



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Final Analysis

Emily E. Wendel

### **Sub. H.B. 139**

132nd General Assembly  
(As Passed by the General Assembly)

**Reps.** Perales and Keller, Hambley, Fedor, Seitz, Dean, Antonio, Brenner, Craig, Cupp, Green, Greenspan, Lang, Retherford, Riedel, Young

**Sens.** Uecker, Coley, Skindell, Brown, Eklund, Hackett, Kunze, Manning, Oelslager, Schiavoni, Tavares, Terhar, Thomas, Yuko

**Effective date:** April 8, 2019

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## **ACT SUMMARY**

- Makes a permanently retained record that is exempt from disclosure under the Public Records Law available to the public 75 years after its creation, with certain exceptions.

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## **CONTENT AND OPERATION**

### **Background**

The Public Records Law generally requires a public office to make its records available to the public on request, unless an exemption applies to a particular record. For purposes of the Law, a public office includes any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by Ohio law for the exercise of any function of government. The term includes a state, county, city, village, township, or school district unit. JobsOhio is not considered a public office under the Law.

A record is any document, device, or item, regardless of physical form or characteristic, including an electronic record, created by, received by, or coming under the jurisdiction of any public office, that serves to document the office's organization, functions, policies, decisions, procedures, operations, or other activities. But, the Law contains an extensive list of categories of records kept by public offices that are exempt from disclosure because they are not considered public records. For example, the Law

exempts medical records, intellectual property records, confidential law enforcement investigatory records, and records the release of which is prohibited by other provisions of state or federal law.<sup>1</sup>

## **Exempt records become public after 75 years**

### **Generally**

The act specifies that a permanently retained record that is exempt from disclosure under the Public Records Law becomes a public record 75 years after it was created, with certain exceptions. If another provision of the Revised Code establishes a period for disclosing a record that conflicts with the 75-year period, the time period in the other provision prevails.

The types of records that become public after 75 years include records that are confidential under other Ohio laws but not specifically listed in the Public Records Law. However, if a record is confidential under federal law, the act does not make it public.<sup>2</sup>

### **Exceptions**

The following records are not subject to the act's 75-year mark for disclosure:

- A record protected by the attorney-client privilege;
- A trial preparation record, which under continuing law includes any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including an attorney's independent thought processes and personal trial preparation;
- Security and infrastructure records that are exempt from release or disclosure under continuing law;
- A statement prohibiting the release of identifying information signed by a biological parent under an adoption law;
- A denial of release form that is signed by a birth parent and filed with the Department of Health under an adoption law.

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<sup>1</sup> R.C. 149.43. See also R.C. 149.011, not in the act.

<sup>2</sup> R.C. 149.43(A)(1).



In addition, if the record is a birth certificate and a biological parent's name redaction request form has been accepted by the Department of Health under continuing law and placed in an adoption file, the name of that parent must be redacted from the birth certificate before it is disclosed under the act.<sup>3</sup>

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## HISTORY

ACTION	DATE
Introduced	03-21-17
Reported, H. State & Local Gov't	03-21-18
Passed House (93-0)	06-20-18
Reported, S. Gov't Oversight & Reform	12-06-18
Passed Senate (32-0)	12-27-18
House concurred in Senate amendments (88-0)	12-27-18

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<sup>3</sup> R.C. 149.43 and references to R.C. 149.433, 3107.083, 3107.391, and 3107.46, not in the act.

