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BILL ANALYSIS



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Senate Bill 691 (as enacted)
Sponsor: Senator Jim Runestad
Senate Committee: Judiciary and Public Safety
House Committee: Judiciary

PUBLIC ACT 174 of 2022

Date Completed: 12-15-22

CONTENT

The bill amended the Michigan Penal Code to include a violation of Section 4 of the Organized Retail Crime Act as a predicate offense of racketeering.

Section 159i of the Code prohibits a person from engaging in certain activities through a "pattern of racketeering activity" (at least two incidents of racketeering that have interrelated characteristics and amount to or pose a threat of continuing criminal activity). "Racketeering" means committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or intimidating a person to commit an offense for financial gain by obtaining money, property, or any other thing of value, involving certain violations specified in the Code.

The bill includes among those specified violations a violation of Section 4 of the Organized Retail Crime Act (see **BACKGROUND** for more information on that section).

(Under the Code, a person who violates Section 159i is guilty of a felony punishable by up to 20 years' imprisonment or a maximum fine of \$100,000, or both. In addition, a court may order the person to pay court costs and the costs of investigation and prosecution. A court must order a person convicted of violating Section 159i to criminally forfeit to the State any real, personal, or intangible property in which he or she has an interest and that was used in the course of, intended for use in the course of, derived from, or realized through conduct in the violation. Also, all property of a person convicted of violating Section 159i that is the proceeds, substitute proceeds, or an instrumentality of racketeering is subject to civil in rem forfeiture.)

The bill took effect on October 19, 2022.

MCL 750.159g

BACKGROUND

Under Section 4 of the Organized Retail Crime Act, a person is guilty of organized retail crime when that person, alone or in association with another person, does any of the following:

- Knowingly commits an organized retail crime.
- Organizes, supervises, finances, or otherwise manages or assists another person in committing an organized retail crime.

- Removes, destroys, deactivates, or knowingly evades any component of an antishoplifting or inventory control device to prevent the activation of that device or to facilitate another person in committing an organized retail crime.
- Conspires with another person to commit an organized retail crime.
- Receives, purchases, or possesses retail merchandise for sale or resale knowing or believing the retail merchandise to be stolen from a retail merchant.
- Uses any artifice, instrument, container, device, or other article to facilitate the commission of an organized retail crime act.
- Knowingly causes a fire exit alarm to sound or otherwise activate or deactivates or prevents a fire exit alarm from sounding, in the commission of an organized retail crime or to facilitate the commission of an organized retail crime by another person.
- Knowingly purchases a wireless telecommunication device using fraudulent credit, knowingly procures a wireless telecommunications service agreement with the intent to defraud another person or to breach that agreement, or uses another person to obtain a wireless telecommunications service agreement with the intent to defraud another person or to breach that agreement.

The Organized Retail Crime Act defines "organized retail crime" as the theft of retail merchandise from a retail merchant with the intent or purpose of reselling, distributing, or otherwise reentering the retail merchandise in commerce, including the transfer of the stolen retail merchandise to another retail merchant or to any other person personally, through the mail, or through any electronic medium, including the internet, in exchange for anything of value. "Person" means an individual, sole proprietorship, partnership, cooperative, association, corporation, limited liability company, personal representative, receiver, trustee, assignee, or other entity.

Under the Organized Retail Crime Act, organized retail crime is a felony punishable by up to five years' imprisonment or a maximum fine of \$5,000, or both.

Legislative Analyst: Stephen P. Jackson

FISCAL IMPACT

The bill may have an indeterminate fiscal impact on State and local government. New felony arrests and convictions under the bill may increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. However, it is unknown how many additional people will be prosecuted under the bill's provisions. The average cost to State government for felony probation supervision is approximately \$3,400 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately \$5,800 per prisoner per year. Any additional revenue from imposed fines will go to local libraries.

In addition, by adding a violation of the Organized Retail Crime Act to the list of those crimes that constitute racketeering, the real and tangible property of those convicted of violating the Organized Retail Crime Act may be subject to civil in rem forfeiture under Michigan Compiled Laws 750.159m. Civil in rem forfeiture is a legal process that is distinct from criminal prosecution by which the State or local prosecuting agencies may petition a court to seize property.

Currently, retail property seized under the Organized Retail Crime Act that otherwise cannot be returned to the merchant is subject to forfeiture by the State for use by the Organized Retail Crime Advisory Board. The bill may expand the types of property subject to seizure if that offense also constitutes a pattern of racketeering behavior. The property subject to

seizure then may include the proceeds, substitute proceeds, or instrumentalities of racketeering in addition to any retail property associated with the underlying offense.

Fiscal Analyst: Joe Carrasco, Jr.
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.