



S.B. 320

127th General Assembly
(As Introduced)

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BILL SUMMARY

- Expands the list of offenses that are within the definition of "corrupt activity" under the Corrupt Activity Law to also include engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another to engage in "organized retail theft."
- Defines "organized retail theft," for purposes of the provision described in the preceding dot point, as the theft of retail property with a retail value of \$500 or more from a retail establishment with the intent to sell, deliver, or transfer that property to a retail property fence.

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CONTENT AND OPERATION

Existing law

In general

The existing Corrupt Activity Law (R.C. 2923.31 to 2923.36, not in the bill except for R.C. 2923.31), prohibits a person from doing any of the following: (1) if the person is employed by, or associated with, any enterprise, from conducting or participating in, directly or indirectly, the affairs of the enterprise through a "pattern of corrupt activity" (see "*Pattern of corrupt activity, and corrupt activity*," below) or the collection of an unlawful debt, (2) through a "pattern of corrupt activity" or the collection of an unlawful debt, from acquiring or

maintaining, directly or indirectly, any interest in, or control of, any enterprise or real property, or (3) if the person knowingly has received any proceeds derived, directly or indirectly, from a "pattern of corrupt activity" or the collection of any unlawful debt, from using or investing, directly or indirectly, any part of those proceeds, or any proceeds derived from the use or investment of any of those proceeds, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise. The Law provides an exception for a purchase of securities on the open market, in specified circumstances.

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

The Corrupt Activity Law provides other sanctions and remedies that apply regarding the offense of engaging in a pattern of corrupt activity. The other sanctions and remedies are described in the **COMMENT**.

Pattern of corrupt activity, and corrupt activity

Pattern of corrupt activity. Under the existing Corrupt Activity 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 be a felony under the law of the United States or the other state and would be a criminal offense under Ohio law if committed in Ohio. (R.C. 2923.31(E).)

Corrupt activity. Under the existing 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 (R.C. 2923.31(I)):

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

(2) Conduct constituting any of the following:

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

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

(c) Any violation of R.C. 2907.21, 2907.22, 2907.31, 2913.02, 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.42, 2913.47, 2913.51, 2915.03, 2925.03, 2925.04, 2925.05, or 2925.37, any violation of R.C. 2925.11 that is a felony of the first, second, third, or fourth degree and that occurs on or after July 1, 1996, any violation of R.C. 2915.02 that occurred prior to July 1, 1996, any violation of R.C. 2915.02 that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would not have been a violation of R.C. 3769.11 as it existed prior to that date, any violation of R.C. 2915.06 as it existed prior to July 1, 1996, or any violation of R.C. 2915.05(B) as it exists on and after July 1, 1996, when the proceeds of the violation, the payments made in the violation, the amount of a claim for payment or for any other benefit that is false or deceptive

and that is involved in the violation, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation exceeds \$500, or any combination of violations described in this paragraph when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds \$500;

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

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

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

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

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

Operation of the bill

The bill expands the list of offenses that are within the definition of "corrupt activity" under the Corrupt Activity Law to also include "organized retail theft," which the bill defines (see below). The value of the property involved in the theft is not a relevant factor. (R.C. 2923.31(I)(5).) 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 or (2) organized retail theft (R.C. 2923.31(I)).

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

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

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

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

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

COMMENT

The existing Corrupt Activity Law provides other sanctions and remedies, contained in R.C. 2923.32(B)(2) and (3), 2923.34, and 2923.36, none of which are in the bill, that apply to the offense of engaging in a pattern of corrupt activity. Existing R.C. Chapter 2981., not in the bill, sets forth the state's Forfeiture Law, which applies to specified criminal forfeiture proceedings and specified civil forfeiture proceedings, including proceedings regarding criminal or civil forfeitures under the Corrupt Activity Law. A summary of the other Corrupt Activity Law sanctions and remedies follows:

