



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. S.B. 337 of the 129th G.A.

Date: May 23, 2012

Status: As Reported by Senate Judiciary

Sponsor: Sens. Seitz and Smith

Local Impact Statement Procedure Required: Yes

Contents: Collateral sanctions

State Fiscal Highlights

- **Certificate of qualification for employment.** The bill requires the Department of Rehabilitation and Correction (DRC) to coordinate petitions for certificates of qualification for employment from certain individuals subject to collateral sanctions. The processing and consideration of these petitions should not create any significant additional costs for DRC.
- **Criminal record sealing fees.** As a result of the bill, the future size of the pool of persons eligible to apply to the court to have their records sealed will increase and the state treasury would gain \$30 from each \$50 application fee. The amount of additional revenue that could be collected annually is uncertain.
- **Juvenile law.** The bill's various juvenile law changes will have no discernible fiscal effect on the state's Department of Youth Services.
- **Criminal records checks.** The Attorney General's Bureau of Criminal Identification and Investigation will likely experience an increase in the number of requests for criminal background checks, with the revenues generated likely to offset any expenditures incurred. The revenues will be credited to, and the expenditures charged against, the General Reimbursement Fund (Fund 1060).
- **Reinstatement fees.** The bill permits the Registrar of Motor Vehicles to allow a person to pay reinstatement fees in installments. This provision may result in a gain in revenues for the State Bureau of Motor Vehicles Fund (Fund 4W40), as well as any other state fund that receives reinstatement fees. There would also be, however, costs related to administering the program, including programming costs to develop a system to accept and track payments.
- **License suspensions.** The bill eliminates the requirement that the Registrar suspend the driver's license of persons involved in a motor vehicle accident without proof of financial responsibility. This could result in a revenue loss for the Financial Responsibility Compliance Fund (Fund 8350), which is used by the Department of Public Safety, as well as the Indigent Defense Support Fund (Fund 5DY0), which is

used by the Public Defender Commission, because the provision could result in fewer license suspensions, thereby resulting in fewer reinstatement fees collected by the Department.

Local Fiscal Highlights

- **Courts of common pleas.** There is the potential for courts of common pleas to experience an increase in operating costs related to the processing and consideration of: (1) petitions for certificates of qualification for employment from individuals convicted of certain crimes, (2) hearings for additional requests to seal criminal records, and (3) certain juvenile law matters. It is uncertain whether such increases in court related costs would exceed minimal in any given county. However, when combined with other local costs created by the bill, the net effect may exceed minimal.
- **Criminal record sealing.** The bill will increase the number of offenders that are eligible to apply for the sealing of their criminal records. There would be a corresponding gain in revenues from the \$50 application fee, of which a county or municipality retains \$20. The number of additional offenders that might apply is uncertain and the revenue gain would help offset the hearing cost.
- **Paraphernalia charges.** The bill may create a reduction in county and municipal criminal justice system expenditures related to investigating, prosecuting, adjudicating, and sanctioning offenders charged with certain drug paraphernalia offenses, as well as a reduction in the fine revenue collected. The net effect of changes in fine revenue collected compared to the reduction of criminal justice related expenditures in these cases is uncertain.

Detailed Fiscal Analysis

Certificate of qualification for employment

The bill creates a process by which an individual who is subject to a collateral sanction may petition for a certificate of qualification for employment that would eliminate certain statutory prohibitions on employment or occupational licensing. Petitions for those individuals will initially be filed with the Department of Rehabilitation and Correction (DRC). DRC is tasked with reviewing the petition to determine whether it is complete. If the petition is complete, DRC forwards the petition for a certificate of qualification for employment and any accompanying materials to the court of common pleas for the county in which the petitioner resides. DRC does not anticipate the need to hire additional personnel to perform these tasks, as existing staff will be allocated to this petition review process as necessary. Thus, the processing of these petitions should not create any significant additional costs for DRC.

The court will review the petition and, if certain criteria are met, may issue the certificate of qualification for employment. If the court denies the petition, the individual may appeal the decision in the court of appeals. While the courts will receive additional work as a result of the bill, the size of the potential caseload of petitions, and the additional administrative cost to any single jurisdiction, is uncertain. However, when combined with other local costs created by the bill, the net annual cost may exceed minimal.

