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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 4162

03/05/2020 Authored by Scott and Schomacker The bill was read for the first time and referred to the Judiciary Finance and Civil Law Division

1.1 A bill for an act
1.2 relating to open government; transferring certain responsibilities under chapter 13
1.3 from the commissioner of administration to the Office of Administrative Hearings;
1.4 establishing a data practices coordinator position; amending the administrative
1.5 remedy under chapter 13; appropriating money; amending Minnesota Statutes
1.6 2018, sections 13.02, by adding a subdivision; 13.08, subdivision 4; 13.085,
1.7 subdivisions 2, 5, 6, by adding a subdivision; 13.685; 13D.06, subdivision 4; 14.54;
1.8 proposing coding for new law in Minnesota Statutes, chapters 13; 14; repealing
1.9 Minnesota Statutes 2018, sections 13.02, subdivision 2; 13.072, subdivisions 1,
1.10 2, 4; 13.085, subdivision 7.

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

1.12 Section 1. Minnesota Statutes 2018, section 13.02, is amended by adding a subdivision
1.13 to read:

1.14 Subd. 1a. Chief administrative law judge. "Chief administrative law judge" means the
1.15 chief administrative law judge of the state Office of Administrative Hearings.

1.16 Sec. 2. [13.071] DATA PRACTICES COORDINATOR.

1.17 Subdivision 1. Appointment. The chief administrative law judge shall appoint a data
1.18 practices coordinator in the unclassified service within the Office of Administrative Hearings.

1.19 Subd. 2. Qualifications. The coordinator must be knowledgeable about the Minnesota
1.20 Government Data Practices Act, the Minnesota Open Meeting Law, and federal laws and
1.21 regulations regarding data privacy. The coordinator must have experience in dealing with
1.22 both private enterprise and governmental entities, interpreting laws and regulations, record
1.23 keeping, report writing, public speaking, and management.

1.24 Subd. 3. Duties. The coordinator shall:

2.1 (1) advise and serve as a technical resource for government entities on questions related  
 2.2 to public access to government data, rights of subjects of data, classification of data, or  
 2.3 applicable duties under chapter 13D;

2.4 (2) advise persons regarding their rights under this chapter or chapter 13D;

2.5 (3) administer the public information policy training program under section 13.073; and

2.6 (4) perform other duties as directed by the chief administrative law judge.

2.7 Subd. 4. **Effect of coordinator advice.** The advice of the coordinator is not binding on  
 2.8 a government entity or members of a body subject to chapter 13D, does not constitute legal  
 2.9 advice, and has no effect on liability, fines, or fee awards arising from a violation of this  
 2.10 chapter or chapter 13D. This section does not preclude a person from bringing any other  
 2.11 action under this chapter or other law in addition to or instead of requesting advice from  
 2.12 the coordinator.

2.13 Subd. 5. **Data submitted to coordinator.** A government entity may submit not public  
 2.14 data to the coordinator for the purpose of requesting advice. Government data submitted to  
 2.15 the coordinator by a government entity or copies of government data submitted by other  
 2.16 persons have the same classification as the data have when held by the government entity.

2.17 Sec. 3. Minnesota Statutes 2018, section 13.08, subdivision 4, is amended to read:

2.18 Subd. 4. **Action to compel compliance.** (a) Actions to compel compliance may be  
 2.19 brought either under this subdivision or section 13.085. For actions under this subdivision,  
 2.20 in addition to the remedies provided in subdivisions 1 to 3 or any other law, any aggrieved  
 2.21 person seeking to enforce the person's rights under this chapter or obtain access to data may  
 2.22 bring an action in district court to compel compliance with this chapter and may recover  
 2.23 costs and disbursements, including reasonable attorney's fees, as determined by the court.  
 2.24 If the court determines that an action brought under this subdivision is frivolous and without  
 2.25 merit and a basis in fact, it may award reasonable costs and attorney fees to the responsible  
 2.26 authority. If the court issues an order to compel compliance under this subdivision, the court  
 2.27 may impose a civil penalty of up to \$1,000 against the government entity. This penalty is  
 2.28 payable to the state general fund and is in addition to damages under subdivision 1. The  
 2.29 matter shall be heard as soon as possible. In an action involving a request for government  
 2.30 data under section 13.03 or 13.04, the court may inspect in camera the government data in  
 2.31 dispute, but shall conduct its hearing in public and in a manner that protects the security of  
 2.32 data classified as not public. If the court issues an order to compel compliance under this  
 2.33 subdivision, the court shall forward a copy of the order to the commissioner of administration.

