



S.B. 137

124th General Assembly
(As Introduced)

Sens. Wachtmann, Nein, Mumper, Ryan, Hottinger, Harris

BILL SUMMARY

- Specifies that a court sentencing a person for the offense of insurance fraud to require the offender to make restitution to a health insuring corporation or sickness and accident insurer for losses they incur as a result of the violation.
- Specifies that the restitution required under the provision described in the preceding paragraph includes reimbursement to a health insuring corporation or sickness and accident insurer for the costs of all payments and other benefits they provide under a policy, contract, or agreement, delivered, issued for delivery, or renewed in Ohio, as a result of the violation, and reimbursement for reasonable attorney's fees and investigative costs incurred in connection with the offense.

CONTENT AND OPERATION

Operation of the bill

Felony sentencing

The bill adds a new provision to the list of financial sanctions set forth below in existing law that are identified as being financial sanctions that a court *may* impose upon a person convicted of a felony. Under the bill, the list of the financial sanctions that *may* be imposed upon the offender include those currently specified below in existing law plus a new provision that specifies that, without limiting its authority to impose other financial sanctions, the court *must require an offender to make restitution* to a health insuring corporation or sickness and accident insurer for losses incurred by either of these third-party payers as a result of the offender's felony violation of R.C. 2913.47 (the offense of insurance fraud--see **COMMENT 2**). The bill specifies that restitution, for purposes of the provision described in the preceding sentence, includes reimbursement to a health

insuring corporation or sickness and accident insurer for the costs of all payments and other benefits provided by either of these third-party payers under a policy, contract, or agreement, delivered, issued for delivery, or renewed in Ohio pursuant to R.C. Chapter 1751. or 3923., as a result of the violation, and must include reimbursement for reasonable attorney's fees and investigative costs incurred by these parties in connection with such a violation. (R.C. 2929.18(A)(1)(b).)

Related to the provision described in the preceding paragraph, the bill specifies that that provision is an exception to the existing provision that prohibits a court that sentences a person convicted of a felony to restitution from requiring the offender to repay an insurance company for any amounts the company paid on behalf of the offender pursuant to a policy of insurance (R.C. 2929.18(A)(1)(a)).

Misdemeanor sentencing

The bill retains the provision in existing law (see below) that authorizes a court in specified circumstances to require a person convicted of a misdemeanor to make restitution and adds a new restitution provision that requires the court to impose restitution in specified circumstances. Under the bill, the court must require a person who is convicted of a misdemeanor violation of R.C. 2913.47 (the offense of insurance fraud--see **COMMENT 2**) *to make restitution* to a health insuring corporation or sickness and accident insurer for losses incurred by either of these third-party payers as a result of the offense. The bill specifies that restitution, for purposes of the provision described in the preceding sentence, includes reimbursement to a health insuring corporation or sickness and accident insurer for the costs of all payments and other benefits provided by either of these third-party payers under a policy, contract, or agreement, delivered, issued for delivery, or renewed in Ohio pursuant to R.C. Chapter 1751. or 3923., as a result of the offense, and must include reimbursement for reasonable attorney's fees and investigative costs incurred by these parties in connection with such an offense. (R.C. 2929.21(E).)

Existing law

Felony sentencing

The existing Felony Sentencing Law (R.C. 2929.11 to 2929.20) contains a full range of possible sanctions that generally are available to the court that sentences a person convicted of a felony offense. For a few felony offenses (e.g., aggravated murder and murder), the court is required to impose a specified type of sentence, such as a sentence of life imprisonment, upon an offender convicted of any of those offenses. In other specified circumstances (e.g., for the offense of rape, the offense of gross sexual imposition when the victim is under 13, and certain felony drug offenses, etc.) the court is required to impose a mandatory

prison term upon the offender. In either of those cases, when the court is required to impose a specified type of sentence or a mandatory prison term, it also may impose a financial sanction as part of the sentence. However, when the court is not required to impose a specified type of sentence or a mandatory prison term on the offender, the Law provides the court with the discretion to directly impose on the offender a sentence that consists of a prison term or, if it does not impose a prison term, one or more community residential sanctions, nonresidential sanctions, or financial sanctions. The Law specifies a philosophy of sentencing and factors to be considered that are intended to give the court "guidance" in deciding the sentence to impose. The duration of all such community residential sanctions, nonresidential sanctions, and financial sanctions so imposed cannot exceed five years.

