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- Reps.** Tiberi, James, Thomas, Taylor, Patton, Grendell, Haines, Pringle, Vesper, Jones, Coughlin, Jerse, Lucas, Brading, Jacobson, Roman, Healy, O'Brien, Boyd, Mottley, Evans, Metelsky, Myers, Terwilleger, Opfer, Hoops, Young, Householder, Goodman, Callender, Damschroder, Corbin, Clancy, Buchy, Gardner, Krebs, Cates, Willamowski, Harris, Metzger, Jolivette, Olman, Mead, Bateman, Schuler, Amstutz, Salerno, Maier, Ogg, Bender, Logan, D. Miller, Beatty, Wilson, Britton, Weston, Core, Perz, Buehrer, DePiero, Carey, Sulzer, Barnes, Hartnett, Peterson, Van Vyven, Hollister, Gooding, Austria, Schuring, Winkler, Allen, Roberts, Gerberry, Sutton, Ford, Flannery, Barrett, Sullivan, Verich
- Sens.** Latta, Herington, Watts, Hagan, DiDonato, Drake, Nein, Armbruster, Mumper, Ray, Oelslager, Brady, Spada, Wachtmann, Latell, Hottinger, Johnson, Kearns, White, Carnes, Gardner, Horn, Schafrath, Blessing

Effective date: *

ACT SUMMARY

- Enhances the penalties for the offenses of theft, unauthorized use of a vehicle, unauthorized use of property, misuse of credit cards in specified circumstances, forgery, and securing writings by deception when the victim of the offense is an elderly person or disabled adult.
- Permits a court determining the degree of the offense for those six offenses to aggregate the value of all property, services, debts for which credit cards were held as security, and losses to the victims involved in violations comprising a course of conduct, if the offense for which the penalty is enhanced occurred as part of a scheme or course of conduct involving any of those offenses, attempts to commit, conspiracies to commit, or complicity in committing any of those offenses or other specified offenses

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

or as part of a series of those offenses committed in the same employment, capacity, or relationship to another.

- Specifies that in the prosecution of any violation of the Theft Offense Chapter, if the lack of consent of the victim is an element of the violation, evidence that, at the time of the alleged violation, the victim lacked the capacity to give consent is admissible to show that the victim did not give consent.
- Expands the offense of theft to also prohibit a person, with purpose to deprive the owner of property or services, from knowingly obtaining or exerting control over either the property or services by intimidation.

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CONTENT AND OPERATION



Overview of enhanced penalty provisions

The act enhances the penalties for the offenses of theft, unauthorized use of a vehicle, unauthorized use of property, misuse of credit cards in specified circumstances, forgery, and securing writings by deception when the victim of the offense is an elderly person or disabled adult. The enhanced penalties range from a felony of the fifth degree to a felony of the second degree, depending on the amount involved in the offense. When determining the degree of the offense, if the offense occurred as part of a scheme or course of conduct involving other commissions of, attempts to commit, conspiracies to commit, and complicity in committing those offenses or other specified offenses or as part of a series of those offenses committed in the same employment, capacity, or relationship to another, the court may aggregate the value of all property, services, debts for which credit cards were held as security, and losses to the victims involved in the violations comprising that course of conduct.

Evidence of lack of capacity to consent

The act specifies that in the prosecution of any violation of a provision of the Theft Offense Chapter, if the victim's lack of consent is an element of the provision, evidence that, at the time of the alleged violation, the victim lacked the capacity to give consent is admissible to show that the victim did not give consent. "*Lacks the capacity to consent*" means being impaired for any reason to the extent that the person lacks sufficient understanding or capacity to make and carry out reasonable decisions concerning the person or the person's resources. (R.C. 2913.73.)

Definitions

For purposes of the enhanced penalty provisions it contains, the act defines the following terms (R.C. 2913.01(CC) and (DD)):

"Elderly person" means a person who is 65 years of age or older.

