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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 366\*  
135<sup>th</sup> General Assembly

## Bill Analysis

[Click here for H.B. 366's Fiscal Note](#)

**Version:** As Reported by Senate Judiciary

**Primary Sponsor:** Rep. Ghanbari

Ashley F. Dean, Attorney

### SUMMARY

#### **Fight Organized Retail Crime and Empower Law Enforcement (FORCE) Act**

- Names the act the Fight Organized Retail Crime and Empower Law Enforcement (FORCE) Act.

#### **Organized Retail Theft Task force**

- Establishes the Organized Retail Theft Task Force within the Organized Crime Investigations Commission, to investigate retail theft activity, including cargo theft, and any complaint received involving retail theft.
- Requires the Organized Crime Investigation Commission to appoint a director and specified members of the Organized Retail Theft Task Force.
- Increases the fee for a sales tax vendor license from \$25 to \$50, and directs that additional money to be used by the Organized Crime Investigations Commission exclusively to support the operations of the Organized Retail Theft Task Force.

#### **Organized Retail Theft Advisory Council**

- Creates the Organized Retail Theft Advisory Council within the Attorney General's office.
- Requires the Organized Retail Theft Advisory Council to advise the Organized Crime Investigations Commission on organized retail theft and recommend actions for the commission to detect, deter, prevent, and prosecute organized retail theft.

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\* This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

## **Theft**

- Specifies that an offender is guilty of grand theft, a fourth degree felony, if the offender has been convicted of or pleaded guilty to a felony theft offense within the previous three years.
- Specifies that an offender is guilty of aggravated theft, a third degree felony, if the offender two or more times has been convicted of or pleaded guilty to a felony theft offense within the previous three years.
- Specifies that an offender is guilty of theft from a person in a protected class, a fourth degree felony, if the offender has been convicted of or pleaded guilty to a felony theft offense within the previous three years, and a third degree felony if the offender two or more times has been convicted of or pleaded guilty to a felony theft offense within the previous three years.

## **Theft of mail**

- Creates the crime of theft of mail, which is generally a fifth degree felony, but can escalate as high as a first degree felony depending on the value of the mail stolen and other specified circumstances.

## **Organized theft of retail property**

- Creates the crime of organized theft of retail property, which prohibits a person from doing any of the following:
  - Knowingly committing theft of retail property with a retail value of \$7,500 or more from a retail establishment, manufacturer, distributor, or cargo transportation unit for purposes of selling, delivering, or transferring that property to a retail property fence or for purposes of selling, delivering, transferring, exchanging, or returning the retail property for value;
  - Receiving, purchasing, or possessing retail property with a retail value of \$7,500 or more if the person is employed by, or associated with an enterprise and the person knows, believes, or has reasonable cause to believe that the property has been obtained by theft;
  - Knowingly acting as an agent of an enterprise to steal retail property with a retail value of \$7,500 or more from a retail establishment, manufacturer, distributor, or cargo transportation unit as part of an organized plan to commit theft;
  - Knowingly recruiting, coordinating, organizing, supervising, directing, managing, or financing an enterprise to commit any of the acts described in the three preceding dot points.
- Specifies that organized theft of retail property is generally a third degree felony, but can escalate as high as a first degree felony depending on the value of the retail property stolen and other specified circumstances.

- Provides that when determining whether the retail value of retail property equals or exceeds \$1,000, the value of all retail property stolen from the retail establishment or retail establishments by the same person or persons within any 6-month period will be aggregated.
- Provides that a prosecution for a violation of organized theft of retail property does not preclude a prosecution for theft, receiving stolen property, criminal simulation, or engaging in a pattern of corrupt activity related to organized retail theft based on the same conduct.
- Provides that if an offender is convicted of or pleads guilty to organized theft of retail property and is also convicted of or pleads guilty to a violation of theft, receiving stolen property, criminal simulation, or engaging in a pattern of corrupt activity related to organized retail theft based on the same conduct, the two or more offenses will be considered as allied offenses of similar import.

## **Counterfeiting**

- Expands the offense of counterfeiting to also prohibit the following:
  - Directly or indirectly using a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on an access device without the permission of the authorized user, the financial institution issuing the authorized user's access device, or a merchant.
  - Directly or indirectly using an encoding machine to place information encoded on an access device onto a different access device without permission from the authorized user of the access device, the financial institution issuing the authorized user's access device, or a merchant.

