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**S.B. 33**  
**133<sup>rd</sup> General Assembly**

## Final Analysis

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**Version:** As Passed by the General Assembly

**Primary Sponsor:** Sen. Hoagland

**Effective date:** April 12, 2021

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### SUMMARY

- Adds new prohibitions under the offenses of criminal mischief, criminal trespass, aggravated trespass, and making false alarms for conduct occurring in or on a critical infrastructure facility.
- Creates the offense of improper organizational involvement with a critical infrastructure facility that prohibits an organization from knowingly doing either of the following:
  - Directing, authorizing, facilitating, or encouraging a person to commit an offense in the first dot point or a specified type of telecommunications harassment involving a critical infrastructure facility.
  - Providing compensation to a person for committing an offense in the first dot point or a specified type of telecommunications harassment involving a critical infrastructure facility.
- Provides for the imposition of increased fines on organizations that are guilty of improper organizational involvement with a critical infrastructure facility.
- Creates a new civil cause of action for willfully causing damage to a critical infrastructure facility.

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## DETAILED ANALYSIS

### Criminal liability

#### **Improper organizational involvement with a critical infrastructure facility**

The act creates the offense of “improper organizational involvement with a critical infrastructure facility” that prohibits an organization from knowingly doing either of the following:<sup>1</sup>

- Directing, authorizing, facilitating, or encouraging a person to commit criminal mischief, criminal trespass, aggravated trespass, making false alarms, or telecommunications harassment (these offenses are described below);
- Providing compensation to a person for committing criminal mischief, criminal trespass, aggravated trespass, making false alarms, or telecommunications harassment.

The act specifies that, notwithstanding the continuing law penalties for an organization convicted of a criminal offense, any organization found guilty of improper organizational involvement with a critical infrastructure facility in violation of one of the specified offenses must be punished with a fine that is ten times the maximum fine that can be imposed on an individual for a violation of the offense.<sup>2</sup>

#### **Criminal mischief**

The act adds a new prohibition under the offense of “criminal mischief” that expressly states that no person, without privilege to do so, shall knowingly destroy or improperly tamper with a critical infrastructure facility. The act makes criminal mischief committed in violation of the new prohibition a third degree felony.

The act specifies that any organization found guilty of “improper organizational involvement with a critical infrastructure facility” in violation of the above prohibition must be punished with a fine that is ten times the maximum fine that can be imposed on an individual for a third degree felony.<sup>3</sup> Under the Felony Sentencing Law, the maximum fine that can be imposed on an individual for a third degree felony is \$10,000.<sup>4</sup>

Under the act, “improperly tamper” means to change the physical location or the physical condition of the property.<sup>5</sup>

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<sup>1</sup> R.C. 2923.04(B).

<sup>2</sup> R.C. 2923.04(C).

<sup>3</sup> R.C. 2909.07(A)(7) and (C)(4) and 2923.04(B)(1) and (C)(1).

<sup>4</sup> R.C. 2929.18, not in the act.

<sup>5</sup> R.C. 2909.07(B)(3).

## **Criminal trespass**

The act adds a new prohibition under the offense of “criminal trespass” that expressly prohibits a person, without privilege to do so, from knowingly entering or remaining on a critical infrastructure facility. The act makes criminal trespass committed in violation of the new prohibition a first degree misdemeanor.

The act specifies that any organization found guilty of “improper organizational involvement with a critical infrastructure facility” in violation of the above prohibition must be punished with a fine that is ten times the maximum fine that can be imposed on an individual for a first degree misdemeanor.<sup>6</sup> Under the Misdemeanor Sentencing Law, the maximum fine that can be imposed on an individual for a first degree misdemeanor is \$1,000.<sup>7</sup>

Related to the change described above, the act repeals a prohibition under the offense of “criminal trespass on the land or premises of a railroad company” that prohibits a person, without privilege to do so, from knowingly entering or remaining on the land or premises of a railroad company.<sup>8</sup> The new prohibition appears to cover any conduct that would otherwise have been covered by the repealed prohibition.