"Disabled adult" means a person who is 18 years of age or older and has some impairment of body or mind that makes the person unfit to work at any substantially remunerative employment 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 years of age or older and has been certified as permanently and totally disabled by an Ohio or federal agency that has the function of so classifying persons.

The act also relocates cross-references to existing definitions that are referred to in the existing "theft" section (R.C. 2913.01(EE), (FF), (GG), and (HH) and

2913.02): firearm and dangerous ordnance (from R.C. 2923.11); motor vehicle (R.C. 4501.01); dangerous drug (R.C. 4729.01); and drug abuse offense (R.C. 2925.01).

Theft

Continuing law

Prohibition. Continuing law prohibits a person, with purpose to deprive the owner of property or services, from knowingly obtaining or exerting control over either the property or services in any of the following ways (R.C. 2913.02(A)): (1) without the consent of the owner or person authorized to give consent, (2) beyond the scope of the express or implied consent of the owner or person authorized to give consent, (3) by deception, or (4) by threat.

Penalty. Generally, a violation of the prohibition described in the preceding paragraph is petty theft, a misdemeanor of the first degree. If the value of the property or services stolen is \$500 or more and is less than \$5,000 or if the property stolen is any of the property listed in R.C. 2913.71, a violation of the prohibition is theft, a felony of the fifth degree. If the value of the property or services stolen is \$5,000 or more and is less than \$100,000 or if the property stolen is a firearm or dangerous ordnance, a violation of the prohibition is grand theft, a felony of the fourth degree. If the property stolen is a motor vehicle, a violation of the prohibition is grand theft of a motor vehicle, a felony of the fourth degree. If the value of the property or services stolen is \$100,000 or more, a violation of the prohibition is aggravated theft, a felony of the third degree. If the property stolen is any dangerous drug, a violation of the prohibition is theft of drugs, a felony of the fourth degree, or, if the offender previously has been convicted of a felony drug abuse offense, a felony of the third degree. (R.C. 2913.02(B).)

Operation of the act

Expansion of prohibition. The act expands the "theft" prohibition described in the second preceding paragraph to also prohibit a person, with purpose to deprive the owner of property or services, from knowingly obtaining or exerting control over either the property or services by "intimidation" (R.C. 2913.02(A)(5)).

Enhanced penalty. The act also modifies the penalty provisions for a violation of the "theft" prohibition. Under the act, if the victim of the offense is an elderly person or disabled adult and except when the property stolen is a firearm or a dangerous ordnance, a motor vehicle, or a dangerous drug, a violation of the prohibition is "theft from an elderly person or disabled adult." "Theft from an elderly person or disabled adult" is whichever of the following is applicable (R.C. 2913.02(B)(3)):

- (1) Generally, a felony of the fifth degree;
- (2) If the value of the property or services stolen is \$500 or more and is less than \$5,000, a felony of the fourth degree;
- (3) If the value of the property or services stolen is \$5,000 or more and is less than \$25,000, a felony of the third degree;
- (4) If the value of the property or services stolen is \$25,000 or more, a felony of the second degree.

The act expands preexisting provisions that provide for the aggregation of the value of property, services, etc., involved in a series of theft offenses that are related in a specified manner, so that the provisions also apply in specified circumstances when a series of theft offenses are committed that involve victims who are elderly persons or disabled adults (see "*Determination of value when multiple theft offenses committed*," below).

Unauthorized use of a vehicle

Continuing law

Prohibition. Continuing law prohibits a person from knowingly using or operating an aircraft, motor vehicle, motorcycle, motorboat, or other motor-propelled vehicle: (1) without the consent of the owner or person authorized to give consent, or (2) without the consent of the owner or person authorized to give consent, and either removing it from Ohio or keeping possession of it for more than 48 hours. Existing law provides two affirmative defenses to a charge of violating either prohibition. (R.C. 2913.03(A) to (C).)

Penalty. A violation of either prohibition is unauthorized use of a vehicle. A violation of the first prohibition is a misdemeanor of the first degree. A violation of the second prohibition is a felony of the fifth degree. (R.C. 2913.03(D).)

