



Sub. S.B. 320

127th General Assembly
(As Passed by the General Assembly)

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Effective date: *

ACT SUMMARY

- Expands the list of offenses that are within the definition of "corrupt activity" under the Corrupt Activity Law to also include engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another to engage in conduct constituting "organized retail theft" or conduct that constitutes one or more violations of any law of another state, that is substantially similar to organized retail theft, and that if committed in Ohio would be organized retail theft, if the actor was convicted of the conduct in a criminal proceeding in the other state.
- States that: (1) by enacting the provisions described in the preceding dot point it is the intent of the General Assembly to add organized retail theft and the substantially similar conduct occurring in a state other than Ohio as conduct constituting corrupt activity, and (2) the enactment described in clause (1) of this paragraph does not limit or preclude any prosecution for the offense of "engaging in a pattern of corrupt activity" that is based

* 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.

on one or more violations of R.C. 2913.02 (theft, aggravated theft, and other theft-based offenses) or 2913.51 (receiving stolen property), one or more similar offenses under the laws of Ohio or any other state, or any combination of any of those violations or offenses, even though the conduct constituting the basis for those violations or offenses could be construed as also constituting organized retail theft or substantially similar conduct occurring in a state other than Ohio.

- Defines "organized retail theft," for purposes of the provision described in the two preceding dot points, as the theft of retail property with a retail value of \$500 or more from one or more retail establishments with the intent to sell, deliver, or transfer that property to a retail property fence.
- Specifies that, regarding a successor manufacturer of alcoholic beverages that acquires all or substantially all of the stock or assets of another manufacturer of alcoholic beverages through merger or acquisition, or acquires or is the assignee of a particular product or brand of alcoholic beverage from another manufacturer of alcoholic beverages, the territories for the particular product or brand of alcoholic beverage must not be assigned to another distributor of alcoholic beverages until the successor manufacturer of alcoholic beverages compensates the terminated or nonrenewed distributor of alcoholic beverages for the diminished value of the distributor's business, and specifies a procedure to determine the diminished value.
- Provides that when a distributor of a product or brand of alcoholic beverage receives written notice of termination or nonrenewal of its franchise, the distribution of beer or wine for 90 days or more without a written contract does not constitute a franchise relationship between the successor manufacturer of alcoholic beverages and the distributor of alcoholic beverages.
- Provides that if an offender commits theft by stealing rented property or rental services, the court may order that the offender make restitution pursuant to the ongoing statutes that set forth financial sanctions for felonies and misdemeanors.
- Specifies that the restitution described in the preceding dot point may include, but is not limited to, the cost of repairing or replacing the stolen property, or the cost of repairing the stolen property and any loss of revenue resulting from deprivation of the property due to theft of rental

services that is less than or equal to the actual value of the property at the time it was rented.

- Specifies that the section of the Revised Code that explains how to establish evidence of intent to commit theft of rented property also applies to theft of "rental services."
- Specifies that the definition of "services" in the theft and fraud sections of the Revised Code also includes "rental services."

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CONTENT AND OPERATION

Corrupt Activity Law

Continuing law--in general

The Corrupt Activity Law, law largely unchanged by the act (R.C. 2923.31 to 2923.36, not in the act except for R.C. 2923.31), prohibits a person from doing any of the following: (1) if the person is employed by, or associated with, any enterprise, from conducting or participating in, directly or indirectly, the affairs of the enterprise through a "pattern of corrupt activity" (see "Pattern of corrupt activity, and corrupt activity," below) or the collection of an unlawful debt, (2) through a "pattern of corrupt activity" or the collection of an unlawful debt, from acquiring or maintaining, directly or indirectly, any interest in, or control of, any enterprise or real property, or (3) if the person knowingly has received any proceeds derived, directly or indirectly, from a "pattern of corrupt activity" or the collection of any unlawful debt, from using or investing, directly or indirectly, any part of those proceeds, or any proceeds derived from the use or investment of any of those proceeds, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise. The Law

provides an exception for a purchase of securities on the open market, in specified circumstances.