3.1 (b) In determining whether to assess a civil penalty under this subdivision, the court or  
 3.2 other tribunal shall consider whether the government entity has substantially complied with  
 3.3 general data practices under this chapter, including but not limited to, whether the government  
 3.4 entity has:

3.5 (1) designated a responsible authority under section 13.02, subdivision 16;

3.6 (2) designated a data practices compliance official under section 13.05, subdivision 13;

3.7 (3) prepared the data inventory that names the responsible authority and describes the  
 3.8 records and data on individuals that are maintained by the government entity under section  
 3.9 13.025, subdivision 1;

3.10 (4) developed public access procedures under section 13.03, subdivision 2; procedures  
 3.11 to guarantee the rights of data subjects under section 13.025, subdivision 3; and procedures  
 3.12 to ensure that data on individuals are accurate and complete and to safeguard the data's  
 3.13 security under section 13.05, subdivision 5;

3.14 (5) acted in conformity with ~~an opinion issued under section 13.072 that was sought by~~  
 3.15 ~~a government entity or another person~~ a previously issued advisory opinion of the  
 3.16 commissioner of administration or a prior decision of the office; or

3.17 (6) provided ongoing training to government entity personnel who respond to requests  
 3.18 under this chapter.

3.19 (c) The court shall award reasonable attorney fees to a prevailing plaintiff who has  
 3.20 brought an action under this subdivision if the government entity that is the defendant in  
 3.21 the action was also the subject of a ~~written opinion issued under section 13.072~~ previously  
 3.22 issued advisory opinion of the commissioner of administration or a prior decision of the  
 3.23 office and the court finds that the opinion or decision is directly related to the cause of action  
 3.24 being litigated and that the government entity did not act in conformity with the opinion or  
 3.25 decision.

3.26 Sec. 4. Minnesota Statutes 2018, section 13.085, subdivision 2, is amended to read:

3.27 Subd. 2. **Complaints.** (a) A complaint alleging a violation of this chapter for which an  
 3.28 order to compel compliance is requested may be filed with the office. An action to compel  
 3.29 compliance does not include procedures pursuant to section 13.04, subdivision 4 or 4a.

3.30 (b) The complaint must be filed with the office within two years after the occurrence of  
 3.31 the act or failure to act that is the subject of the complaint, except that if the act or failure  
 3.32 to act involves concealment or misrepresentation by the government entity that could not

4.1 be discovered during that period, the complaint may be filed with the office within one year  
4.2 after the concealment or misrepresentation is discovered.

4.3 (c) The complaint must be made in writing, submitted under oath, and detail the factual  
4.4 basis for the claim that a violation of law has occurred. The office may prescribe a standard  
4.5 form for the complaint. ~~The complaint must be accompanied by a filing fee of \$1,000 or a~~  
4.6 ~~bond to guarantee the payment of this fee.~~ The office may not charge a filing fee for the  
4.7 complaint.

4.8 (d) Upon receipt of a filed complaint, the office must immediately notify the respondent  
4.9 and, if known, the applicable responsible authority for the government entity, if the  
4.10 responsible authority is not otherwise named as the respondent. The office must provide  
4.11 the respondent with a copy of the complaint by the most expeditious means available. Notice  
4.12 to a responsible authority must be delivered by certified mail. The office must also notify,  
4.13 to the extent practicable, any individual or entity that is the subject of all or part of the data  
4.14 in dispute.

