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Bill Analysis
Legislative Service Commission

H.B. 364

123rd General Assembly
(As Introduced)

**Reps. Goodman, Tiberi, Peterson, O'Brien, Patton, Taylor, Bender, Trakas,
Clancy, Britton, Flannery, Allen, Verich**

BILL SUMMARY

- Increases the penalty for theft in office to a felony of the third degree in all cases, regardless of the value of property or services stolen.

CONTENT AND OPERATION

Existing law

Existing law prohibits a public official or party official from committing any "theft offense" (see **COMMENT**) when either of the following applies:

(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 Ohio, any other state, the United States, a county, a municipal corporation, a township, or any political subdivision, department, or agency of any of them, is owned by a political party, or is part of a political campaign fund.

A person who violates this prohibition is guilty of theft in office. Generally, theft in office is a felony of the fifth degree. If the value of property or services stolen is \$500 or more and is less than \$5,000, theft in office is a felony of the fourth degree. If the value of property or services stolen is \$5,000 or more, theft in office is a felony of the third degree. (Sec. 2921.41.)

Operation of the bill

The bill increases the penalty for theft in office to be a felony of the third degree in all cases, regardless of the value of property or services stolen (sec. 2921.41(B)).

Other provisions relating to theft in office

Disqualification from holding public office

A public official or party official who is convicted of or pleads guilty to theft in office is forever disqualified from holding any public office, employment, or position of trust in this state (sec. 2921.41(C)(1)).

Restitution

A court that imposes sentence for theft in office by the means described in paragraph (2) under "**Existing law**" must require the public official or party official who is convicted of or pleads guilty to the offense to make restitution for all of the property or the service that is the subject of the offense, in addition to the term of imprisonment and any fine imposed. A court that imposes sentence for theft in office by the means described in paragraph (1) under "**Existing law**" and that determines at trial that Ohio or a political subdivision of Ohio if the offender is a public official, or a political party in the United States or Ohio if the offender is a party official, suffered actual loss as a result of the offense must require the offender to make restitution to Ohio or to the political subdivision or political party for all of the actual loss experienced, in addition to the term of imprisonment and any fine imposed. If restitution is required under the preceding provisions and if the offender, at the time of the commission of the offense or at any other time, belonged to specified public retirement systems or plans, the entity to which restitution is to be made may seek the withholding of the amount required as restitution from any payment that is to be made to the person under the retirement system or plan. Existing law specifies the procedure to be followed.

Upon the filing of charges against a person for theft in office, the prosecutor who is assigned the case must send written notice that charges have been filed against that person to specified retirement systems and plans. The written notice must specifically identify the person charged. (Sec. 2921.41(C)(2) and (D).)

COMMENT

"Theft offense" as any of the following (sec. 2913.01(K)--not in the bill):

(a) Aggravated robbery (sec. 2911.01), robbery (sec. 2911.02), aggravated burglary (sec. 2911.11), burglary (sec. 2911.12), breaking and entering (sec. 2911.13), safecracking (sec. 2911.31), tampering with coin machines (sec. 2911.32), petty theft, theft, grand theft, grand theft of a motor vehicle, aggravated theft, and theft of drugs (sec. 2913.02), unauthorized use of a vehicle (sec. 2913.03), unauthorized use of property and unauthorized use of computer property

(sec. 2913.04), possession of an unauthorized device and sale of an unauthorized device (sec. 2913.041), passing bad checks (sec. 2913.11), misuse of credit cards (sec. 2913.21), forgery and forging identification cards or selling or distributing forged identification cards (sec. 2913.31), criminal simulation (sec. 2913.32), making or using slugs (sec. 2913.33), trademark counterfeiting (sec. 2913.34), Medicaid fraud (sec. 2913.40), tampering with records (sec. 2913.42), securing writings by deception (sec. 2913.43), personating an officer (sec. 2913.44), defrauding creditors (sec. 2913.45), insurance fraud (sec. 2913.47), receiving stolen property (sec. 2913.51), cheating (sec. 2915.05), corrupting sports (sec. 2915.05), theft in office (sec. 2921.41), the former offense of insurance fraud (former sec. 2913.47), or the former offense of workers' compensation fraud (former sec. 2913.48);

(b) A violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States, substantially equivalent to any section listed in clause (a) or defrauding a livery or hostelry (former sec. 2913.41), denying access to a computer (sec. 2913.81), or corrupting sports (sec. 2915.06) as those offenses existed prior to July 1, 1996;

(c) An offense under an existing or former municipal ordinance or law of Ohio, any other state, or the United States, involving robbery, burglary, breaking and entering, theft, embezzlement, wrongful conversion, forgery, counterfeiting, deceit, or fraud;

(d) A conspiracy to commit, attempt to commit, or complicity in committing any offense identified in clause (a), (b), or (c).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-02-99	p. 753

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