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HOUSE FILE NO. 3553

FIRST COMMITTEE ENGROSSMENT

February 28, 2008

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The bill was read for the first time and referred to the Committee on Public Safety and Civil Justice

Referred by Chair to Data Practices Subcommittee.

March 10, 2008

Returned to the Committee on Public Safety and Civil Justice as Amended.

1.1 A bill for an act
1.2 relating to data practices; making technical changes; authorizing the electronic
1.3 exchange of certain Hennepin County medical data; regulating use of driver's
1.4 license numbers and application information; amending Minnesota Statutes 2006,
1.5 sections 13.03, subdivision 3; 13.601, subdivision 3, by adding a subdivision;
1.6 13.6905, subdivision 2, by adding a subdivision; 168.346, subdivision 1, by
1.7 adding a subdivision; 171.12, subdivision 7, by adding a subdivision; 260B.171,
1.8 subdivision 5; 383B.917, subdivision 1; Minnesota Statutes 2007 Supplement,
1.9 section 13.39, subdivisions 2, 2a.

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

1.11 Section 1. Minnesota Statutes 2006, section 13.03, subdivision 3, is amended to read:

1.12 Subd. 3. **Request for access to data.** (a) Upon request to a responsible authority
1.13 or designee, a person shall be permitted to inspect and copy public government data at
1.14 reasonable times and places, and, upon request, shall be informed of the data's meaning. If
1.15 a person requests access for the purpose of inspection, the responsible authority may not
1.16 assess a charge or require the requesting person to pay a fee to inspect data.

1.17 (b) For purposes of this section, "inspection" includes, but is not limited to, the
1.18 visual inspection of paper and similar types of government data. Inspection does not
1.19 include printing copies by the government entity, unless printing a copy is the only
1.20 method to provide for inspection of the data. In the case of data stored in electronic form
1.21 and made available in electronic form on a remote access basis to the public by the
1.22 government entity, inspection includes remote access to the data by the public and the
1.23 ability to print copies of or download the data on the public's own computer equipment.
1.24 Nothing in this section prohibits a government entity from charging a reasonable fee for
1.25 remote access to data under a specific statutory grant of authority. A government entity

2.1 may charge a fee for remote access to data where either the data or the access is enhanced
2.2 at the request of the person seeking access.

2.3 (c) The responsible authority or designee shall provide copies of public data upon
2.4 request. If a person requests copies or electronic transmittal of the data to the person,
2.5 the responsible authority may require the requesting person to pay the actual costs of
2.6 searching for and retrieving government data, including the cost of employee time, and for
2.7 making, certifying, ~~compiling~~, and electronically transmitting the copies of the data or the
2.8 data, but may not charge for separating public from not public data. However, if 100 or
2.9 fewer pages of black and white, letter or legal size paper copies are requested, actual costs
2.10 shall not be used, and instead, the responsible authority may charge no more than 25 cents
2.11 for each page copied. If the responsible authority or designee is not able to provide copies
2.12 at the time a request is made, copies shall be supplied as soon as reasonably possible.

2.13 (d) When a request under this subdivision involves any person's receipt of copies
2.14 of public government data that has commercial value and is a substantial and discrete
2.15 portion of or an entire formula, pattern, compilation, program, device, method, technique,
2.16 process, database, or system developed with a significant expenditure of public funds by
2.17 the government entity, the responsible authority may charge a reasonable fee for the
2.18 information in addition to the costs of making, ~~certifying, and compiling~~ and certifying the
2.19 copies. Any fee charged must be clearly demonstrated by the government entity to relate
2.20 to the actual development costs of the information. The responsible authority, upon the
2.21 request of any person, shall provide sufficient documentation to explain and justify the
2.22 fee being charged.

2.23 (e) The responsible authority of a government entity that maintains public
2.24 government data in a computer storage medium shall provide to any person making a
2.25 request under this section a copy of any public data contained in that medium, in electronic
2.26 form, if the government entity can reasonably make the copy or have a copy made.
2.27 This does not require a government entity to provide the data in an electronic format or
2.28 program that is different from the format or program in which the data are maintained
2.29 by the government entity. The entity may require the requesting person to pay the actual
2.30 cost of providing the copy.