Other sanctions for a criminal conviction or delinquent child adjudication. Existing R.C. 2923.32(B)(2) provides that, notwithstanding the financial sanctions authorized by the general Felony Sentencing Law, the court

may do all of the following with respect to any person who derives pecuniary value or causes property damage, personal injury other than pain and suffering, or other loss through or by the violation of the prohibition contained in R.C. 2923.32(A): (1) in lieu of the fine authorized by that Law, impose a fine not exceeding the greater of three times the gross value gained or three times the gross loss caused and order the clerk of the court to pay the fine into the state treasury to the credit of the Corrupt Activity Investigation and Prosecution Fund, in addition to the fine described in clause (1) of this paragraph and the financial sanctions authorized by the general Felony Sentencing Law, (2) order the person to pay court costs, and (3) order the person to pay to the state, municipal, or county law enforcement agencies that handled the investigation and prosecution the costs of investigation and prosecution that are reasonably incurred.

Under existing R.C. 2923.32(B)(3), in addition to any other penalty or disposition authorized or required by law, the court must order any person who is convicted of a violation of the prohibition contained in R.C. 2923.32(A) or who is adjudicated delinquent by reason of a violation of that prohibition to criminally forfeit to the state under R.C. Chapter 2981. any personal or real property in which the person has an interest and that was used in the course of or intended for use in the course of a violation of the prohibition, or that was derived from or realized through conduct in violation of the prohibition, including any property constituting an interest in, means of control over, or influence over the enterprise involved in the violation and any property constituting proceeds derived from the violation, including all of the following: (1) any position, office, appointment, tenure, commission, or employment contract of any kind acquired or maintained by the person in violation of the prohibition, through which the person, in violation of the prohibition, conducted or participated in the conduct of an enterprise, or that afforded the person a source of influence or control over an enterprise that the person exercised in violation of the prohibition, (2) any compensation, right, or benefit derived from a position, office, appointment, tenure, commission, or employment contract described in clause (1) of this paragraph that accrued to the person in violation of the prohibition during the period of the pattern of corrupt activity, (3) any interest in, security of, claim against, or property or contractual right affording the person a source of influence or control over the affairs of an enterprise that the person exercised in violation of the prohibition, and (4) any amount payable or paid under any contract for goods or services that was awarded or performed in violation of the prohibition.

Civil action remedy for a violation. Existing R.C. 2923.34 provides that any person who is injured or threatened with injury by a violation of the prohibition contained in R.C. 2923.32(A) may institute a civil proceeding in an appropriate court seeking relief from any person whose conduct violated or allegedly violated the prohibition or who conspired or allegedly conspired to

violate that prohibition, except that the pattern of corrupt activity alleged by the plaintiff must include at least one incident other than a violation of R.C. 1707.042(A)(1) or (2) or R.C. 1707.44(B), (C)(4), (D), (E), or (F), of 18 U.S.C. 1341, 1343, or 2314, or any other offense involving fraud in the sale of securities. If the plaintiff in the civil action proves the violation by a preponderance of the evidence, the court, after making due provision for the rights of innocent persons, may grant relief by entering any appropriate orders to ensure that the violation will not continue or be repeated. The orders may include, but are not limited to, orders that: (1) require the divestiture of the defendant's interest in any enterprise or in any real property, (2) impose reasonable restrictions upon the future activities or investments of any defendant in the action, including, but not limited to, restrictions that prohibit the defendant from engaging in the same type of endeavor as the enterprise in which the defendant was engaged in violation of the prohibition contained in R.C. 2923.32(A), (3) order the dissolution or reorganization of any enterprise, (4) order the suspension or revocation of a license, permit, or prior approval granted to any enterprise by any State Department or Agency, or (5) order the dissolution of a corporation organized under Ohio law, or the revocation of the authorization of a foreign corporation to conduct business within Ohio, upon a finding that the board of directors or an agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of the prohibition contained in R.C. 2923.32(A), and that, for the prevention of future criminal conduct, the public interest requires the corporation to be dissolved or its license revoked.

