



**S.B. 74**

125th General Assembly  
(As Introduced)

**Sens. Mallory, DiDonato, Goodman, Schuler, Fingerhut, Roberts**

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**BILL SUMMARY**

- Establishes an address confidentiality program for victims of menacing, aggravated menacing, menacing by stalking, aggravated trespass, domestic violence, and child abuse and for individuals who possess a protection order or temporary protection order.

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## CONTENT AND OPERATION

The bill establishes an Address Confidentiality Program for victims of menacing, aggravated menacing, menacing by stalking, aggravated trespass, domestic violence, and child abuse and for individuals who possess a protection order or temporary protection order.

### **Findings of the General Assembly**

The bill declares that the General Assembly finds that persons attempting to avoid being the victim of the offense of "menacing," "aggravated menacing," "menacing by stalking," "aggravated trespass," "domestic violence," or "child abuse," (see "**Definitions**," below, for definitions of the terms in quotation marks) and persons possessing a protection order or temporary protection order, frequently establish new addresses in order to prevent past assailants or potential assailants from finding them. It further declares that the purposes of the Address Confidentiality Program it establishes are to enable governmental entities to respond to requests for public records without disclosing the location of any of these persons, to enable interagency cooperation with the Secretary of State in providing address confidentiality for these persons, and to enable governmental entities to accept a "program participant's" (see "**Definitions**," below) use of an address "designed" by the Secretary of State as a substitute mailing address. (Section 3.)

### **Generally; filing and content of application under the Program**

The bill provides that an adult person or a parent or guardian acting on behalf of a minor or incompetent (see "**Definitions**," below) may apply with the assistance of an "application assistant" (see "**Definitions**," below) to the Secretary of State to have an address designated by the Secretary of State serve as the person's "address" (see "**Definitions**," below) or the address of the minor or incompetent. The person, parent, or guardian must file the application with the office of the Secretary of State. (R.C. 111.27(A) and (B).) The Secretary of State must approve an application if it is filed in the manner and on the form prescribed under the bill, as described below, and if it contains all of the following (R.C. 111.27(A)):

- (1) A sworn statement by the applicant that the applicant fears for the safety of the applicant or the applicant's children or the safety of the minor or incompetent on whose behalf the application is made, as appropriate, and that one

or both of the following applies: (a) the applicant has good reason to believe that the applicant or any of the applicant's children, or the minor or incompetent on whose behalf the application is made, is an abused child or is a victim of the offense of menacing, aggravated menacing, menacing by stalking, aggravated trespass, or domestic violence, whether or not the alleged offender has been charged with, or pleaded guilty to or been convicted of, any of the applicable offenses or whether or not any of the applicable offenses have been reported to a law enforcement agency, or (b) the applicant or any of the applicant's children, or the minor or incompetent on whose behalf the application is made, is protected by a protection order issued under R.C. 2903.213, 2903.214, or 3113.31, a protection order issued by a court of another state that has been registered under R.C. 2919.272, or a temporary protection order issued under R.C. 2919.26.

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

(3) The mailing address where the applicant may be contacted by the Secretary of State, and the telephone number or numbers where the applicant may be called by the Secretary of State;

(4) The new address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of the commission of the offense of menacing, aggravated menacing, menacing by stalking, aggravated trespass, or domestic violence, the commission of acts resulting in a child being an abused child, or the violation of a protection order or temporary protection order;

(5) The applicant's signature, 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.

### **Certification as a program participant**

Upon the filing of a properly completed application, the Secretary of State must certify the applicant as a program participant in the Confidential Address Program (R.C. 111.26 to 111.35). Applicants are certified for four years after the date of filing unless the certification is withdrawn or invalidated before the end of that four-year period. A program participant may renew certification pursuant to the renewal procedure adopted by the Secretary of State under the provisions of the bill described below in **"Adoption of rules regarding the Program."** (R.C. 111.27(C).)

**Criminal offense--false attestation or statements in application under the Program**

The bill provides that a person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's children or the minor or incompetent on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application, is guilty of a misdemeanor of the second degree (R.C. 111.27(D)).