4.15 ~~(e) The office must notify the commissioner of administration of an action filed under~~  
4.16 ~~this section. Proceedings under this section must be dismissed if a request for an opinion~~  
4.17 ~~from the commissioner was accepted on the matter under section 13.072 before the complaint~~  
4.18 ~~was filed, and the complainant's filing fee must be refunded.~~

4.19 ~~(f)~~ (e) The respondent must file a response to the complaint within 15 business days of  
4.20 receipt of the notice. For good cause shown, the office may extend the time for filing a  
4.21 response.

4.22 Sec. 5. Minnesota Statutes 2018, section 13.085, subdivision 5, is amended to read:

4.23 Subd. 5. **Disposition.** (a) Following a hearing, the judge must determine whether the  
4.24 violation alleged in the complaint occurred and must make at least one of the following  
4.25 dispositions. The judge may:

4.26 (1) dismiss the complaint;

4.27 (2) find that an act or failure to act constituted a violation of this chapter;

4.28 (3) impose a civil penalty against the respondent of up to \$300;

4.29 (4) issue an order compelling the respondent to comply with a provision of law that has  
4.30 been violated, and may establish a deadline for production of data, if necessary; and

4.31 (5) refer the complaint to the appropriate prosecuting authority for consideration of  
4.32 criminal charges.

5.1 (b) In determining whether to assess a civil penalty, the office shall consider the factors  
5.2 described in section 13.08, subdivision 4.

5.3 (c) The judge must render a decision on a complaint within ten business days after the  
5.4 hearing record closes. ~~The chief administrative law judge shall provide for public~~  
5.5 ~~dissemination of orders issued under this section. If the judge determines that a government~~  
5.6 ~~entity has violated a provision of law and issues an order to compel compliance, the office~~  
5.7 ~~shall forward a copy of the order to the commissioner of administration. Any order issued~~  
5.8 pursuant to this section is enforceable through the district court for the district in which the  
5.9 respondent is located.

5.10 (d) A party aggrieved by a final decision on a complaint filed under this section is entitled  
5.11 to judicial review as provided in sections 14.63 to 14.69. ~~Proceedings on a complaint are~~  
5.12 ~~not a contested case within the meaning of chapter 14 and are not otherwise governed by~~  
5.13 ~~chapter 14.~~

5.14 ~~(e) A decision of the office under this section is not controlling in any subsequent action~~  
5.15 ~~brought in district court alleging the same violation and seeking damages.~~

5.16 ~~(f)~~ (e) A government entity or person that releases not public data pursuant to an order  
5.17 under this section is immune from civil and criminal liability for that release. A government  
5.18 entity or person that acts in conformity with an order issued under this section to the  
5.19 government entity or to any other person is not liable for compensatory or exemplary damage  
5.20 or awards of attorney fees for acting in conformity with that order in actions under this  
5.21 section or section 13.08, or for a penalty under section 13.09.

5.22 Sec. 6. Minnesota Statutes 2018, section 13.085, subdivision 6, is amended to read:

5.23 Subd. 6. **Costs; attorney fees.** (a) A rebuttable presumption shall exist that a complainant  
5.24 who substantially prevails on the merits in an action brought under this section is entitled  
5.25 to an award of reasonable attorney fees, not to exceed \$5,000. An award of attorney fees  
5.26 may be denied if the judge determines that the violation is merely technical or that there is  
5.27 a genuine uncertainty about the meaning of the governing law.

5.28 (b) Reasonable attorney fees, not to exceed \$5,000, must be awarded to a substantially  
5.29 prevailing complainant if the government entity that is the respondent in the action was also  
5.30 the subject of a ~~written opinion issued under section 13.072~~ previously issued advisory  
5.31 opinion of the commissioner of administration or a prior decision of the office and the  
5.32 administrative law judge finds that the opinion or decision is directly related to the matter

6.1 in dispute and that the government entity did not act in conformity with the opinion or  
 6.2 decision.

6.3 ~~(c) The office shall refund the filing fee of a substantially prevailing complainant in full,~~  
 6.4 ~~less \$50, and~~ If a complainant substantially prevails on the merits of an action brought under  
 6.5 this section, the office's costs in conducting the matter shall be billed to the respondent, not  
 6.6 to exceed \$1,000.

