



Ohio Legislative Service Commission

Bill Analysis

Aida S. Montano

H.B. 391

128th General Assembly
(As Introduced)

Reps. Chandler, Harris, Weddington, B. Williams, Boyd, Foley, Fende, Domenick, Yuko, S. Williams, Brown, Murray, Ujvagi, Garland, Phillips, Heard, Hagan, Lehner

BILL SUMMARY

- Establishes an address confidentiality program in the Office of the Secretary of State.
- Permits an adult, a parent, or a guardian acting on behalf of a minor, incompetent, or ward to apply with the assistance of an application assistant to the Secretary of State to have an address designated by the Secretary of State serve as the person's address or the address of the minor, incompetent, or ward and requires the Secretary of State to approve an application if it is filed in the manner and on the form prescribed under the bill and contains all of the information specified in the bill, including a sworn statement that the applicant fears for the safety of the applicant, the applicant's children, or the minor, incompetent, or ward on whose behalf the application is made.
- Prohibits any person from falsely attesting in an application that disclosure of the applicant's address would endanger the applicant's safety, the safety of the applicant's children, or the safety of the minor, incompetent, or ward on whose behalf the application is made or knowingly providing false or incorrect information upon making an application.
- Permits a program participant to request that a governmental entity use the address designated by the Secretary of State as the program participant's address and requires the Office of the Secretary of State to daily place all first class mail of a program participant received that day into an envelope or package and mail it to the program participant at the mailing address provided in the application.
- Generally authorizes a program participant who is a qualified elector to vote by absent voter's ballot, provides that such program participant must apply to the Secretary of State for an absent voter's ballot using the participant's confidential address, prescribes the procedures in which the ballot is transmitted, provides for

the verification of the program participant's registration and eligibility to vote by bipartisan teams of employees of the Office of the Secretary of State, and generally prohibits the Secretary of State from disclosing or making a program participant's voter registration record available for public inspection or copying.

- Allows a person to petition the Franklin County Court of Common Pleas for a hearing to order the Secretary of State to make a program participant's confidential address available to the person and prescribes the procedures for the service of notice and hearing.
- Prohibits the Secretary of State from disclosing or making a program participant's confidential address available for inspection or copying subject to specified exceptions, excludes such address from the definition of "public record" under the Public Records Law, and prohibits any person who obtains the confidential address of a program participant from knowingly disclosing that address to any person not authorized to receive it.
- Specifies the circumstances in which the Secretary of State must cancel a program participant's certification and the circumstances in which the Secretary of State may cancel the certification.
- Authorizes the Secretary of State to designate one or more employees or volunteers of shelters for victims of domestic violence or other agencies in a county that serve victims of abuse to serve as application assistants for the applicants for certification, and requires the Secretary of State to adopt rules to facilitate the administration of the bill's provisions.
- Grants to the state and the Office of the Secretary of State immunity from liability in damages for injury, death, or loss to person or property that allegedly arises from the performance of the Secretary of State's duties.

TABLE OF CONTENTS

Application for designated address; prohibition	3
Use of designated address by governmental entity	4
Voting by program participant	5
Voter registration records.....	6
Petition for inspection or copying of confidential address	6
Prohibitions against disclosure of confidential address	7
Exclusion from Public Records Law	8
Cancellation of certification	8
Application assistants	8
Civil immunity.....	8
Rules.....	9
Definitions	9

CONTENT AND OPERATION

Application for designated address; prohibition

The bill permits an adult person, a "parent," or a "guardian" acting on behalf of a minor, "incompetent," or "ward" to apply with the assistance of an "application assistant" to the Secretary of State (hereafter "Secretary") to have an "address" designated by the Secretary serve as the person's address or the address of the minor, incompetent, or ward. The Secretary is required to approve an application if it is filed in the manner and on the form prescribed under the bill and if it contains all of the following (terms in quotation marks are defined below in "**Definitions**") (R.C. 111.32(A)):

(1) A sworn statement by the applicant that the applicant fears for the safety of the applicant, the applicant's children, or the minor, incompetent, or ward on whose behalf the application is made and that one or more of the following apply:

