



Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 80

128th General Assembly

(As Reported by S. Judiciary - Civil Justice)

Sens. Seitz, Wagoner, Gibbs, Coughlin, D. Miller, Stewart, Hughes, Schuring, Patton, Widener, Schaffer, Turner, Kearney

BILL SUMMARY

- Creates a testimonial privilege, subject to specific exceptions, for communications between an accountant and the accountant's client.

CONTENT AND OPERATION

Existing testimonial privilege law

The existing law on testimonial privilege, which the bill expands, shields testimony concerning communications made between certain persons, subject to specified exceptions. Generally, communications made between the following or concerning certain information or acts are protected by this testimonial privilege: attorney and client; physician or dentist and patient; member of the clergy, rabbi, priest, Christian Science practitioner, or minister, concerning a confession made or information confidentially communicated for a religious counseling purpose; husband and wife, concerning communications made by one to the other, or acts done in the presence of each other, during coverture; a person assigning a claim or interest, concerning any matter in respect to which the person would not, if a party, be permitted to testify; a person who, if a party, would be restricted under continuing law regarding testifying in an action involving specified adverse parties (R.C. 2317.03, not in the bill), when the property or thing is sold or transferred by an executor, administrator, guardian, trustee, heir, devisee, or legatee; school guidance counselor, professional clinical counselor, professional counselor, social worker, independent social worker, marriage and family therapist, independent marriage and family therapist, or registered social work assistant, and client; mediator acting under a mediation order issued under continuing law or issued in any proceeding for divorce, dissolution, legal separation, annulment, or the allocation of parental rights and responsibility for the care of children, concerning

information in the mediation process; communications assistant, when providing telecommunications relay service pursuant to Ohio law (R.C. 4931.35, not in the bill) or the federal Communications Act of 1934; chiropractor and patient; critical incident stress management team member and individual receiving crisis response services from the team member; and employee assistance professional and client. (R.C. 2317.02.)

Accountant-client testimonial privilege

Under the bill, generally speaking, an accountant is prohibited from testifying concerning a communication made to the accountant by a client in that relation or the accountant's advice to the client. This prohibition does not apply, and an accountant may testify or may be compelled to testify concerning a communication or advice described above, if the client expressly consents to the accountant's testifying or if the client is deceased and the client's surviving spouse or the executor or administrator of the client's estate expressly consents to the accountant's testifying. If the client voluntarily testifies or if the client is deemed to have waived the accountant-client testimonial privilege, the prohibition does not apply and the accountant may testify or may be compelled to testify on the same subject upon which the client voluntarily testifies or on the same subject with respect to which the client is deemed to have waived the accountant-client testimonial privilege. The prohibition also does not apply to work papers or other work product of an accountant. (R.C. 2317.02(M)(1) to (4).)

Miscellaneous provisions

The bill specifies that the accountant-client testimonial privilege does not apply if the client sought or obtained the services of the accountant to enable or aid any person to commit or plan to commit what the client knew or reasonably should have known to be fraud or a crime, that the accountant-client testimonial privilege is not applicable to a client receiving certain audits conducted by the State Auditor, and that the accountant-client testimonial privilege is not affected by an accountant's participation in a peer review conducted in accordance with R.C. 4701.04 (see **COMMENT**). The bill also provides that the General Assembly intends that, insofar as the provisions of R.C. 2317.02(M) (accountant-client privilege) are similar to the provisions of R.C. 2317.02(A) (attorney-client privilege), the accountant-client testimonial privilege be construed, interpreted, and applied in a manner consistent with the attorney-client testimonial privilege. (R.C. 2317.02(M)(5) to (8).)

Definitions

The bill provides the following definitions for use in its new accountant-client testimonial privilege provisions (R.C. 2317.02(M)(9)):

- (1) "Public record" has the same meaning as in the Public Records Law.



(2) "Work papers or other work product" means any of the following:

(a) Federal, state, or local tax returns;

(b) Audit, review, compilation, or other similar reports;

(c) Financial reports that have been disclosed to third parties, that are public records or otherwise are required by Ohio law or U.S. law to be made public, or that are mere data compilations;

(d) Financial information that does not include deliberative communications made to an accountant by a client in that relation or the accountant's advice to the client in connection with those deliberative communications and that is not covered by (a), (b), or (c), above.

(3) "Accountant" means a person who holds a valid permit to practice public accounting pursuant to Ohio law regarding the licensing of accountants.

COMMENT

Under existing law, a public accounting firm cannot practice under the firm's name in Ohio unless it registers with the Accountancy Board. As a condition for initial or renewal registration, the Accountancy Board by rule must require a public accounting firm to undergo a peer review to determine the firm's degree of compliance in the practice of public accounting with generally accepted accounting principles and auditing standards and other generally accepted technical standards, unless certain exceptions apply to the firm. The disclosure of information obtained during or in connection with the peer process, for other than specified peer review purposes, is generally prohibited. (R.C. 4701.04(A), (F), and (G)(4), not in the bill.)

Existing law specifies that, in any civil action, arbitration, or administrative proceeding involving a public accounting firm, the proceedings, records, and work papers of any reviewer (including Accountancy Board members and peer review committee members) in the peer review process are privileged, are not subject to discovery, subpoena, or other means of legal process, and may not be introduced into evidence and a reviewer is not permitted to and cannot be required to testify as to any matters produced, presented, disclosed, or discussed during or in connection with the peer review process and cannot be required to testify to any finding, recommendation, evaluation, opinion, or other actions of a peer review committee or its members. This privilege does not exist relative to information presented or considered in the peer review process that was otherwise available to the public or materials prepared in connection with a particular engagement merely because they subsequently are

presented or considered as part of the peer review process. (R.C. 4701.04(K), not in the bill.)

HISTORY

ACTION	DATE
Introduced	03-12-09
Reported, S. Judiciary - Civil Justice	05-07-09

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