



Amber Hardesty

Final Analysis
Legislative Service Commission

Am. Sub. S.B. 248
127th General Assembly
(As Passed by the General Assembly)

Sens. Austria, Boccieri, Buehrer, Carey, Cates, Coughlin, Faber, Gardner, Harris, Jacobson, Mason, Mumper, Padgett, Schaffer, Schuring, Spada, Smith, Grendell, Fedor, Roberts, Amstutz, Kearney, Sawyer, Schuler, Stivers, Wagoner, Wilson

Reps. Batchelder, Boyd, Celeste, Chandler, Ciafardini, Coley, DeBose, Domenick, Dyer, Flowers, Gardner, Gibbs, Goyal, Grady, J. Hagan, Hite, Hughes, Letson, Mandel, R. McGregor, Nero, Schindel, Schlichter, Uecker, Wachtmann, Widener, S. Williams, Yuko, Zehringer

Effective date: April 7, 2009

ACT SUMMARY

- Creates a public records exemption for Armed Forces discharges for a period of 75 years except for requests by an authorized party and except for requests from other persons to receive a redacted copy.
- Excuses from jury service a prospective juror who is on active duty pursuant to an executive order issued by the President, an act of Congress, or an order or proclamation of the Governor.
- Establishes a criminal penalty for a person who unlawfully uses a deceased military person's persona for commercial purposes.
- Requires state institutions of higher education to charge a resident rate to a nonresident student who is a United States Armed Forces member and who is stationed in Ohio pursuant to military orders, or who is the spouse or dependent child of such a student.
- Clarifies remedies for actions under the Uniformed Services Employment and Reemployment Rights Act of 1994.

- Creates the Ohio Military Medal of Distinction and requires the Adjutant General to design the medal and coordinate an eligibility establishment program for the medal.
- Requires the Adjutant General to issue a report on the feasibility of establishing an Ohio National Guard Youth Challenge Program.
- Prohibits a person who knows that an unauthorized use of computer, cable, or telecommunication property has been or is being committed, or who has received information derived from such an unauthorized use, from knowingly failing to report the violation to law enforcement authorities.

CONTENT AND OPERATION

Public records

General law: Armed Forces discharge exemption

(R.C. 149.43)

The Public Records Act generally requires every public office to prepare promptly all public records and make them available for inspection at all reasonable times during regular business hours. Upon request and within a reasonable period of time, a public office or person responsible for public records generally must make copies of the records available at cost.

The Public Records Act defines a "public record" as records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in Ohio that are kept by the nonprofit or for-profit entity operating the alternative school. The Public Records Act contains a list of classes of records that are not included within the definition of "public record." The act states that Armed Forces discharges recorded with a county recorder are not public records to the extent provided in the act (see "Recording of Armed Forces discharge records," below).

Recording of Armed Forces discharge records

(R.C. 317.24 and 317.27)

Continuing law requires the county recorder, upon request of any discharged member of the United States Armed Forces and presentation of the

member's discharge, to record the discharge in a book to be furnished by the board of county commissioners for that purpose. Continuing law also requires the county recorder to record the discharge, upon request and presentation of the discharge, of any person who served during World War I or World War II as a member of any Polish or Czechoslovakian armed forces while participating in armed conflict with a United States enemy and who has been a United States citizen for at least ten years. There is no recording fee for either type of recording and the record, or a certified copy of it, must be received in evidence in all cases where the original would be received.

The act specifies that a discharge recorded in either manner described above is not a public record for purposes of the Public Records Law for 75 years after the recording date. During that time, except as explained below, the county recorder's office must make the discharge record available only to an authorized party. The act defines an "authorized party" as any of the following:

- (1) The person who is the subject of the discharge record.
- (2) A county veterans service officer, or an attorney-in-fact, agent, or other representative of the person who is the subject of the discharge record, if the person is authorized to inspect or copy the discharge record by the person who is the subject of the discharge record in a power of attorney or other document.
- (3) A person authorized, for good cause shown, by a court of record to inspect or copy the discharge record.
- (4) If the person who is the subject of the discharge record is deceased, the executor or administrator, or an heir, legatee, or devisee, of the person's estate or a funeral director who is to perform the funeral for the deceased person.

