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SUMMARY

Illegal use of a tracking device or application

- Prohibits a person from knowingly installing a tracking device or tracking application on another person's property without the other person's consent.
- Specifies that the offense of "illegal use of a tracking device or application," is generally a first degree misdemeanor.
- Specifies that illegal use of a tracking device or application is a fourth degree felony in listed circumstances.
- Specifies circumstances in which previously granted consent to the installation of a tracking device or application is presumed to be revoked and situations that are exempt from the prohibition.

Penalties for selling tobacco products to underage persons

- Specifies fines for repeated violations of the prohibitions against selling tobacco products to underage persons and selling tobacco products without checking the consumer's identification.
- Expands the definition of "public nuisance" to include those places or businesses that repeatedly violate the prohibitions against selling tobacco products to underage persons or selling tobacco products without checking the consumer's identification.

Oral fluid testing

- Authorizes law enforcement to collect an oral fluid sample from a person arrested for operating a vehicle under the influence (OVI).
- Authorizes the testing of that oral fluid sample for the presence of a drug of abuse or a metabolite of a drug of abuse.

- Authorizes the oral fluid sample and its test results to be used as evidence related to charges that a person operated a vehicle while “under the influence of alcohol, a drug of abuse, or a combination of them” (the general OVI prohibition).
- Specifies that any person who operates a vehicle or who is in physical control of a vehicle has given consent to have that person’s oral fluid collected and tested if arrested for OVI (“implied consent”).
- Makes conforming changes to the laws governing OVI while operating a watercraft or a commercial motor vehicle and the release of drug test records in criminal cases.

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DETAILED ANALYSIS

Illegal use of a tracking device or application

The act enacts a provision that, subject to the exceptions described below, prohibits a “person” (see “**Definitions**,” below) from knowingly doing either of the following:¹

1. Installing a “tracking device” or “tracking application” (see “**Definitions**,” below) on another person’s property without the other person’s consent, or causing a tracking device or tracking application to track the position or movement of another person or another person’s property without the other person’s consent.
2. If the person installed a tracking device or tracking application on another’s property with the other person’s consent, and the other person subsequently revokes that consent, failing to remove or ensure removal of the device or application after the other person revokes the consent.

¹ R.C. 2903.216(B).

A violation of this prohibition is the offense of “illegal use of a tracking device or application,” generally a first degree misdemeanor.² Illegal use of a tracking device or application is a fourth degree felony if any of the following applies:³

- The offender previously has been convicted of or pleaded guilty to the offense of illegal use of a tracking device or application or menacing by stalking.
- At the time of the commission of the offense, the offender was the subject of a protection order, regardless of whether the person to be protected under the order is the victim of the offense or another person.
- Prior to committing the offense, the offender had been determined to represent a substantial risk of physical harm to others as manifested by evidence of then-recent homicidal or other violent behavior, evidence of then-recent threats that placed another in reasonable fear of violent behavior and serious physical harm, or other evidence of then-present dangerousness.
- The offender has a history of violence toward the victim or of other violent acts towards the victim.

Presumption of revocation of prior consent

The act specifies that if a person has given consent for another to install a tracking device or application on the consenting person’s property, the consent is presumed to be revoked if any of the following applies:⁴

- The consenting person and the person to whom consent was given are lawfully married and one of them files a complaint for divorce or a petition for dissolution of marriage from the other.
- The consenting person or the person to whom consent was given files an “Ohio protection order” (see “**Definitions**,” below) against the other person or an Ohio protection order is issued against the other person, and the person to be protected under the order is the consenting person.

Not later than 72 hours after being served with a complaint for divorce or a petition for dissolution of marriage or the issuance of an Ohio protection order, the person to whom consent was given must lawfully uninstall or discontinue use of the tracking device or tracking application. If the person to whom consent was given cannot lawfully uninstall or discontinue use of the tracking device or tracking application, the person to whom consent was given must

² R.C. 2903.216(F)(1).

³ R.C. 2903.216(F)(2).

⁴ R.C. 2903.216(C)(1).

notify the court in which the complaint for divorce or the petition for dissolution of marriage was filed or the court that issued the Ohio protection order in writing.⁵

Revocation of consent under the above listed circumstances is effective upon the service of the petition or motion, or an Ohio protection order.⁶

Exceptions

The act provides exceptions to its general prohibition against knowingly installing a tracking device or application in the following situations:⁷