(a) The applicant provides proof that the applicant, any of the applicant's children, or the minor, incompetent, or ward on whose behalf the application is made is a victim of a violation of R.C. 2903.11 (felonious assault), 2903.12 (aggravated assault), 2903.13 (assault), 2903.21 (aggravated menacing), 2903.211 (menacing by stalking), 2903.22 (menacing), 2907.02 (rape), 2907.03 (sexual battery), 2907.04 (unlawful sexual conduct with a minor), 2907.05 (gross sexual imposition), 2907.06 (sexual imposition), 2907.07 (importuning), 2907.08 (voyeurism), 2907.09 (public indecency), 2911.211 (aggravated trespass), 2919.22 (endangering children), or 2919.25 (domestic violence).

(b) The applicant provides proof that the applicant, any of the applicant's children, or the minor, incompetent, or ward on whose behalf the application is made has a protection order issued or consent agreement approved under R.C. 2903.213 (protection order as a pretrial condition of release of certain alleged offenders), 2903.214 (protection order in menacing by stalking cases), or 3113.31 (protection order in civil domestic violence cases) or a protection order issued by a court of another state that has been registered under R.C. 2919.272.

(c) The applicant reasonably fears that the applicant, any of the applicant's children, or the minor, incompetent, or ward on whose behalf the application is made is in danger of being threatened or physically harmed by another person.

(2) A designation of the Secretary as the agent for the purposes of receiving service of process and the receipt of mail;

(3) The mailing address at which the applicant may be contacted by the Secretary and the telephone number or numbers at which the applicant may be called by the Secretary;

(4) The new address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk that the applicant, the applicant's children, or the minor, incompetent, or ward on whose behalf the application is made will be threatened or physically harmed by another person;

(5) The signature of the applicant, the name, work address, and signature of the application assistant who assisted the applicant in applying to become a "program participant," and the date on which the applicant and application assistant signed the application;

(6) The name, occupation if known, and contact information if known of the person the applicant reasonably believes will threaten or physically harm the applicant, the applicant's children, or the minor, incompetent, or ward on whose behalf the application is made.

Any person who files such an application must file the application with the Office of the Secretary of State. Upon the filing of a properly completed application, the Secretary must certify the applicant or the minor, incompetent, or ward on whose behalf the application is filed as a program participant. The certification of a program participant is valid for four years after the date of the filing of the application for the program participant unless the certification is withdrawn or invalidated before the end of that four-year period. A program participant may renew the program participant's certification pursuant to the renewal procedure adopted by the Secretary as described below in "**Rules.**"

The bill prohibits any person from falsely attesting in an application that disclosure of the applicant's address would endanger the applicant's safety, the safety of the applicant's children, or the safety of the minor, incompetent, or ward on whose behalf the application is made or knowingly providing false or incorrect information upon making an application. A violation of this prohibition constitutes grounds for removal from the address confidentiality program. (R.C. 111.32(B), (C), and (D).)

Use of designated address by governmental entity

The bill permits a program participant to request that a "governmental entity" use the address designated by the Secretary as the program participant's address. If the program participant requests that a governmental entity use that address, the governmental entity must accept that address, except that this provision does not apply to a municipal-owned public utility. The "confidential addresses" of participants of the

address confidentiality program that are maintained by a municipal-owned public utility are not a public record and cannot be released by a municipal-owned public utility or by any employee of a municipal-owned public utility. The bill also permits a program participant to use the address designated by the Secretary as the program participant's address at the program participant's place of employment. (Terms in quotation marks are defined below in "**Definitions.**") (R.C. 111.33(A), (B), and (D).)

The bill requires the Office of the Secretary of State to daily place all first class mail of a program participant that the Secretary receives that day into an envelope or package and mail that envelope or package to the program participant at the mailing address of the program participant provided in the program participant's application. The Secretary may contract with the United States Postal Service to establish special postal rates for the envelopes or packages used in mailing a program participant's first class mail under this provision. (R.C. 111.33(C).)