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

6.9 ~~(e)~~ (d) If the administrative law judge determines that a complaint is frivolous, or brought  
 6.10 for purposes of harassment, the judge must order that the complainant pay the respondent's  
 6.11 reasonable attorney fees, not to exceed \$5,000. ~~The complainant shall not be entitled to a~~  
 6.12 ~~refund of the filing fee.~~

6.13 ~~(f)~~ (e) The court shall award the complainant costs and attorney fees incurred in bringing  
 6.14 an action in district court to enforce an order of the Office of Administrative Hearings under  
 6.15 this section.

6.16 Sec. 7. Minnesota Statutes 2018, section 13.085, is amended by adding a subdivision to  
 6.17 read:

6.18 Subd. 8. **Publication and authority of decisions.** (a) The chief administrative law judge  
 6.19 shall provide for public dissemination of the office's decisions issued under this section.  
 6.20 Public dissemination must include the publication and maintenance of all decisions in a  
 6.21 searchable database conspicuously located on the office's website. Not public data contained  
 6.22 in a decision must be redacted prior to public dissemination.

6.23 (b) Unless the decision states otherwise, a decision of the office issued under this section  
 6.24 has precedential effect on future complaints under this section and shall, where appropriate,  
 6.25 be used to provide guidance to similarly situated persons or government entities.

6.26 (c) The chief administrative law judge shall publish and maintain all previously issued  
 6.27 advisory opinions of the commissioner of administration. The previously issued advisory  
 6.28 opinions must be made available in the same manner prescribed by paragraph (a) for decisions  
 6.29 of the office. A previously issued advisory opinion is not binding on the office, a government  
 6.30 entity, or members of a body subject to chapter 13D, but may be used as persuasive authority  
 6.31 by the office, a court, or other tribunal.

6.32 (d) A government entity, member of a body subject to chapter 13D, or person that acts  
 6.33 in conformity with a decision of the office made under this section or with a previously

7.1 issued advisory opinion is not liable for compensatory or exemplary damages or awards of  
 7.2 attorney fees in actions for violations arising under this section or section 13.08, or for a  
 7.3 penalty under section 13.09, or for fines, awards of attorney fees, or any other penalty under  
 7.4 chapter 13D. A member of a body subject to chapter 13D is not subject to forfeiture of  
 7.5 office if the member was acting in reliance on a decision of the office made under this  
 7.6 section or a previously issued advisory opinion.

7.7 Sec. 8. Minnesota Statutes 2018, section 13.685, is amended to read:

7.8 **13.685 MUNICIPAL UTILITY CUSTOMER DATA.**

7.9 Data on customers of municipal electric utilities are private data on individuals or  
 7.10 nonpublic data, but may be released to:

7.11 (1) a law enforcement agency that requests access to the data in connection with an  
 7.12 investigation;

7.13 (2) a school for purposes of compiling pupil census data;

7.14 (3) the Metropolitan Council for use in studies or analyses required by law;

7.15 (4) a public child support authority for purposes of establishing or enforcing child support;

7.16 or

7.17 (5) a person where use of the data directly advances the general welfare, health, or safety  
 7.18 of the public; ~~the commissioner of administration may issue advisory opinions construing~~  
 7.19 ~~this clause pursuant to section 13.072.~~

7.20 Sec. 9. Minnesota Statutes 2018, section 13D.06, subdivision 4, is amended to read:

7.21 Subd. 4. **Costs; attorney fees; requirements; limits.** (a) In addition to other remedies,  
 7.22 the court may award reasonable costs, disbursements, and reasonable attorney fees of up to  
 7.23 \$13,000 to any party in an action under this chapter.

7.24 (b) The court may award costs and attorney fees to a defendant only if the court finds  
 7.25 that the action under this chapter was frivolous and without merit.

7.26 (c) A public body may pay any costs, disbursements, or attorney fees incurred by or  
 7.27 awarded against any of its members in an action under this chapter.