- A law enforcement officer, or any “law enforcement agency” (see “**Definitions**,” below), that installs a tracking device or application on another person’s property or causes a tracking device or tracking application to track the position or movement of another person or another person’s property as part of a criminal investigation, or a probation officer, parole officer, or employee of the Department of Rehabilitation and Correction (DRC), a halfway house, or a community-based correctional facility when engaged in the lawful performance of the officer’s or employee’s official duties.
- A parent or legal guardian of a minor child who installs or uses a tracking device or application to track the minor child if any of the following applies:
 - The child’s parents or legal guardians are lawfully married to each other and are not separated or otherwise living apart, and either of those parents or legal guardians consents to the installation of the tracking device or application;
 - The child’s parent or legal guardian is the sole surviving parent or legal guardian of the child;
 - The child’s parent or legal guardian has sole custody of the child;
 - The child’s parents or legal guardians are divorced, separated, or otherwise living apart and neither parent has sole custody of the child, and both consent to the installation of the tracking device or application.
 - The child’s parents or legal guardians are divorced, separated, or otherwise living apart, neither parent has sole custody of the child, and either only one parent consents to the installation of the tracking device or tracking application or one parent revokes consent, if the consenting parent only uses the tracking device or tracking application during that parent’s parenting or custodial time and disables or removes the tracking device or application during the nonconsenting parent’s parenting or custodial time.

⁵ R.C. 2903.216(C)(1)(a) and (b).

⁶ R.C. 2903.216(C)(2).

⁷ R.C. 2903.216(D).

- A caregiver of an “elderly person” or “disabled adult” (see “**Definitions**,” below), if the elderly person’s or disabled adult’s treating physician certifies that the installation of a tracking device or application onto the elderly person’s or disabled adult’s property is necessary to ensure the elderly person or disabled adult’s safety.
- A person acting in good faith on behalf of a “business entity” for a legitimate business purpose, with the exception that this does not apply to a “private investigator” engaged in the “business of private investigation” (see “**Definitions**,” below) on behalf of another person.
- A private investigator, or other person licensed as a private investigator under a class B license, as a security guard provider under a class C license, or as a private investigator and a security guard provider under a class A license, who is acting in the normal course of the investigator’s private investigation business on behalf of another person and who has the consent of the owner of the property upon which the tracking device or tracking application is installed for the purpose of obtaining information regarding any of the following:
 - Criminal offenses committed, threatened, or suspected against the United States, a U.S. territory, a state, or any person or legal entity;
 - Locating an individual known to be a fugitive from justice;
 - Locating lost or stolen property or other assets that have been awarded by the court;
 - Investigating claims related to worker’s compensation.
 - ❖ This exception does not apply if the person on whose behalf the private investigator is working is the subject of an Ohio protection order or a “protection order issued by a court of another state” (see “**Definitions**,” below), or if the private investigator knows or reasonably should know that the person on whose behalf the private investigator is working seeks the investigator’s services to aid in the commission of a crime.
- An owner or lessee of a motor vehicle who installs, or directs the installation of, a tracking device or application on the vehicle during the period of ownership or lease, if any of the following applies:
 - The tracking device or application is removed before the vehicle’s title is transferred or the lease expires;
 - The new owner of the vehicle, in the case of a sale, or the lessor of the vehicle, in the case of an expired lease, consents in writing to the nonremoval of the tracking device or application;
 - The owner of the vehicle at the time of the installation of the tracking device or application was the original manufacturer of the vehicle.
- A person who installs a tracking device or application on property in which the person has an ownership or contractual interest, unless the person is the subject of a protective

order and the property is likely to be used by the person who obtained the protective order.

- A person or business entity that installs a tracking device or tracking application on any fixed wing aircraft or rotorcraft operated or managed by the person or business entity pursuant to 14 C.F.R. part 91 or part 135 to track the position or movement of the fixed wing aircraft or rotorcraft.
- A surety bail bond agent, or any employee or contractor of a surety bail bond agent; that installs a tracking device or tracking application on another person's property or causes a tracking device or tracking application to track the position or movement of another person or another person's property as part of the surety bail bond agent's, employee's, or contractor's official responsibilities or duties.

For purposes of the first bullet point above, a probation officer, parole officer, or employee of DRC, a halfway house, or a community-based correctional facility is engaged in the lawful performance of the officer's or employee's duties if both of the following apply:⁸

- The court or DRC imposes electronic monitoring on a person.
- The officer or employee installs or uses an electronic monitoring device on that person in accordance with the court's or DRC's imposition of electronic monitoring of that person.

Definitions

The act defines the following terms for purposes of its provisions described above:⁹

"Business entity" means any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in Ohio.

"Business of private investigation" means, except under specified circumstances, the conducting, for hire, in person or through a partner or employees, of any investigation relevant to any crime or wrong done or threatened, or to obtain information on the identity, habits, conduct, movements, whereabouts, affiliations, transactions, reputation, credibility, or character of any person, or to locate and recover lost or stolen property, or to determine the cause of or responsibility for any libel or slander, or any fire, accident, or damage to property, or to secure evidence for use in any legislative, administrative, or judicial investigation or proceeding.