Relief pursuant to the provision described in clause (3), (4), or (5) of the preceding paragraph cannot be granted in any civil proceeding instituted by an injured person unless the Attorney General (the AG) intervenes in the civil action as described in this paragraph. Upon the filing of a civil proceeding for relief under the provision described in clause (3), (4), or (5) of the preceding paragraph by an allegedly injured person other than a prosecuting attorney, the allegedly injured person immediately must notify the AG. The AG, upon timely application, may intervene in a civil proceeding of that nature if the AG certifies that, in his or her opinion, the proceeding is of general public interest. In any proceeding brought by an injured person under the provision described in clause (3), (4), or (5) of the preceding paragraph, the AG is entitled to the same relief as if the AG instituted the proceeding.

In a civil proceeding under the provision described in the second preceding paragraph, the court may grant injunctive relief without a showing of special or irreparable injury. Pending final determination of a civil proceeding initiated under the provision described above, the court may issue a temporary restraining order or a preliminary injunction upon a showing of immediate danger or

significant injury to the plaintiff, including the possibility that any judgment for money damages might be difficult to execute, and, in a proceeding initiated by an aggrieved person, upon the execution of proper bond against injury for an improvidently granted injunction.

In a civil proceeding under the provisions described in the third preceding paragraph, any person directly or indirectly injured by conduct in violation of the prohibition contained in R.C. 2923.32(A) or a conspiracy to violate that prohibition, other than a violator of that prohibition or a conspirator to violate that prohibition, in addition to relief as described in the third preceding paragraph, has a cause of action for triple the actual damages the person sustained. To recover triple damages, the plaintiff must prove the violation or conspiracy to violate that prohibition and actual damages by clear and convincing evidence. Damages as described in this paragraph may include, but are not limited to, competitive injury and injury distinct from the injury inflicted by corrupt activity.

In a civil action in which the plaintiff prevails under the provisions described in the preceding paragraph or the fourth preceding paragraph, the plaintiff must recover reasonable attorney fees in the trial and appellate courts, and the court must order the defendant to pay to the state, municipal, or county law enforcement agencies that handled the investigation and litigation the costs of investigation and litigation that reasonably are incurred and that are not ordered to be paid pursuant to R.C. 2923.32(B)(2) or the provisions described in the next paragraph. Upon application, based on the evidence presented in the case by the plaintiff, as the interests of justice may require, the trial court may grant a defendant who prevails in the civil action section all or part of the defendant's costs, including the costs of investigation and litigation reasonably incurred, and all or part of the defendant's reasonable attorney fees, unless the court finds that special circumstances, including the relative economic position of the parties, make an award unjust.

If a person, other than an individual, is not convicted of a violation of the prohibition contained in R.C. 2923.32(A), the prosecuting attorney may institute proceedings against the person to recover a civil penalty for conduct that the prosecuting attorney proves by clear and convincing evidence is in violation of the prohibition. The civil penalty cannot exceed \$100,000 and must be paid into the State Treasury to the credit of the Corrupt Activity Investigation and Prosecution Fund. If a civil penalty is ordered, the court must order the defendant to pay to the state, municipal, or county law enforcement agencies that handled the investigation and litigation the costs of investigation and litigation that are reasonably incurred and that are not ordered to be paid as described above.

A final judgment, decree, or delinquency adjudication rendered against the defendant or the adjudicated delinquent child in a civil action under these

provisions or in a criminal or delinquency action or proceeding for a violation of the prohibition contained in R.C. 2923.32(A) estops the defendant or the child in any subsequent civil proceeding or action brought by any person as to all matters as to which the judgment, decree, or adjudication would be an estoppel as between the parties to the civil, criminal, or delinquency proceeding or action. The application of any civil remedy under these provisions does not preclude the application of any criminal remedy or criminal forfeiture under the criminal provisions of R.C. 2923.32 or any other provision of law, or the application of any delinquency disposition under R.C. Chapter 2152. or any other provision of law.

