

537.19 RESERVED.

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CHAPTER 537 Offenses Against Persons

537.18 ILLEGAL DISTRIBUTION OF CIGARETTES, OTHER TOBACCO PRODUCTS, OR ALTERNATE NICOTINE PRODUCTS; TRANSACTION SCANS.

(a) Illegal Distribution of Cigarettes, Other Tobacco Products, or Alternative Nicotine Products.

(1) As used in this section:

A. "Age verification." A service provided by an independent third party (other than a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes) that compares information available from a commercially available database, or aggregate of databases, that regularly are used by government and businesses for the purpose of age and identity verification to personal information provided during an internet sale or other remote method of sale to establish that the purchaser is twenty-one years of age or older.

B. "Alternative nicotine product."

1. Subject to subsection (a)(1)B.2. of this section, an electronic smoking device, vapor product, or any other product or device that consists of or contains nicotine that can be ingested into the body by any means, including, but not limited to, chewing, smoking, absorbing, dissolving, or inhaling.

2. The phrase does not include any of the following:

- a. Any cigarette or other tobacco product;
- b. Any product that is a "drug" as that term is defined in 21 U.S.C. 321(g)(1);
- c. Any product that is a "device" as that term is defined in 21 U.S.C. 321(h);
- d. Any product that is a "combination product" as described in 21 U.S.C. 353(g).

C. "Cigarette." Includes clove cigarettes and hand-rolled cigarettes.

D. "Distribute." Means to furnish, give, or provide cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to the ultimate consumer of the cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes.

E. "Electronic smoking device." Means any device that can be used to deliver aerosolized or vaporized nicotine or any other substance to the person inhaling from the device including an electronic cigarette, electronic cigar, electronic hookah, vaping pen, or electronic pipe. The phrase includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. The phrase does not include any product that is a drug, device, or combination product, as those terms are defined or described in 21 U.S.C. 321 and 353(g).

F. "Proof of age." Means a driver's license, a commercial driver's license, a military identification card, a passport, or an identification card issued under Ohio R.C. 4507.50 to 4507.52 that shows that a person is twenty-one years of age or older.

G. "Tobacco product." Means any product that is made or derived from tobacco or that contains any form of nicotine, if it is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including, but not limited to, a cigarette, an electronic smoking device, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. The phrase also means any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, blunt or hemp wraps, and liquids used in electronic smoking devices, whether or not they contain nicotine. The phrase does not include any product that is a drug, device, or combination product, as those terms are defined

or described in 21 U.S.C. 321 and 353(g).

H. "Vapor product." Means a product, other than a cigarette or other tobacco product as defined in Ohio R.C. Chapter 5743, that contains or is made or derived from nicotine and that is intended and marketed for human consumption, including by smoking, inhaling, snorting, or sniffing. The phrase includes any component, part, or additive that is intended for use in an electronic smoking device, a mechanical heating element, battery, or electronic circuit and is used to deliver the product. The phrase does not include any product that is a drug, device, or combination product, as those terms are defined or described in 21 U.S.C. 321 and 353(g). The phrase includes any product containing nicotine, regardless of concentration.

I. "Vending machine." Has the same meaning as "coin machine" in Ohio R.C. 2913.01.

(2) No manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes, no agent, employee, or representative of a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes, and no other person shall do any of the following:

A. Give, sell, or otherwise distribute cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes:

1. To any person under twenty-one years of age; or
2. Without first verifying proof of age.

B. Give away, sell, or distribute cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes in any place that does not have posted in a conspicuous place a legibly printed sign in letters at least one-half inch high stating that giving, selling, or otherwise distributing cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a person under twenty-one years of age is prohibited by law;

C. Knowingly furnish any false information regarding the name, age, or other identification of any person under twenty-one years of age with purpose to obtain cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes for that person;

D. Manufacture, sell, or distribute in this state any pack or other container of cigarettes containing fewer than twenty cigarettes or any package of roll-your-own tobacco containing less than six-tenths of one ounce of tobacco;

E. Sell cigarettes or alternative nicotine products in a smaller quantity than that placed in the pack or other container by the manufacturer;

F. Give, sell, or otherwise distribute alternative nicotine products, papers used to roll cigarettes, or tobacco products other than cigarettes over the internet or through another remote method without age verification.