During the 75-year period, the county recorder's office also must make the discharge record available to a person other than an authorized party who requests to view a copy of a discharge record. The county recorder's office must provide a copy of the discharge record to such a person. However, the copy must be redacted so that it contains only the name, rank, date of birth, date of discharge, and type of discharge of the person who is the subject of the discharge record.

The act requires the authorized party and a person other than an authorized party to pay the reasonable costs of copying the discharge record. However, continuing law exempts discharged members of the Armed Forces from paying copying charges for one certified copy of a discharge record. The act extends this one certified copy exemption to authorized parties and to persons other than authorized parties who request a copy of a discharge record.

Excuse from jury service for active duty military persons

(R.C. 2313.16)

Except for postponement of jury service by a person who has not previously requested a postponement or who faces an emergency situation, continuing law allows a court of common pleas to excuse a person who is called for jury service only if the prospective juror or another person acquainted with the facts shows to the satisfaction of the judge that one or more of the following applies:

(1) The interests of the public will be materially injured by the juror's attendance.

(2) The juror's spouse or a near relative of the juror or the juror's spouse has recently died or is dangerously ill.

(3) The juror is a cloistered member of a religious organization.

(4) The prospective juror has a mental or physical condition that causes the prospective juror to be incapable of performing jury service.

(5) Jury service would otherwise cause undue or extreme physical or financial hardship to the prospective juror or a person under the care or supervision of the prospective juror.

(6) The juror is over 75 years of age and requests to be excused.

(7) The prospective juror is an active member of a recognized Amish sect and requests to be excused because of the prospective juror's sincere belief that as a result of that membership the prospective juror cannot pass judgment in a judicial matter.

The act adds, as a ground for excuse from jury service, that a prospective juror is on active duty pursuant to an executive order issued by the President, an act of Congress, or an order or proclamation of the Governor.

Using a deceased military person's persona

(R.C. 2741.02, 2741.06, not in the act, and 2741.99)

Subject to certain exceptions, generally under continuing law, a person may not, without permission, use any aspect of another individual's persona¹ for a commercial purpose during the individual's lifetime or for a period of 60 years after the date of the individual's death. A person can use an individual's persona for a commercial purpose during the individual's lifetime if the person first obtains written consent to use the individual's persona from certain specified persons. A person also is permitted to use an individual's persona for a commercial purpose after the individual's death if: (1) the person first obtains the written consent to use the individual's persona from a specified person who owns the individual's right of publicity or (2) the name of the individual was the name of a business entity or a trade name at the time of the individual's death. Continuing law permits certain persons to bring a civil action to enforce the rights set forth above.

The act states that whoever violates a person's rights as set forth above by using any aspect of an individual's persona who is a deceased member of the Ohio National Guard or the United States Armed Forces is guilty of a misdemeanor of the first degree. However, this criminal penalty applies for only ten years after the date of death of a deceased member of the Ohio National Guard or the United States Armed Forces. The act states that any criminal penalty imposed under the act is cumulative to the civil remedies available under continuing law for unauthorized use of a person's persona.

Military persons tuition rates and discounts

(R.C. 3333.42 and 3345.01)

The act requires state institutions of higher education² to charge a nonresident student who is a member of the United States Armed Forces and who

¹ "Persona" means an individual's name, voice, signature, photograph, image, likeness, or distinctive appearance, if any of these aspects have commercial value (R.C. 2741.01(A), not in the act).

² "State institution of higher education" means the University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State University, Shawnee State University, University of Toledo, Wright State University, Youngstown State University, and the Northeastern Ohio Universities College of Medicine, and any community college, state community college, university branch, or technical college (R.C. 3345.011, not in the act).

is stationed in Ohio pursuant to military orders, or who is the spouse or dependent child of such a student, the same rates for tuition and fees as are charged to an Ohio resident.