Notwithstanding any other provision of law providing a shorter period of limitations, a civil proceeding or action under these provisions may be commenced at any time within five years after the unlawful conduct terminates or the cause of action accrues or within any longer statutory period of limitations that may be applicable. If a criminal proceeding, delinquency proceeding, civil action, or other proceeding is brought or intervened in by the state to punish, prevent, or restrain any activity that is unlawful under the prohibition contained in R.C. 2923.32(A), the running of the period of limitations described in this paragraph with respect to any civil action brought under these provisions by a person who is injured by a violation or threatened violation of the prohibition, based in whole or in part upon any matter complained of in the state prosecution, action, or proceeding, is suspended during the pendency of the state prosecution, action, or proceeding and for two years following its termination.

Any person who prevails in a civil action pursuant to these provisions has a right to any property, or the proceeds of any property, criminally forfeited to the state pursuant to R.C. 2981.04 or against which any fine under the criminal provisions of R.C. 2923.32 or civil penalty under the provisions described in the third preceding paragraph may be imposed. The right of any person who prevails in a civil action pursuant to these provisions, other than a prosecuting attorney performing official duties, to forfeited property, property against which fines and civil penalties may be imposed, and the proceeds of that property is superior to any right of the state, a municipal corporation, or a county to the property or the proceeds of the property, if the civil action is brought within 180 days after the entry of a sentence of forfeiture or a fine pursuant to R.C. 2923.32 and 2981.04 or the entry of a civil penalty under the provisions described in the third preceding paragraph may be imposed. The right is limited to the total value of the treble damages, civil penalties, attorney's fees, and costs awarded to the prevailing party in an action pursuant to these provisions, less any restitution received by the person.

If the aggregate amount of claims of persons who have prevailed in a civil action pursuant to these provisions against any one defendant is greater than the

total value of the treble fines, civil penalties, and forfeited property paid by the person against whom the actions were brought, all of the persons who brought their actions within 180 days after the entry of a sentence or disposition of forfeiture or a fine pursuant to the criminal provisions of R.C. 2923.32 or the entry of a civil penalty under the provisions described in the fourth preceding paragraph may be imposed, first are to receive a *pro rata* share of the total amount of the fines, civil penalties, and forfeited property. After the persons who brought their actions within the specified 180-day period have satisfied their claims out of the fines, civil penalties, and forfeited property, all other persons who prevailed in civil actions pursuant to these provisions are to receive a *pro rata* share of the total amount of the fines, civil penalties, and forfeited property that remains in the custody of the law enforcement agency or in the corrupt activity investigation and prosecution fund.

Corrupt activity lien and lis pendens. Existing R.C. 2923.36 provides that, upon the institution of any criminal proceeding charging a violation of the prohibition contained in R.C. 2923.32(A), the filing of any complaint, indictment, or information in juvenile court alleging a violation of that prohibition as a delinquent act, or the institution of any civil proceeding under R.C. 2923.34, as described above, or R.C. 2981.05, the state, at any time during the pendency of the proceeding, may file a corrupt activity lien notice with the county recorder of any county in which property subject to forfeiture may be located. The section sets forth procedures related to corrupt activity lien notices, and specifies the impact of a corrupt activity lien.

The section also provides that, notwithstanding any law or rule to the contrary, in conjunction with any civil proceeding brought pursuant to R.C. 2981.05, the prosecuting attorney may file in any county, without prior court order, a *lis pendens* pursuant to R.C. 2703.26 and 2703.27. In such a case, any person acquiring an interest in the subject property or beneficial interest in the property, if the property interest is acquired subsequent to the filing of the *lis pendens*, takes the property or interest subject to the civil proceeding and any subsequent judgment. If a corrupt activity lien notice has been filed, the prosecuting attorney may name as a defendant in the *lis pendens*, in addition to the person named in the notice, any person acquiring an interest in the personal or real property or beneficial interest in the property subsequent to the filing of the notice. If a judgment of forfeiture is entered in the criminal or delinquency proceeding in favor of the state, the interest of any person in the property that was acquired subsequent to the filing of the notice is subject to the notice and judgment of forfeiture.

HISTORY

ACTION

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