## **Corrupt activity**

- Provides that if a pattern of corrupt activity involves one or more incidents of organized retail theft, the retail establishment, manufacturer, distributor, cargo transportation unit, online marketplace, or group of those entities whose retail property was allegedly stolen may contact the prosecuting attorney and request that the charge be aggregated with other known thefts of retail property.

## **Securities Law**

- Revises a provision of the Ohio Securities Law that allows a corporation to recover profit derived from the sale of securities by a person who proposes to, or publicly discloses the intention of, acquiring control of a corporation.
- Limits application of that remedy to situations in which the person selling the securities engages in "manipulative practices," by staging a hostile takeover bid to manipulate a corporation or committing any other act that the Ohio Division of Securities defines as manipulative.

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## DETAILED ANALYSIS

### **Fight Organized Retail Crime and Empower Law Enforcement (FORCE) Act**

The bill names the act the Fight Organized Retail Crime and Empower Law Enforcement (FORCE) Act.<sup>1</sup>

### **Organized Retail Theft Task Force**

#### **Creation of Task Force**

The bill establishes an Organized Retail Theft Task Force within the Organized Crime Investigations Commission to investigate organized retail theft activity, including cargo theft. The Task Force may investigate based on any complaint filed or information the Task Force receives that gives reason to believe organized retail theft has occurred and continues to occur in one or more counties. The Task Force director and members of the Task Force must be appointed in the same manner as an organized crime task force established under existing law.<sup>2</sup>

Continuing law requires that, unless a statutory exception applies, any person engaged in making retail sales subject to sales tax is required to have a vendor’s license. Application for a vendor’s license must be made to the county auditor of each county in which the applicant desires to engage in business, and current law requires each applicant pay a license fee of \$25 to the county treasury for each fixed place of business in the county that will be the situs of retail sales. The bill increases this fee from \$25 to \$50, and specifies that the county auditor must

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<sup>1</sup> Section 3.

<sup>2</sup> R.C. 177.02(B)(2) and (3).

transmit \$25 of each license fee to the State Treasurer for deposit into the State Treasury to the credit of the Organized Crime Commission Fund. The bill directs that this money is to be used by the Organized Crime Investigations Commission exclusively to support the operations of the Organized Retail Theft Task Force.<sup>3</sup>

### **Definitions – organized theft of retail property**

As used in the creation of the Task Force described above, the bill defines the following term:<sup>4</sup>

- **“Cargo theft”** means the unlawful taking of any cargo including goods, chattels, money, or baggage that constitutes a commercial shipment of freight moving in any of the following:
  - Commerce;
  - A pipeline system;
  - A railroad car;
  - A motor truck or other vehicle;
  - A tank or storage facility;
  - A station house, platform, or depot;
  - A vessel or wharf;
  - An aircraft, airport terminal, airport, aircraft terminal, or air navigation facility;
  - An intermodal container, intermodal chassis, trailer, container freight station, warehouse, freight distribution facility, or freight consolidation facility.

### **Organized Retail Theft Advisory Council**

The bill creates the Organized Retail Theft Advisory Council within the office of the Attorney General, to consist of the following members:<sup>5</sup>

- The Attorney General or the Attorney General’s designee;
- An employee of the office of the Attorney General appointed by the Attorney General;
- The president or chief executive officer of the Ohio Council of Retail Merchants, or the president’s or chief executive officer’s designee;
- Two loss prevention representatives from retail businesses with more than 250 employees, two loss prevention representatives from retail businesses with less than 250 employees;

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<sup>3</sup> R.C. 177.011(A)(2) and (D), 177.02(D)(4), and 5739.17.

<sup>4</sup> R.C. 177.02(A)(1).

<sup>5</sup> R.C. 177.04(A).

- A member of the Ohio Prosecuting Attorneys Association, or a member of the Ohio Prosecuting Attorneys Association's designee;
- A member of the Ohio Grocers Association, or a member of the Ohio Grocers Association's designee.

