



Ohio Legislative Service Commission

Bill Analysis

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S.B. 299

129th General Assembly
(As Introduced)

Sens. Jordan, Brown, Eklund, Schaffer

BILL SUMMARY

- Provides that, as used in the law governing the sealing of criminal conviction records of a first offender, if the offender's offense involves misconduct in public office, the "final discharge" that determines when the offender is eligible to apply for the sealing means a release of the offender from all obligations and satisfaction of all conditions imposed by the sentencing court, agreed to by the offender at sentencing, or imposed by statute as a consequence of the offense.

CONTENT AND OPERATION

Criminal conviction record sealing mechanism

Existing law, in general

Existing law provides a mechanism pursuant to which a person who has been convicted of a criminal offense, who is a "first offender" (see "**First offender definition**," below), and who satisfies other specified criteria may have the conviction record sealed. A first offender who wishes to have the conviction record sealed may apply for the sealing to the sentencing court if convicted in Ohio, or to a court of common pleas if convicted in another state or in a federal court. Application may be made at the expiration of three years after the offender's *final discharge* if convicted of a felony, or at the expiration of one year after the offender's *final discharge* if convicted of a misdemeanor.¹ Existing law provides procedures a court follows in deciding an application; specifies the manner of issuance and dissemination of, and the effect of, a sealing order; and identifies certain offenses for which the mechanism cannot be used²

¹ R.C. 2953.32(A)(1), not in the bill.

² R.C. 2953.32(B) to (H), 2953.321, and 2953.33 to 2953.36, not in the bill.

(see "**Background – sealing order procedures, issuance, effect, and excluded offenses**," below).

Existing law also provides a related mechanism pursuant to which a person who has been arrested for any misdemeanor offense, who has effected a bail forfeiture, and who satisfies other specified criteria may have the record of the case sealed.³ This mechanism is not affected by the bill and is not further discussed in this analysis.

Operation of the bill

The bill defines "final discharge" for purposes of the criminal conviction record sealing mechanism described above, when the term is used with respect to certain specified offenses. Under the bill, "final discharge," when used in connection with an offender who was convicted of the offense of "soliciting improper compensation" or any other offense involving misconduct in public office (see "**Background – "soliciting improper compensation" and other misconduct in public office offenses**," below), means a release from all obligations and satisfaction of all conditions imposed by the sentencing, agreed to by the offender at sentencing, or imposed by statute as a consequence of the offense.⁴

First offender definition

Under existing law, unchanged by the bill, as used in the criminal conviction record sealing mechanism, "first offender" means anyone who has been convicted of an offense in Ohio or any other jurisdiction and who previously or subsequently has not been convicted of the same or a different offense in Ohio or any other jurisdiction. When two or more convictions result from or are connected with the same act or result from offenses committed at the same time, they are counted as one conviction. When two or three convictions result from the same indictment, information, or complaint, from the same plea of guilty, or from the same official proceeding, and result from related criminal acts that were committed within a 3-month period but do not result from the same act or from offenses committed at the same time, they are counted as one conviction, provided that a court may decide in specified circumstances that it is not in the public interest for the two or three convictions to be counted as one conviction.

For purposes of the existing definition of "first offender," and except as otherwise described in this paragraph, a conviction for a minor misdemeanor, for a violation of any section in R.C. Chapter 4507., 4510., 4511., 4513., or 4549., or for a violation of a municipal ordinance that is substantially similar to any section in those Chapters is not

³ R.C. 2953.32(A)(2), not in the bill.

⁴ R.C. 2953.31(J).

a previous or subsequent conviction. However, a conviction for a violation of R.C. 4511.19, 4511.251, 4549.02, 4549.021, 4549.03, 4549.042, 4549.62, or 4549.41 to 4549.46, for a violation of R.C. 4510.11 or 4510.14 that is based upon the offender's operation of a vehicle during a suspension imposed under R.C. 4511.191 or 4511.196, for a violation of a substantially equivalent municipal ordinance, for a felony violation of R.C. Title XLV, or for a violation of a substantially equivalent former law of Ohio or former municipal ordinance is considered a previous or subsequent conviction.⁵

Background – "soliciting improper compensation" and other misconduct in public office offenses

Soliciting improper compensation

Prohibitions

Existing law, not in the bill, contains three prohibitions within the offense of "soliciting improper compensation." The offense is a first degree misdemeanor. A public servant convicted of committing the offense is disqualified from holding any public office, employment, or position of trust in Ohio for a period of seven years from the date of conviction. The prohibitions do not prohibit a person from making voluntary contributions to a political party, campaign committee, legislative campaign fund, political action committee, or political contributing entity or prohibit a political party, campaign committee, legislative campaign fund, political action committee, or political contributing entity from accepting voluntary contributions.⁶ The three prohibitions within the offense are as follows:⁷