Operation of the act

The act modifies the penalty provisions for the offense. Under the act, if the victim of the offense is an elderly person or disabled adult and if the victim incurs a loss as a result of the offense, unauthorized use of a vehicle is whichever of the following is applicable (R.C. 2913.03(D)(4)):

- (1) Generally, a felony of the fifth degree;
- (2) If the loss to the victim is \$500 or more and is less than \$5,000, a felony of the fourth degree;

(3) If the loss to the victim is \$5,000 or more and is less than \$25,000, a felony of the third degree;

(4) If the loss to the victim is \$25,000 or more, a felony of the second degree.

The act expands preexisting provisions that provide for the aggregation of the value of property, services, etc., involved in a series of theft offenses that are related in a specified manner, so that the provisions also apply in specified circumstances when a series of theft offenses are committed that involve victims who are elderly persons or disabled adults (see "*Determination of value when multiple theft offenses committed*," below).

Unauthorized use of property and unauthorized use of computer property

Continuing law

Prohibitions and penalties. Continuing law prohibits a person from knowingly using or operating the property of another without the consent of the owner or person authorized to give consent (R.C. 2913.04(A)). A violation of the prohibition is unauthorized use of property. Generally, unauthorized use of property is a misdemeanor of the fourth degree. But if unauthorized use of property is committed for the purpose of devising or executing a scheme to defraud or to obtain property or services, unauthorized use of property is whichever of the following is applicable (R.C. 2913.04(D)):

(1) Generally, a misdemeanor of the first degree;

(2) If the value of the property or services or the loss to the victim is \$500 or more and is less than \$5,000, a felony of the fifth degree;

(3) If the value of the property or services or the loss to the victim is \$5,000 or more and is less than \$100,000, a felony of the fourth degree;

(4) If the value of the property or services or the loss to the victim is \$100,000 or more, a felony of the third degree.

Continuing law also prohibits a person from knowingly gaining access to, attempting to gain access to, or causing access to be gained to any computer, computer system, computer network, telecommunications device, telecommunications service, or information service without the consent of, or beyond the scope of the express or implied consent of, the owner of the computer, computer system, computer network, telecommunications device, telecommunications service, or information service or other person authorized to

give consent by the owner. A violation of this prohibition is unauthorized use of computer or telecommunication property, a felony of the fifth degree. (R.C. 2913.04(B) and (E).)

Continuing law provides two affirmative defenses to a charge of violating either prohibition (R.C. 2913.04(C) by reference to R.C. 2913.03(C)).

Operation of the act

The act modifies the penalty provisions for unauthorized use of property. Under the act, if the victim of unauthorized use of property is an elderly person or disabled adult, unauthorized use of property is whichever of the following is applicable (R.C. 2913.04(D)(4)):

- (1) Generally, a felony of the fifth degree;
- (2) If the value of the property or services or loss to the victim is \$500 or more and is less than \$5,000, a felony of the fourth degree;
- (3) If the value of the property or services or loss to the victim is \$5,000 or more and is less than \$25,000, a felony of the third degree;
- (4) If the value of the property or services or loss to the victim is \$25,000 or more, a felony of the second degree.

The act expands preexisting provisions that provide for the aggregation of the value of property, services, etc., involved in a series of theft offenses that are related in a specified manner, so that the provisions also apply in specified circumstances when a series of theft offenses are committed that involve victims who are elderly persons or disabled adults (see "**Determination of value when multiple theft offenses committed**," below).

Misuse of credit cards

Continuing law

The offense of misuse of credit cards under continuing law contains three sets of prohibitions.

First prohibition and penalty. The first prohibition prohibits a person from doing any of the following: (1) practicing deception for the purpose of procuring the issuance of a credit card, when a credit card is issued in actual reliance thereon, or (2) knowingly buying or selling a credit card from or to a person other than the issuer. A violation of this prohibition is misuse of credit cards and is a misdemeanor of the first degree (R.C. 2913.21(A), (D)(1), and (D)(2)).

