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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. **3445**

03/08/2018 Authored by Kresha; Anderson, S.; Fabian; Ecklund; Howe and others
The bill was read for the first time and referred to the Committee on Government Operations and Elections Policy
04/26/2018 Adoption of Report: Amended and re-referred to the Committee on State Government Finance
Pursuant to Joint Rule 2.03, re-referred to the Committee on Rules and Legislative Administration

1.1 A bill for an act
1.2 relating to state government; modifying rulemaking; regulating policy
1.3 pronouncements; providing for the investigation of complaints of harassment,
1.4 misconduct, and discrimination in the executive branch; amending Minnesota
1.5 Statutes 2016, sections 14.03, subdivision 3; 14.127, subdivision 4; 14.381, by
1.6 adding a subdivision; proposing coding for new law in Minnesota Statutes, chapters
1.7 14; 43A; repealing Minnesota Statutes 2016, section 14.381, subdivision 3.

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

1.9 Section 1. Minnesota Statutes 2016, section 14.03, subdivision 3, is amended to read:

1.10 Subd. 3. **Rulemaking procedures.** (a) The definition of a rule in section 14.02,
1.11 subdivision 4, does not include:

1.12 (1) rules concerning only the internal management of the agency or other agencies that
1.13 do not directly affect the rights of or procedures available to the public;

1.14 (2) an application deadline on a form; and the remainder of a form and instructions for
1.15 use of the form to the extent that they do not impose substantive requirements other than
1.16 requirements contained in statute or rule;

1.17 (3) the curriculum adopted by an agency to implement a statute or rule permitting or
1.18 mandating minimum educational requirements for persons regulated by an agency, provided
1.19 the topic areas to be covered by the minimum educational requirements are specified in
1.20 statute or rule;

1.21 (4) procedures for sharing data among government agencies, provided these procedures
1.22 are consistent with chapter 13 and other law governing data practices.

1.23 (b) The definition of a rule in section 14.02, subdivision 4, does not include:

2.1 (1) rules of the commissioner of corrections relating to the release, placement, term, and
 2.2 supervision of inmates serving a supervised release or conditional release term, the internal
 2.3 management of institutions under the commissioner's control, and rules adopted under
 2.4 section 609.105 governing the inmates of those institutions;

2.5 (2) rules relating to weight limitations on the use of highways when the substance of the
 2.6 rules is indicated to the public by means of signs;

2.7 (3) opinions of the attorney general;

2.8 (4) the data element dictionary and the annual data acquisition calendar of the Department
 2.9 of Education to the extent provided by section 125B.07;

2.10 (5) the occupational safety and health standards provided in section 182.655;

2.11 (6) revenue notices and tax information bulletins of the commissioner of revenue;

2.12 (7) uniform conveyancing forms adopted by the commissioner of commerce under
 2.13 section 507.09;

2.14 (8) standards adopted by the Electronic Real Estate Recording Commission established
 2.15 under section 507.0945; ~~or~~

2.16 (9) the interpretive guidelines developed by the commissioner of human services to the
 2.17 extent provided in chapter 245A.; or

2.18 (10) policies established pursuant to section 14.031.

2.19 Sec. 2. **[14.031] POLICY PRONOUNCEMENTS.**

2.20 Subdivision 1. **Definition.** (a) As used in this section, "policy" means a public written
 2.21 policy, guideline, bulletin, manual, or similar document providing an interpretation,
 2.22 clarification, or explanation of a statute or rule to provide guidance for agency regulatory
 2.23 functions including but not limited to permits or enforcement actions.

2.24 The definition of a policy does not include:

2.25 (1) policies concerning only the internal management of the agency or other agencies
 2.26 that do not directly affect the rights of or procedures available to the public;

2.27 (2) forms and instructions for use of the form to the extent that they do not impose
 2.28 substantive requirements other than requirements contained in statute or rule;

2.29 (3) curriculums adopted by an agency to implement a statute or rule permitting or
 2.30 mandating minimum educational requirements for persons regulated by an agency, provided

3.1 the topic areas to be covered by the minimum educational requirements are specified in
3.2 statute or rule;

3.3 (4) procedures for sharing data among government agencies, provided these procedures
3.4 are consistent with chapter 13 and other law governing data practices; or

3.5 (5) policies concerning agency actions required to comply with treaty obligations.

