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H.B. 366*
135th General Assembly

Bill Analysis

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Version: As Reported by House Criminal Justice

Primary Sponsor: Rep. Ghanbari

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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.
- Requires that the president or chief executive officer of the Ohio Council of Retail Merchants must be a member 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, minus 5% which may be used for certain expenses of the Retail Theft Advisory Council.

Organized Retail Theft Advisory Council

- Creates the Organized Retail Theft Advisory Council within the office of the Attorney General, to consist of the Attorney General or Attorney General's designee, an assistant

* This analysis was prepared before the report of the House Criminal Justice Committee appeared in the House Journal. Note that the legislative history may be incomplete.

attorney general, the president of the Ohio Council of Retail Merchants, and four loss prevention representatives, a member of the Ohio Prosecuting Attorneys Association, and a member of the Ohio Grocers Association.

- 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.
- Requires the Organized Retail Theft Advisory Council to operate a secure retail theft web portal that complies with applicable data privacy laws, to share real time crime information and intelligence on organized retail theft between retail businesses and law enforcement agencies.

Criminal mischief

- Increases the penalty for criminal mischief to a third degree felony if the property involved is a retail pump or meter of an electric charging station.

Theft

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

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 \$1,000 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 \$1,000 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 \$1,000 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 12-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, or criminal simulation 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, or criminal simulation 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

- Amends the definition of "organized retail theft" for purposes of the Corrupt Activities Law, to mean conduct constituting the offense of organized theft of retail property or conduct that constitutes a violation of any law of any state other than Ohio that is substantially similar to the offense of organized theft of retail property.

- 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.
- Provides that if a prosecuting attorney declines a request from a retail establishment or retail establishments to aggregate multiple thefts of retail property, the prosecuting attorney must promptly inform the establishment or establishments and provide a basis for the refusal.

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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.¹

Organized Retail Theft 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

¹ Section 6.

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, and the president or chief executive officer of the Ohio Council of Retail Merchants is required to be a member.²

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 each applicant must 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 transmit \$25 of each license fee to the Treasurer of State 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, except that 5% of the money may be used for the administrative expenses of the Organized Retail Theft Advisory Council and the operation of the retail theft web portal (both described in "**Organized Retail Theft Advisory Council**," below).³

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 Attorney General or the Attorney General's designee, an assistant attorney general appointed by the Attorney General, the president or chief executive officer of the Ohio Council of Retail Merchants, two loss prevention representatives from retail businesses with more than 250 employees, two loss prevention representatives from retail businesses with less than 250 employees, a member of the Ohio Prosecuting Attorneys Association, and a member of the Ohio Grocers Association. 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.⁴

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 with the Attorney General or the Attorney General's designee. The assistant attorney general appointed to the Advisory Council must serve as liaison to the Organized Retail Theft Task Force. Members of the Advisory Council will not be compensated, but will be reimbursed for actual and necessary expenses incurred in performing their official duties. The Organized Crime Investigations Commission may

² R.C. 177.02(B)(2) and (3).

³ R.C. 177.02(D)(4), 177.011(D), and 5739.17.

⁴ R.C. 177.04(A) and (B).

provide the Advisory Council with technical and clerical employees as necessary to accomplish its responsibilities mentioned under the bill.⁵

In addition to the duties described above, the bill allows the Advisory Council to engage in the following activities:⁶

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.

Secure retail theft web portal

The bill requires the Advisory Council to operate a secure retail theft web portal that complies with applicable data privacy laws, to share real time crime information and intelligence on organized retail theft between retail businesses and law enforcement agencies to enhance the identification of offenders and the targeting of criminal enterprises. The Council may utilize, or coordinate operations with, commercially operated retail theft information sharing services.⁷

Definitions – organized theft of retail property

As used in the creation of the Advisory Council described above, the bill defines the following term:⁸

- **“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;

⁵ R.C. 177.04(C) and (F).

⁶ R.C. 177.04(E).

⁷ R.C. 177.04(D).

⁸ R.C. 177.02(A)(1).

- A vessel or wharf;
- An aircraft, airport terminal, airport, aircraft terminal, or air navigation facility;
- An intermodal container, intermodal chassis, trailer, container freight station, freight distribution facility, or freight consolidation facility.

