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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **2899**

February 11, 2010

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The bill was read for the first time and referred to the Committee on State and Local Government Operations Reform, Technology and Elections

1.1 A bill for an act
1.2 relating to data practices; providing an administrative remedy for certain
1.3 data practices and open meetings law violations; providing civil penalties;
1.4 appropriating money; proposing coding for new law in Minnesota Statutes,
1.5 chapters 13; 13D; repealing Minnesota Statutes 2008, sections 13.08, subdivision
1.6 4; 13D.06.

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

1.8 Section 1. **[13.085] ADMINISTRATIVE REMEDY.**

1.9 Subdivision 1. **Definition.** As used in this section, "office" means the Office of
1.10 Administrative Hearings.

1.11 Subd. 2. **Complaints.** (a) A complaint eligible for filing under this section must be
1.12 filed with the office and be finally disposed of by the office before the alleged violation may
1.13 be subject to criminal prosecution or included in a civil complaint filed in district court.

1.14 (b) Under this section, a person may file a complaint alleging:

1.15 (1) a violation of chapter 13D; or

1.16 (2) a violation of this chapter for which an order to compel compliance is requested.

1.17 An action to compel compliance does not include procedures pursuant to section
1.18 13.04, subdivision 4.

1.19 (c) The complaint must be filed with the office within two years after the occurrence
1.20 of the act or failure to act that is the subject of the complaint, except that if the act or
1.21 failure to act involves concealment or misrepresentation that could not be discovered
1.22 during that period, the complaint may be filed with the office within one year after the
1.23 concealment or misrepresentation is discovered.

2.1 (d) The complaint must be made in writing, submitted under oath, and detail the
2.2 factual basis for the claim that a violation of law has occurred. The office may prescribe a
2.3 standard form for the complaint.

2.4 (e) The complaint must be accompanied by a filing fee of \$1,000 or a bond to
2.5 guarantee the payment of this fee.

2.6 (f) Upon receipt of a filed complaint, the office must immediately notify the
2.7 respondent and provide the respondent with a copy of the complaint by the most
2.8 expeditious means available. The respondent must file a response to the complaint within
2.9 ten business days of receipt of the notice.

2.10 Subd. 3. **Probable cause review.** (a) The chief administrative law judge must
2.11 randomly assign an administrative law judge to review each complaint. Within 15
2.12 business days after a complaint is filed with the office, the administrative law judge must
2.13 make a preliminary determination for its disposition as follows:

2.14 (1) If the administrative law judge determines that the complaint and any timely
2.15 reply of the respondent agency do not present sufficient facts to believe that a violation
2.16 of law of this chapter or chapter 13D has occurred, the judge must immediately dismiss
2.17 the complaint.

2.18 (2) If the administrative law judge determines that the complaint and any timely
2.19 reply of the respondent agency do present sufficient facts to believe that a violation of law
2.20 of this chapter or chapter 13D has occurred, the judge must further determine whether
2.21 the complaint presents questions of law or questions of fact. If the judge determines that
2.22 the filings present controlling questions of law, the judge must schedule a hearing on
2.23 those questions as provided in subdivision 4. If the judge determines that the complaint
2.24 contains any material questions of fact, the judge must schedule an evidentiary hearing as
2.25 provided in subdivision 5.

2.26 (b) The office must notify all parties of the determination made under paragraph
2.27 (a). The notice must provide as follows:

2.28 (1) If the complaint is scheduled for a hearing, the notice must identify the time and
2.29 place of the hearing and inform all parties that they may submit evidence, affidavits,
2.30 documentation, and argument for consideration by the administrative law judge.

2.31 (2) If the complaint is dismissed for failure to present sufficient facts to believe that
2.32 a violation of law of this chapter or chapter 13D has occurred, the notice must inform the
2.33 parties of the right of the complainant to seek reconsideration of the decision on the record
2.34 by the chief administrative law judge, as provided in paragraph (c).

2.35 (c) A petition for reconsideration must be filed within five business days after a
2.36 complaint is dismissed for failure to present sufficient facts to believe that a violation of

3.1 law of this chapter or chapter 13D has occurred. The chief administrative law judge must
 3.2 review the petition and make a final ruling within ten business days after its receipt. If the
 3.3 chief administrative law judge determines that the assigned administrative law judge made
 3.4 a clear error of law, the chief administrative law judge must schedule the matter for an
 3.5 appropriate hearing under subdivision 4 or 5.

3.6 Subd. 4. **Hearing to resolve questions of law.** Upon determination that a matter
 3.7 involves controlling questions of law, the assigned administrative law judge must schedule
 3.8 a hearing for argument on those questions. The hearing must be held within 20 business
 3.9 days after the complaint was assigned. An oral hearing to resolve questions of law may be
 3.10 waived upon consent of all parties and the presiding administrative law judge.

3.11 Subd. 5. **Evidentiary hearing.** An evidentiary hearing must be held on all matters
 3.12 for which questions of fact must be resolved, as determined on probable cause review by
 3.13 the assigned administrative law judge. An evidentiary hearing must be held within 20
 3.14 business days after the complaint was assigned. For good cause shown, the judge may
 3.15 delay the date of the hearing by no more than ten business days.

