By him or his representative or his lawyer or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action

and concerning a matter of common interest therein;

(4) Between representatives of the client or between the client and a representative of the client; or

(5) Among lawyers and their representatives representing the same client.

19-13-7. (Rule 503(b)) Patient's privilege on confidential communications with physician or psychotherapist. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of his physical, mental, or emotional condition, including alcohol or drug addiction, among himself, physician, or psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

19-13-21. (Rule 508) Privileged disclosures to public officers. A public officer cannot be examined as to communications made to him in an official confidence, when the public interests would suffer by the disclosure.

19-13-22. (Rule 509(a)) Governmental investigative agency's privilege as to identity of informer. The United States or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

PERSONAL RIGHTS AND OBLIGATIONS

20-13-32.2. Investigative materials confidential--Access to material by parties following determination. Prior to the issuance of a determination under § 20-13-1.1, 20-13-28.1, or 20-13-32, information and materials regarding a charge of discrimination obtained by an investigating official are confidential. Notwithstanding §§ 1-27-29 to 1-27-32, inclusive, after the issuance of a determination and upon receipt of a written request and payment of costs for copying, all investigatory materials may be disclosed to the parties or their counsel of record.

CRIMINAL IDENTIFICATION

23-5-11. Confidential criminal justice information not subject to inspection--Exception. The provisions of § 1-27-1 do not apply to confidential criminal justice information. Information about calls for service revealing the date, time, and general location and general subject matter of the call is not confidential criminal justice information and may be released to the public, at the discretion of the executive of the law enforcement agency involved, unless the information contains intelligence or identity information that would jeopardize an ongoing investigation. The provisions of this section do not supersede more specific provisions regarding public access or confidentiality elsewhere in state or federal law.

23-7-8.6. List, record, or registry of privately owned firearms, owners of firearms, or holders of permits prohibited. No state agency, political subdivision, official, agent, or employee of any state agency or political subdivision may knowingly keep or cause to

be kept any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of those firearms, or any list, record, or registry of holders of permits to carry a concealed pistol.

23-7-8.10. Access restricted application, record, or registry of holders of permits. No state agency, political subdivision, official, agent, employee of any state agency or political subdivision, may knowingly release or permit access to any application, list, record or registry of applicants or holders of permits to carry a concealed pistol to any person except another law enforcement agency or the secretary of state.

CRIMINAL PROCEDURE

23A-13-5. Work product protected from discovery by defendant. Except as provided in §§ 23A-13-1, 23A-13-2, and 23A-13-4, this chapter does not authorize the discovery or inspection of reports, memoranda, or other internal prosecution documents made by the prosecuting attorney or other employees of law enforcement agencies in connection with the investigation or prosecution of the case, or of statements made by the prosecution witnesses or prospective prosecution witnesses except as provided in §§ 23A-13-7 to 23A-13-10, inclusive.

23A-28B-36. Confidentiality of records and reports. Any record or report obtained by the department or commission, the confidentiality of which is protected by any law or administrative rule, shall remain confidential.

PENAL INSTITUTIONS, PROBATION & PAROLE

24-14-11. Effects of pardon--Disabilities removed--Records sealed--Filing of document making pardon public--Failure to acknowledge proceedings not perjury--Prior conviction for habitual offender law. Any person who has been granted a pardon under the provisions of this chapter shall be released from all disabilities consequent on the person's conviction. Upon the granting of a pardon under the provisions of this chapter, the Governor shall order that all official records relating to the pardoned person's arrest, indictment or information, trial, finding of guilt, application for a pardon, and the proceedings of the Board of Pardons and Paroles shall be sealed. The Governor shall file a public document with the secretary of state certifying that the Governor has pardoned the person in compliance with the provisions of this chapter. The document shall remain a public document for five years and after five years that document shall be sealed. The receipt of any pardon, which was granted without following the provisions of this chapter, may not be sealed. The pardon restores the person, in the contemplation of the law, to the status the person occupied before arrest, indictment, or information. No person as to whom such order has been entered may be held thereafter under any provision of any law to be guilty of perjury or of giving a false statement by reason of such person's failure to recite or acknowledge such arrest, indictment, information, or trial in response to any inquiry made of such person for any purpose.

For the sole purpose of consideration of the sentence of a defendant for subsequent offenses or the determination of whether the defendant is a habitual offender under chapter 22-7 or whether the defendant has prior driving under the influence convictions pursuant to chapter 32-23, the pardoned offense shall be considered a prior conviction.

The court shall forward a nonpublic record of disposition to the Division of Criminal Investigation. The nonpublic record shall be retained solely for use by law enforcement agencies, prosecuting attorneys, and courts in sentencing such person for any subsequent offense and in determining whether or not, in any subsequent proceeding, the person is a habitual offender under chapter 22-7 or the determination of whether the defendant has prior driving under the influence convictions pursuant to chapter 32-23.

ADOPTION OF CHILDREN

25-6-15. Restrictions on access to court records in adoption proceedings--Court order required for disclosure of information--Notice of hearing to department or adoption agency-- Disclosure not contested nor supported. The files and records of the court in adoption proceedings are not open to inspection or copy by persons other than the parents by adoption and their attorneys, representatives of the Department of Social Services, and the child when he reaches maturity, except upon order of the court expressly permitting inspection or copy. No person having charge of any adoption records may disclose the names of any parents, or parents by adoption, or any other matter, appearing in such records, or furnish certified copies of any such records, except upon order of the court for the county in which the adoption took place or other court of competent jurisdiction except as otherwise provided by this section and §§ 25-6-15.1 to 25-6-15.3, inclusive. The court may not order disclosure of any matter appearing in adoption records unless the Department of Social Services or the licensed adoption agency has received notice of the petition for disclosure of such information and of the date fixed for hearing the petition. The Department of Social Services or the licensed adoption agency shall neither contest nor support the petition for disclosure during its hearing.

