

**SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION**

S.F. No. 4949

(SENATE AUTHORS: WESTLIN)

DATE
03/13/2024

D-PG
12197

Introduction and first reading
Referred to Judiciary and Public Safety

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to data practices; modifying certain data practices provisions to modernize
1.3 and update data storage practices; amending Minnesota Statutes 2022, sections
1.4 13.05, subdivision 5; 13.055, subdivision 2; 13.08, subdivision 1; 13.40, subdivision
1.5 2; 15.17, subdivisions 1, 2; 138.17, subdivision 1.

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

1.7 Section 1. Minnesota Statutes 2022, section 13.05, subdivision 5, is amended to read:

1.8 Subd. 5. **Data protection.** (a) The responsible authority shall:

1.9 (1) establish procedures to assure that all data on individuals is accurate, complete, and
1.10 current for the purposes for which it was collected;

1.11 (2) establish appropriate security safeguards for all records containing data on individuals,
1.12 including procedures for ensuring that data that are not public are only accessible to persons
1.13 whose work assignment reasonably requires access to the data, and is only being accessed
1.14 by those persons for purposes described in the procedure; ~~and~~

1.15 (3) establish procedures for monitoring access to private or confidential data on
1.16 individuals; and

1.17 ~~(3)~~ (4) develop a policy incorporating these procedures, which may include a model
1.18 policy governing access to the data if sharing of the data with other government entities is
1.19 authorized by law.

1.20 (b) When not public data is being disposed of, the data must be destroyed in a way that
1.21 prevents its contents from being determined.

2.1 Sec. 2. Minnesota Statutes 2022, section 13.055, subdivision 2, is amended to read:

2.2 Subd. 2. **Notice to individuals; investigation report.** (a) A government entity that
2.3 collects, creates, receives, maintains, or disseminates private or confidential data on
2.4 individuals must disclose any a breach of the security of the data ~~following discovery or~~
2.5 ~~notification of the breach.~~ if:

2.6 (1) the data is personal information as defined under section 325E.61, subdivision 1,
2.7 paragraphs (e) and (f);

2.8 (2) the data is data on a minor child; or

2.9 (3) the unauthorized access to or acquisition of data is by an employee, contractor, or
2.10 agent of the government entity with the intent to use the data for nongovernmental purposes.

2.11 (b) Written notification must be made to ~~any~~ the individual who is the subject of the
2.12 data ~~and whose private or confidential data was, or is reasonably believed to have been,~~
2.13 ~~acquired by an unauthorized person~~ identified in paragraph (a) and must inform the individual
2.14 that a report will be prepared under paragraph ~~(b)~~ (c), how the individual may obtain access
2.15 to the report, and that the individual may request delivery of the report by mail or email.
2.16 The disclosure must be made in the most expedient time possible and without unreasonable
2.17 delay, consistent with (1) the legitimate needs of a law enforcement agency as provided in
2.18 subdivision 3; or (2) any measures necessary to determine the scope of the breach and restore
2.19 the reasonable security of the data.

2.20 ~~(b)~~ (c) Notwithstanding section 13.15 or 13.37, upon completion of an investigation into
2.21 any breach in the security of data and final disposition of any disciplinary action for purposes
2.22 of section 13.43, including exhaustion of all rights of appeal under any applicable collective
2.23 bargaining agreement, the responsible authority shall prepare a report on the facts and results
2.24 of the investigation. If the breach involves unauthorized access to or acquisition of data by
2.25 an employee, contractor, or agent of the government entity, the report must at a minimum
2.26 include:

2.27 (1) a description of the type of data that were accessed or acquired;

2.28 (2) the number of individuals whose data was improperly accessed or acquired;

2.29 (3) if there has been final disposition of disciplinary action for purposes of section 13.43,
2.30 the name of each employee determined to be responsible for the unauthorized access or
2.31 acquisition, unless the employee was performing duties under chapter 5B; and

2.32 (4) the final disposition of any disciplinary action taken against each employee in
2.33 response.

3.1 Sec. 3. Minnesota Statutes 2022, section 13.08, subdivision 1, is amended to read:

3.2 Subdivision 1. **Action for damages.** Notwithstanding section 466.03, a responsible
 3.3 authority or government entity which violates any provision of this chapter is liable to a
 3.4 ~~person~~ the subject of the data, a parent or guardian of a minor subject of the data, or
 3.5 representative of a decedent who suffers any damage as a result of the violation, and the
 3.6 ~~person damaged~~ the subject of the data, a parent or guardian of a minor subject of the data,
 3.7 or a representative in the case of private data on decedents or confidential data on decedents
 3.8 may bring an action against the responsible authority or government entity to cover any
 3.9 damages sustained, plus costs and reasonable attorney fees. In the case of a willful violation,
 3.10 the government entity shall, in addition, be liable to exemplary damages of not less than
 3.11 \$1,000, nor more than \$15,000 for each violation. The state is deemed to have waived any
 3.12 immunity to a cause of action brought under this chapter.

