

**As Passed by the House**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**Am. H. B. No. 341**

**Representatives Huffman, Cera**

**Cosponsors: Representatives Becker, Butler, Gavarone, Goodman, Lipps, Riedel, Reineke, Retherford, Rezabek, Sprague, Thompson, Antonio, Boccieri, Boggs, Celebrezze, Craig, Fedor, Reece, Rogers, Smith, K., Strahorn, Sweeney, West, Anielski, Arndt, Ashford, Barnes, Boyd, Brown, Carfagna, Faber, Galonski, Ginter, Greenspan, Hill, Holmes, Howse, Hughes, Johnson, Landis, LaTourette, Leland, Lepore-Hagan, Manning, Miller, O'Brien, Patterson, Patton, Pelanda, Perales, Romanchuk, Ryan, Schuring, Sheehy, Stein, Sykes, Young**

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**A BILL**

To amend sections 149.43 and 149.45 of the Revised 1  
Code to include judges and magistrates as 2  
individuals whose residential and familial 3  
information is exempt from disclosure under the 4  
Public Records Law, and whose addresses public 5  
offices, upon request, must redact from records 6  
available to the general public on the internet. 7

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

**Section 1.** That sections 149.43 and 149.45 of the Revised 8  
Code be amended to read as follows: 9

**Sec. 149.43.** (A) As used in this section: 10

(1) "Public record" means records kept by any public 11  
office, including, but not limited to, state, county, city, 12  
village, township, and school district units, and records 13  
pertaining to the delivery of educational services by an 14

alternative school in this state kept by the nonprofit or for- 15  
profit entity operating the alternative school pursuant to 16  
section 3313.533 of the Revised Code. "Public record" does not 17  
mean any of the following: 18

(a) Medical records; 19

(b) Records pertaining to probation and parole proceedings 20  
or to proceedings related to the imposition of community control 21  
sanctions and post-release control sanctions; 22

(c) Records pertaining to actions under section 2151.85 23  
and division (C) of section 2919.121 of the Revised Code and to 24  
appeals of actions arising under those sections; 25

(d) Records pertaining to adoption proceedings, including 26  
the contents of an adoption file maintained by the department of 27  
health under sections 3705.12 to 3705.124 of the Revised Code; 28

(e) Information in a record contained in the putative 29  
father registry established by section 3107.062 of the Revised 30  
Code, regardless of whether the information is held by the 31  
department of job and family services or, pursuant to section 32  
3111.69 of the Revised Code, the office of child support in the 33  
department or a child support enforcement agency; 34

(f) Records specified in division (A) of section 3107.52 35  
of the Revised Code; 36

(g) Trial preparation records; 37

(h) Confidential law enforcement investigatory records; 38

(i) Records containing information that is confidential 39  
under section 2710.03 or 4112.05 of the Revised Code; 40

(j) DNA records stored in the DNA database pursuant to 41

section 109.573 of the Revised Code; 42

(k) Inmate records released by the department of 43  
rehabilitation and correction to the department of youth 44  
services or a court of record pursuant to division (E) of 45  
section 5120.21 of the Revised Code; 46

(l) Records maintained by the department of youth services 47  
pertaining to children in its custody released by the department 48  
of youth services to the department of rehabilitation and 49  
correction pursuant to section 5139.05 of the Revised Code; 50

(m) Intellectual property records; 51

(n) Donor profile records; 52

(o) Records maintained by the department of job and family 53  
services pursuant to section 3121.894 of the Revised Code; 54

(p) ~~Peace officer, parole officer, probation officer,~~ 55  
~~bailiff, prosecuting attorney, assistant prosecuting attorney,~~ 56  
~~correctional employee, community-based correctional facility~~ 57  
~~employee, youth services employee, firefighter, EMT,~~ 58  
~~investigator of the bureau of criminal identification and~~ 59  
~~investigation, or federal law enforcement officer~~ Designated 60  
public service worker residential and familial information; 61

(q) In the case of a county hospital operated pursuant to 62  
Chapter 339. of the Revised Code or a municipal hospital 63  
operated pursuant to Chapter 749. of the Revised Code, 64  
information that constitutes a trade secret, as defined in 65  
section 1333.61 of the Revised Code; 66

(r) Information pertaining to the recreational activities 67  
of a person under the age of eighteen; 68

(s) In the case of a child fatality review board acting 69

under sections 307.621 to 307.629 of the Revised Code or a 70  
review conducted pursuant to guidelines established by the 71  
director of health under section 3701.70 of the Revised Code, 72  
records provided to the board or director, statements made by 73  
board members during meetings of the board or by persons 74  
participating in the director's review, and all work products of 75  
the board or director, and in the case of a child fatality 76  
review board, child fatality review data submitted by the board 77  
to the department of health or a national child death review 78  
database, other than the report prepared pursuant to division 79  
(A) of section 307.626 of the Revised Code; 80

(t) Records provided to and statements made by the 81  
executive director of a public children services agency or a 82  
prosecuting attorney acting pursuant to section 5153.171 of the 83  
Revised Code other than the information released under that 84  
section; 85

(u) Test materials, examinations, or evaluation tools used 86  
in an examination for licensure as a nursing home administrator 87  
that the board of executives of long-term services and supports 88  
administers under section 4751.04 of the Revised Code or 89  
contracts under that section with a private or government entity 90  
to administer; 91

(v) Records the release of which is prohibited by state or 92  
federal law; 93

(w) Proprietary information of or relating to any person 94  
that is submitted to or compiled by the Ohio venture capital 95  
authority created under section 150.01 of the Revised Code; 96

(x) Financial statements and data any person submits for 97  
any purpose to the Ohio housing finance agency or the 98

controlling board in connection with applying for, receiving, or 99  
accounting for financial assistance from the agency, and 100  
information that identifies any individual who benefits directly 101  
or indirectly from financial assistance from the agency; 102

(y) Records listed in section 5101.29 of the Revised Code; 103

(z) Discharges recorded with a county recorder under 104  
section 317.24 of the Revised Code, as specified in division (B) 105  
(2) of that section; 106

(aa) Usage information including names and addresses of 107  
specific residential and commercial customers of a municipally 108  
owned or operated public utility; 109

(bb) Records described in division (C) of section 187.04 110  
of the Revised Code that are not designated to be made available 111  
to the public as provided in that division; 112