25-6-15.1. Confidentiality of records. All papers, records, and information pertaining to an adoption whether part of the permanent file in the Department of Social Services or in a child placement agency are confidential and may be disclosed only in accordance with §§ 25-6-15 to 25-6- 15.3, inclusive.

JUVENILE COURT

26-7A-28. Release of information on identity of child prohibited except by court order or when child adjudicated delinquent offender. No fingerprint, photograph, name, address, or other information concerning the identity of any child taken into temporary custody or issued a summons under this chapter or chapter 26-8A, 26-8B, or 26-8C may be released or transmitted to the Federal Bureau of Investigation or any other

person or agency except in the following instances:

- (1) To the person or party specifically authorized by order of the court; and
- (2) To courts, law enforcement agencies, prosecuting attorneys, court services officers, and the Department of Social Services if the child is an adjudicated delinquent offender.

Information regarding an alleged, apparent, or adjudicated abused or neglected child may be released only in accordance with § 26-8A-13.

26-7A-29. Release of information to persons, agencies, or facilities with legitimate interest in child. Notwithstanding §§ 26-7A-27 and 26-7A-28, information concerning children may be released, pursuant to an order of the court, to persons or agencies who have a legitimate interest in the child, to the child's parents, guardian, or custodian, or to the child's attorney. The Department of Social Services may release information pursuant to provisions of § 26-8A-13 regarding apparent, alleged, or adjudicated abused or neglected children. Any correctional or detention facility may release information concerning any child to any other correctional or detention facility that has a legitimate interest in the child.

26-7A-113. Sealing records in action involving abused or neglected child--

Inspection. In any action involving an abused or neglected child, the records and files of the court may be sealed by court order issued on the court's own motion or on the petition of any party to the action after the termination or completion of the action in all respects and after the expiration of the time for all appeals. If parental rights were terminated, the records and files of the court may not be sealed until adoption proceedings concerning the child have been completed or the court specifically orders the records and files sealed on the court's finding, based on information received by the court from the Department of Social Services, that adoption of the child is improbable. After the court records and files relating to the action concerning the abused or neglected child are sealed, inspection of the records and files may thereafter be permitted by the court only on petition by the guardian, guardian ad litem, or attorney for the child who is the subject of the action, by respondent parents whose parental rights have not been terminated or by the Department of Social Services. Before allowing inspection of sealed records and files, the court shall find that the inspection is in keeping with the best interests of the child.

26-7A-114. Sealing records in action involving child in need of supervision--

Inspection. In any action involving a child in need of supervision, the records and files of the court may be sealed by court order issued on the court's own motion or on the petition of any party to the action after the termination or completion of the action in all respects, after the expiration of the time for all appeals and after the unconditional release of the child from the court's jurisdiction. After the records and files are sealed, inspection of them may thereafter be permitted by the court only on petition by the state's attorney, guardian, guardian ad litem, or attorney for the child who is the subject of the action or by the respondent parents or a court services officer. Before allowing inspection of sealed

records and files, the court shall find that the inspection is in keeping with the best interests of the child.

26-7A-115. Sealing records in action involving delinquent child--Inspection. In any action involving a delinquent child, the records and files of the court may be sealed by a court order issued on the court's own motion or on the petition of the child or the child's parents. However, no such petition may be filed and considered by the court until after one year from the date of the child's unconditional release from the court's jurisdiction or the discharge of the child by the Department of Corrections, whichever date is later. Upon the filing of the petition, the court shall set a date for hearing and shall notify the state's attorney and any other party who the court believes may have relevant information about the delinquent child. The court may order sealed all of the court's records and files and the records and files in the custody or under the control of any other agency or official if at the hearing on the petition to seal the court finds:

(1) The delinquent child has not been adjudicated as a delinquent under this chapter or chapter 26-8C since the termination of the court's jurisdiction of the child or the discharge of the child by the Department of Corrections;

(2) No proceeding involving the delinquent child concerning a felony, a sexual contact offense, a misdemeanor involving moral turpitude or a petition under this chapter or chapter 26-8C is pending or is being instituted against the child; and

(3) The rehabilitation of the delinquent child has been attained to the satisfaction of the court.

PROTECTION OF CHILDREN FROM ABUSE OR NEGLECT

26-8A-13. Confidentiality of abuse or neglect information--Violation as misdemeanor-- Release to certain parties. All investigative case records and files relating to reports of child abuse or neglect are confidential, and no disclosure of any such records, files, or other information may be made except as authorized in chapter 26-7A or this chapter. Any person who knowingly violates the confidential nature of the records, files, or information is guilty of a Class 1 misdemeanor. The Department of Social Services may release records, files, or other information to the following parties upon the receipt by the department of a request showing that it is necessary for the parties to have such information in the performance of official functions relating to child abuse or neglect:

(1) The attorney general, the state's attorneys, law enforcement agencies, protective services workers, and judges of the courts investigating reports of known or suspected child abuse or neglect;

(2) The attorney or guardian ad litem of the child who is the subject of the information;

