



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB6083

Introduced 2/11/2016, by Rep. Terri Bryant

#### SYNOPSIS AS INTRODUCED:

5 ILCS 140/11  
740 ILCS 180/2

from Ch. 116, par. 211  
from Ch. 70, par. 2

Amends the Freedom of Information Act. Provides that if the court determines that a public body willfully and intentionally failed to comply with the Act, or otherwise acted in bad faith, the court shall also impose upon the public body a civil penalty of not less than \$2,500 nor more than \$10,000 (instead of \$5,000) for each occurrence. Provides that if the public body fails to comply with the court's order after 30 days, the court shall impose an additional \$1,000 penalty for each day the violation continues. Amends the Wrongful Death Act. Provides that an action under the Act shall be commenced within 2 years after the discovery of evidence indicating that a wrongful death may have occurred (instead of "within 2 years after the death of such person"). Provides that the amendatory Act may be referred to as Molly's law.

LRB099 17215 HEP 41573 b

1 AN ACT concerning the disclosure of information.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. This Act may be referred to as Molly's Law.

5 Section 5. The Freedom of Information Act is amended by  
6 changing Section 11 as follows:

7 (5 ILCS 140/11) (from Ch. 116, par. 211)

8 Sec. 11. (a) Any person denied access to inspect or copy  
9 any public record by a public body may file suit for injunctive  
10 or declaratory relief.

11 (b) Where the denial is from a public body of the State,  
12 suit may be filed in the circuit court for the county where the  
13 public body has its principal office or where the person denied  
14 access resides.

15 (c) Where the denial is from a municipality or other public  
16 body, except as provided in subsection (b) of this Section,  
17 suit may be filed in the circuit court for the county where the  
18 public body is located.

19 (d) The circuit court shall have the jurisdiction to enjoin  
20 the public body from withholding public records and to order  
21 the production of any public records improperly withheld from  
22 the person seeking access. If the public body can show that

1 exceptional circumstances exist, and that the body is  
2 exercising due diligence in responding to the request, the  
3 court may retain jurisdiction and allow the agency additional  
4 time to complete its review of the records.

5 (e) On motion of the plaintiff, prior to or after in camera  
6 inspection, the court shall order the public body to provide an  
7 index of the records to which access has been denied. The index  
8 shall include the following:

9 (i) A description of the nature or contents of each  
10 document withheld, or each deletion from a released  
11 document, provided, however, that the public body shall not  
12 be required to disclose the information which it asserts is  
13 exempt; and

14 (ii) A statement of the exemption or exemptions claimed  
15 for each such deletion or withheld document.

16 (f) In any action considered by the court, the court shall  
17 consider the matter de novo, and shall conduct such in camera  
18 examination of the requested records as it finds appropriate to  
19 determine if such records or any part thereof may be withheld  
20 under any provision of this Act. The burden shall be on the  
21 public body to establish that its refusal to permit public  
22 inspection or copying is in accordance with the provisions of  
23 this Act. Any public body that asserts that a record is exempt  
24 from disclosure has the burden of proving that it is exempt by  
25 clear and convincing evidence.

26 (g) In the event of noncompliance with an order of the

1 court to disclose, the court may enforce its order against any  
2 public official or employee so ordered or primarily responsible  
3 for such noncompliance through the court's contempt powers.

4 (h) Except as to causes the court considers to be of  
5 greater importance, proceedings arising under this Section  
6 shall take precedence on the docket over all other causes and  
7 be assigned for hearing and trial at the earliest practicable  
8 date and expedited in every way.

9 (i) If a person seeking the right to inspect or receive a  
10 copy of a public record prevails in a proceeding under this  
11 Section, the court shall award such person reasonable  
12 attorney's ~~attorneys'~~ fees and costs. In determining what  
13 amount of attorney's fees is reasonable, the court shall  
14 consider the degree to which the relief obtained relates to the  
15 relief sought. The changes contained in this subsection apply  
16 to an action filed on or after January 1, 2010 (the effective  
17 date of Public Act 96-542) ~~this amendatory Act of the 96th~~  
18 ~~General Assembly.~~

19 (j) If the court determines that a public body willfully  
20 and intentionally failed to comply with this Act, or otherwise  
21 acted in bad faith, the court shall also impose upon the public  
22 body a civil penalty of not less than \$2,500 nor more than  
23 \$10,000 ~~\$5,000~~ for each occurrence. In assessing the civil  
24 penalty, the court shall consider in aggravation or mitigation  
25 the budget of the public body and whether the public body has  
26 previously been assessed penalties for violations of this Act.

1 If the public body fails to comply with the court's order after  
2 30 days, the court shall impose an additional \$1,000 penalty  
3 for each day the violation continues. The changes contained in  
4 this subsection that are made by Public Act 96-542 apply to an  
5 action filed on or after January 1, 2010 (the effective date of  
6 Public Act 96-542) ~~this amendatory Act of the 96th General~~  
7 ~~Assembly.~~

8 (Source: P.A. 96-542, eff. 1-1-10; 97-813, eff. 7-13-12;  
9 revised 10-14-15.)