(cc) Information and records that are made confidential, 113  
privileged, and not subject to disclosure under divisions (B) 114  
and (C) of section 2949.221 of the Revised Code; 115

(dd) Personal information, as defined in section 149.45 of 116  
the Revised Code; 117

(ee) The confidential name, address, and other personally 118  
identifiable information of a program participant in the address 119  
confidentiality program established under sections 111.41 to 120  
111.47 of the Revised Code, including the contents of any 121  
application for absent voter's ballots, absent voter's ballot 122  
identification envelope statement of voter, or provisional 123  
ballot affirmation completed by a program participant who has a 124  
confidential voter registration record, and records or portions 125  
of records pertaining to that program that identify the number 126  
of program participants that reside within a precinct, ward, 127

township, municipal corporation, county, or any other geographic 128  
area smaller than the state. As used in this division, 129  
"confidential address" and "program participant" have the 130  
meaning defined in section 111.41 of the Revised Code. 131

(ff) Orders for active military service of an individual 132  
serving or with previous service in the armed forces of the 133  
United States, including a reserve component, or the Ohio 134  
organized militia, except that, such order becomes a public 135  
record on the day that is fifteen years after the published date 136  
or effective date of the call to order. 137

(2) "Confidential law enforcement investigatory record" 138  
means any record that pertains to a law enforcement matter of a 139  
criminal, quasi-criminal, civil, or administrative nature, but 140  
only to the extent that the release of the record would create a 141  
high probability of disclosure of any of the following: 142

(a) The identity of a suspect who has not been charged 143  
with the offense to which the record pertains, or of an 144  
information source or witness to whom confidentiality has been 145  
reasonably promised; 146

(b) Information provided by an information source or 147  
witness to whom confidentiality has been reasonably promised, 148  
which information would reasonably tend to disclose the source's 149  
or witness's identity; 150

(c) Specific confidential investigatory techniques or 151  
procedures or specific investigatory work product; 152

(d) Information that would endanger the life or physical 153  
safety of law enforcement personnel, a crime victim, a witness, 154  
or a confidential information source. 155

(3) "Medical record" means any document or combination of 156

documents, except births, deaths, and the fact of admission to 157  
or discharge from a hospital, that pertains to the medical 158  
history, diagnosis, prognosis, or medical condition of a patient 159  
and that is generated and maintained in the process of medical 160  
treatment. 161

(4) "Trial preparation record" means any record that 162  
contains information that is specifically compiled in reasonable 163  
anticipation of, or in defense of, a civil or criminal action or 164  
proceeding, including the independent thought processes and 165  
personal trial preparation of an attorney. 166

(5) "Intellectual property record" means a record, other 167  
than a financial or administrative record, that is produced or 168  
collected by or for faculty or staff of a state institution of 169  
higher learning in the conduct of or as a result of study or 170  
research on an educational, commercial, scientific, artistic, 171  
technical, or scholarly issue, regardless of whether the study 172  
or research was sponsored by the institution alone or in 173  
conjunction with a governmental body or private concern, and 174  
that has not been publicly released, published, or patented. 175

(6) "Donor profile record" means all records about donors 176  
or potential donors to a public institution of higher education 177  
except the names and reported addresses of the actual donors and 178  
the date, amount, and conditions of the actual donation. 179

(7) "~~Peace~~Designated public service worker" means a peace 180  
officer, parole officer, probation officer, bailiff, prosecuting 181  
attorney, assistant prosecuting attorney, correctional employee, 182  
community-based correctional facility employee, youth services 183  
employee, firefighter, EMT, investigator of the bureau of 184  
criminal identification and investigation, judge, magistrate, or 185  
federal law enforcement officer. 186

(8) "Designated public service worker residential and 187  
familial information" means any information that discloses any 188  
of the following about a ~~peace officer, parole officer,~~ 189  
~~probation officer, bailiff, prosecuting attorney, assistant~~ 190  
~~prosecuting attorney, correctional employee, community-based~~ 191  
~~correctional facility employee, youth services employee,~~ 192  
~~firefighter, EMT, investigator of the bureau of criminal~~ 193  
~~identification and investigation, or federal law enforcement~~ 194  
~~officer~~ designated public service worker: 195

(a) The address of the actual personal residence of a 196  
~~peace officer, parole officer, probation officer, bailiff,~~ 197  
~~assistant~~ designated public service worker, other than a 198  
prosecuting attorney or judge, ~~correctional employee, community-~~ 199  
~~based correctional facility employee, youth services employee,~~ 200  
~~firefighter, EMT, an investigator of the bureau of criminal~~ 201  
~~identification and investigation, or federal law enforcement~~ 202  
~~officer,~~ except for the state or political subdivision in which 203  
the ~~peace officer, parole officer, probation officer, bailiff,~~ 204  
~~assistant~~ designated public service worker, other than a 205  
prosecuting attorney or judge, ~~correctional employee, community-~~ 206  
~~based correctional facility employee, youth services employee,~~ 207  
~~firefighter, EMT, investigator of the bureau of criminal~~ 208  
~~identification and investigation, or federal law enforcement~~ 209  
~~officer~~ resides; 210

(b) Information compiled from referral to or participation 211  
in an employee assistance program; 212

(c) The social security number, the residential telephone 213  
number, any bank account, debit card, charge card, or credit 214  
card number, or the emergency telephone number of, or any 215  
medical information pertaining to, a ~~peace officer, parole~~ 216

~~officer, probation officer, bailiff, prosecuting attorney,~~ 217  
~~assistant prosecuting attorney, correctional employee,~~ 218  
~~community-based correctional facility employee, youth services~~ 219  
~~employee, firefighter, EMT, investigator of the bureau of~~ 220  
~~criminal identification and investigation, or federal law~~ 221  
~~enforcement officer~~ designated public service worker; 222

(d) The name of any beneficiary of employment benefits, 223  
including, but not limited to, life insurance benefits, provided 224  
to a ~~peace officer, parole officer, probation officer, bailiff,~~ 225  
~~prosecuting attorney, assistant prosecuting attorney,~~ 226  
~~correctional employee, community-based correctional facility~~ 227  
~~employee, youth services employee, firefighter, EMT,~~ 228  
~~investigator of the bureau of criminal identification and~~ 229  
~~investigation, or federal law enforcement officer~~ designated 230  
public service worker by the ~~peace officer's, parole officer's,~~ 231  
~~probation officer's, bailiff's, prosecuting attorney's,~~ 232  
~~assistant prosecuting attorney's, correctional employee's,~~ 233  
~~community-based correctional facility employee's, youth services~~ 234  
~~employee's, firefighter's, EMT's, investigator of the bureau of~~ 235  
~~criminal identification and investigation's, or federal law~~ 236  
~~enforcement officer's~~ designated public service worker's 237  
employer; 238