(3) Public officials or their authorized representatives who require the information in connection with the discharge of official duties;

(4) Institutions and agencies that have legal responsibility or authorization to

care for, treat, or supervise a child who is the subject of the information or report;

(5) An adoptive parent of the child who is the subject of the information or report and a licensed child welfare agency, a tribal agency which the Department of Social Services has an agreement with to provide child welfare agency services which would otherwise require licensure by the department or any private child welfare agency whose licensure has been waived pursuant to § 26-6-9, for screening of applicants;

(6) A state, regional, or national registry of child abuse and neglect cases and courts of record of other states;

(7) A validly appointed and registered child protection team under § 26-8A-17;

(8) A physician who is caring for a child whom the physician reasonably suspects may be abused or neglected;

(9) State hearing examiners and any person who is the subject of the report for purposes directly related to review under § 26-8A-11; and

(10) A person eligible to submit an adoptive home study report under § 25-6-9.1 or 26-4-15. However, the information may only be released for the purpose of screening applicants.

Information received by an authorized receiving party shall be held confidential by the receiving party. However, the court may order the release of the information or any portion of it necessary for determination of an issue before the court.

However, the Department of Social Services may release information and findings to the media regarding the abuse or neglect of a child that resulted in a fatality or near fatality of the child if the release of the information has been approved by the prosecutor who has commenced or who has authority to commence legal action, and, if such disclosure has been authorized by the court and is not contrary to the best interests of the child, the child's siblings, or other children in the household. The information to be released shall relate to the acts of child abuse or neglect that caused the fatality or near fatality of the child. However, the identity of the child may never be released. For the purpose of this chapter, near fatality means an act that, as certified by a physician, places the child in serious or critical condition.

MENTALLY ILL PERSONS

27A-12-25. Individual records required--Contents--Confidentiality. A complete statistical and medical record shall be kept current for each person receiving mental health services, or being otherwise detained under this title. The record shall include information pertinent to the services provided to the person, pertinent to the legal status of the recipient, required by this title or other provision of law, and required by rules or policies. The material in the record shall be confidential in accordance with the provisions of this title.

CARE, TREATMENT AND RIGHTS OF MENTAL PATIENTS

27A-12-26. Confidentiality of information acquired in course of providing mental health services. Information in the record of a person, and other information acquired in the course of providing mental health services to a person, shall be kept confidential and

are not open to public inspection. The information may be disclosed outside the center, department, mental health program, or inpatient facility, whichever is the holder of the record, only if the holder of the records and the person, his parents if he is a minor or his guardian, consent or, in the absence of such consent, in the circumstances and under the conditions set forth in §§ 27A-12-25 to 27A-12-32, inclusive, and in conformity with federal law.

27A-12-26.1. Access to own records--Exceptions--Confidentiality following discharge. A person has the right to access, upon request, to his mental health records. However, the person may be refused access to:

- (1) Information in such records provided by a third party under assurance that such information remain confidential; and
- (2) Specific material in such records if the qualified mental health professional responsible for the mental health services concerned has made a determination in writing that such access would be detrimental to the person's health. However, such material may be made available to a similarly licensed qualified mental health professional, selected by the person; and such professional may, in the exercise of professional judgment, provide such person with access to any or all parts of such material or otherwise disclose the information contained in the material to such person.

The rights to confidentiality of and access to records as provided in §§ 27A-12-25 to 27A-12-32, inclusive, shall remain applicable to records pertaining to such person after the person's discharge.

DEVELOPMENTALLY DISABLED PERSONS

27B-8-46. Records confidential--Disclosure. All records kept pursuant to this chapter are confidential and not open to public inspection. The information may be disclosed only in the circumstances and under the conditions set forth in §§ 27B-8-47 to 27B-8-49, inclusive.

27B-8-48. Identity of person to be protected. If information is disclosed, the identity of the person to whom it pertains shall be protected and may not be disclosed unless it is germane to the authorized purpose for which disclosure was sought. If practicable, no other information may be disclosed unless it is germane to the authorized purpose for which disclosure was made.

PUBLIC WELFARE AND ASSISTANCE

28-1-29. Public assistance records confidential--Exceptions. Any application or record concerning any applicant for, or recipient of, public assistance provided under the laws of this state through the Department of Social Services is confidential except:

- (1) For inspection by any person duly authorized by this state or the United States in connection with the person's official duties;

- (2) For the purpose of fair hearings as provided by law.

28-1-45.1. Records required--Improper use of names or information concerning persons applying for assistance. The adult services and aging programs shall keep such records as may be required by law or federal regulations. All applications and records concerning any applicant or recipient are confidential. Except for purposes directly connected with the administration of the adult services and aging program and in accordance with the rules of the department, no person may solicit, disclose, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any lists or names of, or any information concerning, persons applying for or receiving public assistance, derived from the records, papers, files, or communications of the department acquired in the course of the performance of official duties.

28-1-45.2. Use of information--Publication of names of applicants and recipients prohibited. The use or disclosure of information concerning applicants and recipients is limited to:

- (1) Any person authorized by the secretary in connection with the secretary's official duties, if the official duties are directly connected with the administration of the adult services and aging program;
- (2) Any purpose directly connected with the adult services and aging program, including disclosure by the department of information and documents, alleged violator, police department, prosecutor's offices, the attorney general's office, or any other state, county, or federal agency engaged in the detection, investigation, or prosecution of violations of applicable state, county, and federal laws or regulations regarding all aspects of theft, fraud, deception, or overpayment in connection with any aspect of the adult services and aging program. However, disclosure by recipient agencies and personnel is permitted under this section to the extent reasonably necessary to carry out the functions for which the information was provided;
- (3) Federal agencies responsible for the administration of federally assisted programs, which provide assistance in cash or in kind.