**Use of address by Secretary of State**

Under the bill, when a person becomes a program participant, all of the following apply (R.C. 111.28):

(1) The program participant may request that governmental entities use the address designated by the Secretary of State as the program participant's address. When creating a new public record, governmental entities must accept the address designated by the Secretary of State as a program participant's substitute address, unless the Secretary of State has determined both of the following: (a) the governmental entity has a bona fide requirement imposed by law or administrative rule for the use of the address that otherwise would be confidential under the Confidential Address Program, and (b) the address that otherwise would be confidential under the Program will be used only for the purposes of the law or rule.

(2) The program participant may use the address designated by the Secretary of State as the participant's address at the participant's place of employment.

(3) The Office of the Secretary of State must daily place all first class mail of a program participant that the Secretary of State receives that day into an envelope or package and mail it to the program participant at the mailing address provided in the program participant's application. The Secretary of State may contract with the United States Postal Service to establish special postage rates for the envelopes or packages used in mailing program participants' first class mail under the provisions described above.

**Absentee voting by program participant**

The bill provides that, except as otherwise described below, a program participant who is a qualified elector may vote by absent voter's ballots under the Elections Law in R.C. Chapter 3509. The program participant must apply for those ballots using the participant's confidential address, and the board of elections



must send to the participant the ballots appropriate for the precinct where the participant's true residence is located. The absent voter's ballots provided to program participants must be referred to as "ACP absent voter's ballots." Except as otherwise described below, a program participant who applies for ACP absent voter's ballots will automatically receive those ballots for each election held in the precinct where the program participant resides between the program participant's date of certification into the Program and December 31 of the next even-numbered calendar year. After that time, a program participant may reapply to receive ACP absent voter's ballots. If a program participant reapplies for those ballots, the board of elections must automatically send to the participant ACP absent voter's ballots for all elections held in the precinct where the participant resides from the date the board receives the properly completed application for those ballots through December 31 of the next even-numbered calendar year. A person may continue to reapply for ballots under this provision for as long as the person is a program participant. (R.C. 111.29(A) and 3509.02(A)(9).)

The bill modifies an existing Elections Law provision that specifies the content of an absent voter's ballot to reflect the bill's provisions described in the preceding paragraph and specifies that an existing Elections Law provision that specifies a time period within which applications for absent voter's ballots must be delivered to the county Director of Elections does not apply to the extent it is in conflict with the provisions described in the preceding paragraph (R.C. 3509.03 and 3509.04).

If the Secretary of State cancels the certification of a program participant (see "*Cancellation of certification*," below), the Secretary of State must notify the board of elections of the appropriate county. Upon receiving that notification, the board must cease to automatically send ACP absent voter's ballots to the participant. (R.C. 111.29(C).)

### *General confidentiality of voter registration record and address of program participant*

The bill contains several provisions that pertain to a grant of confidentiality for program participants:

#### *Voter registration record*

The bill provides that, except as otherwise described in the next paragraph and in "*Court order requiring the provision of a participant's address*," below and notwithstanding any provision of R.C. 3503.26 (see **COMMENT**) or any other Revised Code section to the contrary, the Secretary of State and a board of elections cannot make a program participant's voter registration record available for public inspection or copying (R.C. 111.29(B)).

### Address

The bill also provides that, notwithstanding any provision of R.C. 3503.26 or any other Revised Code section to the contrary, the Secretary of State and a board of elections cannot make a program participant's "confidential address" (see "Definitions," below) available for inspection or copying, except under the following circumstances: (1) if that address is requested by a law enforcement agency, it must be made available to that agency, (2) if that address is ordered by a court to be made available to a person under R.C. 111.30 (see "Court order requiring the provision of a participant's address," below), it must be made available to the person named in the court order, and (3) if the Secretary of State has canceled a program participant's certification (see "Cancellation of certification," below), the address may be made available. (R.C. 111.31.)

