Overview

This is the annual data practices omnibus bill. It classifies data; provides access to data that is not public; and provides for Minnesota to enter a National Crime Prevention and Privacy Compact covering non-criminal justice use of criminal history data.

1 **Headnotes.** Amends chapter 13 to provide that headnotes for paragraphs in that chapter merely indicate content and are not part of the statute. Parallels a provision in Minnesota Statutes chapter 645 on headnotes for sections and subdivisions. (H.F. 3696)

2 **Provisions coded in other chapters.** States that sections referenced in chapter 13 that are coded outside that chapter, classify government data, restrict access to it, or involve data sharing. Specifies that those sections are governed by chapter 13, except that the judiciary's records are governed by court rule and except as otherwise provided by law. (H.F. 3696)

3 **Request for access to data.** Deals with access to public government data in a computer storage medium. Requires the government entity to provide the data in computer form on request if it can reasonably make a copy or have a copy made. Does not require the government entity to provide the data in an electronic format or program different from the one in which it maintains the data. Allows the government entity to require the requester to pay the actual cost of providing the copy. (H.F. 2481)

4 **Copyright or patent of computer program.** Authorizes a government entity to enforce a copyright or patent computer software without statutory authority. Restates current law, which says nothing in the statute prevents taking these actions. (H.F. 2481)

5 **General standards for collection and storage.** Limits use of all data on individuals to that necessary to administer and manage programs authorized by local, state, or federal government.
Current law limits use only of private and confidential data. Limits dissemination of private and confidential data on individuals to what is necessary to administer government programs. (H.F. 2481)

**Identification or justification.** Unless authorized by statute, government entities may not require persons to identify themselves, state a reason for requesting data, or justify a request for public data. Permits asking a person to provide identifying or clarifying information for the sole purpose of facilitating data access. (H.F. 2481)

**Data practices compliance official.** By December 1, 2000, requires each government entity to appoint an employee to act as the entity's compliance official. The responsible authority for the entity may fill this role. The public may direct to this person questions or concerns about data access or other data problems. (H.F. 2481)

**Administrative remedies.** (H.F. 2481)

**Subd. 1. Complaints.** Lets anyone file with the commissioner of administration a data practices compliance complaint about a government entity. Requires the commissioner to specify the form of complaint. Requires the commissioner to investigate whether the complaint is valid or whether an alternative dispute resolution process exists for the complaint. Requires the commissioner to dismiss the complaint if it is not valid or an alternative process would be more appropriate. If the commissioner finds the complaint valid, the actions in subdivision 2 may be used. Requires the commissioner to either dismiss the complaint or refer it under subdivision 2 within 20 days after receiving the request. Lets the commissioner extend this deadline another 30 days for good cause and upon written notice to the person with the complaint.

**Subd. 2. Informal resolution of complaint.** Allows the commissioner to informally resolve a complaint or, with both parties' consent, refer it to the office of dispute resolution or the office of administrative hearings to arbitrate or mediate.

**Uses of data.** Provides that a school district, its agents, and employees who in good faith use and share juvenile data they receive pursuant to the juvenile statutes are immune from criminal or civil liability that might otherwise result from their actions. (H.F. 2672)

**St. Paul Housing and Redevelopment Authority.** (H.F. 3615)

**Subd. 1. Private and nonpublic data.** Makes private the following data on individuals and business entities requesting financial assistance: financial statements, credit reports, business plans, income and expense projections, customer lists, balance sheets, income tax returns, and design, market, and feasibility studies not paid for with public funds.

**Subd. 2. Public data.** Keeps some of the data under subdivision 1 private if the authority provides financial assistance to the individual or business. Items that become public are income and expense projections related to the financial assistance provided, financial statements, credit reports, and balance sheets. Items kept private are business plans, income and expense projections not related to the financial assistance, customer lists, income tax returns, and design/market/feasibility studies not paid for with public funds.

**St. Paul economic assistance data.** Identical to section one except it applies to data submitted to the city. (H.F. 2834)

**Disclosure.** Amends the court services data section of the Minnesota Government Data Practices Act. Authorizes disclosure of private or confidential court services data on an individual to both local and state correctional facilities and agencies. (H.F. 2834)

**Public data.** Makes public the date of birth of an adult on whom court services data exists. (H.F. 2834)

**Classification.** Current law makes conviction data held by the BCA public for 15 years after discharge of sentence. The bill makes this data public permanently. (Committee Amendment)

Classification of data. Adds subd. 4a to § 62D.14. Classifies any data obtained by the commissioner of health in the course of regulating HMOs, as private data on individuals or as nonpublic data. Protects such data and allows it to be released consistent with a subdivision governing protection and release of information obtained by the commissioner of commerce in the course of supervising and examining insurance companies. (H.F. 3225)

Disclosure of information held by health maintenance organizations. Adds § 62D.145. Subdivision 1 adds cross-references in chapter 62D to provisions in another chapter that govern an HMO's ability to disclose personal information and privileged information. Subdivision 2 specifies the circumstances under which an HMO may disclose individually identifiable health data or information. (H.F. 3225)

Subd. 1. Personal and privileged information. Provides cross-references in chapter 62D, which governs HMOs, to provisions in chapter 72A that regulate the ability of HMOs and other insurers to disclose personal information and privileged information.

