



**Sub. S.B. 9\***  
126th General Assembly  
(As Reported by S. Judiciary on Criminal Justice)

**Sen. Jacobson**

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\* *This analysis was prepared before the report of the Senate Judiciary on Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

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## CONTENT AND OPERATION

Existing law contains a series of antiterrorism measures, enacted in Sub. S.B. 184 of the 124th General Assembly (generally, R.C. 2909.21, 2909.22, 2909.23, 2909.24, 2909.25, 2921.32, 2923.31, and 2927.24; see **COMMENT 1** for a description of the existing measures). The bill enacts a series of new measures that address different aspects of the terrorism problem and modifies a few existing definitions that are used in some of the existing measures.

### *Offense of "criminal possession of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device"*

The bill prohibits a person from knowingly possessing any "chemical weapon," "biological weapon," "radiological or nuclear weapon," or "explosive device" with the intent to use the weapon or device to cause "serious physical harm" or death to another person (see *Definitions of terms used in the bill,* below, for definitions of the terms in quotation marks). A violation of this prohibition is the offense of "criminal possession of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device," and the offense is a felony of the third degree.

The bill also prohibits a person from knowingly possessing any chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device with intent to use the weapon to do any of the following: (1) intimidate or coerce a civilian population, (2) influence the policy of any government by intimidation or coercion, or (3) affect the conduct of any government by murder, assassination, or kidnapping. A violation of this prohibition also is the offense of "criminal possession of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device," and the offense is a felony of the second degree.

**Offense of "criminal use of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device"**

The bill prohibits a person from recklessly using, deploying, releasing, or causing to be used, deployed, or released any "chemical weapon," "biological weapon," "radiological or nuclear weapon," or "explosive device" that creates a "risk" of death or "serious physical harm" to another person not a participant in the offense (see **'Definitions of terms used in the bill,'** below, for definitions of the terms in quotation marks). A violation of this prohibition is the offense of "criminal use of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device," and the offense is a felony of the second degree.

The bill also prohibits a person from knowingly doing any of the following: (1) using, deploying, releasing, or causing to be used, deployed, or released any chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device with the intent to intimidate or coerce a civilian population, to influence the policy of any government by intimidation or coercion, or to affect the conduct of any government by murder, assassination, or kidnapping, or (2) using, deploying, releasing, or causing to be used, deployed, or released any chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device with intent to cause either serious physical harm to, or the death of, more than two persons who are not participants in the offense, or serious physical harm to, or the death of, another person who is not a participant in the offense. A violation of either of these prohibitions also is the offense of "criminal use of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device," and the offense is a felony of the first degree.

The prohibition in the second preceding paragraph (the "recklessness offense") does not apply to any person who *uses* any of the following: (1) any household product that is generally available for sale to consumers in Ohio in the quantity and concentration available for sale to those consumers, (2) a self-defense spray, (3) a chemical weapon used solely for a purpose not prohibited under this section if the type and quantity is consistent with that purpose, or (4) a biological agent, toxin, or delivery system used solely for protective, bona fide research, or other peaceful purposes. For purposes of this provision, "a purpose not prohibited under this section" means any of the following: (1) any peaceful purpose related to an industrial, agricultural, research, medical, or pharmaceutical activity or other peaceful activity, (2) any purpose directly related to protection against toxic chemicals and to protection against chemical weapons, (3) any military purpose of the United States that is not connected with the use of a chemical weapon or that is not dependent on the use of the toxic or poisonous properties of the chemical weapon to cause death or other harm, or (4) any law enforcement purpose, including any domestic riot control purpose. (R.C. 2909.27.)

**Offense of "illegal assembly or possession of chemicals for the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device"**

The bill prohibits a person, with the intent to manufacture a "chemical weapon," "biological weapon," "radiological or nuclear weapon," or "explosive device," from knowingly assembling or possessing one or more "toxins," "toxic chemicals," "precursors" of toxic chemicals, "vectors," "biological agents," or "hazardous radioactive substances" (see **Definitions of terms used in the bill,** below, for definitions of the terms in quotation marks), including, but not limited to, those listed by the Department of Public Safety in rules it is required to adopt pursuant to a provision of the bill described below in **Department of Public Safety duties regarding offenses and procedures under the bill,** that may be used to manufacture a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device. A violation of this prohibition is the offense of "illegal assembly or possession of chemicals for the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device," a felony of the fourth degree.

The bill specifies that, in a prosecution for a violation of the prohibition, it is not necessary to allege or prove that the offender assembled or possessed all chemicals or substances necessary to manufacture a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device. Rather, the assembly or possession, with the intent to manufacture a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device, of a single chemical or substance that may be used in the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device is sufficient to violate this section.

**Offense of "money laundering in support of terrorism"**

The bill enacts prohibitions against conduct that relates to money laundering in support of terrorism.

**Prohibition regarding a transaction involving the proceeds of an act of terrorism or monetary instrument related to an act of terrorism**

The bill prohibits a person, knowing that the property involved in the transaction is the proceeds of an "act of terrorism" (see **Definitions of terms used in the bill,** below) or a monetary instrument given, received, or intended to be used in support of an act of terrorism, from conducting or attempting to conduct one or more transactions with either of the following: (1) the intent to commit or further the commission of criminal activity, or (2) the intent to conceal or disguise the nature, the location, the source, the ownership, or the control of either the

proceeds of an act of terrorism or a monetary instrument given, received, or intended to be used to support an act of terrorism or the intent to avoid a transaction reporting requirement under R.C. 1315.53 (see **COMMENT 2**) or federal law.

A violation of this prohibition is the offense of "money laundering in support of terrorism." Except as otherwise described in this paragraph, the offense committed in violation of either portion of the prohibition is a misdemeanor of the first degree. If the offense is committed in violation of the portion of the prohibition described in clause (1) of the prohibition, the offense is a felony of the fifth degree if the total value of the property involved in the transaction or transactions equals or exceeds \$1,000 and is less than \$5,000 (this provision does not include a reference to a violation involving a monetary instrument). If the offense is committed in violation of the portion of the prohibition described in clause (2) of the prohibition, the offense is a felony of the fifth degree if the total value of the property involved in the transaction or transactions or monetary instrument or instruments equals or exceeds \$2,000 and is less than \$5,000. If the offense is committed in violation of either portion of the prohibition and the total value of the property involved in the transaction or transactions or monetary instrument or instruments equals or exceeds \$5,000, the offense is punished as described below in "*Penalties if the amount involved in the offense equals or exceeds \$5,000.*" (R.C. 2909.29(A), (C)(1), and (C)(2).)

*Prohibition regarding transportation, transmittance, or transfer of monetary instrument representing proceeds of an act of terrorism or monetary instrument related to an act of terrorism*

The bill prohibits a person from transporting, transmitting, or transferring on one or more occasion monetary instruments that represent either the proceeds of an act of terrorism or a monetary instrument given, received, or intended to be used in support of an act of terrorism with either of the following: (1) the intent to commit or further the commission of criminal activity, or (2) the intent to conceal or disguise the nature, the location, the source, the ownership, or the control of either the proceeds of an act of terrorism or a monetary instrument given, received, or intended to be used to support an act of terrorism or the intent to avoid a transaction reporting requirement under R.C. 1315.53 (see **COMMENT 2**) or federal law.

A violation of this prohibition also is the offense of "money laundering in support of terrorism." Except as otherwise described in this paragraph, the offense committed in violation of either portion of the prohibition is a misdemeanor of the first degree. The offense committed in violation of either portion of the prohibition is a felony of the fifth degree if the total value of the property involved in the transaction or transactions or monetary instrument or instruments equals or

exceeds \$2,000 and is less than \$5,000. If the offense is committed in violation of either portion of the prohibition and the total value of the property involved in the transaction or transactions or monetary instrument or instruments equals or exceeds \$5,000, the offense is punished as described below in **'Penalties if the amount involved in the offense equals or exceeds \$5,000.'** (R.C. 2909.29(B), (C)(1), and (C)(2).)

**Penalties if the amount involved in the offense equals or exceeds \$5,000**

The bill provides that, for a violation of either portion of either prohibition that constitutes the offense of "money laundering in support of terrorism," if the amount involved equals or exceeds \$5,000, the offense is punished as follows (R.C. 2909.29(C)(3) to (5)):

(1) The offense is a felony of the fourth degree if the total value of the property involved in the transaction or transactions or monetary instrument or instruments equals or exceeds \$5,000 and is less than \$25,000.

(2) The offense is a felony of the third degree if the total value of the property involved in the transaction or transactions or monetary instrument or instruments equals or exceeds \$25,000 and is less than \$75,000.

(3) The offense is a felony of the second degree if the total value of the property involved in the transaction or transactions or monetary instrument or instruments equals or exceeds \$75,000.

**Felony conviction of alien not legally in the country--notification of, and possible transfer to, ICES**

The bill requires any "prosecutor" (see **'Definitions of terms used in the bill,'** below, for definitions of this term) or judge of a court of record to notify the Immigration and Customs Enforcement Section of the United States Department of Homeland Security when an "alien" (see below) who is not legally present in the United States has been convicted of or pleaded guilty to a felony.

The bill provides that, if the Department of Rehabilitation and Correction has custody of an alien who is serving a prison term, at least 90 days before releasing the alien from the Department's custody upon completion of the term or for any other reason or not later than ten days after learning that the alien is to be released from the Department's custody, whichever is later, the Department must contact the Immigration and Customs Enforcement Section of the United States Department of Homeland Security and inquire as to whether the Section wishes to be transferred custody of the alien. The bill also requires the Department of Rehabilitation and Correction, pursuant to a valid detainer lodged against the

alien, to transfer any "alien" who is not legally present in the United States and has been convicted of or pleaded guilty to a felony to the custody of the Immigration and Customs Enforcement Section of the United States Department of Homeland Security upon completion of that alien's prison term. As used in these provisions, "alien" means an individual who is not a citizen of the United States. (R.C. 2909.30.)

**Showing of identification when in or near a critical transportation infrastructure site**

The bill prohibits a person who is in or near an airport, train station, port, or other critical transportation infrastructure site from refusing to show identification when requested by a law enforcement officer under circumstances in which the law enforcement officer is requiring identification of all similarly situated people.