Any publication of lists or names of applicants and recipients is prohibited.

28-1-68. Confidentiality of enforcement services applications and records. All applications and records concerning any applicant for child and spousal support enforcement services are confidential except:

- (1) For inspection by persons authorized by this state or the United States in connection with their official duties;
- (2) For the purpose of fair hearings provided by law.

UNIFORM PROBATE CODE

29A-5-207. Certain documents to be sealed--Available to certain persons. The

statement of financial resources, any written report of the court representative, and any accountings or inventories made by the guardian or conservator shall be sealed upon filing and shall not be made a part of the public record but shall be available to the court, to the minor, to the petitioner, to the court representative, to their attorneys, to abstractors or employees of abstractors licensed pursuant to chapter 36-13, to employees and agents of title insurance companies licensed pursuant to chapter 58- 25, to attorneys who are licensed to practice law pursuant to chapter 16-16 and who are representing a relative of the minor within the third degree of kinship, to the spouse of the minor, to joint tenants of the minor, to any intestate heirs of the minor which relationship shall be established by sworn affidavit, and to such other interested persons as the court may order upon a showing of the need therefor.

ANNUAL REGISTRATION AND LICENSE PLATES

32-5-144. Disclosure of personal information contained in motor vehicle records prohibited-- Exceptions. Notwithstanding any other provision of state law to the contrary, except as provided in §§ 32-5-145 to 32-5-147, inclusive, the department and any officer, employee, agent, or contractor thereof may not disclose personal information about any person obtained by the department in connection with a motor vehicle record. Under no circumstances may a person's social security number or medical or disability information from a motor vehicle record be disclosed, except for the purposes permitted by subdivisions 32-5-147(1), (3), and (5).

32-5-145. Personal information to be disclosed for certain purposes. Personal information shall be disclosed for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of nonowner records from the original owner records of motor vehicle manufacturers to carry out the purposes of Titles I and IV of the Anti Car Theft Act of 1992, 15 U.S.C. § 2021 et seq., as of January 1, 2001, the Automobile Information Disclosure Act, 15 U.S.C. § 1231 et seq., as of January 1, 2001, and the Clean Air Act, 42 U.S.C. § 7401 et seq. , as of January 1, 2001, chapters 301, 305, and 321-331 of Title 49, as of January 1, 2001, and agency regulations enacted or adopted pursuant to the authority of, or to attain compliance with, these acts of Congress.

32-5-146. Disclosure to one who has subject's consent. Personal information may be disclosed to any person who demonstrates, in such form and manner as the department prescribes, that express consent of the person who is the subject of the information has been obtained.

32-5-147. Disclosure on proof of identity of requestor and representation of use for certain limited purposes. Personal information may be disclosed to any person by the department on proof of the identity of the person requesting the record and representation by such person that the use of the personal information will be strictly limited to the following described uses:

- (1) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a government agency in carrying out its functions;
- (2) For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only under the following circumstances:
 - (a) To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and
 - (b) If such information as submitted is not correct or is no longer correct, to obtain the correct information for the purposes of preventing fraud by pursuing legal remedies against, or recovering on a debt or security interest against, the individual;
- (3) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any court or government agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of any court;
- (4) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals;
- (5) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, anti-fraud activities, rating, or underwriting;
- (6) For use in providing notice to the owners or lienholders of towed or impounded vehicles;
- (7) For use by any licensed private investigative agency or licensed security service for any purpose permitted under this section;
- (8) For use in connection with the operation of private toll transportation facilities;
- (9) For any other use specifically authorized under the law of the state that holds the record, if such use is related to the operation of a motor vehicle or public safety.

32-5-148. Department may impose conditions on requesting person. The department may, prior to the disclosure of personal information as permitted under §§ 32-5-144 to 32-5-147, inclusive, require the requesting person to meet conditions for the purposes of obtaining reasonable assurance concerning the identity of such requesting person, and, to the extent required, that the use will be only as authorized, or the consent of the person who is the subject of the information has been obtained. Such conditions may include the making and filing of a written application in such form and containing such information and certification requirements as the department may prescribe.

32-5-149. Retention of records by certain recipients. Any authorized recipient, except a recipient of an individual record under § 32-5-148, who resells or rediscloses personal information shall maintain for a period of at least five years records as to the information obtained and the permitted use for which it was obtained and shall make such records available for inspection by the department, upon request.

32-5-150. Misrepresentation by requesting person as misdemeanor--Use of personal information to commit crime of violence as felony. Any person who requests disclosure of personal information from department records and who misrepresents his or her identity or knowingly makes a false statement to the department on any application required to be submitted pursuant to §§ 32-5-143 to 32-5-151, inclusive, is guilty of a Class 1 misdemeanor. However, if any person uses the personal information obtained pursuant to §§ 32-5-143 to 32-5-151, inclusive, to commit a crime of violence as defined in § 22-1-2, the person is guilty of a Class 5 felony.

EMERGENCY MANAGEMENT

33-15-11.6. Confidentiality of information. The information provided pursuant to §§ 33-15-11.1 to 33-15-11.6, inclusive, shall remain confidential and may only be used for emergency purposes.

