



Dennis M. Papp

Final Analysis
Legislative Service Commission

Sub. H.B. 273

124th General Assembly
(As Passed by the General Assembly)

Reps. DePiero, Calvert, Sullivan, Redfern, Goodman, R. Miller, Fessler, Hartnett, Boccieri, Metzger, Coates, Cirelli, Lendrum, Schmidt, Ford, Jones, Beatty, Allen, Aslanides, Fedor, Britton, Distel, Carano, Jerse, Womer Benjamin, Reidelbach, Seaver, Sulzer, Brown, Hughes, Seitz, Faber, Sykes, S. Smith, Grendell, Ogg, Strahorn, Woodard, Driehaus, Barrett, Barnes, Rhine, Key, D. Miller, Flannery, Carey, Damschroder, Niehaus, Manning, McGregor, G. Smith, Salerno, Gilb, Collier, Trakas, Core, Oakar, Clancy, Latell, Willamowski, Hoops, Krupinski, Carmichael, Latta, Roman, Otterman, Perry, Wilson, Cates, Schneider, Buehrer

Sens. Herington, Blessing, Brady, Espy, Roberts, Oelslager, Fingerhut, Robert Gardner, Spada, Ryan, Harris, Armbruster, Prentiss, Amstutz, Mead, Austria

Effective date: *

ACT SUMMARY

- Expands the definition of "harmful intoxicants" to include the chemicals Gamma Butyrolactone and 1,4 Butanediol.

CONTENT AND OPERATION

Definition of "harmful intoxicants"

The act expands the definition of "harmful intoxicant" that applies to R.C. Chapter 2925. (the general Drug Offense Law) so that in addition to the substances included under preexisting law the term also includes the chemicals Gamma Butyrolactone and 1,4 Butanediol as "harmful intoxicants." Formerly, subject to the exclusion described below, "harmful intoxicant" meant any compound,

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

mixture, preparation, or substance the gas, fumes, or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation, or other harmful physiological effects, and included, but was not limited to, any of the following:

(1) Any volatile organic solvent, plastic cement, model cement, fingernail polish remover, lacquer thinner, cleaning fluid, gasoline, or other preparation containing a volatile organic solvent;

(2) Any aerosol propellant;

(3) Any fluorocarbon refrigerant;

(4) Any anesthetic gas.

Under preexisting law, retained by the act, "harmful intoxicant" does not include beer or intoxicating liquor. (R.C. 2925.01(I).)

Effect of expansion of definition of "harmful intoxicants"

Five preexisting statutory provisions, not in the act, use the term "harmful intoxicant." A summary of those provisions follows. The act's expansion of the definition of the term includes the two specified chemicals within the scope of the provisions.

Abusing harmful intoxicants

Except for lawful research, clinical, medical, dental, or veterinary purposes, preexisting law prohibits a person, with purpose to induce intoxication or similar physiological effects, from obtaining, possessing, or using a *harmful intoxicant*. A violation of this prohibition is "abusing harmful intoxicants," a misdemeanor of the first degree. If the offender previously has been convicted of a "drug abuse offense," abusing harmful intoxicants is a felony of the fifth degree. In addition to any other sanction imposed for the offense, the court must suspend for not less than six months or more than five years the driver's or commercial driver's license or permit of any person who is convicted of or has pleaded guilty to the offense. The court also must comply with certain professional licensing entity notification provisions. (R.C. 2925.31.)

Trafficking in harmful intoxicants

Preexisting law prohibits a person from knowingly dispensing or distributing a *harmful intoxicant*, other than nitrous oxide, to a person *age 18 or older* if the person who dispenses or distributes it knows or has reason to believe

that the *harmful intoxicant* will be used in violation of the prohibition described above under "**Abusing harmful intoxicants.**"

Preexisting law also prohibits a person from knowingly dispensing or distributing a *harmful intoxicant*, other than nitrous oxide, to a person *under age 18* if the person who dispenses or distributes it knows or has reason to believe that the *harmful intoxicant* will be used in violation of the prohibition described above under "**Abusing harmful intoxicants.**" But this prohibition does not prohibit: (1) dispensing or distributing a harmful intoxicant to a person under age 18 if a written order from the juvenile's parent or guardian is provided to the dispenser or distributor, or (2) dispensing or distributing gasoline or diesel fuel to a person under age 18 if the dispenser or distributor does not know or have reason to believe the product will be used in violation of that prohibition. A person is not required to obtain a written order from the parent or guardian of a person under age 18 in order to distribute or dispense gasoline or diesel fuel to the person. (R.C. 2925.32(A).)¹

These prohibitions do not apply to products used in making, fabricating, assembling, transporting, or constructing a product or structure by manual labor or machinery for sale or lease to another person, or to the mining, refining, or processing of natural deposits (R.C. 2925.32(C)).

A violation of either of these prohibitions is "trafficking in harmful intoxicants," a felony of the fifth degree. If the offender previously has been convicted of a drug abuse offense, trafficking in harmful intoxicants is a felony of the fourth degree. In addition to any other sanction imposed for the offense, the court must suspend for not less than six months or more than five years the driver's or commercial driver's license or permit of any person who is convicted of or has pleaded guilty to the offense. The court also must comply with certain professional licensing entity notification provisions. (R.C. 2925.32(D)(1).)