If a person refuses to show identification under the circumstances described in the preceding paragraph, the law enforcement officer may detain that person at the location or its immediate vicinity for the purpose of determining the person's name, address, and date of birth. The bill states that this provision does not limit or affect any other authority that the officer may have under law to detain the person for any other reason or for any other length of time and does not limit or affect any authority that the officer may have under law to arrest the person. (R.C. 2909.31.) The bill does not provide any criminal penalty for the refusal.

**Procedures regarding state-issued licenses for which the holder would present a potential risk to residents if he or she has terrorist connections**

**Determination of "potential risk" licenses**

The bill requires the Director of Public Safety to adopt rules in accordance with the Administrative Procedure Act identifying licenses issued by the state for which the holder of any of the identified licenses would present a potential risk to the residents of the state if the "applicant" has a connection to a terrorist organization (see **Department of Public Safety duties regarding offenses and procedures under the bill,** below, for a similar, but not identical, requirement). In no case may the rules identify a driver's license or permit as a license of that nature if the applicant for the license or permit, or for renewal of the license or permit, is an Ohio resident; this restriction does not apply regarding nonrenewable licenses and temporary Ohio residents who apply for nonrenewable licenses (existing R.C. 4507.09, not in the bill, provides that every driver's license issued to an Ohio resident is renewable at any time prior to its expiration and that any license of a temporary resident is nonrenewable; it also requires the Registrar of Motor Vehicles to adopt special rules governing nonrenewable licenses that must include certain specified security provisions). (R.C. 2909.32(A)(1).)



**Development and use of questionnaire**

The bill requires the Director of Public Safety to develop a questionnaire to be used for purposes of the bill's licensing restriction provisions section by applicants for any license or for renewal of any license identified by the Director pursuant to the provisions described in the preceding paragraph to indicate whether they have provided "material assistance" to an organization listed on the "United States Department of State Terrorist Exclusion List" (see "**Definitions of terms used in the bill**," below, for definitions of the terms in quotation marks). The questionnaire must be substantially in the form set forth below and must be made available to each issuing agency of a license identified by the Director pursuant to the provisions described in the preceding paragraph. The Director also must make available to each issuing agency of any such license a then-current copy of the U.S. Department of State Terrorist Exclusion List. Any issuing agency of a license so identified by the Director must include in the agency's application form a copy of the questionnaire developed by the Director, as described above, and a then-current copy of the U.S. Department of State Terrorist Exclusion List and must inform persons completing the application that they must truthfully answer each question on the questionnaire. Each applicant for a license identified by the Director as described above must answer each question on the questionnaire and attach the completed questionnaire to the application for the license or for renewal of the license that the person submits. Any answer of "yes" to any of the questions serves for purposes of the bill's licensing restriction provisions as a disclosure by the applicant that the applicant has provided material assistance to an organization listed on the U.S. Department of State Terrorist Exclusion List. (R.C. 2909.32(A)(2)(a), (B), and (G)(1).)

The questionnaire required under the bill must be substantially as follows, and must include the following questions and the associated spaces for answering the questions (R.C. 2909.32(A)(2)(b)):

**"QUESTIONNAIRE, REGARDING MATERIAL ASSISTANCE  
TO TERRORIST ORGANIZATION**

(1) Are you a member of an organization on the U.S. Department of State Terrorist Exclusion List?    Yes .....; No .....

(2) Have you used any position of prominence you have within any country to persuade others to support an organization on the U.S. Department of State Terrorist Exclusion List?    Yes .....; No .....

(3) Have you knowingly solicited funds or other things of value for an organization on the U.S. Department of State Terrorist Exclusion List?    Yes .....; No .....



(4) Have you solicited any individual for membership in an organization on the U.S. Department of State Terrorist Exclusion List? Yes .....; No .....

(5) Have you committed an act that you know, or reasonably should have known, affords "material support or resources" (see below) to an organization on the U.S. Department of State Terrorist Exclusion List? Yes .....; No .....

(6) Have you hired or compensated a person known to be a member of an organization on the U.S. Department of State Terrorist Exclusion List or a person known to be engaged in planning, assisting, or carrying out an act of terrorism? Yes .....; No .....

For purposes of question 5 on this questionnaire, "material support or resources" means currency, payment instruments, other financial securities, funds, transfer of funds, financial services, communications, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials."

**Denial of license; exception**

Subject to the exception subsequently described in this paragraph, any person who discloses in an application for a license, or for renewal of a license, identified by the Director of Public Safety pursuant to the provisions described above the provision of material assistance to any organization listed on the U.S. Department of State Terrorist Exclusion List must be denied the license or the renewal of the license. If the issuing agency of a license so identified by the Director denies an application for a license, or for the renewal of a license, because of such a disclosure, the agency must notify the Department of Public Safety of the denial. (R.C. 2909.32(D) and (G)(2).) The Department of Public Safety, upon an applicant's request, is required to review, within 30 days of the request, the denial of a license pursuant to this provision and is required to reinstate the license application for good cause if the Department determines all of the following (R.C. 2909.32(D)):

(1) Either of the following:

(a) That the applicant's provision of material assistance to the organization listed on the U.S. Department of State Terrorist Exclusion List that was disclosed in the application occurred more than ten years prior to the applicant's making of the application;

(b) That, at the time of the applicant's provision of material assistance to the organization that is listed on the United States Department of State Terrorist



Exclusion List that was disclosed in the application, the organization was not on that Terrorist Exclusion List if the List was in existence at that time or, if the List was not in existence at that time, the organization was not involved in any activity or conduct that would have merited the inclusion of the organization on that List had it been in existence at that time;

(2) That, within the period commencing on the date ten years prior to the applicant's making of the application and ending on the date on which the Department conducts the review, the applicant has not provided material assistance to any organization that was listed on the United States Department of State Terrorist Exclusion List or, regarding any time during that period during which that Terrorist Exclusion List was not in existence, to any organization that was involved in any activity or conduct that would have merited the inclusion of the organization on that List had it been in existence at that time;

(3) That it is unlikely that, in the future, the applicant will provide material assistance to any organization listed on the U.S. Department of State Terrorist Exclusion List;

(4) That the applicant does not pose a risk to the residents of the state. (R.C. 2909.32(C), (D), and (G)(2).)

#### **Failure to disclose material assistance; making of false statements**

If an applicant for a license identified by the Director of Public Safety as described above fails to complete and attach to the application the questionnaire developed by the Director, fails to disclose in an application for the license or for the renewal of the license any material assistance to any organization listed on the U.S. Department of State Terrorist Exclusion List, or makes false statements regarding any material assistance to any organization listed on that Terrorist Exclusion List, the failure or the making of the false statements: (1) is required to result in the denial of the application and the revocation of the person's license, and (2) regarding a failure to disclose or the making of false statements, is a felony of the fifth degree (R.C. 2909.32(F)).

#### **Prohibitions and restrictions against government entity having business contacts with, or providing funding to, private entity or person providing material assistance to a terrorist organization**

#### **Development and use of questionnaire**

The bill requires the Director of Public Safety to develop a questionnaire to be used, in the manner described below, by the state, instrumentalities of the state, and political subdivisions of the state in determining whether any person,

company, affiliated group, or organization with which the state, instrumentality, or political subdivision might conduct business or provide funding, or any person who holds, owns, or otherwise has a controlling interest in a company, affiliated group, or organization and with whom the state, instrumentality, or political subdivision might conduct business or provide funding, has provided "material assistance" to an organization listed on the "United States Department of State Terrorist Exclusion List" (see **Definitions of terms used in the bill,**" below, for definitions of the terms in quotation marks). The questionnaire must be substantially in the form described above under **Prohibitions and restrictions against government entity having business contacts with, or providing funding to, private entity or person providing material assistance to a terrorist organization**" for the questionnaire that is used regarding those prohibitions and restrictions, must include the questions described in that division and the associated spaces for answering the questions, and must be made available to the state, instrumentalities of the state, and political subdivisions of the state. The Director also must make available to the state, instrumentalities of the state, and political subdivisions of the state a then-current copy of the U.S. Department of State Terrorist Exclusion List. The questionnaire and a then-current copy of the U.S. Department of State Terrorist Exclusion List must be provided to each person, company, affiliated group, or organization, and each person who holds, owns, or otherwise has a controlling interest in a company, affiliated group, or organization, with which the state, instrumentality, or political subdivision might conduct business or provide funding before the state, instrumentality, or political subdivision conducts the business or provides the funding.

Each person, company, affiliated group, or organization with which the state might conduct business or provide funding, and each person who holds, owns, or otherwise has a controlling interest in a company, affiliated group, or organization and with whom the state, instrumentality, or political subdivision might conduct business or provide funding, and that is provided a copy of the questionnaire described above must complete the questionnaire, and any answer of "yes" to any of the questions serves for purposes of the bill's "doing business/providing funding" restrictions described below as a disclosure by the person, company, affiliated group, or organization that the person, company, affiliated group, or organization has provided material assistance to an organization listed on the U.S. Department of State Terrorist Exclusion List. (R.C. 2909.33(A).)

**Government entities--no business with or funding to terrorist organization or individual with terrorist ties**

Subject to the exception described below in **Exception to the restrictions**" and to the provisions described in the second succeeding paragraph, the bill

prohibits any state instrumentality or political subdivision of the state from conducting any business with or providing funding to any person, company, affiliated group, or organization that provides material assistance to any organization listed on the United States Department of State Terrorist Exclusion List or conduct business with or provide funding to any person who holds, owns, or otherwise has a controlling interest in a company, affiliated group, or organization that provides material assistance to any organization on that Terrorist Exclusion List (R.C. 2909.33(B)). The bill provides that this restriction does not apply to any investment in any company that is publicly traded in any United States market and does not prohibit, limit, or restrict a state instrumentality or political subdivision from investing in any company that is publicly traded in any United States market (R.C. 2909.33(F)).