STATE AND COUNTY VETERANS' AGENCIES

33-16-23. Division records as confidential--Exceptions. The contents of, and all files, records, reports, papers, and documents pertaining to, any claim for the benefits of this chapter, or chapters 33-17 to 33-19, inclusive, whether pending or adjudicated, are confidential and privileged except to the veteran, a veteran's dependents or their duly authorized agents. However, investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for the benefits of this chapter, or chapters 33-17 to 33-19, inclusive, are exempt from release to the extent that the disclosure of the material would reveal the identity of the source who furnished information to the division under an express promise that the identity of the source would be held in confidence, or, prior to July 1, 1985, under an implied promise that the identity of the source would be held in confidence.

PUBLIC HEALTH AND SAFETY

34-11-5.1. Patient information received by ambulance service is confidential. Any patient information identifying the patient's name, address, diagnosis, or treatment received by an ambulance service under the authority of this chapter is not a public record and is confidential, except for official purposes, and may not be published or disclosed without authorization from the patient or the patient's designee.

34-12-15. Inmate records and statistics required of institutions--Copy to patient and certain other persons on request--Reproduction cost--No liability for compliance--Section not applicable to chemical dependency treatment facilities. All superintendents, or managers, or other persons in charge of hospitals, lying-in, or other institutions, public or private, to which persons resort for treatment of disease, confinement, or are committed by process of law, shall make and keep a record of all the

personal and statistical particulars relative to the inmates, such record to be made at the time of their admittance and in such form of certificate as directed by the secretary of health. In case of persons admitted or committed for treatment of disease, the physician in charge shall specify for entry in such record the nature of the disease and where in the physician's opinion it was contracted. The personal particulars and information required by this section shall be obtained from the individual, if it is practicable to do so, and if not practicable, shall be obtained in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts. Such record shall be open at all times to the inspection of the secretary of health or an accredited agent of the secretary.

A health care facility shall provide copies of all medical records, reports, and X rays pertinent to the health of the patient, if available, to a discharged patient or the patient's designee upon receipt by the health care facility of a written request or a legible copy of a written request signed by the patient. The health care facility may require before delivery that the patient pay the actual reproduction and mailing expense.

If a personal representative of a deceased patient has not been appointed, the following surviving family members, in the priority stated, have the right to copies of the patient's medical record to the same extent as the patient would have the right to copies of the medical record while alive:

- (1) The spouse, if not legally separated at the time of the patient's death;
- (2) An adult child;
- (3) A parent;
- (4) An adult sibling;
- (5) A grandparent or an adult grandchild;
- (6) An adult aunt or uncle, or an adult niece or nephew.

A health care facility, complying in good faith with the provisions of this section, may not be held liable for any injury or damage proximately resulting from compliance with this section. This section does not apply to chemical dependency treatment facilities.

34-14-1. Information obtained in medical studies confidential--Inadmissibility in evidence. All information, interviews, reports, statements, memoranda, or other data procured by the Department of Health, South Dakota State Medical Association, allied medical societies, or in-hospital staff committees of accredited hospitals in the course of a medical study for the purpose of reducing morbidity or mortality shall be strictly confidential and shall only be used for medical research.

Such information, records, reports, statements, notes, memoranda, or other data, shall not be admissible as evidence in any action of any kind in any court or before any tribunal, board, agency, or person.

34-18-21. Registration of guests at lodging establishment or campground--Contents and inspection of records. Each person conducting a lodging establishment or campground shall keep a record of guests. Such a record may be kept in a register or on separate cards and shall be opened for inspection and copying by the secretary of health for the purpose of protecting the health or life of persons or for an emergency which may affect the public health. The inspection and copying shall take place during business hours and shall be conducted by an authorized department inspector after presentation of

identification. The registry shall contain the name of the guest, the number in the party, the place of permanent residence of the guest, the date of registration, the date of departure, the daily rate charged, and the motor vehicle license number of the registrant. The record shall also include each rate, price, or fee charged to the guest for the guest's stay at the lodging establishment or campground, as required by subdivision 37-24-6(8). These records shall be kept for a minimum of one year.

34-18-21.1. Confidentiality of information obtained through inspection of records. Information obtained by the department under the authority of § 34-18-21 is confidential, except for official purposes of the department, and may not be disclosed except in accordance with a judicial order or as otherwise provided by law.

34-22-12.1. Confidentiality of Communicable Disease reports--Exceptions. Any report required to be submitted pursuant to § 34-22-12 is strictly confidential medical information. No report may be released, shared with any agency or institution, or made public, upon subpoena, search warrant, discovery proceedings, or otherwise. No report is admissible as evidence in any action of any kind in any court or before any tribunal, board, agency, or person. However, the Department of Health may release medical or epidemiological information under any of the following circumstances:

- (1) For statistical purposes in such a manner that no person can be identified;
- (2) With the written consent of the person identified in the information released;
- (3) To the extent necessary to enforce the provisions of this chapter and rules promulgated pursuant to this chapter concerning the prevention, treatment, control, and investigation of communicable diseases;
- (4) To the extent necessary to protect the health or life of a named person;
- (5) To the extent necessary to comply with a proper judicial order requiring release of human immunodeficiency virus test results and related information to a prosecutor for an investigation of a violation of § 22-18-31; and
- (6) To the attorney general or an appropriate state's attorney if the secretary of the Department of Health has reasonable cause to suspect that a person violated § 22-18-31.