"Private investigator" means any person who engages in the business of private investigation.

"Disabled adult" means a person who is 18 or older and has some impairment of body or mind that makes the person unable to work at any substantially remunerative employment

⁸ R.C. 2903.216(E).

⁹ R.C. 2903.216(A), including by reference to R.C. 4749.01, 2913.01, 2919.27, and 2929.01, not in the act.

that the person otherwise would be able to perform and that will, with reasonable probability, continue for a period of at least 12 months without any present indication of recovery from the impairment, or who is 18 or older and has been certified as permanently and totally disabled by an Ohio agency or the United States.

“Elderly person” means a person who is 65 or older.

“Electronic monitoring” means monitoring through the use of an electronic monitoring device.

“Electronic monitoring device” means any of the following:

- Any device that can be operated by electrical or battery power and that conforms with all of the following:
 - The device has a transmitter that can be attached to a person, that will transmit a specified signal to a receiver if the transmitter is removed from the person, turned off, or altered in any manner without prior court approval in relation to electronic monitoring or without prior approval of DRC in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with, that can transmit continuously and periodically a signal to that receiver when the person is within a specified distance from the receiver, and that can transmit an appropriate signal to that receiver if the person to whom it is attached travels a specified distance from that receiver.
 - The device has a receiver that can receive continuously the signals transmitted by a transmitter, can transmit continuously those signals by a wireless or landline telephone connection to a central monitoring computer, and can transmit continuously an appropriate signal to that central monitoring computer if the device has been turned off or altered without prior court approval or otherwise tampered with. The device is designed specifically for use in electronic monitoring, is not a converted wireless phone or another tracking device that is clearly not designed for electronic monitoring, and provides a means of text-based or voice communication with the person.
 - The device has a central monitoring computer that can receive continuously the signals transmitted by a wireless or landline telephone connection by a receiver and can monitor continuously the person to whom an electronic monitoring device is attached.
- Any device that is not described above and that conforms with all of the following:
 - The device includes a transmitter and receiver that can monitor and determine the location of a subject person at any time, or at a designated point in time, through the use of a central monitoring computer or through other electronic means.
 - The device includes a transmitter and receiver that can determine at any time, or at a designated point in time, through the use of a central monitoring computer or other electronic means the fact that the transmitter is turned off or altered in any manner without prior approval of the court in relation to the electronic monitoring

or without prior approval of DRC in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with.

- Any type of technology that can adequately track or determine the location of a subject person at any time and that is approved by the DRC Director, including, but not limited to, any satellite technology, voice tracking system, or retinal scanning system that is so approved.

“Law enforcement agency” means any organization or unit comprised of law enforcement officers, and also includes any federal or military law enforcement agency.

“Person” means an individual, but does not include a business entity.

“Ohio protection order” means a protection order filed or issued or a consent agreement approved upon a motion and hearing for a protection order, as part of a domestic violence hearing, or a no contact order issued as any of the following:

- As a part of a person’s sentence under a community control sanction;
- As a term or condition of a person’s release under sentence reduction through judicial release;
- As a post-release control sanction imposed as a condition of a person’s post-release control;
- As a term of supervision for a person transferred to transitional control;
- As a term or condition of the intervention plan of a person granted intervention in lieu of conviction.

“Protection order issued by a court of another state” means an injunction or another order issued by a criminal court of another state for the purpose of preventing violent or threatening acts or harassment against, contact or communication with, or physical proximity to another person, including a temporary order, and means an injunction or order of that nature issued by a civil court of another state, including a temporary order and a final order issued in an independent action or as a pendente lite order in a proceeding for other relief, if the court issued it in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection. “Protection order issued by a court of another state” does not include an order for support or for custody of a child issued pursuant to the divorce and child custody laws of another state, except to the extent that the order for support or for custody of a child is entitled to full faith and credit under the laws of the United States.

“Tracking application” means any software program that permits a person to remotely determine or track the position or movement of another person or another person’s property.

“Tracking device” means an electronic or mechanical device that permits a person to remotely determine or track the position or movement of another person or another person’s property, including an electronic monitoring device.

Penalties for selling tobacco products to underage persons

Overview

The act amends the methods used to enforce the prohibitions against selling tobacco products to underage persons, and selling tobacco products without checking the consumer's identification, in two ways – altered fines for repeat offenders and designating places where one or both prohibitions are continuously violated as public nuisances.

Under continuing law, unchanged by the act, it is prohibited to sell tobacco products to any person under the age of 21. Furthermore, the seller must verify the age of the consumer by checking a driver's license, military identification card, passport, or state identification card.¹⁰ "Tobacco products" means any product that is made or derived from tobacco or that contains any form of nicotine. Tobacco products also include vaping products and accessories, regardless of whether they contain nicotine.¹¹

Fines

The act prescribes specific fines for repeated violations of the tobacco-related prohibitions. Under continuing law, a first violation of this prohibition is a misdemeanor of the fourth degree. Any subsequent violations are a misdemeanor of the third degree.¹² The act maintains these misdemeanor designations, but changes the associated fines for repeated violations.

