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*Bill Analysis*  
*Legislative Service Commission*

## **S.B. 177**

124th General Assembly  
(As Introduced)

**Sen. Austria**

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### **BILL SUMMARY**

- Provides a limited testimonial privilege for a Certified Public Accountant (CPA) concerning certain communications made to the CPA by a client and certain advice given to a client by the CPA.

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### **CONTENT AND OPERATION**

#### **Testimonial privilege**

##### **Current law**

R.C. 2317.02 provides a testimonial privilege to various persons. Under this section, the following persons, subject to specified conditions and exceptions, are not permitted to testify regarding the following communications:

(1) An attorney concerning communications made to the attorney by a client or the attorney's advice to a client;

(2) A physician, dentist, or chiropractor concerning a communication made to that person by a patient or that person's advice to a patient;

(3) A member of the clergy, rabbi, priest, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination, or sect concerning a confession made or any information confidentially communicated to that person for a religious purpose;

(4) A husband or wife concerning any communication made by one to the other or an act done in the other's presence during coverture;

(5) A school guidance counselor, licensed professional clinical counselor, professional counselor, social worker, or independent social worker, or registered social work assistant concerning confidential communications received from a client;

(6) A mediator acting under a domestic relations-related mediation order with respect to information discussed or presented in the mediation process or related proceedings;

(7) A communications assistant when providing a telecommunications relay service.

In addition, the following persons may not testify in the following aspects: (1) a person who assigns a claim or interest, concerning any matter in respect to which the person would not, if a party, be permitted to testify, and (2) a person who, if a party, would be restricted under R.C. 2317.03, when the property or thing is sold or transferred by an executor, administrator, guardian, trustee, heir, devisee, or legatee, must be restricted in the same manner in any action or proceeding concerning the property or thing may not testify. R.C. 2317.03 prohibits, except under certain circumstances, a party from testifying when the adverse party is the guardian or trustee of either a deaf and dumb or an insane person or of a child of a deceased person, or is an executor or administrator, or claims or defends as heir, grantee, assignee, devisee, or legatee of a deceased person.

### **Operation of the bill**

The bill prohibits a certified public accountant (CPA) from testifying with regards to a communication made to the CPA by a client in that relation or the CPA's advice to a client, except as otherwise provided below, and if either of the following apply (R.C. 2317.02(K)(1)):

(1) The communication is made to or the advice is from the CPA in the presence of the client's attorney, and the communication or advice is for the purpose of obtaining legal advice from the attorney concerning matters for which the CPA's presence is necessary for effective consultation between the client and the attorney.

(2) The communication is made to or the advice is from a CPA who has been designated a client's tax representative pursuant to R.C. 5703.51(F) (taxpayer entitled to attorney, accountant, bookkeeper, or other tax practitioner at all stages of an audit or administrative review of audit by tax commissioner or county auditor), but only with respect to matters related to tax advice or the interpretation and application of the provisions of R.C. Title LVII (Taxation) and other tax laws and regulations of the state, including the production, review, and correction of assessments, audits, valuations, findings, determinations, and computations. This provision applies only to noncriminal tax matters brought before the Ohio Department of Taxation or before an Ohio court by or against the state of Ohio.

The testimonial privilege established above does not apply, and a CPA may testify or be compelled to testify, under any of the following circumstances (R.C. 2317.02(K)(2)):

- (1) If the client gives express consent;
- (2) In the course of testimony at, participation in, or conduction of a quality review pursuant to R.C. Chapter 4701. (Accountants Law);
- (3) With respect to the disclosure of information required to be disclosed by the standards of the accounting profession in reporting on the examination of financial statements and rendering an opinion on the presentation of financial statements;
- (4) If services were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or should have known was a crime or fraud;
- (5) As to a communication relevant to an issue of breach of duty by the CPA to the client or by the client to the CPA or the services of the CPA are otherwise at issue;
- (6) As to a communication relevant to a matter of common interest between two or more clients of the CPA if the communication was made by any of the clients to a CPA retained or consulted in common when offered in an action between the clients;
- (7) As to a communication between any entity formed under or governed by the provisions of R.C. Title XVII (Corporation and Partnership Law) and a CPA under either of the following circumstances:
  - (a) In any derivative action by a party with an ownership interest in any entity formed under or governed by that title on behalf of the entity;
  - (b) In any action by a party with an ownership interest in any entity formed under or governed by the provisions of R.C. Title LVII (Taxation) based upon a breach of fiduciary duty.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-11-01	p. 964
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