

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 1404

02/22/2021 Authored by Becker-Finn
The bill was read for the first time and referred to the Committee on Judiciary Finance and Civil Law
03/15/2021 Adoption of Report: Placed on the General Register as Amended
Read for the Second Time
03/17/2021 By motion, re-referred to the Committee on Ways and Means
03/24/2022 By motion, recalled and re-referred to the Committee on Judiciary Finance and Civil Law

1.1 A bill for an act
1.2 relating to data practices; modifying certain government data practices provisions;
1.3 classifying certain data; reestablishing the Legislative Commission on Data
1.4 Practices; requiring certifying entities to timely process visa certification documents;
1.5 amending Minnesota Statutes 2020, sections 13.32, subdivision 3; 13.7931, by
1.6 adding a subdivision; 13.824, subdivision 6; 13.825, subdivision 9; 13.856,
1.7 subdivision 3; 144.225, subdivision 7; proposing coding for new law in Minnesota
1.8 Statutes, chapters 3; 84; 611A.

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

1.10 Section 1. **[3.8844] LEGISLATIVE COMMISSION ON DATA PRACTICES.**

1.11 Subdivision 1. **Established.** The Legislative Commission on Data Practices and Personal
1.12 Data Privacy is created to study issues relating to government data practices and individuals'
1.13 personal data privacy rights and to review legislation impacting data practices, data security,
1.14 and personal data privacy. The commission is a continuation of the commission that was
1.15 established by Laws 2014, chapter 193, as amended, and which expired June 30, 2019.

1.16 Subd. 2. **Membership.** The commission consists of four senators appointed by the senate
1.17 Subcommittee on Committees of the Committee on Rules and Administration, and four
1.18 members of the house of representatives appointed by the speaker. Two members from each
1.19 chamber must be from the majority party in that chamber and two members from each
1.20 chamber must be from the minority party in that chamber. Each appointing authority must
1.21 make appointments as soon as possible after the beginning of the regular legislative session
1.22 in the odd-numbered year. The ranking senator from the majority party appointed to the
1.23 commission must convene the first meeting of a biennium by February 15 in the
1.24 odd-numbered year. The commission may elect up to four former legislators who have
1.25 demonstrated an interest in, or have a history of working in, the areas of government data

practices and personal data privacy to serve as nonvoting members of the commission. The former legislators must not be registered lobbyists and shall be compensated as provided under section 15.0575, subdivision 3.

Subd. 3. **Terms; vacancies.** Members of the commission serve for terms beginning upon appointment and ending at the beginning of the regular legislative session in the next odd-numbered year. The appropriate appointing authority must fill a vacancy for a seat of a current legislator for the remainder of the unexpired term.

Subd. 4. **Officers.** The commission must elect a chair and may elect other officers as it determines are necessary. The chair alternates between a member of the senate and a member of the house of representatives in January of each odd-numbered year.

Subd. 5. **Staff.** Legislative staff must provide administrative and research assistance to the commission. The Legislative Coordinating Commission may, if funding is available, appoint staff to provide research assistance.

Subd. 6. **Duties.** The commission shall:

(1) review and provide the legislature with research and analysis of emerging issues relating to government data practices and security and privacy of personal data;

(2) review and make recommendations on legislative proposals relating to the Minnesota Government Data Practices Act; and

(3) review and make recommendations on legislative proposals impacting personal data privacy rights, data security, and other related issues.

EFFECTIVE DATE. This section is effective the day following final enactment. Initial members of the commission serve for a term ending in January 2023. A member of the house of representatives shall serve as the first chair of the commission. A member of the senate shall serve as chair of the commission beginning in January 2023.

Sec. 2. Minnesota Statutes 2020, section 13.32, subdivision 3, is amended to read:

Subd. 3. **Private data; when disclosure is permitted.** Except as provided in subdivision 5, educational data is private data on individuals and shall not be disclosed except as follows:

(a) pursuant to section 13.05;

(b) pursuant to a valid court order;

(c) pursuant to a statute specifically authorizing access to the private data;

(d) to disclose information in health, including mental health, and safety emergencies pursuant to the provisions of United States Code, title 20, section 1232g(b)(1)(I) and Code of Federal Regulations, title 34, section 99.36;

(e) pursuant to the provisions of United States Code, title 20, sections 1232g(b)(1), (b)(4)(A), (b)(4)(B), (b)(1)(B), (b)(3), (b)(6), (b)(7), and (i), and Code of Federal Regulations, title 34, sections 99.31, 99.32, 99.33, 99.34, 99.35, and 99.39;

(f) to appropriate health authorities to the extent necessary to administer immunization programs and for bona fide epidemiologic investigations which the commissioner of health determines are necessary to prevent disease or disability to individuals in the public educational agency or institution in which the investigation is being conducted;