It is an affirmative defense to a charge of a violation of the second prohibition that (R.C. 2925.32(E)):

(1) An individual exhibited to the defendant or an officer or employee of the defendant, for purposes of establishing the individual's age, an Ohio driver's license or permit, an Ohio commercial driver's license or permit, an Ohio

¹ *Separate prohibitions, not further discussed in this final analysis, exist relating to nitrous oxide. A violation of these prohibitions is either the offense of trafficking in harmful intoxicants or a separate offense called improperly dispensing or distributing nitrous oxide. (R.C. 2925.32(B), (D), (F), and (G).)*

identification card, for (sic) another document that purports to be such a license, permit, or identification card;

(2) The document exhibited appeared to be a genuine, unaltered document, to pertain to the individual, and to establish the individual's age;

(3) The defendant or the officer or employee of the defendant otherwise did not have reasonable cause to believe that the individual was under the age represented.

Inclusion of Gamma Butyrolactone and 1,4 Butanediol within definition of "drug of abuse"

Preexisting R.C. 3719.011(A) defines, for the purposes of the Revised Code, "drug of abuse" as any controlled substance, any *harmful intoxicant*, and any dangerous drug. By amending the definition of "harmful intoxicant," the act includes Gamma Butyrolactone and 1,4 Butanediol as drugs of abuse. The phrase "drug of abuse" is used in 71 other sections of the Revised Code, none of which are in the act. The effects of the act on some of the more significant provisions are described below:

(1) The prohibition against adulteration of food more explicitly covers instances in which either of these chemicals have been added to a food or confection (R.C. 3716.11).

(2) The offenses of OMVI, OMVUAC, operating a watercraft under the influence, involuntary manslaughter in certain circumstances, and related provisions apply to instances when the offender is under the influence of either of these chemicals (R.C. 1547.11, 1547.111, 1547.99, 1905.01, 1905.03, 1905.05, 1905.201, 2743.51, 2743.60, 2903.04, 2919.22, 3701.143, 3937.41, 4503.234, 4503.235, 4506.01, 4507.021, 4507.16, 4507.162, 4507.169, 4509.31, 4511.19, 4511.191, 4511.193, 4511.195, 4511.196, and 4511.99).

(3) A person is under a disability to have, carry, or use any firearm or dangerous ordnance (and, thus, is generally prohibited from knowingly acquiring, using, etc., a firearm or dangerous ordnance) if the person is under indictment for or has been convicted of any offense involving the illegal possession, use, sale, administration, distribution, or trafficking in either of these chemicals or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been an offense involving the illegal possession, use, sale, administration, distribution, or trafficking in either of these chemicals (R.C. 2923.13).

(4) Using weapons while intoxicated applies to a person under the influence of either of these chemicals, and the "varminting" exception to the prohibition against discharging a firearm from a motor vehicle does not apply to a person under the influence of either of these chemicals (R.C. 2923.15 and 2923.16).

(5) In determining whether to grant bail in certain cases, the court must consider whether the offense involves either of these chemicals (R.C. 2937.222).

(6) Certain provisions relating to sentencing, probation, parole, and post-release control impose restrictions on the use of either of these chemicals (R.C. 2929.15, 2929.19, 2951.02, 2951.03, 2951.08, and 2967.131).

(7) Tests for these chemicals are included in the provisions relating to random drug tests of prisoners (R.C. 341.26, 753.33, 2951.05, and 5120.63).

(8) These chemicals may not be conveyed onto the grounds of a detention facility or of an institution that is under the control of the Department of Mental Health or the Department of Mental Retardation and Developmental Disabilities, and Department of Rehabilitation and Correction and Department of Youth Services institutions may search visitors for these chemicals (R.C. 2921.36, 5120.421, and 5139.251).

(9) Education Law provisions relating to programs regarding drugs of abuse and the treatment of children under the influence of drugs of abuse include these chemicals (R.C. 3313.60, 3313.95, and 3321.13).

(10) Use of either of these chemicals is covered by the Alcohol and Drug Addiction Services Laws (R.C. 340.15(A), 3793.01, 3793.02, 3793.04, and 3793.15).

(11) The immunity of physicians relating to reports to certain employers regarding employee drug abuse apply to instances when the employee is under the influence of either of these chemicals (R.C. 2305.33).

(12) These chemicals are governed by the provisions relating to the limitation of a physician's or dentist's testimonial privilege in certain criminal cases and law enforcement access to the results of drug tests (R.C. 2317.02, 2317.022, and 2317.422).

Nursing law

Preexisting law provides that the Board of Nursing may abstain from taking disciplinary action against an individual with a chemical dependency if it finds that the individual can be treated effectively and there is no impairment of the

individual's ability to practice according to acceptable and prevailing standards of safe care. For the purposes of this provision, "chemical dependency" includes the use of a *harmful intoxicant* to the extent that the user becomes physically or psychologically dependent on the intoxicant or endangers the user's health, safety, or welfare or that of others. (R.C. 4723.35(B).)

Chiropractic law

Preexisting law requires the State Chiropractic Board to establish a chemical dependency and mental illness monitoring program. The program must be made available to any individual under the board's jurisdiction who has a chemical dependency or mental illness and meets the board's eligibility requirements for admission to and continued participation in the program. For the purposes of this provision, "chemical dependency" includes the use of a *harmful intoxicant* to the extent that the user becomes physically or psychologically dependent on the intoxicant or endangers the user's health, safety, or welfare or that of others. (R.C. 4734.41.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-24-01	p. 468
Reported, H. Criminal Justice	02-07-02	pp. 1363-1364
Passed House (96-0)	02-13-02	pp. 1391-1392
Reported, S. Judiciary on Criminal Justice	03-13-02	p. 1574
Passed Senate (33-0)	03-13-02	pp. 1578-1579

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