A bill for an act

relating to data practices; regulating the collection, dissemination, disclosure, and use of data; classifying data; amending temporary classification provisions; making technical and conforming changes; amending Minnesota Statutes 2008, sections 13.05, subdivision 4, by adding a subdivision; 13.06, subdivisions 1, 3, 4, 5, 7, by adding subdivisions; 13.43, subdivisions 1, 2; 13.792; 13.87, by adding a subdivision; 13D.05, subdivision 3; 16B.97, by adding a subdivision; 125A.21, subdivision 5; Minnesota Statutes 2009 Supplement, section 13.64; repealing Minnesota Statutes 2008, section 13.06, subdivision 2; Minnesota Rules, part 1205.1800.

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

ARTICLE 1

GENERAL PROVISIONS

Section 1. Minnesota Statutes 2008, section 13.05, subdivision 4, is amended to read:

Subd. 4. **Limitations on collection and use of data.** Private or confidential data on an individual shall not be collected, stored, used, or disseminated by government entities for any purposes other than those stated to the individual at the time of collection in accordance with section 13.04, except as provided in this subdivision.

(a) Data collected prior to August 1, 1975, and which have not been treated as public data, may be used, stored, and disseminated for the purposes for which the data was originally collected or for purposes which are specifically approved by the commissioner as necessary to public health, safety, or welfare.

(b) Private or confidential data may be used and disseminated to individuals or entities specifically authorized access to that data by state, local, or federal law enacted or promulgated after the collection of the data.

(c) Private or confidential data may be used and disseminated to individuals or entities subsequent to the collection of the data when the responsible authority maintaining the data has requested approval for a new or different use or dissemination of the data and that request has been specifically approved by the commissioner as necessary to carry out a function assigned by law.

(d) Private data may be used by and disseminated to any person or entity if the individual subject or subjects of the data have given their informed consent. Whether a data subject has given informed consent shall be determined by rules of the commissioner. ~~The format for informed consent is as follows, unless otherwise prescribed by the HIPAA, Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. 82, 461 (2000) (to be codified as Code of Federal Regulations, title 45, section 164): informed consent shall not be deemed to have been given by an individual subject of the data by the signing of any statement authorizing any person or entity to disclose information about the individual to an insurer or its authorized representative, unless the statement is:~~

~~(1) in plain language;~~

~~(2) dated;~~

~~(3) specific in designating the particular persons or agencies the data subject is authorizing to disclose information about the data subject;~~

~~(4) specific as to the nature of the information the subject is authorizing to be disclosed;~~

~~(5) specific as to the persons or entities to whom the subject is authorizing information to be disclosed;~~

~~(6) specific as to the purpose or purposes for which the information may be used by any of the parties named in clause (5), both at the time of the disclosure and at any time in the future;~~

~~(7) specific as to its expiration date which should be within a reasonable period of time, not to exceed one year except in the case of authorizations given in connection with applications for (i) life insurance or noncancelable or guaranteed renewable health insurance and identified as such, two years after the date of the policy or (ii) medical assistance under chapter 256B or MinnesotaCare under chapter 256L, which shall be ongoing during all terms of eligibility, for individual education plan health-related services provided by a school district under section 125A.21, subdivision 2.~~

The responsible authority may require a person requesting copies of data under this paragraph to pay the actual costs of making~~,~~ and certifying~~, and compiling~~ the copies.

(e) Private or confidential data on an individual may be discussed at a meeting open to the public to the extent provided in section 13D.05.

Sec. 2. Minnesota Statutes 2008, section 13.05, is amended by adding a subdivision to read:

Subd. 4a. **Informed consent for insurance purposes.** Informed consent for insurance purposes must comply with this subdivision, unless otherwise prescribed by the HIPAA Standards for Privacy of Individually Identifiable Health Information, Code of Federal Regulations, title 45, section 164. Informed consent for insurance purposes is not considered to have been given by an individual subject of data by the signing of a statement authorizing a government entity to disclose information about the individual to an insurer or its authorized representative, unless the statement is:

(1) in plain language;

(2) dated;

(3) specific in designating the government entity the data subject is authorizing to disclose information about the data subject;

(4) specific as to the nature of the information the data subject is authorizing to be disclosed;

(5) specific as to the persons to whom the data subject is authorizing information to be disclosed;

(6) specific as to the purpose or purposes for which the information may be used by any of the persons named in clause (5), both at the time of the disclosure and at any time in the future; and

(7) specific as to its expiration date, which must be within a reasonable period of time, not to exceed one year.