(g) when disclosure is required for institutions that participate in a program under title IV of the Higher Education Act, United States Code, title 20, section 1092;

(h) to the appropriate school district officials to the extent necessary under subdivision 6, annually to indicate the extent and content of remedial instruction, including the results of assessment testing and academic performance at a postsecondary institution during the previous academic year by a student who graduated from a Minnesota school district within two years before receiving the remedial instruction;

(i) to appropriate authorities as provided in United States Code, title 20, section 1232g(b)(1)(E)(ii), if the data concern the juvenile justice system and the ability of the system to effectively serve, prior to adjudication, the student whose records are released; provided that the authorities to whom the data are released submit a written request for the data that certifies that the data will not be disclosed to any other person except as authorized by law without the written consent of the parent of the student and the request and a record of the release are maintained in the student's file;

(j) to volunteers who are determined to have a legitimate educational interest in the data and who are conducting activities and events sponsored by or endorsed by the educational agency or institution for students or former students;

(k) to provide student recruiting information, from educational data held by colleges and universities, as required by and subject to Code of Federal Regulations, title 32, section 216;

(l) to the juvenile justice system if information about the behavior of a student who poses a risk of harm is reasonably necessary to protect the health or safety of the student or other individuals;

(m) with respect to Social Security numbers of students in the adult basic education system, to Minnesota State Colleges and Universities and the Department of Employment and Economic Development for the purpose and in the manner described in section 124D.52, subdivision 7;

(n) to the commissioner of education for purposes of an assessment or investigation of a report of alleged maltreatment of a student as mandated by chapter 260E. Upon request by the commissioner of education, data that are relevant to a report of maltreatment and are from charter school and school district investigations of alleged maltreatment of a student must be disclosed to the commissioner, including, but not limited to, the following:

(1) information regarding the student alleged to have been maltreated;

(2) information regarding student and employee witnesses;

(3) information regarding the alleged perpetrator; and

(4) what corrective or protective action was taken, if any, by the school facility in response to a report of maltreatment by an employee or agent of the school or school district;

(o) when the disclosure is of the final results of a disciplinary proceeding on a charge of a crime of violence or nonforcible sex offense to the extent authorized under United States Code, title 20, section 1232g(b)(6)(A) and (B) and Code of Federal Regulations, title 34, sections 99.31 (a)(13) and (14);

(p) when the disclosure is information provided to the institution under United States Code, title 42, section 14071, concerning registered sex offenders to the extent authorized under United States Code, title 20, section 1232g(b)(7); ~~or~~

(q) when the disclosure is to a parent of a student at an institution of postsecondary education regarding the student's violation of any federal, state, or local law or of any rule or policy of the institution, governing the use or possession of alcohol or of a controlled substance, to the extent authorized under United States Code, title 20, section 1232g(i), and Code of Federal Regulations, title 34, section 99.31 (a)(15), and provided the institution has an information release form signed by the student authorizing disclosure to a parent. The institution must notify parents and students about the purpose and availability of the information release forms. At a minimum, the institution must distribute the information release forms at parent and student orientation meetings; or

(r) with tribal nations about tribally enrolled or descendant students to the extent necessary for the tribal nation and school district or charter school to support the educational attainment of the student.

5.1 Sec. 3. Minnesota Statutes 2020, section 13.7931, is amended by adding a subdivision to
5.2 read:

5.3 Subd. 1b. **Data on individuals who are minors.** Data on individuals who are minors
5.4 that are collected, created, received, maintained, or disseminated by the Department of
5.5 Natural Resources are classified under section 84.0873.

5.6 Sec. 4. Minnesota Statutes 2020, section 13.824, subdivision 6, is amended to read:

5.7 Subd. 6. **Biennial audit.** (a) In addition to the log required under subdivision 5, the law
5.8 enforcement agency must maintain records showing the date and time automated license
5.9 plate reader data were collected and the applicable classification of the data. The law
5.10 enforcement agency shall arrange for an independent, biennial audit of the records to
5.11 determine whether data currently in the records are classified, how the data are used, whether
5.12 they are destroyed as required under this section, and to verify compliance with subdivision
5.13 7. If the commissioner of administration believes that a law enforcement agency is not
5.14 complying with this section or other applicable law, the commissioner may order a law
5.15 enforcement agency to arrange for additional independent audits. Data in the records required
5.16 under this paragraph are classified as provided in subdivision 2.

5.17 (b) The results of the audit are public. The commissioner of administration shall review
5.18 the results of the audit. If the commissioner determines that there is a pattern of substantial
5.19 noncompliance with this section by the law enforcement agency, the agency must
5.20 immediately suspend operation of all automated license plate reader devices until the
5.21 commissioner has authorized the agency to reinstate their use. An order of suspension under
5.22 this paragraph may be issued by the commissioner, upon review of the results of the audit,
5.23 review of the applicable provisions of this chapter, and after providing the agency a
5.24 reasonable opportunity to respond to the audit's findings.