(e) The identity and amount of any charitable or 239  
employment benefit deduction made by the ~~peace officer's, parole~~ 240  
~~officer's, probation officer's, bailiff's, prosecuting~~ 241  
~~attorney's, assistant prosecuting attorney's, correctional~~ 242  
~~employee's, community-based correctional facility employee's,~~ 243  
~~youth services employee's, firefighter's, EMT's, investigator of~~ 244  
~~the bureau of criminal identification and investigation's, or~~ 245  
~~federal law enforcement officer's~~ designated public service 246  
worker's employer from the ~~peace officer's, parole officer's,~~ 247

~~probation officer's, bailiff's, prosecuting attorney's,~~ 248  
~~assistant prosecuting attorney's, correctional employee's,~~ 249  
~~community-based correctional facility employee's, youth services-~~ 250  
~~employee's, firefighter's, EMT's, investigator of the bureau of-~~ 251  
~~criminal identification and investigation's, or federal law-~~ 252  
~~enforcement officer's~~ designated public service worker's 253  
compensation, unless the amount of the deduction is required by 254  
state or federal law; 255

(f) The name, the residential address, the name of the 256  
employer, the address of the employer, the social security 257  
number, the residential telephone number, any bank account, 258  
debit card, charge card, or credit card number, or the emergency 259  
telephone number of the spouse, a former spouse, or any child of 260  
~~a peace officer, parole officer, probation officer, bailiff,~~ 261  
~~prosecuting attorney, assistant prosecuting attorney,~~ 262  
~~correctional employee, community-based correctional facility-~~ 263  
~~employee, youth services employee, firefighter, EMT,~~ 264  
~~investigator of the bureau of criminal identification and-~~ 265  
~~investigation, or federal law enforcement officer~~ designated 266  
public service worker; 267

(g) A photograph of a peace officer who holds a position 268  
or has an assignment that may include undercover or plain 269  
clothes positions or assignments as determined by the peace 270  
officer's appointing authority. 271

(9) As used in ~~divisions~~ division (A) (7) and ~~(B) (9)~~ of 272  
this section, ~~"peace-;~~ 273

"Peace officer" has the ~~same~~ meaning as defined in section 274  
109.71 of the Revised Code and also includes the superintendent 275  
and troopers of the state highway patrol; it does not include 276  
the sheriff of a county or a supervisory employee who, in the 277

absence of the sheriff, is authorized to stand in for, exercise 278  
the authority of, and perform the duties of the sheriff. 279

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 280  
~~"correctional"~~ "Correctional" employee" means any employee of the 281  
department of rehabilitation and correction who in the course of 282  
performing the employee's job duties has or has had contact with 283  
inmates and persons under supervision. 284

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 285  
~~"youth"~~ "Youth" services employee" means any employee of the 286  
department of youth services who in the course of performing the 287  
employee's job duties has or has had contact with children 288  
committed to the custody of the department of youth services. 289

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 290  
~~"firefighter"~~ "Firefighter" means any regular, paid or 291  
volunteer, member of a lawfully constituted fire department of a 292  
municipal corporation, township, fire district, or village. 293

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 294  
"EMT" means EMTs-basic, EMTs-I, and paramedics that provide 295  
emergency medical services for a public emergency medical 296  
service organization. "Emergency medical service organization," 297  
"EMT-basic," "EMT-I," and "paramedic" have the ~~same~~ meanings ~~as~~ 298  
defined in section 4765.01 of the Revised Code. 299

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 300  
~~"investigator"~~ "Investigator" of the bureau of criminal 301  
identification and investigation" has the meaning defined in 302  
section 2903.11 of the Revised Code. 303

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 304  
~~"federal"~~ "Federal" law enforcement officer" has the meaning 305  
defined in section 9.88 of the Revised Code. 306

~~(8)~~ (10) "Information pertaining to the recreational 307  
activities of a person under the age of eighteen" means 308  
information that is kept in the ordinary course of business by a 309  
public office, that pertains to the recreational activities of a 310  
person under the age of eighteen years, and that discloses any 311  
of the following: 312

(a) The address or telephone number of a person under the 313  
age of eighteen or the address or telephone number of that 314  
person's parent, guardian, custodian, or emergency contact 315  
person; 316

(b) The social security number, birth date, or 317  
photographic image of a person under the age of eighteen; 318

(c) Any medical record, history, or information pertaining 319  
to a person under the age of eighteen; 320

(d) Any additional information sought or required about a 321  
person under the age of eighteen for the purpose of allowing 322  
that person to participate in any recreational activity 323  
conducted or sponsored by a public office or to use or obtain 324  
admission privileges to any recreational facility owned or 325  
operated by a public office. 326

~~(9)~~ (11) "Community control sanction" has the ~~same~~ meaning 327  
~~as defined~~ in section 2929.01 of the Revised Code. 328

~~(10)~~ (12) "Post-release control sanction" has the ~~same~~ 329  
meaning ~~as defined~~ in section 2967.01 of the Revised Code. 330

~~(11)~~ (13) "Redaction" means obscuring or deleting any 331  
information that is exempt from the duty to permit public 332  
inspection or copying from an item that otherwise meets the 333  
definition of a "record" in section 149.011 of the Revised Code. 334

~~(12)~~ (14) "Designee" and "elected official" have the ~~same~~ 335  
meanings ~~as defined~~ in section 109.43 of the Revised Code. 336

(B) (1) Upon request and subject to division (B) (8) of this 337  
section, all public records responsive to the request shall be 338  
promptly prepared and made available for inspection to any 339  
person at all reasonable times during regular business hours. 340  
Subject to division (B) (8) of this section, upon request by any 341  
person, a public office or person responsible for public records 342  
shall make copies of the requested public record available to 343  
the requester at cost and within a reasonable period of time. If 344  
a public record contains information that is exempt from the 345  
duty to permit public inspection or to copy the public record, 346  
the public office or the person responsible for the public 347  
record shall make available all of the information within the 348  
public record that is not exempt. When making that public record 349  
available for public inspection or copying that public record, 350  
the public office or the person responsible for the public 351  
record shall notify the requester of any redaction or make the 352  
redaction plainly visible. A redaction shall be deemed a denial 353  
of a request to inspect or copy the redacted information, except 354  
if federal or state law authorizes or requires a public office 355  
to make the redaction. 356