2.31 (f) If the responsible authority or designee determines that the requested data is
2.32 classified so as to deny the requesting person access, the responsible authority or designee
2.33 shall inform the requesting person of the determination either orally at the time of the
2.34 request, or in writing as soon after that time as possible, and shall cite the specific
2.35 statutory section, temporary classification, or specific provision of federal law on which
2.36 the determination is based. Upon the request of any person denied access to data, the

3.1 responsible authority or designee shall certify in writing that the request has been denied
3.2 and cite the specific statutory section, temporary classification, or specific provision of
3.3 federal law upon which the denial was based.

3.4 Sec. 2. Minnesota Statutes 2007 Supplement, section 13.39, subdivision 2, is amended
3.5 to read:

3.6 Subd. 2. **Civil actions.** (a) Except as provided in paragraph (b), data collected by
3.7 ~~state agencies, political subdivisions, or statewide systems~~ a government entity as part of
3.8 an active investigation undertaken for the purpose of the commencement or defense of a
3.9 pending civil legal action, or which are retained in anticipation of a pending civil legal
3.10 action, are classified as protected nonpublic data pursuant to section 13.02, subdivision
3.11 13, in the case of data not on individuals and confidential pursuant to section 13.02,
3.12 subdivision 3, in the case of data on individuals. Any ~~agency, political subdivision, or~~
3.13 ~~statewide system~~ government entity may make any data classified as confidential or
3.14 protected nonpublic pursuant to this subdivision accessible to any person, agency or
3.15 the public if the ~~agency, political subdivision, or statewide system~~ government entity
3.16 determines that the access will aid the law enforcement process, promote public health or
3.17 safety or dispel widespread rumor or unrest.

3.18 (b) A complainant has access to a statement provided by the complainant to a
3.19 government entity under paragraph (a).

3.20 Sec. 3. Minnesota Statutes 2007 Supplement, section 13.39, subdivision 2a, is
3.21 amended to read:

3.22 Subd. 2a. **Disclosure of data.** During the time when a civil legal action is
3.23 determined to be pending under subdivision 1, any person may bring an action in the
3.24 district court in the county where the data ~~is~~ are maintained to obtain disclosure of data
3.25 classified as confidential or protected nonpublic under subdivision 2. The court may order
3.26 that all or part of the data be released to the public or to the person bringing the action. In
3.27 making the determination whether data shall be disclosed, the court shall consider whether
3.28 the benefit to the person bringing the action or to the public outweighs any harm to the
3.29 public, the government entity, or any person identified in the data. The data in dispute
3.30 shall be examined by the court in camera.

3.31 Sec. 4. Minnesota Statutes 2006, section 13.601, subdivision 3, is amended to read:

3.32 Subd. 3. **Applicants for election or appointment.** Data on candidates for election
3.33 or applicants for appointment to boards, commissions, committees, task forces, advisory

4.1 groups, or other public bodies are private except that the following data on all applicants
4.2 for election or appointment to a public body, including those subject to chapter 13D, are
4.3 public: name, ~~city of residence~~ address, education and training, employment history,
4.4 volunteer work, awards and honors, and prior government service or experience.

4.5 Sec. 5. Minnesota Statutes 2006, section 13.601, is amended by adding a subdivision
4.6 to read:

4.7 Subd. 4. **Boards, commissions, and advisory groups.** (a) Upon election or
4.8 appointment to a public body, all application data held by the government entity on the
4.9 appointee or elected official are public, including: home address, telephone number,
4.10 and e-mail address.

4.11 (b) An individual whose contact information is made public by paragraph (a) may
4.12 request the government entity with jurisdiction over the body to keep the individual's
4.13 contact information private. The individual must provide a request, in writing, to the
4.14 responsible authority of the government entity. Upon receiving a request, the responsible
4.15 authority must classify any addresses, telephone numbers, and e-mail addresses provided
4.16 by the individual as private data on individuals.

4.17 (c)(1) A responsible authority must provide a requestor with a postal or electronic
4.18 mail address at which the requestor may send documents or other information related to
4.19 the individual's public duties. The responsible authority may provide the same postal mail
4.20 address for more than one individual whose data has been made private.

4.21 (2) In providing an alternate address, the responsible authority must also provide
4.22 the individual whose contact information has been made private with secure access
4.23 procedures for purposes of collecting materials sent to the address. The individual must
4.24 regularly collect any materials sent to the alternate address.