Feasibility study

The bill requires the Department of Rehabilitation and Correction, in conjunction with the Ohio Judicial Conference, to: (1) conduct a study to determine whether the application process for certificates of qualification for employment is feasible based upon the caseload capacity of DRC and the courts, and (2) submit a report with recommendations to the General Assembly within one year of the bill's effective date. These state agencies will incur a minimal one-time cost to produce the required study and report.

Sealing criminal records

The bill expands the pool of offenders eligible to have their criminal records sealed. Upon the application to seal a record under current law, the applicant, unless indigent, must pay a \$50 fee. The court forwards \$30 of the fee for deposit in the state treasury to the credit of the General Revenue Fund (GRF), with the balance (\$20) forwarded for deposit in the general revenue fund of the county or municipality as appropriate.

The court must hold hearings to consider any additional applications to have criminal records sealed. There could be a significant number of new requests to have records sealed, which would require more of the court's time as well as an increase in

the workload for the relevant probation departments charged with preparing written reports for any new applications. The increase in court related costs could potentially exceed minimal in certain counties, however when considered in conjunction with the revenue gain from the application fee, the net effect is uncertain.

Drug paraphernalia

The bill decreases the penalty for the illegal use or possession of drug paraphernalia from a fourth degree misdemeanor to a minor misdemeanor if the offender uses or possesses with purpose to use it with marihuana. Approximately 20,000 drug paraphernalia cases occur each year statewide. Many of these charges are filed in conjunction with more serious drug abuse or possession charges. In cases of marihuana possession, the reduction of drug paraphernalia charges to the minor misdemeanor level may not have much, if any, fiscal impact.

In those cases in which the offender is caught with drug paraphernalia related to use with marijuana, the fiscal effect of the reduction in charge could be two-fold. First, there may be a reduction in county and municipal criminal justice system expenditures related to investigating, prosecuting, adjudicating, and sanctioning these offenders. Minor misdemeanors involve a fine and no risk of jail time. Second, there would be a reduction in the fine revenues collected. The maximum fines for a fourth degree misdemeanor and a minor misdemeanor are \$250 and \$150, respectively. The precise magnitude of any change in fine revenues collected is uncertain. The net effect of changes in fine revenue collected compared to the reduction of criminal justice related expenditures in these cases is also uncertain.

Juvenile law

The bill allows for delinquent children between ages 18 and 21 to be held in facilities other than those operated solely for the confinement of children. This may result in some juvenile offenders being transferred to certain qualified adult facilities. This provision of the bill may involve around 3,000, or 5%, of the annual delinquency cases statewide. There would likely be an increase in juvenile court expenditures related to the processing and adjudication of new petitions for the transfer of youths between these juvenile and adult facilities. Each petition would require a hearing in addition to any cost related to detaining the youths in a juvenile detention facility pending an outcome. It is unclear whether the increase in expenditures for any given juvenile court would exceed minimal, however when combined with other local costs created by the bill, the net effect may exceed the minimal threshold for certain jurisdictions. The bill's various juvenile law changes will have no discernible fiscal effect on the Department of Youth Services.

Prohibition of licensing preclusions

The bill makes changes to the following regulatory boards to generally prohibit, subject to specified exceptions, the preclusion of individuals from obtaining or

renewing licenses, certifications, or permits due to any past criminal history unless the person had committed serious violent crimes or other disqualifying offenses.

Ohio Optical Dispensers Board

The bill removes the requirement that a person be of good moral character to be eligible to apply for an optical dispensing license. The bill requires that the Ohio Optical Dispensers Board adopt rules to establish disqualifying offenses for licensure as a dispensing optician or certification as an apprentice dispensing optician. Additionally, the bill prohibits the Board from doing either of the following due to any past criminal activity or interpretation of moral character of an individual, unless the individual has committed a crime of moral turpitude or a disqualifying offense: (1) adopting, maintaining, renewing, or enforcing any rule that precludes an individual from receiving or renewing a license as a dispensing optician, or (2) denying certification as an apprentice dispensing optician. However, the bill allows the Board, by majority vote, to refuse to grant a license, to suspend or revoke a license, or to impose fines for licensees convicted of a crime involving moral turpitude or a disqualifying offense. Current law allows the Board to take these actions for a conviction of a felony or a crime of moral turpitude.