A violation of this prohibition is the offense of "engaging in a pattern of corrupt activity." Engaging in corrupt activity generally is a felony of the second degree. However, if at least one of the incidents of corrupt activity is a felony of the first, second, or third degree, aggravated murder, or murder, if at least one of the incidents was a felony under Ohio law that was committed prior to July 1, 1996, and that would constitute a felony of the first, second, or third degree, aggravated murder, or murder if committed on or after July 1, 1996, or if at least one of the incidents of corrupt activity is a felony under the law of the United States or of another state that, if committed in Ohio on or after July 1, 1996, would constitute a felony of the first, second, or third degree, aggravated murder, or murder under Ohio law, engaging in a pattern of corrupt activity is a felony of the first degree. Notwithstanding any other provision of law, a person may be convicted of violating the provisions described above as well as of a conspiracy to violate one or more of those provisions under the state's conspiracy provisions contained in R.C. 2923.01. (R.C. 2923.32(A) and (B)(1).)

The Corrupt Activity Law provides other sanctions and remedies, unchanged by the act, that apply regarding the offense of engaging in a pattern of corrupt activity.

Pattern of corrupt activity, and corrupt activity

Pattern of corrupt activity. Under the Corrupt Activity Law, a "pattern of corrupt activity" continues to mean two or more incidents of "corrupt activity" (see below), whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event. Regarding the definition, the Law provides that: (1) at least one of the incidents forming the pattern must occur on or after January 1, 1986, (2) unless any incident was an aggravated murder or murder, the last of the incidents forming the pattern must occur within six years after the commission of any prior incident forming the pattern, excluding any period of imprisonment served by any person engaging in the corrupt activity, and (3) for purposes of the criminal penalties for the offense, at least one of the incidents forming the pattern must be a felony under the Ohio law in existence at the time it was committed or, if committed in violation of the laws of the United States or of any other state, must be a felony under the law of the United States or the other state and would be a criminal offense under Ohio law if committed in Ohio. (R.C. 2923.31(E).)

Corrupt activity. The definition of "corrupt activity" under the Corrupt Activity Law is largely unchanged by the act. The act expands the offenses

included under "corrupt activity" (see "*Operation of the act--corrupt activity*," below), otherwise, "corrupt activity" continues to mean engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the following (R.C. 2923.31(I)):

(1) Conduct defined as "racketeering activity" under the federal Organized Crime Control Act of 1970, as amended;

(2) Conduct constituting any of the following:

(a) A violation of R.C. 1315.55, 1322.02, 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2905.01, 2905.02, 2905.11, 2905.22, 2907.321, 2907.322, 2907.323, 2909.02, 2909.03, 2909.22, 2909.23, 2909.24, 2909.26, 2909.27, 2909.28, 2909.29, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2911.31, 2913.05, 2913.06, 2921.02, 2921.03, 2921.04, 2921.11, 2921.12, 2921.32, 2921.41, 2921.42, 2921.43, 2923.12, 2923.17, 1315.53(F)(1)(a), (b), or (c), 1707.042(A)(1) or (2), 1707.44(B), (C)(4), (D), (E), or (F), 2923.20(A)(1) or (2), 4712.02(J)(1), 4719.02, 4719.05, 4719.06, 4719.07(C), (D), or (E), 4719.08, or 4719.09(A);

(b) Any violation of R.C. 3769.11, 3769.15, 3769.16, or 3769.19 as it existed prior to July 1, 1996, any violation of R.C. 2915.02 that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would have been a violation of R.C. 3769.11 as it existed prior to that date, or any violation of R.C. 2915.05 that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would have been a violation of R.C. 3769.15, 3769.16, or 3769.19 as it existed prior to that date;

