

March 19, 2009

H 734. OPEN GOVERNMENT/NONDISCLOSURE PENALTIES. Filed 3/19/09. *AMENDING THE PUBLIC RECORDS LAWS TO PROVIDE THAT THE SUCCESSFUL PLAINTIFF IN A PUBLIC RECORDS DISPUTE IS ENTITLED TO REASONABLE ATTORNEYS' FEES AND TO IMPOSE INDIVIDUAL LIABILITY FOR CIVIL PENALTIES FOR FAILURE TO PROVIDE ACCESS TO A PUBLIC RECORD WITHOUT GOOD CAUSE; CREATING THE OPEN GOVERNMENT UNIT OF THE DEPARTMENT OF JUSTICE; AND, ESTABLISHING A FEE FOR MODERATION AND MEDIATION SERVICES BY THAT UNIT.*

Amends GS 132-9(c) to permit the prevailing party in an action brought under GS 132-9 to recover its reasonable attorney's fees if attributed to those records, even if the court finds that the public entity that withheld the records acted with substantial justification in denying access to the records, and even if the court finds circumstances that would make the award of attorneys' fees unjust. This amendment applies to actions brought on or after October 1, 2009.

Amends Chapter 132 by adding new GS 132-11, which (1) permits a court that has found that a state or local officer or official violated the public records access requirements of Chapter 132 without good cause to find that officer or official individually liable for a civil penalty of up to \$50 per day for each day that the officer or official failed to provide access to the records without good cause and (2) provides that the proceeds of the civil penalty must be remitted to the Civil Penalty and Forfeiture Fund. This amendment applies to violations on or after October 1, 2009.

Amends Chapter 114 of the General Statutes by adding new Article 8, which creates an Open Government Unit (Unit) within the Department of Justice, and provides that the Unit shall (1) develop education and awareness programs designed to educate the public and government agencies about the public records and open meetings laws; (2) serve as a moderator or mediator in resolving public records and open meetings disputes; (3) assemble, maintain, and make available electronically a collection of resources regarding the public records and open meetings laws; and (4) report annually to the General Assembly on its activities and on research regarding open meetings and public records procedures in other states. Also permits the Unit to charge a reasonable fee for its moderation or mediation services. Exempts the Judicial Department from the new statute. Requires that, during the 2010-11 fiscal year, the Unit (1) receive and attempt to formally resolve disputes between the public and more than 430 state and local government agencies and (2) educate and raise awareness among the public and governmental agency representatives about rights and responsibilities under the open meetings and public records laws.

Intro. By Blust.

GS 114, 132