Second prohibition and penalty. The second prohibition prohibits a person, with purpose to defraud, from doing any of the following (R.C. 2913.21(B)):

- (1) Obtaining control over a credit card as security for a debt;
- (2) Obtaining property or services by the use of a credit card, in one or more transactions, knowing or having reasonable cause to believe that the card has expired or been revoked, or was obtained, is retained, or is being used in violation of law;
- (3) Furnishing property or services upon presentation of a credit card, knowing that the card is being used in violation of law;
- (4) Representing or cause to be represented to the issuer of a credit card that property or services have been furnished, knowing that the representation is false.

A violation of this prohibition also is misuse of credit cards. A violation of paragraph (1) is a misdemeanor of the first degree. A violation of paragraph (2), (3), or (4) generally is a misdemeanor of the first degree; a violation of any of those prohibitions is a felony of the fifth degree if the cumulative retail value of the property and services involved in one or more violations of paragraph (2), (3), or (4), which violations involve one or more credit card accounts and occur within a period of 90 consecutive days commencing on the date of the first violation, is \$500 or more and is less than \$5,000, a felony of the fourth degree if the cumulative retail value of the involved property and services is \$5,000 or more and is less than \$100,000, and a felony of the third degree if the cumulative retail value of the involved property and services is \$100,000 or more. (R.C. 2913.21(D).)

Third prohibition and penalty. The third prohibition prohibits a person, with purpose to violate any of the above prohibitions, from receiving, possessing, controlling, or disposing of a credit card. A violation of this prohibition also is misuse of credit cards and is a misdemeanor of the first degree. (R.C. 2913.21(C) and (D)(1) and (2).)

Operation of the act

Enhanced penalty. The act modifies the penalty provisions for misuse of credit cards. Under the act, if the violation involves paragraph (1) or (2) of the second prohibition described above, and if the victim of the offense is an elderly person or disabled adult, misuse of credit cards is whichever of the following is applicable (R.C. 2913.21(D)(4)):

- (1) Generally, a felony of the fifth degree;

(2) If the debt for which the card is held as security or the cumulative retail value of the property or services involved in the violation is \$500 or more and is less than \$5,000, a felony of the fourth degree;

(3) If the debt for which the card is held as security or the cumulative retail value of the property or services involved in the violation is \$5,000 or more and is less than \$25,000, a felony of the third degree;

(4) If the debt for which the card is held as security or the cumulative retail value of the property or services involved in the violation is \$25,000 or more, a felony of the second degree.

The act does not change the penalty for any of the other prohibitions.

The act expands preexisting provisions that provide for the aggregation of the value of property, services, etc., involved in a series of theft offenses that are related in a specified manner, so that the provisions also apply in specified circumstances when a series of theft offenses are committed that involve victims who are elderly persons or disabled adults (see "*Determination of value when multiple theft offenses committed*," below).

Technical change. The act makes a technical change in R.C. 301.27 regarding a cross-reference to R.C. 2913.21.

Forgery and forging identification cards or selling or distributing forged identification cards

Continuing law

Prohibitions and penalties. Continuing law prohibits a person, with purpose to defraud or knowing that the person is facilitating a fraud, from doing any of the following (R.C. 2913.31(A)):

(1) Forging any writing of another without the other person's authority;

(2) Forging any writing so that it purports to be genuine when it actually is spurious, or to be the act of another who did not authorize that act, or to have been executed at a time or place or with terms different from what in fact was the case, or to be a copy of an original when no such original existed;

(3) Uttering, or possessing with purpose to utter, any writing that the person knows to have been forged.

A violation of this prohibition is forgery. Generally, forgery is a felony of the fifth degree. If property or services are involved in the offense or the victim

suffers a loss and if the value of the property or services or the loss to the victim is \$5,000 or more and is less than \$100,000, forgery is a felony of the fourth degree. If property or services are involved in the offense or the victim suffers a loss and if the value of the property or services or the loss to the victim is \$100,000 or more, forgery is a felony of the third degree. (R.C. 2913.31(C)(1).)

