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INTRODUCED

HB160

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4 A BILL to amend and reenact §§ 2.2-3714 and 2.2-3715 of the Code of Virginia, relating to Virginia  
5 Freedom of Information Act; officers, employees, or members of a public body; alleged willful and  
6 knowing violations; mitigating factors to be considered.  
7

8 Patron—Simon  
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10 Committee Referral Pending

11 Be it enacted by the General Assembly of Virginia:

12 1. That §§ 2.2-3714 and 2.2-3715 of the Code of Virginia are amended and reenacted as follows:  
13     § 2.2-3714. Violations and penalties.

14     A. In a proceeding commenced against any officer, employee, or member of a public body *in his*  
15 *individual capacity* under § 2.2-3713 for a violation of § 2.2-3704, 2.2-3705.1 through 2.2-3705.7, 2.2-3706,  
16 2.2-3706.1, 2.2-3707, 2.2-3708.2, 2.2-3708.3, 2.2-3710, 2.2-3711, or 2.2-3712, the court, if it finds that a  
17 violation was willfully and knowingly made, shall impose upon such officer, employee, or member in his  
18 individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not  
19 less than \$500 nor more than \$2,000, which amount shall be paid into the Literary Fund. For a second or  
20 subsequent violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.

21     B. In addition to any penalties imposed pursuant to subsection A, if the court finds that any officer,  
22 employee, or member of a public body failed to provide public records to a requester in accordance with the  
23 provisions of this chapter because such officer, employee, or member altered or destroyed the requested  
24 public records with the intent to avoid the provisions of this chapter with respect to such request prior to the  
25 expiration of the applicable record retention period set by the retention regulations promulgated pursuant to  
26 the Virginia Public Records Act (§ 42.1-76 et seq.) by the State Library Board, the court may impose upon  
27 such officer, employee, or member in his individual capacity, whether or not a writ of mandamus or  
28 injunctive relief is awarded, a civil penalty of up to \$100 per record altered or destroyed, which amount shall  
29 be paid into the Literary Fund.

30     C. In addition to any penalties imposed pursuant to subsections A and B, if the court finds that a public  
31 body voted to certify a closed meeting in accordance with subsection D of § 2.2-3712 and such certification  
32 was not in accordance with the requirements of clause (i) or (ii) of subsection D of § 2.2-3712, the court may  
33 impose on the public body, whether or not a writ of mandamus or injunctive relief is awarded, a civil penalty  
34 of up to \$1,000, which amount shall be paid into the Literary Fund. In determining whether a civil penalty is  
35 appropriate, the court shall consider mitigating factors, including reliance of members of the public body on  
36 (i) opinions of the Attorney General, (ii) court cases substantially supporting the rationale of the public body,  
37 and (iii) published opinions of the Virginia Freedom of Information Advisory Council, and (iv) advice of  
38 counsel for the public body.

39     § 2.2-3715. Effect of good faith reliance upon advisory opinions from the Freedom of Information  
40 Advisory Council and certain legal advice and opinions on liability for willful and knowing violations.

41     Any When determining whether an officer, an employee, or a member of a public body who is alleged to  
42 have has committed a willful and knowing violation pursuant to § 2.2-3714 shall have the right to introduce  
43 at any proceeding a copy of a relevant advisory opinion issued pursuant to § 30-179, the court shall consider  
44 mitigating factors, including good faith reliance on (i) opinions of the Attorney General; (ii) court cases  
45 substantially supporting such officer's, employee's, or member's actions; (iii) advisory opinions of the  
46 Virginia Freedom of Information Advisory Council; and (iv) advice of counsel for the public body, as  
47 evidence that he such officer, employee, or member did not willfully and knowingly commit the violation if  
48 the alleged violation resulted from his good faith reliance on the advisory opinion.