

Senate File 50

SENATE FILE 50

State Government
Kelly, Chairperson
Rush
Slater

FILED JAN 21 1977

SENATE FILE 50

By HILL of Polk

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to public and other records.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section sixty-eight A point one (68A.1), Code
2 1977, is amended by striking the section and inserting the
3 thereof the following:

4 68A.1 DEFINITIONS. Whenever used in this chapter the
5 terms defined in this section shall have the following
6 meanings:

7 1. "Public records" includes all records and documents
8 of or belonging to a lawful custodian.

9 2. "Personal information" includes all information and
10 data on individuals which is kept or is intended to be kept
11 on a permanent or semipermanent basis by a lawful custodian
12 regardless of whether it is a public record.

13 3. "Lawful custodian" means the state and any county,
14 city, township, school corporation, political subdivision,
15 or tax supported district in this state, or any branch,
16 department, board, bureau, commission, council, or committee
17 of any of the foregoing.

18 4. "Summary data" means statistical records derived from
19 personal information from which the identity of an individual
20 cannot be ascertained.

21 5. "Commission" means the state records commission
22 established in chapter three hundred four (304) of the Code.

23 Sec. 2. Chapter sixty-eight A (68A), Code 1977, is amended
24 by adding sections three (3) through seven (7) of this Act.

25 Sec. 3. On or before December first of each year commencing
26 on December 1, 1978 the commission shall prepare a report
27 to the general assembly containing the following:

28 1. A list of the title, name, and address of all lawful
29 custodians of personal information.

30 2. A list of the categories by which the lawful custodian
31 has organized the personal information, and including the
32 following:

33 a. The number of individuals in the category.

34 b. The method by and source from which personal information
35 is obtained for the category.

1 c. Who has access to the category and whether the category
2 is accessible by computer.

3 d. The nature and purpose of the personal information
4 in each category.

5 e. Whether in the opinion of the commission the category
6 is a public record.

7 3. The policies and practices of the commission regarding
8 the duration of storage and disposal of personal information.

9 4. The procedures, practices and rules adopted pursuant
10 to section four (4) of this Act.

11 5. Any recommendations concerning appropriate legislation.

12 Sec. 4. NEW SECTION. The commission shall promulgate
13 rules applicable to all lawful custodians in accordance with
14 chapter seventeen A (17A) of the Code to implement the
15 following objectives:

16 1. The collection and method and period of retention of
17 personal information shall be limited to that necessary for
18 the administration of programs enacted by the general assembly
19 or local governing body.

20 2. The lawful custodian shall document and file with the
21 commission the information required by section three (3) of
22 this Act.

23 3. The use of personal information by other than the
24 lawful custodian, including the sharing of personal information
25 by mechanical, manual, or electronic means, may be permitted
26 only when required by law, where clearly necessary to the
27 health, safety, or welfare of the public, or when clearly
28 in the interest of the individual.

29 4. The use of summary data shall be permitted upon written
30 request stating the intended use and approved by the lawful
31 custodian if summarized under the direction of the lawful
32 custodian or by a person having a written agreement with the
33 lawful custodian prohibiting the disclosure of personal
34 information.

35 5. The lawful custodian shall establish reasonable and

1 appropriate safeguards for the collection, storage,
2 dissemination and use of personal information to assure that
3 it is accurate, complete and current. Emphasis shall be
4 placed on the security of personal information stored or
5 transmitted by computer or telecommunications.

6 Sec. 5. NEW SECTION. A lawful custodian shall not request
7 or retain personal information unless the lawful custodian
8 complies with the following:

9 1. The purpose for which the personal information is
10 requested or retained is filed in writing with the commission.

11 2. The individual requested to supply personal information
12 is informed of the purpose of the intended use.

13 3. The individual is informed whether he is legally
14 required to supply the requested personal information and
15 of any consequences of supplying or refusing to supply the
16 requested personal information.

17 4. The individual may, upon request to the lawful
18 custodian, be informed that he is the subject of personal
19 information held by the lawful custodian.

20 5. The individual may contest the accuracy or completeness
21 of the personal information by written notice to the lawful
22 custodian describing the disagreement with and the change
23 sought in the personal information. The lawful custodian
24 shall within thirty days correct the personal information
25 if it is determined to be inaccurate or incomplete and attempt
26 to notify past recipients of the personal information. The
27 determination of the lawful custodian may be appealed as an
28 agency action if the custodian is an agency as defined in
29 chapter seventeen A (17A) of the Code; if not, the individual
30 may within thirty days petition the district court of the
31 county of the lawful custodian for an order to correct the
32 personal information on the grounds that it is inaccurate
33 or incomplete.