Voting by program participant

Generally, the bill authorizes a program participant who is a qualified elector to vote by absent voter's ballots under R.C. Chapter 3509. (Absent Voter's Ballot Law). The program participant must apply to the Secretary for those ballots using the participant's confidential address. "Bipartisan teams" of employees (defined as two designated employees of the Office of the Secretary of State who are from different political parties) must determine the precinct in which the program participant resides and the ballot style that the program participant should receive and request the program participant absent voter's ballot from the board of elections. The board of elections must send to the Secretary the ballots appropriate for the precinct where the participant's true residence is located. The Office of the Secretary must forward the ballot to the program participant and instruct the program participant to return the program participant's ballot to the Office of the Secretary. Bipartisan teams of employees of such Office must verify that the program participant is registered and eligible to vote using the Secretary of State's participant voter registration system and that the ballot envelope was properly completed before forwarding for tabulation the ballot to the board of elections in the county where the program participant voter resides. The absent voter's ballots provided to program participants must be referred to as "ACP absent voter's ballots." The board of elections must accept all ballots forwarded by the Secretary that are postmarked prior to election day for up to ten days after election day. The bill requires each employee of the Office of the Secretary who serves on a bipartisan team that handles program participants' absent voter's ballots to subscribe to an oath that the employee will faithfully execute the employee's duties to the best of the employee's ability. (R.C. 111.34(A), (B), and (D).)

The bill provides that the procedures described in the preceding paragraph are an exception to existing law's provision that requires an application for absent voter's ballots to be delivered to the director of the board of elections not earlier than the first day of January of the year of the elections for which the absent voter's ballots are requested or not earlier than 90 days before the day of the election at which the ballots are to be voted, whichever is earlier, and not later than 12 noon of the third day before the day of the election at which the ballots are to be voted, or not later than the close of regular business hours on the day before the day of the election at which the ballots are to be voted if the application is delivered in person to the office of the board (R.C. 3509.03).

Except as otherwise described below in "**Petition for inspection or copying of confidential address**" and "**Prohibitions against disclosure of confidential address**" and notwithstanding any provision of R.C. 3503.15 (statewide voter registration database) and 3503.26 (custody of registration forms, records, and lists) or any other section of the Revised Code to the contrary, the bill prohibits the Secretary from disclosing or making a program participant's voter registration record available for public inspection or copying. A program participant's voter registration record is subject to a mandatory audit every four years by the Auditor of State. The results of that audit are not a public record and must be kept only by the Auditor of State and the Secretary of State. (R.C. 111.34(C).)

Voter registration records

The bill provides that notwithstanding any other provision of R.C. Chapter 3503. (Voters' Qualifications and Registration Law), the Secretary of State must maintain the voter registration records for participants in the address confidentiality program who are registered or choose to register to vote. The Secretary must process new voter registration records and maintain existing voter registration records in the same manner as county boards of elections. (R.C. 3503.151.)

The bill expands existing law's requirement for the Secretary to adopt rules pertaining to the maintenance of voter registration records to include rules establishing a process to keep the voter registration record of a person who is a program participant under the bill's provisions confidential and not available for public inspection (R.C. 3503.15(D)(6)).

Petition for inspection or copying of confidential address

The bill allows a person to petition the Court of Common Pleas of Franklin County for a hearing to order the Secretary of State to make a program participant's confidential address available to the person. Upon the filing of such a petition, the

Court must fix a date for a hearing on it and require the Clerk of the Court to serve a notice of the date, time, place, and purpose of the hearing upon the petitioner and the program participant. The Clerk must notify by electronic means the Secretary on behalf of the program participant and send the notice by certified mail, return receipt requested, to the participant. Upon receipt of that notice by the Secretary, the Secretary must forward by certified mail, return receipt requested, a copy of the individual notice to the program participant at the program participant's confidential address. The return receipt must be addressed to the Clerk of the applicable Court of Common Pleas. The Court may not hear the petition until the Clerk receives the return receipt containing proof of service of the notice upon the program participant. At a hearing under this provision, the program participant or the program participant's attorney may appear and be heard. After the hearing and considering the testimony, the Court must issue the requested order only if good cause is shown for the order and it appears to the Court by clear and convincing evidence that the disclosure of the program participant's confidential address will not increase the risk that the program participant will be threatened or harmed by another person. (R.C. 111.35.)