**Persons, companies, affiliated groups, or organizations that conduct business with or receive funding from a government entity--no business or funds for five years if material assistance to terrorist organization**

The bill provides that, subject to the exception described below in "**Exception to the restrictions**," any person, company, affiliated group, or organization, and any person who holds, owns, or otherwise has a controlling interest in a company, affiliated group, or organization, that conducts any business with or receives funding from the state, an instrumentality of the state, or a political subdivision of the state and that provides material assistance to any organization listed on the United States Department of State Terrorist Exclusion List is prohibited from conducting any business with or receiving funding from the state, an instrumentality of the state, or a political subdivision of the state for a period of five years (R.C. 2909.33(C)).

The bill provides that the investment by the state, an instrumentality of the state, or a political subdivision of the state in a company that is publicly traded in any United States market cannot be considered for purposes of this restriction as the state, the instrumentality, or the political subdivision conducting business with or providing funding to the company (R.C. 2909.33(F)).

**Exception to the restrictions**

The Department of Public Safety, upon the request of any person, company, affiliated group, or organization that discloses in a questionnaire provided under the provisions described above that the person, company, affiliated group, or organization, or the company, affiliated group, or organization in which the person holds, owns, or otherwise has a controlling interest, has provided material assistance to an organization that is listed on the United States Department of State Terrorist Exclusion List, must review, within 30 days of the request, whether the bill's "doing business/providing funding" restrictions described above should apply

to the person, company, affiliated group, or organization and must order that those restrictions do not apply to the person, company, affiliated group, or organization if the Department determines all of the following (R.C. 2909.33(D)):

(1) Either of the following:

(a) That the person's, company's, affiliated group's, or organization's provision of material assistance to the organization listed on the U.S. Department of State Terrorist Exclusion List that was disclosed in the questionnaire occurred more than ten years prior to the person's, company's, affiliated group's, or organization's completion of the questionnaire;

(b) That, at the time of the person's, company's, affiliated group's, or organization's provision of material assistance to the organization that is listed on the United States Department of State Terrorist Exclusion List that was disclosed in the application, the organization was not on that Terrorist Exclusion List if the List was in existence at that time or, if the List was not in existence at that time, the organization was not involved in any activity or conduct that would have merited the inclusion of the organization on that List had it been in existence at that time;

(2) That, within the period commencing on the date ten years prior to the person's, company's, affiliated group's, or organization's completion of the questionnaire and ending on the date on which the Department conducts the review, the person, company, affiliated group, or organization has not provided material assistance to any organization that was listed on the United States Department of State Terrorist Exclusion List or, regarding any time during that period during which that Terrorist Exclusion List was not in existence, to any organization that was involved in any activity or conduct that would have merited the inclusion of the organization on that List had it been in existence at that time;

(3) That it is unlikely that, in the future, the person, company, affiliated group, or organization will provide material assistance to any organization listed on the U.S. Department of State Terrorist Exclusion List;

(4) That, the person, company, affiliated group, or organization does not pose a risk to the residents of the state.

**Persons, companies, affiliated groups, or organizations that conduct business with or receive funding from a government entity-certification of no material assistance to terrorist organization**

Any person, company, affiliated group, or organization, and any person who holds, owns, or otherwise has a controlling interest in a company, affiliated

group, or organization, that conducts business with or receives funding *in an amount greater than \$25,000 annually* from the state, an instrumentality of the state, or a political subdivision of the state, not including any amount of a "personal benefit" (see below), must first certify that the person, company, etc., does not provide material assistance to any organization on the United States Department of State Terrorist Exclusion List. The certification may be made by the completion of the questionnaire developed by the Director of Public Safety and provided as described above, in accordance with the provisions governing completion of the questionnaire. As used in this provision, "personal benefit" means money, goods, services, or other things of value provided by the United States, the state, or a political subdivision of the state to which the recipient is entitled by reason of age, medical condition, or financial need by an act of Congress or by regulations adopted pursuant to an act of Congress.

Any person, company, affiliated group, or organization, and any person who holds, owns, or otherwise has a controlling interest in a company, affiliated group, or organization, that conducts business with or receives funding from the state, an instrumentality of the state, or a political subdivision of the state (note that the provision does not include an annual minimum amount exceeding \$25,000) that makes a false certification that it does not provide material assistance to any organization listed on the U.S. Department of State Terrorist Exclusion List is: (1) permanently banned from conducting business with or receiving funding from the state, an instrumentality of the state, or a political subdivision of the state, and (2) guilty of a misdemeanor of the first degree. (R.C. 2909.33(E) and (G).)

### **Prohibitions and restriction against government entity employing a person with terrorist ties**

#### **Development and use of questionnaire**

The bill requires the Director of Public Safety to develop a questionnaire to be used, in the manner described below, by the state, instrumentalities of the state, and political subdivisions of the state in determining whether any potential employee has provided "material assistance" to an organization listed on the "United States Department of State Terrorist Exclusion List" (see "**Definitions of terms used in the bill**," below, for definitions of the terms in quotation marks). The questionnaire must be substantially in the form described above under "**Prohibitions and restrictions against government entity having business contacts with, or providing funding to, private entity or person providing material assistance to a terrorist organization**" for the questionnaire that is used regarding those prohibitions and restrictions, must include the questions described in that form and the associated spaces for answering the questions, and must be made available to the state, instrumentalities of the state, and political subdivisions

of the state. The Director also must make available to the state, instrumentalities of the state, and political subdivisions of the state a then-current copy of the U.S. Department of State Terrorist Exclusion List. The questionnaire and a then-current copy of the U.S. Department of State Terrorist Exclusion List must be provided to each person under final consideration for employment with the state, a state instrumentality, or a political subdivision before the person is employed by the state, instrumentality, or political subdivision.

Each person under final consideration for employment with the state, a state instrumentality, or a political subdivision of the state who is provided a copy of the questionnaire under the provision described in the preceding paragraph must complete the questionnaire, and any answer of "yes" to any of the questions must be considered a disclosure by the person that the person has provided material assistance to an organization listed on the U.S. Department of State Terrorist Exclusion List. (R.C. 2909.34(A) and (B).)

**Government entities--no employment of person with terrorist ties; exception**

Subject to the exception described below, if a person under final consideration for employment with the state, a state instrumentality, or a political subdivision of the state discloses on the questionnaire provided as described in the two preceding paragraphs the provision of material assistance to an organization listed on the U.S. Department of State Terrorist Exclusion List, the state, state instrumentality, or political subdivision is prohibited from employing the person (R.C. 2909.34(C)). The Department of Public Safety, upon the request of a person who has been denied employment as described in the preceding paragraph, must review, within 30 days of the request, the denial of employment and must void the denial for good cause if the Department determines all of the following (R.C. 2909.34(D)):

(1) Either of the following:

(a) That the person's provision of material assistance to the organization listed on the U.S. Department of State Terrorist Exclusion List that was disclosed in the questionnaire occurred more than ten years prior to the person's completion of the questionnaire;

(b) That, at the time of the person's provision of material assistance to the organization that is listed on the United States Department of State Terrorist Exclusion List that was disclosed in the application, the organization was not on that Terrorist Exclusion List if the List was in existence at that time or, if the List was not in existence at that time, the organization was not involved in any activity



or conduct that would have merited the inclusion of the organization on that List had it been in existence at that time;

(2) That, within the period commencing on the date ten years prior to the person's completion of the questionnaire and ending on the date on which the Department conducts the review, the person has not provided material assistance to any organization that was listed on the United States Department of State Terrorist Exclusion List or, regarding any time during that period during which that Terrorist Exclusion List was not in existence, to any organization that was involved in any activity or conduct that would have merited the inclusion of the organization on that List had it been in existence at that time;

(3) That it is unlikely that, in the future, the person will provide material assistance to any organization listed on the U.S. Department of State Terrorist Exclusion List;

(4) That the person does not pose a risk to the residents of the state.

**Changes in existing R.C. 2909.21 definitions that affect existing antiterrorism measures**

Existing law defines numerous terms that are used in the existing antiterrorism measures contained in R.C. 2909.21 to 2909.25. Those measures are described in **COMMENT 1**. The bill modifies some of those definitions, and makes all of the definitions apply to sections 2909.21 to 2909.34.

**Material support or resources**

**Existing law.** Existing R.C. 2909.01(B) defines "material support or resources," for purposes of R.C. 2909.21 to 2909.25, as currency, payment instruments, other financial securities, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

**Operation of the bill.** The bill expands the definition of "material support or resources" so that, in addition to the items and services specified under existing law, it also includes funds, transfer of funds, and communications (R.C. 2909.01(I), as redesignated by the bill). The effect of this change is to expand the scope of the existing antiterrorism measures, set forth in **COMMENT 1**, that use the term "material support or resources" to include the items and services added by the change.

### *Specified offense*

**Existing law.** Existing R.C. 2909.21(E) defines "specified offense," for purposes of R.C. 2909.21 to 2909.25, as any of the following: (1) a felony offense of violence, the offense of "disrupting public services" (R.C. 2909.04), the offense of "contaminating a substance for human consumption or use or contamination with a hazardous chemical, biological, or radioactive substance" or "spreading a false report of contamination" (both in R.C. 2927.24), or a felony of the first degree that is not a violation of any provision in R.C. Chapter 2925. or 3719., or (2) an attempt to commit, complicity in committing, or a conspiracy to commit an offense listed in clause (1) of this sentence.

**Operation of the bill.** The bill expands the definition of "specified offense" so that, in addition to the offenses identified under existing law, it also includes the offenses of "soliciting or providing support for an act of terrorism" (existing offense in R.C. 2909.22; see **COMMENT 1**), "making a terroristic threat" (existing offense in R.C. 2909.23; see **COMMENT 1**), "terrorism" (existing offense in R.C. 2909.24; see **COMMENT 1**), "criminal possession of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device" (enacted by the bill in R.C. 2909.26), "criminal use of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device" (enacted by the bill in R.C. 2909.27), "illegal assembly or possession of chemicals for the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device" (enacted by the bill in R.C. 2909.28), and "money laundering in support of terrorism" (enacted by the bill in R.C. 2909.29), and an attempt to commit, complicity in committing, or a conspiracy to commit any of those offenses added by the bill (R.C. 2909.21(N), as redesignated by the bill). The effect of this change is to expand the scope of the existing antiterrorism measures, set forth in **COMMENT 1**, that use the term "specified offense" or "act of terrorism" to include the offenses added by the change.

