

2024 Regular Session

HOUSE BILL NO. 768

BY REPRESENTATIVE FARNUM

PUBLIC RECORDS: Provides relative to custodian liability for public records requests

1 AN ACT

2 To amend and reenact R.S. 44:35(E)(1), relative to the Public Records Law; to provide
3 relative to enforcement proceedings; to provide a limitation of liability in certain
4 instances for certain persons having custody or control of a public record; and to
5 provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 44:35(E)(1) is hereby amended and reenacted to read as follows:

8 §35. Enforcement

9 * * *

10 E.(1) If the court finds that the custodian arbitrarily or capriciously withheld
11 the requested record or unreasonably or arbitrarily failed to respond to the request
12 as required by R.S. 44:32, it may award the requestor any actual damages proven by
13 him to have resulted from the actions of the custodian except as hereinafter provided.
14 In addition, if the court finds that the custodian unreasonably or arbitrarily failed to
15 respond to the request as required by R.S. 44:32 it may award the requestor civil
16 penalties not to exceed one hundred dollars per day, exclusive of Saturdays,
17 Sundays, and legal public holidays for each such day of such failure to give
18 notification. A representative of a public official or head of any public body having
19 custody or control of a public record specifically authorized by the custodian to
20 respond to a request pursuant to the provisions of this Subsection shall not be liable
21 for penalties or damages assessed for failure to comply with this Section.

22 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 768 Reengrossed

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Farnum

Abstract: Provides that a representative of a public official or head of any public body having custody or control of a public record specifically authorized by the custodian to respond to a request shall not be liable for penalties or damages assessed for failure to comply with provisions related to the enforcement of a right to a public record.

Present law provides that any person who has been denied the right to inspect, copy, reproduce, or obtain a copy or reproduction of a record pursuant to the Public Records Law may institute proceedings for the issuance of a writ of mandamus, injunctive or declaratory relief, together with attorney fees, costs and damages.

Present law provides that a person who prevails in such suit seeking public records shall be awarded reasonable attorney fees and other costs of litigation.

Present law provides that if the court finds that the custodian arbitrarily or capriciously withheld the requested record it may award the requestor any actual damages. If the court finds that the custodian unreasonably or arbitrarily failed to respond to the request, it may award the requestor any actual damages in addition to civil penalties not to exceed \$100 per day for each day of failure to give notification.

Proposed law retains present law and further provides that a representative of a public official or head of any public body having custody or control of a public record specifically authorized by the custodian to respond to a request shall not be liable for penalties or damages assessed for failure to comply with the enforcement provisions.

Present law provides that the custodian shall be personally liable for the payment of damages for arbitrary and capricious withholding of records or failure to respond to a request. Provides that the custodian shall be liable in solido with the public body for the payment of the requestor's attorney fees and other costs of litigation, except where the custodian has withheld or denied production of the requested record or records on advice of legal counsel representing the public body. In the event the custodian retains private legal counsel for his defense or for bringing suit against the requestor in connection with the request for records, the court may award attorney fees to the custodian.

Proposed law retains present law.

(Amends R.S. 44:35(E)(1))

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Reinstates the custodian's personal liability for arbitrarily and capriciously withholding records or failing to respond to a request.
2. Provide a limitation of liability for a representative of a public official or head of a public body authorized to respond to a public records request.