Continuing law also prohibits a person from knowingly doing either of the following (R.C. 2913.31(B)):

(1) Forging an identification card;

(2) Selling or otherwise distributing a card that purports to be an identification card, knowing it to have been forged.

A violation of this prohibition is forging identification cards or selling or distributing forged identification cards. Generally, forging identification cards or selling or distributing forged identification cards is a misdemeanor of the first degree. If the offender previously has been convicted of the offense, forging identification cards or selling or distributing forged identification cards is a misdemeanor of the first degree, and, in addition, the court must impose upon the offender a fine of not less than \$250. (R.C. 2913.31(B).)

Operation of the act

Enhanced penalty. The act modifies the penalty provisions for forgery. Under the act, if the victim of the offense of forgery is an elderly person or disabled adult, forgery generally is a felony of the fifth degree. If the victim is an elderly person or disabled adult, and if property or services are involved in the offense or the victim suffers a loss, forgery is one of the following (R.C. 2913.31(C)(1)(c)):

(1) If the value of the property or services or the loss to the victim is \$500 or more and is less than \$5,000, a felony of the fourth degree;

(2) If the value of the property or services or the loss to the victim is \$5,000 or more and is less than \$25,000, a felony of the third degree;

(3) If the value of the property or services or the loss to the victim is \$25,000 or more, a felony of the second degree.

The act expands preexisting provisions that provide for the aggregation of the value of property, services, etc., involved in a series of theft offenses that are related in a specified manner, so that the provisions also apply in specified circumstances when a series of theft offenses are committed that involve victims who are elderly

persons or disabled adults (see "*Determination of value when multiple theft offenses committed*," below).

Securing writings by deception

Continuing law

Continuing law prohibits a person, by deception, from causing another to execute any writing that disposes of or encumbers property, or by which a pecuniary obligation is incurred. A violation of this prohibition is securing writings by deception. Generally, securing writings by deception is a misdemeanor of the first degree. If the value of the property or the obligation involved is \$500 or more and less than \$5,000, securing writings by deception is a felony of the fifth degree. If the value of the property or the obligation involved is \$5,000 or more and is less than \$100,000, securing writings by deception is a felony of the fourth degree. If the value of the property or the obligation involved is \$100,000 or more, securing writings by deception is a felony of the third degree. (R.C. 2913.43.)

Operation of the act

The act modifies the penalty provisions for the offense. Under the act, if the victim of the offense is an elderly person or disabled adult, securing writings by deception is whichever of the following is applicable (R.C. 2913.43(C)(3)):

- (1) Generally, a felony of the fifth degree;
- (2) If the value of the property or obligation involved is \$500 or more and is less than \$5,000, a felony of the fourth degree;
- (3) If the value of the property or obligation involved is \$5,000 or more and is less than \$25,000, a felony of the third degree;
- (4) If the value of the property or obligation involved is \$25,000 or more, a felony of the second degree.

The act expands preexisting provisions that provide for the aggregation of the value of property, services, etc., involved in a series of theft offenses that are related in a specified manner, so that the provisions also apply in specified circumstances when a series of theft offenses are committed that involve victims who are elderly persons or disabled adults (see "*Determination of value when multiple theft offenses committed*," below).

Determination of value when multiple theft offenses committed

Continuing law

Determination of the value of property or services involved in a theft offense. Continuing law provides that, if a person is charged with a theft offense involving property or services valued in a specified range that is linked to the penalties for the offense, the jury or court trying the case must determine the value of the involved property or services as of the time of the offense and, if it returns a guilty verdict, must return the finding as part of the verdict. It is sufficient for the jury or court to return a finding to the effect that the value of the property or services involved was within one of the specified ranges, and it is unnecessary to find the exact value. When more than one item of property or services is involved in a theft offense, the value for purposes of this provision is the aggregate value of all property or services involved in the offense. The law contains a series of criteria, and specifies types of evidence, to use in determining the value of the property or services involved in a theft offense. (R.C. 2913.61(A), (B), (D), and (E).)