3.6 (b) A policy does not have the force of law.

3.7 (c) Policies established by the agency are subject to all of the following requirements:

3.8 (1) a policy shall comply with the statutes and rules that are in existence at the time the
3.9 policy is established;

3.10 (2) a policy shall not establish any new requirement;

3.11 (3) a policy shall be established only by the commissioner of the agency; and

3.12 (4) the following statement must be printed on the first page of each policy in uppercase
3.13 letters: "Every five years the agency shall review and update each policy that is established
3.14 before the effective date of this section or that it establishes after the effective date of this
3.15 section and shall prepare written documentation certifying that the policy has been reviewed
3.16 and updated. A policy that has not been reviewed and updated pursuant to this paragraph
3.17 is void."

3.18 Subd. 2. **Notice to legislature.** By January 15 each year, each agency must submit each
3.19 policy the agency has or intends to publish under subdivision 3 in the upcoming calendar
3.20 year to the policy and funding committees and divisions with jurisdiction over the agency.
3.21 Each agency must post a link to its policies on the agency's Web site.

3.22 Subd. 3. **Public notice.** Before a policy is in effect, the agency must publish public notice
3.23 of the proposed policy and solicit public comment. The agency shall use the procedure set
3.24 forth under section 14.22 to provide public notice and meeting. The agency shall publish
3.25 the public notice on the agency's Web site. The agency must send a copy of the same notice
3.26 to the chairs and ranking minority members of the legislative policy and budget committees
3.27 with jurisdiction over the subject matter of the proposed policy. The public comment period
3.28 shall be 30 days after the date of a public meeting on the policy.

3.29 Subd. 4. **Final publication.** The agency must make all policies that conform to this
3.30 section available electronically on the agency's Web site within 60 days of the completion
3.31 of requirements in this section.

4.1 Subd. 5. **Committee action; delay action.** The agency shall not use a policy until the
4.2 legislature adjourns the annual legislative session that began the year the legislature received
4.3 notice of the policy under subdivision 2. The speaker of the house and the president of the
4.4 senate shall determine if a committee has jurisdiction over the agency before a committee
4.5 may act under this section.

4.6 Subd. 6. **Policy docket.** (a) Each agency shall maintain a policy docket with the agency's
4.7 current public rulemaking docket under section 14.366.

4.8 (b) The policy docket must contain:

4.9 (1) a listing of the precise subject matter;

4.10 (2) the name and address of agency personnel with whom persons may communicate
4.11 with respect to the matter and an indication of its present status within the agency;

4.12 (3) any known timetable for agency decisions or other action in the proceeding;

4.13 (4) the date of the public hearing on the policy;

4.14 (5) the schedule for public comments on the policy; and

4.15 (6) the date the policy became or becomes effective.

4.16 Sec. 3. Minnesota Statutes 2016, section 14.127, subdivision 4, is amended to read:

4.17 Subd. 4. **Exceptions.** (a) Subdivision 3 does not apply if the administrative law judge
4.18 approves an agency's determination that the legislature has appropriated money to sufficiently
4.19 fund the expected cost of the rule upon the business or city proposed to be regulated by the
4.20 rule.

4.21 (b) Subdivision 3 does not apply if the administrative law judge approves an agency's
4.22 determination that the rule has been proposed pursuant to a specific federal statutory or
4.23 regulatory mandate.

4.24 (c) This section does not apply if the rule is adopted under section 14.388 or under
4.25 another law specifying that the rulemaking procedures of this chapter do not apply.

4.26 (d) This section does not apply to a rule adopted by the Public Utilities Commission.