(1) The first prohibits a "public servant" (see below) from knowingly soliciting or accepting, and prohibits any person from knowingly promising or giving to a public servant, either of the following: (a) any compensation, other than as allowed by R.C. 102.03(G), (H), and (I) or other provisions of law, to perform the public servant's official duties, to perform any other act or service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation, or (b) additional or greater fees or costs than are allowed by law to perform the public servant's official duties.

(2) The second prohibits a public servant for the public servant's own personal or business use, and prohibits any person for the person's own personal or business use

⁵ R.C. 2953.31(A).

⁶ R.C. 2921.43(D) to (F), not in the bill.

⁷ R.C. 2921.43(A) to (C), not in the bill.

or for the personal or business use of a public servant or party official, from soliciting or accepting anything of value in consideration of either of the following: (a) appointing or securing, maintaining, or renewing the appointment of any person to any public office, employment, or agency, or (b) preferring, or maintaining the status of, any public employee with respect to compensation, duties, placement, location, promotion, or other material aspects of employment.

(3) The third prohibits any person for the benefit of a "political party," "campaign committee," "legislative campaign fund," "political action committee," or "political contributing entity" (see below) from coercing any contribution in consideration of either of the following: (a) appointing or securing, maintaining, or renewing the appointment of any person to any public office, employment, or agency, or (b) preferring, or maintaining the status of, any public employee with respect to compensation, duties, placement, location, promotion, or other material aspects of employment.

Definitions

Under existing law, not in the bill, as used in the prohibitions set forth above:⁸

(1) "Public servant" means any of the following: (a) an elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers (i.e., any public official), (b) a person performing *ad hoc* a governmental function, including, but not limited to, a juror, member of a temporary commission, master, arbitrator, advisor, or consultant, or (c) a person who is a candidate for public office, whether or not the person is elected or appointed to the office for which the person is a candidate (a person is a candidate for purposes of this clause if the person has been nominated according to law for election or appointment to public office, or has filed a petition or petitions as required by law to have the person's name placed on the ballot in a primary, general, or special election, or campaigns as a write-in candidate in any primary, general, or special election).

(2) "Campaign committee," "contribution," "political action committee," "legislative campaign fund," "political party," and "political contributing entity" have the same meanings as in R.C. 3517.01, which is not in the bill.

⁸ R.C. 2921.01, not in the bill.

Other misconduct in public office offenses

The bill does not define the phrase "misconduct in public office" that it uses in its definition of "final discharge." No existing criminal offense uses the phrase "misconduct in public office" or the phrase "misconduct in office," and no other existing Revised Code section uses the phrase "misconduct in public office." Over 20 existing Revised Code sections use the phrase "misconduct in office," with most of them referring to misconduct in office as being grounds for removal of a particular public official or employee from office or specifying that a particular public official is responsible for any misconduct in office of the official's subordinates or employees.⁹ None of the existing sections that uses the phrase "misconduct in office" defines it.

The only section in the current Criminal Code that uses the phrase "misconduct in office" is the section that prescribes periods of limitation for criminal prosecutions. In that regard, it specifies that, if the period of limitation provided with respect to an offense has expired, prosecution must be commenced for an offense involving misconduct in office by a public servant at any time while the accused remains a public servant, or within two years thereafter, and must be commenced for an offense by a person who is not a public servant but whose offense is directly related to the misconduct in office of a public servant, at any time while that public servant remains a public servant or within two years thereafter. As used in the provision, an "offense is directly related to the misconduct in office of a public servant" includes, but is not limited to, a violation of R.C. 101.71, 101.91, 121.61, 2921.13, 102.03(F) or (H), 2921.02(A), 2921.43(A) or (B), or 3517.13(F) or (G), that is directly related to an offense involving misconduct in office of a public servant. Also, "public servant" has the same meaning as described above in "**Soliciting improper compensation.**"¹⁰

Background – sealing order procedures, issuance, effect, and excluded offenses

Procedures

Under existing law, unchanged by the bill, if a "first offender" timely files an application with the appropriate court for the sealing of the offender's conviction record the court schedules a hearing and notifies the prosecutor of the hearing. The prosecutor

⁹ See, e.g., R.C. 3.06, 3.07, 145.057, 303.04, 309.05, 311.05, 315.06, 317.05, 321.04, 505.491, 519.04, 733.35, 742.046, 1725.04, 2301.18, 2503.07, 3307.061, 3309.061, 3501.22, 4510.035, 4513.37, and 5505.048, not in the bill.

