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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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S.B. 10
133rd General Assembly

Final Analysis

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Version: As Passed by the General Assembly

Primary Sponsor: Sen. Wilson

Effective date: Emergency: the provisions addressing tolling of periods of limitation take effect January 7, 2021; all other provisions are effective April 7, 2021

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SUMMARY

Theft in office

- 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 a 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 the law that allows for 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.

Other provisions

- 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 the law that requires law enforcement agencies to close

investigatory work product upon the sealing or expungement of a criminal record or delinquent child adjudication.

- Expands the exercise of personal jurisdiction by a court to include personal jurisdiction over a person on any basis consistent with the Ohio Constitution and the United States Constitution.
- Specifies that the time period between March 9, 2020, and July 30, 2020, cannot be computed as part of the periods of limitation and time limitations that are tolled under H.B. 197 of the 133rd General Assembly as a result of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020.
- Specifies that the tolling provisions expire on July 30, 2020, rather than the sooner of when the period of emergency ends or July 30, 2020.

DETAILED ANALYSIS

Theft in office

Increased penalty for theft in office

The act 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 former penalties for theft in office with the penalties imposed under the act and describe the maximum sentences for felony offenses.

Theft in office penalty under former law		Theft in office penalty under the act	
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

¹ R.C. 2921.41(A).

Theft in office penalty under former law		Theft in office penalty under the act	
Level of offense	Value of property or services	Level of offense	Value of property or services
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

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 for theft in office

The act also requires an offender convicted of theft in office to pay restitution for the costs of auditing any public entity that owns the property or service involved in the offense or that suffered loss as a result of the offense. Except as provided in a negotiated plea agreement, the total 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 all of the property or the service that is the subject of the offense or for the entity's loss.³

Finally, the act 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

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

³ R.C. 2921.41(C)(2)(a).

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 act excludes convictions for theft in office from the law that allows for sealing of certain criminal convictions upon application by the offender. Under the act, a person convicted of theft in office cannot apply to a court to have the conviction sealed pursuant to that process.⁵

Soliciting improper compensation

The act 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. This provision is an exception to the law that 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 act 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;

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).

⁵ R.C. 2953.36(A)(9).

⁶ R.C. 2953.32(A).

- 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 act 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 act, 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 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 act specifies that when such a court order is presented, the auditor has no liability for that expenditure, and the court issuing the order must assume the financial liability, if any, for that expenditure. The county auditor must keep a record of all such warrants showing the number, date of issue, amount for which drawn, in whose favor, for what purpose, and on what fund.

If the county auditor questions the validity of such an expenditure, the auditor must notify the court that presented the documents, must issue the warrant under protest, and must 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 act, 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 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

⁷ R.C. 5747.12.

⁸ R.C. 319.16(A)(2), (B), and (D).

⁹ R.C. 117.16.

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 act, notwithstanding the law that requires 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 act excludes from the definition of “official records” that applies to the criminal 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 act also allows the Auditor of State or a prosecutor, notwithstanding the 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 of State or prosecutor may not be compelled by court order to seal those records.¹³

Personal jurisdiction¹⁴

Continuing law expressly identifies the actions (see below) that permit a court to exercise personal jurisdiction over a person acting directly or by an agent.¹⁵ These actions create a requisite amount of contact with Ohio in order for the court to exercise jurisdiction over the person. Prior law provided that when a court exercised personal jurisdiction over a person based solely because the person performed one of those actions, only a claim arising

¹⁰ R.C. 319.16(A)(1) and (E).

¹¹ R.C. 2953.321(B)(4) and 2953.54(A)(4).

¹² R.C. 2953.51(D)(3).

¹³ R.C. 2953.32(H).

¹⁴ The provisions discussed in this section are identical to those enacted by H.B. 272 of the 133rd General Assembly, effective December 16, 2020.

