

RACKETEERING: INCLUDE ORGANIZED RETAIL CRIME

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 691 as reported from House committee

Sponsor: Sen. Jim Runestad

House Committee: Judiciary

Senate Committee: Judiciary and Public Safety

Complete to 6-30-22

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Senate Bill 691 would amend Chapter XXVA (Criminal Enterprises) of the Michigan Penal Code to include a violation of section 4 of the Organized Retail Crime Act in the definition of “racketeering” for purposes of that chapter.

Organized Retail Crime Act

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.

Section 4 of the Organized Retail Crime Act provides that 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.

Organized retail crime is a felony punishable by imprisonment for up to five years or a fine of \$5,000, or both.

Racketeering

Currently, ***racketeering*** is defined in Chapter XXVA as 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 any of certain listed violations. Among numerous offenses, racketeering includes violations involving bribery, explosives, welfare fraud, animal fighting, money laundering, or identity theft. Senate Bill 691 would add organized retail crime to this list of offenses.

Section 159i of Chapter XXVA contains the following prohibitions:

- A person employed by, or associated with, an ***enterprise*** shall not knowingly conduct or participate in the affairs of an enterprise directly or indirectly through a ***pattern of racketeering activity***.
- A person shall not knowingly acquire or maintain an interest in or control of an enterprise or real or personal property used or intended for use in the operation of an enterprise, directly or indirectly, through a ***pattern of racketeering activity***.
- A person who has knowingly received any proceeds derived directly or indirectly from a ***pattern of racketeering activity*** shall not directly or indirectly use or invest any part of proceeds, or any proceeds derived from the use or investment of any of proceeds, in the establishment or operation of an enterprise, or the acquisition of any title to, or a right, interest, or equity in, real or personal property used or intended for use in the operation of an enterprise.
- A person shall not conspire or attempt to violate the above provisions.

Pattern of racketeering activity means at least two incidents of ***racketeering*** to which all of the following characteristics apply:

- The incidents have the same or a substantially similar purpose, result, participant, victim, or method of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated acts.
- The incidents amount to or pose a threat of continued criminal activity.
- At least one of the incidents occurred in Michigan on or after April 1, 1996, and the last of the incidents occurred within 10 years after the commission of any prior incident, excluding any period of imprisonment served by a person engaging in the racketeering activity.

Enterprise includes an individual, sole proprietorship, partnership, corporation, limited liability company, trust, union, association, governmental unit, or other legal entity or a group of persons associated in fact although not a legal entity. Enterprise includes illicit as well as licit enterprises.

A violation of section 159i is a felony punishable by imprisonment for up to 20 years or a fine of up to \$100,000, or both. In addition, a court can impose numerous other sanctions, including among other things the payment of court costs, the payment of the costs of the investigation and prosecution, restitution, forfeiture of certain personal and real property, and the loss of any license granted to the enterprise.

The bill would take effect 90 days after enactment.

MCL 750.159g

FISCAL IMPACT:

Senate Bill 691 would have an indeterminate fiscal impact on the state and on local units of government. The number of convictions that would result under provisions of the bill is not known. In fiscal year 2021, the average cost of prison incarceration in a state facility was roughly \$44,400 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$4,600 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

POSITIONS:

Representatives of the following entities testified in support of the bill (5-24-22):

- Department of the Attorney General
- Michigan Retailers Association

The following entities indicated support for the bill:

- Michigan State Police (6-7-22)
- Canton Township (6-7-22)
- Michigan Distributors and Vendors Association (5-24-22)
- Michigan Petroleum Association (5-24-22)
- Michigan Sheriffs' Association (5-24-22)
- Michigan Licensed Beverage Association (5-24-22)
- Home Depot (5-24-22)
- Target (5-24-22)
- International Council of Shopping Centers (6-7-22)
- Consumer Health Products Association (6-7-22)
- Michigan Association of Chiefs of Police (6-7-22)
- Michigan Chamber of Commerce (6-7-22)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.