G. Allow an employee under eighteen years of age to sell any tobacco product;

H. Give away or otherwise distribute free samples of cigarettes, other tobacco products, alternative nicotine products, or coupons redeemable for cigarettes, other tobacco products or alternative tobacco products.

(3) No person shall sell or offer to sell cigarettes, other tobacco products, or alternative nicotine products by or from a vending machine, except in the following locations:

A. An area within a factory, business, office, or other place not open to the general public;

B. An area to which persons under twenty-one years of age are not generally permitted access;

C. Any other place not identified in subsection (a)(3)A. or B. of this section, upon all of the following conditions:

1. The vending machine is located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of that person, so that all cigarettes, other tobacco product, and alternative nicotine product purchases from the vending machine will be readily observed by the person who owns or operates the place or an employee of that person. For the purpose of this section, a vending machine located in any unmonitored area, including an unmonitored coatroom, restroom, hallway, or outer waiting area, shall not be considered located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of that person.

2. The vending machine is inaccessible to the public when the place is closed.

3. A clearly visible notice is posted in the area where the vending machine is located that states the following in letters that are legibly printed and at least one-half inch high: "It is illegal for any person under the age of twenty-one to purchase tobacco or alternative nicotine products."

(4) The following are affirmative defenses to a charge under subsection (a)(2)A. of this section:

A. The person under twenty-one years of age was accompanied by a parent, spouse who is twenty-one years of age or older, or legal guardian of the person under twenty-one years of age.

B. The person who gave, sold, or distributed cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a person under twenty-one years of age under subsection (a)(2)A. of this section is a parent, spouse who is twenty-one years of age or older, or legal guardian of the person under twenty-one years of age.

(5) A. It is not a violation of subsection (a)(2)A. or B. of this section for a person to give or otherwise distribute to a person under twenty-one years of age cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes while the person under twenty-one years of age is participating in a research protocol if all of the following apply:

1. The parent, guardian, or legal custodian of the person under twenty-one years of age has consented in writing to the person under twenty-one years of age participating in the research protocol.

2. An institutional human subjects protection review board, or an equivalent entity, has approved the research protocol.

3. The person under twenty-one years of age is participating in the research protocol at the facility or location specified in the research protocol.

B. It is not a violation of subsection (a)(2)A. or B. of this section for an employer to permit an employee eighteen, nineteen or twenty years of age to sell a tobacco product.

(6) A. No delivery service shall accept from, transport or deliver to, or allow pick-up by, a person under twenty-one years of age with respect to any of the following:

1. Alternative nicotine products;
2. Papers used to roll cigarettes;
3. Tobacco products other than cigarettes.

B. A delivery service shall require proof of age as a condition of accepting, transporting, delivering, or allowing pickup of the items described in subsections (a)(6)A1. to 3. of this section.

(7) Whoever violates subsections (a)(2)A., B., D., E., F., G., H., (3) or (6) of this section is guilty of illegal distribution of cigarettes, other tobacco products, or alternative nicotine products. Except as otherwise provided in this division, illegal distribution of cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the fourth degree. If the offender previously has been convicted of or pleaded guilty to illegal distribution of cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the third degree.

(8) A. Notwithstanding Ohio R.C. 2929.28(A)(2), if an offender is convicted of or pleads guilty to a violation of subsection (a)(2)A. of this section, the court shall impose a fine in the following amount:

1. Except as otherwise provided in subsections (a)(8)A.2., (a)(8)A.3., (a)(8)A.4., and (a)(8)A.5. of this section, not more than two hundred fifty dollars (\$250.00);

2. Except as otherwise provided in subsections (a)(8)A.3., (a)(8)A.4., and (a)(8)A.5. of this section, if an offender has previously been convicted of or pleaded guilty to a violation of subsection (a)(2)A. of this section or a substantially equivalent state law or municipal ordinance, not more than five hundred dollars (\$500.00);

3. Except as otherwise provided in subsections (a)(8)A.4. and (a)(8)A.5. of this section, if an offender previously has been convicted of or pleaded guilty to two or more violations of subsection (a)(2)A. of this section or a substantially equivalent state law or municipal ordinance, five hundred dollars (\$500.00);

4. Except as otherwise provided in subsection (a)(8)A.5. of this section, if an offender previously has been convicted of or pleaded guilty to three or more violations of subsection (a)(2)A. of this section or a substantially equivalent state law or municipal ordinance, one thousand dollars (\$1,000.00);

5. If an offender previously has been convicted of or pleaded guilty to four or more violations of subsection (a)(2)A. of this section or a substantially equivalent state law or municipal ordinance, one thousand five hundred dollars (\$1,500),

B. The financial sanctions required by subsection (a)(8)A. of this section are in lieu of the financial sanctions described in Ohio R.C. 2929.28(A)(2), but are in addition to any other sanctions or penalties that may apply to the offender, including other financial sanctions under that section or a jail term under Ohio R.C. 2929.24.

