SLS 23RS-304 ORIGINAL

2023 Regular Session

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SENATE BILL NO. 213

BY SENATOR DUPLESSIS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PUBLIC RECORDS. Provides relative to the costs for public records. (8/1/23)

1	AN ACT
2	To amend and reenact R.S. 44:32(C)(1)(a) and 35(A) and (E), relative to examination of
3	public records; to provide for a fee schedule; to provide for notification; to provide
4	for the collection of fees; to provide for challenges of fees; to provide for the award
5	of attorney fees; and to provide for related matters.
6	Be it enacted by the Legislature of Louisiana:
7	Section 1. R.S. 44:32(C)(1)(a) and 35(A) and (E) are hereby amended and reenacted
8	to read as follows:
9	§32. Duty to permit examination; prevention of alteration; payment for overtime;
10	copies provided; fees
11	* * *
12	C.(1)(a) For all public records, except public records of state agencies, it shall
13	be the duty of the custodian of such public records to provide copies to persons so
14	requesting, unless the requestor fails to pay the applicable copying fees after being
15	notified of the amount in advance of production or the requestor has an outstanding
16	balance from a prior request. The custodian may establish and collect reasonable fees

for making copies of public records, which may include the transmission of

electronic copies of public records. Any custodian who elects to establish and collect such fees shall establish a reasonable fee schedule and post the schedule where it can be readily accessed by the public. The custodian may request payment of fees in advance of production. Copies of records may be furnished without charge or at a reduced charge to indigent citizens of this state.

* * *

§35. Enforcement

A. Any person who has been denied the right to inspect, copy, reproduce, or obtain a copy or reproduction of a record under the provisions of this Chapter, either by a determination of the custodian, by being quoted a fee that the person wishes to challenge as unreasonable, or by the passage of five days, exclusive of Saturdays, Sundays, and legal public holidays, from the date of his in-person, written, or electronic request without receiving a determination in writing by the custodian or an estimate of the time reasonably necessary for collection, segregation, redaction, examination, or review of a records request, may institute proceedings for the issuance of a writ of mandamus, injunctive or declaratory relief, together with attorney fees, costs, and damages as provided for by this Section, in the district court for the parish in which the office of the custodian is located.

* * *

E.(1) If the court finds that the custodian arbitrarily or capriciously withheld the requested record, arbitrarily or capriciously set an unreasonable copying fee, or unreasonably or arbitrarily failed to respond to the request as required by R.S. 44:32, it may award the requestor any actual damages proven by him to have resulted from the actions of the custodian except as hereinafter provided in Paragraph (2) of this Subsection. In addition, if the court finds that the custodian unreasonably or arbitrarily failed to respond to the request as required by R.S. 44:32 it may award the requestor civil penalties not to exceed one hundred dollars per day, exclusive of Saturdays, Sundays, and legal public holidays for each such day of such failure to give notification.

(2) The custodian shall be personally liable for the payment of damages pursuant to Paragraph (1) of this Subsection and shall be liable in solido with the public body for the payment of the requester's 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 the legal counsel representing the public body in which the office of such custodian is located, and in the event the custodian retains private legal counsel for his defense or for bringing suit against the requester requestor in connection with the request for records or the challenging of a fee, the court may award attorney fees to the custodian if the action was brought in violation of Code of Civil Procedure Art. 863.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Matt DeVille.

DIGEST 2023 Regular Session

Duplessis

SB 213 Original

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<u>Present law</u> allows a custodian of public records to establish and collect reasonable fees for making copies of public records, including the transmission of electronic copies. Requires adoption of a uniform fee schedule for copying public records of state agencies.

<u>Proposed law</u> retains <u>present law</u> and further requires a custodian of public records that are not public records of a state agency to set and publicly post a reasonable fee schedule.

<u>Present law</u> allows any person who has been denied the right to inspect, copy, reproduce, or obtain a copy or reproduction of a record either by a determination of the custodian or the passage of five days exclusive of legal holidays from the date the request was made to institute proceedings for the issuance of a writ of mandamus, injunctive or declaratory relief, and attorney fees, costs, and damages in the district court for the parish in which the office of the custodian is located.

<u>Proposed law</u> retains <u>present law</u> and further provides a right of action to a person who has been quoted a fee the person intends to challenge as unreasonable.

<u>Present law</u> allows for the award of actual damages to a public records requestor upon the determination by a court that either the requested record was withheld arbitrarily or capriciously by the custodian or the custodian unreasonably or arbitrarily failed to respond to the request.

<u>Proposed law</u> retains <u>present law</u> and further allows for the award of damages upon determination by the court that the custodian of records arbitrarily or capriciously set an unreasonable copying fee.

<u>Present law</u> provides that the court may award attorney fees to a custodian of public records in the event the custodian retains private legal counsel for his defense or brings suit against a requestor in connection with a request for public records.

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Coding: Words which are struck through are deletions from existing law; words in **boldface type and underscored** are additions.

<u>Proposed law</u> retains <u>present law</u> and further provides for the award of attorney fees in connection with a challenge to a copying fee.

Effective August 1, 2023.

(Amends R.S. 44:32(C)(1)(a) and 35(A) and (E))