¹⁰ R.C. 2901.13, not in the bill.

may object to the granting of the application.¹¹ Upon the filing of the application, the applicant, unless indigent, must pay a \$50 fee.¹²

The court must determine whether the applicant is a first offender, whether criminal proceedings are pending against the applicant, and whether the applicant has been rehabilitated to its satisfaction, consider the reasons specified by the prosecutor against granting the application, and weigh the applicant's interests in having the records pertaining to the applicant's conviction sealed against the legitimate needs, if any, of the government to maintain those records.¹³

Issuance and effect of order

If the court determines that the applicant is a first offender, that no criminal proceeding is pending against the applicant, that the applicant's rehabilitation has been attained to its satisfaction, and that the applicant's interests in having the records pertaining to the conviction sealed are not outweighed by a legitimate government need to maintain those records, the court, except with respect to certain school records and DNA records described below, must order all official records pertaining to the case sealed and, except with respect to a government-maintained index described below, all index references to the case deleted. The proceedings in the case must be considered not to have occurred and the conviction must be sealed, except that upon conviction of a subsequent offense, the sealed record of prior conviction may be considered by the court in determining the sentence or other appropriate disposition.¹⁴

Inspection of the sealed records included in the order may be made only by the specified persons or for specified purposes.¹⁵ Also, when the nature and character of the offense with which a person is to be charged would be affected by the information, it may be used for the purpose of charging the person with an offense. And in any criminal proceeding, proof of an otherwise admissible prior conviction may be introduced and proved, notwithstanding the fact that a sealing order previously was issued for that conviction. Other exceptions are provided for boards of education regarding conviction records of a person who has been permanently excluded under R.C. 3301.121 and 3313.662, and for DNA records collected in the state's DNA Database and fingerprints filed for record by BCII's Superintendent, and special procedures apply

¹¹ R.C. 2953.32(B), not in the bill.

¹² R.C. 2953.32(C)(3), not in the bill.

¹³ R.C. 2953.32(C)(1), not in the bill.

¹⁴ R.C. 2953.32(C)(2), not in the bill.

¹⁵ R.C. 2953.32(D), not in the bill.

regarding "investigatory work product" possessed by a law enforcement officer or employing law enforcement agency.¹⁶

Except as mentioned in the preceding paragraph with respect to boards of education, an order to seal the record of a person's conviction restores the subject person to all rights and privileges not otherwise restored by termination of the sentence or community control sanction or by final release on parole or post-release control. In any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, except as described in the second preceding paragraph with respect to use in criminal proceedings or in R.C. 3319.292, a person may be questioned only with respect to convictions not sealed, unless the question bears a direct and substantial relationship to the position for which the person is being considered.¹⁷

Excluded offenses

Existing law, unchanged by the bill, provides that the criminal conviction records sealing mechanism does not apply to any of the following:¹⁸

- (1) Convictions when the offender is subject to a mandatory prison term;
- (2) Convictions under R.C. 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.321, 2907.322, or 2907.323, former R.C. 2907.12, or R.C. Chapter 4507., 4510., 4511., or 4549., or a conviction for a violation of a municipal ordinance substantially similar to any section contained in any of those chapters;
- (3) Convictions of an offense of violence when the offense is a first degree misdemeanor or a felony and when the offense is not a violation of R.C. 2917.03 and is not a first degree misdemeanor violation of R.C. 2903.13, 2917.01 or 2917.31;
- (4) Convictions on or after October 10, 2007, under R.C. 2907.07 or a conviction on or after that date for a violation of a municipal ordinance substantially similar to that section;
- (5) Convictions on or after October 10, 2007, under R.C. 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.31, 2907.311, 2907.32, or 2907.33 when the victim was under 18;

¹⁶ R.C. 2953.32(D), (E), (G), and (H), and 2953.321, not in the bill.

¹⁷ R.C. 2953.33, not in the bill.

¹⁸ R.C. 2953.36, not in the bill.

(6) Convictions of an offense in circumstances in which the victim was under 18 when the offense is a first degree misdemeanor or a felony;

(7) Convictions of a first or second degree felony;

(8) Bail forfeitures in a traffic case as defined in Traffic Rule 2.

HISTORY

ACTION	DATE
Introduced	02-14-12

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