Prohibitions against disclosure of confidential address

Notwithstanding any provision of R.C. 3503.15 (statewide voter registration database) and 3503.26 (custody of registration forms, records, and lists) or any other section of the Revised Code to the contrary, the bill prohibits the Secretary of State from disclosing or making a program participant's confidential address available for inspection or copying, except under the following circumstances (R.C. 111.36(A)):

(1) If a member of a law enforcement agency has a legitimate law enforcement purpose for seeking the confidential address and obtains a court order requiring the Office of the Secretary to release a program participant's confidential address to that person, the Office of the Secretary must make the program participant's confidential address available to that person.

(2) If a court orders that a program participant's confidential address be made available to a person as described above in "**Petition for inspection or copying of confidential address**," the Secretary must make it available to the person named in the court order.

(3) If the Secretary has canceled a program participant's certification as described below in "**Cancellation of certification**," the Secretary may make the address available for inspection or copying under R.C. 3503.26 (see **COMMENT 1**).

The bill prohibits any person who obtains the confidential address of a program participant from knowingly disclosing the confidential address to any person not

authorized to receive that confidential address. Whoever violates this prohibition is guilty of a felony of the fifth degree. (R.C. 111.36(B).)

Exclusion from Public Records Law

The Public Records Law governs the inspection and copying of public records and defines "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 kept by the nonprofit or for-profit entity operating the alternative school pursuant to R.C. 3313.533. Several types of records are excluded from the definition of "public record." The bill adds the confidential address of a participant of the address confidentiality program under its provisions to the list of records excluded from the definition of "public record" (R.C. 149.43(A)(1)(bb)).

Cancellation of certification

The bill requires the Secretary to immediately cancel the certification of a program participant if the program participant's application contained one or more false statements or the program participant requests to cease being a program participant. The bill permits the Secretary to cancel the certification of a program participant if the program participant's address changes from any address listed on the application, unless the program participant or the person who applied for the program on behalf of the program participant provides the Secretary with written notice of the change of address within 14 days after the change of address occurs. (R.C. 111.37.)

Application assistants

The bill authorizes the Secretary to designate one or more employees or volunteers of various "shelters for victims of domestic violence" (see definition below in "**Definitions**,") or other agencies within a county that serve victims of abuse to serve as application assistants for the applicants. Application assistants must comply with the requirements for training and certification adopted by the Secretary as described below in "**Rules**." (R.C. 111.38.)

Civil immunity

The bill provides that notwithstanding any provision of R.C. Chapter 2743. (Court of Claims Law) or any other section of the Revised Code to the contrary, the state and the Office of the Secretary are not liable in damages for injury, death, or loss to person or property that allegedly arises from the performance of the Secretary's duties under the bill. R.C. 9.86 (see **COMMENT 2**) applies to all officers and employees of the Office of the Secretary in relation to that performance. Any assistance or counseling

rendered to program applicants or program participants by the Office of the Secretary or by certified application assistants is not legal advice. (R.C. 111.39.)

Rules

The bill requires the Secretary of State to adopt rules under the Administrative Procedure Act to facilitate the administration of the bill's provisions and to establish the following (R.C. 111.40(A) and (B)):

- (1) Guidelines for maintaining the confidentiality of the voter registration records of program participants;
- (2) Requirements for the training and certification of application assistants;
- (3) The application for certification as a program participant;
- (4) The procedure for renewal of certification as a program participant.

The Secretary must prescribe forms necessary for the administration of the address confidentiality program, including, but not limited to, an address confidentiality program identification card. Application assistants and other persons involved in registering participants in the address confidentiality program must use the forms prescribed by the Secretary. (R.C. 111.40(C).)

Definitions

The bill defines the following terms as used in its provisions (R.C. 111.31):

"Abused child" has the same meaning as in R.C. 2151.031 (see **COMMENT 3**) and also includes any child who is the victim of threats of the commission of any act covered by that section.

"Address" means a residential street address, school address, or work address of a person as specified on an application to be a program participant under the bill.