According to the Board, licenses have been granted to individuals in the past with criminal backgrounds. Thus, the Board does not anticipate additional licenses or license revenue as a result of the bill. However, if any additional licenses were granted, there would be a gain in fee revenue and a subsequent increase in administrative costs. Any additional fee revenue collected will be deposited in the Occupational Licensing and Regulatory Fund (Fund 4K90). The Board will realize a minimal one-time increase in administrative costs to promulgate rules.

Hearing Aid Dealers and Fitters Licensing Board

The bill changes a requirement for applicants applying for licensure as a hearing aid dealer or fitter or for a trainee permit. The bill changes the requirement that a person be of good moral character to be eligible to apply for licensure to the applicant not having committed a disqualifying offense or crime of moral turpitude. The bill requires that the Hearing Aid Dealers and Fitters Licensing Board adopt rules to establish disqualifying offenses for licensure. Additionally, the bill prohibits the Board from doing either of the following due to any past criminal activity or interpretation of moral character, unless the individual has committed a crime of moral turpitude or a disqualifying offense: (1) adopting, maintaining, renewing, or enforcing any rule that precludes an individual from receiving or renewing a license; or (2) denying a hearing aid dealer's and fitter's trainee permit. However, the bill allows the Board to revoke or suspend a license for licensees convicted of a crime involving moral turpitude or a disqualifying offense. Current law allows this disciplinary action if a person is convicted of a felony or a misdemeanor involving moral turpitude.

As a result of the bill, additional licenses may be granted by the Board. If this occurs, there would be a gain in fee revenue and a subsequent increase in administrative costs. Any additional fee revenue collected will be deposited in the General Operating Fund (Fund 4700). The Board will realize a minimal onetime increase in administrative costs to promulgate rules.

State Board of Cosmetology

The bill prohibits the Board from denying a license based on a prior conviction or incarceration. The Board currently grants licenses to many qualified individuals regardless of their previous criminal history. Since the bill largely codifies existing practice, there is no fiscal effect. The bill also specifically requires the Board to assist ex-offenders and military veterans who hold cosmetology licenses to find employment. This latter requirement could minimally increase administrative costs related to assisting licensees in their job search, costs that would be covered by money appropriated from the Occupational Licensing and Regulatory Fund (Fund 4K90).

Department of Public Safety

The bill requires the Registrar of Motor Vehicles, with regard to motor vehicle salvage dealers, motor vehicle auctions, and salvage motor vehicle pools, and the Director of Public Safety, with regard to private investigators and security guards, to prohibit the preclusion of individuals from obtaining or renewing such licenses, certifications, or permits due to any past criminal history unless the individual had committed a crime of moral turpitude or a disqualifying offense. This could result in a gain in revenues related to licensing fees, but it is unlikely that any gain in revenues would exceed minimal annually.

Construction Industry Licensing Board

The bill prohibits the Construction Industry Licensing Board from denying the issuance of a license to a qualified applicant based on a prior conviction or incarceration. The Board would likely grant a few more licenses annually, and would also generate a minimal amount of additional revenue stemming from the fees charged for examination applications and the issuance of the license. Any such additional revenue would be deposited in the state treasury and credited to Fund 5560, the Labor Operating Fund, which is used to pay the administrative costs related to the issuance and renewal of commercial contracting licenses.

Office of the Attorney General

The bill requires that any licensing agency obtain criminal records checks on applicants seeking a professional license. The Attorney General's Bureau of Criminal Identification and Investigation (BCII) charges \$22 to perform a state criminal records check and an additional \$24 to obtain information from the FBI to perform a federal criminal records check. These charges will offset BCII's cost of performing the background checks. The revenue will be deposited to the credit of the General

Reimbursement Fund (Fund 1060). While the licensing agency will be responsible for initially paying the fee, the licensing applicant is required to remit reimbursement to the agency.