For a summary of community residential sanctions and nonresidential sanctions, see **COMMENT 1**. Regarding financial sanctions, the Felony Sentencing Law provides that the court *may* sentence the offender to any financial sanction or combination of financial sanctions, and that the financial sanctions include, but are not limited to, the following (R.C. 2929.18(A)):

(1) *Restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. The court cannot require an offender to repay an insurance company for any amounts the company paid on behalf of the offender pursuant to a policy of insurance. At sentencing, the court must determine the amount of restitution to be made by the offender. All restitution payments must be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender.*

(2) A fine payable by the offender to the state, to a political subdivision, or to one or more law enforcement agencies, with the amount of the fine based on a standard percentage of the offender's daily income over a period of time determined by the court and based upon the seriousness of the offense. The fine cannot exceed the statutory fine amount authorized for the level of the offense under (3), below.

(3) A fine payable by the offender to the state, to a political subdivision when appropriate for a felony, or to one or more law enforcement agencies, in a specified amount depending upon the degree of the felony (e.g., for a felony of the first degree, not more than \$20,000; for a felony of the second degree, not more than \$15,000; and for a felony of the third degree, not more than \$10,000; etc.).

(4) Reimbursement by the offender of any or all of the costs of sanctions incurred by the government, including all or part of the costs of implementing any community control sanction or all or part of the costs of confinement under a

prison term or residential sanction, provided that the amount of reimbursement cannot exceed the total amount of reimbursement the offender is able to pay as determined at a hearing and cannot exceed the actual cost of the confinement. If the offender is sentenced to a sanction of confinement in prison or a residential sanction that is to be served in a county, municipal, or other local facility, in certain circumstances, the court must impose a financial sanction under this provision that requires the offender to reimburse the county, municipal corporation, or other local governmental entity for the cost of the confinement, in certain circumstances, the court is prohibited from imposing such a financial sanction under this provision, and in all other circumstances, the court is permitted, but not required, to impose a financial sanction under this provision.

(5) Reimbursement by the offender for costs related to an arson investigation.

The Felony Sentencing Law also provides that, for a first, second, or third degree felony violation of R.C. Chapter 2925., 3719., or 4729., unless the offender is indigent and unable to pay, the sentencing court must impose upon the offender a mandatory fine of at least one-half of, but not more than, the maximum statutory fine amount authorized for the level of the offense pursuant to the provision described above in (3). Further, for a fourth degree felony OMVI offense and for a third degree felony OMVI offense, the sentencing court must impose upon the offender a mandatory fine in the amount specified in R.C. 4511.99(A)(4). Also, the court that sentences an offender for a violation of R.C. 2925.03 may impose upon the offender a fine in addition to any fine otherwise imposed under the provisions described above. (R.C. 2929.18(B).)

The Felony Sentencing Law provides that a financial sanction imposed pursuant to the above-described provisions is a judgment in favor of the state or a political subdivision in which the court that imposed the financial sanction is located, except that: (1) a financial sanction of reimbursement so imposed upon an offender who is incarcerated in a state facility or a municipal jail is a judgment in favor of the state or the municipal corporation, (2) a financial sanction of reimbursement so imposed upon an offender for costs incurred by a private provider of sanctions is a judgment in favor of the private provider, and (3) *a financial sanction of restitution so imposed is a judgment in favor of the victim of the offender's criminal act.* The offender subject to the sanction is the judgment debtor. Imposition of a financial sanction and execution on the judgment does not preclude any other power of the court to impose or enforce sanctions on the offender. Once the financial sanction is imposed as a judgment, the victim, private provider, state, or political subdivision may bring a specified type of action to collect the judgment. (R.C. 2929.18(D).)

A court that imposes a financial sanction upon an offender may hold a hearing if necessary to determine whether the offender is able to pay the sanction or is likely in the future to be able to pay it. If a court that imposes a financial sanction finds that an offender satisfactorily has completed all other sanctions imposed upon the offender and that all restitution that has been ordered has been paid as ordered, the court may suspend any financial sanctions imposed that have not been paid. No financial sanction imposed under these provisions precludes a victim from bringing a civil action against the offender. (R.C. 2929.18(E) to (G).)

Misdemeanor sentencing

The existing Misdemeanor Sentencing Law (R.C. 2929.21 and 2929.22) provides that, if a person is convicted of a misdemeanor other than a minor misdemeanor, the person must be imprisoned for a definite term or fined, or both, and specifies a range of terms of imprisonment and a range of fines that a court must use in fixing the term of imprisonment and fine. If a person is convicted of a minor misdemeanor, the person must be fined not more than \$100. The Law specifies a philosophy of sentencing and factors to be considered that are intended to give the court "guidance" in deciding the sentence to impose. The Law also provides that, if a person is convicted of arson or criminal damaging or endangering when the means used are fire or explosion, the court must require the offender to reimburse agencies for their investigation or prosecution costs.