34-22-12.5. Sharing of certain immunization records without consent permitted--Violation as a misdemeanor. A patient's immunization record, even if the immunization was received prior to July 1, 1996, may be shared among health care providers, health care facilities, federal or state health agencies, child welfare agencies, schools, or family day care facilities, without the consent of the patient or the person acting on the patient's behalf unless the patient's signed refusal to release immunization information is part of the patient's medical record. If the patient is a minor, the refusal to release immunization information may be signed by the patient's parent or guardian on behalf of the minor patient. Any person who receives immunization data pursuant to this section and knowingly or intentionally discloses or fails to protect the confidentiality of the data is guilty of a Class 1 misdemeanor.

34-23-2. Reports of cases required of physicians and institutions--Information confidential. Any physician or other person who makes a diagnosis in or treats a case of venereal disease and any superintendent or manager of a hospital, dispensary, or

charitable or penal institution in which there is a case of venereal disease shall make a report of such case to the health authorities in such form and manner as the State Department of Health shall direct. The identity of any individual appurtenant to an investigation conducted pursuant to a report of a venereal disease shall be maintained in strictest confidence within the venereal disease control system, and any information obtained from that individual may not be disclosed in any action in any court or before any tribunal, board, or agency.

34-23A-44. Department to ensure anonymity--Confidentiality of communication.

No report made under §§ 34-23A-34 to 34-23A-45, inclusive, may include the name of any female having an abortion. The Department of Health shall take care to ensure that none of the information included in any report required by §§ 34-23A-34 to 34-23A-45, inclusive, including printed records, computerized records, or stored information of any type, can reasonably lead to the identification of any person obtaining an abortion. Except in the case of a mother who was younger than the age of sixteen at the time her child was conceived, any information collected by or under the direction of a physician or psychotherapist for the purpose of completing a report required by §§ 34-23A-34 to 34-23A-45, inclusive, is privileged as a confidential communication under § 19-13-7. In the case of a mother who was younger than the age of sixteen at the time the child was conceived, the privilege of confidentiality set forth in § 19-13-7 may not be claimed in any judicial proceeding involving § 22-22-1.

34-24-28. Confidentiality of Fetal Alcohol Reports. Any report required to be submitted pursuant to § 34-24- 27 is strictly confidential. The reports may not be released, shared with any agency or institution, or made public, upon subpoena, search warrant, discovery proceedings or otherwise and are not admissible as evidence in any action of any kind in a court or before any tribunal, board, agency or person. However, release of medical or epidemiological information may be authorized by the Department of Health under any of the following circumstances:

- (1) For statistical purposes in such a manner that no person can be identified;
- (2) With the written consent of the person identified in the information released;
- (3) To the extent necessary to enforce the provisions of §§ 34-24-28 to 34-24-31, inclusive, and rules promulgated thereunder concerning the prevention and treatment of fetal alcohol syndrome; or
- (4) To the extent necessary to protect the health or life of a named person.

VITAL RECORDS AND BURIAL PERMITS

34-25-16.4. Sealing of original birth certificate after new certificate issued--

Opening of sealed materials. When a new certificate of birth is established pursuant to §§ 34-25-15 to 34-25- 16.2, inclusive, the original certificate of birth together with the adoption information or other evidence upon which a new certificate is made shall be sealed, filed, and may be opened only upon order of a court of competent jurisdiction, or by the secretary of health for purposes of properly administering the vital registration system.

PHYSICIANS AND SURGEONS

36-4-22.1. Board access to premises where medicine practiced--Inspection of drug records and inventories--Refusal as misdemeanor--Confidentiality. The Board of Examiners, or any of its officers, agents or employees so authorized, may enter and inspect, during business hours, any place where medicine or osteopathy are practiced for the purpose of enforcing this chapter and rules adopted pursuant hereto. The refusal to allow an inspection is a Class 1 misdemeanor. Such inspection may include any medical or drug records, and the copying thereof, and inventories relating to drugs and controlled substances required to be kept under the provisions of chapter 34-20B. The Board of Examiners, its officers, agents and employees shall maintain the confidential nature of any records obtained pursuant to this section.

36-11A-8. Application for license. An applicant for licensure as a wholesale distributor shall apply annually to the board on a form provided by the board. The application shall be accompanied by a license fee set by the board. The fee may not exceed two hundred fifty dollars. All financial statements or related information submitted by applicants shall be treated as confidential materials.

TECHNICAL PROFESSIONS

36-18A-24. Record and report policy. The board shall maintain the following record and report policy:

- (1) A record of its proceedings and all current applications of licensure shall be retained;
- (2) The record of the board shall be prima facie evidence of the proceedings of the board, and a transcript thereof, duly certified by the executive director of the board, shall be admissible as evidence with the same force and effect as if the original were produced; and
- (3) The following are of a confidential nature and are not public records: examination scores, examination material, examination problem solutions, letters of inquiry and references concerning applicants, board inquiry forms concerning applicants and licensees, and investigation files if any investigation is still pending.

PUBLIC ACCOUNTANTS

36-20B-42. Investigating officer--Confidentiality of information. The board may designate a member, or any other person of appropriate competence, to serve as investigating officer to conduct an investigation. Upon completion of an investigation, the investigating officer shall file a report with the board. The board shall find probable cause or lack of probable cause upon the basis of the report or shall return the report to the investigating officer for further investigation. Unless there has been a determination of probable cause, the report of the investigating officer, the complaint, if any, the testimony and documents submitted in support of the complaint or gathered in the

investigation, and the fact of pendency of the investigation shall be treated as confidential information and may not be disclosed to any person except law enforcement authorities and, to the extent deemed necessary in order to conduct the investigation, the subject of the investigation, persons whose complaints are being investigated, and witnesses questioned in the course of the investigation.

