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Office of Research
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S.B. 31*
133rd General Assembly

Bill Analysis

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Version: As Reported by House Civil Justice

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SUMMARY

Public records

- Adds the following to the list of professions whose residential and familial information is exempted from disclosure under the Public Records Law: “emergency service telecommunicators,” certain Ohio National Guard members, state or federal judges, “regional physician advisory board members,” and “first responders.”
- Permits those added persons in the first dot point to request the person’s address be redacted from any record of a public office that is publicly available on the Internet in which the person’s residential and familial information appears, except for the records of a county auditor.
- Permits those added persons or their spouses to request that the county auditor replace the person’s or spouse’s name or initials on records publicly available on the Internet or in a publicly accessible database.

Workers’ compensation claims and records

- Requires the Industrial Commission and the Bureau of Workers’ Compensation, upon written request by a journalist, to disclose a claimant’s name, and removes the requirement for information on a claimant’s or multiple workers’ dependents to be disclosed.

* This analysis was prepared before the report of the House Civil Justice Committee appeared in the House Journal. Note that the legislative history may be incomplete.

Contact tracing

- Prohibits the Governor from issuing an order requiring an individual to participate in contact tracing.
- Prohibits the Ohio Department of Health, another state agency, a local board of health, or any other person or government entity under contract with the foregoing, from requiring an individual to participate in contact tracing.
- Requires written consent to participate in contact tracing.
- Prohibits any penalties, including withholding medical treatment, from being imposed on an individual who refuses to participate in contact tracing efforts.
- Specifies that any record created during the contact tracing process is not a public record and that disclosure of protected health information collected during the process must be done in accordance with existing Ohio law that is consistent with the federal Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule.

DETAILED ANALYSIS

Public records

Added public service worker's residential and familial information not a public record

Under continuing Public Records Law, any person may request to inspect or obtain copies of public records from a public office. When it receives a public records request, and unless part or all of a record is exempt from release, a public office must provide inspection of the requested records promptly and at no cost, or provide copies at cost within a reasonable period of time.¹ The bill includes an emergency service telecommunicator, a designated Ohio National Guard member, a state or federal judge, and a member of a regional physician advisory board within the definition of "designated public service worker" and includes a first responder as an EMT within that definition (hereafter added public service workers). As a result, any of those added public service workers' residential and familial information are exempt from disclosure under the Public Records Law.²

Definitions

An "emergency service telecommunicator" is an individual employed by an emergency service provider, whose primary responsibility is to be an operator for the receipt or processing of calls for emergency services made by telephone, radio, or other electronic means.³

¹ R.C. 149.43(B).

² R.C. 149.43(A)(1)(p) and (7).

³ R.C. 149.43(A)(9), by reference to R.C. 4742.01(B), not in the bill.

A “designated Ohio National Guard member” is a member of the Ohio National Guard who is participating in duties related to remotely piloted aircraft, including but not limited to, pilots, sensor operators, and mission intelligence personnel, duties related to special forces operations, or duties related to cybersecurity, and is designated by the Adjutant General as a designated public service worker for those purposes.⁴

A “member of a regional physician advisory board” is a member of a physician advisory board appointed by the State Board of Emergency Medical, Fire, and Transportation Services (hereafter State Board) to serve as the advisory board for a prehospital emergency medical services region under the law that requires the State Board to geographically divide the state into prehospital emergency medical services regions to oversee the provision of medical services to patients who require immediate assistance due to illness or injury, prior to their arrival at an emergency medical facility.⁵

A “first responder,” which is added to the current definition of “EMT,” is an individual who holds a current valid certificate to practice as a first responder issued by the State Board to an applicant who meets all of the following conditions: (a) generally is a volunteer for a nonprofit emergency medical service organization or a nonprofit fire department, (b) holds the appropriate certificate of completion of an accredited training program for first responders, (c) passes the appropriate examination provided by the State Board, (d) is not in violation of the Division of Emergency Services Law or rules adopted under it, and (e) meets other certification requirements in rules adopted by the State Board.⁶

Under continuing law, and generally under the bill for the added public service workers, designated public service worker’s residential and familial information that is exempt from the Public Records Law includes the following:⁷

1. The address of the actual personal residence of a designated public service worker, except for the following information:
 - a. The address of the actual personal residence of a prosecuting attorney or judge; and
 - b. The state or political subdivision in which a designated public service worker resides.
2. Information compiled from referral to or participation in an employee assistance program;
3. The Social Security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a designated public service worker;

⁴ R.C. 149.43(A)(9).

