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HOUSE BILL NO. 933

Offered January 22, 1996

A BILL to amend and reenact §§ 2.1-346 and 2.1-346.1 of the Code of Virginia, relating to Freedom of Information Act; enforcement; civil penalty.

Patron—Grayson

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 2.1-346 and 2.1-346.1 of the Code of Virginia are amended and reenacted as follows:**

§ 2.1-346. Proceedings for enforcement of chapter.

Any person, including the attorney for the Commonwealth acting in his official or individual capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause, addressed to the general district court or the court of record of the county or city from which the public body has been elected or appointed to serve and in which such rights and privileges were so denied. Failure by any person to request and receive notice of the time and place of meetings as provided in § 2.1-343 shall not preclude any person from enforcing his or her rights and privileges conferred by this chapter.

Any petition alleging denial of rights and privileges conferred by this chapter by a board, bureau, commission, authority, district or agency of the state government or by a standing or other committee of the General Assembly, shall be addressed to the General District Court or the Circuit Court of the City of Richmond. A petition for mandamus or injunction under this chapter shall be heard within seven days of the date when the same is made. However, any petition made outside of the regular terms of the circuit court of a county which is included in a judicial circuit with another county or counties, the hearing on the petition shall be given precedence on the docket of such court over all cases which are not otherwise given precedence by law. The petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs and attorney's fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position. The court may also impose appropriate sanctions in favor of the public body as provided in § 8.01-271.1.

In addition, any person denied the rights and privileges conferred by this chapter may petition the chief executive officer of the board, bureau, commission, authority, district or agency of the state government or the chairman of the standing or other committee of the General Assembly to review the circumstances surrounding such denial.

§ 2.1-346.1. Violations and penalties.

In a proceeding commenced against members of public bodies under § 2.1-346 for a violation of §§ 2.1-342, 2.1-343, 2.1-343.1, 2.1-344 or § 2.1-344.1, the court, if it finds that a violation was willfully and knowingly made, shall impose upon such member in his individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$25 nor more than \$1,000, which amount shall be paid into the State Literary Fund. *For a second or subsequent violation, such civil penalty shall be not less than \$250 nor more than \$1,000.*

INTRODUCED

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