

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1284
Committee Substitute Favorable 4/24/01
Committee Substitute #2 Favorable 6/19/01
Committee Substitute #3 Favorable 8/1/01
Senate Judiciary I Committee Substitute Adopted 11/29/01

Short Title: Openness of Court Records and Proceedings.

(Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

1 AN ACT TO CREATE A CIVIL PROCEDURE FOR ASSERTING A RIGHT OF
2 ACCESS TO A JUDICIAL PROCEEDING OR TO A JUDICIAL RECORD; TO
3 CREATE A NEW FEE FOR FILING A MOTION UNDER G.S. 1-72.1; AND TO
4 PROTECT CERTAIN RECORDS AND PROCEEDINGS DEALING WITH
5 SENSITIVE PUBLIC SECURITY AND PROTECTION ISSUES.
6

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Article 6 of Chapter 1 of the General Statutes is amended by
9 adding a new section to read:

10 "**§ 1-72.1. Procedure to assert right of access.**

11 (a) Any person asserting a right of access to a civil judicial proceeding or to a
12 judicial record in that proceeding may file a motion in the proceeding for the limited
13 purpose of determining the person's right of access. The motion shall not constitute a
14 request to intervene under the provisions of Rule 24 of the Rules of Civil Procedure and
15 shall instead be governed by the procedure set forth in this statute. The movant shall not
16 be considered a party to the action solely by virtue of filing a motion under this section
17 or participating in proceedings on the motion. An order of the court granting a motion
18 for access made pursuant to this section shall not make the movant a party to the action
19 for any purpose.

20 (b) The movant shall serve a copy of its motion on all parties to the proceeding in
21 any manner provided in Rule 5 of the Rules of Civil Procedure. Upon receipt of a
22 motion filed pursuant to this section, the court shall establish the date and location of the
23 hearing on the motion that shall be set at a time before conducting any further
24 proceedings relative to the matter for which access is sought under the motion. The
25 court shall cause notice of the hearing date and location to be posted at the courthouse
26 where the hearing is scheduled. The movant shall serve a copy of the notice of the date,

1 time, and location of the hearing on all parties to the proceeding in any manner provided
2 in Rule 5 of the Rules of Civil Procedure.

3 (c) The court shall rule on the motion after consideration of such facts, legal
4 authority, and argument as the movant and any other party to the action desire to
5 present. The court shall issue a written ruling on the motion that shall contain a
6 statement of reasons for the ruling sufficiently specific to permit appellate review. The
7 order may also specify any conditions or limitations on the movant's right of access that
8 the court determines to be warranted under the facts and applicable law.

9 (d) A party seeking to seal a document or testimony to be used in a court
10 proceeding may submit the document or testimony to the court to be reviewed in
11 camera. This subsection also applies to (i) any document or testimony that is the subject
12 of a motion made under this section and that is submitted for review for the purposes of
13 the court's consideration of the motion to seal, and (ii) to any document or testimony
14 that is the subject of a motion made under this section and that was submitted under seal
15 or offered in closed session prior to the filing of a motion under this section. Submission
16 of the document or proffer of testimony to the court pursuant to this section shall not in
17 itself result in the document or testimony thereby becoming a judicial record subject to
18 constitutional, common law, or statutory rights of access unless the document or
19 testimony is thereafter introduced into evidence after a motion to seal or to restrict
20 access is denied.

21 (e) A ruling on a motion made pursuant to this section may be the subject of an
22 immediate interlocutory appeal by the movant or any party to the proceeding. Notice of
23 appeal must be given in writing, filed with the court, and served on all parties no later
24 than 10 days after entry of the court's ruling. If notice of appeal is timely given and
25 given before further proceedings are held in the court that might be affected by appellate
26 review of the matter, the court, on its own motion or on the motion of the movant or any
27 party, shall consider whether to stay any proceedings that could be affected by appellate
28 review of the court's ruling on the motion. If notice of appeal is timely given but is
29 given only after further proceedings in the trial court that could be affected by appellate
30 review of the ruling on a motion made pursuant to this section, or if a request for stay of
31 proceedings is made and is denied, then the sole relief that shall be available on any
32 appeal in the event the appellate court determines that the ruling of the trial court was
33 erroneous shall be reversal of the trial court's ruling on the motion and remand for
34 rehearing or retrial. On appeal the court may determine that a ruling of the trial court
35 sealing a document or restricting access to proceedings or refusing to unseal documents
36 or open proceedings was erroneously entered, but it may not retroactively order the
37 unsealing of documents or the opening of testimony that was sealed or closed by the
38 trial court's order.