⁵ R.C. 149.43(A)(9), by reference to R.C. 4765.05, not in the bill.

⁶ R.C. 149.43(A)(9), by reference to R.C. 4765.01 and 4765.30, not in the bill.

⁷ R.C. 149.43(A)(8).

4. The name of any beneficiary of employment benefits, including life insurance benefits, provided to a designated public service worker by the designated public service worker's employer;
5. The identity and amount of any charitable or employment benefit deduction made by the designated public service worker's employer from the designated public service worker's compensation, unless the amount of the deduction is required by state or federal law;
6. The name, residential address, the name of the employer, the address of the employer, the Social Security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a designated public service worker;
7. A photograph of a peace officer who holds a position or has an assignment that may include undercover or plain clothes positions or assignments as determined by the peace officer's appointing authority.

Continuing law allows a journalist to submit a written request to a public office that employs a person whose residential and familial information is exempted from the Public Records Law for the actual address of the person. The journalist may also request the name and address of the employer of the person's spouse, former spouse, or child if they are also employed by a public office. This process also applies to the added public service workers under the bill.⁸

Added public service worker may request address be redacted from available online records

Under the bill, an added public service worker may request that the worker's address be redacted from a record in which that person's residential and familial information appears and that is available to the public on the Internet. Continuing law allows a designated public service worker to submit a request (in writing and on a form developed by the Attorney General) to a public office, except for a county auditor, to redact the worker's address from any record in which the worker's residential and familial information appears that is publicly available on the Internet.⁹ The public office that receives the request must redact the worker's address from the public record within five business days, or if the redaction is impracticable, provide an explanation, verbally or in writing, of the impracticality of the request within five business days of receiving the request.¹⁰ Generally a public office, other than an employer of a designated public service worker, or a person responsible for the public records of the employer, is not required to redact designated public service worker residential and familial information of the

⁸ R.C. 149.43(B)(9)(a).

⁹ R.C. 149.45(D)(1), not in the bill.

¹⁰ R.C. 149.45(D)(2), not in the bill.

designated public service worker from other records maintained by the public office.¹¹ The bill includes the added public service workers in this process.

Civil action for damages

Continuing law provides that a public office or person responsible for a public office's public records is not liable in damages in a civil action for any harm an individual allegedly sustains as a result of the inclusion of that individual's personal information on any record made available to the general public on the Internet or any harm a designated public service worker sustains as a result of the inclusion of the designated public service worker's address on any record made available to the general public on the Internet in violation of the requirements described under "**Added public service worker may request address be redacted from available online records,**" above, unless the public office or person responsible for the public office's public records acted with malicious purpose, in bad faith, or in a wanton or reckless manner or unless R.C. 2744.03(A)(6)(a) or (c) applies (exceptions to employee immunity under the Political Subdivision Tort Liability Law). The bill applies this provision to the added public service workers.¹²

Added public service worker, or the person's spouse may request name removed from the property tax list

The bill permits an added public service worker, or the person's spouse to file an affidavit to have the worker's, or spouse's name removed from certain records. Under continuing law, a person, or spouse of that person, whose residential and familial information is not a public record under the Public Records Law may submit an affidavit to the county auditor requesting that the county auditor remove the name of the person from any record made available to the general public on the Internet or a publicly accessible database and from the general tax list and duplicate of real and public utility property and to replace the name with the person's initials as the name of the individual that appears on the deed. When the county auditor receives the affidavit, the auditor must act on the request within five business days if practicable. If removal and reinsertion is not practicable, the auditor must explain to the requestor, within five days after receiving the affidavit, why the removal and insertion is impracticable.¹³

Requirements of Adjutant General – designation of Ohio National Guard members

The bill adds to the specific requirements of the Adjutant General the duty to designate Ohio National Guard members, who are participating in duties related to remotely piloted aircraft, including but not limited to, pilots, sensor operators, and mission intelligence

¹¹ R.C. 149.45(D)(3), not in the bill.