(2) To facilitate broader access to public records, a 357  
public office or the person responsible for public records shall 358  
organize and maintain public records in a manner that they can 359  
be made available for inspection or copying in accordance with 360  
division (B) of this section. A public office also shall have 361  
available a copy of its current records retention schedule at a 362  
location readily available to the public. If a requester makes 363  
an ambiguous or overly broad request or has difficulty in making 364  
a request for copies or inspection of public records under this 365

section such that the public office or the person responsible 366  
for the requested public record cannot reasonably identify what 367  
public records are being requested, the public office or the 368  
person responsible for the requested public record may deny the 369  
request but shall provide the requester with an opportunity to 370  
revise the request by informing the requester of the manner in 371  
which records are maintained by the public office and accessed 372  
in the ordinary course of the public office's or person's 373  
duties. 374

(3) If a request is ultimately denied, in part or in 375  
whole, the public office or the person responsible for the 376  
requested public record shall provide the requester with an 377  
explanation, including legal authority, setting forth why the 378  
request was denied. If the initial request was provided in 379  
writing, the explanation also shall be provided to the requester 380  
in writing. The explanation shall not preclude the public office 381  
or the person responsible for the requested public record from 382  
relying upon additional reasons or legal authority in defending 383  
an action commenced under division (C) of this section. 384

(4) Unless specifically required or authorized by state or 385  
federal law or in accordance with division (B) of this section, 386  
no public office or person responsible for public records may 387  
limit or condition the availability of public records by 388  
requiring disclosure of the requester's identity or the intended 389  
use of the requested public record. Any requirement that the 390  
requester disclose the requester's identity or the intended use 391  
of the requested public record constitutes a denial of the 392  
request. 393

(5) A public office or person responsible for public 394  
records may ask a requester to make the request in writing, may 395

ask for the requester's identity, and may inquire about the 396  
intended use of the information requested, but may do so only 397  
after disclosing to the requester that a written request is not 398  
mandatory and that the requester may decline to reveal the 399  
requester's identity or the intended use and when a written 400  
request or disclosure of the identity or intended use would 401  
benefit the requester by enhancing the ability of the public 402  
office or person responsible for public records to identify, 403  
locate, or deliver the public records sought by the requester. 404

(6) If any person ~~chooses to obtain~~ requests a copy of a 405  
public record in accordance with division (B) of this section, 406  
the public office or person responsible for the public record 407  
may require that person to pay in advance the cost involved in 408  
providing the copy of the public record in accordance with the 409  
choice made by the person ~~seeking~~ requesting the copy under this 410  
division. The public office or the person responsible for the 411  
public record shall permit that person to choose to have the 412  
public record duplicated upon paper, upon the same medium upon 413  
which the public office or person responsible for the public 414  
record keeps it, or upon any other medium upon which the public 415  
office or person responsible for the public record determines 416  
that it reasonably can be duplicated as an integral part of the 417  
normal operations of the public office or person responsible for 418  
the public record. When the person ~~seeking~~ requesting the copy 419  
makes a choice under this division, the public office or person 420  
responsible for the public record shall provide a copy of it in 421  
accordance with the choice made by ~~the~~ that person ~~seeking the~~ 422  
~~copy~~. Nothing in this section requires a public office or person 423  
responsible for the public record to allow the person ~~seeking~~ 424  
requesting a copy of the public record to make the copies of the 425  
public record. 426

(7) (a) Upon a request made in accordance with division (B) 427  
of this section and subject to division (B) (6) of this section, 428  
a public office or person responsible for public records shall 429  
transmit a copy of a public record to any person by United 430  
States mail or by any other means of delivery or transmission 431  
within a reasonable period of time after receiving the request 432  
for the copy. The public office or person responsible for the 433  
public record may require the person making the request to pay 434  
in advance the cost of postage if the copy is transmitted by 435  
United States mail or the cost of delivery if the copy is 436  
transmitted other than by United States mail, and to pay in 437  
advance the costs incurred for other supplies used in the 438  
mailing, delivery, or transmission. 439

(b) Any public office may adopt a policy and procedures 440  
that it will follow in transmitting, within a reasonable period 441  
of time after receiving a request, copies of public records by 442  
United States mail or by any other means of delivery or 443  
transmission pursuant to division (B) (7) of this section. A 444  
public office that adopts a policy and procedures under division 445  
(B) (7) of this section shall comply with them in performing its 446  
duties under that division. 447

(c) In any policy and procedures adopted under division 448  
(B) (7) of this section: 449

(i) A public office may limit the number of records 450  
requested by a person that the office will physically deliver by 451  
United States mail or by another delivery service to ten per 452  
month, unless the person certifies to the office in writing that 453  
the person does not intend to use or forward the requested 454  
records, or the information contained in them, for commercial 455  
purposes; 456

(ii) A public office that chooses to provide some or all 457  
of its public records on a web site that is fully accessible to 458  
and searchable by members of the public at all times, other than 459  
during acts of God outside the public office's control or 460  
maintenance, and that charges no fee to search, access, 461  
download, or otherwise receive records provided on the web site, 462  
may limit to ten per month the number of records requested by a 463  
person that the office will deliver in a digital format, unless 464  
the requested records are not provided on the web site and 465  
unless the person certifies to the office in writing that the 466  
person does not intend to use or forward the requested records, 467  
or the information contained in them, for commercial purposes. 468

(iii) For purposes of division (B)(7) of this section, 469  
"commercial" shall be narrowly construed and does not include 470  
reporting or gathering news, reporting or gathering information 471  
to assist citizen oversight or understanding of the operation or 472  
activities of government, or nonprofit educational research. 473