3.16 Subd. 6. **Disposition.** (a) Following a hearing under subdivision 4 or 5, the judge
 3.17 must determine whether the violation alleged in the complaint occurred and must make at
 3.18 least one of the following dispositions. The judge may:

3.19 (1) dismiss the complaint;

3.20 (2) find that an act or failure to act constituted a violation of this chapter or chapter
 3.21 13D;

3.22 (3) impose a civil penalty against the respondent of up to \$300 for violation of
 3.23 this chapter;

3.24 (4) issue an order compelling the respondent to comply with a provision of law that
 3.25 has been violated, including the establishment of a deadline for production of data, if
 3.26 necessary;

3.27 (5) refer the complaint to the appropriate prosecuting authority for consideration
 3.28 of criminal charges; and

3.29 (6) impose a civil penalty against any person who intentionally violates chapter 13D,
 3.30 not to exceed \$300 for a single occurrence. This penalty may not be paid by the public
 3.31 body. The public body may pay costs and attorney fees incurred by or awarded against
 3.32 any of its members.

3.33 (b) The judge must dispose of the complaint within ten business days after the
 3.34 hearing record closes. If the judge determines that a government entity has violated a
 3.35 provision of law and issues an order to compel compliance, the office shall forward a copy
 3.36 of the order to the commissioner of administration. Any order issued pursuant to this

4.1 section is enforceable through the district court for the district in which the respondent
4.2 is located.

4.3 (c) If a person is found to have intentionally violated chapter 13D in three or more
4.4 actions involving the same governing body, the person shall forfeit any further right to
4.5 serve on that governing body for a period of time equal to the term of office the person
4.6 was then serving. Upon such a finding by the administrative law judge, the district court
4.7 shall issue an order declaring the position vacant and notify the appointing authority
4.8 or clerk of the governing body.

4.9 Subd. 7. **Hearing procedures.** (a) The administrative law judge shall consider any
4.10 evidence and argument submitted until a hearing record is closed, including affidavits and
4.11 documentation. The administrative law judge may continue a hearing to enable the parties
4.12 to submit additional testimony. For good cause shown, the judge may delay the initial date
4.13 of the hearing by no more than ten business days.

4.14 (b) All hearings, and any records relating to the hearing, must be open to the public,
4.15 except that in a matter involving a request for government data under section 13.03
4.16 or 13.04, the judge may inspect in camera the government data in dispute and shall
4.17 otherwise conduct the hearing and maintain records in a manner that protects the security
4.18 of data classified or alleged to be classified as not public. A hearing may be conducted
4.19 by conference telephone call or interactive television, at the discretion of the presiding
4.20 administrative law judge.

4.21 (c) A party aggrieved by a final decision on a complaint filed under this section
4.22 is entitled to judicial review of the decision as provided in sections 14.63 to 14.69.
4.23 Proceedings on a complaint filed under this section are not a contested case within the
4.24 meaning of chapter 14 and are not otherwise governed by chapter 14.

4.25 Subd. 8. **Costs; attorney fees.** (a)(1) A complainant that substantially prevails
4.26 on the merits in an action brought under this section shall be awarded reasonable
4.27 attorney fees, not to exceed \$5,000. The office shall refund the filing fee of a prevailing
4.28 complainant in full, less \$50, and the office's costs in conducting the matter shall be billed
4.29 to the respondent, not to exceed \$1,000.

4.30 (2) A complainant that does not substantially prevail on the merits shall be entitled
4.31 to a refund of the filing fee, less any costs incurred by the office in conducting the matter.

4.32 (b) If the administrative law judge determines that a complaint is frivolous, without
4.33 merit, and lacking a basis in fact, the judge must order that the complainant pay the
4.34 respondent's costs, disbursements, and reasonable attorney fees, and any costs incurred by
4.35 the office in conducting the matter. The complainant shall not be entitled to a refund of
4.36 the filing fee.

5.1 (c) Reasonable attorney fees shall be awarded to a substantially prevailing plaintiff
5.2 who has brought an action under this section if the government entity that is the respondent
5.3 in the action was also the subject of a written opinion issued under section 13.072 and the
5.4 administrative law judge finds that the opinion is directly related to the matter in dispute
5.5 and that the government entity did not act in conformity with the opinion.

5.6 Subd. 9. **Special account; appropriation.** Proceeds collected by the office from
5.7 filing fees and bonds submitted under this section shall be deposited into a special account
5.8 and are appropriated to the office for use in administering the requirements of this section.

5.9 **Sec. 2. [13D.061] ADMINISTRATIVE REMEDY.**

5.10 A person may file a complaint for a violation of this chapter under section 13.085.

5.11 **Sec. 3. REPEALER.**

5.12 Minnesota Statutes 2008, sections 13.08, subdivision 4; and 13D.06, are repealed.

5.13 **Sec. 4. EFFECTIVE DATE.**

5.14 Sections 1 to 3 are effective August 1, 2010, and apply to actions commenced on or
5.15 after that date.