4.27 ~~(e) Subdivision 3 does not apply if the governor waives application of subdivision 3.~~
4.28 ~~The governor may issue a waiver at any time, either before or after the rule would take~~
4.29 ~~effect, but for the requirement of legislative approval. As soon as possible after issuing a~~
4.30 ~~waiver under this paragraph, the governor must send notice of the waiver to the speaker of~~

5.1 ~~the house and the president of the senate and must publish notice of this determination in~~
5.2 ~~the State Register.~~

5.3 Sec. 4. Minnesota Statutes 2016, section 14.381, is amended by adding a subdivision to
5.4 read:

5.5 Subd. 4. **Fees and expenses.** (a) The administrative law judge shall award fees and other
5.6 expenses to the prevailing party under subdivision 1, unless special circumstances make an
5.7 award unjust.

5.8 (b) A party seeking an award of fees and other expenses shall, within 30 days of the
5.9 administrative law judge's report issued in the action, submit to the administrative law judge
5.10 an application of fees and other expenses that shows that the party is a prevailing party and
5.11 is eligible to receive an award, and the amount sought, including an itemized statement from
5.12 any attorney or expert witness representing or appearing on behalf of the party stating the
5.13 actual time expended and the rate at which fees and other expenses were computed.

5.14 (c) The administrative law judge may reduce the amount to be awarded under this section,
5.15 or deny an award, to the extent that during the proceedings the prevailing party engaged in
5.16 conduct that unduly and unreasonably protracted the final resolution of the matter in
5.17 controversy. The decision of an administrative law judge under this section must be made
5.18 a part of the record containing the final decision of the agency and must include written
5.19 findings and conclusions.

5.20 (d) This section does not preclude a party from recovering costs, disbursements, fees,
5.21 and expenses under other applicable law.

5.22 Sec. 5. **[43A.385] HARASSMENT, MISCONDUCT, AND DISCRIMINATION;**
5.23 **INDEPENDENT OFFICE ESTABLISHED.**

5.24 Subdivision 1. **Office established; purpose.** An independent, centralized office to
5.25 receive and investigate complaints of harassment, misconduct, and discrimination, including
5.26 sexual harassment, in executive branch state agencies is established. The office shall be led
5.27 by a director, appointed by the commissioner of management and budget, who serves in
5.28 the unclassified service. The purpose of the office is to apply consistent practices in the
5.29 investigation of these complaints across agencies and reinforce a culture that encourages
5.30 the reporting of such complaints by increasing confidence in the process and the fairness
5.31 of the outcome.

6.1 Subd. 2. Office duties. (a) In addition to the requirements of subdivisions 3 to 7, the
6.2 office must:

6.3 (1) collect, maintain, and analyze data related to complaints of harassment, misconduct,
6.4 and discrimination across state government and must provide public, de-identified summary
6.5 reports on the data;

6.6 (2) provide an opportunity for state employees, and members of the public who interact
6.7 with state employees, to report a complaint, provided that the office's complaint procedures
6.8 must be in addition to existing opportunities for reporting available through other means;

6.9 (3) review complaints filed, and provide related investigation services, to all state
6.10 agencies;

6.11 (4) in the event the office determines that a complaint is substantiated, determine an
6.12 appropriate corrective action in response, in consultation with the agency employing the
6.13 person found to have engaged in improper conduct;

6.14 (5) track the outcomes of disciplinary or other corrective action, and advise agencies as
6.15 needed to ensure consistency in these actions; and

6.16 (6) employ trained staff to provide resources and information to all parties to a complaint.

6.17 (b) State agencies must provide applicable data to the office as required by this section,
6.18 and must otherwise assist the office in fulfilling its responsibilities, as requested by the
6.19 director.

6.20 Subd. 3. State employee community survey. The office must administer an employee
6.21 community survey to gain feedback on the workplace in state agencies. Results of the survey
6.22 must be used to review the effectiveness of existing agency leadership efforts, and the
6.23 application of existing policies and procedures within each agency. The survey must be
6.24 intended to solicit feedback from employees on:

6.25 (1) whether they feel safe in their workplaces;

6.26 (2) whether they are knowledgeable about the process for reporting complaints of
6.27 harassment, misconduct, or discrimination;

6.28 (3) their level of satisfaction with reporting a complaint, if applicable; and

6.29 (4) suggestions for ways their employing agency can provide additional support to
6.30 employees who have made a complaint.

