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PENALTIES FOR PROVIDING FALSE INFORMATION UNDER FOIA

House Bill 4227

Sponsor: Rep. Ken Bradstreet

Committee: Civil Law and the Judiciary

Complete to 4-9-01

A SUMMARY OF HOUSE BILL 4227 AS INTRODUCED 2-14-01

The bill would amend the Freedom of Information Act (FOIA) to allow civil and criminal actions against public bodies that failed to respond to requests for information under the act, and to establish criminal penalties for public bodies that knowingly provided false information or knowingly failed to respond to a request for information within the period of time required by the act.

Currently, someone who wants to look at or obtain a copy of a public record (as defined in the act) is required to make a written request (including by facsimile, electronic mail, or other electronic transmission) to the public body holding the records, and the public body is required to respond to the request within five days in one of four ways: The public body can (1) grant the request, (2) issue a written notice denying the request, (3) grant the request in part and issuing a written notice denying the request in part, or (4) issue a notice that extends for up to ten business days the period during which the public body must respond to the request. A public body's failure to respond to a request constitutes its "final determination" to deny the request, in which case, the person requesting the information may either (a) submit a written appeal to the head of the public body that identifies the reason(s) why the denial should be reversed, or (b) commence an action in the circuit court to compel the public body to disclose the public records within 180 days after its final determination to deny the request. If the circuit court determines that the public body has not complied with the law and if it orders the public body to disclose or provide copies of all or a portion of a public record in an action commenced under these provisions of the act, then the court also is required to assess damages against the public body. If the person who commences an action under this section (section 10) of the act prevails, then the court must award reasonable attorneys' fees, costs, and disbursements. If the circuit court determines that the public body had "arbitrarily and capriciously" violated the act by refusal or delay in disclosing or providing copies of a public record, the court must award, in addition to any actual or compensatory damages, punitive damages of \$500 to the person seeking the information under the act.

The bill would amend the act to make it a misdemeanor for a public body to knowingly provide false information in response to a FOIA request or to knowingly fail to respond to a FOIA request within the required five business days. If the public body were an individual, the misdemeanor would be punishable by a fine of at least \$1,000 but not more than \$5,000, imprisonment for up to 93 days, or both. If the public body were not an individual, the misdemeanor would be punishable by a fine of at least \$10,000, but not more than \$100,000.

MCL 15.235 and 15.240

Analyst: S. Ekstrom

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

Analysis available @ <http://www.michiganlegislature.org>

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