

# HOUSE RESEARCH

## Bill Summary

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### Overview

This bill is the omnibus government data practices bill. It contains various provisions related to the classification and use of data held or collected by the government. Penalties for violation of the data practices act are increased, certain types of data related to the Department of Transportation, the Department of Revenue, and the Metropolitan Council are classified, and the use of social security numbers is regulated. This bill also makes terminology changes and modifies other provisions as described below.

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- 1** **Individual.** Modifies the definition of "individual" to replace the reference to individuals "judged mentally incompetent" with "incapacitated person." This new term is consistent with currently used terminology, and is defined in statute.
- 2, 5, 6, 12, 14-24, 26-40, 46, 48** **Terminology.** Substitutes the term "government entity" for the phrase "political subdivision, statewide system, or state agency" (depending on the section, these three terms may appear in a different order). This replacement is intended to simplify the language in statute and does not change any substantive law; the term "government entity" is defined in statute to mean "state agency, statewide system, or political subdivision."
- 3** **Judicial Branch Data.** Specifies that the "traveling data" provisions apply to the judicial branch. If the judicial branch disseminates judicial branch data to a government entity, the existing classification of the new government-entity-controlled data remains unchanged.
- 4** **Access to Data by Individual.** Permits the designee of a responsible authority to respond to data requests from individuals who seek access to data about themselves. This modification

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provides consistency with the section governing the public's access to public data.

- 7 **Advisory Opinions.** Specifies that an attorney general's written advisory opinion takes precedence over advisory opinions issued by the commissioner of administration if the attorney general's opinion is numbered and published.
- 8 **Damages.** Increases the penalty for a willful violation of the data practices act. Provides that a government entity is liable for exemplary damages of between \$5,000 and \$50,000 for each violation. Current law sets the penalty range between \$100 and \$10,000 per violation.
- 9 **Action to Compel Compliance.** Provides an increased civil penalty, to a maximum of \$3,000, against a government entity if a court issues an order to compel compliance with the provisions of the data practices act. Under current law, the civil penalty may not exceed \$300.

This section also modifies language relating to a government entity's conformity with issued advisory opinions; it eliminates the requirement that a court consider whether the entity has specifically sought an oral, written, or electronic opinion when the court determines whether a civil penalty is appropriate.

- 10 **Labor Relations Data. (HF 1173)** Establishes a cross-reference to labor relations data classifications related to collective bargaining contract negotiations by the Met Council. These classifications are established in section 61 of the bill.
- 11 **Directory Information.** Updates a date reference to student information. Classifies as public data information designated as "directory information" under federal law as of January 1, 2007.
- 13 **Partial Social Security Numbers.** Modifies the classification of social security numbers; partial social security numbers (for example, the last four digits of a social security number) are designated as private data.

This section also makes a terminology substitution, as described in section 2.

- 25 **Public Official Complaint Data.** States that disciplinary data related to a public official are public data only if the data concerns a specified public official in state government.

This section also makes a terminology substitution, as described in section 2.

- 41 **Grants. (HF 1638)** Adds a new section to the Minnesota Government Data Practices Act to deal with the status of data relating to grants. Key points include:
- Data created by a granting agency to create a request for proposal is nonpublic until the request for proposal is published.
  - Responses submitted by a grantee are not public until opened. Once opened, the name and address of the grantee and the amount requested is public. After the government agency's evaluation process is complete, all other data in the response is public, except for trade secret data. If all responses are rejected, data that is not made public at the initial opening remains private until the evaluation process is completed or the grant is abandoned.

Data that a government agency maintains as part of the evaluation process are not public until completion of the evaluation process.

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**42 Market Research Data. (HF 1282)** Classifies as private data names, home addresses except ZIP codes, home e-mail addresses, and home telephone numbers obtained by the Department of Transportation in preparation for, or in response to a survey. The same types of information are classified as nonpublic data when relating to a business.

Data practices law provides that "private data on individuals" and "nonpublic data" are both accessible to the subject of the data only; these data are not available to the public.