(9) Whoever violates subsection (a)(2)C. of this section is guilty of permitting a person under twenty-one years of age to use cigarettes, other tobacco products, or alternative nicotine products. Except as otherwise provided in this division, permitting a person under twenty-one years of age to use cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of subsection (a)(2)C. of this section or a substantially equivalent state law or municipal ordinance, permitting a person under twenty-one years of age to use cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the third degree.

(10) Any cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes that are given, sold, or otherwise distributed to a person under twenty-one years of age in violation of this section and that are used, possessed, purchased, or received by a person under twenty-one years of age in violation of Ohio R.C. 2151.87 are subject to seizure and forfeiture as contraband under Ohio R.C. Chapter 2981. (ORC 2927.02)

(b) Transaction Scan.

(1) For the purpose of this subsection (b) and subsection (c) of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

A. "Card holder." Any person who presents a driver's or commercial driver's license or an identification card to a seller, or an agent or employee of a seller, to purchase or receive cigarettes, other tobacco products, or alternative nicotine products from a seller, agent or employee.

B. "Identification card." An identification card issued under Ohio R.C. 4507.50 to 4507.52.

C. "Seller." A seller of cigarettes, other tobacco products, or alternative nicotine products and includes any person whose gift of or other distribution of cigarettes, other tobacco products, or

alternative nicotine products is subject to the prohibitions of subsection (a) of this section.

D. "Transaction scan." The process by which a seller or an agent or employee of a seller checks, by means of a transaction scan device, the validity of a driver's or commercial driver's license or an identification card that is presented as a condition for purchasing or receiving cigarettes, other tobacco products, or alternative nicotine products.

E. "Transaction scan device." Any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver's or commercial driver's license or an identification card.

(2) A. A seller or an agent or employee of a seller may perform a transaction scan by means of a transaction scan device to check the validity of a driver's or commercial driver's license or identification card presented by a card holder as a condition for selling, giving away or otherwise distributing to the card holder cigarettes, other tobacco products, or alternative nicotine products.

B. If the information deciphered by the transaction scan performed under subsection (b)(2)A. of this section fails to match the information printed on the driver's or commercial driver's license or identification card presented by the card holder, or if the transaction scan indicates that the information so printed is false or fraudulent, neither the seller nor any agent or employee of the seller shall sell, give away or otherwise distribute any cigarettes, other tobacco products, or alternative nicotine products to the card holder.

C. Subsection (b)(2)A. of this section does not preclude a seller or an agent or employee of a seller from using a transaction scan device to check the validity of a document other than a driver's or commercial driver's license or identification card, if the document includes a bar code or magnetic strip that may be scanned by the device, as a condition for selling, giving away or otherwise distributing cigarettes, other tobacco products, or alternative nicotine products to the person presenting the document.

(3) Rules adopted by the Registrar of Motor Vehicles under Ohio R.C. 4301.61(C) apply to the use of transaction scan devices for purposes of this subsection (b) and subsection (c) of this section.

(4) A. No seller or agent or employee of a seller shall electronically or mechanically record or maintain any information derived from a transaction scan, except for the following:

1. The name and date of birth of the person listed on the driver's or commercial driver's license or identification card presented by the card holder;

2. The expiration date and identification number of the driver's or commercial driver's license or identification card presented by the card holder.

B. No seller or agent or employee of a seller shall use the information that is derived from a transaction scan or that is permitted to be recorded and maintained under subsection (b)(4)A. of this section, except for purposes of subsection (c) of this section.

C. No seller or agent or employee of a seller shall use a transaction scan device for a purpose other than the purpose specified in subsection (c)(2)A. of this section.

D. No seller or agent or employee of a seller shall sell or otherwise disseminate the information derived from a transaction scan to any third party, including but not limited to selling or otherwise disseminating that information for any marketing, advertising or promotional activities, but a seller or agent or employee of a seller may release that information pursuant to a court order or as specifically authorized by subsection (c) of this section or another section of these Codified Ordinances or the Ohio Revised Code.