(c) Any violation of R.C. 2907.21, 2907.22, 2907.31, 2913.02 (theft, aggravated theft, and other theft-based offenses), 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.42, 2913.47, 2913.51 (receiving stolen property), 2915.03, 2925.03, 2925.04, 2925.05, or 2925.37, any violation of R.C. 2925.11 that is a felony of the first, second, third, or fourth degree and that occurs on or after July 1, 1996, any violation of R.C. 2915.02 that occurred prior to July 1, 1996, any violation of R.C. 2915.02 that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would not have been a violation of R.C. 3769.11 as it existed prior to that date, any violation of R.C. 2915.06 as it existed prior to July 1, 1996, or any violation of R.C. 2915.05(B) as it exists on and after July 1, 1996, when the proceeds of the violation, the payments made in the violation, the amount of a claim for payment or for any other benefit that is false or deceptive and that is involved in the violation, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation exceeds \$500, or any combination of violations described in this paragraph when the total proceeds of the combination of violations, payments made in the combination of violations,

amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds \$500;

(d) Any violation of R.C. 5743.112 when the amount of unpaid tax exceeds \$100;

(e) Any violation or combination of violations of R.C. 2907.32 involving any material or performance containing a display of bestiality or of sexual conduct that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice when the total proceeds of the violation or combination of violations, the payments made in the violation or combination of violations, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation or combination of violations exceeds \$500;

(f) Any combination of violations described above in (2)(c) and violations of R.C. 2907.32 involving any material or performance containing a display of bestiality or of sexual conduct that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds \$500.

(3) Conduct constituting a violation of any law of any state other than Ohio that is substantially similar to the conduct described above in (2), provided the defendant was convicted of the conduct in a criminal proceeding in the other state.

(4) Animal or ecological terrorism, which means the commission of any felony that involves causing or creating a substantial risk of physical harm to any property of another, the use of a deadly weapon or dangerous ordnance, or purposely, knowingly, or recklessly causing serious physical harm to property and that involves an intent to obstruct, impede, or deter any person from participating in a lawful animal activity, from mining, foresting, harvesting, gathering, or processing natural resources, or from being lawfully present in or on an animal facility or research facility.

Operation of the act--corrupt activity

The act expands the list of offenses that are within the definition of "corrupt activity" under the Corrupt Activity Law to also include "organized retail theft,"

which the act defines (see below), and conduct that constitutes one or more violations of any law of any state other than Ohio, that is substantially similar to "organized retail theft," and that if committed in Ohio 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 value of the property involved in the theft is not a relevant factor. (R.C. 2923.31(I)(5)(a).) Thus, under the act, corrupt activity means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another to engage in (1) any of the offenses identified under ongoing provisions of the law, (2) organized retail theft, or (3) conduct that constitutes one or more violations of any law of any state other than Ohio, that is substantially similar to organized retail theft, and that if committed in Ohio 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 (R.C. 2923.31(I)).

The act states that, by enacting the provisions that include organized retail theft and substantially similar conduct occurring in a state other than Ohio in the definition of "corrupt activity," it is the intent of the General Assembly to add organized retail theft and the substantially similar conduct occurring in a state other than Ohio as conduct constituting corrupt activity. The act states that the enactment of the provisions that add organized retail theft and substantially similar conduct occurring in a state other than Ohio as conduct constituting "corrupt activity" does not limit or preclude, and cannot be construed as limiting or precluding, any prosecution for a violation of the Corrupt Activity Law prohibition contained in R.C. 2923.32, as described above in "Continuing law--in general" under "Corrupt Activity Law" that is based on one or more violations of R.C. 2913.02 (theft, aggravated theft, and other theft-based offenses) or 2913.51 (receiving stolen property), one or more similar offenses under the laws of Ohio or any other state, or any combination of any of those violations or similar offenses, even though the conduct constituting the basis for those violations or offenses could be construed as also constituting organized retail theft or substantially similar conduct occurring in a state other than Ohio. (R.C. 2923.31(A)(5)(b).)

For purposes of the provisions described in the preceding paragraph, the act defines the following terms (R.C. 2923.31(Q) to (T)):

(1) "Organized retail theft" means the theft of "retail property" with a "retail value" of \$500 or more from one or more retail establishments with the intent to sell, deliver, or transfer that property to a "retail property fence."

(2) "Retail property" means any tangible personal property displayed, held, stored, or offered for sale in or by a retail establishment.