34 Sec. 6. NEW SECTION. Personal information shall not be
35 used for any purpose other than that filed with the commission

1 unless the lawful custodian makes an additional filing of
2 the new purpose with the commission, or the general assembly
3 by law permits such use, or the individual gives an informed
4 consent. Personal information which is being contested shall
5 not be disclosed by the lawful custodian unless it is
6 accompanied by the individual's description of the disagreement
7 and change sought and the requesting party demonstrates its
8 need for the personal information.

9 Sec. 7. NEW SECTION. This Act shall not apply to personal
10 information which is intelligence data as defined in chapter
11 seven hundred forty-nine B (749B) of the Code. Nothing in
12 this Act shall be construed to restrict or modify the right
13 of citizens to examine public records guaranteed in section
14 sixty-eight A point two (68A.2) of the Code.

15 Sec. 8. Section sixty-eight A point five (68A.5), Code
16 1977, is amended to read as follows:

17 68A.5 ENFORCEMENT OF RIGHTS. The provisions of this
18 chapter and all rights of citizens under this chapter may
19 be enforced by mandamus or injunction, whether or not any
20 other remedy is also available. In the alternative, rights
21 under this chapter also may be enforced by an action for
22 judicial review according to the provisions of the Iowa
23 administrative procedure Act, if the records involved are
24 records of an "agency" as defined in that Act.

25 Any lawful custodian, political subdivision, or state who
26 violates this chapter shall be liable to a person who suffers
27 any damages as a result of the violation, and that person
28 may bring an action against the lawful custodian, political
29 subdivision, or state to recover damages, costs, and reasonable
30 attorney's fees. For a willful violation of this chapter,
31 the violator shall also be liable for exemplary damage of
32 not less than one hundred dollars nor more than one thousand
33 dollars.

34 Sec. 9. Section sixty-eight A point six (68A.6), Code
35 1977, is amended to read as follows:

1 68A.6 PENALTY. It shall be unlawful for any person to
2 deny or refuse any citizen of Iowa any right under this
3 chapter, or to cause any such right to be denied or refused.
4 Any person knowingly violating or attempting to violate any
5 provision of this chapter shall be guilty of a misdemeanor
6 and upon conviction shall be punished by a fine of not more
7 than one hundred dollars. Any public employee who willfully
8 violates this chapter may be suspended without pay or
9 discharged.

10 Sec. 10. Section three hundred four point three (304.3),
11 Code 1977, is amended by adding the following new subsection:

12 NEW SUBSECTION. Four public members, two appointed by
13 the governor, one appointed by the lieutenant governor, and
14 one appointed by the speaker of the house.

15 Sec. 11. Section three hundred four point four (304.4),
16 Code 1977, is amended to read as follows:

17 304.4 EXPENSES. The nonlegislative members of the
18 commission who are state officials shall serve without
19 compensation but may receive their actual expenses incurred
20 in the performance of their duties. ~~Legislative-members~~ The
21 public members shall receive per diem and expenses. The
22 legislative member shall receive per diem and expenses pursuant
23 to section 2.10 and section 2.12.

24 Sec. 12. This Act is effective January 1, 1978.

25 EXPLANATION

26 The bill places restrictions on the use of and access to
27 personal information in the records of the state and local
28 governments. An annual reporting of the nature, purpose and
29 method of retention of personal information in governmental
30 records is required. The state records commission is empowered
31 to promulgate rules to limit unnecessary dissemination of
32 or access to personal information. Purposes of the uses of
33 personal information are required to be filed with the
34 commission. Personal information may not be maintained in
35 records unless the purpose is filed, the individual is informed

1 of the purpose and the consequences of supplying or not
2 supplying the information, and the individual is able to
3 challenge the accuracy of the personal information. Contested
4 personal information may not be disseminated without an
5 accompanying statement of the challenge to the information.

6 An action for damages is provided for persons injured by
7 a violation of the Act and any public employee willfully
8 violating the Act may be suspended without pay or discharged.

9 Four additional members appointed by the governor,
10 lieutenant governor and speaker of the house are added to
11 the state records commission.

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