(5) Nothing in this subsection (b) or subsection (c) of this section relieves a seller or an agent

or employee of a seller of any responsibility to comply with any other applicable local, state or federal laws or rules governing the sale, giving away or other distribution of cigarettes, other tobacco products, or alternative nicotine products.

(6) Whoever violates subsection (b)(2)B. or (b)(4) of this section is guilty of engaging in an illegal tobacco product or alternative nicotine product transaction scan, and the court may impose upon the offender a civil penalty of up to one thousand dollars (\$1,000) for each violation. The Clerk of the Court shall pay each collected civil penalty to the County Treasurer for deposit into the County Treasury.

(ORC 2927.021)

(c) Affirmative Defenses.

(1) A seller or an agent or employee of a seller may not be found guilty of a charge of a violation of subsection (a) of this section in which the age of the purchaser or other recipient of cigarettes, other tobacco products, or alternative nicotine products is an element of the alleged violation, if the seller, agent or employee raises and proves as an affirmative defense that all of the following occurred:

A. A card holder attempting to purchase or receive cigarettes, other tobacco products, or alternative nicotine products presented a driver's or commercial driver's license or an identification card.

B. A transaction scan of the driver's or commercial driver's license or identification card that the card holder presented indicated that the license or card was valid.

C. The cigarettes, other tobacco products, or alternative nicotine products were sold, given away or otherwise distributed to the card holder in reasonable reliance upon the identification presented and the completed transaction scan.

(2) In determining whether a seller or an agent or employee of a seller has proven the affirmative defense provided by subsection (c)(1) of this section, the trier of fact in the action for the alleged violation of subsection (a) of this section shall consider any written policy that the seller has adopted and implemented and that is intended to prevent violations of subsection (a) of this section. For purposes of subsection (c)(1)C. of this section, the trier of fact shall consider that reasonable reliance upon the identification presented and the completed transaction scan may require a seller or an agent or employee of a seller to exercise reasonable diligence to determine, and that the use of a transaction scan device does not excuse a seller or an agent or employee of a seller from exercising reasonable diligence to determine, the following:

A. Whether a person to whom the seller or agent or employee of a seller sells, gives away or otherwise distributes cigarettes, other tobacco products, or alternative nicotine products is twenty-one years of age or older;

B. Whether the description and picture appearing on the driver's or commercial driver's license or identification card presented by a card holder is that of the card holder.

(3) In any criminal action in which the affirmative defense provided by subsection (c)(1) of this section is raised, the Registrar of Motor Vehicles or a Deputy Registrar who issued an identification card under Ohio R.C. 4507.50 to 4507.52 shall be permitted to submit certified copies of the records of that issuance in lieu of the testimony of the personnel of or contractors with the Bureau of Motor Vehicles in the action.

(ORC 2927.022)

(d) Shipment of Tobacco Products.

(1) As used in this subsection (d):

A. "Authorized recipient of tobacco products" means:

1. In the case of cigarettes, a person who is:
 - a. Licensed as a cigarette wholesale dealer under Ohio R.C. 5743.15;
 - b. Licensed as a retail dealer as long as the person purchases cigarettes with the appropriate tax stamp affixed;
 - c. An export warehouse proprietor as defined in Internal Revenue Code Section 5702;
 - d. An operator of a customs bonded warehouse under 19 U.S.C. Section 1311 or 19 U.S.C. Section 1555;
 - e. An officer, employee, or agent of the federal government or of this state acting in the person's official capacity;
 - f. A department, agency, instrumentality, or political subdivision of the federal government or of this state;
 - g. A person having a consent for consumer shipment issued by the Ohio Tax Commissioner under Ohio R.C. 5743.71.

2. In the case of electronic smoking devices or vapor products, a person who is:
 - a. Licensed as a distributor of tobacco or vapor products under Ohio R.C. 5743.61;
 - b. A retail dealer of vapor products, as defined in Ohio R.C. 5741.01(C)(3), that is not licensed as a vapor distributor, as long as the tax levied by Ohio R.C. 5743.51, 5743.62, or 5743.63, as applicable, has been paid;
 - c. An operator of a customs bonded warehouse under 19 U.S.C. Section 1311 or 19 U.S.C. Section 1555;
 - d. An officer, employee, or agent of the federal government or of this state acting in the person's official capacity;
 - e. A department, agency, instrumentality, or political subdivision of the federal government or of this state.

