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S.B. 10
133rd General Assembly

Bill Analysis

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Version: As Re-Reported by House Criminal Justice

Primary Sponsor: Sen. Wilson

Nicholas A. Keller, Attorney

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.
- Excludes convictions for theft in office from continuing law that allows for the sealing of certain criminal convictions upon application by the offender.
- Prohibits an offender convicted of soliciting improper compensation from applying to have that conviction sealed until the expiration of seven years after the offender's final discharge.
- Expands the list of debts toward satisfaction of which the Tax Commissioner may apply a tax refund due to a taxpayer.
- Modifies the process by which a county auditor must issue warrants for payment of county obligations on the county treasurer for moneys payable from the county treasury upon presentation of a court order for expenses.
- Permits the Auditor of State to provide or discuss investigatory work product with other parties, notwithstanding existing law provisions that require law enforcement agencies to close investigatory work product upon the sealing or expungement of a criminal record or delinquent child adjudication.

DETAILED ANALYSIS

Theft in office

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.

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

¹ R.C. 2921.41(A).

Continuing law maximum sentences for felony offenses		
Level of offense	Prison term	Fine
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 for theft in office

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. Except as provided in a negotiated plea agreement, the amount of restitution cannot exceed the amount of restitution imposed for all of the property or service that is the subject of the offense or for all of the actual loss suffered. 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, 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

Sealing a conviction for theft in office

The bill excludes convictions for theft in office from continuing law that allows for the sealing of certain criminal convictions upon application by the offender. Under the bill, a person

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).

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).

convicted of theft in office could not apply to a court to have the conviction sealed pursuant to that process.⁵

Soliciting improper compensation

The bill prohibits an offender convicted of soliciting improper compensation from applying to have that conviction sealed until the expiration of seven years after the offender's final discharge. Continuing law generally allows an offender to apply for sealing one to four years after the offender's final discharge, depending on the quantity and severity of the offender's convictions.⁶

Tax refund garnishment

The bill adds all of the following to the list of debts toward satisfaction of which the Tax Commissioner may apply a tax refund due to a taxpayer:

- Debts owed to a political subdivision under a claim certified to the Attorney General;
- Debts owed based on a finding for recovery in an audit report filed with or delivered to the Attorney General; and
- Collection costs arising from debts for which the refund may be applied.

Under continuing law, the Tax Commissioner may apply a tax refund due to a taxpayer to the state for any of the following amounts due to the state:

- Tax;
- Workers' compensation premiums;
- Unemployment compensation contributions;
- Claims certified to the Attorney General;
- Fees paid to a clerk of courts related to the issuance of a certificate of title;
- Any charge, penalty, or interest arising from one of the above amounts.⁷

Warrants on a county treasury for court expenses

The bill modifies the process by which a county auditor must issue warrants for payment of county obligations on the county treasurer for moneys payable from the county treasury upon presentation of a court order for expenses.

Under the bill, the county auditor must issue warrants on the county treasurer for all moneys payable from the county treasury upon presentation of any proper court order for

⁵ R.C. 2953.36(A)(9).

⁶ R.C. 2953.32(A).

⁷ R.C. 5747.12.

expenses of the court funded through the county treasury and, upon request of the county auditor, legible copies of a court-approved invoice, bill, receipt, check, or contract related to the order, redacted as required by law, to the extent those documents exist. The bill specifies that when such a court order is presented, the auditor has no liability for that expenditure.

If the county auditor questions the validity of such an expenditure, the auditor must notify the court that presented the documents, issue the warrant under protest, and notify the auditor of state of the protest. When a warrant is issued in protest, the auditor has no liability for that expenditure. If the auditor refuses to issue the warrant, a writ of mandamus may be sought. The court must issue a writ of mandamus for issuance of the warrant if the court determines that the claim is valid.⁸

The auditor of state, upon receiving notification that a county has filed a warrant under protest, as specified in the bill, may review that warrant as part of the Auditor of State's next regularly scheduled audit of the public office that presented documents under the bill that led to issuance of the warrant under protest.⁹

Continuing law applies to the county auditor's issuance of warrants on the county treasurer for moneys payable from the county treasury upon presentation of a proper order or voucher and evidentiary matter. If the auditor questions the validity of an expenditure presented under continuing law and for which a proper order and evidentiary matter is submitted that is within available appropriations, the auditor must notify the board, officer, or tribunal who presented the documents. If the board, officer, or tribunal determines the expenditure is valid and the auditor refuses to issue the appropriate warrant on the county treasury, a writ of mandamus may be sought. The court must issue a writ of mandamus for the issuance of the warrant if the court determines that the claim is valid.¹⁰

Records of the Auditor of State

Under the bill, notwithstanding existing law provisions that require law enforcement agencies to close investigatory work product upon the sealing of a criminal record or the expungement of a criminal record or delinquent child adjudication, the Auditor of State may provide or discuss investigatory work product with other parties. Investigatory work product covered by this provision includes records, reports, or audits maintained by the Auditor of State or that are specific investigatory work product of a law enforcement officer employed by the Auditor of State that were delivered to the Auditor of State pursuant to an order of sealing.¹¹ To this end, the bill excludes from the definition of "official records" that applies to the criminal

⁸ R.C. 319.16.

⁹ R.C. 117.16.

¹⁰ R.C. 319.16.

¹¹ R.C. 2953.321(B)(4).

records sealing law regarding not guilty findings, dismissed charges, and no bills, any records, reports, or audits maintained by the Auditor of State under the Auditor's authority.¹²

The bill also allows the Auditor of State or a prosecutor, notwithstanding existing records sealing law, to maintain records, reports, or audits of an individual who has been forever disqualified from holding public office, employment, or a position of trust in this state under continuing law, or who has otherwise been convicted of an offense based on records, reports, or audits of the Auditor of State, to the extent the records were used as the basis for the individual's disqualification or conviction. The auditor or prosecutor may not be compelled by court order to seal those records.¹³

HISTORY

Action	Date
Introduced	02-12-19
Reported, S. Gov't Oversight & Reform	03-12-19
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Reported, H. Criminal Justice	05-13-19
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Re-reported, H. Criminal Justice	05-19-20

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¹² R.C. 2953.51(D)(3).

¹³ R.C. 2953.32(H).