3.13 Sec. 4. Minnesota Statutes 2022, section 13.40, subdivision 2, is amended to read:

3.14 Subd. 2. **Private data; library ~~borrowers~~ patrons.** (a) Except as provided in paragraph
 3.15 (b) or pursuant to a court order, the following data maintained by a library are private data
 3.16 on individuals and may not be disclosed for other than library purposes ~~except pursuant to~~
 3.17 ~~a court order:~~

3.18 (1) data that link a library patron's name with materials requested or borrowed by the
 3.19 patron or that link a patron's name with a specific subject about which the patron has
 3.20 requested information or materials; ~~or~~

3.21 (2) data in applications for patron borrower cards, other than the name of the borrower;
 3.22 and

3.23 (3) the names of minor children library patrons maintained in library records.

3.24 (b) A library may release reserved materials to a family member or other person who
 3.25 resides with a library patron and who is picking up the material on behalf of the patron. A
 3.26 patron may request that reserved materials be released only to the patron.

3.27 (c) Section 13.04, subdivision 2, does not apply to data classified under paragraph (a),
 3.28 clause (3).

3.29 Sec. 5. Minnesota Statutes 2022, section 15.17, subdivision 1, is amended to read:

3.30 Subdivision 1. **Must be kept.** All officers and agencies of the state, counties, cities,
 3.31 towns, school districts, municipal subdivisions or corporations, or other public authorities
 3.32 or political entities within the state, hereinafter "public officer," shall make and preserve

4.1 all records ~~necessary to~~ pursuant to state law or in connection with the transaction of public
 4.2 business for a full and accurate knowledge of their official activities regardless of the record's
 4.3 physical form or storage media. ~~Government records may be produced in the form of~~
 4.4 ~~computerized records.~~ All government records shall be made ~~on a physical medium of a~~ in
 4.5 a manner and quality to insure permanent records. Every public officer is empowered to
 4.6 reproduce records ~~if the records are not deemed to be of permanent or archival value by the~~
 4.7 ~~commissioner of administration and the records disposition panel under section 138.17.~~ ~~The~~
 4.8 ~~public officer is empowered to reproduce these records by any photographic, photostatic,~~
 4.9 ~~microphotographic, optical disk imaging system, microfilming, or other reproduction~~ in a
 4.10 method that clearly and accurately reproduces the records. Each public officer may order
 4.11 ~~that those photographs, photostats, microphotographs, microfilms, optical images, or other~~
 4.12 ~~reproductions,~~ reproductions be substituted for the originals of them. Records that are
 4.13 reproduced when so ordered by any public officer are admissible as evidence in all courts
 4.14 and proceedings of every kind. A certified or exemplified copy of the reproduction has the
 4.15 same effect and weight as evidence as would a certified or exemplified copy of the original.
 4.16 The public officer may direct the destruction or sale for salvage or other disposition of the
 4.17 originals from which they were made, in accordance with the disposition requirements of
 4.18 section 138.17. ~~Photographs, photostats, microphotographs, microfilms, optical images, or~~
 4.19 ~~other reproductions are for all purposes deemed the original recording of the papers, books,~~
 4.20 ~~documents, and records reproduced when so ordered by any public officer and are admissible~~
 4.21 ~~as evidence in all courts and proceedings of every kind. A facsimile or exemplified or~~
 4.22 ~~certified copy of a photograph, photostat, microphotograph, microfilm, optical image, or~~
 4.23 ~~other reproduction, or an enlargement or reduction of it, has the same effect and weight as~~
 4.24 ~~evidence as would a certified or exemplified copy of the original.~~

4.25 Sec. 6. Minnesota Statutes 2022, section 15.17, subdivision 2, is amended to read:

4.26 Subd. 2. **Responsibility for records.** The chief administrative officer of each public
 4.27 agency shall be responsible for the preservation and care of the ~~agency's government records,~~
 4.28 ~~which shall include written or printed books, papers, letters, contracts, documents, maps,~~
 4.29 ~~plans, computer-based data, and other records made or received pursuant to law or in~~
 4.30 ~~connection with the transaction of public business~~ records described in subdivision 1. It
 4.31 shall be the duty of each agency, and of its chief administrative officer, to carefully protect
 4.32 and preserve government records from deterioration, mutilation, loss, or destruction. Records
 4.33 or record books may be repaired, renovated, or rebound when necessary to preserve them
 4.34 properly.