7.28 (d) No monetary penalties or attorney fees may be awarded against a member of a public  
 7.29 body unless the court finds that there was an intent to violate this chapter.

8.1 (e) The court shall award reasonable attorney fees to a prevailing plaintiff who has  
 8.2 brought an action under this section if the public body that is the defendant in the action  
 8.3 was also the subject of a ~~prior written opinion issued under section 13.072~~ previously issued  
 8.4 advisory opinion of the commissioner of administration or a prior decision of the Office of  
 8.5 Administrative Hearings, and the court finds that the opinion or decision is directly related  
 8.6 to the cause of action being litigated and that the public body did not act in conformity with  
 8.7 the opinion or decision. The court shall give deference to the opinion or decision in a  
 8.8 proceeding brought under this section.

8.9 **Sec. 10. [14.535] DATA PRACTICES AND OPEN MEETINGS; COSTS.**

8.10 The chief administrative law judge shall certify to the commissioner of management  
 8.11 and budget the total amount of unreimbursed costs incurred for responsibilities under chapters  
 8.12 13 and 13D during each fiscal year, in an amount less than or equal to \$547,000. The  
 8.13 commissioner of management and budget shall transfer the amount of certified costs from  
 8.14 the general fund and deposit it in the administrative hearings account established under  
 8.15 section 14.54. Transfers may occur quarterly, based on quarterly cost and revenue reports,  
 8.16 with final certification and reconciliation after each fiscal year. Amounts necessary to fund  
 8.17 the transfers required by this section are appropriated in each fiscal year from the general  
 8.18 fund to the commissioner of management and budget.

8.19 Sec. 11. Minnesota Statutes 2018, section 14.54, is amended to read:

8.20 **14.54 ADMINISTRATIVE HEARINGS ACCOUNT.**

8.21 A state Office of Administrative Hearings account is hereby created in the state treasury.  
 8.22 All receipts from services rendered by the state Office of Administrative Hearings shall be  
 8.23 deposited in the account, and all funds in the account shall be annually appropriated to the  
 8.24 state Office of Administrative Hearings for carrying out the duties specified in chapters 13  
 8.25 and 13D, and sections 14.48 to 14.56.

8.26 **Sec. 12. TRANSFER OF DUTIES; DATA PRACTICES AND OPEN MEETING**  
 8.27 **LAW.**

8.28 (a) Responsibilities of the commissioner of administration under Minnesota Statutes,  
 8.29 sections 13.06, 13.07, and 13.073, and any other law providing general oversight  
 8.30 responsibilities related to operation of the Minnesota Government Data Practices Act and  
 8.31 the Minnesota Open Meeting Law, are transferred from the commissioner to the chief  
 8.32 administrative law judge in the Office of Administrative Hearings. Minnesota Statutes,



9.1 section 15.039, applies to the transfer of these responsibilities. The commissioner may, with  
9.2 the approval of the governor, issue reorganization orders under Minnesota Statutes, section  
9.3 16B.37, as necessary to complete the transfer of duties consistent with the requirements of  
9.4 this section.

9.5 (b) Nothing in this section relieves the commissioner of administration from the duty to  
9.6 comply with Minnesota Statutes, chapter 13, or any other applicable law related to data  
9.7 collected, created, or maintained by the commissioner, or to comply with Minnesota Statutes,  
9.8 chapter 13D, related to meetings conducted by the commissioner.

9.9 **Sec. 13. REVISOR INSTRUCTION.**

9.10 In Minnesota Statutes, chapter 13, the revisor of statutes shall replace the term  
9.11 "commissioner of administration" with "chief administrative law judge" and the term  
9.12 "commissioner" with "chief administrative law judge" where it is clear the text is referring  
9.13 to the commissioner of administration.

9.14 **Sec. 14. REPEALER.**

9.15 Minnesota Statutes 2018, sections 13.02, subdivision 2; 13.072, subdivisions 1, 2, and  
9.16 4; and 13.085, subdivision 7, are repealed.