B. "Motor Carrier," Has the same meaning as in Ohio R.C. 4923.01.

(2) The purpose of this section is to prevent the sale of cigarettes, electronic smoking devices, and vapor products to minors and to ensure compliance with the Master Settlement Agreement, as defined in Ohio R.C. 1346.01.

(3) A. No person shall cause to be shipped any cigarettes, electronic smoking devices, and vapor products to any person in this municipality other than an authorized recipient of tobacco products.

B. No motor carrier, or other person shall knowingly transport cigarettes, electronic smoking devices, and vapor products to any person in this municipality that the carrier or other person reasonably believes is not an authorized recipient of tobacco products. If cigarettes, electronic smoking devices, and vapor products are transported to a home or residence, it shall be presumed that the motor carrier, or other person knew that the person to whom the cigarettes, electronic smoking devices, and vapor products were delivered was not an authorized recipient of tobacco products.

(4) No person engaged in the business of selling cigarettes, electronic smoking devices, and vapor products who ships or causes to be shipped cigarettes, electronic smoking devices, and vapor products to any person in this municipality in any container or wrapping other than the original container or wrapping shall fail to plainly and visibly mark the exterior of the container or wrapping in which the cigarettes, electronic smoking devices, and vapor products are shipped with the words "cigarettes", "electronic smoking devices", or "vapor products", as applicable.

(5) A court shall impose a fine of up to one thousand dollars (\$1,000) for each violation of subsection (d)(3)A., (d)(3)B. or (d)(4) of this section.

(ORC 2927.023)

(e) Furnishing False Information to Obtain Tobacco Products.

(1) No person who is eighteen years of age or older but younger than twenty-one years of age shall knowingly furnish false information concerning that person's name, age, or other identification for the purpose of obtaining tobacco products.

(2) Whoever violates subsection (e)(1) of this section is guilty of furnishing false information to obtain tobacco products. Except as otherwise provided in this division, furnishing false information to obtain tobacco products is a misdemeanor of the fourth degree. If the offender previously has been convicted of or pleaded guilty to a violation of subsection (e)(1) of this section or a substantially equivalent state law or municipal ordinance, furnishing false information to obtain tobacco products is a misdemeanor of the third degree.

(ORC 2927.024)

537.19 RESERVED.

(Editor's note: This section was formerly 537.19 Criminal Child Enticement, based on Ohio R.C. 2905.05, Criminal Child Enticement. The Ohio Supreme Court held that Ohio R.C. 2905.05(A) was unconstitutionally overbroad in violation of the First Amendment. See *State v. Ramage*, 138 Ohio St. 3d. 390 (2014).)

537.20 CONTRIBUTING TO UNRULINESS OR DELINQUENCY OF A CHILD.

(a) As used in this section:

(1) "Delinquent child" has the same meaning as in Ohio R.C. 2152.02.

(2) "Unruly child" has the same meaning as in Ohio R.C. 2151.022.

(b) No person, including a parent, guardian or other custodian of a child, shall do any of the following:

(1) Aid, abet, induce, cause, encourage, or contribute to a child or a ward of the juvenile court becoming an unruly child or a delinquent child;

(2) Act in a way tending to cause a child or a ward of the juvenile court to become an unruly child or a delinquent child;

(3) Act in a way that contributes to an adjudication of the child as a delinquent child based on the child's violation of a court order adjudicating the child an unruly child for being an habitual truant;

(4) If the person is the parent, guardian, or custodian of a child who has the duties under Ohio R.C. Chapters 2152 and 2950 to register, register a new residence address, and periodically verify a residence address and, if applicable, to send a notice of intent to reside, and if the child is not emancipated, as defined in Ohio R.C. 2919.121, fail to ensure that the child complies with those duties under Ohio R.C. Chapters 2152 and 2950.

(c) Whoever violates this section is guilty of contributing to the unruliness or delinquency of a child, a misdemeanor of the first degree. Each day of violation of this section is a separate offense. (ORC 2919.24)

537.21 HAZING PROHIBITED.

(a) As used in this section:

(1) "Hazing" means doing any act or coercing another, including the victim, to do any act of initiation into any student or other organization or any act to continue or reinstate membership in or affiliation with any student or other organization that causes or creates a substantial risk of causing mental or physical harm to any person, including coercing another to consume alcohol or a drug of abuse, as defined in Ohio R.C. 3719.011.