5.1 Sec. 7. Minnesota Statutes 2022, section 138.17, subdivision 1, is amended to read:

5.2 Subdivision 1. **Destruction, preservation, reproduction of records; prima facie**
5.3 **evidence.** (a) The attorney general, legislative auditor in the case of state records, state
5.4 auditor in the case of local records, and director of the Minnesota Historical Society,
5.5 hereinafter director, shall constitute the Records Disposition Panel. The members of the
5.6 panel shall have power by majority vote to direct the destruction or sale for salvage of
5.7 government records determined to be no longer of any value, or to direct the disposition by
5.8 gift to the Minnesota Historical Society or otherwise of government records determined to
5.9 be valuable for preservation. The Records Disposition Panel may by majority vote order
5.10 any of those records to be reproduced ~~by photographic or other means, and order that~~
5.11 ~~photographic or other~~ and that the reproductions be substituted for the originals of them.
5.12 Records that are reproduced when so ordered by the Records Disposition Panel are admissible
5.13 as evidence in all courts and proceedings of every kind. A certified or exemplified copy of
5.14 the reproduction has the same effect and weight as evidence as would a certified or
5.15 exemplified copy of the original. It may direct the destruction or sale for salvage or other
5.16 disposition of the originals from which they were made. ~~Photographic or other reproductions~~
5.17 ~~shall for all purposes be deemed the originals of the records reproduced when so ordered~~
5.18 ~~by the records disposition panel, and shall be admissible as evidence in all courts and in~~
5.19 ~~proceedings of every kind. A facsimile, exemplified or certified copy of a photographic,~~
5.20 ~~optical disk imaging, or other reproduction, or an enlargement or reduction of it, shall have~~
5.21 ~~the same effect and weight as evidence as would a certified or exemplified copy of the~~
5.22 ~~original.~~ The Records Disposition Panel, by majority vote, may direct the storage of
5.23 government records, except as herein provided, ~~and direct the storage of photographic or~~
5.24 ~~other reproductions.~~ ~~Photographic or other~~ Reproductions substituted for original records
5.25 shall be disposed of in accordance with the procedures provided for the original records.

5.26 (b) For the purposes of this chapter:

5.27 (1) the term "government records" means ~~state and local records, including all cards,~~
5.28 ~~correspondence, discs, maps, memoranda, microfilms, papers, photographs, recordings,~~
5.29 ~~reports, tapes, writings, optical disks, and other data, information, or documentary material,~~
5.30 ~~regardless of physical form or characteristics, storage media or conditions of use, made or~~
5.31 ~~received by an officer or agency of the state and an officer or agency of a county, city, town,~~
5.32 ~~school district, municipal subdivision or corporation or other public authority or political~~
5.33 ~~entity within the state pursuant to state law or in connection with the transaction of public~~
5.34 ~~business by an officer or agency~~ those state or local records which must be preserved under
5.35 section 15.17, subdivision 1;

6.1 (2) the term "state record" means a record of a department, office, officer, commission,
6.2 commissioner, board or any other agency, however styled or designated, of the executive
6.3 branch of state government; a record of the state legislature; a record of any court, whether
6.4 of statewide or local jurisdiction; and any other record designated or treated as a state record
6.5 under state law;

6.6 (3) the term "local record" means a record of an agency of a county, city, town, school
6.7 district, municipal subdivision or corporation or other public authority or political entity;

6.8 (4) the term "records" excludes data and information that does not become part of an
6.9 official transaction, library and museum material made or acquired and kept solely for
6.10 reference or exhibit purposes, extra copies of documents kept only for convenience of
6.11 reference and stock of publications and processed documents, and bonds, coupons, or other
6.12 obligations or evidences of indebtedness, the destruction or other disposition of which is
6.13 governed by other laws;

6.14 (5) the term "state archives" means those records preserved or appropriate for preservation
6.15 as evidence of the organization, functions, policies, decisions, procedures, operations or
6.16 other activities of government or because of the value of the information contained in them,
6.17 when determined to have sufficient historical or other value to warrant continued preservation
6.18 by the state of Minnesota and accepted for inclusion in the collections of the Minnesota
6.19 Historical Society.

6.20 (c) If the decision is made to dispose of records by majority vote, the Minnesota Historical
6.21 Society may acquire and retain whatever they determine to be of potential historical value.