(3) "Retail property fence" means a person who possesses, procures, receives, or conceals retail property that was represented to the person as being stolen or that the person knows or believes to be stolen.

(4) "Retail value" means the full retail value of the retail property. In determining whether the retail value of retail property equals or exceeds \$500, the value of all retail property stolen from the retail establishment or retail establishments by the same person or persons within any 180-day period must be aggregated.

Merger, acquisition, purchase, or assignment of franchise for distributing alcoholic beverages

Continuing law

In general, continuing law provides that no manufacturer or distributor of alcoholic beverages may cancel or fail to renew a franchise or substantially change a sales area or territory without the prior consent of the other party for other than just cause and without at least 60-days' written notice to the other party setting forth the reasons for the cancellation, failure to renew, or substantial change (see **COMMENT** for alcoholic beverage franchise definitions). However, continuing law also specifies that if a successor manufacturer of alcoholic beverages acquires all or substantially all of the stock or assets of another manufacturer of alcoholic beverages through merger or acquisition or acquires or is the assignee of a particular product or brand of alcoholic beverage from another manufacturer of alcoholic beverages, the successor manufacturer, within 90 days of the date of the merger, acquisition, purchase, or assignment, may give written notice of termination, nonrenewal, or renewal of the franchise to a distributor of the acquired product or brand. Continuing law further specifies that any notice of termination or nonrenewal of the franchise to a distributor of the acquired product or brand must be received at the distributor's principal place of business within the 90-day period. If notice is not received within this 90-day period, a franchise relationship is established between the parties. If the successor manufacturer complies with the above provisions, just cause or consent of the distributor is not required for the termination or nonrenewal. Upon termination or nonrenewal of a franchise pursuant to the above provisions, the distributor must sell and the successor manufacturer must repurchase the distributor's inventory of the terminated or nonrenewed product or brand as set forth in R.C. 1333.85(C), and the successor manufacturer also must compensate the distributor for the diminished value of the distributor's business that is directly related to the sale of the product or brand terminated or not renewed by the successor manufacturer. The value of the distributor's business that is directly related to the sale of the terminated or nonrenewed product or brand must include, but is not limited to, the appraised market value of those assets of the distributor principally devoted to the

sale of the terminated or nonrenewed product or brand and the goodwill associated with that product or brand. (R.C. 1333.85(D).)

Operation of the act

The act provides that with respect to any merger, acquisition, purchase, or assignment of all or substantially all of the stock or assets of another manufacturer of alcoholic beverages or of a particular product or brand of alcoholic beverage, as described above in "**Continuing law**" under "**Merger, acquisition, purchase, or assignment of franchise for distributing alcoholic beverages,**" both of the following apply (R.C. 1333.851(A)):

(1) The territories for the particular product or brand of alcoholic beverage must not be assigned to another distributor until the successor manufacturer compensates the terminated or nonrenewed distributor for the diminished value of the distributor's business.

(2) When a distributor receives written notice of termination or nonrenewal of its franchise pursuant to continuing law as described above, the distribution of beer or wine for 90 days or more without a written contract does not constitute a franchise relationship between the successor manufacturer and the distributor under R.C. 1333.83.

Further, with respect to the merger, acquisition, or purchase of a manufacturer of alcoholic beverages by a successor manufacturer of alcoholic beverages or the purchase or assignment of a product or brand to a successor manufacturer of alcoholic beverages under continuing law as described above, all of the following apply (R.C. 1333.851(B)):

(1) Except as otherwise provided in (2) below, within 75 days after a distributor receives written notice of termination or nonrenewal of its franchise as discussed above in continuing law, the distributor must provide the successor manufacturer with the three previous years of financial statements and other relevant and reasonably necessary financial information regarding the diminished value of the distributor's business. The distributor and successor manufacturer must negotiate in good faith to determine the diminished value of the distributor's business, and the successor manufacturer must pay the distributor for that diminished value.