(8) A public office or person responsible for public 474  
records is not required to permit a person who is incarcerated 475  
pursuant to a criminal conviction or a juvenile adjudication to 476  
inspect or to obtain a copy of any public record concerning a 477  
criminal investigation or prosecution or concerning what would 478  
be a criminal investigation or prosecution if the subject of the 479  
investigation or prosecution were an adult, unless the request 480  
to inspect or to obtain a copy of the record is for the purpose 481  
of acquiring information that is subject to release as a public 482  
record under this section and the judge who imposed the sentence 483  
or made the adjudication with respect to the person, or the 484  
judge's successor in office, finds that the information sought 485  
in the public record is necessary to support what appears to be 486  
a justiciable claim of the person. 487

(9) (a) Upon written request made and signed by a 488  
journalist ~~on or after December 16, 1999,~~ a public office, or 489  
person responsible for public records, having custody of the 490  
records of the agency employing a specified ~~peace officer,~~ 491  
~~parole officer, probation officer, bailiff, prosecuting~~ 492  
~~attorney, assistant prosecuting attorney, correctional employee,~~ 493  
~~community based correctional facility employee, youth services~~ 494  
~~employee, firefighter, EMT, investigator of the bureau of~~ 495  
~~criminal identification and investigation, or federal law~~ 496  
~~enforcement officer~~ designated public service worker shall 497  
disclose to the journalist the address of the actual personal 498  
residence of the ~~peace officer, parole officer, probation~~ 499  
~~officer, bailiff, prosecuting attorney, assistant prosecuting~~ 500  
~~attorney, correctional employee, community based correctional~~ 501  
~~facility employee, youth services employee, firefighter, EMT,~~ 502  
~~investigator of the bureau of criminal identification and~~ 503  
~~investigation, or federal law enforcement officer~~ designated 504  
public service worker and, if the ~~peace officer's, parole~~ 505  
~~officer's, probation officer's, bailiff's, prosecuting~~ 506  
~~attorney's, assistant prosecuting attorney's, correctional~~ 507  
~~employee's, community based correctional facility employee's,~~ 508  
~~youth services employee's, firefighter's, EMT's, investigator of~~ 509  
~~the bureau of criminal identification and investigation's, or~~ 510  
~~federal law enforcement officer's~~ designated public service 511  
worker's spouse, former spouse, or child is employed by a public 512  
office, the name and address of the employer of the ~~peace~~ 513  
~~officer's, parole officer's, probation officer's, bailiff's,~~ 514  
~~prosecuting attorney's, assistant prosecuting attorney's,~~ 515  
~~correctional employee's, community based correctional facility~~ 516  
~~employee's, youth services employee's, firefighter's, EMT's,~~ 517  
~~investigator of the bureau of criminal identification and~~ 518  
~~investigation's, or federal law enforcement officer's~~ designated 519

public service worker's spouse, former spouse, or child. The 520  
request shall include the journalist's name and title and the 521  
name and address of the journalist's employer and shall state 522  
that disclosure of the information sought would be in the public 523  
interest. 524

(b) Division (B) (9) (a) of this section also applies to 525  
journalist requests for customer information maintained by a 526  
municipally owned or operated public utility, other than social 527  
security numbers and any private financial information such as 528  
credit reports, payment methods, credit card numbers, and bank 529  
account information. 530

(c) As used in division (B) (9) of this section, 531  
"journalist" means a person engaged in, connected with, or 532  
employed by any news medium, including a newspaper, magazine, 533  
press association, news agency, or wire service, a radio or 534  
television station, or a similar medium, for the purpose of 535  
gathering, processing, transmitting, compiling, editing, or 536  
disseminating information for the general public. 537

(C) (1) If a person allegedly is aggrieved by the failure 538  
of a public office or the person responsible for public records 539  
to promptly prepare a public record and to make it available to 540  
the person for inspection in accordance with division (B) of 541  
this section or by any other failure of a public office or the 542  
person responsible for public records to comply with an 543  
obligation in accordance with division (B) of this section, the 544  
person allegedly aggrieved may do only one of the following, and 545  
not both: 546

(a) File a complaint with the clerk of the court of claims 547  
or the clerk of the court of common pleas under section 2743.75 548  
of the Revised Code; 549

(b) Commence a mandamus action to obtain a judgment that 550  
orders the public office or the person responsible for the 551  
public record to comply with division (B) of this section, that 552  
awards court costs and reasonable attorney's fees to the person 553  
that instituted the mandamus action, and, if applicable, that 554  
includes an order fixing statutory damages under division (C) (2) 555  
of this section. The mandamus action may be commenced in the 556  
court of common pleas of the county in which division (B) of 557  
this section allegedly was not complied with, in the supreme 558  
court pursuant to its original jurisdiction under Section 2 of 559  
Article IV, Ohio Constitution, or in the court of appeals for 560  
the appellate district in which division (B) of this section 561  
allegedly was not complied with pursuant to its original 562  
jurisdiction under Section 3 of Article IV, Ohio Constitution. 563

(2) If a requester transmits a written request by hand 564  
delivery or certified mail to inspect or receive copies of any 565  
public record in a manner that fairly describes the public 566  
record or class of public records to the public office or person 567  
responsible for the requested public records, except as 568  
otherwise provided in this section, the requester shall be 569  
entitled to recover the amount of statutory damages set forth in 570  
this division if a court determines that the public office or 571  
the person responsible for public records failed to comply with 572  
an obligation in accordance with division (B) of this section. 573

The amount of statutory damages shall be fixed at one 574  
hundred dollars for each business day during which the public 575  
office or person responsible for the requested public records 576  
failed to comply with an obligation in accordance with division 577  
(B) of this section, beginning with the day on which the 578  
requester files a mandamus action to recover statutory damages, 579  
up to a maximum of one thousand dollars. The award of statutory 580

damages shall not be construed as a penalty, but as compensation 581  
for injury arising from lost use of the requested information. 582  
The existence of this injury shall be conclusively presumed. The 583  
award of statutory damages shall be in addition to all other 584  
remedies authorized by this section. 585

The court may reduce an award of statutory damages or not 586  
award statutory damages if the court determines both of the 587  
following: 588

(a) That, based on the ordinary application of statutory 589  
law and case law as it existed at the time of the conduct or 590  
threatened conduct of the public office or person responsible 591  
for the requested public records that allegedly constitutes a 592  
failure to comply with an obligation in accordance with division 593  
(B) of this section and that was the basis of the mandamus 594  
action, a well-informed public office or person responsible for 595  
the requested public records reasonably would believe that the 596  
conduct or threatened conduct of the public office or person 597  
responsible for the requested public records did not constitute 598  
a failure to comply with an obligation in accordance with 599  
division (B) of this section; 600