### 13.02 DEFINITIONS.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of the Department of Administration.

### 13.072 OPINIONS BY THE COMMISSIONER.

Subdivision 1. **Opinion; when required.** (a) Upon request of a government entity, the commissioner may give a written opinion on any question relating to public access to government data, rights of subjects of data, or classification of data under this chapter or other Minnesota statutes governing government data practices. Upon request of any person who disagrees with a determination regarding data practices made by a government entity, the commissioner may give a written opinion regarding the person's rights as a subject of government data or right to have access to government data.

(b) Upon request of a body subject to chapter 13D, the commissioner may give a written opinion on any question relating to the body's duties under chapter 13D. Upon request of a person who disagrees with the manner in which members of a governing body perform their duties under chapter 13D, the commissioner may give a written opinion on compliance with chapter 13D. A governing body or person requesting an opinion under this paragraph must pay the commissioner a fee of \$200. Money received by the commissioner under this paragraph is appropriated to the commissioner for the purposes of this section.

(c) If the commissioner determines that no opinion will be issued, the commissioner shall give the government entity or body subject to chapter 13D or person requesting the opinion notice of the decision not to issue the opinion within five business days of receipt of the request. If this notice is not given, the commissioner shall issue an opinion within 20 days of receipt of the request.

(d) For good cause and upon written notice to the person requesting the opinion, the commissioner may extend this deadline for one additional 30-day period. The notice must state the reason for extending the deadline. The government entity or the members of a body subject to chapter 13D must be provided a reasonable opportunity to explain the reasons for its decision regarding the data or how they perform their duties under chapter 13D. The commissioner or the government entity or body subject to chapter 13D may choose to give notice to the subject of the data concerning the dispute regarding the data or compliance with chapter 13D.

(e) This section does not apply to a determination made by the commissioner of health under section 13.3805, subdivision 1, paragraph (b), or 144.6581.

(f) A written, numbered, and published opinion issued by the attorney general shall take precedence over an opinion issued by the commissioner under this section.

Subd. 2. **Effect.** Opinions issued by the commissioner under this section are not binding on the government entity or members of a body subject to chapter 13D whose data or performance of duties is the subject of the opinion, but an opinion described in subdivision 1, paragraph (a), must be given deference by a court or other tribunal in a proceeding involving the data. The commissioner shall arrange for public dissemination of opinions issued under this section, and shall indicate when the principles stated in an opinion are not intended to provide guidance to all similarly situated persons or government entities. This section does not preclude a person from bringing any other action under this chapter or other law in addition to or instead of requesting a written opinion. A government entity, members of a body subject to chapter 13D, or person that acts in conformity with a written opinion of the commissioner issued to the government entity, members, or person or to another party is not liable for compensatory or exemplary damages or awards of attorneys fees in actions for violations arising under section 13.08 or 13.085, or for a penalty under section 13.09 or for fines, awards of attorney fees, or any other penalty under chapter 13D. A member of a body subject to chapter 13D is not subject to forfeiture of office if the member was acting in reliance on an opinion.

Subd. 4. **Data submitted to commissioner.** A government entity may submit not public data to the commissioner for the purpose of requesting or responding to a person's request for an opinion. Government data submitted to the commissioner by a government entity or copies of government data submitted by other persons have the same classification as the data have when held by the government entity. If the nature of the opinion is such that the release of the opinion would reveal not public data, the commissioner may issue an opinion using pseudonyms for individuals. Data maintained by the commissioner, in the record of an opinion issued using pseudonyms that would reveal the identities of individuals protected by the use of the pseudonyms, are private data on individuals.

**13.085 ADMINISTRATIVE REMEDY.**

Subd. 7. **Special account; appropriation.** Proceeds collected by the office from filing fees and bonds submitted under this section shall be deposited into the administrative hearings account established under section 14.54 and are appropriated to the office for use in administering the requirements of this section. By September 1 each year, the chief administrative law judge must report to the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over the office on receipt and expenditure of money under this section in the preceding fiscal year.