## **Aggravated trespass**

The act adds a new prohibition under the offense of “aggravated trespass” that expressly prohibits a person from entering or remaining on a critical infrastructure facility with purpose to destroy or tamper with the facility. The act makes aggravated trespass committed in violation of the new prohibition a third degree felony.

The act specifies that any organization found guilty of “improper organizational involvement with a critical infrastructure facility” in violation of the above prohibition must be punished with a fine that is ten times the maximum fine that can be imposed on an individual for a third degree felony.<sup>9</sup> Under the Felony Sentencing Law, the maximum fine that can be imposed on an individual for a third degree felony is \$10,000.<sup>10</sup>

## **Making false alarms**

The act adds a new prohibition under the offense of “making false alarms” that prohibits a person from initiating or circulating a report or warning of an alleged or impending fire, explosion, crime, or other catastrophe, knowing that the report or warning is false and likely to impede the operation of a critical infrastructure facility. The penalty for making false alarms, under continuing law, ranges from a first degree misdemeanor to a third degree felony, depending on the offender’s conduct.

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<sup>6</sup> R.C. 2911.21(A)(5) and (D) and 2923.04(B)(2) and (C)(2).

<sup>7</sup> R.C. 2929.28, not in the act.

<sup>8</sup> R.C. 2909.10.

<sup>9</sup> R.C. 2911.211(A)(2) and (B) and 2923.04(B)(3) and (C)(3).

<sup>10</sup> R.C. 2929.18, not in the act.

The act specifies that any organization found guilty of “improper organizational involvement with a critical infrastructure facility” in violation of the above prohibition must be punished with a fine that is ten times the maximum fine that can be imposed on an individual for the violation.<sup>11</sup> Under the Misdemeanor Sentencing Law, the maximum fine that can be imposed on an individual for a first degree misdemeanor is \$1,000. Under the Felony Sentencing Law, the maximum fine that can be imposed on an individual for a third degree felony is \$10,000.<sup>12</sup>

### **Telecommunications harassment**

Under continuing law, the offense of “telecommunications harassment” prohibits a person from knowingly making or causing to be made a telecommunication, or knowingly permitting a telecommunication to be made from a telecommunications device under the person’s control, to another, if the caller knowingly states to the recipient of the telecommunication that the caller intends to cause damage to or destroy public or private property, and the recipient, any member of the recipient’s family, or any other person who resides at the premises to which the telecommunication is made owns, leases, resides, or works in, will at the time of the destruction or damaging be near or in, has the responsibility of protecting, or insures the property that will be destroyed or damaged.<sup>13</sup> The penalty for telecommunications harassment, under continuing law, ranges from a first degree misdemeanor to a third degree felony, depending on the offender’s conduct.

The act specifies that any organization found guilty of “improper organizational involvement with a critical infrastructure facility” that is in violation of the above prohibition and that involves a threat of damage to or destruction of a critical infrastructure facility must be punished with a fine that is ten times the maximum fine that can be imposed on an individual for the violation.<sup>14</sup> Under the Misdemeanor Sentencing Law, the maximum fine that can be imposed on an individual for a first degree misdemeanor is \$1,000. Under the Felony Sentencing Law, the maximum fine that can be imposed on an individual for a third degree felony is \$10,000.<sup>15</sup>

## **Civil liability**

### **In general**

The act creates a new civil cause of action in which an owner or operator of a critical infrastructure facility may bring a civil cause of action against a person who willfully causes damage to the critical infrastructure facility. The plaintiff may recover compensatory damages

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<sup>11</sup> R.C. 2917.32(A)(4) and (C) and 2923.04(B)(5) and (C)(5).

<sup>12</sup> R.C. 2929.18 and 2929.28, not in the act.

<sup>13</sup> R.C. 2917.21(A)(4), not in the act.

