



Ohio Legislative Service Commission

Bill Analysis

Bethany Boyd

Sub. S.B. 227

131st General Assembly
(As Reported by H. State Government)

Sens. Bacon, Coley, Eklund, Faber, Hughes, Jones, Obhof, Patton, Seitz

BILL SUMMARY

Cost of obtaining records from a financial institution

- Exempts the state from the obligation to pay a financial institution the cost of providing a customer's financial records in connection with a criminal investigation or prosecution when the records are required under a subpoena, demand for production, request for records, or demand for inspection issued by or on motion of the Attorney General (AG) or the Organized Crime Investigations Commission (R.C. 9.02(D)(2)).

Public records: competitive solicitation materials

- Provides generally that materials submitted to a public office in response to a "competitive solicitation" requesting bids for the provision of goods or services are not public records until the date the public office announces the award of a contract based on the solicitation or the cancellation of the solicitation (R.C. 9.28(B)).
- Provides that if a public office rejects all bids or proposals received in response to a competitive solicitation and gives notice of its intent to reissue the solicitation, the materials submitted in response to the original and to any reissued solicitation are not public records until the date the public office announces the award of a contract based on the reissued solicitation or the cancellation of the reissued solicitation (R.C. 9.28(C)).

Collections enforcement

- Allows the AG to appoint *and authorize* special counsel to represent the state *and any political subdivision* in connection with claims certified to the AG for collection or that the AG is authorized to collect (R.C. 109.08).

- Specifies that the amounts paid to special counsel may be assessed as collection costs and are fully recoverable from the indebted party and that the amounts so assessed are in addition to other collection costs authorized under "**Recovery of collection costs**," below (R.C. 109.08).
- Permits the AG to provide to special counsel the AG's official letterhead stationery (currently, the AG must provide it to special counsel appointed to represent the state in matters involving only the collection of certain taxes) and to authorize special counsel's use of the stationery in connection with the collection of claims arising out of amounts certified by the state and political subdivisions (R.C. 109.08).
- Specifies that eliminating language allowing use of the AG's official letterhead stationery only in connection with the collection of certain taxes is intended to clarify that this provision of law has always permitted the AG to authorize special counsel to use the stationery in connection with the collection of any certified claims, even outside of the tax collections (R.C. 109.08 and Section 3).

Recovery of collection costs

- Specifies that existing law requiring payment into the Attorney General Claims Fund of up to 11% of all amounts collected by the AG on claims due applies only with respect to claims for amounts certified by state officials to the AG for collection (R.C. 109.081).
- Specifies that the amount payable to the Fund must be assessed as an additional collection cost and is fully recoverable from the debtor (R.C. 109.081).

Attorney General training of elected officials or their designees

- Requires that the Public Records Law training programs that the AG currently must develop, certify, and provide to elected officials or their appropriate designees also cover the Open Meetings Law (R.C. 109.43(B)).
- Repeals the requirement that the AG ensure that the training programs are accredited by the Supreme Court's Commission on Continuing Legal Education (R.C. 109.43(B)).

Forfeiture funds, forfeiture expenditure, and BCII

- Adds the existing Bureau of Criminal Identification and Investigation (BCII) Asset Forfeiture and Cost Reimbursement Fund to the funds receiving a portion of the proceeds of sales of forfeited property; requires the Fund to be used only in accordance with a written internal control policy of the AG, for specified law



enforcement purposes or other law enforcement purposes the AG determines to be appropriate; and prohibits use of the Fund for the AG's operating costs (R.C. 2981.13(B)(4)(b), (C)(2)(a)(v), and (C)(2)(c)).

- Requires that amounts awarded to BCII as a result of shared state asset forfeiture and all amounts received by BCII under the state asset forfeiture laws be deposited in the BCII Asset Forfeiture and Cost Reimbursement Fund (continuing law applies this requirement only with respect to shared federal asset forfeiture) (R.C. 109.521).

BCII assistance to county coroners

- Requires the Superintendent of BCII, upon a county coroner's request, to assist the coroner in the identification of a deceased person through the use of fingerprint impressions (R.C. 109.57(A)(6)).

Criminal records information

- Clarifies the application of an existing law that authorizes the BCII to release information it has gathered relating to an arrest of an adult, a delinquent child adjudication, or a criminal conviction of a minor when a criminal records check is requested pursuant to statutory authorization, and either a criminal action resulting from the arrest is pending or the BCII cannot reasonably determine whether there has been a final disposition of a criminal action resulting from the arrest (R.C. 109.572(F) and 109.578(E)).