### *Offense of "failure to disclose one's personal information"*

The bill prohibits a person who is in a public place from refusing to disclose the person's name, address, or date of birth, when requested by a law enforcement officer who reasonably suspects that either: (1) the person is committing, has committed, or is about to commit a criminal offense, or (2) the person witnessed any of the following: (a) an "offense of violence" (see "**Definitions of terms used in the bill,**" below) that would constitute a felony under Ohio law (see **COMMENT 3**), (b) a felony offense that causes or results in, or creates a substantial risk of, serious physical harm to another person or to property, (c) any attempt or conspiracy to commit, or complicity in committing, any offense identified in clause (2)(a) or (b), or (d) any conduct reasonably indicating that any offense identified in clause (2)(a) or (b) or any attempt,

conspiracy, or complicity described in clause (2)(c) has been, is being, or is about to be committed. A violation of this provision is the offense of "failure to disclose one's personal information," a misdemeanor of the fourth degree.

The bill states that nothing in the provisions described in the preceding paragraph requires a person to answer any questions beyond that person's name, address, or date of birth and that nothing in those provisions authorizes a law enforcement officer to arrest a person for not providing any information beyond that person's name, address, or date of birth. (R.C. 2921.29.)

### **Government employee cooperation with antiterrorism measures; validity and effect of hindering municipal ordinances**

#### **Government employee compliance**

The bill provides that, notwithstanding any law, ordinance, or collective bargaining contract to the contrary, no state or local employee unreasonably fail to comply with any lawful request for assistance made by any federal authorities carrying out the provisions of the USA Patriot Act, any federal immigration or terrorism investigation, or any executive order of the President of the United States pertaining to homeland security, to the extent that the request is consistent with the doctrine of federalism. The bill specifies that, if a local employee states disagreement with, or a critical opinion of, the USA Patriot Act or any executive order of the President of the United States pertaining to homeland security, the statement of the disagreement with, or the critical opinion of, the Act or order is not sufficient to qualify, for purposes of this provision, as unreasonably noncompliance with a request for assistance made by any federal authorities carrying out the provisions of the USA Patriot Act, any federal immigration or terrorism investigation, or any executive order of the President of the United States pertaining to homeland security. As used in these provisions, and the provisions described in the next part of this analysis, "USA Patriot Act" means the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001," Pub. L. No. 107-056, 115 Stat. 272, as amended. (R.C. 9.63(A), (D)(1), and (E).)

#### **Restrictions on municipal corporation enactments**

The bill prohibits any municipal corporation from enacting an ordinance, policy, directive, rule, or resolution that would materially hinder or prevent local employees from complying with the USA Patriot Act, any federal immigration or terrorism investigation, or any executive order of the President of the United States pertaining to homeland security or from cooperating with state or federal immigration services and terrorism investigations (R.C. 9.63(B)).

It also specifies that any municipal corporation that enacts any ordinance, policy, directive, rule, or resolution that materially hinders or prevents local employees from complying with the USA Patriot Act (see above) or any executive order of the President of the United States pertaining to homeland security or that materially hinders or prevents local employees from cooperating with state or federal immigration services or terrorism investigations is ineligible to receive any homeland security funding available from the state. Whenever the Director of Public Safety determines that a municipal corporation has enacted any such ordinance, policy, directive, rule, or resolution, the Director must certify that the municipal corporation is ineligible to receive any homeland security funding from the state and must notify the General Assembly of that ineligibility. That municipal corporation will remain ineligible to receive any homeland security funding from the state until the Director certifies that the ordinance, policy, directive, rule, or resolution has been repealed. (R.C. 9.63(C).)

The bill specifies that, if a municipal corporation enacts an ordinance, policy, directive, rule, or resolution that states disagreement with, or a critical opinion of, any state or federal immigration or terrorism policy, the USA Patriot Act, or any executive order of the President of the United States pertaining to homeland security, the statement of the disagreement with, or the critical opinion of, the policy, Act, or order is not sufficient to qualify, for purposes of the provisions described in the two preceding paragraphs, as a "material hindrance or prevention" of local employees from cooperating with federal immigration services and terrorism investigations or from complying with the USA Patriot Act or any executive order of the President of the United States pertaining to homeland security (R.C. 9.63(D)).

### **Period of limitations for specified terrorism-related offenses**

#### **Existing law**

Existing law specifies that, except as described in this paragraph or another paragraph in this part of this analysis, a criminal prosecution is barred unless it is commenced within the following periods after an offense is committed: for a felony, six years; for a misdemeanor other than a minor misdemeanor, two years; and for a minor misdemeanor, six months. Existing law specifies that there is no period of limitation for the prosecution of a violation of R.C. 2903.01 (aggravated murder) or 2903.02 (murder). Existing law also provides a special 20-year limitations period for certain offenses--under this provision, except as otherwise described below, a prosecution of any of the following offenses is barred unless it is commenced within 20 years after the offense is committed: (1) a violation of R.C. 2903.03, 2903.04, 2905.01, 2907.02, 2907.03, 2907.04, 2907.05, 2907.21, 2909.02, 2911.01, 2911.02, 2911.11, 2911.12, or 2917.02, a violation of R.C. 2903.11 or 2903.12 if the victim is a peace officer, a felony violation of R.C.

2903.13, or a violation of former R.C. 2907.12, or (2) a conspiracy to commit, attempt to commit, or complicity in committing a violation set forth in clause (1) of this sentence.

For purposes of these provisions, an offense is committed when every element of the offense occurs. In the case of an offense of which an element is a continuing course of conduct, the period of limitation does not begin to run until such course of conduct or the accused's accountability for it terminates, whichever occurs first. A prosecution is commenced on the date an indictment is returned or an information filed, on the date a lawful arrest without a warrant is made, or on the date a warrant, summons, citation, or other process is issued, whichever occurs first. A prosecution is not commenced by the return of an indictment or the filing of an information unless reasonable diligence is exercised to issue and execute process on the same, and is not commenced upon issuance of a warrant, summons, citation, or other process unless reasonable diligence is exercised to execute the same.

Existing law specifies that the period of limitation does not run during any of the following times: (1) during any time when the *corpus delicti* remains undiscovered, (2) during any time when the accused purposely avoids prosecution (proof that the accused departed Ohio or concealed his or her identity or whereabouts is *prima-facie* evidence of his or her purpose to avoid prosecution), or (3) during any time a prosecution against the accused based on the same conduct is pending in Ohio, even though the indictment, information, or process which commenced the prosecution is quashed or the proceedings thereon are set aside or reversed on appeal. (R.C. 2901.13.)

### **Operation of the bill**

The bill provides a 20-year period of limitation for the prosecution of a violation of R.C. 2909.22 ("soliciting or providing support for an act of terrorism," existing law; see **COMMENT 1**), 2909.23 ("making a terroristic threat," existing law; see **COMMENT 1**), 2909.24 ("terrorism," existing law; see **COMMENT 1**), 2909.26 ("criminal possession of a chemical weapon or biological weapon," enacted by the bill), 2909.27 ("criminal use of a chemical weapon or biological weapon," enacted by the bill), 2909.28 ("illegal assembly or possession of chemicals for the manufacture of a chemical weapon or biological weapon," enacted by the bill), or 2909.29 ("money laundering in support of terrorism," enacted by the bill) (R.C. 2901.13(A)(3)).

## Corrupt Activity Law

### In general

The existing Corrupt Activity Law (R.C. 2923.31 to 2923.36), 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. The Law provides other sanctions and remedies that apply regarding the offense of engaging in a pattern of corrupt activity. (R.C. 2923.31 to 2923.36, not in the bill except for R.C. 2923.31.)

### Pattern of corrupt activity, and corrupt activity

**Existing law--pattern of corrupt activity.** Under existing law, a "pattern of corrupt activity" means 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 constitute 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).)

**Existing law--corrupt activity.** Under existing law, "corrupt activity" means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of a list of specified offenses. Some of the specified offenses are included as "corrupt activity" regardless of the value of the property involved in the offense, and others are included only if the value of the property involved in the offense satisfies a threshold amount. (R.C. 2923.31(I).) **COMMENT 4** sets forth the existing definition of "corrupt activity."

**Operation of the bill--corrupt activity expansion.** The bill expands the list of offenses that are within the definition of "corrupt activity" under the Corrupt Activity Law to also include the new offenses of "criminal possession of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device," "criminal use of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device," "illegal assembly or possession of chemicals or substances for the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device," or "money laundering in support of terrorism" that it enacts, or "animal or ecological terrorism" (see below). The value of the property involved in the terrorism is not a relevant factor. (R.C. 2923.31(I)(2) and (4).) Thus, under the bill, 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 existing law, (2) the cited new terrorism-related offenses enacted in the bill, (3) animal or ecological terrorism, or (4) conduct constituting a violation of any law of any state other than Ohio that is substantially similar to any of the cited new terrorism-related offenses or to animal or ecological terrorism, provided the defendant was convicted of the criminal conduct in a criminal proceeding in the other state.

For purposes of the provisions described in the preceding paragraph, the bill defines the following terms (R.C. 2923.31(M) to (P)):

(1) "Animal or ecological terrorism" means the commission of any felony that involves causing or creating a "substantial risk" of "physical harm to any

property of another" (see **COMMENT 5**), the use of a deadly weapon or dangerous ordnance, or purposely, knowingly, or recklessly causing "serious physical harm to property" (see **COMMENT 5**) and that involves an intent to obstruct, impede, or deter any person from participating in a lawful "animal activity" (see below), from mining, foresting, harvesting, gathering, or processing natural resources, or from being lawfully present in or on an "animal facility" (see below) or "research facility" (see below).

(2) "Animal activity" means any activity that involves the use of animals or animal parts, including, but not limited to, hunting, fishing, trapping, traveling, camping, the production, preparation, or processing of food or food products, clothing or garment manufacturing, medical research, other research, entertainment, recreation, agriculture, biotechnology, or service activity that involves the use of animals or animal parts.

(3) "Animal facility" means a vehicle, building, structure, nature preserve, or other premises in which an animal is lawfully kept, handled, housed, exhibited, bred, or offered for sale, including, but not limited to, a zoo, rodeo, circus, amusement park, hunting preserve, or premises in which a horse or dog event is held.