Child support

The bill prohibits a court from determining that a parent is voluntarily unemployed or underemployed and from imputing income to that parent if the parent is incarcerated or institutionalized for a period of 12 months or more with no other available assets. However, this requirement does not apply if the parent is incarcerated for an offense relating to the abuse or neglect of a child who is the subject of the support order or a criminal offense when the obligee or a child who is the subject of the support order is a victim of the offense. Further, it does not apply if its application would be unjust, inappropriate, and not in the best interest of the child.

Under current law, the court or child support enforcement agency (CSEA), in determining imputed income, is required to consider a number of factors, including the parent's prior employment experience, education, mental and physical disabilities, the availability of employment in the area, the prevailing wage and salary levels in the area, the parent's special skills and training, whether there is evidence that the parent has the ability to earn the income, the age and special needs of the child for whom support is being calculated, and the parent's increased earning capacity because of experience. The bill includes as an additional enumerated factor the parent's decreased earning capacity because of a prior felony conviction.

The bill also adds that a court or CSEA may disregard a parent's additional income from overtime or additional employment when the court or CSEA finds that the additional income was generated primarily to support a new or additional family member or members, or under other appropriate circumstances.

Finally, the bill provides that if both parents involved in the immediate child support determination have a prior order for support for a minor child or children born to both parents, the court or CSEA must collect information about the existing order or orders and consider those together with the current calculation for support to ensure that the total of all orders for all children of the parties does not exceed the amount that would have been ordered if all children were addressed in a single judicial or administrative proceeding.

According to a spokesperson for the Ohio CSEA Directors' Association, all of these child support provisions will likely have a minimal fiscal impact on CSEAs and courts.

Bureau of Motor Vehicles

Installment payment plan for license reinstatement fees

The bill permits the Registrar of Motor Vehicles, with the approval of the Director of Public Safety, to adopt rules that permit a person to pay reinstatement fees

in installments. This provision may result in a long-term gain in revenues (although possibly a short-term loss as a result of people choosing to make installment payments rather than paying the whole reinstatement fee at one time) for the State Bureau of Motor Vehicles Fund (Fund 4W40), as well as the other funds that receive reinstatement fees, as it would likely encourage more people to pay their reinstatement fees since they would be able to pay them off over time as opposed to one lump sum. The other funds that receive reinstatement fees include the Financial Responsibility Compliance Fund (Fund 8350), the Indigent Drivers Interlock and Alcohol Monitoring Fund (Fund 5FF0), the Trauma and EMS Grants Fund (Fund 83P0), the Statewide Treatment and Prevention Fund (Fund 4750), the Reparations Fund (Fund 4020), the Drug Abuse Resistance Education Fund (Fund 4L60), the Rehabilitation Services Commission Fund (Fund 4L10), and the Indigent Defense Support Fund (Fund 5DY0).

According to the Department of Public Safety, this provision may also result in an increase in one-time and ongoing administrative expenditures, likely from Fund 4W40. The costs would include a major programming effort to develop a system to accept payments, track timeliness of payments, re-suspend drivers for failing to make payments, etc. The Department may also need an increase in staff to monitor these cases and the additional payments created by an installment plan.

Financial responsibility suspensions

The bill eliminates the requirement that the Registrar suspend the driver's license of any person who is named in a motor vehicle accident report that alleges that the person was uninsured at the time of the accident and the person then fails to give to the Registrar acceptable proof of financial responsibility. This provision, depending on the number of instances of this type of event that occur, could result in a loss in revenues for the Financial Responsibility Compliance Fund (Fund 8350), which is used by the Department of Public Safety, as well as the Indigent Defense Support Fund (Fund 5DY0), which is used by the Public Defender Commission, because the provision could result in fewer license suspensions, thereby resulting in fewer reinstatement fees collected by the Department.

Feasibility study of establishing a one-time amnesty program

The bill also requires the Department of Public Safety to conduct an advisability and feasibility study of establishing a one-time amnesty program for the payment of fees and fines owed by persons who have been convicted of motor vehicle traffic and equipment offenses or have had their driver's license, commercial driver's license, or temporary instruction permit suspended for any reason, and to issue a report on the study no later than six months after the effective date of the bill. This provision would result in a one-time increase in expenditures in order to conduct the study and issue a final report.