**43 Overhead Rate Data. (HF 1282)** Classifies as nonpublic data or private data on individuals financial statements and lists of stockholders provided to the commissioner of transportation by a consultant in order to establish its overhead rate. The schedule of audit adjustments and the overhead rate schedule prepared by the department of transportation to establish the overhead rate for a consultant carries the same classification.

The overhead rate percentage is classified as public data. Public data is accessible to anyone, for any reason.

**44 Bid Escrow Data. (HF 1282)** Classifies as nonpublic data any bid documentation held in escrow by the department of transportation. Any data on individuals in the bid documentation is private data.

"Bid documentation" is defined as all writings, working papers, computer printout charts, and other data calculations used by a contractor to determine its bid on a contract.

**45 Bureau of Mediation Services Data.** Recodifies the classification of Bureau of Mediation Services Data into a section separate from Department of Labor and Industry Data. The substance of the classifications is unchanged.

**47 Criminal History Data. (HF 1506)** Authorizes redaction of an innocent person's name from the public criminal history record when fingerprint verification determines that the person is not the subject of the criminal history. Requires the innocent person's name to be retained in the criminal history and classified as private data.

**49 Parole and Probation Authority Access to Records. (HF 93)** Grants parole and probation authorities access to records regarding a weapons permit applied for or held by any individual who is a defendant, parolee, or probationer of a district court.

**50 CrimNET Data Access. (HF 1305)**

**Subd. 1. Definitions.** Defines " Integrated Search Service" (ISS) to mean a service operated by the Bureau of Criminal Apprehension which allows authorized users to search and view data stored and maintained by criminal justice agencies.

A "criminal justice agency," defined in section 299C.46, subdivision 2, is an agency of the state or of a political subdivision charged with detection, enforcement, prosecution, adjudication, or incarceration related to state criminal or traffic laws.

**Subd. 2. Requests by Data Subject.** Permits an individual to request a state or local law enforcement agency with access to the ISS to conduct a search to locate data about the individual. Agencies with access must only provide: 1) a list of the government entities that have provided public or private data about the individual through the ISS; and 2) data that describe what information is maintained about the

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individual at each entity on the list.

**Subd. 3. Bureau Responsibilities.** Requires the Bureau of Criminal Apprehension to provide a listing of all law enforcement agencies with ISS access and information for individual data subjects on how to challenge the accuracy or completeness of data.

This information must be provided on a public internet site.

- 51 Landowner's Rights. (HF 904)** Directs the Department of Natural Resources to share a real estate appraisal with the landowner prior to an offer. Eliminates the requirement that a landowner be given a resume of the state's certified appraisal, and instead requires the landowner be informed of the value of the land as determined by the commissioner. This provision makes the law consistent with other requirements in the data practices act.
- 52 High School Coaching Data.** Corrects a technical error; classifies data about high school coaches as private data, rather than nonpublic data. Data is classified as "private" when it concerns an individual; it is classified as "nonpublic" when the data does not concern a particular individual.
- 53 Drivers License Photos. (HF 1302)** Permits criminal justice agencies and public defenders to access driver's license photos for specified purposes. A criminal justice agency may use photos to investigate and prosecute crimes, serve process, locate missing persons, supervise offenders, and prepare for court cases. A public defender may use the photos for preparation of criminal, juvenile, and traffic court cases.
- 54 "Tax Laws" Definition. (HF 996)** For purposes of tax data classification and disclosure, incorporates motor vehicle sales taxes (chapter 297B) into the definition of "Minnesota tax laws."
- 55 Confidential and Protected Non-public Data. (HF 996)** Clarifies that classification of certain information given to the Department of Revenue concerning tax-law compliance by an individual as confidential or protected non-public does not apply to laws relating to property taxes.
- 56 Debt Collection. (HF 996)** Permits the commissioner of revenue to use tax return information for the purpose of collecting any debts referred to the commissioner of revenue under the general state debt collection chapter, 16D. Chapter 16D allows state agencies to refer debts to the commissioner of revenue for collection purposes, and grants the commissioner of revenue certain powers to collect these debts.
- 57 Disclosure for Certain Job Opportunity, Biotechnology, and Health Science Industry Programs. (HF 996)** Permits the commissioner of revenue to disclose return information for certain taxes to the Department of Employment and Economic Development and appropriate local government units, if a qualifying business is located there, as needed to enforce job opportunity building zone benefits and biotechnology and health science industry zone benefits.
- 58 Homesteads of Blind and Disabled Persons. (HF 996)** Amends section 273.1315 to provide that, beginning in 2008, persons seeking to qualify for a class 1b homestead will be applying to the county assessor rather than the commissioner of revenue. Properties already receiving the class 1b benefits will continue to receive those benefits until the property no longer qualifies. Effective for taxes payable in 2008 and thereafter.
- 59 Social Security Numbers; Generally. (HF 131)** In clause (3), the bill adds one additional requirement that must be met to allow requiring an individual to send a Social Security number over the internet. The addition is that the number must be necessary to the