The Attorney General must appoint the loss prevention representatives to the Advisory Council after consulting with statewide trade and professional organizations that represent the interests of retail businesses and loss prevention, and the organizations are allowed to nominate persons to be considered for appointment as council members.<sup>6</sup>

The Advisory Council must advise the Organized Crime Investigations Commission on organized retail theft and recommend actions for the Commission to detect, deter, prevent, and prosecute organized retail theft, and must meet at least quarterly. The Attorney General or the Attorney General's designee is the chairperson of the Advisory Council. The employee of the office of the Attorney General appointed to the Advisory Council must serve as liaison to the Organized Retail Theft Task Force. Members of the Advisory Council are not compensated, but will be reimbursed for actual and necessary expenses incurred in performing their official duties. The Organized Crime Investigations Commission may provide the Advisory Council with technical and clerical employees as necessary to accomplish its responsibilities mentioned under the bill.<sup>7</sup>

In addition to the duties described above, the bill allows the Advisory Council to engage in the following activities:<sup>8</sup>

1. Compiling and disseminating to retail businesses and law enforcement agencies innovative methods of detecting, deterring, preventing, and prosecuting organized retail theft;
2. Conducting training conferences to educate retail businesses and law enforcement agencies regarding current and emerging crime trends;
3. Consulting with national, state, and local law enforcement agencies and retail associations concerning organized retail theft;
4. Educating the public on the problems associated with organized retail theft.

## Theft

The bill modifies the penalties for theft as follows:

- For grand theft, a fourth degree felony if the offender has been convicted of or pleaded guilty to a felony theft offense within the previous three years.<sup>9</sup>

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<sup>6</sup> R.C. 177.04(B).

<sup>7</sup> R.C. 177.04(C) and (E).

<sup>8</sup> R.C. 177.04(D).

<sup>9</sup> R.C. 2913.02(B)(2).

- For aggravated theft, a third degree felony if the offender two or more times has been convicted of or pleaded guilty to a felony theft offense within the previous three years.<sup>10</sup>
- For theft from a person in a protected class, a fourth degree felony if the offender has been convicted of or pleaded guilty to a felony theft offense within the previous three years, and a third degree felony if the offender two or more times has been convicted of or pleaded guilty to a felony theft offense within the previous three years.<sup>11</sup>

## Theft of mail

The bill creates the offense of theft of mail. The bill prohibits a person, with purpose to deprive the owner of mail, from knowingly obtaining or exerting control over the mail in any of the following ways:<sup>12</sup>

- Without consent from the owner or person authorized to give consent;
- Beyond the scope of express or implied consent of the owner or person authorized to give consent;
- By deception;
- By threat;
- By intimidation.

Under the bill, if the property stolen is mail, the person commits the offense of theft of mail, a fifth degree felony. If the value of the mail is \$7,500 or more or, in the case of a victim who is an elderly person, disabled adult, active duty service member, or spouse of an active duty service member, \$1,000 or more, the bill specifies that the penalties for theft of mail escalate as under existing law from a fourth degree felony to a first degree felony, based on the value of the stolen mail.<sup>13</sup>

For purposes of this prohibition, “mail” is defined as any letter, card, parcel, or other material, along with its contents, that is received, accepted for delivery, delivered, or left for collection by a postal service, including the United States Postal Service, a common carrier, or a private delivery service.<sup>14</sup>

The bill specifies that a prosecution for theft of mail does not preclude a prosecution of a violation of any other Revised Code section. Under the bill, one or more acts, a series of acts, or a course of behavior that can be prosecuted under theft of mail, or any other Revised Code section may be prosecuted under theft of mail, another section or both. However, if an offender is convicted of or pleads guilty to theft of mail and is also convicted of or pleads guilty to theft

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<sup>10</sup> R.C. 2913.02(B)(2).

<sup>11</sup> R.C. 2913.02(B)(3).

<sup>12</sup> R.C. 2913.021(B).

<sup>13</sup> R.C. 2913.02(B)(2) and (3) and 2913.021(C).

<sup>14</sup> R.C. 2913.021(A).

based on the same conduct involving the same victim that was the basis of the theft of mail violation, the two offenses are allied offenses of similar import.<sup>15</sup>

## Organized theft of retail property

The bill creates the offense of organized theft of retail property. The bill prohibits the following:<sup>16</sup>

1. A person from knowingly committing “theft” (terms within quotes are defined terms, and definitions can be found in “**Definitions – organized theft of retail property,**” below) of “retail property” with a “retail value” of \$7,500 or more from a retail establishment, manufacturer, distributor, or cargo transportation unit for purposes of selling, delivering, or transferring that property to a “retail property fence” or for purposes of selling, delivering, transferring, exchanging, or returning the retail property for value;
2. A person employed by, or associated with an “enterprise,” from receiving, purchasing, or possessing retail property with a retail value of \$7,500 or more if the person knows, believes, or has reasonable cause to believe that the property has been obtained by theft;
3. A person from knowingly acting as an agent of an enterprise to steal retail property with a retail value of \$7,500 or more from a retail establishment, manufacturer, distributor, or cargo transportation unit as part of an organized plan to commit theft;
4. A person from knowingly recruiting, coordinating, organizing, supervising, directing, managing, or financing an enterprise to commit any of the acts described in (1) to (3), above.