(4) "Research facility" means a place, laboratory, institution, medical care facility, government facility, or public or private educational institution in which a scientific test, experiment, or investigation involving the use of animals or other living organisms is lawfully carried out, conducted, or attempted.

### **Communications Interception Law**

#### **Existing law**

Existing law regulates, and generally restricts, the interception of wire, oral, and electronic communications, through the Communications Interception Law contained in R.C. 2933.51 to 2933.66. The Law permits the interception in specified circumstances, though, including through the execution of an interception warrant obtained from a judge. Warrants may be issued, upon the application of a prosecuting attorney or an assistant, if certain criteria are satisfied, including that there is probable cause to believe that a particular person is committing, has committed, or is about to commit a designated offense and that there is probable cause to believe that particular communications concerning the designated offense will be obtained through the interception of wire, oral, or electronic communications. (R.C. 2933.52 to 2933.54.)

For purposes of the Communications Interception Law, "designated offense" means any of the following (R.C. 2933.51(I)): (1) a felony violation of



R.C. 1315.53, 1315.55, 2903.01, 2903.02, 2903.11, 2905.01, 2905.02, 2905.11, 2905.22, 2907.02, 2907.21, 2907.22, 2909.02, 2909.03, 2909.04, 2909.22, 2909.23, 2909.24, 2911.01, 2911.02, 2911.11, 2911.12, 2913.02, 2913.04, 2913.42, 2913.51, 2915.02, 2915.03, 2917.01, 2917.02, 2921.02, 2921.03, 2921.04, 2921.32, 2921.34, 2923.20, 2923.32, 2925.03, 2925.04, 2925.05, or 2925.06 or of 2915.05(B), (2) a violation of R.C. 2919.23 that, had it occurred prior to July 1, 1996, would have been a violation of R.C. 2905.04 as it existed prior to that date, (3) a felony violation of R.C. 2925.11 that is not a minor drug possession offense, as defined in R.C. 2925.01, (4) complicity in the commission of a felony violation of a section listed in clause (1), (2), or (3) of this paragraph, or (5) an attempt to commit, or conspiracy in the commission of, a felony violation of a section listed in clause (1), (2), or (3) of this paragraph, if the attempt or conspiracy is punishable by a term of imprisonment of more than one year.

### **Operation of the bill**

The bill expands the existing definition of "designated offense" that applies to the Communications Interception Law so that, in addition to the offenses included under existing law, it also includes the new offenses of "criminal possession of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device," "criminal use of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device," "illegal assembly or possession of chemicals or substances for the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device," or "money laundering in support of terrorism" that it enacts (R.C. 2923.51(I)). Thus, under the bill, "designated offense" means: (1) any of the offenses identified under existing law, (2) the cited new terrorism-related offenses enacted in the bill, (3) complicity in the commission of a felony offense listed in clause (1) or (2) of this paragraph, or (4) an attempt to commit, or conspiracy in the commission of, a felony offense listed in clause (1) or (2) of this paragraph, if the attempt or conspiracy is punishable by a term of imprisonment of more than one year.

### **Registration of aircraft based in Ohio**

The bill requires the owner of each aircraft that is based in Ohio, that is not registered pursuant to existing R.C. 4561.17 to 4561.22 (see **COMMENT 6**), and that is not an aircraft operated for hire over regularly scheduled routes within Ohio to register the aircraft with the Office of Aviation of the Department of Transportation. Registrations must be made and signed by the owner of the aircraft on forms prepared by the Department and must contain a description of the aircraft, including its federal registration number, the airport or other place at which the aircraft is based, and any other information that is required by the Office of Aviation. Registration forms must be filed with the Office of Aviation annually and at the time specified by the Director of Transportation. If the airport or other

place at which the aircraft is based changes, the owner must update the registration by filing a new form with the Office of Aviation. The Office of Aviation is required to maintain all registrations filed with it under this provision and to develop a program to track and enforce the registration of aircraft based in Ohio.

The bill permits the Director of Transportation to impose a civil fine of not more than \$100 on an owner of an aircraft that is required to be registered under the provisions described in the preceding paragraph and that the owner does not register. A separate fine may be imposed for each aircraft that the owner fails to register, and a separate fine may be imposed for each registration period during which the owner fails to register. The general criminal penalties provided under existing law for violations of R.C. Chapter 4561. do not apply to a violation of the registration provisions described in the preceding paragraph. (R.C. 4561.26 and 4561.99.)

**Rules regarding the security of public-use and private-use airports**

The bill requires the Department of Public Safety and the Office of Aviation of the Department of Transportation to jointly adopt rules regarding the security of "public-use and private-use airports" (see below). Those rules must include, but not be limited to, provisions doing the following: (1) requiring all public-use and private-use airports located in whole or in part in Ohio to register biennially with the Office of Aviation of the Department of Transportation, (2) requiring all public-use airports located in whole or in part in Ohio, and all private-use airports located in whole or in part in Ohio when appropriate to prepare a written security plan that is consistent with the most recent security guidelines for general aviation airports published by the United States Transportation Security Administration, (3) requiring all aircraft owners or pilots to secure their aircraft, (4) requiring all persons who rent an aircraft to present government-issued identification, in addition to any pilot's license, to the person who rents them the aircraft, (5) requiring all public-use airports located in whole or in part in Ohio, and all private use airports located in whole or in part in Ohio when appropriate, to do all of the following: (a) develop a written list of emergency contacts and telephones, (b) restrict access to aircraft keys by unlicensed persons, (c) require pilots, including those renting aircraft, to operate pursuant to F.A.R. 61.3 regarding pilot identification, (d) create an emergency locator map that identifies runways, ramp areas, fence lines, gates, hydrants, emergency shelters, buildings, and hazardous material sites, and (e) familiarize local law enforcement agencies with the airport and consult with them in the airport's development of security procedures, and (6) addressing or governing the security of public-use and private-use airports located in whole or in part in Ohio in any other manner that the Department of Public Safety and the Office of Aviation of the Department of Transportation jointly determine to be necessary.

The security plan described in clause (2) of the preceding paragraph and the emergency locator map described in clause (5)(d) of that paragraph must prominently display the following statement: "This document may contain information that, if disclosed, could endanger the life or safety of the public and, therefore, this document is to be maintained and used in a manner that preserves the confidentiality of the information it contains in a manner consistent with law."

Each public-use and private-use airport located in whole or in part in Ohio must provide a copy of its registration described in clause (1) of the second preceding paragraph, a copy of its security plan described in clause (2) of that paragraph, and a copy of its emergency locator map described in clause (5)(d) of that paragraph to the Department of Public Safety, to the Office of Aviation of the Department of Transportation, to the sheriff of the county in which the airport is located in whole or in part, and, if the airport is located in whole or in part in a municipal corporation, to the chief of police of each such municipal corporation in which it is wholly or partly located. Copies of registrations, emergency locator maps, and security plans that are in the possession of the Department of Public Safety, the Office of Aviation, a sheriff, or a chief of police and that were provided under this provision are not public records under R.C. 149.43 (not in the bill) and are not subject to mandatory disclosure under that section. (R.C. 4563.30(B) to (D).)

As used in the provisions described above (R.C. 4563.30(A)):

(1) "Aircraft" means any contrivance used or designed for navigation or flight in the air, excepting a parachute or other contrivance for such navigation used primarily as safety equipment (by reference to existing R.C. 4561.01, not in the bill).

(2) "Airport" means any location either on land or water which is used for the landing and taking off of aircraft, except that it does not include any airport operated by a multi-state authority or any airport with scheduled commercial air carrier service (by reference to existing R.C. 4561.01, not in the bill).

(3) "Private-use airport" means an airport used exclusively by the owner of the airport and by persons authorized by that owner.

(4) "Public-use airport" means an airport available for use by the general public without a requirement for the prior approval of the owner or operator except as may be required by federal law or regulation.

**Department of Public Safety duties regarding offenses and procedures under the bill**

The bill requires the Department of Public Safety to do all of the following (R.C. 5502.012):

(1) Adopt rules in accordance with the Administrative Procedure Act that identify licenses issued by the state for which the holder of any of the identified licenses may present a potential risk or threat to public safety if the applicant for the license has connections to a terrorist organization, as required by the provision of the bill described above in "**Procedures regarding state-issued licenses for which the holder would present a potential risk to residents if he or she has terrorist connections.**" In no case may the rules identify a driver's license or permit as a license of that nature if the applicant for the license or permit, or for renewal of the license or permit, is an Ohio resident; this restriction does not apply regarding nonrenewable licenses and temporary Ohio residents who apply for nonrenewable licenses.

(2) Adopt rules jointly with the Office of Aviation of the Department of Transportation and in accordance with the Administrative Procedure Act, regarding the security of public-use and private-use airports in accordance with the bill's provisions described above in "**Rules regarding the security of public-use and private-use airports**";

(3) Adopt rules in accordance with the Administrative Procedure Act identifying a list of toxins, toxic chemicals, precursors of toxic chemicals, vectors, biological agents, and hazardous radioactive substances and their components that could be used alone or in combination for the manufacture of a chemical or biological weapon (this relates to the bill's provisions described above in "**Illegal assembly or possession of chemicals for the manufacture of a chemical weapon or biological weapon.**"

**Assistance to federal law enforcement officer**

The bill enacts a provision that permits any peace officer to render assistance to any federal law enforcement officer who has arrest authority under the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001," Pub. L. No. 107-056, 115 Stat. 272, as amended, if both of the following apply: (1) there is a threat of imminent physical danger to the federal law enforcement officer, a threat of physical harm to another person, or any other serious emergency situation present, and (2) either the federal law enforcement officer requests emergency assistance or it appears that the federal law enforcement officer is unable to

request assistance and the circumstances reasonably indicate that assistance is appropriate (R.C. 2935.03(G) and (H)(8)).

**Vulnerability assessment or other security-sensitive information of chemical facility or other facility or business--authority to provide to local officials, and not public record**

The bill authorizes the owner or operator of a facility where chemicals are produced, or the owner or operator of any other facility or business of any type, to provide a copy of any vulnerability assessment of the facility or business or of any other security-sensitive information developed regarding the facility or business to any of the following: (1) the local emergency planning committee of the emergency planning district in which the facility or business is located, (2) the fire department with jurisdiction over the facility or business, (3) the sheriff of the county in which the facility or business is located, or (4) the chief of police of any municipal corporation with jurisdiction over the facility or business.