7.1 Subd. 4. **Complaint hotline.** The office may enter a contract for the development and
7.2 maintenance of a hotline that may be used by state employees to report a complaint of
7.3 harassment, misconduct, or discrimination.

7.4 Subd. 5. **Audits.** The office must conduct audits to ensure state agencies have effective
7.5 and consistent policies and procedures to prevent and correct harassment, misconduct, and
7.6 discrimination. The audits must include an evaluation of outcomes related to complaints of
7.7 harassment based on a status protected under chapter 363A. The office must provide technical
7.8 guidance and otherwise assist agencies in making corrections in response to an audit's
7.9 findings, and in ensuring consistency in the handling of complaints.

7.10 Subd. 6. **Training.** The office must provide a centralized, consistent, regular training
7.11 program for all state agencies designed to increase the knowledge of state employees in the
7.12 state's harassment, misconduct, and discrimination prevention policies, procedures, and
7.13 resources, and to create a culture of prevention and support for victims. The content of the
7.14 program must include bystander training, retaliation prevention training, and respect in the
7.15 workplace training. Customized training programs must be offered for: (1) general state
7.16 employees; (2) supervisors and managers; and (3) agency affirmative action and human
7.17 resources employees.

7.18 Subd. 7. **Annual legislative report required.** No later than January 15, 2019, and
7.19 annually thereafter, the office must provide a written report to the chairs and ranking minority
7.20 members of the legislative committees with jurisdiction over state government finance and
7.21 state government operations on the work of the office. The report must include detail on
7.22 disciplinary and other corrective actions taken by state agencies in response to a substantiated
7.23 complaint. The report must not identify a party to a complaint, unless the identity is public
7.24 under applicable law.

7.25 Subd. 8. **Transfer of responsibilities to office.** To the extent that a responsibility
7.26 described in subdivisions 1 to 7 conflicts with or duplicates the responsibilities of an existing
7.27 office or department within a state agency, those responsibilities are transferred to the
7.28 centralized office established by this section, consistent with the requirements of section
7.29 15.039. The commissioner of administration may, with the approval of the governor, issue
7.30 reorganization orders under section 16B.37 as necessary to complete the transfer of duties
7.31 required by this subdivision.

7.32 **EFFECTIVE DATE.** This section is effective July 1, 2018.

8.1 Sec. 6. **REPEALER.**

8.2 Minnesota Statutes 2016, section 14.381, subdivision 3, is repealed.

8.3 Sec. 7. **EFFECTIVE DATE; APPLICATION.**

8.4 (a) Except where otherwise provided, this act is effective August 1, 2018, and applies
8.5 to rules for which a notice of hearing under Minnesota Statutes, section 14.14; a notice of
8.6 intent to adopt under Minnesota Statutes, section 14.22; or a dual notice under Minnesota
8.7 Statutes, section 14.225, is published in the State Register on or after that date.

8.8 (b) This act also applies to policies established on or after January 1, 2019. All policies
8.9 existing on or before the date of enactment shall be posted on the agency's public docket
8.10 on or before January 1, 2019.

14.381 UNADOPTED RULES.

Subd. 3. **Costs.** The agency is liable for all Office of Administrative Hearings costs associated with review of the petition. If the administrative law judge rules in favor of the agency, the agency may recover all or a portion of the costs from the petitioner unless the petitioner is entitled to proceed in forma pauperis under section 563.01 or the administrative law judge determines that the petition was brought in good faith and that an assessment of the costs would constitute an undue hardship for the petitioner. If an agency has reason to believe it will prevail in the consideration of a petition, and that an effort to recover costs from the petitioner will be unsuccessful, it may request the chief administrative law judge to require the petitioner to provide bond or a deposit to the agency in an amount the chief administrative law judge estimates will be the cost to the Office of Administrative Hearings to review the petition.