<sup>14</sup> R.C. 2917.21(C), not in the act, and 2923.04(B)(4) and (C)(4).

<sup>15</sup> R.C. 2929.18 and 2929.28, not in the act.

equal to the replacement value of the property that was damaged, reasonable attorney's fees, court costs, and other reasonable expenses incurred in maintaining the civil action.<sup>16</sup>

### **Vicarious liability**

The act also allows the court to hold a person or organization vicariously liable for any judgment the plaintiff obtains against the person who damaged the critical infrastructure facility if the person or organization did either of the following:<sup>17</sup>

- Directed, authorized, facilitated, or encouraged the person to cause damage to the critical infrastructure facility;
- Provided compensation to the person for damaging the critical infrastructure facility.

### **Criminal conviction or delinquency adjudication not prerequisite**

In a civil action to recover damages for willful damage to a critical infrastructure facility under the act, the trier of fact may determine that the defendant willfully caused damage to the critical infrastructure facility, regardless of whether the defendant has been charged with any criminal offense, has pleaded guilty or been convicted of a criminal offense, or has been adjudicated a delinquent child in connection with the property damage.

The act's provisions described above do not affect the prosecution of any criminal action or proceeding or any action to obtain a delinquent child adjudication in connection with the property damage.<sup>18</sup>

### **Definitions**

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

**"Compensation"** means any money, thing of value, or financial benefit; the term does not include bail, fines, or court costs.<sup>19</sup>

**"Critical infrastructure facility"** means:<sup>20</sup>

1. One of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with signs that are reasonably likely to come to the attention of potential intruders and that indicate entry is forbidden without site authorization: (a) a petroleum or alumina refinery, (b) an electric generating facility, substation, switching station, electrical control center, or electric transmission and distribution lines and associated equipment, (c) a chemical, polymer, or rubber manufacturing facility, (d) a water intake structure, water treatment

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<sup>16</sup> R.C. 2307.67(B).

<sup>17</sup> R.C. 2307.67(C).

<sup>18</sup> R.C. 2307.67(D) and (E).

<sup>19</sup> R.C. 2307.67(A) and 2923.04(A).

<sup>20</sup> R.C. 2307.67(A), 2909.07(B), 2911.21(F), 2911.211(C), 2917.32(E), and 2923.04(A).

facility, waste water facility, drainage facility, water management facility, or any similar water or sewage treatment system and its water and sewage piping, (e) a natural gas company facility or interstate natural gas pipeline, including a pipeline interconnection, natural gas compressor station and associated facilities, city gate or town border station, metering station, above-ground piping, regulator station, valve site, delivery station, fabricated assembly, or any other part of a natural gas storage facility involved in the gathering, storage, transmission, or distribution of gas, (f) a telecommunications central switching office or remote switching facility or an equivalent network facility that serves a similar purpose, (g) wireline or wireless telecommunications infrastructure, including telecommunications towers and telephone poles and lines, including fiber optic lines, (h) a port, trucking terminal, or other freight transportation facility, (i) a gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas or natural gas liquids, (j) a transmission facility used by a federally licensed radio or television station, (k) a steel-making facility that uses an electric arc furnace to make steel, (l) a facility identified and regulated by the U.S. Department of Homeland Security's Chemical Facility Anti-Terrorism Standards Program under 6 C.F.R. part 27, (m) a dam that is regulated by the state or federal government, (n) a crude oil or refined products storage and distribution facility, including valve sites, pipeline interconnections, pump station, metering station, below- or above-ground pipeline, or piping and truck loading or off-loading facility, (o) a video service network and broadband infrastructure, including associated buildings and facilities, video service headends, towers, utility poles, and utility lines such as fiber optic lines ("video service network" has the same meaning as in R.C. 1332.21), (p) any above-ground portion of an oil, gas, hazardous liquid or chemical pipeline, tank, or other storage facility, (q) any above-ground portion of a well, well pad, or production operation, (r) a laydown area or construction site for pipe and other equipment intended for use on an interstate or intrastate natural gas or crude oil pipeline, or (s) any mining operation, including any processing equipment, batching operation, or support facility for that mining operation.