The penalty for organized theft of retail property depends on the retail value of the items stolen. If the retail value is less than \$750,000, organized theft of retail property is a third degree felony. If the retail value is \$750,000 or more but less than \$1,500,000, organized theft of retail property is a second degree felony. If the retail value of the property is \$1,500,000 or more, organized theft of retail property is a first degree felony.<sup>17</sup>

The bill specifies that if organized theft of retail property is a third degree felony and if the offender previously has been convicted of or pleaded guilty to organized theft of retail property or, within the prior three years, any felony theft offense, there is a presumption of a prison term for the offense. If organized theft of retail property is a third degree felony and if the offender two or more times previously has been convicted of or pleaded guilty to organized theft of retail property, or, within the prior three years, two or more felony theft offenses, the court must impose as a mandatory prison term one of the prison terms prescribed for a third degree felony.<sup>18</sup>

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<sup>15</sup> R.C. 2913.021(D).

<sup>16</sup> R.C. 2913.08(B), (C), (D), and (E).

<sup>17</sup> R.C. 2913.08(F).

<sup>18</sup> R.C. 2913.08(F).



The bill provides that when determining whether the retail value of retail property equals or exceeds \$7,500, the value of all retail property stolen from the retail establishment or retail establishments by the same person or persons within any 12-month period will be aggregated.<sup>19</sup> A prosecution for organized theft of retail property does not preclude a prosecution for theft, receiving stolen property, criminal simulation, or engaging in a pattern of corrupt activity related to organized retail theft based on the same conduct. However, if an offender is convicted of or pleads guilty to a violation of organized theft of retail property and is also convicted of or pleads guilty to a violation of theft, receiving stolen property, criminal simulation, or engaging in a pattern of corrupt activity related to organized retail theft based on the same conduct that was the basis of the violation of organized theft of retail property, the two or more offenses are allied offenses of similar import.<sup>20</sup>

The bill adds the offense of organized theft of retail property to the list of offenses that constitute a “theft offense” for purposes of the use of that term in Ohio’s Theft and Fraud Law, and certain other specified places throughout the Revised Code that reference a “theft offense” as defined in Ohio’s Theft and Fraud Law.<sup>21</sup>

### **Definitions – organized theft of retail property**

As used in regards to the offense of organized theft of retail property described above, the bill defines the following terms:<sup>22</sup>

- **“Enterprise”** includes any individual, sole proprietorship, partnership, limited partnership, corporation, trust, union, government agency, or other legal entity, or any organization, association, or group of persons associated in fact although not a legal entity. “Enterprise” includes illicit as well as licit enterprises.
- **“Retail property”** means any tangible personal property displayed, held, stored, transported, or offered for sale in or by a retail establishment, manufacturer, distributor, or an online marketplace. “Retail property” includes gift cards.
- **“Retail property fence”** means an enterprise that possesses, procures, receives, or conceals retail property that was represented to the enterprise as being stolen or that the enterprise knows or believes to be stolen.
- **“Retail value”** means the full retail value of the retail property, including all applicable taxes and shipping costs.
- **“Theft”** means conduct that would constitute a violation of the crime of theft, which is when a person, with purpose to deprive the owner of property, knowingly obtains or exerts control over the property without consent from the owner, beyond the scope of

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<sup>19</sup> R.C. 2913.08(G).

<sup>20</sup> R.C. 2913.08(G) and (H).

<sup>21</sup> R.C. 2913.01(K).

<sup>22</sup> R.C. 2913.08(A).

express or implied consent of the owner or person authorized to give consent, by deception, by threat, or by intimidation.

