A bill for an act

relating to data practices; modifying provisions governing civil investigative data and licensing data; amending Minnesota Statutes 2006, section 13.41; proposing coding for new law in Minnesota Statutes, chapter 13; repealing Minnesota Statutes 2006, section 13.39, subdivision 1.

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

Section 1. **[13.395] CIVIL INVESTIGATIVE DATA.**

Subdivision 1. **Civil investigative data.** (a) "Civil investigative data" means data collected, created, received, maintained, or disseminated by a government entity as part of an investigation undertaken for the purpose of the commencement or defense of a civil legal action.

(b) A "civil legal action" includes, but is not limited to, judicial, administrative, or arbitration proceedings.

(c) Administrative orders issued in connection with an investigation are civil investigative data.

(d) Data collected, created, received, maintained, or disseminated by a government entity as part of activities to monitor compliance with laws the government entity administers or enforces do not become civil investigative data unless the government entity determines that the activities are part of an investigation undertaken for the purpose of the commencement or defense of a civil legal action.

(e) An investigation is undertaken for the purpose of the commencement or defense of a civil legal action if and when:

(1) the government entity determines that there is a reasonable likelihood that it will pursue or that it will need to defend a civil legal action; or

(2) the government entity decides to pursue or defend a civil legal action.

Subd. 2. **Confidential or protected nonpublic data.** Civil investigative data are classified as confidential under section 13.02, subdivision 3, in the case of data on individuals, and protected nonpublic data under section 13.02, subdivision 13, in the case of data not on individuals. Civil investigative data become public or may be disclosed under subdivisions 3, 4, and 5.

Subd. 3. **Inactive civil investigative data.** (a) Civil investigative data become inactive upon the occurrence of any of the following events:

(1) the government entity, or the chief attorney acting for the government entity, decides not to pursue the civil legal action;

(2) the time to commence a civil legal action has expired under the statute of limitations or agreement applicable to the civil legal action;

(3) the right to appeal by either party to the civil legal action has been exhausted, waived, or expired;

(4) a written agreement ends the investigation or civil legal action; or

(5) an administrative order issued by the investigating government entity is not timely appealed.

(b) Inactive civil investigative data are public, except as follows:

(1) data determined to be inactive under paragraph (a), clause (1), are again classified as confidential or protected nonpublic if the government entity or chief attorney acting for the government entity decides to renew the civil legal action;

(2) data remain classified as confidential or protected nonpublic if the government entity or the chief attorney acting for the government entity decides that disclosure would jeopardize another investigation or civil legal action;

(3) data that are classified as other than public by another provision of this chapter or other law retain that classification;

(4) data protected by order of a court or other government entity with authority to issue protective orders remain confidential or protected nonpublic;

(5) data that identify a complainant are private or nonpublic data on the complainant;

(6) data that relate to an individual's health and from which the individual can be identified are private data on the individual; and

(7) data concerning an investigation of a licensee or applicant for a license by a licensing agency are private or nonpublic, except that a written agreement or final order that imposes discipline or other sanction against the licensee or applicant for a license is public. For purposes of this clause, the following terms have the meanings given them:

(i) "license" has the meaning given in section 13.41, subdivision 1, paragraph (a); and

(ii) "licensing agency" means a government entity that has the authority to deny, suspend, revoke, or otherwise restrict the license as a result of an investigation, or a government entity that has the authority to commence a proceeding against a licensee for any of those purposes.

Subd. 4. **Proceedings in a court or at the Office of Administrative Hearings.** Notwithstanding subdivision 2 or 3, all civil investigative data made part of the record of a proceeding in a court or at the Office of Administrative Hearings or in any subsequent proceeding in the matter are public unless protected by a court or administrative law judge order, or as otherwise provided by law.

Subd. 5. **Disclosure of civil investigative data.** Notwithstanding classification as not public by this section, civil investigative data may be disclosed as set out in this subdivision.

(a) Any person may bring an action in the district court in the county where civil investigative data are maintained to obtain disclosure of the data. The court may order that all or some of the data be released to the public or to the person bringing the action. In determining whether data shall be disclosed, the court shall consider whether the benefit to the person bringing the action or to the public outweighs any harm to the public, the government entity, or any person identified in the data. The court shall not order disclosure of the identity of a complainant unless the complainant consents or the court determines that the complaint was false and made in bad faith. The court shall examine the data in dispute in camera.

(b) If a complainant or witness provides a statement to a government entity, that government entity must make the statement accessible to that complainant or witness.

(c) A government entity may make any civil investigative data classified as not public by this section accessible to any person, agency, or the public if the government entity determines that the access will aid the law enforcement or investigative process, promote public health or safety, or dispel widespread rumor or unrest. However, civil investigative data may not be disclosed under this paragraph if the data are protected by order of a court or tribunal.