4.25 Sec. 6. Minnesota Statutes 2006, section 13.6905, subdivision 2, is amended to read:

4.26 Subd. 2. **Vehicle registration application data.** ~~Certain~~ Driver's license numbers
4.27 and other information provided in applications for motor vehicle registrations ~~is~~ are
4.28 governed under section ~~168.10, subdivision~~ 168.346, subdivisions 1 and 1a.

4.29 Sec. 7. Minnesota Statutes 2006, section 13.6905, is amended by adding a subdivision
4.30 to read:

4.31 Subd. 9a. **Driver's license number and application data.** Driver's license numbers
4.32 and information provided in applications for drivers' licenses are governed under section
4.33 171.12, subdivisions 7 and 7a.

5.1 Sec. 8. Minnesota Statutes 2006, section 168.346, subdivision 1, is amended to read:

5.2 Subdivision 1. **Vehicle registration data; federal compliance.** (a) The Department
5.3 of Public Safety shall treat data on an individual provided to register a vehicle ~~shall be~~
5.4 ~~treated, including the driver's license number,~~ as provided by United States Code, title 18,
5.5 section 2721, as in effect on May 23, 2005, and ~~shall be disclosed~~ may disclose that data
5.6 only as required or permitted by that section.

5.7 (b) The registered owner of a vehicle who is an individual may consent in writing to
5.8 the commissioner to disclose the individual's personal information exempted by United
5.9 States Code, title 18, section 2721, to any person who makes a written request for the
5.10 personal information. If the registered owner is an individual and so authorizes disclosure,
5.11 the commissioner shall implement the request.

5.12 (c) If authorized by the registered owner as indicated in paragraph (b), the registered
5.13 owner's personal information may be used, rented, or sold solely for bulk distribution by
5.14 organizations for business purposes including surveys, marketing, or solicitation.

5.15 Sec. 9. Minnesota Statutes 2006, section 168.346, is amended by adding a subdivision
5.16 to read:

5.17 Subd. 1a. **Driver's license number classified as private data on individuals.**

5.18 Except as otherwise provided for the Department of Public Safety under subdivision 1:

5.19 (1) driver's license numbers must be treated as private data on individuals, as defined
5.20 in section 13.02, subdivision 12; and

5.21 (2) data in applications for drivers' licenses provided to a state or local government
5.22 agency must also be treated as private data on individuals if the data are provided by the
5.23 department and shall not be disclosed except:

5.24 (i) according to court order;

5.25 (ii) according to a statute specifically authorizing disclosure of the private data; or

5.26 (iii) to administer federal funds or programs.

5.27 Sec. 10. Minnesota Statutes 2006, section 171.12, subdivision 7, is amended to read:

5.28 Subd. 7. **Privacy of data.** (a) The department shall treat driver's license numbers
5.29 and data on individuals provided to obtain a driver's license or Minnesota identification
5.30 card ~~shall be treated~~ as provided by United States Code, title 18, section 2721, as in
5.31 effect on May 23, 2005, and ~~shall be disclosed~~ may disclose the numbers or data only as
5.32 required or permitted by that section.

5.33 (b) An applicant for a driver's license or a Minnesota identification card may consent,
5.34 in writing, to the commissioner to disclose the applicant's personal information exempted

6.1 by United States Code, title 18, section 2721, to any person who makes a request for the
6.2 personal information. If the applicant so authorizes disclosures, the commissioner shall
6.3 implement the request and the information may be used.

6.4 (c) If authorized by an applicant for a driver's license or a Minnesota identification
6.5 card, as indicated in paragraph (b), the applicant's personal information may be used,
6.6 rented, or sold solely for bulk distribution by organizations for business purposes,
6.7 including surveys, marketing, or solicitation.

6.8 (d) An applicant for a driver's license, instruction permit, or Minnesota identification
6.9 card may request that the applicant's residence address be classified as "private data on
6.10 individuals," as defined in section 13.02, subdivision 12. The commissioner shall grant
6.11 the classification on receipt of a signed statement by the individual that the classification
6.12 is required for the safety of the applicant or the applicant's family, if the statement also
6.13 provides a valid, existing address where the applicant consents to receive service of
6.14 process. The commissioner shall use the service for process mailing address in place of the
6.15 residence address in all documents and notices pertaining to the driver's license, instruction
6.16 permit, or Minnesota identification card. The residence address and any information
6.17 provided in the classification request, other than the mailing address, are private data on
6.18 individuals and may be provided to requesting law enforcement agencies, probation and
6.19 parole agencies, and public authorities, as defined in section 518A.26, subdivision 18.