2. With respect to a video service network or broadband or wireless telecommunications infrastructure, the above-ground portion of a facility installed in a public right-of-way on a utility pole or in a conduit;
3. Any railroad property;
4. An electronic asset of any of the following: (a) an electric light company that is a public utility under the Public Utilities Commission Law, (b) an electric cooperative (as defined in R.C. 4928.01), (c) a municipal electric utility (as defined in R.C. 4928.01), (d) a natural gas company that is a public utility under the Public Utilities Commission Law, (e) a telephone company that is a public utility under the Public Utilities Commission Law, or (f) a video service provider, including a cable operator, as those terms are defined in R.C. 1332.21.

“**Electronic asset**” includes, but is not limited to, the hardware, software, and data of a programmable electronic device; all communications, operations, and customer data networks; and the contents of those data networks.<sup>21</sup>

“**Organization**” means a corporation for profit or not-for-profit, partnership, limited partnership, joint venture, unincorporated nonprofit association, estate, trust, or other commercial or legal entity; the term does not include an entity organized as or by a governmental agency for the execution of a governmental program.<sup>22</sup>

“**Production operation**” means all operations and activities and all related equipment, facilities, and other structures that may be used in or associated with the exploration and production of oil, gas, or other mineral resources that are regulated under this chapter, including operations and activities associated with site preparation, site construction, access road construction, well drilling, well completion, well stimulation, well site activities, reclamation, and plugging. “Production operation” also includes all of the following: (1) the piping, equipment, and facilities used for the production and preparation of hydrocarbon gas or liquids for transportation or delivery, (2) the processes of extraction and recovery, lifting, stabilization, treatment, separation, production processing, storage, waste disposal, and measurement of hydrocarbon gas and liquids, including related equipment and facilities, (3) the processes and related equipment and facilities associated with production compression, gas lift, gas injection, fuel gas supply, well drilling, well stimulation, and well completion activities, including dikes, pits, and earthen and other impoundments used for the temporary storage of fluids and waste substances associated with well drilling, well stimulation, and well completion activities, (4) equipment and facilities at a well pad or other location that are used for the transportation, handling, recycling, temporary storage, management, processing, or treatment of any equipment, material, and by-products or other substances from an operation at a well pad that may be used or reused at the same or another operation at a well pad or that will be disposed of in accordance with applicable laws and rules adopted under them.<sup>23</sup>

“**Well**” means any borehole, whether drilled or bored, within the state for production, extraction, or injection of any gas or liquid mineral, excluding potable water to be used as such, but including natural or artificial brines and oil field waters.<sup>24</sup>

“**Well pad**” means the area that is cleared or prepared for the drilling of one or more horizontal wells.<sup>25</sup>

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<sup>21</sup> R.C. 2911.21(F).

<sup>22</sup> R.C. 2307.67(A) and 2923.04(A); and by reference to R.C. 2901.23, not in the act.

<sup>23</sup> R.C. 2911.21(F); and by reference to R.C. 1509.01, not in the act.

<sup>24</sup> R.C. 2911.21(F); and by reference to R.C. 1509.01, not in the act.

<sup>25</sup> R.C. 2911.21(F); and by reference to R.C. 1509.01, not in the act.

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## HISTORY

| Action                                      | Date     |
|---|----------|
| Introduced                                  | 02-12-19 |
| Reported, S. Judiciary                      | 05-01-19 |
| Passed Senate (24-8)                        | 05-01-19 |
| Reported, H. Public Utilities               | 01-30-20 |
| Passed House (55-30)                        | 12-17-20 |
| Senate concurred in House amendments (24-7) | 12-22-20 |

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