(d) Disclosure of civil investigative data to the subject of the investigation or to others under this section does not make the data public.

Sec. 2. Minnesota Statutes 2006, section 13.41, is amended to read:

13.41 LICENSING DATA.

Subdivision 1. **Definition.** As used in this section, the following terms have the meanings given them.

(a) "License" means a credential specified in Minnesota Statutes as a license, certification, registration, permit, or any other credential issued by a government entity that is required in order for a person to engage in an occupation, trade, or business regulated by law.

(b) "Licensing agency" means any ~~board, department or agency of this state which~~ government entity that is given the statutory authority to issue professional or other types of licenses, except the various agencies primarily administered by the commissioner of human services. Data pertaining to persons or agencies licensed or registered under authority of the commissioner of human services shall be administered pursuant to section 13.46.

Subd. 2. **Private and nonpublic data; designated addresses and telephone numbers.** (a) Except as provided in this chapter or other law, the following data collected, created or maintained by any licensing agency are classified as private, pursuant to section 13.02, subdivision 12, in the case of data on individuals, or nonpublic, under section 13.02, subdivision 9, in the case of data not on individuals: all data related to an application for a license, other than ~~their names~~ the applicant's name and designated ~~addresses~~ address, ~~submitted by applicants for licenses; the identity of complainants who have made reports concerning licensees or applicants which appear in inactive complaint data unless the complainant consents to the disclosure; the nature or content of unsubstantiated complaints when the information is not maintained in anticipation of legal action; the identity of patients whose medical records are received by any health licensing agency for purposes of review or in anticipation of a contested matter; inactive investigative data relating to violations of statutes or rules; and the record of any disciplinary proceeding except as limited by subdivision 5~~ the license period for which the applicant applied, and whether the application is approved, disapproved, withdrawn, or pending.

(b) An applicant for a license shall designate on the application a residence or business address and telephone number at which the applicant can be contacted in connection with the license application. A licensee shall designate a residence or business address and telephone number at which the licensee can be contacted in connection with the license. By designating an address under this paragraph other than a residence address, the applicant or licensee consents to accept personal service of process by service on the licensing agency for legal or administrative proceedings. The licensing agency shall mail a copy of the documents to the applicant or licensee at the last known residence address, in the case of an applicant or licensee who is an individual, or to the last known address, in the case of an applicant or licensee that is not an individual.

Subd. 3. **Board of Peace Officer Standards and Training.** The following government data of the Board of Peace Officer Standards and Training are private data:

(1) home addresses of licensees and applicants for licenses; and

(2) data that identify the state agency, statewide system, or political subdivision that employs a licensed peace officer.

The board may disseminate private data on applicants and licensees as is necessary to administer law enforcement licensure or to provide data under section 626.845, subdivision 1, to law enforcement agencies who are conducting employment background investigations.

~~Subd. 4. **Confidential data.** The following data collected, created or maintained by any licensing agency are classified as confidential, pursuant to section 13.02, subdivision 3: active investigative data relating to the investigation of complaints against any licensee.~~

Subd. 5. **Public data.** Licensing agency minutes~~,~~ and application data on licensees except nondesignated addresses~~, orders for hearing, findings of fact, conclusions of law and specification of the final disciplinary action contained in the record of the disciplinary action~~ and Social Security numbers are classified as public, pursuant to section 13.02, subdivision 15. ~~The entire record concerning the disciplinary proceeding is public data pursuant to section 13.02, subdivision 15, in those instances where there is a public hearing concerning the disciplinary action. If the licensee and the licensing agency agree to resolve a complaint without a hearing, the agreement and the specific reasons for the agreement are public data.~~ The license numbers, the license status, and continuing education records issued or maintained by the Board of Peace Officer Standards and Training are classified as public data, pursuant to section 13.02, subdivision 15.

Subd. 5a. **Complaints and investigations.** All data related to complaints against or investigations about a licensee or applicant for a license are governed by section 13.395.

Subd. 6. **Releasing data.** Any licensing agency may make any data classified as ~~private or confidential~~ not public pursuant to this section accessible to ~~an appropriate person or agency~~ any person, government entity, or the public if the licensing agency determines that ~~failure to make the data accessible is likely to create a clear and present danger to public health or safety~~ the access will aid the law enforcement or investigative process, provide due process rights, promote public health or safety, or dispel widespread rumor or unrest.

Sec. 3. **REPEALER.**

Minnesota Statutes 2006, section 13.39, subdivision 1, is repealed.

13.39 CIVIL INVESTIGATION.

Subdivision 1. **Definitions.** A "pending civil legal action" includes but is not limited to judicial, administrative or arbitration proceedings. Whether a civil legal action is pending shall be determined by the chief attorney acting for the government entity.