39 (f) This section is intended to establish a civil procedure for hearing and
40 determining claims of access to documents and to testimony in civil judicial
41 proceedings and shall not be deemed or construed to limit, expand, change, or otherwise
42 preempt any provisions of substantive law that define or declare the rights and

1 restrictions with respect to claims of access. Without in any way limiting the generality
 2 of the foregoing provision, this section shall not apply to juvenile proceedings or court
 3 records of juvenile proceedings conducted pursuant to Chapters 7A, 7B, 90, or any other
 4 Chapter of the General Statutes dealing with juvenile proceedings.

5 (g) Nothing in this section diminishes the rights of a movant or any party to seek
 6 appropriate relief at any time from the Supreme Court or Court of Appeals through the
 7 use of the prerogative writs of mandamus or supersedeas."

8 **SECTION 2.** G.S. 7A-308(a) reads as rewritten:

9 "(a) The following miscellaneous fees and commissions shall be collected by the
 10 clerk of superior court and remitted to the State for the support of the General Court of
 11 Justice:

- 12 (1) Foreclosure under power of sale in deed of trust or
 13 mortgage \$40.00
 14 If the property is sold under the power of sale, an additional amount
 15 will be charged, determined by the following formula: thirty cents
 16 (30¢) per one hundred dollars (\$100.00), or major fraction thereof, of
 17 the final sale price. If the amount determined by the formula is less
 18 than ten dollars (\$10.00), a minimum ten dollar (\$10.00) fee will be
 19 collected. If the amount determined by the formula is more than two
 20 hundred dollars (\$200.00), a maximum two hundred dollar (\$200.00)
 21 fee will be collected.
- 22 (2) Proceeding supplemental to execution 20.00
- 23 (3) Confession of judgment 15.00
- 24 (4) Taking a deposition 5.00
- 25 (5) Execution 15.00
- 26 (6) Notice of resumption of former name 5.00
- 27 (7) Taking an acknowledgment or administering an oath, or both, with or
 28 without seal, each certificate (except that oaths of office shall be
 29 administered to public officials without charge) \$1.00
- 30 (8) Bond, taking justification or approving 5.00
- 31 (9) Certificate, under seal 2.00
- 32 (10) Exemplification of records 5.00
- 33 (11) Recording or docketing (including indexing) any document
 34 – first page 4.00
 35 – each additional page or fraction thereof25
- 36 (12) Preparation of copies
 37 – first page 1.00
 38 – each additional page or fraction thereof25
- 39 (13) Preparation and docketing of transcript of judgment 5.00
- 40 (14) Substitution of trustee in deed of trust 5.00
- 41 (15) Execution of passport application – the amount allowed by federal law
- 42 (16) Repealed by Session Laws 1989, c. 783, s. 2.

- 1 (17) Criminal record search except if search is requested by an agency of
- 2 the State or any of its political subdivisions or by an agency of the
- 3 United States or by a petitioner in a proceeding under Article 2 of
- 4 General Statutes Chapter 20..... 5.00
- 5 (18) Filing the affirmations, acknowledgments, agreements and resulting
- 6 orders entered into under the provisions of G.S. 110-132 and G.S.
- 7 110-133..... 4.00
- 8 (19) Repealed by Session Laws 1989, c. 783, s. 3.
- 9 (20) Filing a motion to assert a right of access under G.S. 1-72.120.00."

10 **SECTION 3.** Chapter 132 of the General Statutes is amended by adding the
 11 following new section to read:

12 "**§ 132-1.6. Sensitive public security information.**

13 Public records, as defined in G.S. 132-1, shall not include information containing
 14 specific details of public security plans and arrangements or the detailed plans and
 15 drawings of public buildings and infrastructure facilities. Information relating to the
 16 general adoption of public security plans and arrangements, and budgetary information
 17 concerning the authorization or expenditure of public funds to implement public
 18 security plans and arrangements, or for the construction, renovation, or repair of public
 19 buildings and infrastructure facilities shall be public records."

20 **SECTION 4.** Sections 1 and 2 of this act become effective January 1, 2002,
 21 and apply to court records filed on or after that date and apply to judicial proceedings
 22 commenced or pending on or after that date. The remainder of this act is effective when
 23 it becomes law. Section 3 of this act applies to public records in existence on or after
 24 the effective date.