The bill specifies that copies of vulnerability assessments of a facility or business or of any other security-sensitive information developed regarding a facility or business that are in the possession of a local emergency planning committee of an emergency planning district, a fire department, a sheriff, or a chief of police and that were provided under the provision described in the preceding paragraph are not public records under the state's Public Records Law (R.C. 149.43, not in the bill) and are not subject to mandatory disclosure under that Law. (R.C. 3750.22.)

**No reinstatement of driving privileges for a person who is subject to an active arrest warrant**

The bill prohibits the reinstatement of driving privileges to a person whose driver's license or permit has been suspended under R.C. Chapter 4510. or any other provision of the Revised Code if the Registrar of Motor Vehicles determines that a warrant has been issued for the person's arrest and the warrant is an active warrant (R.C. 4507.08(E)).

**Reverse 9-1-1 system**

The bill expands the existing provisions that govern 9-1-1 systems to also address "reverse 9-1-1 systems." The bill specifies that, in addition to a few existing exceptions, the existing prohibition against a person disclosing or using any information concerning telephone numbers, addresses, or names obtained from the data base that serves the public answering point of a 9-1-1 system does not apply in the circumstance of access to a data base given by a telephone company that is a wireline service provider to a state and local government in

warning of a public emergency, as determined by the public utilities commission. The charge, terms, and conditions for the disclosure or use of such information for the purpose of such access to a data base shall be subject to the jurisdiction of the public utilities commission.

The bill also expands an existing qualified civil immunity contained in the 9-1-1 Law for telephone companies and other specified persons with telephone-related positions regarding their participation in or development, maintenance, or operation of a 9-1-1 system. Under the bill, in addition to the existing qualified civil immunities, except for willful or wanton misconduct, a telephone company, and any other installer, maintainer, or provider, through the sale or otherwise, of customer premises equipment, and their respective officers, directors, employees, agents, and suppliers, are not liable in damages in a civil action for injuries, death, or loss to persons or property incurred by any person resulting from such an entity's or its officers', directors', employees', agents', or suppliers' provision of assistance to a public utility, municipal utility, or state or local government authorized by the above-described provision. (R.C. 4931.49(C) and (F)(5).)

**Expansion of duties of Division of Homeland Security of the Department of Public Safety**

The bill expands the specified duties of the Division of Homeland Security of the Department of Public Safety. Under the bill, in addition to the duties currently specified by law for the Division, the Division is required to do all of the following (R.C. 5502.03):

(1) Coordinate and facilitate information sharing among local, state, and federal government agencies and the private sector to ensure appropriate analysis of intelligence to assist in the early identification of, and response to, potential terrorist threats or activities;

(2) Coordinate efforts of state and local governments and private organizations to enhance the security and protection of critical infrastructure and key assets in Ohio;

(3) Develop and coordinate policies, protocols, and strategies that may be used to prevent, detect, prepare for, respond to, and recover from terrorist acts or threats;

(4) Develop, update, and coordinate the implementation of an Ohio homeland security strategic plan that will guide state and local governments in the achievement of homeland security in Ohio.

### **Definitions of terms used in the bill**

The following definitions apply to the provisions of the bill described above that are located in R.C. 2909.21 to 2909.32:

**"Act of terrorism"** means an act that is committed within or outside the territorial jurisdiction of Ohio or the United States, that constitutes a "specified offense" (see below) if committed in Ohio or constitutes an offense in any jurisdiction within or outside the territorial jurisdiction of the United States containing all of the essential elements of a specified offense, and that is intended to do one or more of the following: (1) intimidate or coerce a civilian population, (2) influence the policy of any government by intimidation or coercion, or (3) affect the conduct of any government by the act that constitutes the offense (existing R.C. 2909.21(A), unchanged by the bill).

**"Biological agent"** means any microorganism, virus, infectious substance, or biological product that may be engineered through biotechnology, or any naturally occurring or bioengineered component of any microorganism, virus, infectious substance, or biological product that may be engineered through biotechnology, capable of causing any of the following: (1) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism, (2) deterioration of food, water, equipment, supplies, or material of any kind, or (3) deleterious alteration of the environment. (R.C. 2909.21(B), by reference to existing R.C. 2917.33--not in the bill).

**"Biological weapon"** means any "biological agent," "toxin," "vector," or "delivery system" (all as defined below) or combination of any biological agent or agents, any toxin or toxins, any vector or vectors, and any delivery system or systems (R.C. 2909.21(C), enacted by the bill).

**"Chemical weapon"** means any one or more of the following: (1) a "toxic chemical" or "precursor" of a toxic chemical that is listed in Schedule 1, Schedule 2, or Schedule 3 of the international "Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC)," as entered into force on April 29, 1997, (2) a device specifically designed to cause death or other harm through the toxic properties of a toxic chemical or precursor identified in clause (1) that would be created or released as a result of the employment of that device, or (3) any equipment specifically designed for use directly in connection with the employment of devices (R.C. 2909.21(D), enacted by the bill).

**"Radiological or nuclear weapon"** means any device that is designed to create or release radiation or radioactivity at a level that is dangerous to human life or in order to cause "serious physical harm to persons" (see below) as a result of

the radiation or radioactivity created or released (R.C. 2909.21(E), enacted by the bill).

**"Explosive device"** has the same meaning as in existing R.C. 2923.11, not in the bill (R.C. 2909.21(F)).

**"Delivery system"** means any of the following: (1) any apparatus, equipment, device, or means of delivery specifically designed to deliver or disseminate a biological agent, toxin, or "vector" (see below), or (2) any vector (R.C. 2909.21(B), by reference to existing R.C. 2917.33--not in the bill).

**"Key component of a binary or multicomponent chemical system"** means the "precursor" (see below) that plays the most important role in determining the toxic properties of the final product and reacts rapidly with other chemicals in the binary or multicomponent chemical system (R.C. 2909.21(G), enacted by the bill and used in the definition of "precursor").

**"Material assistance"** means any of the following: (1) membership in an organization on the United States Department of State Terrorist Exclusion List (see below), (2) use of the person's position of prominence within any country to persuade others to support an organization on the U.S. Department of State Terrorist Exclusion List, (3) knowingly soliciting funds or other things of value for an organization on the U.S. Department of State Terrorist Exclusion List, (4) solicitation of any individual for membership in an organization on the U.S. Department of State Terrorist Exclusion List, (5) commission of an act that the person knows, or reasonably should have known, affords material support or resources to an organization on the U.S. Department of State Terrorist Exclusion List, or (6) hiring or compensating a person known to be a member of an organization on the U.S. Department of State Terrorist Exclusion List or a person known to be engaged in planning, assisting, or carrying out an act of terrorism (R.C. 2909.21(F), enacted by the bill).

**"Offense of violence"** means any of the following: (1) a violation of R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, 2923.161, 2911.12(A)(1), (2), or (3), or 2919.22(B)(1), (2), (3), or (4), or former R.C. 2907.12, (2) a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States, substantially equivalent to any offense listed in clause (1), (3) an offense, other than a traffic offense, under an existing or former municipal ordinance or law of Ohio or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons, or (4) a conspiracy or attempt to commit,



or complicity in committing, any offense under clause (1), (2), or (3) (existing R.C. 2901.01, not in the bill).

**"Peace officer"** includes, except as provided in R.C. 2935.081, a sheriff; deputy sheriff; marshal; deputy marshal; member of the organized police department of a municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract; member of a metropolitan housing authority police force; member of a regional transit authority police force; state university law enforcement officer; designated enforcement agent of the Department of Public Safety; employee of the Department of Taxation delegated investigation powers; employee of the Department of Natural Resources who is a natural resources law enforcement staff officer, forest officer, preserve officer, wildlife officer, park officer, or state watercraft officer; individual designated to perform law enforcement duties under R.C. 511.232, 1545.13, or 6101.75; veterans' home police officer; port authority special police officer; township police constable or police officer; special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations and that is required to be under a security program and is governed by aviation security rules of the federal Transportation Security Administration; the House sergeant at arms if he or she has arrest authority; and an assistant House sergeant at arms; specified officer or employee of the Bureau of Criminal Identification and Investigation who is providing assistance upon request to a law enforcement officer or emergency assistance to a peace officer pursuant to law; and, for the purpose of arrests within those areas, for the purposes of R.C. Chapter 5503., and the filing of and service of process relating to those offenses witnessed or investigated by them, the State Highway Patrol Superintendent and Troopers (R.C. 2909.21(I), by reference to existing R.C. 2935.01--not in the bill).

**"Precursor"** means any chemical reactant that takes part at any stage in the production by whatever method of a toxic chemical, including any "key component of a binary or multicomponent chemical system," as described above (R.C. 2909.21(J), enacted by the bill).

**"Prosecutor"** includes the county prosecuting attorney and any assistant prosecutor designated to assist the county prosecuting attorney, and, in the case of courts inferior to courts of common pleas, includes the village solicitor, city director of law, or similar chief legal officer of a municipal corporation, any such officer's assistants, or any attorney designated by the prosecuting attorney of the county to appear for the prosecution of a given case. (R.C. 2909.21(I), by reference to existing R.C. 2935.01--not in the bill).

**"Risk"** means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist (existing R.C. 2901.01, not in the bill).

**"Serious physical harm to persons"** means any of the following: (1) any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment, (2) any "physical harm" (see below) that carries a substantial risk of death, (3) any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity, (4) any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement, or (5) any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain. "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration. (Existing R.C. 2901.01, not in the bill.)

**"Toxic chemical"** means any chemical that through its chemical action on life processes can cause death or serious physical harm to persons or animals, regardless of its origin or of its method of production and regardless of whether it is produced in facilities, in munitions, or elsewhere (R.C. 2909.21(M), enacted by the bill).

**"Toxin"** means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances or a recombinant molecule, whatever its origin or method of reproduction, including, but not limited to, any of the following: (1) any poisonous substance or biological product that may be engineered through biotechnology and that is produced by a living organism, or (2) a poisonous isomer or biological product, homolog, or derivative of any substance or product described in division (D)(3)(a) of this section (R.C. 2909.21(B), by reference to existing R.C. 2917.33--not in the bill).