### Public Records Law exemption

The existing Public Records Law specifically identifies 21 different types of records and specifies that those types of records, and any other records the release of which is prohibited by state or federal law, are not public records for purposes of that Law; as a result, the records so identified and the other records the release of which is prohibited by state or federal law are not subject to the inspection or copying provisions of the Public Records Law. The bill adds the confidential address of a program participant under the bill's Address Confidentiality Program to the list of types of records that are not public records for purposes of the Public Records Law. (R.C. 149.43(A)(1)(v).)

### Jury list provisions

Existing law provides that, on or before December 31 of each year: (1) unless otherwise ordered by the court of common pleas, the board of elections for each county must compile and file with the commissioners of jurors of the county a certified, current list containing the names, addresses, dates of birth, and Social Security numbers, if the numbers are available, of all electors of the county shown on the registration lists for the most recent general election, and (2) unless otherwise ordered by the court of common pleas of any particular county, the Registrar of Motor Vehicles must compile and file with the commissioners of jurors of each county a certified, current list containing the names, addresses, dates of birth, duration of residence in Ohio, citizenship status, and Social Security numbers, if the numbers are available, of all residents of the particular county who have been issued, on or after January 1, 1984, a commercial driver's license or a driver's license that is valid and current on the date of the compilation of the list, who are or will be 18 years of age or older as of the day of the general election of the year the list is filed, and who, regardless of whether they actually are registered to vote, would be electors if they were registered to vote. The bill enacts an

exception to this provision of existing law, which prohibits a board of elections and the Registrar of Motor Vehicles from filling with the commissioners of jurors the information required to be filed under the provision with respect to any program participant under the bill's Address Confidentiality Program. (R.C. 2313.06.)

### **Court order requiring the provision of a program participant's address**

#### **Filing of petition**

The bill permits 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. It also permits a person to petition the court of common pleas in the county in which a board of elections is located for a hearing to order the board of elections to make a program participant's confidential address available to the person. (R.C. 111.30(A).)

#### **Provision of notice**

Upon the filing of a petition under either provision described in the preceding paragraph, 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 send the notice by certified mail, return receipt requested, to the petitioner's address and to the Secretary of State on behalf of the program participant.

Notwithstanding the procedure for forwarding first class mail of a program participant that is specified under the bill, as described above, upon receipt of a notice by the Secretary of State from the clerk, the Secretary of State must place the individual notice into a new envelope or package and mail the notice by certified mail, return receipt requested, 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 cannot hear the petition until the clerk receives the return receipt containing proof of service of the notice upon the program participant. (R.C. 111.30(B) and (C).)

#### **Hearing and issuance of disclosure order**

At a hearing on a petition requesting disclosure under these provisions, 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 of menacing, aggravated menacing,

menacing by stalking, aggravated trespass, or domestic violence, the commission of acts resulting in a child being an abused child, or the violation of a protection order or temporary protection order. (R.C. 111.30(D).)

### **Cancellation of certification**

The bill requires the cancellation of the certification of a program participant in certain circumstances and permits the cancellation of the certification in others.

#### **Mandatory cancellation**

The bill requires the Secretary of State to immediately cancel the certification of a program participant if: (1) the program participant changes the program participant's name, (2) the program participant's application contained one or more false statements, or (3) the program participant requests to cease being a program participant (R.C. 111.32(A)).

#### **Permissive cancellation**

The bill permits the Secretary of State to cancel the certification of a program participant under either of the following circumstances: (1) the program participant's address changes from any address listed on the participant's application, unless the program participant or the person who applied for the Program on behalf of the program participant provides the Secretary of State with written notice of the change of address not later than seven days before the change of address occurs, or (2) mail forwarded by the Secretary of State to the program participant's address is returned as nondeliverable (R.C. 111.32(B)).

#### **Designation of "application assistant"**

The bill requires the presiding judge of each court of common pleas, the administrative judge of each multi-judge municipal court or multi-judge county court, or the single judge in each municipal court or county court that is not a multi-judge court to designate either one employee of the court or one employee of the office of the appropriate prosecuting authority to serve as an application assistant for the court. As used in this provision, "appropriate prosecuting authority" means the prosecuting attorney of a county, or the village solicitor, city director of law, or similar chief legal officer of a municipal corporation, as appropriate, who is responsible for prosecuting cases in the court.