Criminal mischief

The offense of criminal mischief, in part, prohibits a person, without privilege to do so, from knowingly moving, defacing, damaging, destroying, or otherwise improperly tampering with the property of another. The penalty is generally a third degree misdemeanor. The bill increases the penalty for criminal mischief to a third degree felony if the property is a retail pump or meter of an electric vehicle charging station.⁹

Theft

The bill modifies the penalties for theft as follows:

- For grand theft, a fourth degree felony if the offender previously has been convicted of or pleaded guilty to a theft offense.¹⁰
- For aggravated theft, a third degree felony if the offender two or more times previously has been convicted of or pleaded guilty to a theft offense.¹¹
- For theft from a person in a protected class, a fourth degree felony if the offender previously has been convicted of or pleaded guilty to a theft offense, and a third degree felony if the offender two or more times previously has been convicted of or pleaded guilty to a theft offense.¹²

Theft of mail

The bill creates the crime 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 without consent from the owner, beyond the scope of express or implied consent of the owner or person authorized to give consent, by deception, by threat, or by intimidation.¹³ Under the bill, if the property stolen is mail, the person commits the crime of theft of mail, a fifth degree felony. If the value of the mail is greater than \$7,500 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, greater

⁹ R.C. 2909.07(C)(2).

¹⁰ R.C. 2913.02(B)(2).

¹¹ R.C. 2913.02(B)(2).

¹² R.C. 2913.02(B)(3).

¹³ R.C. 2913.021(B).

than \$1,000, 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.¹⁴

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.¹⁵

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 a violation of theft of mail and is also convicted of or pleads guilty to a violation of theft based on the same conduct that was the basis of the violation of theft of mail, the two offenses are allied offenses of similar import.¹⁶

Organized theft of retail property

The bill creates the crime of organized theft of retail property. The bill prohibits the following:¹⁷

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 \$1,000 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 \$1,000 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 \$1,000 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.

¹⁴ R.C. 2913.02(B)(2) and (3) and 2913.021(C).

¹⁵ R.C. 2913.021(A).

¹⁶ R.C. 2913.021(D).

¹⁷ R.C. 2913.08(B), (C), (D), and (E).

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.¹⁸

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 a theft offense, there is a presumption of a prison term for the offense. If organized theft of retail property is a felony of the third degree and if the offender two or more times previously has been convicted of or pleaded guilty to a theft offense, the court must impose as a mandatory prison term one of the prison terms prescribed for a third degree felony.¹⁹

The bill 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 12-month period will be aggregated.²⁰ A prosecution for organized theft of retail property does not preclude a prosecution for theft, receiving stolen property, or criminal simulation 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, or criminal simulation 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.²¹

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.²²

Definitions – organized theft of retail property

As used in the new offense described above, the bill defines the following terms:²³

- **“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.

¹⁸ R.C. 2913.08(F).

¹⁹ R.C. 2913.08(F).

²⁰ R.C. 2913.08(G).

²¹ R.C. 2913.08(G) and (H).

²² R.C. 2913.01(K).

²³ R.C. 2913.08(A).

- **“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 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:²⁴

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:²⁵

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.

²⁴ R.C. 2913.30(B).

²⁵ R.C. 2913.30(B)(5) and (6).

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:²⁶

- **“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

The bill amends the definition of “organized retail theft” for purposes of the Corrupt Activities Law. Under continuing 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.²⁷

Under existing law, “corrupt activity” includes conduct constituting any of the following:²⁸

²⁶ R.C. 2913.30(A).

²⁷ R.C. 2923.31(I).

²⁸ R.C. 2923.31(I)(5).

1. Organized retail theft, which is defined as the theft of retail property with a retail value of \$1,000 or more from one or more retail establishments with the intent to sell, deliver, or transfer that property to a retail property fence;
2. Conduct that constitutes one or more violations of any law of any state other than this state, that is substantially similar to organized retail theft, and that if committed in this state would be organized retail theft, if the defendant was convicted of or pleaded guilty to the conduct in a criminal proceeding in the other state.

The bill eliminates (2), above, and replaces the definition of “organized retail theft” such that it means conduct constituting the offense of organized theft of retail property (described above under “**Organized theft of retail property**”) or conduct that constitutes a violation of any law of any state other than Ohio that is substantially similar to the offense of organized theft of retail property, provided the defendant was convicted of or pleaded guilty to the conduct in a criminal proceeding in the other state.²⁹

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.³⁰

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.³¹ 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. If the prosecuting attorney declines the request, the prosecuting attorney must promptly inform the retail establishment or group of establishments and provide the basis for the prosecuting attorney’s decision. 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 12-month period must be aggregated.³²

²⁹ R.C. 2923.31(Q).

³⁰ R.C. 2923.31(E).

³¹ R.C. 2923.32 and R.C. 2923.34 and 2923.36, not in the bill.

³² R.C. 2923.32(C).

HISTORY

Action	Date
Introduced	12-19-23
Reported, H. Criminal Justice	---