**"United States Department of State Terrorist Exclusion List"** means the list compiled by the United States Secretary of State, in consultation with or upon the request of the United States Attorney General, that designates terrorist organizations for immigration purposes, as authorized by the federal "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001," (R.C. 2909.21(N), enacted by the bill).

**"Vector"** means a living organism or molecule, including a recombinant molecule or biological product that may be engineered through biotechnology, capable of carrying a biological agent or toxin to a host (R.C. 2909.21(B), by reference to existing R.C. 2917.33--not in the bill).

**"Hazardous radioactive substance"** means any substance or item that releases or is designed to release radiation or radioactivity at a level dangerous to human life (R.C. 2909.21(Q), enacted by the bill).

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## COMMENT

1. Existing law contains a series of antiterrorism measures, enacted in Sub. S.B. 184 of the 124th General Assembly. The existing antiterrorism measures, which are not in the bill but which are affected by definitional changes made in the bill as described in **"Changes in existing R.C. 2909.21 definitions that affect existing antiterrorism measures,"** include the following:

(a) **Offense of "soliciting or providing support for an act of terrorism"**. Existing R.C. 2909.22, not in the bill, prohibits a person from raising, soliciting, collecting, donating, or providing any material support or resources, with purpose that the material support or resources will be used in whole or in part to plan, prepare, carry out, or aid in either "an act of terrorism" or the concealment of, or an escape from, an act of terrorism. A violation of the prohibition is the offense of "soliciting or providing support for an act of terrorism," a felony of the third degree. A prosecution for a violation of this prohibition does not preclude a prosecution for a violation of any other Revised Code section. One or more acts, a series of acts, or a course of behavior that can be prosecuted under R.C. 2909.22 or any other Revised Code section may be prosecuted under R.C. 2909.22, the other section, or both sections.

(b) **Offense of "making terroristic threats"**. Existing R.C. 2909.23, not in the bill, prohibits a person from threatening to commit or threatening to cause to be committed a "specified offense" when both of the following apply: (i) the person makes the threat with purpose to intimidate or coerce a civilian population, to influence the policy of any government by intimidation or coercion, or to affect the conduct of any government by the threat or by the specified offense, and (ii) as a result of the threat, the person causes a reasonable expectation or fear of the imminent commission of the specified offense. It is not a defense to a charge of a violation of this prohibition that the defendant did not have the intent or capability to commit the threatened specified offense or that the threat was not made to a person who was a subject of the threatened specified offense. A violation of this prohibition is the offense of "making a terroristic threat," a felony of the third degree.

(c) **Offense of "terrorism"**. Existing R.C. 2909.24, not in the bill, prohibits a person from committing a "specified offense" with purpose to intimidate or coerce a civilian population, to influence the policy of any government by intimidation or coercion, or to affect the conduct of any

government by the specified offense. A violation of the prohibition is the offense of "terrorism." Terrorism is punished as follows: (i) generally, it is an offense one degree higher than the most serious underlying specified offense the defendant committed, (ii) if the most serious underlying specified offense the defendant committed is a felony of the first degree or murder, the person must be sentenced to life imprisonment without parole, and (iii) if the most serious underlying specified offense the defendant committed is aggravated murder, the offender must be sentenced to life imprisonment without parole or death pursuant to the state's Capital Punishment Mechanism.

(d) **Reimbursement of investigation, prosecution, and response costs concerning act of terrorism.** Existing R.C. 2909.25, not in the bill, provides that, in addition to the financial sanctions authorized under the general Felony Sentencing Law, the court sentencing an offender who is convicted of any of the offenses described above in (1)(a), (b), or (c) or the offense of "obstructing justice" when the offense or act committed by the person aided or to be aided as described in that offense is an "act of terrorism" may order the offender to pay to the state, municipal, or county law enforcement agencies that handled the investigation and prosecution all the costs that the state, municipal corporation, or county reasonably incurred in the investigation and prosecution of the offense. The court must hold a hearing to determine the amount of costs to be imposed. The section also provides that, if a person is convicted of the offense described above in (1)(b) or (c) and if any political subdivision incurred any response costs as a result of, or in making any response to, the threat of the specified offense or the actual specified offense involved in the offense of which the person is convicted, in addition to the financial sanctions authorized under the general Felony Sentencing Law, the court sentencing the offender for the offense may order the offender to reimburse the involved political subdivision for the response costs it so incurred.

(e) **Offense of "inducing panic"**. Existing R.C. 2907.31, not in the bill, prohibits a person from causing the evacuation of any public place, or otherwise cause serious public inconvenience or alarm, by doing any of the following: (i) initiating or circulating a report or warning of an alleged or impending fire, explosion, crime, or other catastrophe, knowing that such report or warning is false, (ii) threatening to commit any offense of violence, or (iii) committing any offense, with reckless disregard of the likelihood that its commission will cause serious public inconvenience or alarm. A violation of the prohibition is the offense of "inducing panic." Generally, the offense is a misdemeanor of the first degree, but there are increased penalties provided in specified circumstances. Related to terrorism, if the violation pertains to a purported, threatened, or actual use of a weapon of mass destruction, the penalty for the offense ranges from a felony of the fourth degree to a felony of the second degree, depending upon whether the offense causes physical harm to any person, whether the public place

involved is a school, and the amount of economic harm resulting from the offense. It is not a defense to a charge under this offense that pertains to a purported or threatened use of a weapon of mass destruction that the offender did not possess or have the ability to use a weapon of mass destruction or that what was represented to be a weapon of mass destruction was not a weapon of mass destruction. Any act that is a violation of R.C. 2907.31 and any other Revised Code section may be prosecuted under R.C. 2907.31, the other section, or both sections.

As used in this offense, relevant to the bill, "weapon of mass destruction" means any of the following: (i) any weapon designed or intended to cause death or serious physical harm through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors, (ii) any weapon involving a disease organism or biological agent, (iii) any weapon designed to release radiation or radioactivity at a level dangerous to human life, or (iv) any of the following, except to the extent that the item or device in question is expressly excepted from the definition of "destructive device" pursuant to a specified provision of federal law and regulations issued under it: any explosive, incendiary, or poison gas bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or similar device; or any combination of parts either designed or intended for use in converting any item or device into any item or device described in the preceding clause in (vi) and from which an item or device described in that clause may be readily assembled. "Biological agent" has the same meaning as is described in the next paragraph.

(f) **Offense of "unlawful possession or use of a hoax weapon of mass destruction"**. Existing R.C. 2917.33, not in the bill, prohibits a person, without privilege to do so, from manufacturing, possessing, selling, delivering, displaying, using, threatening to use, attempting to use, conspiring to use, or making readily accessible to others a "hoax weapon of mass destruction" (see below) with the intent to deceive or otherwise mislead one or more persons into believing that the hoax weapon of mass destruction will cause terror, bodily harm, or property damage. The prohibition does not apply to any member or employee of the armed forces of the United States, a governmental agency of Ohio, another state, or the United States, or a private entity, in specified circumstances. A violation of the prohibition is the offense of "unlawful possession or use of a hoax weapon of mass destruction," a felony of the fourth degree. Any act that is a violation of R.C. 2917.33 and any other Revised Code section may be prosecuted under R.C. 2917.33, the other section, or both sections.

As used in this offense:

(i) "Hoax weapon of mass destruction" means any device or object that by its design, construction, content, or characteristics appears to be, appears to

constitute, or appears to contain, or is represented as being, constituting, or containing, a weapon of mass destruction and to which either of the following applies: it is, in fact, an inoperative facsimile, imitation, counterfeit, or representation of a weapon of mass destruction that does not meet the definition of a weapon of mass destruction; or it does not actually contain or constitute a weapon, biological agent, toxin, vector, or delivery system.

(ii) The definitions of "biological agent," "delivery system," "toxin," and "vector" are set forth above in "Definitions of terms used in the bill" in the **CONTENT AND OPERATION** portion of this analysis.

(iii) "Weapon of mass destruction" has the same meaning as is described above in (1)(e) Offense of "inducing panic".

(g) Offense of "contaminating substance for human consumption or use or contamination with hazardous chemical, biological, or radioactive substance; spreading false report". Existing R.C. 2927.24, not in the bill, generally prohibits a person from doing any of the following: (i) knowingly mingle a poison, "hazardous chemical, biological, or radioactive substance" (see below), or other harmful substance with a food, drink, nonprescription drug, prescription drug, or pharmaceutical product, or knowingly place a poison, hazardous chemical, biological, or radioactive substance, or other harmful substance in a spring, well, reservoir, or public water supply, if the person knows or has reason to know that the food, drink, nonprescription drug, prescription drug, pharmaceutical product, or water may be ingested or used by another person, (ii) knowingly release into the air, knowingly leave in any public place, or knowingly expose one or more persons to any hazardous chemical, biological, or radioactive substance with the intent to cause, or create a risk of, death or serious physical harm to any person, (iii) inform another person that a poison, hazardous chemical, biological, or radioactive substance, or other harmful substance has been or will be placed in a food, drink, nonprescription drug, prescription drug, or other pharmaceutical product, spring, well, reservoir, or public water supply, if the placement of the poison or substance would be a violation of the provision in clause (i) and the person knows both that the information is false and that the information likely will be disseminated to the public, or (iv) inform another person that a hazardous chemical, biological, or radioactive substance has been or will be released into the air or left in a public place, or that one or more persons has been or will be exposed to a hazardous chemical, biological, or radioactive substance, if the release, leaving, or exposure of the hazardous chemical, biological, or radioactive substance would be a violation of clause (ii) and the person knows both that the information is false and that the information likely will be disseminated to the general public. The section provides a few exceptions to the prohibitions.

A violation of the provisions described in clause (i) or (ii) of the preceding paragraph if the offense of "contaminating a substance for human consumption or use or contamination with a hazardous chemical, biological, or radioactive substance." Generally, the offense is a felony of the first degree, but if it involved an amount of poison, the hazardous chemical, biological, or radioactive substance, or the other harmful substance sufficient to cause death if ingested or used by a person or sufficient to cause death to persons who are exposed to it, or if it resulted in serious physical harm to another person, the offender must be imprisoned for life with parole eligibility after serving 15 years of imprisonment. A violation of clause (iii) or (iv) of the preceding paragraph is the offense of "spreading a false report of contamination," a felony of the fourth degree.