5.25 (c) A report summarizing the results of each audit must be provided to the commissioner
5.26 of administration, to the ~~chair~~ chairs and ranking minority members of the committees of
5.27 the house of representatives and the senate with jurisdiction over data practices and public
5.28 safety issues, and to the Legislative Commission on Data Practices and Personal Data Privacy
5.29 no later than 30 days following completion of the audit.

5.30 **EFFECTIVE DATE.** This section is effective the day following final enactment.

Sec. 5. Minnesota Statutes 2020, section 13.825, subdivision 9, is amended to read:

Subd. 9. **Biennial audit.** (a) A law enforcement agency must maintain records showing the date and time portable recording system data were collected and the applicable classification of the data. The law enforcement agency shall arrange for an independent, biennial audit of the data to determine whether data are appropriately classified according to this section, how the data are used, and whether the data are destroyed as required under this section, and to verify compliance with subdivisions 7 and 8. If the governing body with jurisdiction over the budget of the agency determines that the agency is not complying with this section or other applicable law, the governing body may order additional independent audits. Data in the records required under this paragraph are classified as provided in subdivision 2.

(b) The results of the audit are public, except for data that are otherwise classified under law. The governing body with jurisdiction over the budget of the law enforcement agency shall review the results of the audit. If the governing body determines that there is a pattern of substantial noncompliance with this section, the governing body must order that operation of all portable recording systems be suspended until the governing body has authorized the agency to reinstate their use. An order of suspension under this paragraph may only be made following review of the results of the audit and review of the applicable provisions of this chapter, and after providing the agency and members of the public a reasonable opportunity to respond to the audit's findings in a public meeting.

(c) A report summarizing the results of each audit must be provided to the governing body with jurisdiction over the budget of the law enforcement agency ~~and~~² to the Legislative Commission on Data Practices and Personal Data Privacy, and to the chairs and ranking minority members of the committees of the house of representatives and the senate with jurisdiction over data practices and public safety issues no later than 60 days following completion of the audit.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 6. Minnesota Statutes 2020, section 13.856, subdivision 3, is amended to read:

Subd. 3. **Public data.** The following closed case data maintained by the ombudsperson are classified as public data pursuant to section 13.02, subdivision 15:

(1) client name;

(2) client location; and

(3) the inmate identification number assigned by the Department of Corrections.

7.1 Sec. 7. **[84.0873] DATA ON INDIVIDUALS WHO ARE MINORS.**

7.2 (a) When the Department of Natural Resources collects, creates, receives, maintains, or
7.3 disseminates the following data on individuals who the department knows are minors, the
7.4 data are considered private data on individuals, as defined in section 13.02, subdivision 12,
7.5 except for data classified as public data according to section 13.43:

7.6 (1) name;

7.7 (2) date of birth;

7.8 (3) Social Security number;

7.9 (4) telephone number;

7.10 (5) e-mail address;

7.11 (6) physical or mailing address;

7.12 (7) location data;

7.13 (8) online account access information;

7.14 (9) data associated with the location of electronic devices; and

7.15 (10) other data that would identify participants who have registered for events, programs,
7.16 or classes sponsored by the Department of Natural Resources.

7.17 (b) Data about minors classified under this section maintain their classification as private
7.18 data on individuals after the individual is no longer a minor.

7.19 Sec. 8. Minnesota Statutes 2020, section 144.225, subdivision 7, is amended to read:

7.20 Subd. 7. **Certified birth or death record.** (a) The state registrar or local issuance office
7.21 shall issue a certified birth or death record or a statement of no vital record found to an
7.22 individual upon the individual's proper completion of an attestation provided by the
7.23 commissioner and payment of the required fee:

7.24 (1) to a person who ~~has a tangible interest in the requested vital record. A person who~~
7.25 ~~has a tangible interest~~ is:

7.26 (i) the subject of the vital record;

7.27 (ii) a child of the subject;

7.28 (iii) the spouse of the subject;

7.29 (iv) a parent of the subject;

8.1 (v) the grandparent or grandchild of the subject;

8.2 (vi) if the requested record is a death record, a sibling of the subject;

8.3 ~~(vii) the party responsible for filing the vital record;~~

8.4 ~~(viii)~~ (vii) the legal custodian, guardian or conservator, or health care agent of the subject;

8.5 ~~(ix)~~ (viii) a personal representative, by sworn affidavit of the fact that the certified copy

8.6 is required for administration of the estate;

8.7 ~~(x)~~ (ix) a successor of the subject, as defined in section 524.1-201, if the subject is