(2) If the distributor and successor manufacturer are unable to negotiate in good faith or are unable to resolve the distributor's diminished value within 90 days of the date that notice of termination is given, either party may bring an action in the court of common pleas of the county in which the distributor's principal place of business in this state is located within 90 days of the date that

notice of termination is given, except that the parties may mutually agree in writing to extend that 90-day period.

(3) The court of common pleas must determine the diminished value of the distributor's business within 90 days after the action is filed. The successor manufacturer must pay the distributor the amount of diminished value the court determines. Upon payment of that amount by the manufacturer to the distributor, the successor manufacturer may transfer the brands to a new distributor.

(4) Either party may appeal the decision of the court of common pleas to the court of appeals. The filing of an appeal does not stay the successor manufacturer's payment of diminished value to the distributor or the successor manufacturer's transfer of brands to a new distributor.

(5) If the court is unable to determine the diminished value of the distributor's business within 90 days after the action is filed, the court must order the successor manufacturer to pay its last good faith offer to the distributor on the 91st day after the action is filed and must treat the manufacturer's application for that order as a request for emergency injunctive relief without the need for any showing of irreparable harm. Upon payment of the amount of its last good faith offer to the distributor, the successor manufacturer may transfer the brands to a new distributor. After the successor manufacturer's payment of that amount to the distributor and its transfer of the brands, the court must determine the diminished value of the distributor's business. The successor manufacturer must pay the distributor the amount of the diminished value determined by the court less the amount of its last good faith offer previously paid.

(6) The parties by mutual agreement may extend or shorten any of the time deadlines set forth in this section. (R.C. 1333.851.)

Theft of rented property or rental services

The act specifies that in addition to the ongoing penalties for theft, if the offender committed the theft by stealing rented property or rental services, the court may order that the offender make restitution pursuant to R.C. 2929.18 (financial sanctions for felonies) or 2929.28 (financial sanctions for misdemeanors). Restitution may include, but is not limited to, the cost of repairing or replacing the stolen property or the cost of repairing the stolen property and any loss of revenue resulting from deprivation of the property due to theft of rental services that is less than or equal to the actual value of the property at the time it was rented. The act specifies that evidence of intent to commit theft of rented property or rental services must be determined pursuant to R.C. 2913.72 (ongoing law that specifies factors to be considered evidence of intent to commit theft of rented property). (R.C. 2913.02(B)(10).)

Additionally, the act amends the definition of "services" that is used in the theft and fraud sections of the Revised Code (R.C. Chapter 2913.) to include "rental services" (R.C. 2913.01(E)). It also specifies that the section of the Revised Code that explains how to establish evidence of intent to commit theft of rented property also applies to theft of "rental services" (R.C. 2913.72).

COMMENT

As used in R.C. 1333.82 to 1333.87 (R.C. 1333.82, not in the act):

(a) "Alcoholic beverages" means beer and wine as defined in R.C. 4301.01.

(b) "Manufacturer" means a person, whether located in this state or elsewhere, that manufactures or supplies alcoholic beverages to distributors in this state.

(c) "Distributor" means a person that sells or distributes alcoholic beverages to retail permit holders in this state, but does not include the state or any of its political subdivisions.

(d) "Franchise" means a contract or any other legal device used to establish a contractual relationship between a manufacturer and a distributor.

(e) "Good faith" means the duty of any party to any franchise, and all officers, employees, or agents of any party to any franchise, to act in a fair and equitable manner toward each other so as to guarantee each party freedom from coercion or intimidation; except that recommendation, endorsement, exposition, persuasion, urging, or argument shall not be considered to constitute a lack of good faith or coercion.

(f) "Brand," as applied to wine, means a wine different from any other wine in respect to type, brand, trade name, or container size.

(g) "Sales area or territory" means an exclusive geographic area or territory that is assigned to a particular A or B permit holder and that either has one or more political subdivisions as its boundaries or consists of an area of land with readily identifiable geographic boundaries. "Sales area or territory" does not include, however, any particular retail location in an exclusive geographic area or territory that had been assigned to another A or B permit holder before April 9, 2001.

HISTORY

| ACTION | DATE |
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