6.20 Sec. 11. Minnesota Statutes 2006, section 171.12, is amended by adding a subdivision
6.21 to read:

6.22 **Subd. 7b. Driver's license number classified as private data on individuals.**

6.23 Except as otherwise provided for the Department of Public Safety under subdivision 7:

6.24 (1) driver's license numbers must be treated as private data on individuals, as defined
6.25 in section 13.02, subdivision 12; and

6.26 (2) data in applications for drivers' licenses provided to a state or local government
6.27 agency must also be treated as private data on individuals if the data are provided by the
6.28 department and shall not be disclosed except:

6.29 (i) according to court order;

6.30 (ii) according to a statute specifically authorizing disclosure of the private data; or

6.31 (iii) to administer federal funds or programs.

6.32 Sec. 12. Minnesota Statutes 2006, section 260B.171, subdivision 5, is amended to read:

6.33 **Subd. 5. Peace officer records of children.** (a) Except for records relating to
6.34 an offense where proceedings are public under section 260B.163, subdivision 1, peace

7.1 officers' records of children who are or may be delinquent or who may be engaged in
7.2 criminal acts shall be kept separate from records of persons 18 years of age or older
7.3 and are private data but shall be disseminated: (1) by order of the juvenile court, (2) as
7.4 required by section 121A.28, (3) as authorized under section 13.82, subdivision 2, (4) to
7.5 the child or the child's parent or guardian unless disclosure of a record would interfere
7.6 with an ongoing investigation, (5) to the Minnesota crime victims reparations board as
7.7 required by section 611A.56, subdivision 2, clause (f), for the purpose of processing
7.8 claims for crime victims reparations, or (6) as otherwise provided in this subdivision.
7.9 Except as provided in paragraph (c), no photographs of a child taken into custody may be
7.10 taken without the consent of the juvenile court unless the child is alleged to have violated
7.11 section 169A.20. Peace officers' records containing data about children who are victims
7.12 of crimes or witnesses to crimes must be administered consistent with section 13.82,
7.13 subdivisions 2, 3, 6, and 17. Any person violating any of the provisions of this subdivision
7.14 shall be guilty of a misdemeanor.

7.15 In the case of computerized records maintained about juveniles by peace officers,
7.16 the requirement of this subdivision that records about juveniles must be kept separate
7.17 from adult records does not mean that a law enforcement agency must keep its records
7.18 concerning juveniles on a separate computer system. Law enforcement agencies may keep
7.19 juvenile records on the same computer as adult records and may use a common index to
7.20 access both juvenile and adult records so long as the agency has in place procedures that
7.21 keep juvenile records in a separate place in computer storage and that comply with the
7.22 special data retention and other requirements associated with protecting data on juveniles.

7.23 (b) Nothing in this subdivision prohibits the exchange of information by law
7.24 enforcement agencies if the exchanged information is pertinent and necessary for law
7.25 enforcement purposes.

7.26 (c) A photograph may be taken of a child taken into custody pursuant to section
7.27 260B.175, subdivision 1, clause (b), provided that the photograph must be destroyed when
7.28 the child reaches the age of 19 years. The commissioner of corrections may photograph
7.29 juveniles whose legal custody is transferred to the commissioner. Photographs of juveniles
7.30 authorized by this paragraph may be used only for institution management purposes,
7.31 case supervision by parole agents, and to assist law enforcement agencies to apprehend
7.32 juvenile offenders. The commissioner shall maintain photographs of juveniles in the same
7.33 manner as juvenile court records and names under this section.

7.34 (d) Traffic investigation reports are open to inspection by a person who has sustained
7.35 physical harm or economic loss as a result of the traffic accident. Identifying information
7.36 on juveniles who are parties to traffic accidents may be disclosed as authorized under

8.1 section 13.82, subdivision ~~4~~6, and accident reports required under section 169.09 may be
8.2 released under section 169.09, subdivision 13, unless the information would identify a
8.3 juvenile who was taken into custody or who is suspected of committing an offense that
8.4 would be a crime if committed by an adult, or would associate a juvenile with the offense,
8.5 and the offense is not an adult court traffic offense under section 260B.225.