10 Section 10. The Wrongful Death Act is amended by changing  
11 Section 2 as follows:

12 (740 ILCS 180/2) (from Ch. 70, par. 2)

13 Sec. 2. Every such action shall be brought by and in the  
14 names of the personal representatives of such deceased person,  
15 and, except as otherwise hereinafter provided, the amount  
16 recovered in every such action shall be for the exclusive  
17 benefit of the surviving spouse and next of kin of such  
18 deceased person. In every such action the jury may give such  
19 damages as they shall deem a fair and just compensation with  
20 reference to the pecuniary injuries resulting from such death,  
21 including damages for grief, sorrow, and mental suffering, to  
22 the surviving spouse and next of kin of such deceased person.

23 The amount recovered in any such action shall be  
24 distributed by the court in which the cause is heard or, in the

1 case of an agreed settlement, by the circuit court, to each of  
2 the surviving spouse and next of kin of such deceased person in  
3 the proportion, as determined by the court, that the percentage  
4 of dependency of each such person upon the deceased person  
5 bears to the sum of the percentages of dependency of all such  
6 persons upon the deceased person.

7 Where the deceased person left no surviving spouse or next  
8 of kin entitled to recovery, the damages shall, subject to the  
9 following limitations inure, to the exclusive benefit of the  
10 following persons, or any one or more of them:

11 (a) to the person or persons furnishing hospitalization or  
12 hospital services in connection with the last illness or injury  
13 of the deceased person, not exceeding \$450;

14 (b) to the person or persons furnishing medical or surgical  
15 services in connection with such last illness or injury, not  
16 exceeding \$450;

17 (c) to the personal representatives, as such, for the costs  
18 and expenses of administering the estate and prosecuting or  
19 compromising the action, including a reasonable attorney's  
20 fee. In any such case the measure of damages to be recovered  
21 shall be the total of the reasonable value of such  
22 hospitalization or hospital service, medical and surgical  
23 services, funeral expenses, and such costs and expenses of  
24 administration, including attorney fees, not exceeding the  
25 foregoing limitations for each class of such expenses and not  
26 exceeding \$900 plus a reasonable attorney's fee.

1           Every such action shall be commenced within 2 years after  
2 the discovery of evidence indicating that a wrongful death may  
3 have occurred, ~~death of such person~~ but an action against a  
4 defendant arising from a crime committed by the defendant in  
5 whose name an escrow account was established under the  
6 "Criminal Victims' Escrow Account Act" shall be commenced  
7 within 2 years after the establishment of such account. For the  
8 purposes of this Section 2, next of kin includes an adopting  
9 parent and an adopted child, and they shall be treated as a  
10 natural parent and a natural child, respectively. However, if a  
11 person entitled to recover benefits under this Act, is, at the  
12 time the cause of action accrued, within the age of 18 years,  
13 he or she may cause such action to be brought within 2 years  
14 after attainment of the age of 18.

15           In any such action to recover damages, it shall not be a  
16 defense that the death was caused in whole or in part by the  
17 contributory negligence of one or more of the beneficiaries on  
18 behalf of whom the action is brought, but the amount of damages  
19 given shall be reduced in the following manner.

20           The trier of fact shall first determine the decedent's  
21 contributory fault in accordance with Sections 2-1116 and  
22 2-1107.1 of the Code of Civil Procedure. Recovery of damages  
23 shall be barred or diminished accordingly. The trier of fact  
24 shall then determine the contributory fault, if any, of each  
25 beneficiary on behalf of whom the action was brought:

26           (1) Where the trier of fact finds that the contributory

1 fault of a beneficiary on whose behalf the action is  
2 brought is not more than 50% of the proximate cause of the  
3 wrongful death of the decedent, then the damages allowed to  
4 that beneficiary shall be diminished in proportion to the  
5 contributory fault attributed to that beneficiary. The  
6 amount of the reduction shall not be payable by any  
7 defendant.

8 (2) Where the trier of fact finds that the contributory  
9 fault of a beneficiary on whose behalf the action is  
10 brought is more than 50% of the proximate cause of the  
11 wrongful death of the decedent, then the beneficiary shall  
12 be barred from recovering damages and the amount of damages  
13 which would have been payable to that beneficiary, but for  
14 the beneficiary's contributory fault, shall not inure to  
15 the benefit of the remaining beneficiaries and shall not be  
16 payable by any defendant.

17 The trial judge shall conduct a hearing to determine the  
18 degree of dependency of each beneficiary upon the decedent. The  
19 trial judge shall calculate the amount of damages to be awarded  
20 each beneficiary, taking into account any reduction arising  
21 from either the decedent's or the beneficiary's contributory  
22 fault.

23 This amendatory Act of the 91st General Assembly applies to  
24 all actions pending on or filed after the effective date of  
25 this amendatory Act.

26 This amendatory Act of the 95th General Assembly applies to

1 causes of actions accruing on or after its effective date.

2 (Source: P.A. 95-3, eff. 5-31-07.)