(2) "Organization" includes a national or international organization with which a fraternity or

sorority is affiliated.

(b) (1) No person shall recklessly participate in the hazing of another.

(2) No administrator, employee, faculty member, teacher, consultant, alumnus, or volunteer of any organization, including any primary, secondary, or post-secondary school or any other educational institution, public or private, shall recklessly permit the hazing of any person associated with the organization.

(c) (1) No person shall recklessly participate in the hazing of another when the hazing includes coerced consumption of alcohol or drugs of abuse resulting in serious physical harm to the other person.

(2) No administrator, employee, faculty member, teacher, consultant, alumnus, or volunteer of any organization, including any primary, secondary, or post-secondary school or other educational institution, public or private, shall recklessly permit the hazing of any person associated with the organization when the hazing includes coerced consumption of alcohol or drugs of abuse resulting in serious physical harm to that person.

(d) Whoever violates subsections (b) or (c) of this section is guilty of hazing. A violation of subsections (b)(1) or (b)(2) of this section is a misdemeanor of the second degree. A violation of subsections (c)(1) or (c)(2) of this section is a felony to be prosecuted under appropriate state law. (ORC 2903.31)

(e) Reckless failure to immediately report knowledge of hazing.

(1) No administrator, employee, faculty member, teacher, consultant, alumnus, or volunteer of any organization, including any primary, secondary, or post-secondary school or any other public or private educational institution, who is acting in an official and professional capacity shall recklessly fail to immediately report the knowledge of hazing to a law enforcement agency in the county in which the victim of hazing resides or in which the hazing is occurring or has occurred.

(2) A violation of subsection (e)(1) of this section is a misdemeanor of the fourth degree, except that the violation is a misdemeanor of the first degree if the hazing causes serious physical harm.

(ORC 2903.311(B), (C))

537.22 ILLEGAL USE OF A TRACKING DEVICE OR APPLICATION.

(a) As used in this section:

(1) "Business entity" means any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state.

(2) "Business of private investigation" has the same meaning as in Ohio R.C. 4749.01.

(3) "Disabled adult" has the same meaning as in Ohio R.C. 2913.01.

(4) "Elderly person" has the same meaning as in Ohio R.C. 2913.01.

(5) "Electronic monitoring" has the same meaning as in Ohio R.C. 2929.01.

(6) "Electronic monitoring device" has the same meaning as in Ohio R.C. 2929.01.

(7) "Law enforcement agency" means any organization or unit comprised of law enforcement officers, and also includes any federal or military law enforcement agency.

(8) "Ohio Protection Order" means a protection order filed or issued or a consent agreement approved pursuant to Ohio R.C. 2919.26 or 3113.31, a protection order filed or issued pursuant to Ohio R.C. 2151.34, 2903.213, or 2903.214, or a no contact order issued as any of the following:

A. As part of a person's sentence under a community control sanction imposed under Ohio R.C. 2929.16, 2929.17, 2929.26, or 2929.27;

B. As a term or condition of a person's release under Ohio R.C. 2929.20;

C. As a post-release control sanction imposed as a condition of a person's post-release

control under Ohio R.C. 2967.28;

D. As a term of supervision for a person transferred to transitional control under Ohio R.C. 2967.26;

E. As a term or condition of the intervention plan of a person granted intervention in lieu of conviction under Ohio R.C. 2951.041.

(9) "Person" means an individual, but does not include a business entity.

(10) "Private investigator" has the same meaning as in Ohio R.C. 4749.01.

(11) "Protection order issued by a court of another state" has the same meaning as in Ohio R.C. 2919.27.

(12) "Tracking application" means any software program that permits a person to remotely determine or track the position or movement of another person or another person's property.

(13) "Tracking device" means an electronic or mechanical device that permits a person to remotely determine or track the position or movement of another person or another person's property, including an electronic monitoring device.

(b) Except as otherwise provided in subsection (d) of this section, no person shall knowingly do either of the following:

(1) Install a tracking device or tracking application on another person's property without the other person's consent or cause a tracking device or tracking application to track the position or movement of another person or another person's property without the other person's consent;

(2) If the person installed a tracking device or tracking application on another's property with the other person's consent and the other person subsequently revokes that consent, fail to remove or ensure the removal of the device or application after the other person revokes the consent.