Court authority to take fingerprints

- Requires a court to take a person's or child's fingerprints at the time of sentencing or adjudication as an alternative to requiring a sheriff or police chief to take the fingerprints, if fingerprinting was required but not done at the time of arrest, arraignment, or first appearance (R.C. 109.60(A)(3)).

Organized Crime Investigations Commission

- Creates the Organized Crime Law Enforcement Trust Fund in the state treasury and requires the Organized Crime Investigations Commission to establish this Fund for receiving reimbursement of expenses the Commission incurred in investigating criminal activity through a task force (R.C. 177.05).
- Specifies that the Fund consists of all moneys paid to the State Treasurer for purposes of the Fund and investment earnings on moneys in the Fund, and provides that the moneys must be expended for equipment used to investigate organized criminal activity, but not for the Commission's operating costs (R.C. 177.05).



Ohio's Anti-Trust Law (the Valentine Act)

- Adds to the trusts prohibited under the state antitrust law a combination of capital, skill, or acts by two or more bidders or potential bidders, or one or more bidders or potential bidders and any person affiliated with a public office (defined by the bill), to restrain or prevent competition in the letting or awarding of any public contract in derogation of any statute, ordinance, or rule requiring the use of competitive bidding or selection in the letting or awarding of the public contract (R.C. 1331.01(B) and (C)(2) and 1331.04).
- Eliminates the separate offense of combining to control the price or supply of bread, butter, eggs, flour, meat, or vegetables (R.C. 1331.99(B) and repeal of R.C. 1331.05).
- Prohibits the AG from disclosing publicly the facts developed in an antitrust investigation unless the matter has become public through enforcement proceedings or public hearings, or unless the person from whom the information has been obtained consents to the public disclosure (R.C. 1331.17).
- Increases the penalty for conspiracy against trade from a first degree misdemeanor to a fifth degree felony, or, under specified circumstances, to a fourth degree felony (R.C. 1331.99(A) and (C)).

Consumer Sales Practices Act (CSPA)

- Specifies that certain currently prohibited activities, such as encouraging a consumer to default on a mortgage or loan agreement, constitute an unconscionable act or practice in connection with a consumer transaction, in addition to being an unconscionable act in connection with the origination of a residential mortgage (R.C. 1345.031(B)(6), (7), and (15)).
- Clarifies which CSPA provisions apply to a consumer transaction in connection with the *origination* of a residential mortgage (R.C. 1345.03(C) and 1345.031(A)).
- Makes a supplier's failure to be licensed, registered, insured, or bonded as required by state law or local ordinance an unfair or deceptive act or practice under the CSPA and authorizes the AG to bring a class action against the supplier for violating the requirement (R.C. 1345.02(G) and 1345.07(A)(3)(a)).

Home Solicitation Sales Act: Martin Luther King Day

- Adds Martin Luther King Day to the days excluded from the definition of "business day" for purposes of the Home Solicitation Sales Act (R.C. 1345.21(I)).



Home Solicitation Sales Act and Prepaid Entertainment Contracts Act: notice of cancellation

- Additionally authorizes a consumer to give notice of cancellation of a home solicitation sale agreement or prepaid entertainment contract by email and fax, specifies when delivery by fax or email is effective, and removes notice by telegram as an acceptable means of cancellation (R.C. 1345.24, 1345.43, and 1345.44).
- Makes conforming changes to the statutory notice-of-cancellation forms for both home solicitation sales and prepaid entertainment contracts (R.C. 1345.23 and 1345.44).

Enforcement reports

- Replaces the requirement that the AG quarterly submit to the Department of Commerce a list of all enforcement actions taken against loan officers, mortgage brokers, and nonbank mortgage lenders, and related judgments, with a requirement that the AG notify the Department of all such enforcement actions and judgments, with no time specified (R.C. 1349.43).

Charitable organizations – late fees

- Requires a charitable organization that does not timely pay the annual registration fee required under existing law to pay a late fee of \$200 (R.C. 1716.02).
- Permits the AG to waive this late fee for reasons that were beyond the control of the charitable organization, and provides an exception to this late fee for those charitable organizations required to pay a late fee in connection with the filing of the trustee's annual report (R.C. 1716.02).
- Requires fund-raising counsel and professional solicitors to make complete and timely filings, and otherwise subjects them to liability and a \$200 late fee for failure to do so, in addition to any other penalties under existing law (R.C. 1716.05(F) and 1716.07(J)).