(b) That a well-informed public office or person 601  
responsible for the requested public records reasonably would 602  
believe that the conduct or threatened conduct of the public 603  
office or person responsible for the requested public records 604  
would serve the public policy that underlies the authority that 605  
is asserted as permitting that conduct or threatened conduct. 606

(3) In a mandamus action filed under division (C)(1) of 607  
this section, the following apply: 608

(a) (i) If the court orders the public office or the person 609

responsible for the public record to comply with division (B) of 610  
this section, the court shall determine and award to the relator 611  
all court costs, which shall be construed as remedial and not 612  
punitive. 613

(ii) If the court makes a determination described in 614  
division (C) (3) (b) (iii) of this section, the court shall 615  
determine and award to the relator all court costs, which shall 616  
be construed as remedial and not punitive. 617

(b) If the court renders a judgment that orders the public 618  
office or the person responsible for the public record to comply 619  
with division (B) of this section or if the court determines any 620  
of the following, the court may award reasonable attorney's fees 621  
to the relator, subject to ~~the provisions of~~ division (C) (4) of 622  
this section: 623

(i) The public office or the person responsible for the 624  
public records failed to respond affirmatively or negatively to 625  
the public records request in accordance with the time allowed 626  
under division (B) of this section. 627

(ii) The public office or the person responsible for the 628  
public records promised to permit the relator to inspect or 629  
receive copies of the public records requested within a 630  
specified period of time but failed to fulfill that promise 631  
within that specified period of time. 632

(iii) The public office or the person responsible for the 633  
public records acted in bad faith when the office or person 634  
voluntarily made the public records available to the relator for 635  
the first time after the relator commenced the mandamus action, 636  
but before the court issued any order concluding whether or not 637  
the public office or person was required to comply with division 638

(B) of this section. No discovery may be conducted on the issue 639  
of the alleged bad faith of the public office or person 640  
responsible for the public records. This division shall not be 641  
construed as creating a presumption that the public office or 642  
the person responsible for the public records acted in bad faith 643  
when the office or person voluntarily made the public records 644  
available to the relator for the first time after the relator 645  
commenced the mandamus action, but before the court issued any 646  
order described in this division. 647

(c) The court shall not award attorney's fees to the 648  
relator if the court determines both of the following: 649

(i) That, based on the ordinary application of statutory 650  
law and case law as it existed at the time of the conduct or 651  
threatened conduct of the public office or person responsible 652  
for the requested public records that allegedly constitutes a 653  
failure to comply with an obligation in accordance with division 654  
(B) of this section and that was the basis of the mandamus 655  
action, a well-informed public office or person responsible for 656  
the requested public records reasonably would believe that the 657  
conduct or threatened conduct of the public office or person 658  
responsible for the requested public records did not constitute 659  
a failure to comply with an obligation in accordance with 660  
division (B) of this section; 661

(ii) That a well-informed public office or person 662  
responsible for the requested public records reasonably would 663  
believe that the conduct or threatened conduct of the public 664  
office or person responsible for the requested public records 665  
would serve the public policy that underlies the authority that 666  
is asserted as permitting that conduct or threatened conduct. 667

(4) All of the following apply to any award of reasonable 668

attorney's fees awarded under division (C) (3) (b) of this 669  
section: 670

(a) The fees shall be construed as remedial and not 671  
punitive. 672

(b) The fees awarded shall not exceed the total of the 673  
reasonable attorney's fees incurred before the public record was 674  
made available to the relator and the fees described in division 675  
(C) (4) (c) of this section. 676

(c) Reasonable attorney's fees shall include reasonable 677  
fees incurred to produce proof of the reasonableness and amount 678  
of the fees and to otherwise litigate entitlement to the fees. 679

(d) The court may reduce the amount of fees awarded if the 680  
court determines that, given the factual circumstances involved 681  
with the specific public records request, an alternative means 682  
should have been pursued to more effectively and efficiently 683  
resolve the dispute that was subject to the mandamus action 684  
filed under division (C) (1) of this section. 685

(5) If the court does not issue a writ of mandamus under 686  
division (C) of this section and the court determines at that 687  
time that the bringing of the mandamus action was frivolous 688  
conduct as defined in division (A) of section 2323.51 of the 689  
Revised Code, the court may award to the public office all court 690  
costs, expenses, and reasonable attorney's fees, as determined 691  
by the court. 692

(D) Chapter 1347. of the Revised Code does not limit the 693  
provisions of this section. 694

(E) (1) To ensure that all employees of public offices are 695  
appropriately educated about a public office's obligations under 696  
division (B) of this section, all elected officials or their 697

appropriate designees shall attend training approved by the 698  
attorney general as provided in section 109.43 of the Revised 699  
Code. In addition, all public offices shall adopt a public 700  
records policy in compliance with this section for responding to 701  
public records requests. In adopting a public records policy 702  
under this division, a public office may obtain guidance from 703  
the model public records policy developed and provided to the 704  
public office by the attorney general under section 109.43 of 705  
the Revised Code. Except as otherwise provided in this section, 706  
the policy may not limit the number of public records that the 707  
public office will make available to a single person, may not 708  
limit the number of public records that it will make available 709  
during a fixed period of time, and may not establish a fixed 710  
period of time before it will respond to a request for 711  
inspection or copying of public records, unless that period is 712  
less than eight hours. 713

(2) The public office shall distribute the public records 714  
policy adopted by the public office under division (E) (1) of 715  
this section to the employee of the public office who is the 716  
records custodian or records manager or otherwise has custody of 717  
the records of that office. The public office shall require that 718  
employee to acknowledge receipt of the copy of the public 719  
records policy. The public office shall create a poster that 720  
describes its public records policy and shall post the poster in 721  
a conspicuous place in the public office and in all locations 722  
where the public office has branch offices. The public office 723  
may post its public records policy on the internet web site of 724  
the public office if the public office maintains an internet web 725  
site. A public office that has established a manual or handbook 726  
of its general policies and procedures for all employees of the 727  
public office shall include the public records policy of the 728

public office in the manual or handbook. 729

(F) (1) The bureau of motor vehicles may adopt rules 730  
pursuant to Chapter 119. of the Revised Code to reasonably limit 731  
the number of bulk commercial special extraction requests made 732  
by a person for the same records or for updated records during a 733  
calendar year. The rules may include provisions for charges to 734  
be made for bulk commercial special extraction requests for the 735  
actual cost of the bureau, plus special extraction costs, plus 736  
ten per cent. The bureau may charge for expenses for redacting 737  
information, the release of which is prohibited by law. 738

