



Ohio Legislative Service Commission

Bill Analysis

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S.B. 63

130th General Assembly
(As Introduced)

Sens. Hughes, Patton, Schaffer

BILL SUMMARY

- Generally increases the penalties for theft of a computer or telecommunications device.
- Prohibits the use of a computer or telecommunications device to intercept any information or computer program or application relating to the transfer or possible transfer of funds.
- Prohibits the use of any information or computer program or application intercepted in the manner described in the preceding dot point to obtain or exert control over the property of another.

CONTENT AND OPERATION

Penalties for theft-based offense involving a computer or telecommunications device

Existing law, unchanged by the bill, prohibits any 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: (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," (4) by threat, (5) or by intimidation (see "**Definitions**," below for definitions of the terms in quotation marks).¹ The offense name and penalty for a violation of the prohibition depend upon the value of the property or services involved and, in certain

¹ R.C. 2913.02(A).

cases, the type of property involved.² The existing offense names and penalties for violations are described below in "**Background – existing penalties for theft-based offense.**"

The bill increases the penalty for a violation of the prohibition described above if the property stolen is a "computer" or "telecommunications device" (see "**Definitions,**" below). The penalties under the bill, with the existing penalties for violations of the prohibition in comparable circumstances indicated in parentheses, are as follows:³

(1) Except as otherwise provided with respect to violations when the victim is an elderly person or a disabled adult, as described in (2), below, a violation of the prohibition involving a computer or telecommunications device apparently is the offense of "theft," and the penalty is one of the following:

(a) If the value of the computer or telecommunications device stolen is less than \$150,000, the violation is a fourth degree felony (currently, generally theft of a computer or telecommunications device is "petty theft," which is a first degree misdemeanor; it is "theft," which is a fifth degree felony, if the value of the computer or telecommunications device stolen is \$1,000 or more and less than \$7,500; it is "grand theft," which is a fourth degree felony, if the value of the computer or telecommunications device is \$7,500 or more and less than \$150,000);

(b) If the value of the computer or telecommunications device stolen is \$150,000 or more but less than \$750,000, the violation is a third degree felony (currently, the violation has the same penalty but is "aggravated theft");

(c) If the value of the computer or telecommunications device stolen is \$750,000 or more but less than \$1,500,000, the violation is a second degree felony (currently, the violation has the same penalty, but is "aggravated theft");

(d) If the value of the computer or telecommunications device stolen is \$1,500,000 or more, the violation is a first degree felony (currently, the violation has the same penalty but is "aggravated theft of one million five hundred thousand dollars or more").

(2) If the victim of the violation is an "elderly person" or "disabled adult" (see "**Definitions,**" below), a violation of the prohibition involving a computer or telecommunications device is "theft from an elderly person or disabled adult," and the penalty is one of the following:

² R.C. 2913.02(B).

³ R.C. 2913.02(B)(2), (3), and (9).

(a) If the value of the computer or telecommunications device stolen is less than \$1,000, the violation is a third degree felony (currently in these circumstances, it is a fifth degree felony; the bill's reference to \$1,000 possibly is intended to be a reference to \$7,500);

(b) If the value of the computer or telecommunications device stolen is \$1,000 or more and is less than \$7,500, the violation is a fourth degree felony (same as existing law);

(c) If the value of the computer or telecommunications device stolen is \$7,500 or more and less than \$37,500, the violation is a third degree felony (same as existing law);

(d) If the value of the computer or telecommunications device stolen is \$37,500 or more and less than \$150,000, the violation is a second degree felony (same as existing law);

(e) If the value of the computer or telecommunications device stolen is \$150,000 or more, the violation is a first degree felony (same as existing law).