Judgment Dormancy Law

- Adds two actions that prevent a judgment from going dormant, whether in favor of the state or not, including a judgment in a county other than that in which a judgment was rendered: (1) an order of garnishment that is issued or is continuing, or until the last garnishment payment is received by the court clerk or the garnishee files the final report, whichever is later, and (2) a proceeding in aid of execution that is commenced or is continuing (R.C. 2329.07).



Reparation awards to victims of crimes

- Requires that interest on money in the Reparations Fund be credited to the Fund (R.C. 2743.191(E)).
- Repeals the two year statute of limitations for a minor who reaches age 18 to file an application for an award of reparations, thereby authorizing minor victims as well as adult victims of criminally injurious conduct to file the application at any time after the criminally injurious conduct occurred (R.C. 2743.56(B) and 2743.71(B)(2)).
- Increases the time period during which a claimant may file a supplemental reparations application from five years to six years from the time the Attorney General or the Court of Claims has made a determination about an award (R.C. 2743.68).

Offense of patient abuse

- Adds to the definition of "offense of violence" that applies throughout the Revised Code: (1) the offense of patient abuse committed by a person who owns, operates, or administers, or who is an agent or employee of, a "care facility" against a resident or patient of the facility, (2) a current or former offense under municipal ordinances or any other state's or United States' laws that are substantially equivalent to patient abuse, or (3) a conspiracy or attempt to commit, or complicity in committing, patient abuse (R.C. 2901.01(A)(9)(a)).

Child pornography evidence

- Requires that any "child pornography" that is offered as evidence or that comes into the custody or control of the prosecutor or the court remain in the custody or control of the prosecutor or court (R.C. 2945.63(B)).
- Requires a court in a criminal proceeding to deny a defendant's request to reproduce any child pornography if the prosecutor gives the defendant, the defendant's attorney, and any individual the defendant seeks to qualify as an expert witness at trial ample opportunity to examine the child pornography where it is being held by the prosecutor or the court (R.C. 2945.63(C)).

Sealing of conviction record

- Requires a court that orders the sealing of a criminal conviction record to order the person whose record is sealed to be fingerprinted by a sheriff if the person was not previously fingerprinted at the time of arrest, arraignment, or first appearance; requires the sheriff to forward the fingerprints to the court; and requires the court to forward the fingerprints and a copy of the sealing order to BCII (R.C. 2953.32(C)(4)).



- Requires the probation officer or county department of probation who is directed by the court to make written reports concerning a person whose record is sealed to determine whether the person was previously fingerprinted, and if so, to forward to the court a record of the person's fingerprints with the written reports (R.C. 2953.32(B)).
- In the provision that requires a court of record to tax as costs or otherwise require the payment of fees in a case, specifies that the costs or fees include all fees to be paid in a sealing proceeding (R.C. 2746.02(O)).

Inspection of sealed criminal records

- Permits a law enforcement agency or its authorized employee and the Department of Rehabilitation and Correction to inspect a sealed criminal conviction record of a person who applies for employment in any capacity with the agency or Department; currently, this provision applies only with respect to persons who apply for a position as a law enforcement or corrections officer (R.C. 2953.32(D)(6)).
- Permits the Department of Youth Services to inspect a sealed criminal conviction record of a person who applies for employment in any capacity with the Department (R.C. 2953.32(D)(6)).

Medicaid Estate Recovery Program: property subject to transfer on death

- Modifies the Medicaid Estate Recovery Program form concerning real property subject to a transfer on death to require the beneficiary to indicate (1) whether or not the deceased owner had ever been a Medicaid recipient or the beneficiary's lack of knowledge on the subject and (2) the same regarding a predeceased spouse of the owner (R.C. 5302.221(B)).
- Requires the Medicaid Estate Recovery Program Administrator to make the above form available to county recorders and requires county recorders to provide the form to beneficiaries (R.C. 5302.221(C)).
- Requires a beneficiary to submit a copy of a completed form to the Administrator only if the form indicates either (1) that the deceased owner of the property or the deceased owner's predeceased spouse had been a Medicaid recipient or (2) that the beneficiary lacks knowledge on the subject (R.C. 5302.221(C)).

HISTORY

ACTION	DATE
Introduced	10-13-15
Reported, S. Gov't Oversight & Reform	05-05-16
Passed Senate (33-0)	05-11-16
Reported, H. State Government	12-01-16

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