FRANCHISES FOR BRAND-NAME GOODS AND SERVICES

37-5A-64. Unauthorized use or disclosure of confidential information as misdemeanor. It is a Class 2 misdemeanor for the director or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the director and which is not generally available to the public. Nothing in this chapter authorizes the director or any of his officers or employees to disclose any confidential information except among themselves or to other administrators or regulatory authorities or when necessary or appropriate in a proceeding or investigation under this chapter.

TRADE REGULATION

37-24-18. Consumer investigative information. Information obtained pursuant to the powers conferred by this chapter may not be made public or disclosed by the attorney general or his employees beyond the extent necessary for law enforcement purposes in the public interest.

37-25A-25. Use or disclosure of information by director restricted. The director of the Division of Securities may not use for personal benefit any information which is filed with or obtained by the director and which is not made public. The director may not disclose any information except if necessary or appropriate in a proceeding or investigation under this chapter.

RURAL REHABILITATION ASSETS AND FUNDS

38-6-12. Information received by secretary not public records. Data or financial information made or received by the secretary of agriculture for the purpose of application for loans, marketing assistance, agricultural finance counseling, and farm loan mediation are not public records and are exempt from the Provisions of § 1-27-1.

SOUTH DAKOTA CERTIFIED BEEF PROGRAM

39-24-5. Confidential information--Exception. Any data or financial information made or received by the Secretary of agriculture pursuant to this chapter is not public record and is exempt from the provisions of § 1-27-1.

SOUTH DAKOTA LOTTERY

42-7A-50. Confidentiality of lottery records. Information and records of the South Dakota Lottery are confidential, except for official purposes, and may not be disclosed except to officers, employees, or legal representatives of the Department of Revenue and Regulation for the purpose of and only to the extent necessary in the investigation and audit procedures authorized by Title 10 or in accordance with a judicial order. No person may use a subpoena, discovery, or other applicable statutes to obtain such information or records. Information and records considered confidential include:

- (1) Applications, credit, and security checks of lottery retailers, licensees, and persons seeking or doing business with the lottery;
- (2) Marketing, financial, or sales data, the disclosure of which may be harmful to the competitive position of the South Dakota Lottery, its retailers, licensees, or persons seeking or doing business with the lottery;
- (3) Audit work papers, worksheets, and auditing procedures used by the lottery, its agent, or employees; and
- (4) Tax returns of individual licensees.

However, this section may not be construed to make confidential the name of any video lottery operator including, if the video lottery operator is a partnership, the name of any partner and, if the video lottery operator is an association or corporation, the name of any director, any officer, and any stockholder who owns five percent or more of the stock in the association or a parent or subsidiary corporation.

INVESTMENT BROKERS

47-31B-607. Public records--Confidentiality. (a) Presumption of public records.

Except as otherwise provided in subsection (b), records obtained by the director or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination.

(b) Nonpublic records. The following records are not public records and are not available for public examination under subsection (a):

- (1) A record obtained by the director in connection with an audit or inspection under § 47-31B-411(d) or an investigation under § 47-31B-602;
- (2) A part of a record filed in connection with a registration statement under §§ 47-31B-301 and 47-31B-303 through 47-31B-305 or a record under § 47-31B-411(d) that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;
- (3) A record that is not required to be provided to the director or filed under this chapter and is provided to the director only on the condition that the record will not be subject to public examination or disclosure;
- (4) A nonpublic record received from a person specified in § 47-31B-608(a);

and

(5) Any social security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed; and

(6) A record obtained by the director through a designee of the director or that a rule or order under this chapter determines has been:

(A) Expunged from the director's records by the designee; or

(B) Determined to be nonpublic or nondisclosable by that designee if the director finds the determination to be in the public interest and for the protection of investors.

(c) Director discretion to disclose. If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in § 47-31B-608(a), the director may disclose a record obtained in connection with an audit or inspection under § 47-31B-411(d) or a record obtained in connection with an investigation under § 47-31B-602.

BANKS AND BANKING

51A-2-35. Records of division open to public inspection--Exceptions--Court order.

The records of the division are open to public inspection. However:

(1) The director may withhold from public inspection any record, including any correspondence, for so long as deemed necessary for the protection of a person or bank or to be in the public interest;

(2) The director shall withhold from public inspection any record required to be confidential pursuant to federal statutes or rules or regulations of the board of governors of the federal reserve system or the Federal Deposit Insurance Corporation; and

(3) Reports of examination shall remain the property of the division and shall be furnished to the bank for its confidential use. Under no circumstances may the report or any supporting documentation be disclosed to anyone, other than directors and officers of the bank or anyone who is acting in a fiduciary capacity for the bank, without written permission from the director.

Any record of the division shall be made available upon order of a court of competent jurisdiction if cause is shown.

51A-6A-2. Confidential information. For the purposes of this chapter, confidential information includes the names of stockholders or owners, ownership information, capital contributions, addresses, business affiliations, state and commission findings through any examination or inquiry of any kind, and any information required to be reported or filed with the director or the commission, and any information or agreement relating to any merger, consolidation, or transfer, and any agreements or information relating to any relationship with a contracting trustee.