(2) As used in division (F) (1) of this section: 739

(a) "Actual cost" means the cost of depleted supplies, 740  
records storage media costs, actual mailing and alternative 741  
delivery costs, or other transmitting costs, and any direct 742  
equipment operating and maintenance costs, including actual 743  
costs paid to private contractors for copying services. 744

(b) "Bulk commercial special extraction request" means a 745  
request for copies of a record for information in a format other 746  
than the format already available, or information that cannot be 747  
extracted without examination of all items in a records series, 748  
class of records, or database by a person who intends to use or 749  
forward the copies for surveys, marketing, solicitation, or 750  
resale for commercial purposes. "Bulk commercial special 751  
extraction request" does not include a request by a person who 752  
gives assurance to the bureau that the person making the request 753  
does not intend to use or forward the requested copies for 754  
surveys, marketing, solicitation, or resale for commercial 755  
purposes. 756

(c) "Commercial" means profit-seeking production, buying, 757

or selling of any good, service, or other product. 758

(d) "Special extraction costs" means the cost of the time 759  
spent by the lowest paid employee competent to perform the task, 760  
the actual amount paid to outside private contractors employed 761  
by the bureau, or the actual cost incurred to create computer 762  
programs to make the special extraction. "Special extraction 763  
costs" include any charges paid to a public agency for computer 764  
or records services. 765

(3) For purposes of divisions (F)(1) and (2) of this 766  
section, "surveys, marketing, solicitation, or resale for 767  
commercial purposes" shall be narrowly construed and does not 768  
include reporting or gathering news, reporting or gathering 769  
information to assist citizen oversight or understanding of the 770  
operation or activities of government, or nonprofit educational 771  
research. 772

(G) A request by a defendant, counsel of a defendant, or 773  
any agent of a defendant in a criminal action that public 774  
records related to that action be made available under this 775  
section shall be considered a demand for discovery pursuant to 776  
the Criminal Rules, except to the extent that the Criminal Rules 777  
plainly indicate a contrary intent. The defendant, counsel of 778  
the defendant, or agent of the defendant making a request under 779  
this division shall serve a copy of the request on the 780  
prosecuting attorney, director of law, or other chief legal 781  
officer responsible for prosecuting the action. 782

**Sec. 149.45.** (A) As used in this section: 783

(1) "Personal information" means any of the following: 784

(a) An individual's social security number; 785

(b) An individual's state or federal tax identification 786

number; 787

(c) An individual's driver's license number or state 788  
identification number; 789

(d) An individual's checking account number, savings 790  
account number, credit card number, or debit card number; 791

(e) An individual's demand deposit account number, money 792  
market account number, mutual fund account number, or any other 793  
financial or medical account number. 794

(2) "Public record," "designated public service worker," 795  
and ~~"peace officer, parole officer, probation officer, bailiff,~~ 796  
~~prosecuting attorney, assistant prosecuting attorney,~~ 797  
~~correctional employee, youth services employee, firefighter,~~ 798  
~~EMT, investigator of the bureau of criminal identification and~~ 799  
~~investigation, or federal law enforcement officer~~ designated 800  
public service worker residential and familial information" have 801  
the ~~same~~ meanings ~~as defined~~ in section 149.43 of the Revised 802  
Code. 803

(3) "Truncate" means to redact all but the last four 804  
digits of an individual's social security number. 805

(B) (1) No public office or person responsible for a public 806  
office's public records shall make available to the general 807  
public on the internet any document that contains an 808  
individual's social security number without otherwise redacting, 809  
encrypting, or truncating the social security number. 810

(2) A public office or person responsible for a public 811  
office's public records that, prior to October 17, 2011, made 812  
available to the general public on the internet any document 813  
that contains an individual's social security number shall 814  
redact, encrypt, or truncate the social security number from 815

that document. 816

(3) Divisions (B) (1) and (2) of this section do not apply 817  
to documents that are only accessible through the internet with 818  
a password. 819

(C) (1) An individual may request that a public office or a 820  
person responsible for a public office's public records redact 821  
personal information of that individual from any record made 822  
available to the general public on the internet. An individual 823  
who makes a request for redaction pursuant to this division 824  
shall make the request in writing on a form developed by the 825  
attorney general and shall specify the personal information to 826  
be redacted and provide any information that identifies the 827  
location of that personal information within a document that 828  
contains that personal information. 829

(2) Upon receiving a request for a redaction pursuant to 830  
division (C) (1) of this section, a public office or a person 831  
responsible for a public office's public records shall act 832  
within five business days in accordance with the request to 833  
redact the personal information of the individual from any 834  
record made available to the general public on the internet, if 835  
practicable. If a redaction is not practicable, the public 836  
office or person responsible for the public office's public 837  
records shall verbally or in writing within five business days 838  
after receiving the written request explain to the individual 839  
why the redaction is impracticable. 840

(3) The attorney general shall develop a form to be used 841  
by an individual to request a redaction pursuant to division (C) 842  
(1) of this section. The form shall include a place to provide 843  
any information that identifies the location of the personal 844  
information to be redacted. 845

(D) (1) A ~~peace officer, parole officer, probation officer,~~ 846  
~~bailiff, prosecuting attorney, assistant prosecuting attorney,~~ 847  
~~correctional employee, youth services employee, firefighter,~~ 848  
~~EMT, investigator of the bureau of criminal identification and~~ 849  
~~investigation, or federal law enforcement officer~~ designated 850  
public service worker may request that a public office, other 851  
than a county auditor, or a person responsible for the public 852  
records of a public office, other than a county auditor, redact 853  
the designated public service worker's address ~~of the person~~ 854  
~~making the request~~ from any record made available to the general 855  
public on the internet that includes ~~peace officer, parole~~ 856  
~~officer, probation officer, bailiff, prosecuting attorney,~~ 857  
~~assistant prosecuting attorney, correctional employee, youth~~ 858  
~~services employee, firefighter, EMT, investigator of the bureau~~ 859  
~~of criminal identification and investigation, or federal law~~ 860  
~~enforcement officer~~ designated public service worker residential 861  
and familial information of the ~~person~~ designated public service 862  
worker making the request. A ~~person~~ designated public service 863  
worker who makes a request for a redaction pursuant to this 864  
division shall make the request in writing and on a form 865  
developed by the attorney general. 866

