



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

Sarah A. Maki

Am. H.B. 405

132nd General Assembly
(As Passed by the General Assembly)

- Reps.** Perales, Butler, Boccieri, Dever, Fedor, Miller, Schaffer, Sheehy, Slaby, K. Smith, Sweeney, Vitale, Manning, Rezabek, Celebrezze, Galonski, Rogers, Seitz, Anielski, Antonio, Arndt, Ashford, Barnes, Boyd, Brown, Craig, Cupp, Faber, Gavarone, Ginter, Green, Greenspan, Hagan, Hambley, Henne, Holmes, Hoops, Huffman, Hughes, Kick, Landis, Lanese, Lang, Leland, Lepore-Hagan, O'Brien, Patmon, Patterson, Riedel, Romanchuk, Ryan, Schuring, Sprague, Stein, Strahorn, Young, Zeltwanger
- Sens.** Bacon, Coley, Burke, Eklund, Gardner, Hackett, Hoagland, Huffman, Kunze, LaRose, McColley, Obhof, O'Brien, Oelslager, Schiavoni, Thomas, Uecker, Wilson

Effective date: January 22, 2019

ACT SUMMARY

- Creates the criminal offense of counterfeiting which prohibits certain conduct involving counterfeited, forged, or altered U.S. currency, other U.S. securities, or debit or credit cards.
- Specifies penalties ranging from a fourth degree felony to a first degree felony based on the value of the counterfeited items or the number of debit or credit cards.
- Provides that a person may be prosecuted for counterfeiting and related offenses, but if the offenses involve the same conduct and the same victim, the person may only be convicted of one offense.
- Adds counterfeiting, and any comparable offense in another state, to the list of offenses included within the definition of corrupt activity under the Corrupt Activities Law.

* This version updates the effective date.

CONTENT AND OPERATION

Offense of counterfeiting

Prohibited conduct

The act creates the offense of "counterfeiting." A person is guilty of counterfeiting if the person does any of the following in order to purposely defraud or knowingly facilitate a fraud:¹

(1) Falsely makes, forges, counterfeits, or alters any "obligation or other security" (meaning, an instrument recognized as currency or legal tender or that is issued by the U.S. Treasury, including bills, coins, bonds, or checks²) of the United States;

(2) Passes, "utters" (meaning, issues, publishes, transfers, uses, puts or sends into circulation, delivers, or displays³), sells, purchases, conceals, or transfers any counterfeit obligation or other security of the United States;

(3) Possesses any obligation or other security of the United States, if the following are true: (a) the person possesses the obligation or other security with purpose to utter it, and (b) the person knows the obligation or other security has been counterfeited;

(4) Falsely makes, forges, counterfeits, alters, or knowingly possesses any "access device" (meaning, any debit or credit card representing a monetary security or retail amount by any financial institution, including a bank, savings bank, savings and loan association, credit union, or business entity⁴) without the authorization of the user.

Penalties

Under the act, the penalty for counterfeiting generally is a fourth degree felony with a mandatory fine of at least \$500 and not more than \$5,000. The penalty for counterfeiting may increase based on the value of the counterfeited obligations or other securities or access devices or the number of access devices involved, as follows:⁵

¹ R.C. 2913.30(B).

² R.C. 2913.30(A)(2).

³ R.C. 2913.01(H), not in the act.

⁴ R.C. 2913.30(A)(1).

⁵ R.C. 2913.30(C).



- If the value of the counterfeited items is \$5,000 or more but less than \$100,000, or if the offense involves five or more access devices, counterfeiting is a third degree felony.
- If the value of the counterfeited items is \$100,000 or more but less than \$1 million, counterfeiting is a second degree felony.
- If the value of the counterfeited items is \$1 million or more, counterfeiting is a first degree felony.

Allied offenses of similar import

The act makes counterfeiting an "allied offense of similar import." Under continuing law, unchanged by the act, when the same conduct by a person can be construed to constitute two or more allied offenses of similar import, the person may be charged with all of those offenses but may be "convicted" of only one of them.⁶ Ohio's courts have held that, as used in this provision, a "conviction" consists of a guilty verdict *and* the imposition of a sentence or penalty.⁷

The act states that a prosecution for counterfeiting does not preclude prosecution for theft, forgery, forging identification cards or selling or distributing forged identification cards, or criminal simulation. The act further provides that if a person is convicted of counterfeiting and another of those offenses based on the same conduct involving the same victim as under the counterfeiting offense, the two or more offenses are allied offenses of similar import. This means that the person may be found guilty of and sentenced for only one of the offenses.⁸

Corrupt activity

The act adds the crime of counterfeiting to the definition of "corrupt activity" for purposes of the Corrupt Activities Law. Corrupt activity means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in: (1) any of a list of offenses specified in continuing law, (2) any conduct constituting a substantially similar offense in another state if the defendant was convicted of the conduct in the other state, or (3) racketeering activity under federal law, animal or ecological terrorism, or certain organized retail theft conduct.⁹

⁶ R.C. 2941.25(A), not in the act.

⁷ See, e.g., *State v. Williams* (2016), 148 Ohio St.3d 403.

⁸ R.C. 2913.30(D).

⁹ R.C. 2923.31(I).



Under continuing law, unchanged by the act, a person is prohibited from engaging in a "pattern of corrupt activity." A pattern of corrupt activity means two or more incidents of corrupt activity related to the affairs of the same enterprise, regardless of whether there has been a conviction. The incidents must neither be isolated nor so closely related to each other and connected in time and place that they constitute a single event; at least one of the incidents must have occurred on or after January 1, 1986, and generally, the last of the incidents must have occurred within six years of any of the prior incidents.¹⁰

A person who engages in a pattern of corrupt activity may be subject to criminal penalties and fines, property forfeiture, a civil proceeding from a person seeking relief, and a corrupt activity lien.¹¹

HISTORY

ACTION	DATE
Introduced	11-07-17
Reported, H. Criminal Justice	01-24-18
Passed House (92-1)	03-21-18
Reported, S. Judiciary	06-06-18
Passed Senate (31-0)	09-25-18

18-HB405-UPDATED-132.docx/ks

¹⁰ R.C. 2923.31(E).

¹¹ R.C. 2923.32, 2923.34, and 2923.36, not in the act.