51A-6A-39. Confidentiality of information generated by examination--Notice of intent to disclose--Hearing. All information the director generates in making an

investigation or examination of a state trust company shall be confidential information. All confidential information shall be the property of the state and is not subject to disclosure except upon the written approval of the director. The director shall give ten days' prior written notice of intent to disclose confidential information to the affected trust company. Any trust company which receives a notice may object to the disclosure of the confidential information and shall be afforded the right to a hearing in accordance with the provisions of chapter 1-26. If a trust company requests a hearing, the director may not reveal confidential information prior to the conclusion of the hearing and a ruling. Disclosure of confidential information shall be made only to formal regulatory bodies of this state which clearly have a need for the confidential information. Prior to dissemination of any confidential information, the director shall require a written agreement not to reveal the confidential information by the party receiving the confidential information. In no event may the director disclose confidential information to the general public, any competitor, or any potential competitor of a trust company.

DIVISION OF INSURANCE

58-2-40. Promulgation of rules to protect privacy of medical records. The director of insurance shall promulgate rules pursuant to chapter 1-26, to protect the privacy of personally identifiable health care and medical information, data, and records. The rules shall cover health care and medical information, data, and records collected, used, or disclosed by any person licensed or registered under Title 58 or any person with whom such licensees or registrants contract, and shall include all health care and medical information, data, and records received by or in the possession of the Division of Insurance. The rules may include the following:

- (1) Definition of terms;
- (2) Standards for the protection of the privacy and confidentiality of personally identifiable health care information and medical records;
- (3) Rules for the collection, use, storage, security, disclosure, release, and disposal of health care and medical information, data, and records in all forms, including printed material, plastic media, audio, video, computerized and electronic transmissions;
- (4) Rules regarding the sale and exchange of health care and medical information, data, and records;
- (5) Rules to define the responsibilities and limitations of those needing or requiring access to health care and medical information, data, and records;
- (6) Rules for procedures and documents required for the release or transfer of health care and medical information, data, and records, including the identity of who may release such information and records and under what conditions and provisions of the law, as needed to protect the privacy of personally identifiable health care and medical information, data, and records;
- (7) Rules for the collection, use, storage, security, disclosure, distribution, release, and disposal of health care information and medical records obtained, used, or held in connection with the operation, maintenance, or review of insurance certificates, contracts, policies, and plans, and health maintenance organizations, subject to the jurisdiction of the director of insurance.

INSURANCE FRAUD

58-4A-12. Records and files confidential--Investigator not subject to subpoena in civil matter--Exceptions. All investigative records and files of the insurance fraud prevention unit are confidential. The investigative records of the insurance fraud prevention unit may not be released except pursuant to a court order. An investigator is not subject to subpoena in civil actions concerning any matter of which the investigator has knowledge regarding a pending insurance fraud investigation by the division, unless so ordered by the court.

UNEMPLOYMENT COMPENSATION

61-3-4. Information confidential--Use by claimant at hearing--Unauthorized disclosure as misdemeanor. Information obtained under § 61-3-2 or 61-3-3 shall not be published or be open to public inspection other than to public employees in the performance of their public duties in any manner revealing the employing unit's identity, but any claimant at a hearing before an appeal tribunal or the Department of Labor shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any employee or officer of the Department of Labor who shall violate any of the provisions of this section commits a Class 2 misdemeanor.

62-4-49. Confidentiality of investigative records--Release--Misdemeanor. All investigative records and files relating to written requests made pursuant to § 62-4-47 are confidential. No disclosure of any such records, files, or other information may be made except as authorized in this section and § 62-4-48. The names of individuals providing evidence in support of a written request are confidential during the pendency of the request and the investigation. If the records or the testimony of the witness supplying the records are to be admitted at the hearing, the records and the testimony, or both, are discoverable and shall be provided to the claimant and the claimant's attorney. The department may release records, files, or other information to the attorney general, the state's attorney, law enforcement officials, and public officials who require the information in connection with their official duties. A violation of this section is a Class 1 misdemeanor.

WORKERS' COMPENSATION

62-6-5. Information confidential--Release to employee or public agency. Information obtained within the contemplation of this title shall be used for no other purpose than for the information of the department or insurance company with reference to the duties imposed upon such department. However, the department may release information to an injured employee or his attorney, to a social security or welfare office having a claim by the employee, or to any state or federal agency which rehabilitates handicapped persons; and the department may issue statistical information where individual claimants are not identified.

FEDERAL STATUTES OR RULES WHICH REQUIRE CONFIDENTIALITY BY STATE GOVERNMENT

28 CFR 20 Criminal history database

28 CFR 66 & 28 CFR 70 Requirements relating to grants

34 CFR 99 Privacy for students and parents

34 CFR 300 Assistance to States for Education of Children with disabilities

34 CFR 675 Federal-work study programs

42 CFR 431.300-431.307 Medicare and Medicaid statutes governing the confidentiality of information about applicants and recipients acquired in course of providing health services

42 CFR 405 Social Security numbers

45 CFR 160 Health Care Information

45 CFR 164 Health Care Information

45 CFR 303.15, 45 CFR 303.69, 45 CFR 303.70 Information related to kidnapping, child custody or visitation cases; information contained in the Federal Parent Locator Service

18 USC 271-2725 (Federal Drivers Privacy Protection Act) personal information in motor vehicle and drivers' license records, including individual's photograph, social security number, driver license number, name, address, telephone number, and medical disability information

23 U.S.C. 409. Information developed for bridge rehabilitation under 23 U.S.C. 144.