Theft of information; unlawful use of intercepted information

The bill prohibits any person, without "privilege" to do so, from knowingly using a "computer" or "telecommunications device" to intercept any information or "computer program" or application that is used, intended to be used, or capable of being used for the transfer of funds (see "**Definitions**," below for definitions of the terms in quotation marks). A violation of this prohibition is the offense of "theft of information," a fourth degree felony.⁴

The bill also prohibits any person from using any information or computer program or application that is intercepted in violation of the prohibition described in the preceding paragraph to obtain or exert control over the "property" (see "**Definitions**," below) of another. A violation of this prohibition is the offense of "unlawful use of intercepted information." Except as otherwise described in this paragraph, unlawful use of intercepted information is a fifth degree felony. If the value of the benefit obtained by the offender or of the detriment to the victim is \$1,000 or more but less than \$7,500, unlawful use of intercepted information is a fourth degree felony. If the value of the benefit obtained by the offender or of the detriment to the victim is \$7,500 or more but less than \$150,000, unlawful use of intercepted information is a third degree felony. If the value of the benefit obtained by the offender or of the detriment to the victim is \$150,000 or more but less than \$1,000,000, unlawful use of

⁴ R.C. 2913.08(A) and (D)(1).

intercepted information is a second degree felony. If the value of the benefit obtained by the offender or of the detriment to the victim is \$1,000,000 or more, unlawful use of intercepted information is a first degree felony.⁵

The bill states that nothing in either of the two preceding paragraphs may be construed to prohibit a merchant, processor, or payment network from processing a lawful payment card transaction, including a recurring payment card transaction, that has been requested, initiated, or otherwise authorized by a consumer or that is processed in connection with a consumer's purchase of a product or service.⁶

Definitions

As used in the bill:⁷

"Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses. "Computer" includes, but is not limited to, all input, output, processing, storage, computer program, or communication facilities that are connected, or related, in a computer system or network to an electronic device of that nature. As used in this definition: (1) "computer system" means a computer and related devices, whether connected or unconnected, including, but not limited to, data input, output, and storage devices, data communications links, and computer programs (see below) and data (see below) that make the system capable of performing specified special purpose data processing tasks, and (2) "computer network" means a set of related and remotely connected computers and communication facilities that includes more than one computer system that has the capability to transmit among the connected computers and communication facilities through the use of computer facilities.

"Computer program" means an ordered set of data (see below) representing coded instructions or statements that, when executed by a computer, cause the computer to process data.

"Data" means a representation of information, knowledge, facts, concepts, or instructions that are being or have been prepared in a formalized manner and that are intended for use in a computer, computer system, or computer network.

⁵ R.C. 2913.08(B) and (D)(2).

⁶ R.C. 2913.08(C).

⁷ R.C. 2913.01, not in the bill, except for the definitions of privilege and property; for the definitions of those two terms, R.C. 2901.01, not in the bill.



"Deception" means knowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact.

"Deprive" means to do any of the following: (1) withhold property of another permanently, or for a period that appropriates a substantial portion of its value or use, or with purpose to restore it only upon payment of a reward or other consideration, (2) dispose of property so as to make it unlikely that the owner will recover it, or (3) accept, use, or appropriate money, property, or services, with purpose not to give proper consideration in return for the money, property, or services, and without reasonable justification or excuse for not giving proper consideration.

"Disabled adult" means a person who is 18 or older and has some impairment of body or mind that makes the person unable 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 agency of Ohio or the United States that has the function of so classifying persons.

"Elderly person" means a person who is 65 or older.

"Owner" means, unless the context requires a different meaning, any person, other than the actor, who is the owner of, who has possession or control of, or who has any license or interest in property or services, even though the ownership, possession, control, license, or interest is unlawful.

"Privilege" means an immunity, license, or right conferred by law, bestowed by express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity.

"Property" means any property, real or personal, tangible or intangible, and any interest or license in that property. "Property" includes, but is not limited to, cable television service, other telecommunications service, telecommunications devices, information service, computers, data, computer software, financial instruments associated with computers, other documents associated with computers, or copies of the documents, whether in machine or human readable form, trade secrets, trademarks, copyrights, patents, and property protected by a trademark, copyright, or patent. As used in this definition, "financial instruments associated with computers" include, but are not limited to, checks, drafts, warrants, money orders, notes of indebtedness,



certificates of deposit, letters of credit, bills of credit or debit cards, financial transaction authorization mechanisms, marketable securities, or any computer system representations of any of them.