## Counterfeiting

Under continuing law, the offense of counterfeiting prohibits a person, with purpose to defraud or knowing that the person is facilitating a fraud, from doing any of the following:<sup>23</sup>

1. Falsely making, forging, counterfeiting, or altering any obligation or other security of the United States;
2. Passing, uttering, selling, purchasing, concealing, or transferring any counterfeit obligation or other security of the United States;
3. Possessing with the purpose to utter any obligation or other security of the United States, knowing that the obligation or other security has been counterfeited;
4. Without authorization of the issuer, falsely making, forging, counterfeiting, altering, or knowingly possessing any access device.

The bill expands the offense of counterfeiting to also prohibit the following:<sup>24</sup>

1. Directly or indirectly using a “scanning device” (terms within quotes are defined terms, and definitions can be found in “**Definitions – counterfeiting**,” below) to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on an “access device” without the permission of the authorized user of the access device, the financial institution issuing the authorized user’s access device, or a “merchant”;
2. Directly or indirectly using an “encoding machine” to place information encoded on an access device onto a different access device without the permission of the authorized user of the access device from which the information was obtained, the financial institution issuing the authorized user’s access device, or a merchant.

Counterfeiting is generally a fourth degree felony, and the court must impose on the offender a fine ranging from \$500 to \$5,000. If the value of the counterfeited obligations or other securities or access devices 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 is \$100,000 or more but less than \$1,000,000, counterfeiting is a second degree felony. If the value is \$1,000,000 or more, counterfeiting is a first degree felony.

### Definitions – counterfeiting

As used in the counterfeiting offense described above, the bill defines the following terms:<sup>25</sup>

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<sup>23</sup> R.C. 2913.30(B).

<sup>24</sup> R.C. 2913.30(B)(5) and (6).

<sup>25</sup> R.C. 2913.30(A).

- **“Encoding machine”** means an electronic device that is used to encode information onto an access device.
- **“Merchant”** means an owner or operator of a retail establishment or an agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of the owner or operator.
- **“Scanning device”** means a scanner, reader, wireless access device, radio frequency identification scanner, an electronic device that utilizes near field communication technology, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on an access device.

The existing law definition of **“access device”** (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 entity) is expanded to include a gift card.

## **Corrupt activity**

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.<sup>26</sup>

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.<sup>27</sup> The bill further specifies that if a pattern of corrupt activity involves one or more incidents of organized retail theft, the retail establishment, manufacturer, distributor, cargo transportation unit, online marketplace, or group of those entities whose retail property is alleged to have been stolen may contact the prosecuting attorney and request that the charge be aggregated with other thefts of retail property about which the retail establishment or group of establishments is aware. In determining whether the retail value of stolen retail property equals or exceeds \$1,000, the value of all retail property stolen from the retail establishment or group of establishments by the same person or persons within any six-month period must be aggregated.<sup>28</sup>

## **Securities Law**

Ohio corporations and their shareholders are permitted, under continuing law, to recover any profits realized from the “disposition of equity securities” by a person from the sale of the

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<sup>26</sup> R.C. 2923.31(E), not in the bill.

<sup>27</sup> R.C. 2923.32 and R.C. 2923.34 and 2923.36, not in the bill.

<sup>28</sup> R.C. 2923.32(C).

corporation's shares when the shares are sold within 18 months after such person either (1) proposed to acquire control of the corporation, or (2) publicly disclosed the intention or possibility of making such proposal. Current law provides that such remedy is available for the purpose of "preventing manipulative practices."

The bill specifies that such remedy is not available unless the person who proposed acquiring control of the corporation actually engaged in manipulative practices. Furthermore, the bill defines "manipulative practices" as the act of staging a hostile takeover bid to manipulate a corporation into repurchasing its own common stock at a premium above the current market price, or any other act that the Ohio Division of Securities defines as a "manipulative practice" pursuant to existing law authority.

Current law defines the "disposition of equity securities of a corporation" as any sale exchange, transfer, or other disposition of any kind of the equity securities or any contract to sell, exchange, transfer, or otherwise dispose of the equity securities to any other person, including the corporation for valuable consideration. The bill revises the definition by including only the sale, exchange, transfer, or other dispositions made to the corporation qualify under the statute. The bill also specifies that "to acquire control of the corporation" does not include attempts by shareholders to generally influence a corporation's policies or actions, including the nomination of candidates for director of the corporation.<sup>29</sup>

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## HISTORY

Action	Date
Introduced	12-19-23
Reported, H. Criminal Justice	06-25-24
Passed House (69-27)	06-26-24
Reported, S. Judiciary	---

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<sup>29</sup> R.C. 1707.043.