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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 4522

03/26/2020 Authored by Lucero
The bill was read for the first time and referred to the Judiciary Finance and Civil Law Division

1.1 A bill for an act
1.2 relating to data privacy; establishing neurodata rights; modifying certain crimes
1.3 to add neurodata elements; providing civil and criminal penalties; amending
1.4 Minnesota Statutes 2018, sections 13.04, by adding a subdivision; 609.88,
1.5 subdivision 2; 609.891, subdivision 3; proposing coding for new law in Minnesota
1.6 Statutes, chapter 325E.

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

1.8 Section 1. Minnesota Statutes 2018, section 13.04, is amended by adding a subdivision
1.9 to read:

1.10 Subd. 1a. Right to mental data. (a) An individual has the right to mental privacy. A
1.11 government entity must not, without informed consent, collect data transcribed directly
1.12 from brain activity.

1.13 (b) An individual has the right to cognitive liberty. A government entity must not interfere
1.14 with the free and competent decision making of the individual when making neurotechnology
1.15 decisions.

1.16 Sec. 2. [325E.80] NEUROTECHNOLOGY.

1.17 Subdivision 1. Definitions. (a) For purposes of this section, the following terms have
1.18 the meanings given.

1.19 (b) "Brain-computer interface" means a device that enables its user to interact with a
1.20 computer by means of brain activity only.

2.1 (c) "Consciousness bypass" means the use of neurotechnology to manipulate brain
2.2 activity by applying electrical or optical stimuli without the conscious awareness of the
2.3 person whose brain activity is being manipulated.

2.4 (d) "Neurotechnology" means the assembly of methods and instruments that enable a
2.5 direct connection of technical components with the nervous system.

2.6 Subd. 2. **Neurotechnology rights.** (a) An individual has the right to change one's
2.7 decisions regarding neurotechnology and the right to determine by what means to change
2.8 that decision.

2.9 (b) An individual has the right to mental integrity and is afforded protection from
2.10 neurotechnological interventions of the mind and from unauthorized access to or manipulation
2.11 of an individual's brain activity.

2.12 (c) An individual has the right to psychological continuity and is afforded protection
2.13 from unauthorized neurotechnological alterations in mental functions critical to personality.

2.14 Subd. 3. **Data collection consent.** Each time an individual connects to a brain-computer
2.15 interface, the company responsible for recording and storing the data must provide notice
2.16 of (1) the uses that the data may be used for by the company, and (2) the third parties with
2.17 which the data will be shared. Before the data may be used or shared, the individual must
2.18 provide consent for each use and third party. The individual must approve each use and
2.19 third party using a separate consent form.

2.20 Subd. 4. **Consciousness bypass prohibition.** (a) Except as provided in paragraph (b),
2.21 a company must not use a brain-computer interface to bypass conscious decision making
2.22 by the individual.

2.23 (b) An individual may provide informed consent before a medical procedure designed
2.24 to bypass conscious decision making. Consent obtained by using a consciousness bypass
2.25 is not informed consent.

2.26 Subd. 5. **Enforcement; civil penalty.** A company that violates subdivision 3 or 4 is
2.27 subject to a civil penalty of up to \$10,000 per incident. The attorney general may bring an
2.28 action in the name of the state in a court of competent jurisdiction to recover civil penalties
2.29 as provided in this subdivision.

2.30 Sec. 3. Minnesota Statutes 2018, section 609.88, subdivision 2, is amended to read:

2.31 Subd. 2. **Penalty.** Whoever commits computer damage may be sentenced as follows:

3.1 (a) to imprisonment for not more than ten years or to payment of a fine of not more than
3.2 \$50,000, or both, if:

3.3 (1) the damage, destruction, or alteration results in a loss in excess of \$2,500, to the
3.4 owner, or the owner's agent, or lessee; or

3.5 (2) the damage, destruction, or alteration occurs to a computer having a brain-computer
3.6 interface, regardless of the value of the loss;

3.7 (b) to imprisonment for not more than five years or to payment of a fine of not more
3.8 than \$10,000, or both, if the damage, destruction or alteration results in a loss of more than
3.9 \$500, but not more than \$2,500 to the owner, or the owner's agent or lessee; or

3.10 (c) in all other cases to imprisonment for not more than 90 days or to payment of a fine
3.11 of not more than \$1,000, or both.

3.12 **EFFECTIVE DATE.** This section is effective for crimes committed on or after August
3.13 1, 2020.

3.14 Sec. 4. Minnesota Statutes 2018, section 609.891, subdivision 3, is amended to read:

3.15 Subd. 3. **Gross misdemeanor.** (a) A person who violates subdivision 1 in a manner that
3.16 creates a risk to public health and safety is guilty of a gross misdemeanor and may be
3.17 sentenced to imprisonment for a term of not more than one year or to payment of a fine of
3.18 not more than \$3,000, or both.

3.19 (b) A person who violates subdivision 1 in a manner that compromises the security of
3.20 data that are protected under section 609.52, subdivision 2, clause (8), or are not public data
3.21 as defined in section 13.02, subdivision 8a, is guilty of a gross misdemeanor and may be
3.22 sentenced under paragraph (a).

3.23 (c) A person who violates subdivision 1 and gains access to personal data is guilty of a
3.24 gross misdemeanor and may be sentenced under paragraph (a).

3.25 (d) A person who is convicted of a second or subsequent misdemeanor violation of
3.26 subdivision 1 within five years is guilty of a gross misdemeanor and may be sentenced
3.27 under paragraph (a).

3.28 (e) A person who violates subdivision 1 by accessing, or attempting to access, an
3.29 electronic terminal through opening, or attempting to open, any panel or access door without
3.30 authorization is guilty of a gross misdemeanor and may be sentenced under paragraph (a).

4.1 (f) A person who violates subdivision 1 and gains access to a system that includes a
4.2 brain-computer interface is guilty of a gross misdemeanor and may be sentenced under
4.3 paragraph (a).

4.4 **EFFECTIVE DATE.** This section is effective for crimes committed on or after August
4.5 1, 2020.