Further, the Misdemeanor Sentencing Law provides that *the sentencing court may require a person who is convicted of a misdemeanor to make restitution for all or part of the property damage caused by the offense and for all or part of the value of the property that is the subject of any theft offense that the person committed.* If the court determines that the victim of the offense was 65 years of age or older or permanently or totally disabled at the time of the commission of the offense, the court, regardless of whether the offender knew the age of victim, must consider that fact in favor of imposing restitution, but that fact does not control the decision of the court.

COMMENT

1. The existing Felony Sentencing Law provides that the community residential sanctions that a sentencing court may impose upon an offender convicted of a felony include, but are not limited to, the following (R.C. 2929.16): (a) a term of up to six months at a community-based correctional facility that serves the county, (b) except as otherwise provided in clause (c), a term of up to six months in a jail, (c) if the offender is convicted of a fourth degree felony OMVI offense and is sentenced under R.C. 2929.13(G)(1), a term of up to one year in a jail less the mandatory term of local incarceration of 60 or 120

consecutive days of imprisonment imposed pursuant to R.C. 2929.13(G)(1), (d) a term in a halfway house, or (e) a term in an alternative residential facility.

The Law provides that the nonresidential sanctions that a sentencing court may impose upon an offender convicted of a felony include, but are not limited to, the following (R.C. 2929.17): (a) a term of day reporting, (b) a term of electronically monitored house arrest, electronic monitoring without house arrest, or house arrest without electronic monitoring, (c) a term of community service of up to 500 hours or, if the court determines that the offender is financially incapable of fulfilling a financial sanction, a term of community service as an alternative to a financial sanction, (d) a term in a drug treatment program, (e) a term of intensive probation supervision, (f) a term of basic probation supervision, (g) a term of monitored time, (h) a term of drug and alcohol use monitoring, including random drug testing, (i) a curfew term, (j) a requirement that the offender obtain employment, (k) a requirement that the offender obtain education or training, (l) provided the court obtains the prior approval of the victim, a requirement that the offender participate in victim-offender mediation, (m) a license violation report, or (n) if the offense is a violation of R.C. 2919.25 or a violation of R.C. section 2903.11, 2903.12, or 2903.13 involving a family or household member, if the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and if the offender or the victim is a parent, guardian, custodian, or person *in loco parentis* of one or more of those children, a requirement that the offender obtain counseling.

2. Existing R.C. 2913.47, not in the bill, prohibits a person, with purpose to defraud or knowing that the person is facilitating a fraud, from doing either of the following: (a) presenting to, or causing to be presented to, an insurer any written or oral statement that is part of, or in support of, an application for insurance, a claim for payment pursuant to a policy, or a claim for any other benefit pursuant to a policy, knowing that the statement, or any part of the statement, is false or deceptive, or (b) assisting, aiding, abetting, soliciting, procuring, or conspiring with another to prepare or make any written or oral statement that is intended to be presented to an insurer as part of, or in support of, an application for insurance, a claim for payment pursuant to a policy, or a claim for any other benefit pursuant to a policy, knowing that the statement, or any part of the statement, is false or deceptive. A violation of either prohibition is the offense of insurance fraud. Generally, insurance fraud is a misdemeanor of the first degree. However, if the amount of the claim that is false or deceptive is \$500 or more and less than \$5,000, it is a felony of the fifth degree, if the amount of the claim that is false or deceptive is \$5,000 or more and less than \$100,000, it is a felony of the fourth degree; and if the amount of the claim that is false or deceptive is \$100,000 or more, it is a felony of the third degree.

As used in the section: (a) "data" has the same meaning as in R.C. 2913.01 and additionally includes any other representation of information, knowledge, facts, concepts, or instructions that are being or have been prepared in a formalized manner, (b) "deceptive" means that a statement, in whole or in part, would cause another to be deceived because it contains a misleading representation, withholds information, prevents the acquisition of information, or by any other conduct, act, or omission creates, confirms, or perpetuates a false impression, including, but not limited to, a false impression as to law, value, state of mind, or other objective or subjective fact, (c) "insurer" means any person that is authorized to engage in the business of insurance in Ohio state under R.C. Title XXXIX, the Ohio Fair Plan Underwriting Association created under R.C. 3929.43, any health insuring corporation, and any legal entity that is self-insured and provides benefits to its employees or members, (d) "policy" means a policy, certificate, contract, or plan that is issued by an insurer, and (e) "statement" includes, but is not limited to, any notice, letter, or memorandum; proof of loss; bill of lading; receipt for payment; invoice, account, or other financial statement; estimate of property damage; bill for services; diagnosis or prognosis; prescription; hospital, medical, or dental chart or other record; x-ray, photograph, videotape, or movie film; test result; other evidence of loss, injury, or expense; computer-generated document; and data in any form.

HISTORY

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