As used in this offense:

(i) "Hazardous chemical, biological, or radioactive substance" means any of the following: any toxic or poisonous chemical, the precursor of any toxic or poisonous chemical, or any toxin; any disease organism or biological agent; or any substance or item that releases or is designed to release radiation or radioactivity at a level dangerous to human life.

(ii) The definitions of "biological agent" and "toxin" are set forth above in "Definitions of terms used in the bill" in the **CONTENT AND OPERATION** portion of this analysis.

2. Existing R.C. 1315.53, not in the bill, sets forth a series of financial transaction reporting requirements. It provides that a money transmitter that is required to file a report regarding business conducted in Ohio pursuant to the federal "Currency and Foreign Transactions Reporting Act" must file a duplicate of that report with the Attorney General. It also requires all persons engaged in a trade or business, who receive more than \$10,000 in money in one transaction or who receive more than \$10,000 in money through two or more related transactions, and who are required to file returns under specified provisions of federal law must complete and file with the Attorney General the information required by specified provisions of federal law. It also provides that a money transmitter that is regulated under the federal "Currency and Foreign Transactions Reporting Act" and that is required to make available prescribed records to the Secretary of the United States Department of Treasury upon request at any time must follow the same prescribed procedures and create and maintain the same prescribed records relating to a transaction and must make those records available to the Attorney General on request at any time. The good faith filing of a report required by R.C. 1315.53 with the appropriate federal agency is considered compliance with the reporting requirements of R.C. 1315.53.

The section prohibits a person from purposely violating or failing to comply with its provisions or, with purpose to commit specified types of fraud or concealment: (a) knowingly furnish or provide to a money transmitter, a person engaged in a trade or business, an officer, employee, agent, or authorized delegate of a money transmitter or person engaged in a trade or business, or the Attorney General, false, inaccurate, or incomplete information, (b) knowingly conceal a material fact in connection with a transaction for which a report is required to be filed pursuant to the section, or (c) conduct or structure or attempt to conduct or structure a transaction by or through one or more money transmitters or persons engaged in a trade or business. Under existing R.C. 1315.99, a violation of any of these prohibitions is a felony of the fourth degree. Under existing R.C. 1315.53(F)(2), in addition to the criminal penalties, the sentencing court may impose upon a person who violates any of the prohibitions an additional fine of three times the value of the property involved in the transaction or, if no transaction is involved, \$5,000.

3. In *Hiibel v. Sixth Judicial District Court of Nevada* (2004), \_\_\_ U.S. \_\_\_, 124 S. Ct. 2451, 2004 U.S. LEXIS 4385, the U.S. Supreme Court upheld a conviction under a Nevada "stop and identify" statute. The Nevada statute, NRS § 171.123, provides that:

1. Any peace officer may detain any person whom the officer encounters under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime.

2. Any peace officer may detain any person the officer encounters under circumstances which reasonably indicate that the person has violated or is violating the conditions of his parole or probation.

3. The officer may detain the person pursuant to this section only to ascertain his identity and the suspicious circumstances surrounding his presence abroad. Any person so detained shall identify himself, but may not be compelled to answer any other inquiry of any peace officer.

4. A person must not be detained longer than is reasonably necessary to effect the purposes of this section, and in no event longer than 60 minutes. The detention must not extend beyond the place or the



immediate vicinity of the place where the detention was first effected, unless the person is arrested.

Another Nevada statute, NRS § 199.280, prohibits a person from willfully resisting, delaying, or obstructing a public officer in discharging or attempting to discharge any legal duty of the officer's office.

Briefly, in *Hiibel*, a police officer responding to a call reporting that a man assaulted a woman found Hiibel (the defendant) standing outside a parked truck with a woman inside the truck. The officer asked for the defendant's identification 11 times and was refused each time, and the officer arrested the defendant. The defendant was convicted under NRS § 199.280 for obstructing the officer in carrying out his duties under NRS § 171.123. The Supreme Court determined that: (a) the stop of the defendant (referred to as a "Terry stop"), the request for identification, and the State's requirement of a response did not contravene the guarantees of the Fourth Amendment, because the request for identity had an immediate relation to the purpose, rationale, and practical demands of the Terry stop and because the request for identification was reasonably related in scope to the circumstances that justified the Terry stop, and (b) the defendant's conviction did not violate the Fifth Amendment's prohibition on compelled self-incrimination, because disclosure of his name presented no reasonable danger of incrimination.

4. Existing R.C. 2923.31 provides that, as used in the Corrupt Activity Law, "corrupt activity" means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the following:

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

(b) Conduct constituting any of the following:

(i) Certain money laundering offenses, certain Mortgage Broker Registration Law offenses, aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, kidnapping, abduction, extortion, extortionate extension of credit, criminal usury, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, illegal use of minor in nudity-oriented material or performance, aggravated arson, arson, soliciting or providing support for an act of terrorism, making a terroristic threat, terrorism, aggravated robbery, robbery, aggravated burglary, burglary, breaking and entering, safecracking, telecommunications fraud, unlawful use of telecommunications device, bribery, intimidation, intimidation of an attorney, victim, or witness in a criminal case, perjury, tampering with evidence, obstructing justice, theft in office, having an unlawful interest in a public contract,



soliciting or receiving improper compensation, carrying concealed weapons, unlawful possession of dangerous ordnance, certain Securities Law offenses, certain unlawful weapons transactions, failure of a credit services organization to register, and certain Telephone Solicitation Law offenses;

(ii) The offenses of gambling, cheating, or corrupting sports as those offenses pertain to horseracing and would have been violations of certain precursor offenses in the Horse Racing Law that existed prior to July 1, 1996, or violations of those precursor offenses;

(iii) Compelling prostitution, promoting prostitution, disseminating matter harmful to juveniles, pandering obscenity, compelling acceptance of objectionable materials, theft, passing bad checks, misuse of credit cards, forgery, identification card offenses, criminal simulation, trademark counterfeiting, tampering with records, insurance fraud, receiving stolen property, operating a gambling house, drug trafficking offenses, illegal manufacture of drugs or cultivation of marijuana, funding of drug or marijuana trafficking, counterfeit controlled substances offenses, any drug possession offense that is a felony of the first, second, third, or fourth degree and that occurs on or after July 1, 1996, gambling in situations not described above in (4)(b)(ii), the former offense of corrupting sports, and the current offense of corrupting sports, 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;

(iv) Trafficking in cigarettes to avoid tax when the amount of unpaid tax exceeds \$100;

(v) Pandering obscenity 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;

(vi) Any combination of violations described above in (4)(b)(iii) and pandering obscenity 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.

(c) Conduct constituting a violation of any law of any state other than Ohio that is substantially similar to the conduct described in (4)(b), provided the defendant was convicted of the conduct in a criminal proceeding in the other state.

5. Existing R.C. 2901.01, not in the bill, specifies that, as used in the Revised Code:

(a) "Physical harm to property" means any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment. "Physical harm to property" does not include wear and tear occasioned by normal use.

(b) "Serious physical harm to property" means any physical harm to property that does either of the following: (i) results in substantial loss to the value of the property or requires a substantial amount of time, effort, or money to repair or replace, or (ii) temporarily prevents the use or enjoyment of the property or substantially interferes with its use or enjoyment for an extended period of time.

(c) "Substantial risk" means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.

6. Existing R.C. 4561.17 to 4561.22, not in the bill, provide for the taxation and registration of certain aircraft based in Ohio. R.C. 4561.17 specifies that, for the purpose of providing revenue for paying the expenses of administering the sections relative to the registration of aircraft, for the surveying of and the establishment, checking, maintenance, and repair of aviation air marking and of air navigation facilities, for the acquiring, maintaining, and repairing of equipment necessary therefor, and for the cost of the creation and distribution of Ohio aeronautical charts and Ohio airport and landing field directories, an annual license tax is levied upon all aircraft based in Ohio for which an aircraft worthiness certificate issued by the Federal Aviation Administration is in effect except the following: (a) aircraft owned by the United States or any territory thereof, (b) aircraft owned by any foreign government, (c) aircraft owned by any state or any political subdivision thereof, (d) aircraft operated under a certificate of convenience and necessity issued by the Civil

Aeronautics Board or any successor thereto, (e) aircraft owned by any nonresident of Ohio whether the owner is an individual, partnership, or corporation, provided the owner has complied with all the laws in regard to the licensing of aircraft in the state of his or her residence, (f) aircraft owned by aircraft manufacturers or aircraft engine manufacturers and operated only for purposes of testing, delivery, or demonstration, or (g) aircraft operated for hire over regularly scheduled routes within Ohio.

R.C. 4561.18 provides that applications for the licensing and registration of aircraft must be made and signed by the owner of the aircraft upon forms prepared by the Department of Transportation and must contain a description of the aircraft, including its federal registration number, and such other information as is required by the Department. Applications must be filed with the Director of Transportation during the month of January annually and must be renewed according to the standard renewal procedure of R.C. 4745.01 to 4745.03. Each application must be accompanied by the proper license tax, which, for aircraft other than gliders, is at the annual rate of \$100 per aircraft. The license tax for gliders is \$3 annually. The license tax must be paid to and collected by the Director at the time of making application. R.C. 4561.19 provides that, upon receipt of an application properly completed and accompanied by the required license tax, the Director of Transportation must forward to the owner a certificate of registration, which certificate must thereafter be kept in the licensed aircraft and must be available for inspection at all times during the current year. Before receipt of the registration certificate, a copy of the application for registration must be so kept in the aircraft. R.C. 4561.20 contains provisions regarding the transfer of title of an aircraft and the issuance of a new registration certificate.

R.C. 4561.22 prohibits an owner or operator of an aircraft from violating R.C. 4561.17 to 4561.20, and specifies that a person who violates the prohibition must be fined not more than \$100, imprisoned for not more than 30 days, or both.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-24-05	p. 60
Reported, S. Judiciary on Criminal Justice	---	---

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