(2) Upon receiving a written request for a redaction 867  
pursuant to division (D) (1) of this section, a public office, 868  
other than a county auditor, or a person responsible for the 869  
public records of a public office, other than a county auditor, 870  
shall act within five business days in accordance with the 871  
request to redact the address of the ~~peace officer, parole~~ 872  
~~officer, probation officer, bailiff, prosecuting attorney,~~ 873  
~~assistant prosecuting attorney, correctional employee, youth~~ 874  
~~services employee, firefighter, EMT, investigator of the bureau~~ 875  
~~of criminal identification and investigation, or federal law~~ 876

~~enforcement officer~~ designated public service worker making the 877  
request from any record made available to the general public on 878  
the internet that includes ~~peace officer, parole officer,~~ 879  
~~probation officer, bailiff, prosecuting attorney, assistant~~ 880  
~~prosecuting attorney, correctional employee, youth services~~ 881  
~~employee, firefighter, EMT, investigator of the bureau of~~ 882  
~~criminal identification and investigation, or federal law~~ 883  
~~enforcement officer~~ designated public service worker residential 884  
and familial information of the ~~person~~ designated public service 885  
worker making the request, if practicable. If a redaction is not 886  
practicable, the public office or person responsible for the 887  
public office's public records shall verbally or in writing 888  
within five business days after receiving the written request 889  
explain to the ~~peace officer, parole officer, probation officer,~~ 890  
~~bailiff, prosecuting attorney, assistant prosecuting attorney,~~ 891  
~~correctional employee, youth services employee, firefighter,~~ 892  
~~EMT, investigator of the bureau of criminal identification and~~ 893  
~~investigation, or federal law enforcement officer~~ designated 894  
public service worker why the redaction is impracticable. 895

(3) Except as provided in this section and section 319.28 896  
of the Revised Code, a public office, other than an employer of 897  
a ~~peace officer, parole officer, probation officer, bailiff,~~ 898  
~~prosecuting attorney, assistant prosecuting attorney,~~ 899  
~~correctional employee, youth services employee, firefighter,~~ 900  
~~EMT, investigator of the bureau of criminal identification and~~ 901  
~~investigation, or federal law enforcement officer~~ designated 902  
public service worker, or a person responsible for the public 903  
records of the employer, is not required to redact the 904  
designated public service worker residential and familial 905  
information of the ~~peace officer, parole officer, probation~~ 906  
~~officer, bailiff, prosecuting attorney, assistant prosecuting~~ 907

~~attorney, correctional employee, youth services employee,~~ 908  
~~firefighter, EMT, investigator of the bureau of criminal~~ 909  
~~identification and investigation, or federal law enforcement~~ 910  
~~officer~~ designated public service worker from other records 911  
maintained by the public office. 912

(4) The attorney general shall develop a form to be used 913  
by a ~~peace officer, parole officer, probation officer, bailiff,~~ 914  
~~prosecuting attorney, assistant prosecuting attorney,~~ 915  
~~correctional employee, youth services employee, firefighter,~~ 916  
~~EMT, investigator of the bureau of criminal identification and~~ 917  
~~investigation, or federal law enforcement officer~~ designated 918  
public service worker to request a redaction pursuant to 919  
division (D)(1) of this section. The form shall include a place 920  
to provide any information that identifies the location of the 921  
address of a ~~peace officer, parole officer, probation officer,~~ 922  
~~bailiff, prosecuting attorney, assistant prosecuting attorney,~~ 923  
~~correctional employee, youth services employee, firefighter,~~ 924  
~~EMT, investigator of the bureau of criminal identification and~~ 925  
~~investigation, or federal law enforcement officer~~ the designated 926  
public service worker to be redacted. 927

(E)(1) If a public office or a person responsible for a 928  
public office's public records becomes aware that an electronic 929  
record of that public office that is made available to the 930  
general public on the internet contains an individual's social 931  
security number that was mistakenly not redacted, encrypted, or 932  
truncated as required by division (B)(1) or (2) of this section, 933  
the public office or person responsible for the public office's 934  
public records shall redact, encrypt, or truncate the 935  
individual's social security number within a reasonable period 936  
of time. 937

(2) A public office or a person responsible for a public 938  
office's public records is not liable in damages in a civil 939  
action for any harm an individual allegedly sustains as a result 940  
of the inclusion of that individual's personal information on 941  
any record made available to the general public on the internet 942  
or any harm a ~~peace officer, parole officer, probation officer,~~ 943  
~~bailiff, prosecuting attorney, assistant prosecuting attorney,~~ 944  
~~correctional employee, youth services employee, firefighter,~~ 945  
~~EMT, investigator of the bureau of criminal identification and~~ 946  
~~investigation, or federal law enforcement officer designated~~ 947  
public service worker sustains as a result of the inclusion of 948  
the designated public service worker's address ~~of the peace~~ 949  
~~officer, parole officer, probation officer, bailiff, prosecuting~~ 950  
~~attorney, assistant prosecuting attorney, correctional employee,~~ 951  
~~youth services employee, firefighter, EMT, investigator of the~~ 952  
~~bureau of criminal identification and investigation, or federal~~ 953  
~~law enforcement officer~~ on any record made available to the 954  
general public on the internet in violation of this section, 955  
unless the public office or person responsible for the public 956  
office's public records acted with malicious purpose, in bad 957  
faith, or in a wanton or reckless manner or unless division (A) 958  
(6) (a) or (c) of section 2744.03 of the Revised Code applies. 959

**Section 2.** That existing sections 149.43 and 149.45 of the 960  
Revised Code are hereby repealed. 961

**Section 3.** Section 149.45 of the Revised Code is presented 962  
in this act as a composite of the section as amended by both 963  
Sub. H.B. 317 and Sub. H.B. 359 of the 131st General Assembly. 964  
The General Assembly, applying the principle stated in division 965  
(B) of section 1.52 of the Revised Code that amendments are to 966  
be harmonized if reasonably capable of simultaneous operation, 967  
finds that the composite is the resulting version of the section 968

in effect prior to the effective date of the section as  
presented in this act.

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