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transaction.

Replaces clause (5) entirely. That eliminates current language that permits printing a Social Security number on materials mailed to the individual, if the person mailing it received the number from someone else and did not know it was a Social Security number. Also eliminates current language that says the person sending the mailing has no duty to investigate whether the number is a Social Security number. The new clause (5) prohibits sending anything that shows a Social Security number on the outside of the envelope. Also prohibits printing a number that the sender knows to be a Social Security number on any document mailed to a person, unless inclusion of the number on that document is required by law or necessary to complete a transaction.

Amends clause (7), which prohibits selling a Social Security number obtained in the course of business, to clarify that it does not apply to a disclosure of a number when it has no independent economic value, is incidental to a larger transaction, and necessary to verify a person's identity.

A new clause (8) prohibits providing an individual's Social Security number to a nonaffiliated third party, unless the disclosure is required or authorized by law, or the individual has consented in writing to the disclosure. States that this clause does not prohibit disclosing the number if the disclosure has no independent economic value, is incidental to a larger transaction, and is necessary to verify the individual's identity.

A new clause (9) prohibits refusing to do business with an individual because the individual refuses to permit access to the individual's Social Security number, unless the person requesting the number has a legally permissible reason to need to obtain a credit report on the individual under the federal Fair Credit Reporting Act, the person requesting the number is required or authorized by federal law to obtain the number, the business has a reasonable basis to believe the person is using a false identity or documents, or the business transaction cannot be completed without the number.

Eliminates current language that is shown below the new clause (9) that permits a Social Security number on certain mailed applications and other forms, but does not permit putting it on the outside of the mailing or in a bulk mailing of credit card solicitations.

Eliminates the existing paragraph (c), which provides that this entire section of existing law, other than subdivision 2 (not shown in this bill, and repealed in section 3 below), is effective July 1, 2007.

**60 Penalties and Remedies. (HF 131)** Provides that a violation of section 59 of is bill, related to the use of social security numbers, subjects the violator to section 8.31. That section permits the Attorney General to enforce the law and also permits a private right of action under section 8.31, subdivision 3a. Current law does not specify an enforcement method or penalty for violations, so by default a violation under current law is a misdemeanor under section 645.241.

**61 Labor Relations Data. (HF 1173)** Permits the Metropolitan Council to classify all or any portion of the positions taken or proposals offered by management or the employee organization during the collective bargaining process with the Amalgamated Transit Union

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as nonpublic data. The collective bargaining process includes mediation, if applicable.

Classification of this data as nonpublic requires the written concurrence of the Union, and the Met Council may withdraw the classification at any time. Data classified as nonpublic under this section becomes public after both parties execute the resulting contract.

This section applies in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties.

**62 Repealers.**

**(a) Section 13.79, subdivision 2.** Removes the provisions of law related to the Bureau of Mediation Services from the section dealing with the Department of Labor and Industry. The provisions are not eliminated from statute, but have been moved in their entirety to a new section as described in section 45 of this bill.

**(b) Section 325E.59, subdivision 2. (HF 131)** Repeals a "grandfather clause" that permits continued use of an individual's Social Security number after July 1, 2007, by a person who was using it before then, under certain conditions.

**63 Effective Dates.**

**Sections 10 and 61** , related to Met Council Labor Negotiation Data, are effective the day following final enactment and apply to positions or proposals presented which have not previously been released to the public.

**Sections 59, 60, and 62(b)** , related to the use of social security numbers, are effective July 1, 2007.