

HOUSE RESEARCH

Bill Summary

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Authors: Pelowski
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Analyst: Matt Gehring, 651-296-5052

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Overview

This bill establishes an administrative remedy for certain types of complaints related to the Data Practices Act. All violations for which a person is requesting an order to compel compliance (a court order forcing a party to follow the requirements of law) may be subject to this new remedy.

Section

- 1** **Advisory opinions; effect.** Provides conforming changes to reflect the new remedy contained in section 3 of the bill.
- 2** **Actions to compel compliance; district court.** Provides conforming changes to reflect the new remedy contained in section 3 of the bill.
- 3** **Administrative remedy.**

Subd. 1. Definition. Specifies that the Office of Administrative Hearings is responsible for handling complaints filed under this section.

Subd. 2. Complaints. Specifies the types of complaints that may be filed with the office, and establishes the requirements for the formal submission of a complaint. A \$1,000 filing fee or bond must accompany a complaint.

A complaint must be filed within two years after the occurrence of the act or failure to act that is the subject of the complaint, except that if fraud or misrepresentation is involved that was not discoverable during the period, a party would have an additional one year to file the complaint after the discovery.

Upon submission of a complaint, the Office of Administrative Hearings is required to notify the named respondent in the complaint, the responsible authority of the appropriate government entity, the subject(s) of the data, and the commissioner of administration. The respondent must file a formal response within 15 business days after receipt of the notice.

If the commissioner of administration has accepted an advisory opinion request on the matter, an action under this section must be dismissed and the complainant's filing fee refunded.

Subd. 3. Probable cause review. Specifies the procedure for initial review of a complaint. A complaint must be initially assigned to an administrative law judge for review. The assigned judge must determine, based on the complaint and timely response of the respondent, whether there are sufficient facts to believe that a violation of the law has occurred.

If the assigned judge determines that there are not sufficient facts to believe a violation of law has occurred, the complaint must be dismissed. If the facts are sufficient, the judge must schedule the complaint for a hearing.

Upon making a probable cause determination, the office must notify all parties of the decision, and provide other appropriate information related to the scheduled hearing, or the right of the complainant to seek reconsideration if the complaint was dismissed.

A petition for reconsideration of a dismissed complaint may be filed with the chief administrative law judge within five business days after a complaint is dismissed. If the chief administrative law judge determines that the assigned judge made a clear error, the matter must be scheduled for a hearing.

Subd. 4. Hearing; procedures. Establishes hearing procedures. A hearing must be held within 30 business days after the parties are notified that a hearing will be held. A hearing may be waived by all parties, with consent of all parties and the assigned judge.

All hearings and hearing records must be open to the public, except that data classified as not public (or alleged to be classified as not public) may be inspected by the judge privately.

Subd. 5. Disposition. Requires the administrative law judge to make at least one of the decisions specified in the bill, within ten days after the hearing record closes. If the judge determines that a government entity violated a provision of law and issues an order to compel compliance, a copy of the order must be sent to the commissioner of administration. An order is enforceable through district court.

A party aggrieved by a final decision is entitled to judicial review under sections 14.63 to 14.69—the procedure for judicial review of state agency decisions—but review of a matter under this section is not considered a “contested case” for purposes of chapter 14.

Decisions under this section would not be binding in any subsequent action in district court for damages arising out of the same violation.

Any person or government entity that relies on or complies with an order issued under this section would not be subject to further civil or criminal liability for those actions.

Subd. 6. Costs and attorney fees. Provides for allocation of costs and attorney's fees upon final disposition of a complaint.

A complainant that substantially prevails is presumed to be entitled to an award of reasonable attorney's fees, up to \$5,000, and is entitled to a full refund of the filing fee, less \$50 (a \$950 refund). Reasonable attorney's fees must be awarded if the government entity failed to act in conformity with an advisory opinion directly related to the matter issued by the commissioner of administration. Attorney's fees are not to be awarded if the respondent's violation was merely technical or there is genuine uncertainty about the meaning of the governing law. If the complainant substantially prevails, the office's costs must be paid by the respondent, up to \$1,000.

A complainant that does not substantially prevail is not entitled to an award of attorney's fees. The office must pay its costs in conducting the matter from the filing fee, and refund any remaining portion to the complainant.

If the administrative law judge determines that a complaint is frivolous or brought for purposes of harassment, the complainant must pay the respondent's reasonable attorney's fees up to \$5,000.

Costs and attorney's fees must be awarded to a complainant who files an action in district court to enforce an order issued under this section.

Subd. 7. Special account. Requires the office to use proceeds from filing fees and bonds submitted to administer the process established under this section. A report to the legislature on receipts and expenditures is required by September 1 of each year.

4

Effective date. Provides that the new procedures apply to actions commenced on or after August 1, 2010.