

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
Senate Finance Committee Substitute Adopted 12/4/01

Short Title: Openness of Court Records and Proceedings.

(Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO CREATE A CIVIL PROCEDURE FOR ASSERTING A RIGHT OF ACCESS TO A JUDICIAL PROCEEDING OR TO A JUDICIAL RECORD; TO CREATE A NEW FEE FOR FILING A MOTION UNDER G.S. 1-72.1; TO PROTECT CERTAIN RECORDS AND PROCEEDINGS DEALING WITH SENSITIVE PUBLIC SECURITY AND PROTECTION ISSUES; TO MODIFY THE COST-SHARING REQUIREMENTS UNDER THE STATE EMPLOYEES HEALTH CARE PLAN AND TO PROVIDE THAT THE TERMS OF CONTRACTS BETWEEN HOSPITALS, HOSPITAL AUTHORITIES, PHYSICIAN OR OTHER MEDICAL PROVIDERS, OR A PHARMACY BENEFIT MANAGER AND THE PLAN ARE CONFIDENTIAL; AND TO PROVIDE FOR THE CONFIDENTIALITY OF COMPETITIVE HEALTH CARE INFORMATION.

The General Assembly of North Carolina enacts:

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

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

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

1 for access made pursuant to this section shall not make the movant a party to the action
2 for any purpose.

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

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

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

30 (e) A ruling on a motion made pursuant to this section may be the subject of an
31 immediate interlocutory appeal by the movant or any party to the proceeding. Notice of
32 appeal must be given in writing, filed with the court, and served on all parties no later
33 than 10 days after entry of the court's ruling. If notice of appeal is timely given and
34 given before further proceedings are held in the court that might be affected by appellate
35 review of the matter, the court, on its own motion or on the motion of the movant or any
36 party, shall consider whether to stay any proceedings that could be affected by appellate
37 review of the court's ruling on the motion. If notice of appeal is timely given but is
38 given only after further proceedings in the trial court that could be affected by appellate
39 review of the ruling on a motion made pursuant to this section, or if a request for stay of
40 proceedings is made and is denied, then the sole relief that shall be available on any
41 appeal in the event the appellate court determines that the ruling of the trial court was
42 erroneous shall be reversal of the trial court's ruling on the motion and remand for

1 rehearing or retrial. On appeal the court may determine that a ruling of the trial court
 2 sealing a document or restricting access to proceedings or refusing to unseal documents
 3 or open proceedings was erroneously entered, but it may not retroactively order the
 4 unsealing of documents or the opening of testimony that was sealed or closed by the
 5 trial court's order.

6 (f) This section is intended to establish a civil procedure for hearing and
 7 determining claims of access to documents and to testimony in civil judicial
 8 proceedings and shall not be deemed or construed to limit, expand, change, or otherwise
 9 preempt any provisions of substantive law that define or declare the rights and
 10 restrictions with respect to claims of access. Without in any way limiting the generality
 11 of the foregoing provision, this section shall not apply to juvenile proceedings or court
 12 records of juvenile proceedings conducted pursuant to Chapters 7A, 7B, 90, or any other
 13 Chapter of the General Statutes dealing with juvenile proceedings.

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

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

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

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

1 – first page 4.00
 2 – each additional page or fraction thereof25
 3 (12) Preparation of copies
 4 – first page 1.00
 5 – each additional page or fraction thereof25
 6 (13) Preparation and docketing of transcript of judgment 5.00
 7 (14) Substitution of trustee in deed of trust 5.00
 8 (15) Execution of passport application – the amount allowed by federal law
 9 (16) Repealed by Session Laws 1989, c. 783, s. 2.
 10 (17) Criminal record search except if search is requested by an agency of
 11 the State or any of its political subdivisions or by an agency of the
 12 United States or by a petitioner in a proceeding under Article 2 of
 13 General Statutes Chapter 20 5.00
 14 (18) Filing the affirmations, acknowledgments, agreements and resulting
 15 orders entered into under the provisions of G.S. 110-132 and G.S.
 16 110-133 4.00
 17 (19) Repealed by Session Laws 1989, c. 783, s. 3.
 18 (20) Filing a motion to assert a right of access under G.S. 1-72.120.00."

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

21 **"§ 132-1.6. Sensitive public security information.**

22 Public records, as defined in G.S. 132-1, shall not include information containing
 23 specific details of public security plans and arrangements or the detailed plans and
 24 drawings of public buildings and infrastructure facilities. Information relating to the
 25 general adoption of public security plans and arrangements, and budgetary information
 26 concerning the authorization or expenditure of public funds to implement public
 27 security plans and arrangements, or for the construction, renovation, or repair of public
 28 buildings and infrastructure facilities shall be public records."