(c) (1) For purposes of this section, if a person has given consent for another to install a tracking device or tracking application on the consenting person's property, it is presumed that the consenting person has revoked that consent if any of the following applies:

A. The consenting person and the person to whom consent was given are lawfully married and one of them files a complaint for divorce or a petition for dissolution of marriage from the other. Not later than seventy-two hours after being served with a complaint for divorce or a petition for dissolution of marriage, the person to whom consent was given shall lawfully uninstall or discontinue use of the tracking device or tracking application. If the person to whom consent was given cannot lawfully uninstall or discontinue use of the tracking device or tracking application, the person to whom consent was given shall notify the court in which the complaint for divorce or the petition for dissolution of marriage was filed in writing.

B. The consenting person or the person to whom consent was given files an Ohio protection order against the other person or an Ohio protection order is issued against the other person, and the person to be protected under the order is the consenting person. Not later than seventy-two hours after being served with the Ohio protection order, the person to whom consent was given shall lawfully uninstall or discontinue use of the tracking device or tracking application. If the person to whom consent was given cannot lawfully uninstall or discontinue use of the tracking device or tracking application, the person to whom consent was given shall notify the court that issued the Ohio protection order in writing that the person to whom consent was given has installed or is using a tracking device or tracking application on the previously consenting person's person or the person's property and cannot uninstall or discontinue its use without violating the Ohio protection order.

(2) Revocation of consent under this subsection is effective upon the service of the petition or

motion or an Ohio protection order.

(d) This section does not apply to any of the following:

(1) A law enforcement officer, or any law enforcement agency, that installs a tracking device or tracking application on another person's property or causes a tracking device or tracking application to track the position or movement of another person or another person's property as part of a criminal investigation, or a probation officer, parole officer, or employee of the department of rehabilitation and correction, a halfway house, or a community-based correctional facility when engaged in the lawful performance of the officer's or employee's official duties;

(2) A parent or legal guardian of a minor child who installs or uses a tracking device or tracking application to track the minor child if any of the following applies:

A. The parents or legal guardians of the child are lawfully married to each other and are not separated or otherwise living apart, and either of those parents or legal guardians consents to the installation of the tracking device or tracking application;

B. The parent or legal guardian of the child is the sole surviving parent or legal guardian of the child;

C. The parent or legal guardian of the child has sole custody of the child;

D. The parents or legal guardians of the child are divorced, separated, or otherwise living apart and neither parent has sole custody of the child, and both consent to the installation of the tracking device or tracking application;

E. The parents or legal guardians of the child are divorced, separated, or otherwise living apart, neither parent has sole custody of the child, and either only one parent consents to the installation of the tracking device or tracking application or one parent revokes consent, if the consenting parent only uses the tracking device or tracking application during that parent's parenting or custodial time and disables or removes the tracking device or application during the nonconsenting parent's parenting or custodial time.

(3) A caregiver of an elderly person or disabled adult, if the elderly person's or disabled adult's treating physician certifies that the installation of a tracking device or tracking application onto the elderly person's or disabled adult's property is necessary to ensure the safety of the elderly person or disabled adult;

(4) A person acting in good faith on behalf of a business entity for a legitimate business purpose, provided that this division does not apply to a private investigator engaged in the business of private investigation on behalf of another person;

(5) A. A private investigator or other person licensed under Ohio R.C. 4749.03, who is acting in the normal course of the investigator's business of private investigation on behalf of another person and who has the consent of the owner of the property upon which the tracking device or tracking application is installed, for the purpose of obtaining information with reference to any of the following:

1. Criminal offenses committed, threatened, or suspected against the United States, a territory of the United States, a state, or any person or legal entity;

2. Locating an individual known to be a fugitive from justice;

3. Locating lost or stolen property or other assets that have been awarded by the court;

4. Investigating claims related to workers' compensation.

B. This subsection does not apply if the person on whose behalf the private investigator is working is the subject of an Ohio protection order or a protection order issued by a court of another state or if the private investigator knows or reasonably should know that the person on whose

behalf the private investigator is working seeks the investigator's services to aid in the commission of a crime.

(6) An owner or lessee of a motor vehicle who installs, or directs the installation of, a tracking device or tracking application on the vehicle during the period of ownership or lease, if any of the following applies:

A. The tracking device or tracking application is removed before the vehicle's title is transferred or the vehicle's lease expires;

B. The new owner of the vehicle, in the case of a sale, or the lessor of the vehicle, in the case of an expired lease, consents in writing to the non-removal of the tracking device or tracking application;

C. The owner of the vehicle at the time of the installation of the tracking device or tracking application was the original manufacturer of the vehicle.