8.8 deceased, by sworn affidavit of the fact that the certified copy is required for administration

8.9 of the estate;

8.10 ~~(xi)~~ (x) if the requested record is a death record, a trustee of a trust by sworn affidavit

8.11 of the fact that the certified copy is needed for the proper administration of the trust;

8.12 ~~(xii)~~ (xi) a person or entity who demonstrates that a certified vital record is necessary

8.13 for the determination or protection of a personal or property right, pursuant to rules adopted

8.14 by the commissioner; or

8.15 ~~(xiii)~~ (xii) an adoption agency in order to complete confidential postadoption searches

8.16 as required by section 259.83;

8.17 (2) to any local, state, tribal, or federal governmental agency upon request if the certified

8.18 vital record is necessary for the governmental agency to perform its authorized duties;

8.19 (3) to an attorney representing the subject of the vital record or another person listed in

8.20 clause (1), upon evidence of the attorney's license;

8.21 (4) pursuant to a court order issued by a court of competent jurisdiction. For purposes

8.22 of this section, a subpoena does not constitute a court order; or

8.23 (5) to a representative authorized by a person under clauses (1) to (4).

8.24 (b) The state registrar or local issuance office shall also issue a certified death record to

8.25 an individual described in paragraph (a), clause (1), items (ii) to ~~(viii)~~ (xi), if, on behalf of

8.26 the individual, a licensed mortician furnishes the registrar with a properly completed

8.27 attestation in the form provided by the commissioner within 180 days of the time of death

8.28 of the subject of the death record. This paragraph is not subject to the requirements specified

8.29 in Minnesota Rules, part 4601.2600, subpart 5, item B.

9.1 **Sec. 9. [611A.95] CERTIFICATIONS FOR VICTIMS OF CRIMES.**

9.2 **Subdivision 1. Definitions.** For purposes of this section, the following terms have the
9.3 meanings given:

9.4 (1) "certifying entity" means a state or local law enforcement agency;

9.5 (2) "criminal activity" means qualifying criminal activity pursuant to section
9.6 101(a)(15)(U)(iii) of the Immigration and Nationality Act, and includes the attempt,
9.7 conspiracy, or solicitation to commit such crimes; and

9.8 (3) "certification" means any certification or statement required by federal immigration
9.9 law including but not limited to the information required by United States Code, title 8,
9.10 section 1184(p), and United States Code, title 8, section 1184(o), including current United
9.11 States Citizenship and Immigration Services Form I-918, Supplement B, and United States
9.12 Citizenship and Immigration Services Form I-914, Supplement B, and any successor forms.

9.13 **Subd. 2. Certification process.** (a) A certifying entity shall process a certification
9.14 requested by a victim of criminal activity or a representative of the victim, including but
9.15 not limited to the victim's attorney, family member, or domestic violence or sexual assault
9.16 violence advocate, within the time period prescribed in paragraph (b).

9.17 (b) A certifying entity shall process the certification within 90 days of request, unless
9.18 the victim is in removal proceedings, in which case the certification shall be processed
9.19 within 14 days of the request. Requests for expedited certification must be affirmatively
9.20 raised at the time of the request.

9.21 (c) An active investigation, the filing of charges, or a prosecution or conviction are not
9.22 required for the victim of criminal activity to request and obtain the certification.

9.23 **Subd. 3. Certifying entity; designate agent.** (a) The head of a certifying entity shall
9.24 designate an agent to perform the following responsibilities:

9.25 (1) timely process requests for certification;

9.26 (2) provide outreach to victims of criminal activity to inform them of the entity's
9.27 certification process; and

9.28 (3) keep a written or electronic record of all certification requests and responses.

9.29 (b) All certifying entities shall implement a language access protocol for
9.30 non-English-speaking victims of criminal activity.

9.31 **Subd. 4. Disclosure prohibited; data classification.** (a) A certifying entity is prohibited
9.32 from disclosing the immigration status of a victim of criminal activity or a representative

10.1 requesting the certification, except to comply with federal law or legal process, or if
10.2 authorized by the victim of criminal activity or the representative requesting the certification.

10.3 (b) Data provided to a certifying entity under this section is classified as private data
10.4 pursuant to section 13.02, subdivision 12.

10.5 **EFFECTIVE DATE.** Subdivisions 1, 2, and 4 are effective the day following final
10.6 enactment. Subdivision 3 is effective July 1, 2021.

10.7 Sec. 10. **INITIAL APPOINTMENTS AND MEETINGS.**

10.8 Appointing authorities for the Legislative Commission on Data Practices under Minnesota
10.9 Statutes, section 3.8844, must make initial appointments by June 1, 2021. The speaker of
10.10 the house must designate one member of the commission to convene the first meeting of
10.11 the commission by June 15, 2021.