8.6 (e) The head of a law enforcement agency or a person specifically given the duty
8.7 by the head of the law enforcement agency shall notify the superintendent or chief
8.8 administrative officer of a juvenile's school of an incident occurring within the agency's
8.9 jurisdiction if:

8.10 (1) the agency has probable cause to believe that the juvenile has committed an
8.11 offense that would be a crime if committed as an adult, that the victim of the offense is a
8.12 student or staff member of the school, and that notice to the school is reasonably necessary
8.13 for the protection of the victim; or

8.14 (2) the agency has probable cause to believe that the juvenile has committed an
8.15 offense described in subdivision 3, paragraph (a), clauses (1) to (3), that would be a crime
8.16 if committed by an adult, regardless of whether the victim is a student or staff member
8.17 of the school.

8.18 A law enforcement agency is not required to notify the school under this paragraph
8.19 if the agency determines that notice would jeopardize an ongoing investigation. For
8.20 purposes of this paragraph, "school" means a public or private elementary, middle,
8.21 secondary, or charter school.

8.22 (f) In any county in which the county attorney operates or authorizes the operation
8.23 of a juvenile prepetition or pretrial diversion program, a law enforcement agency or
8.24 county attorney's office may provide the juvenile diversion program with data concerning
8.25 a juvenile who is a participant in or is being considered for participation in the program.

8.26 (g) Upon request of a local social services agency, peace officer records of
8.27 children who are or may be delinquent or who may be engaged in criminal acts may be
8.28 disseminated to the agency to promote the best interests of the subject of the data.

8.29 (h) Upon written request, the prosecuting authority shall release investigative data
8.30 collected by a law enforcement agency to the victim of a criminal act or alleged criminal
8.31 act or to the victim's legal representative, except as otherwise provided by this paragraph.
8.32 Data shall not be released if:

8.33 (1) the release to the individual subject of the data would be prohibited under
8.34 section 13.821; or

8.35 (2) the prosecuting authority reasonably believes:

8.36 (i) that the release of that data will interfere with the investigation; or

9.1 (ii) that the request is prompted by a desire on the part of the requester to engage in
9.2 unlawful activities.

9.3 Sec. 13. Minnesota Statutes 2006, section 383B.917, subdivision 1, is amended to read:

9.4 Subdivision 1. **Data Practices Act.** (a) The corporation is subject to chapter 13, the
9.5 Minnesota Government Data Practices Act.

9.6 (b) "Competitive data," as defined in this subdivision, are nonpublic data pursuant
9.7 to section 13.02, subdivision 9, or private data on individuals pursuant to section 13.02,
9.8 subdivision 12. Competitive data are any type of data that the corporation, in its discretion,
9.9 determines that if disclosed could cause competitive disadvantage to the corporation,
9.10 including causing adverse effects on the current or future competitive position of the
9.11 corporation or the entities, facilities, and operations for which it is responsible. Data
9.12 discussed at an open meeting of the corporation retains the data's original classification,
9.13 including classification as competitive data, as provided in section 13D.05, subdivision
9.14 1, paragraph (c). Any data disseminated by the corporation to the county shall retain the
9.15 same classification in the hands of the county, including the classification as competitive
9.16 data, as provided in section 13.03, subdivision 4.

9.17 (c) A subsidiary, joint venture, association, partnership, or other entity that is formed
9.18 by the corporation is not subject to chapter 13, except that if the corporation enters into a
9.19 contract with such an entity to perform any functions of the corporation, the corporation
9.20 shall include in the contract terms that make it clear that data created, collected, received,
9.21 stored, used, maintained, or disseminated by the contracting entity in performing those
9.22 functions is subject to the same requirements under chapter 13 as the corporation under
9.23 this subdivision. However, this section does not create a duty on the part of the contracting
9.24 entity to provide access to public data to the public if the public data are available from
9.25 the corporation, except as required by the terms of the contract. Any entity contracting to
9.26 perform functions of the corporation may classify data as competitive data as defined in
9.27 paragraph (b).

9.28 (d) Notwithstanding chapter 13, if a nonprofit corporation provides physician
9.29 services to the corporation and is participating in an electronic exchange of health records
9.30 with the corporation, the nonprofit corporation may share medical data with all other
9.31 participants in the exchange for purposes of treatment, payment, or health care operations.
9.32 The nonprofit corporation and other participants in the exchange are considered related
9.33 health care entities for purposes of section 144.293, subdivision 5, clause (2), and are
9.34 not considered outside of the corporation's facility for purposes of section 144.651,
9.35 subdivision 16.

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