Notwithstanding clause (7), in the case of authorizations given in connection with applications for life insurance or noncancelable or guaranteed renewable health insurance that is so identified, the expiration date must not exceed two years after the date of the policy. An authorization in connection with medical assistance under chapter 256B or MinnesotaCare under chapter 256L or for individual education plan health-related services provided by a school district under section 125A.21, subdivision 2, is valid during all terms of eligibility.

Sec. 3. Minnesota Statutes 2008, section 13.43, subdivision 2, is amended to read:

Subd. 2. **Public data.** (a) Except for employees described in subdivision 5 and subject to the limitations described in subdivision 5a, the following personnel data on current and former employees, volunteers, and independent contractors of a government entity is public:

(1) name; employee identification number, which must not be the employee's Social Security number; actual gross salary; salary range; terms and conditions of employment relationship; contract fees; actual gross pension; the value and nature of employer paid fringe benefits; and the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary;

(2) job title and bargaining unit; job description; education and training background; and previous work experience;

(3) date of first and last employment;

(4) the existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action;

(5) the final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the public body;

(6) the terms of any agreement settling any dispute arising out of an employment relationship, including a buyout agreement as defined in section 123B.143, subdivision 2, paragraph (a); except that the agreement must include specific reasons for the agreement if it involves the payment of more than $10,000 of public money;

(7) work location; a work telephone number; badge number; work-related continuing education; and honors and awards received; and

(8) payroll time sheets or other comparable data that are only used to account for employee's work time for payroll purposes, except to the extent that release of time sheet data would reveal the employee's reasons for the use of sick or other medical leave or other not public data.

(b) For purposes of this subdivision, a final disposition occurs when the government entity makes its final decision about the disciplinary action, regardless of the possibility of any later proceedings or court proceedings. In the case of arbitration proceedings arising under collective bargaining agreements, a final disposition occurs at the conclusion of the arbitration proceedings, or upon the failure of the employee to elect arbitration within the time provided by the collective bargaining agreement. Final disposition includes a resignation by an individual when the resignation occurs after the final decision of the government entity, or arbitrator. A disciplinary action does not become public data if an arbitrator sustains a grievance and reverses all aspects of any disciplinary action.

(c) The government entity may display a photograph of a current or former employee to a prospective witness as part of the government entity's investigation of any complaint or charge against the employee.

(d) A complainant has access to a statement provided by the complainant to a government entity in connection with a complaint or charge against an employee.

(e) Notwithstanding paragraph (a), clause (5), upon completion of an investigation of a complaint or charge against a public official, or if a public official resigns or is terminated from employment while the complaint or charge is pending, all data relating to the complaint or charge are public, unless access to the data would jeopardize an active investigation or reveal confidential sources. For purposes of this paragraph, "public official" means:

(1) the head of a state agency and deputy and assistant state agency heads;

(2) members of boards or commissions required by law to be appointed by the governor or other elective officers; and

(3) executive or administrative heads of departments, bureaus, divisions, or institutions within state government.

Sec. 4. Minnesota Statutes 2009 Supplement, section 13.64, is amended to read:

13.64 DEPARTMENT OF MANAGEMENT AND BUDGET DATA.

(a) Notes and preliminary drafts of reports created, collected, or maintained by the Management Analysis Division, Department of Management and Budget, and prepared during management studies, audits, reviews, consultations, or investigations are classified as confidential or protected nonpublic data until the final report has been published or preparation of the report is no longer being actively pursued.

(b) Data that support the conclusions of the report and that the commissioner of management and budget reasonably believes will result in litigation are confidential or protected nonpublic until the litigation has been completed or until the litigation is no longer being actively pursued.

(c) Data on individuals that could reasonably be used to determine the identity of an individual supplying data for a report are private if:

(1) the data supplied by the individual were needed for a report; and

(2) the data would not have been provided to the Management Analysis Division without an assurance to the individual that the individual's identity would remain private, or the Management Analysis Division reasonably believes that the individual would not have provided the data.