29 **SECTION 4.** G.S. 135-40.4(a), as amended by S.L. 2001-253, reads as
 30 rewritten:

31 "(a) In the event a covered person, as a result of accidental bodily injury, disease
 32 or pregnancy, incurs covered expenses, the Plan will pay benefits up to the amounts
 33 described in G.S. 135-40.5 through G.S. 135-40.9.

34 The Plan is divided into two parts. The first part includes certain benefits which are
 35 not subject to a deductible or coinsurance. The second part is a comprehensive plan and
 36 includes those benefits which are subject to both a three hundred fifty dollar (\$350.00)
 37 deductible for each covered individual to an aggregate maximum of one thousand fifty
 38 dollars (\$1,050) per employee and child(ren) or employee and family coverage contract
 39 and coinsurance of 80%/20%. There is a limit on out-of-pocket expenses under the
 40 second part.

41 Notwithstanding the provisions of this Article, the Executive Administrator and
 42 Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical

1 Plan may contract with providers of institutional and professional medical care and
2 services to established preferred provider networks. The terms of any contract,
3 including reimbursement rates, between hospitals, hospital authorities, doctors or other
4 medical providers, or a pharmacy benefit manager and the Plan shall be confidential and
5 not a public record under Chapter 132 of the General Statutes for a period of five years
6 from the date of the expiration of the contract. Provided, however, nothing in this
7 subsection shall be deemed to prevent or restrict the release of any information made
8 confidential under this subsection to the State Auditor, the Attorney General, the
9 Director of the State Budget, the Plan's Executive Administrator, and the Joint
10 Legislative Health Care Oversight Committee solely and exclusively for their use in the
11 furtherance of their duties and responsibilities. The design, adoption, and
12 implementation of ~~such~~ the preferred provider contracts and networks are not subject to
13 the requirements of Chapter 143 of the General Statutes, provided that for any hospital
14 preferred provider network all hospitals will have an opportunity to contract with the
15 Plan if they meet the contract requirements. The Executive Administrator and Board of
16 Trustees shall, under the provisions of G.S. 135-39.5(12), pursue such preferred
17 provider contracts on a timely basis and shall make reports as requested to the President
18 of the Senate, the President Pro Tempore of the Senate, the Speaker of the House of
19 Representatives, and the Committee on Employee Hospital and Medical Benefits on its
20 progress in negotiating ~~such~~ the preferred provider contracts. The Executive
21 Administrator and Board of Trustees shall implement a refined diagnostic-related
22 grouping or diagnostic-related grouping-based reimbursement system for hospitals as
23 soon as practicable, but no later than January 1, 1995."

24 **SECTION 5.** G.S. 131E-97.3 reads as rewritten:

25 **"§ 131E-97.3. Confidentiality of competitive health care information.**

26 (a) Information relating to competitive health care activities by or on behalf of
27 hospitals and public hospital authorities shall be confidential and not a public record
28 under Chapter 132 of the General Statutes; provided that any contract entered into by or
29 on behalf of a public hospital or public hospital authority, as defined in G.S. 159-39,
30 shall be a public record unless otherwise exempted by ~~law~~ law, or the contract contains
31 competitive health care information, the determination of which shall be as provided in
32 subsection (b) of this section.

33 (b) If a public hospital or public hospital authority is requested to disclose any
34 contract which the hospital or hospital authority believes in good faith contains or
35 constitutes competitive health care information, the hospital or hospital authority may
36 either redact the portions of the contract believed to constitute competitive health care
37 information prior to disclosure, or if the entire contract constitutes competitive health
38 care information, refuse disclosure of the contract. The person requesting disclosure of
39 the contract may institute an action pursuant to G.S. 132-9 to compel disclosure of the
40 contract or any redacted portion thereof. In any action brought under this subsection, the
41 issue for decision by the court shall be whether the contract, or portions of the contract
42 withheld, constitutes competitive health care information, and in making its

1 determination, the court shall be guided by the procedures and standards applicable to
2 protective orders requested under Rule 26(c)(7) of the Rules of Civil Procedure. Before
3 rendering a decision, the court shall review the contract in camera and hear arguments
4 from the parties. If the court finds that the contract constitutes or contains competitive
5 health care information, the court may either deny disclosure or may make such other
6 appropriate orders as are permitted under Rule 26(c) of the Rules of Civil Procedure."

7 **SECTION 6.** Sections 1 and 2 of this act become effective January 1, 2002,
8 and apply to court records filed on or after that date and apply to judicial proceedings
9 commenced or pending on or after that date. The remainder of this act is effective when
10 it becomes law. Section 3 of this act applies to public records in existence on or after
11 the effective date.