Reinstatement and reemployment rights of members of the uniformed services

(R.C. 5903.02)

Continuing law provides that any person whose absence from a position of employment is necessitated by reason of service in the uniformed services or in the Ohio organized militia has the same reinstatement and reemployment rights in Ohio that a person has under the Uniformed Services Employment and Reemployment Rights Act of 1994. A person who is denied a reinstatement or reemployment right therefore has a cause of action in Ohio for the same remedies as a person has under the Uniformed Services Employment and Reemployment Rights Act of 1994.

The act clarifies that a person is not entitled to a remedy in a state action if the person has received a remedy based on the same facts under the Uniformed Services Employment and Reemployment Rights Act of 1994. If a person has received a remedy in a state action and then receives a remedy based on the same facts under the Uniformed Services Employment and Reemployment Rights Act of 1994, the person must reimburse the judgment debtor the value of the federal remedy or the state remedy, whichever is less.

Ohio Military Medal of Distinction

(R.C. 5913.11)

The act creates the Ohio Military Medal of Distinction and requires the Adjutant General to design the medal and coordinate an eligibility establishment program. To be eligible for the medal, an individual must have been killed in the line of duty while doing one of the following: (1) engaging in an action against an enemy of the United States, (2) engaging in military operations involving conflict with an opposing foreign force, (3) serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party, or (4) serving in a combat zone designated by Presidential order. In addition, an individual is not eligible for the medal, unless the individual was at least one of the following at the time the member was killed in the line of duty: an Ohio National Guard member who is an Ohio resident, a United States Military Reserves member who is an Ohio resident, or a United States Armed Forces member who is either an Ohio resident or stationed in Ohio pursuant to a United States Department of Defense order.

The act requires, at least once per year, that both houses of the General Assembly obtain a list of eligible medal recipients from the Adjutant General and meet in joint convention to recognize the recipients for the prior year.

National Guard Youth Challenge Study Committee

(Section 3)

The act requires the Adjutant General to examine and make recommendations on the feasibility of establishing an Ohio National Guard Youth Challenge Program, which is a program under the United States Secretary of Defense that seeks to improve the life skills and employment potential of participants by providing military-based training and supervised work experience, and assists participants in receiving a high school diploma or its equivalent. The Adjutant General must issue a report of the Adjutant General's findings and recommendations to the President of the Senate, the Speaker of the House of Representatives, and the Governor not later than the effective date of the act.

Report of unauthorized use of electronic property to law enforcement

(R.C. 2921.22)

Continuing law generally prohibits a person who knows that a felony has been or is being committed from knowingly failing to report that information to law enforcement authorities. The act further prohibits a person who knows that an unauthorized use of computer, cable, or telecommunication property³ has been or is being committed, or who has received information derived from such an unauthorized use, from knowingly failing to report the violation to law enforcement authorities. A violation of this provision is a misdemeanor of the second degree.

A person need not disclose the information required above if the information is privileged, would tend to incriminate a member of the person's immediate family, would amount to revealing a privileged news source, would amount to disclosure of a confidential communication to a clergy member, or

³ An unauthorized use of computer, cable, or telecommunication property is use in any manner and by any means, including, but not limited to, computer hacking, knowingly gaining access to, attempting to gain access to, or causing access to be gained to, any computer, computer system, computer network, cable service, cable system, telecommunications device, telecommunications service, or information service without the consent of, or beyond the scope of the express or implied consent of, the owner of the computer, system, network, service, or device, or other person authorized to give consent (R.C. 2913.04(B), not in the act).

would amount to revealing information acquired in the course of the person's duties in connection with a bona fide drug treatment or crime victim program.

HISTORY

ACTION	DATE
Introduced	11-08-07
Reported, S. State & Local Gov't & Veterans Affairs	05-29-08
Passed Senate (32-0)	05-29-08
Reported, H. Infrastructure, Homeland Security & Veterans Affairs	12-17-08
Passed House (96-0)	12-17-08
Senate concurred in House amendments (33-0)	12-18-08

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