(d) Security features of building plans, building specifications, and building drawings of state-owned facilities and nonstate-owned facilities leased by the state are classified as nonpublic data when maintained by the Department of Management and Budget and may be shared with anyone as needed to perform duties of the commissioner.

Sec. 5. Minnesota Statutes 2008, section 13.792, is amended to read:

13.792 PRIVATE DONOR GIFT DATA.

The following data maintained by the Minnesota Zoological Garden, the University of Minnesota, the Minnesota State Colleges and Universities, the Regional Parks Foundation of the Twin Cities, and any related entity subject to chapter 13 are classified as private or nonpublic:

(1) research information about prospects and donors gathered to aid in determining appropriateness of solicitation and level of gift request;

(2) specific data in prospect lists that would identify prospects to be solicited, dollar amounts to be requested, and name of solicitor;

(3) portions of solicitation letters and proposals that identify the prospect being solicited and the dollar amount being requested;

(4) letters, pledge cards, and other responses received from donors regarding prospective gifts in response to solicitations;

(5) portions of thank-you letters and other gift acknowledgment communications that would identify the name of the donor and the specific amount of the gift, pledge, or pledge payment;

(6) donor financial or estate planning information, or portions of memoranda, letters, or other documents commenting on any donor's financial circumstances; and

(7) data detailing dates of gifts, payment schedule of gifts, form of gifts, and specific gift amounts made by donors.

Names of donors and gift ranges are public data.

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

Sec. 6. Minnesota Statutes 2008, section 13.87, is amended by adding a subdivision to read:

Subd. 5. **Parole and probation authority access to records.** Parole and county probation authorities may access data identified in subdivision 2 on an applicant or permit holder who is also a defendant, parolee, or probationer of a district court.

Sec. 7. Minnesota Statutes 2008, section 13D.05, subdivision 3, is amended to read:

Subd. 3. **What meetings may be closed.** (a) A public body may close a meeting to evaluate the performance of an individual who is subject to its authority. The public body shall identify the individual to be evaluated prior to closing a meeting. At its next

open meeting, the public body shall summarize its conclusions regarding the evaluation. A meeting must be open at the request of the individual who is the subject of the meeting.

(b) Meetings may be closed if the closure is expressly authorized by statute or permitted by the attorney-client privilege.

(c) A public body may close a meeting:

(1) to determine the asking price for real or personal property to be sold by the government entity;

(2) to review confidential or protected nonpublic appraisal data under section 13.44, subdivision 3; and

(3) to develop or consider offers or counteroffers for the purchase or sale of real or personal property.

Before holding a closed meeting under this paragraph, the public body must identify on the record the particular real or personal property that is the subject of the closed meeting. The proceedings of a meeting closed under this paragraph must be tape recorded at the expense of the public body. The recording must be preserved for eight years after the date of the meeting and made available to the public after all real or personal property discussed at the meeting has been purchased or sold or the governing body has abandoned the purchase or sale. The real or personal property that is the subject of the closed meeting must be specifically identified on the tape. A list of members and all other persons present at the closed meeting must be made available to the public after the closed meeting. If an action is brought claiming that public business other than discussions allowed under this paragraph was transacted at a closed meeting held under this paragraph during the time when the tape is not available to the public, section 13D.03, subdivision 3, applies.

An agreement reached that is based on an offer considered at a closed meeting is contingent on approval of the public body at an open meeting. The actual purchase or sale must be approved at an open meeting after the notice period required by statute or the governing body's internal procedures, and the purchase price or sale price is public data.

(d) Meetings may be closed to receive security briefings and reports, to discuss issues related to security systems, to discuss emergency response procedures and to discuss security deficiencies in or recommendations regarding public services, infrastructure and facilities, if disclosure of the information discussed would pose a danger to public safety or compromise security procedures or responses. Financial issues related to security matters must be discussed and all related financial decisions must be made at an open meeting. Before closing a meeting under this paragraph, the public body, in describing the subject to be discussed, must refer to the facilities, systems, procedures, services, or infrastructures

to be considered during the closed meeting. A closed meeting must be tape recorded at the expense of the governing body, and the recording must be preserved for at least four years.

