

As Introduced

**129th General Assembly
Regular Session
2011-2012**

H. B. No. 616

Representatives Goyal, Lundy

Cosponsors: Representatives Murray, Pillich

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A B I L L

To amend section 149.351 of the Revised Code to make 1
changes to the statute authorizing injunctive 2
relief and liquidated damages to compensate for 3
harm caused by the destruction of public records, 4
and to designate the Act as "The Public Corruption 5
Prosecution Act." 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 149.351 of the Revised Code be 7
amended to read as follows: 8

Sec. 149.351. (A) All records are the property of the public 9
office concerned and shall not be removed, destroyed, mutilated, 10
transferred, or otherwise damaged or disposed of, in whole or in 11
part, except as provided by law or under the rules adopted by the 12
records commissions provided for under sections 149.38 to 149.42 13
of the Revised Code or under the records programs established by 14
the boards of trustees of state-supported institutions of higher 15
education under section 149.33 of the Revised Code. Those records 16
shall be delivered by outgoing officials and employees to their 17
successors and shall not be otherwise removed, destroyed, 18
mutilated, or transferred unlawfully. 19

(B) ~~Any person who is aggrieved by~~ In the event of the 20
removal, destruction, mutilation, or transfer of, or ~~by~~ other 21
damage to or disposition of a record in violation of division (A) 22
of this section, or ~~by~~ the threat of such removal, destruction, 23
mutilation, transfer, or other damage to or disposition of such a 24
record, any person may commence either or both of the following in 25
the court of common pleas of the county in which division (A) of 26
this section allegedly was violated or is threatened to be 27
violated: 28

(1) A civil action for injunctive relief to compel compliance 29
with division (A) of this section, ~~and to obtain an award of the~~ 30
~~reasonable attorney's fees incurred by the person in the civil~~ 31
~~action;~~ 32

(2) A civil action to recover ~~a forfeiture~~ liquidated damages 33
to compensate for the harm caused by the violation in the amount 34
of one thousand dollars for each violation, but not to exceed a 35
cumulative total of ~~ten~~ one hundred thousand dollars, regardless 36
of the number of violations, ~~and to obtain an award of the~~ 37
~~reasonable attorney's fees incurred by the person in the civil~~ 38
~~action not to exceed the forfeiture amount recovered.~~ 39

(C) ~~(1) A person is not aggrieved by a violation of division~~ 40
~~(A) of this section if clear and convincing evidence shows that~~ 41
~~the request for a record was contrived as a pretext to create~~ 42
~~potential liability under this section. The commencement of a~~ 43
~~civil action under division (B) of this section waives any right~~ 44
~~under this chapter to decline to divulge the purpose for~~ 45
~~requesting the record, but only to the extent needed to evaluate~~ 46
~~whether the request was contrived as a pretext to create potential~~ 47
~~liability under this section.~~ 48

~~(2) In a civil action under division (B) of this section, if~~ 49
~~clear and convincing evidence shows that the request for a record~~ 50
~~was a pretext to create potential liability under this section,~~ 51

~~the court may award reasonable attorney's fees to any defendant or~~ 52
~~defendants in the action~~ The court, in its discretion, may limit 53
the cumulative total amount of liquidated damages in an action 54
under division (B)(2) of this section to ten thousand dollars, 55
regardless of the number of violations, if the court determines 56
both of the following: 57

(1) That, based on the ordinary application of statutory law 58
and case law as it existed at the time of violation that was the 59
basis of the action, a well-informed public official or employee 60
reasonably would believe that the public office concerned was not 61
violating this section; and 62

(2) That a well-informed public official or employee 63
reasonably would believe that the conduct that was the basis of 64
the action would serve the public policy that underlies the 65
authority that is asserted as permitting that conduct. 66

(D) If clear and convincing evidence demonstrates that the 67
party bringing an action under division (B) of this section was 68
not harmed by the violation at issue and had no particularized 69
reason for seeking access to or preservation of the record or 70
records at issue, the court shall order that seventy-five per cent 71
of the total amount of any liquidated damages awarded in the 72
action shall be awarded to the Ohio historical society, and that 73
only twenty-five per cent of the total of any liquidated damages 74
awarded in the action shall be awarded to the party bringing the 75
action. Nothing in this division shall affect the court's award of 76
court costs and reasonable attorney's fees under this section. 77

(E) Once a person recovers a forfeiture liquidated damages in 78
a civil action commenced under division (B)(2) of this section, no 79
other person may recover a forfeiture liquidated damages under 80
that division for a violation of division (A) of this section 81
involving the same record, regardless of the number of persons 82
aggrieved by a violation of division (A) of this section or the 83

number of civil actions commenced under this section. 84

~~(E)~~(F) A civil action for injunctive relief under division 85
(B)(1) of this section or a civil action to recover a forfeiture 86
liquidated damages under division (B)(2) of this section shall be 87
commenced within ~~five years after the day in which division (A) of~~ 88
~~this section was allegedly violated or was threatened to be~~ 89
violated one year of the date when a violation is discovered or 90
reasonably should have been discovered by the party bringing the 91
action. 92

(G) Nothing in this section shall be construed to preclude 93
any parallel or additional remedy available under any statute or 94
the common law based on the removal, destruction, mutilation, or 95
transfer of a record. 96

Section 2. That existing section 149.351 of the Revised Code 97
is hereby repealed. 98

Section 3. This act shall be known as "The Public Corruption 99
Prosecution Act." 100