¹⁵ R.C. 2307.382(A).

from that action could be asserted against the person; in other words, it precluded claims not based on that requisite contact.¹⁶

The act extends the exercise of a court's personal jurisdiction such that, in addition to the listed actions, a court may exercise personal jurisdiction over a person on any basis consistent with the Ohio Constitution and the U.S. Constitution.¹⁷

A court's personal jurisdiction under continuing law applies to a cause of action arising from a person's:¹⁸

- Transacting any business in Ohio;
- Contracting to supply services or goods in Ohio;
- Causing tortious injury by an act or omission in Ohio;
- Causing tortious injury in Ohio by an act or omission outside the state, if the person regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in Ohio;
- Causing injury in Ohio to any person by express or implied breach of warranty made in the sale of goods outside the state when the person might reasonably have expected such person to use, consume, or be affected by the goods in Ohio, and the person also regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in the state;
- Causing tortious injury in this state to any person by an act outside the state committed with the purpose of injuring persons, when the person might reasonably have expected that some person would be injured thereby in Ohio;
- Causing tortious injury to any person by a criminal act, any element of which takes place in the state, which the person commits or in the commission of which the person is guilty of complicity;
- Having an interest in, using, or possessing real property in Ohio;
- Contracting to insure any person, property, or risk located in the state at the time of contracting.

Also under continuing law, a person who enters into an agreement, as a principal, with a sales representative for the solicitation of orders in Ohio is transacting business in Ohio.¹⁹

¹⁶ R.C. 2307.382(C).

¹⁷ R.C. 2307.382(C).

¹⁸ R.C. 2307.382(A).

Tolling of statutes of limitations and other time limitations

The act specifies that the time period between March 9, 2020, and July 30, 2020, cannot be computed as part of the periods of limitation and time limitations (see below) that are tolled under H.B. 197 of the 133rd General Assembly as a result of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020. The act also specifies that the tolling expires on July 30, 2020, rather than the sooner of when the period of emergency ends or July 30, 2020.²⁰

The act specifies that the time period between March 9, 2020, and July 30, 2020, cannot be computed as part of the periods of limitation and other time limitations.²¹

The statutes of limitations and time limitations are as follows:

1. Statutes of limitations, as follows:²²
 - a. For any criminal offense, notwithstanding any other provision of law to the contrary, the applicable period of limitation set forth in R.C. 2901.13 for the criminal offense;
 - b. When a civil cause of action accrues against a person, notwithstanding any other provision of law to the contrary, the period of limitation for commencement of the action as provided under any section in R.C. Chapter 2305, or under any other provision of the Revised Code that applies to the cause of action;
 - c. For any administrative action or proceeding, the period of limitation for the action or proceeding as provided under the Revised Code or the Administrative Code, if applicable.
2. The time within which a bill of indictment or an accusation must be returned or the time within which a matter must be brought before a grand jury;
3. The time within which an accused person must be brought to trial or, in the case of a felony, to a preliminary hearing and trial;
4. Time deadlines and other schedule requirements regarding a juvenile, including detaining a juvenile;
5. The time within which a commitment hearing must be held;
6. The time by which a warrant must be issued;
7. The time within which discovery or any aspect of discovery must be completed;

¹⁹ R.C. 2307.382(B).

²⁰ Section 4.

²¹ Section 4.

²² Section 22, Am. Sub. H.B. 197 of the 133rd General Assembly.

8. The time within which a party must be served;
9. The time within which an appearance regarding a dissolution of marriage must occur pursuant to R.C. 3105.64;
10. Any other criminal, civil, or administrative time limitation under the Revised Code.

HIS TORY

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
Re-referred to H. Rules and Reference	10-29-19
Re-referred to H. Criminal Justice	10-29-19
Re-reported, H. Criminal Justice	05-19-20
Passed House (90-0)	06-09-20
Senate refused to concur in House amendments (0-31)	09-02-20
House requested conference committee	09-16-20
Senate acceded to request for conference committee	09-16-20
House agreed to conference committee report (89-0)	12-17-20
Senate agreed to conference committee report (32-0)	12-17-20