¹² R.C. 149.45(E)(2), not in the bill.

¹³ R.C. 319.28(B), not in the bill.

personnel, duties related to special forces operations, or duties related to cybersecurity, as designated public service workers under the Public Records Law.¹⁴

Workers' compensation claims and records

Under current law, generally certain information kept by the Industrial Commission or the Bureau of Workers' Compensation is for the exclusive use and information of the Commission and the Bureau in the discharge of their official duties, is not open to the public, and cannot be used in an action or proceeding pending in any court, unless the Commission or the Bureau is a party to the action or proceeding. However, upon receiving a written request made and signed by an individual whose primary occupation is as a journalist, the Commission or the Bureau must disclose to the individual the address or addresses and telephone number or numbers of claimants, regardless of whether their claims are active or closed, and the dependents of those claimants.¹⁵

The bill expands the type of information given to a journalist upon request to include the name or names of claimants, regardless of whether their claims are active or closed. It removes current law's requirement that information on the dependents of those claimants be given to the journalist.¹⁶

Current law permits a journalist to request the information described in the preceding paragraph for multiple workers or dependents in one written request. The bill removes from the information requested in one written request that of dependents of multiple workers.¹⁷

Contact tracing

Conditions on a Governor's order

The bill specifies that if one or more infections of a contagious disease are observed in Ohio, the Governor is subject to the following conditions when adopting or issuing an order regarding efforts to trace and monitor contacts of individuals infected with the contagious disease:¹⁸

- The order cannot require an individual to comply with the tracing and monitoring efforts;
- The order must require written consent from each individual contacted for participation in the tracing and monitoring efforts before the next step in the process may proceed;

¹⁴ R.C. 5913.01(A)(11).

¹⁵ R.C. 4123.88(C) and (D)(1).

¹⁶ R.C. 4123.88(D)(1).

¹⁷ R.C. 4123.88(D)(2).

¹⁸ R.C. 107.22.

- The order cannot establish or authorize penalties for an individual’s refusal to participate in the tracing and monitoring process, including withholding medical treatment from the individual based on the refusal;
- The order must acknowledge all of the following:
 - That participation in the tracing and monitoring efforts is voluntary;
 - That any record created during the tracing and monitoring process is not a public record;
 - That disclosure of protected health information by a covered entity, during the tracing and monitoring process, must be done in accordance with existing Ohio law that is consistent with the federal Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule;¹⁹
 - That disclosure of protected health information by the Director of Health, the Ohio Department of Health, a local board of health, or a person or government entity under contract with any of the foregoing must be done in accordance with existing Ohio law governing the disclosure of protected health information reported to or obtained by those parties.²⁰

A “covered entity,” under both existing Ohio law and the HIPAA Privacy Rule, is a health plan, a health care clearinghouse, or a health care provider who transmits health information electronically.²¹

Conditions on individual participation

If a state department, a division of such a department, a local board of health, or a person or government entity under contract with any of the foregoing, including a health care facility, engages in efforts to trace and monitor the contacts of individuals infected with a contagious disease, the bill specifies that all of the following conditions apply:²²

- No individual may be required to comply with tracing and monitoring efforts;
- Each individual contacted for participation in tracing and monitoring efforts must provide written consent before the next step in the process may proceed;
- No penalty may be imposed on an individual for refusing to participate in the tracing and monitoring process, including withholding medical treatment from the individual based on the refusal; and

¹⁹ R.C. 3798.04.

²⁰ R.C. 3701.17.

²¹ R.C. 3798.01(B).

²² R.C. 3701.25(B).

- Any record created during the tracing and monitoring process is not a public record. When disclosing protected health information collected during that process, the department, division, board of health, or contracted person or government entity must do so in accordance with existing Ohio law governing the disclosure of protected health information reported to or obtained by those parties.²³

HISTORY

Action	Date
Introduced	02-12-19
Reported, S. Judiciary	04-03-19
Passed Senate (31-0)	04-10-19
Reported, H. Civil Justice	----

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²³ R.C. 3701.17.