"**Services**" include labor, personal services, professional services, rental services, public utility services including wireless service, common carrier services, and food, drink, transportation, entertainment, and cable television services.

"**Telecommunications device**" means any instrument, equipment, machine, or other device that facilitates telecommunication, including, but not limited to, a computer, computer network, computer chip, computer circuit, scanner, telephone, cellular telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables the use of a modem. As used in this definition, "telecommunication" means the origination, emission, dissemination, transmission, or reception of data, images, signals, sounds, or other intelligence or equivalence of intelligence of any nature over any communications system by any method, including, but not limited to, a fiber optic, electronic, magnetic, optical, digital, or analog method.

Background – existing penalties for theft-based offense

Existing law provides the following offense names and penalties for a violation of the prohibition described above in "**Penalties for theft-based offense involving a computer or telecommunications device**":⁸

(1) Except as otherwise described in this paragraph or in (2) to (7), below, the violation is "petty theft," a first degree misdemeanor. If the value of the property or services stolen is \$1,000 or more and less than \$7,500 or if the property stolen is any of the property listed in R.C. 2913.71, the violation is "theft," a fifth degree felony. If the value of the property or services stolen is \$7,500 or more and less than \$150,000, the violation is "grand theft," a fourth degree felony. If the value of the property or services stolen is \$150,000 or more and less than \$750,000, the violation is "aggravated theft," a third degree felony. If the value of the property or services is \$750,000 or more and less than \$1,500,000, the violation is "aggravated theft," a second degree felony. If the value of the property or services stolen is \$1,500,000 or more, the violation is "aggravated theft of one million five hundred thousand dollars or more," a first degree felony.

(2) Except as otherwise described in (3) to (7), below, if the victim of the violation is an elderly person or disabled adult, the violation is "theft from an elderly person or disabled adult," and the provisions of this paragraph apply. Except as otherwise described in this paragraph, the offense is a fifth degree felony. If the value of the

⁸ R.C. 2913.02(B)(1) to (8), and redesignated (B)(10) to (11) under the bill.

property or services stolen is \$1,000 or more and less than \$7,500, the offense is a fourth degree felony. If the value of the property or services stolen is \$7,500 or more and less than \$37,500, the offense is a third degree felony. If the value of the property or services stolen is \$37,500 or more and less than \$150,000, the offense is a second degree felony. If the value of the property or services stolen is \$150,000 or more, the offense is a first degree felony.

(3) If the property stolen is a firearm or dangerous ordnance, the violation is "grand theft." Except as otherwise described in this paragraph, grand theft when the property stolen is a firearm or dangerous ordnance is a third degree felony, and there is a presumption in favor of the court imposing a prison term for the offense. If the firearm or dangerous ordnance was stolen from a federally licensed firearms dealer, grand theft when the property stolen is a firearm or dangerous ordnance is a first degree felony. The offender must serve a prison term imposed for grand theft when the property stolen is a firearm or dangerous ordnance consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(4) If the property stolen is a motor vehicle, the violation is "grand theft of a motor vehicle," a fourth degree felony.

(5) If the property stolen is any dangerous drug, the violation is "theft of drugs," a fourth degree felony, or, if the offender previously has been convicted of a felony drug abuse offense, a third degree felony.

(6) If the property stolen is a police dog or horse or an assistance dog and the offender knows or should know that the property stolen is a police dog or horse or an assistance dog, the violation is "theft of a police dog or horse or an assistance dog," a third degree felony.

(7) If the property stolen is anhydrous ammonia, the violation is "theft of anhydrous ammonia," a third degree felony.

HISTORY

ACTION	DATE
Introduced	03-06-13

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