



# Ohio Legislative Service Commission

## Bill Analysis

Daniel M. DeSantis

### H.B. 663

130th General Assembly  
(As Introduced)

Reps. Buchy, Huffman

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## BILL SUMMARY

- Declares the General Assembly's finding that the identities of persons who assist in carrying out executions by lethal injection must be kept confidential.
- Excludes from the definition of "public record" and prohibits the disclosure of any information or record that identifies or reasonably leads to the identification of any individual or entity that makes, supplies, or administers drugs or equipment used in executions by lethal injection or who participates in carrying out such executions, other than the Director of the Department of Rehabilitation and Correction and prison wardens.
- Creates a civil cause of action for unauthorized disclosure of confidential information relating to executions by lethal injection.
- Prohibits a licensing authority from taking disciplinary action against a licensee for participating in, consulting regarding, performing any function with respect to, or providing any expert opinion testimony regarding an execution by lethal injection.
- Voids contracts that either prohibit the sale, distribution, or transfer of any drug to a governmental entity for use in an execution by lethal injection or are designed to prevent a governmental entity from obtaining a drug for use in such an execution.

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## CONTENT AND OPERATION

### Need for confidentiality for persons who assist in executions

The bill declares the General Assembly's finding that the identities of persons, including business and other entities,<sup>1</sup> who assist the Department of Rehabilitation and

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<sup>1</sup> R.C. 1.59, incorporated by reference into R.C. 2949.222(A)(1).

Correction (DRC) in carrying out executions by lethal injection must be kept confidential to protect them from harassment and possible physical harm. The bill declares the General Assembly's further findings that such persons, have been subjected to threats and risks in other states, that DRC cannot get the necessary assistance to carry out death sentences by lethal injection without the protection of confidentiality, and that the bill is needed to prevent foreign and domestic individuals and entities from interfering with executions by entering into agreements to prevent DRC from obtaining the necessary drugs.<sup>2</sup>

## **Nondisclosure**

The bill excludes from the definition of "public record," and thus from mandatory disclosure under the Public Records Law, information and records that relate in any manner to the execution of a death sentence and that are made confidential, privileged, and not subject to disclosure under the bill's nondisclosure provisions.<sup>3</sup>

Under the bill, if a person manufactures, compounds, imports, transports, distributes, supplies, prescribes, prepares, administers, uses, or tests any of the compounding or medical equipment, active pharmaceutical ingredients, drugs, or medical supplies used in the application of a lethal injection to carry out a death sentence, any information or record that identifies or reasonably leads to the identification of the person must be classified as confidential and privileged and is not subject to disclosure under the Public Records Law or otherwise. Nor is the information or record subject to disclosure in any judicial proceeding or by discovery, subpoena, or any other means of legal compulsion.<sup>4</sup>

The bill expressly applies the foregoing confidentiality provisions to information or records identifying to any current or former DRC employee or other individual, other than the Director of DRC or the warden of the state correctional institution in which the execution took place, who, having been elected or designated by the Director, participated in the administration of a sentence of death by lethal injection.<sup>5</sup>

The bill establishes a civil cause of action for the knowing disclosure, without the approval of the Director of DRC, of the identity of any person protected by the bill's nondisclosure provisions. The plaintiff in such an action may recover actual damages,

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<sup>2</sup> R.C. 2949.221(B).

<sup>3</sup> R.C. 149.43(A)(1)(cc).

<sup>4</sup> R.C. 2949.222(B).

<sup>5</sup> R.C. 2949.222(C).



punitive damages upon a showing of a willful violation of the nondisclosure provisions, and reasonable attorney's fees and court costs.<sup>6</sup>

### **Protection of licensees**

The bill prohibits a licensing authority from challenging, reprimanding, suspending, or revoking the license of, or otherwise taking any disciplinary action against, a licensee for participating in, consulting regarding, performing any function with respect to, or providing any expert opinion testimony regarding an execution by lethal injection. This prohibition applies to activities described in the second paragraph under "**Nondisclosure**," above.<sup>7</sup>

### **Void contracts**

The bill renders void any agreement or portion of an agreement that either (1) prohibits the sale, distribution, or transfer of any drug to any governmental entity for use in the administration of a death sentence by lethal injection or (2) is designed to prevent a governmental entity from obtaining a drug for use in the administration of such a sentence.<sup>8</sup> (See **COMMENT**.)

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## **COMMENT**

To the extent that the bill's provision voiding contracts applies to contracts entered into before the bill's effective date, it might be found to violate the clauses of the U.S. and Ohio Constitutions that prohibit the General Assembly from passing laws that impair contractual obligations.<sup>9</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	11-10-14

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<sup>6</sup> R.C. 2949.222(E).

<sup>7</sup> R.C. 2949.222(D).

<sup>8</sup> R.C. 2949.222(F).

<sup>9</sup> U.S. Const. art I, § 10; Ohio Const. art II, § 28.

