STATE OF MINNESOTA

Office of Governor Tim Pawlenty

130 State Capitol ♦ 75 Rev. Dr. Martin Luther King Jr. Boulevard ♦ Saint Paul, MN 55155

May 15, 2008

The Honorable James Metzen
President of the Senate
75 Rev. Dr. Martin Luther King, Jr. Blvd.
322 State Capitol Building
St. Paul, Minnesota 555155-1606

Dear Senator Metzen:

I have vetoed and am returning Chapter 323, Senate File 3166. Provisions in the bill that weaken the statutory criminal background check standards for people who have direct contact with children, nursing home residents, and vulnerable adults are unacceptable. Provisions in the bill that remove the right to confidentiality that was previously promised to birth parents who placed a child for adoption are also problematic.

The criminal background check procedures for persons providing direct care to children and other vulnerable populations were significantly strengthened during the 2005 legislative session. At that time, the Legislature amended Minnesota Statutes, Section 245C.15, to expressly enumerate sex offenses, predatory offenses such as murder, felony spousal and child abuse, child pornography, and other serious felony offenses as permanent bars from employment providing direct services to children and vulnerable adults. The bill also exempted these most serious of crimes from the administrative set aside process. The protections afforded in H.F. 1, Chapter 136, passed both chambers of the Legislature with broad bipartisan support. This bill compromises those protections.

I expressed my specific concerns on the criminal background check provisions in this bill in a letter to the conference committee. It is unfortunate that my concerns were not addressed.

S.F. 3166 weakens the ability of the Department of Human Services to disqualify an individual from direct contact services where a preponderance of the evidence supports the commission of a disqualifying crime. This bill would invoke a

higher evidentiary standard of "clear and convincing evidence." The preponderance of evidence standard has been a workable standard for many years. Requiring the agency to prove the conduct by a higher evidentiary standard will require the agency to allow individuals, for whom there is significant and credible evidence of serious criminal conduct, to work with children and other vulnerable individuals.

This bill also amends current law to allow individuals who were granted a set aside prior to July 1, 2005, to request another set aside despite their crime being included within the list of permanently disqualifying crimes. This would permit over 400 offenders who committed very serious crimes to potentially obtain a set aside to provide direct contact services to children and other vulnerable individuals.

Finally, S.F. 3166 contains a provision to amend Section 245C.24 to expressly permit a set aside for a person convicted of participating in a felony drive-by shooting, for the purpose of working in a correctional facility. Felony drive-by shooting is rightfully identified as a crime that results in a permanent disqualification. The serious and violent nature of the permanent disqualification crimes is the reason why the Legislature identified them as offenses that result in a permanent disqualification. It fundamentally undermines public policy to statutorily carve out an exception for the purpose of satisfying the specific employment desires of a single constituent.

I am also concerned about this bill's amendment to current laws that afford privacy to birth parents who placed a child for adoption before 1977. Under current law, birth parents are notified that birth records eventually become accessible to the adopted child unless a birth parent files an affidavit opposing release of his or her personally identifying information. However, before 1977, adoption records and the original birth record were sealed. Birth parents that placed a child for adoption were promised that their information would be sealed and kept confidential.

Because of this promise of confidentiality, existing law has always treated pre-adoption birth records from before 1977 with a presumption of confidentiality. For example, when the Legislature established a procedure for an adopted

person to request disclosure of the person's pre-adoption birth record from the State Registrar, the procedure required notice of the request to the birth parents and an opportunity for either parent to consent or object to the release of his or her personally indentifying information. If the birth parents could not be located, or objected to release, a court review process was required for the disclosure of information.

This bill would erase the long-standing presumption of confidentiality for adoptions occurring before 1977 and make those records accessible in the same manner as more recent adoptions. Pre-adoption birth records and personally identifying information would be accessible to the adopted child at age 19 unless the birth parent has affirmatively filed an affidavit opposing release. This bill does not require notice to the pre-1977 birth parents, only posted notices on adoption websites. Accordingly, pre-1977 birth parents are unlikely to receive any actual or meaningful notice of the potential release of personally identifying information.

Although many birth parents may not object to the release of the pre-adoption birth certificate, a significant number choose to preserve confidentiality. Statistics available from Lutheran Social Services indicate that, on average, 23 percent of the birth mothers contacted declined to release identifying information. Releasing this information without their knowledge or consent has the potential to undermine the law and promises that existed for pre-1977 birth parents.

Additionally, this bill would allow release of birth records if the birth parent is deceased. This eliminates any ability of the birth parent to maintain confidentiality and could impact surviving family members.

Before 1977, the law supported a birth parent's expectation their identity and birth records would be forever sealed and confidential. Breaching the promise of confidentiality previously given to these birth parents is not appropriate. Any change to their legitimate expectation of confidentiality must include meaningful notice of the change to the law and an opportunity to protect confidentiality.

The non-controversial child welfare and early childhood development provisions in this bill (Articles 1 and 3) strengthen policies and supports for vulnerable

children in our state and will help Minnesota access federal funding. It is important that we work together to enact these provisions as soon as possible. I hope the Legislature will act to pass these provisions before the end of the 2008 session, unencumbered by the controversial amendments.

Sincerely,

Tim Pawlenty
Governor

Cc: Senator Lawrence J. Pogemiller, Majority Leader
Senator David Senjem, Minority Leader
Senator Patricia Torres Ray
Representative Margaret Anderson Kelliher, Speaker of the House
Representative Marty Seifert, Minority Leader
Representative Neva Walker
Mr. Patrick E. Flahaven, Secretary of the Senate
Mr. Al Mathiowetz, Chief Clerk of the House of Representatives
Mr. Mark Ritchie, Secretary of State