Subd. 2. Health data or information. Specifies that an HMO is prohibited from disclosing any individually identifiable data or information regarding the diagnosis, treatment, or health of any enrollee or any application obtained, except in the following circumstances:

- to the commissioner of health to regulate HMOs, provided the data does not identify particular patients or clients or contain unique personal identifiers;
- with the enrollee's or applicant's consent;
- pursuant to a statute or court order for the production of evidence or discovery;
- as part of litigation or a claim between the subject of the data and a provider or HMO, when the data is pertinent;
- as otherwise authorized by statute;
- to meet the requirements of contracts for prepaid medical services with DHS; or
- to meet the requirements of contracts for benefit plans with the commissioner of employee relations.

Also allows the commissioner of health to obtain data that identifies patients or clients by name when the data are needed for a case involving a suspected violation of law by an HMO. Allows HMOs to claim any statutory privileges against the disclosure of the information that a provider would be entitled to claim. (The content of this subdivision comes from section 62D.14, subdivision 4, which is being repealed. This subdivision differs from the subdivision being repealed by (1) specifying that it governs an HMO's ability to disclose information, while the existing subdivision does not specify to whom it applies; and (2) prohibiting the release of individually identifiable information, rather than classifying the data as private.)

Personal information. Amends § 72A.491, subd. 17. In the definition of "personal information" for sections 72A.49 to 72A.505, changes a term used from "health information," a term which is not defined for these sections, to "health record information," a term which is defined. (Health record information is defined in section 72A.491, subdivision 10.) (H.F. 3225)

Data classification. Provides for the protection of data collected under the Government Data Practices Act for individuals receiving services through community action programs. (H.F. 3300)

Data classification. Provides for the protection of data collected under the Government Data Practices Act for individuals receiving services through foodshelf programs. (H.F. 3300)
Head Start Program. (H.F. 3300)

Subd. 1. Department of children, families, and learning. Makes technical changes.

Subd. 2. Data classification. Provides for the protection of data collected under the Government Data Practices Act for individuals receiving services through the Head Start program.

Income. Excludes earned income of full-time students up to the age of 19 who have not earned a high school diploma or GED high school equivalency diploma from the definition of "income" when determining child care assistance eligibility and co-payments. (H.F. 3300)

Funding priority. Requires first priority for child care assistance under the basic sliding fee program to be given to eligible non-MFIP families who do not have a high school or general equivalency diploma or who need remedial and basic skill courses in order to pursue employment or to pursue education leading to employment who need child care assistance to participate in the education program. (H.F. 3300)

Program review and approval. Changes program plan submission requirements from an annual requirement to a biennial requirement. One-half of school districts must submit their plans in the even numbered years and the other half in the odd numbered years. Requires the commissioners of children, families, and learning and health to determine when districts will submit plans. (H.F. 3300)

Request for information. Amends the parent locator statute used in paternity and child support cases. Clarifies that political subdivisions as well as state agencies may be required to provide information to help locate a parent. (H.F. 2834)

Records of findings. Amends the statute on data the juvenile court forwards to the Bureau of Criminal Apprehension (BCA) from juvenile petitions involving gross misdemeanor and felony level offenses. If the juvenile was adjudicated delinquent, requires the court to indicate whether the offense would have been a felony or a gross misdemeanor if committed by an adult. (H.F. 3518)

Peace officer records of children. Amends current law that allows law enforcement agencies to exchange records on juveniles for law enforcement purposes. Authorizes sharing with federal agencies and agencies in other states. (H.F. 3518)

Data privacy. Amends the statute that permits release of private and nonpublic data held by the department of economic security. Adds to the current list: that the federal Immigration and Naturalization Service (INS) may obtain data the department has on specific individuals and employers who are the subject of an INS investigation. (H.F. 2522)

Access. Provides for the BCA to release juvenile records in connection with a background check authorized under the children's service provider statute. (H.F. 3518)

Information furnished to peace officer. Requires the BCA to inform the arresting officer of any juvenile disposition data on an arrestee that are not in the criminal history system (so-called "suspense" data). (H.F. 3518)

Report by the court. Requires the court to determine the level of offense for each convicted individual and report it to the BCA. (H.F. 3518)

Citation. The next two sections may be called the National Crime Prevention and Privacy Compact. (H.F. 3518)

Compact. Defines various terms, including the following. The compact uses "attorney general" to mean the attorney general of the United States. A "compact officer" for the federal government is someone designated by the FBI director. In a state that person is the chief administrator of the state's criminal history record repository, or a designee. The "council" is the compact council established under the compact.
Defines criminal history; excludes from this term identification information, like fingerprints, that do not indicate involvement with the criminal justice system.

Defines Interstate Identification Index System (III System) to mean the cooperative federal-state system to exchange criminal history records, including the National Identification Index and the National Fingerprint File, and the criminal history records repositories of the states and FBI, to the extent of their participation in the system.