"Application assistant" means a person who is designated by a court of common pleas, a municipal court, a county court, or the Secretary of State to help individuals complete applications to be program participants and who has received training and certification from the Secretary for that purpose.

"Confidential address" means an address that is required to be kept confidential once a program participant is certified by the Secretary under the bill.

"Governmental entity" means the state, a political subdivision of the state, or any department, agency, board, commission, or other instrumentality of the state or a political subdivision of the state.

"Guardian," "incompetent," "parent," and "ward" have the same meanings as in R.C. 2111.01 (see **COMMENT 4**).

"Program participant" means a person certified as a program participant under the bill.

"Shelter for victims of domestic violence" means a facility that provides temporary residential service or facilities to family or household members who are victims of domestic violence (by reference to R.C. 3113.33, not in the bill).

COMMENT

1. R.C. 3503.26, not in the bill, provides as follows:

(A) All registration forms and lists, when not in official use by the registrars or judges of elections, shall be in the possession of the board of elections. Names and addresses of electors may be copied from the registration lists only in the office of the board when it is open for business; but no such copying shall be permitted during the period of time commencing twenty-one days before an election and ending on the eleventh day after an election if such copying will, in the opinion of the board, interfere with the necessary work of the board. The board shall keep in convenient form and available for public inspection a correct set of the registration lists of all precincts in the county.

(B) Notwithstanding division (A) of this section the board of elections shall maintain and make available for public inspection and copying at a reasonable cost all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of voter registration lists, including the names and addresses of all registered electors sent confirmation notices and whether or not the elector responded to the confirmation notice. The board shall maintain all records described in this division for a period of two years.

2. R.C. 9.86, not in the bill, provides the following:

Except for civil actions that arise out of the operation of a motor vehicle and civil actions in which the state is the plaintiff, no officer or employee shall be liable in any civil action that arises under the law of this state for damage or injury caused in the performance of his duties, unless the officer's or employee's actions were manifestly outside the scope of his employment or official responsibilities, or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.

This section does not eliminate, limit, or reduce any immunity from civil liability that is conferred upon an officer or employee by any other provision of the Revised Code or by case law. This section does not affect the liability of the state in an action filed against the state in the court of claims pursuant to Chapter 2743. of the Revised Code.

3. R.C. 2151.031, not in the bill, defines an "abused child" as including any child who:

(A) Is the victim of "sexual activity" as defined under Chapter 2907. of the Revised Code, where such activity would constitute an offense under that chapter, except that the court need not find that any person has been convicted of the offense in order to find that the child is an abused child;

(B) Is endangered as defined in section 2919.22 of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child;

(C) Exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it. Except as provided in division (D) of this section, a child exhibiting evidence of corporal punishment or other physical disciplinary measure by a parent, guardian, custodian, person having custody or control, or person in loco parentis of a child is not an abused child under this

division if the measure is not prohibited under section 2919.22 of the Revised Code.

(D) Because of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare.

(E) Is subjected to out-of-home care child abuse.

4. R.C. 2111.01, not in the bill, defines the following terms:

(A) "Guardian," other than a guardian under sections 5905.01 to 5905.19 of the Revised Code, means any person, association, or corporation appointed by the probate court to have the care and management of the person, the estate, or both of an incompetent or minor. When applicable, "guardian" includes, but is not limited to, a limited guardian, an interim guardian, a standby guardian, and an emergency guardian appointed pursuant to division (B) of section 2111.02 of the Revised Code. "Guardian" also includes an agency under contract with the department of developmental disabilities for the provision of protective service under sections 5123.55 to 5123.59 of the Revised Code when appointed by the probate court to have the care and management of the person of an incompetent.

(B) "Ward" means any person for whom a guardian is acting or for whom the probate court is acting pursuant to section 2111.50 of the Revised Code.

....

(D) "Incompetent" means any person who is so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide, or any person confined to a correctional institution within this state.

....

(G) "Parent" means a natural parent or adoptive parent of a minor child whose parental rights and responsibilities have not been terminated by a juvenile court or another court.

HISTORY

ACTION	DATE
Introduced	12-08-09

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