The bill also permits the Secretary of State to designate one or more employees or volunteers of various shelters for victims of domestic violence, as defined in existing R.C. 3113.33 (not in the bill), to serve as application assistants for the shelter.

The bill requires application assistants to comply with the requirements for training and certification adopted by the Secretary of State under the provisions of the bill described below in "Adoption of rules regarding the Program." (R.C. 111.33.)

**Legal actions, qualified immunity, and effect of assistance or counseling regarding the Program**

The bill provides that (R.C. 111.34):

(1) Any cause of action arising between the office of the Secretary of State and any other governmental entity under the portion of the Program described above in "Use of address by Secretary of State" must be filed in the court of common pleas of Franklin County.

(2) Notwithstanding any provision of the existing Court of Claims Law (not in the bill) or any other Revised Code section to the contrary, the state and the office of the Secretary of State are not liable in damages for injury, death, or loss to person or property that allegedly arises from the performance of the Secretary of State's duties under the bill, and R.C. 9.86 (not in the bill) applies to all officers and employees of the office of the Secretary of State in relation to that performance.

(3) Any assistance or counseling rendered to program applicants or program participants by the office of the Secretary of State or by certified application assistants cannot be construed as legal advice.

**Adoption of rules regarding the Program**

The bill authorizes the Secretary of State to adopt rules under R.C. 111.15 of the Revised Code to facilitate the administration of the bill's Address Confidentiality Program. It requires the Secretary of State to adopt rules under R.C. 111.15 to establish the following: (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, and (4) the procedure for renewal of certification as a program participant. (R.C. 111.35.)

**Definitions**

The bill defines the following terms for purposes of its Address Confidentiality Program (R.C. 111.26):

"Abused child" has the same meaning as in existing R.C. 2151.031 (not in the bill) and also includes any child who is the victim of acts covered by an

ordinance of a municipal corporation that are substantially similar to the acts covered by that section or 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 Program.

**"Aggravated menacing"** means the offense covered by existing R.C. 2903.21 (not in the bill) and also includes an ordinance of a municipal corporation that is substantially similar to that section. R.C. 2903.21 prohibits a person from knowingly causing another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family.

**"Aggravated trespass"** means the offense covered by existing R.C. 2911.211 (not in the bill) and also includes an ordinance of a municipal corporation that is substantially similar to that section. R.C. 2911.211 prohibits a person from entering or remaining on the land or premises of another with purpose to commit on that land or those premises a misdemeanor, the elements of which involve causing physical harm to another person or causing another person to believe that the offender will cause physical harm to him.

**"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 of State for that purpose.

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

**"Domestic violence"** means the offense covered by existing R.C. 2919.25 (not in the bill) and also includes an ordinance of a municipal corporation that is substantially similar to that section. R.C. 2919.25 prohibits a person from doing any of the following: (1) knowingly causing or attempting to cause physical harm to a family or household member, (2) recklessly causing serious physical harm to a family or household member, or (3) by threat of force, knowingly causing a family or household member to believe that the offender will cause imminent physical harm to the family or household member.

**"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," and "parent"** have the same meanings as in existing R.C. 2111.01 (not in the bill).

**"Menacing"** means the offense covered by existing R.C. 2903.22 (not in the bill) and also includes an ordinance of a municipal corporation that is substantially similar to that section. R.C. 2903.22 prohibits a person from knowingly causing another to believe that the offender will cause physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family.

**"Menacing by stalking"** means the offense covered by existing R.C. 2903.211 (not in the bill) and also includes an ordinance of a municipal corporation that is substantially similar to that section. R.C. 2903.211 prohibits a person from doing any of the following: (1) by engaging in a pattern of conduct, knowingly causing another person to believe that the offender will cause physical harm to the other person or cause mental distress to the other person, or (2) through the use of any electronic method of remotely transferring information, including, but not limited to, any computer, computer network, computer program, or computer system, posting a message with purpose to urge or incite another to commit a violation of the prohibition described in clause (1).

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

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## COMMENT

Existing R.C. 3503.26, not in the bill, provides that:

(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.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>	<b>JOURNAL ENTRY</b>
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