Article II states that the compact purposes are to (1) provide a legal framework for interstate and federal-state exchange of criminal history records for noncriminal justice uses; (2) require the FBI to permit use of the National Identification Index and the National Fingerprint File by each party state and to provide federal and state criminal history records to requesting states according to the compact; (3) require party states to provide information and records to the National Identification Index and the National Fingerprint File and to provide criminal history records in a timely fashion to other states and the federal government for noncriminal justice purposes, according to the compact; (4) establish a council to monitor III System operations and prescribe system rules and procedures; and (5) require the FBI and each party state to adhere to III System standards on records dissemination and use, response times, system security, data quality, and other duly established standards, including those on accuracy and privacy of records.

Article III lays out responsibilities of compact parties.

Article IV covers authorized record disclosures. Provides that consistent with the 1974 federal privacy act, the FBI will give (1) state criminal history records repositories and (2) criminal justice agencies and other governmental and nongovernmental agencies: criminal history records that are not sealed, to be used for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that authorizes national indexes checks and has been approved by the U.S. attorney general.

Lets records obtained under this article be used only for the official purposes for which the record was requested. Requires each compact officer to establish procedures to protect records accuracy and privacy, including (1) requiring subsequent records checks to obtain current information whenever a new need arises and (2) ensure that records that may not be used for a particular noncriminal justice purpose are deleted, and if no releasable records remain, a "no record" response is communicated to the requesting official.

Article V covers records request procedures.

Article V covers records request procedures. It requires fingerprints or other approved positive identification be submitted with all criminal history records requests. It allows the state or FBI to charge a fee for a request involving fingerprint processing, but prohibits a fee in response to an electronic request for a record that does not involve fingerprint processing.

Provides procedures when a state cannot positively identify a search subject.

Article VI establishes a compact council to establish rules and procedures and sets out the membership, terms, officers, and meeting schedule of the council.

Article VII provides that the compact takes effect when ratified by two or more states, as between those states and the federal government. Adds other states to the compact as they ratify it.

Article VIII covers miscellaneous issues: the compact (1) does not interfere with the FBI director's control over the agency's collection and dissemination of criminal history records, or the role of the FBI's advisory policy board for all purposes other than noncriminal justice; (2) does not requires the FBI to spend funds beyond those appropriated to it; and (3) does not
change responsibilities under Public Law Number 92-544.

Article IX provides that a compact is in effect for a given state unless renounced by the state. Provides that a state may leave the compact through the same kind of mechanism it used to ratify the compact.

Article X provides that if any part of the compact is found unconstitutional, parts that can continue in effect will do so.

Article XI deals with adjudication of disputes between compact parties. (H.F. 3518)

34 Powers with relation to compact. Authorizes the commissioner of public safety or a designee to carry out the compact in this state. (H.F. 3518)

35 Report to commissioner or local correctional agency. Amends the presentence investigation statute. Requires that when a defendant is sentenced to a local correctional agency or facility, a copy of the presentence investigation report must be provided to the agency or facility. (H.F. 2834)

36 Pilot project authorized; purpose. Amends the session law that created a temporary domestic fatality review team in Hennepin County. States that the team may review cases in which prosecution has been completed or the prosecutor has decided not to pursue the case.

37 Duties; access to data. Requires the domestic fatality review team to collect and analyze necessary and appropriate data on deaths by domestic violence. Authorizes the team to compel production of records by district court subpoena. Gives the team access to the following data that is not public:

- inactive law enforcement investigative data;
- autopsy and medical examiner or coroner records;
- social service agency records on the dead victim, the perpetrator, or other victims of the perpetrator; and
- medical records of the victim. (H.F. 2919)

38 Confidentiality; data privacy. Persons attending a team meeting must not disclose matters discussed, except to carry out team purposes. Lets the team disclose names of victims in the cases it reviews. Team proceedings or records are protected nonpublic data (not available to the public or any subject of the records). Records are not subject to discovery and cannot be offered in evidence in a civil or criminal matter against a professional, the state, or a county agency arising out of matters reviewed by the team. Material available from other sources is not exempt from discovery or being used as evidence because it was presented at team proceedings. Does not prevent a team member or person who presented information to the team from testifying on matters in the person's own knowledge, but the person cannot be questioned about a good faith presentation to the team or opinions formed because of the review meeting. (H.F. 2919)

39 Immunity. Gives civil and criminal immunity for acting in good faith and without malice as a member, agent, or employee of the fourth judicial district domestic fatality advisory board, the domestic fatality review team, or a review panel. A complainant has the burden of proving malice or lack of good faith. Exempts from civil or criminal liability: a person or organization that provides information to the team for an investigation in good faith and without malice. (H.F. 2919)

40 Repealer. Repeals section 62D.14, subdivision 4, which is rewritten as section 62D.14, subdivision 4a. (H.F. 3225)

41 Effective date. The section creating administrative remedies for noncompliance with the data practices act is effective July 1, 2001