(7) A person who installs a tracking device or application on property in which the person has an ownership or contractual interest, unless the person is the subject of a protective order and the property is likely to be used by the person who obtained the protective order;

(8) A person or business entity that installs a tracking device or tracking application on any fixed wing aircraft or rotorcraft operated or managed by the person or business entity pursuant to 14 C.F.R. part 91 or part 135 to track the position or movement of the fixed wing aircraft or rotorcraft;

(9) A surety bail bond agent, or any employee or contractor of a surety bail bond agent, that installs a tracking device or tracking application on another person's property or causes a tracking device or tracking application to track the position or movement of another person or another person's property as part of the surety bail bond agent's, employee's, or contractor's official responsibilities or duties.

(e) For purposes of subsection (d)(1) of this section, a probation officer, parole officer, or employee of the department of rehabilitation and correction, a halfway house, or a community-based correctional facility is engaged in the lawful performance of the officer's or employee's duties if both of the following apply:

(1) The court or the Department of Rehabilitation and Correction imposes electronic monitoring on a person.

(2) The officer or employee installs or uses an electronic monitoring device on that person in accordance with the court's or department's imposition of electronic monitoring of that person.

(f) Whoever violates this section is guilty of illegal use of a tracking device or application.

(1) Except as otherwise provided in subsection (f)(2) of this section, illegal use of a tracking device or application is a misdemeanor of the first degree.

(2) Illegal use of a tracking device or application is a felony to be prosecuted under state law if any of the following applies:

A. The offender previously has been convicted of or pleaded guilty to a violation of this section, Ohio R.C. 2903.216, or Ohio R.C. 2903.211 or any substantially equivalent municipal ordinance.

B. At the time of the commission of the offense, the offender was the subject of a protection order issued under Ohio R.C. 2903.213 or 2903.214, regardless of whether the person to be protected under the order is the victim of the offense or another person.

C. Prior to committing the offense, the offender had been determined to represent a substantial risk of physical harm to others as manifested by evidence of then-recent homicidal or

other violent behavior, evidence of then-recent threats that placed another in reasonable fear of violent behavior and serious physical harm, or other evidence of then-present dangerousness.

D. The offender has a history of violence toward the victim or a history of other violent acts towards the victim.

(ORC 2903.216)

537.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for penalties applicable to any misdemeanor classification.)

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Detected legislative history

- Ordinances of Sheffield Lake, OH
- ORDINANCES OF THE CITY OF SHEFFIELD LAKE, OHIO
- ORDINANCE NO. 116-84
- ORDINANCES OF SHEFFIELD LAKE
- orderly Conduct and Peace Disturbance
- ORDER
- ordinance, not more than five hundred dollars (\$500
- ordinance, five hundred dollars (\$500
- ordinance, one thousand dollars (\$1,000
- ordinance, one thousand five hundred dollars (\$1,500),
- ordinance, permitting a person under twenty-one years of age to use cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the third degree
- adopted by the Registrar of Motor Vehicles under Ohio R
- ord or maintain any information derived from a transaction scan, except for the following:
- orded and maintained under subsection (b)(4)A

- order or as specifically authorized by subsection (c) of this section or another section of these Codified Ordinances or the Ohio Revised Code
- adopted and implemented and that is intended to prevent violations of subsection (a) of this section
- ords of that issuance in lieu of the testimony of the personnel of or contractors with the Bureau of Motor Vehicles in the action
- ords "cigarettes", "electronic smoking devices", or "vapor products", as applicable
- ordinance, furnishing false information to obtain tobacco products is a misdemeanor of the third degree
- order adjudicating the child an unruly child for being an habitual truant;
- Order" means a protection order filed or issued or a consent agreement approved pursuant to Ohio R
- order filed or issued pursuant to Ohio R
- order issued as any of the following:
- order issued by a court of another state" has the same meaning as in Ohio R
- order against the other person or an Ohio protection order is issued against the other person, and the person to be protected under the order is the consenting person
- order, the person to whom consent was given shall lawfully uninstall or discontinue use of the tracking device or tracking application
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- order and the property is likely to be used by the person who obtained the protective order;
- ordance with the court's or department's imposition of electronic monitoring of that person
- ordinance. B
- order issued under Ohio R
- order is the victim of the offense or another person
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