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S.B. 10
133rd General Assembly

Bill Analysis

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Version: As Reported by House Criminal Justice

Primary Sponsor: Sen. Wilson

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SUMMARY

- Increases the penalty for theft in office when the value of property or services stolen is \$150,000 or more.
- Requires the offender to pay restitution for the costs of auditing any public entity that suffered loss as a result of the theft.
- States that restitution imposed for theft in office is not dischargeable in Chapter 7 bankruptcy under federal law.

DETAILED ANALYSIS

Increased penalty for theft in office

The bill increases the penalty for the offense of “theft in office” when the value of property or services stolen is \$150,000 or more. The continuing statute prohibits a public official or party official from committing any theft offense when either of the following applies:¹

1. The offender uses the offender’s office in aid of committing the offense or permits or assents to its use in aid of committing the offense;
2. The property or service involved is owned by a local, state, or federal government entity, owned by a political party, or is part of a political campaign fund.

The following tables compare the current penalties for theft in office with the penalties imposed under the bill and describe the continuing law maximum sentences for felony offenses.

¹ R.C. 2921.41(A).

Theft in office penalty under current law		Theft in office penalty under the bill	
Level of offense	Value of property or services	Level of offense	Value of property or services
-	-	First degree felony	\$750,000 or more
-	-	Second degree felony	\$150,000-\$749,999.99
Third degree felony	\$7,500 or more	Third degree felony	\$7,500-\$149,999.99
Fourth degree felony	\$1,000 - \$7,499.99	Fourth degree felony	\$1,000-\$7,499.99
Fifth degree felony	Less than \$1,000	Fifth degree felony	Less than \$1,000

Continuing law maximum sentences for felony offenses		
Level of offense	Prison term	Fine
First degree felony	11 years	\$20,000
Second degree felony	8 years	\$15,000
Third degree felony	3 years	\$10,000
Fourth degree felony	18 months	\$5,000
Fifth degree felony	1 year	\$2,500

Under continuing law, a person who is convicted of theft in office also is forever disqualified from holding any public office, employment, or position of trust in Ohio.²

Restitution

The bill also requires an offender convicted of theft in office to pay restitution for the costs of auditing any public entity that suffered loss as a result of the offense. Under continuing law, the offender must make restitution for the entity's loss.³

Finally, the bill states that restitution imposed for theft in office is not dischargeable in Chapter 7 bankruptcy under federal law. In general, an eligible person who files for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code can have the person's debts discharged – that is,

² R.C. 2921.41(B) and (C)(1). See also R.C. 2929.14 and 2929.18, not in the bill.

³ R.C. 2921.41(C)(2)(a).

be released from the obligation to pay those debts – so long as the person follows a procedure to pay off as much of the person’s debt as possible. But, some debts cannot be discharged in a Chapter 7 bankruptcy proceeding, such as criminal fines and penalties and debts resulting from fraud. The U.S. Supreme Court has ruled that restitution arising from a criminal conviction cannot be discharged in Chapter 7 bankruptcy. However, if an offender filed for bankruptcy under Chapter 11 or Chapter 13 of the U.S. Bankruptcy Code, the offender still might be permitted to reorganize the offender’s debts, including a restitution debt, and discharge some of the debt under certain circumstances.⁴

HISTORY

Action	Date
Introduced	02-12-19
Reported, S. Gov’t Oversight & Reform	03-12-19
Passed Senate (32-0)	03-13-19
Reported, H. Criminal Justice	05-13-19

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⁴ R.C. 2921.41(C)(2)(c). See also 11 U.S.C. 523; *Kelly v. Robinson*, 479 U.S. 36 (1986); *Pennsylvania Department of Public Welfare v. Davenport*, 495 U.S. 552 (1990); and *Hardenberg v. Virginia Department of Motor Vehicles*, 42 F.3d 986 (6th Cir. 1994).