Penalties

The penalties for a fourth and third degree misdemeanor, generally, are as follows:

Misdemeanor Penalties		
	Fourth degree	Third degree
Jail time ¹³	Up to 30 days	Up to 60 days
Fine ¹⁴	Up to \$250	Up to \$500

Fines under the act

The act amends the fines for repeated violations as follows:

- First offense – up to \$250;

¹⁰ R.C. 2927.02(B)(1).

¹¹ R.C. 2927.02(A)(7).

¹² R.C. 2927.02(G).

¹³ R.C. 2929.24(A), not in the act.

¹⁴ R.C. 2929.28(A)(2), not in the act.

- Second offense – up to \$500;
- Third offense – \$500;
- Fourth offense – \$1,000;
- Fifth offense or more – \$1,500.

The act specifies that these fines are in lieu of the fines imposed for standard misdemeanors, but are in addition to any other sanctions or penalties that may apply to the offender, including other financial sanctions or any applicable jail term.¹⁵ The act does not make any changes to possible jail sentences.

Public nuisance

The act enables a business that continually sells tobacco products to underage persons or without checking identification to be declared a public nuisance. Ohio law provides for the abatement of public nuisances. Under continuing law, expanded by the act, the definition of “public nuisance” is:

- Anything declared by Ohio law to be a nuisance;
- Any place in which lewdness, assignation, or prostitution is conducted or permitted, or any place in which lewd, indecent, or obscene films are shown;
- Any place where beer or intoxicating liquor is made or distributed in violation of law, or any place where such activities occur in a way that interferes with public decency, sobriety, peace, and good order.

The act expands this definition to include “any place in which a pattern of continuous or repeated violations” of the prohibitions against selling tobacco products to minors or against selling tobacco products without checking the consumer’s identification, occurs.¹⁶

Oral fluid testing

Continuing law prohibits a person from operating any vehicle, streetcar, trackless trolley, watercraft (in various forms), or aircraft while under the influence of alcohol, a drug of abuse, or a combination of them, or with a prohibited concentration of alcohol, a drug of abuse, or a metabolite of that drug (“OVI”).¹⁷ Under continuing law, enforcement of the OVI Law relies, in part, on chemical tests of either a person’s breath, urine, whole blood, blood serum, or plasma. The act adds another type of chemical test – of oral fluid – for purposes of OVI enforcement.

While the chemical tests of oral fluid, under the act, cannot specify the concentration of a drug of abuse or a metabolite of a drug of abuse, it can detect the presence and type of drug

¹⁵ R.C. 2927.02(F).

¹⁶ R.C. 3767.01(C); conforming change in R.C. 4301.74.

¹⁷ R.C. 4511.19(A)(1) (vehicles), supported by R.C. 1547.11 (watercraft) and 4561.15 (aircraft).

of abuse or its metabolite. As such, the act authorizes the chemical tests of oral fluid to be used as evidence related to charges that a person operated a vehicle while “under the influence of alcohol, a drug of abuse, or a combination of them” (the general OVI prohibition). Evidence of the presence of a drug of abuse in the oral fluid would potentially need to be paired with other evidence to demonstrate that the person was impaired. The chemical tests of oral fluid would not be used as evidence related to a per se violation of the OVI Law (i.e., the person had a concentration of alcohol, a drug of abuse, or a metabolite of that drug that was above the legal limit).¹⁸ Similar to the other chemical tests, a court may order an OVI offender to reimburse a law enforcement agency for the costs of the oral fluid test.¹⁹

Related to the authorization to collect and use oral fluid as evidence, the act specifies that any person who operates a vehicle or who is in physical control of a vehicle has given consent to have that person’s oral fluid collected and tested if arrested for OVI (“implied consent”). Under continuing law, the same implied consent is given for collection and testing of breath, urine, whole blood, blood serum, and plasma. As such, the act also applies the continuing law penalties for refusing to allow law enforcement to collect and test the relevant substance to the collection and testing of oral fluid.²⁰

Based on the addition of oral fluid to the OVI Law, the act also makes conforming changes to the laws governing OVI while operating a watercraft or a commercial motor vehicle and to the laws governing the release of drug test records in criminal cases.²¹

HISTORY

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¹⁸ R.C. 3701.143 and 4511.19(D).

¹⁹ R.C. 4511.19(G)(8).

²⁰ R.C. 4511.191 and 4511.192.

²¹ R.C. 1547.11, 1547.111, 2317.02, 2317.022, and 4506.17.