Sec. 8. Minnesota Statutes 2008, section 16B.97, is amended by adding a subdivision to read:

Subd. 5. **Data classification.** Data maintained by the commissioner that identify a person providing comments to the commissioner under subdivision 4, paragraph (a), clauses (6) and (7), are private and nonpublic data but may be shared with the executive agency that is the subject of the comments.

Sec. 9. Minnesota Statutes 2008, section 125A.21, subdivision 5, is amended to read:

Subd. 5. **Informed consent.** When obtaining informed consent, consistent with sections 13.05, subdivision ~~4, paragraph (d)~~ 4a; and 256B.77, subdivision 2, paragraph (p), to bill health plans for covered services, the school district must notify the legal representative (1) that the cost of the person's private health insurance premium may increase due to providing the covered service in the school setting, (2) that the school district may pay certain enrollee health plan costs, including but not limited to, co-payments, coinsurance, deductibles, premium increases or other enrollee cost-sharing amounts for health and related services required by an individual service plan, or individual family service plan, and (3) that the school's billing for each type of covered service may affect service limits and prior authorization thresholds. The informed consent may be revoked in writing at any time by the person authorizing the billing of the health plan.

Sec. 10. **REPEALER.**

(a) Minnesota Statutes 2008, section 13.06, subdivision 2, is repealed.

(b) Minnesota Rules, part 1205.1800, is repealed.

ARTICLE 2

TEMPORARY CLASSIFICATIONS

Section 1. Minnesota Statutes 2008, section 13.06, subdivision 1, is amended to read:

Subdivision 1. **Application to commissioner.** (a) Notwithstanding the provisions of section 13.03, the responsible authority of a government entity may apply to the commissioner for permission to classify data or types of data on individuals as private or confidential, or data not on individuals as nonpublic or protected nonpublic, for its own use and for the use of other similar government entities on a temporary basis until

a proposed statute can be acted upon by the legislature. The application for temporary classification is public.

(b) Upon ~~the filing~~ receipt by the commissioner of an application for temporary classification, the data which is the subject of the application shall be deemed to be classified as set forth in the application for a period of 45 days, or until the application is disapproved, rejected, or granted by the commissioner, whichever is earlier.

(c) If the commissioner determines that an application has been submitted for purposes not consistent with this section, the commissioner may immediately reject the application, give notice of that rejection to the applicant, and return the application. When the applicant receives the notice of rejection from the commissioner, the data which was the subject of the application shall have the classification it had before the application was submitted to the commissioner.

Sec. 2. Minnesota Statutes 2008, section 13.06, subdivision 3, is amended to read:

Subd. 3. **Contents of application ~~for nonpublic or nonpublic protected data~~.** An application for temporary classification of government data ~~not on individuals~~ shall include and the applicant shall have the burden of clearly establishing that no statute currently exists which either allows or forbids classification as ~~nonpublic or protected nonpublic~~ not public; and ~~either~~ one or more of the following:

(1) that data similar to that for which the temporary classification is sought ~~has~~ have been ~~treated~~ classified as ~~nonpublic or protected nonpublic~~ not public by other government entities~~, and by the public~~; or

(2) public access to the data would render unworkable a program authorized by law~~; or~~.

~~(3)~~ The applicant must also clearly establish that a compelling need exists for immediate temporary classification, which if not granted could adversely affect the health, safety or welfare of the public, or data subject's well-being or reputation.

Sec. 3. Minnesota Statutes 2008, section 13.06, subdivision 4, is amended to read:

Subd. 4. **Procedure when classification affects others.** If the commissioner determines that an application for temporary classification involves data which would reasonably be classified in the same manner by all government entities similar to the one which made the application, the commissioner may approve or disapprove the classification for data of the kind which is the subject of the application for the use of all government entities similar to the applicant. If requested in the application, the commissioner may also determine that the data classification affects similar government