Procedure when an alleged offender commits a series of theft offenses under R.C. 2913.02 in the same employment, capacity, or relationship to another.

Continuing law specifies that, if an offender commits a series of theft offenses under R.C. 2913.02 in the offender's same employment, capacity, or relationship to another, all those offenses must be tried as a single offense, and the value of the property or services involved for purposes of determining the value as described in the preceding paragraph is the aggregate value of all property and services involved in all offenses in the series. In prosecuting a single offense under this provision, it is not necessary to separately charge and prove each offense in the series; rather, it is sufficient to allege and prove that the offender, within a given time span, committed one or more theft offenses in the offender's same employment, capacity, or relationship to another. (R.C. 2913.61(C)(1).)

Procedure when an alleged offender commits a series of theft offenses under R.C. 2913.02 against multiple victims pursuant to a scheme or course of conduct.

Continuing law also specifies that, if an offender is being tried for the commission of a series of theft offenses under R.C. 2913.02 against more than one victim pursuant to a scheme or course of conduct, the value of the property or services involved, for the purpose of determining the value under the above-described valuation mechanism, is the aggregate value of all property and services involved in the series of offenses (R.C. 2913.61(C)(2)).

Operation of the act

The act modifies the existing theft offense general property valuation and aggregation provisions as follows:

(1) It includes in the general property valuation provision references to the new "\$5,000 or more but less than \$25,000" penalty tier and the new "\$25,000 or more but less than \$100,000" penalty tier that the act includes in the offenses of unauthorized use of a vehicle, unauthorized use of property, misuse of credit cards, forgery, and securing writings by deception. In doing this, the act eliminates the provision's existing reference to the penalty tier of "\$5,000 or more but less than \$100,000." (R.C. 2913.61(A).)

(2) It expands the existing provision that pertains to the aggregation of value when a person commits a series of theft offenses under R.C. 2913.02 in the offender's same employment, capacity, or relationship to another so that it also applies regarding multiple offenses involving a victim who is an elderly person or disabled adult. Under the expansion, *when a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of, the Revised Code sections containing the R.C. 2913.02 theft offenses, unauthorized use of a vehicle, unauthorized use of property, unauthorized use of computer or telecommunications property, misuse of credit cards in specified circumstances, forgery, forging identification cards or selling or distributing forged identification cards, or securing writings by deception involving a victim who is an elderly person or disabled adult* is committed by the offender in the offender's same employment, capacity, or relationship to another, all those offenses must be tried as a single offense, and the value of the property or services involved for purposes of determining the value under the general valuation provision is the aggregate value of all property and services involved in all offenses in the series. In prosecuting a single offense under this provision, it is not necessary to separately charge and prove each offense in the series; rather, it is sufficient to allege and prove that the offender, within a given time span, committed one or more theft offenses in the offender's same employment, capacity, or relationship to another. (R.C. 2913.61(C)(1).)

(3) It expands the existing provision that pertains to the aggregation of value when a person commits a series of theft offenses under R.C. 2913.02 against more than one victim pursuant to a scheme or course of conduct. Under the expansion, *when a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of, the Revised Code sections containing the R.C. 2913.02 theft offenses, unauthorized use of a vehicle, unauthorized use of property, unauthorized use of computer or telecommunications property, misuse of credit cards in specified circumstances, forgery, forging identification cards or selling or*

distributing forged identification cards, or securing writings by deception, whether committed against one victim or more than one victim, involving a victim who is an elderly person or disabled adult, pursuant to a scheme or course of conduct, all those offenses may be tried as a single offense, and the value of the property or services involved for purposes of determining the value under the general valuation provision is the aggregate value of all property and services involved in all offenses in the series of offenses. (R.C. 2913.61(C)(2).)

HISTORY

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