entities. On deeming this approach advisable, the commissioner shall provide notice of the proposed action by publication in the State Register within ~~ten~~ 15 days of receiving the application. Within 30 days after publication in the State Register an affected government entity or the public may submit comments on the ~~commissioner's proposal~~ application. The commissioner shall consider any comments received when granting or denying a classification for data of the kind which is the subject of the application, for the use of all government entities similar to the applicant. Within 45 days after the close of the period for submitting comment, the commissioner shall grant or disapprove the application. Applications processed under this subdivision shall be either approved or disapproved by the commissioner within 90 days of the receipt of the application. For purposes of subdivision 1, the data which is the subject of the classification shall be deemed to be classified as set forth in the application for a period of 90 days, or until the application is disapproved or granted by the commissioner, whichever is earlier. ~~If requested in the application, or determined to be necessary by the commissioner, the data in the application shall be so classified for all government entities similar to the applicant until the application is disapproved or granted by the commissioner, whichever is earlier.~~ Proceedings after the grant or disapproval shall be governed by the provisions of subdivision 5.

Sec. 4. Minnesota Statutes 2008, section 13.06, is amended by adding a subdivision to read:

Subd. 4a. **Withdrawal of application.** Except when an application is processed under subdivision 4, an application may be withdrawn by the responsible authority prior to the commissioner granting or disapproving the temporary classification. The responsible authority shall notify the commissioner in writing of the entity's intent to withdraw the application. The written withdrawal must state the reason the temporary classification is no longer necessary and must be signed by the responsible authority.

Sec. 5. Minnesota Statutes 2008, section 13.06, subdivision 5, is amended to read:

Subd. 5. **Determination.** (a) The commissioner shall either grant or disapprove the application for temporary classification within 45 days after it is ~~filed~~ received by the commissioner. On disapproving an application, the commissioner shall set forth in detail reasons for the disapproval, and shall include a statement of belief as to what classification is appropriate for the data which is the subject of the application. Twenty days after the date ~~of~~ the responsible authority receives the commissioner's disapproval of an application, the data which is the subject of the application shall become public data, unless the responsible authority submits an amended application for temporary

classification which requests the classification deemed appropriate by the commissioner in the statement of disapproval or which sets forth additional information relating to the original proposed classification. Upon the filing of an amended application, the data which is the subject of the amended application shall be deemed to be classified as set forth in the amended application for a period of 20 days or until the amended application is granted or disapproved by the commissioner, whichever is earlier. The commissioner shall either grant or disapprove the amended application within 20 days after it is filed. Five working days after the date ~~of~~ the responsible authority receives the commissioner's disapproval of the amended application, the data which is the subject of the application shall become public data. No more than one amended application may be submitted for any single file or system.

(b) If the commissioner grants an application for temporary classification under this section, it shall become effective immediately, and the complete record relating to the application shall be submitted to the attorney general, who shall review the classification as to form and legality. Within 25 days after receipt of the record, the attorney general shall approve the classification, disapprove a classification as confidential or protected nonpublic but approve a classification as private or nonpublic, or disapprove the classification. If the attorney general disapproves a classification, the data which is the subject of the classification shall become public data five working days after the date of the attorney general's disapproval.

Sec. 6. Minnesota Statutes 2008, section 13.06, is amended by adding a subdivision to read:

Subd. 6a. **Data use and dissemination.** During the period of the temporary classification, a responsible authority may request approval from the commissioner for a new or different use or dissemination of the data as provided in section 13.05, subdivision 4, for any data temporarily classified under this section.

Sec. 7. Minnesota Statutes 2008, section 13.06, subdivision 7, is amended to read:

Subd. 7. **Legislative consideration of temporary classifications; expiration.** On or before January 15 of each year, the commissioner shall submit all temporary classifications in effect on January 1 in bill form to the legislature. The temporary classification expires ~~June~~ August 1 of the year ~~following its submission~~ it is submitted to the legislature.

Sec. 8. Minnesota Statutes 2008, section 13.43, subdivision 1, is amended to read:

Subdivision 1. **Definition.** As used in this section, "personnel data" means government data on individuals ~~collected~~ maintained because the individual is or was an employee of or an applicant for employment by, performs services on a voluntary basis for, or acts as an independent contractor with a government entity. Personnel data includes data submitted by an employee to a government entity as part of an organized self-evaluation effort by the government entity to request suggestions from all employees on ways to cut costs, make government more efficient, or improve the operation of government. An employee who is identified in a suggestion shall have access to all data in the suggestion except the identity of the employee making the suggestion.