

As Introduced

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S. B. No. 353

Senator Schiavoni

Cosponsors: Senators Thomas, Yuko, Brown

A BILL

To amend sections 2907.01, 2907.31, 2981.02, and 2981.04 and to enact sections 9.75, 2307.54, 2917.211, 3345.58, 4113.83, 4113.84, 4113.85, 4113.86, and 4113.87 of the Revised Code to prohibit the nonconsensual dissemination of private sexual images, to require that certain property involved in the offense be criminally forfeited, and to create certain legal rights and employment protections of a victim of the offense.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2907.01, 2907.31, 2981.02, and 2981.04 be amended and sections 9.75, 2307.54, 2917.211, 3345.58, 4113.83, 4113.84, 4113.85, 4113.86, and 4113.87 of the Revised Code be enacted to read as follows:

Sec. 9.75. (A) As used in this section:

(1) "License" means a license, certificate, registration, permit, card, or other authority issued or conferred by a licensing authority of which the licensee has or claims the

privilege to engage in the profession, occupation, or activity, 19
or to have control of and operate certain specific equipment, 20
machinery, or premises, over which the licensing authority has 21
jurisdiction. 22

(2) "Licensing authority" means a public office that 23
issues a license to a person or entity. 24

(3) "Political subdivision" means a county, township, 25
municipal corporation, or any other body corporate and politic 26
that is responsible for government activities in a geographic 27
area smaller than that of the state. 28

(4) "Public office" means any state agency, public 29
institution, political subdivision, other organized body, 30
office, agency, institution, or entity established by the laws 31
of this state for the exercise of any function of government. 32
"Public office" does not include the nonprofit corporation 33
formed under section 187.01 of the Revised Code. 34

(5) "Victim" has the same meaning as in section 2930.01 of 35
the Revised Code. 36

(B) No licensing authority shall knowingly take any of the 37
following actions against a person who is applying for or holds 38
a license solely on the basis that the person is a victim of a 39
violation of section 2917.211 of the Revised Code: 40

(1) Refuse to issue a license to an applicant; 41

(2) Limit, suspend, or revoke a license; 42

(3) Refuse to renew a license. 43

Sec. 2307.54. (A) A victim of a violation of section 44
2917.211 of the Revised Code has and may commence a civil cause 45
of action against the offender for any of the following, in 46

addition to reasonable attorney's fees and the costs of bringing 47
the action: 48

(1) An injunction or a temporary restraining order 49
prohibiting further dissemination of the image that is the 50
subject of the violation; 51

(2) Compensatory and punitive damages for harm resulting 52
from the violation. 53

(B) The cause of action created by this section is in 54
addition to any other cause of action available under statutory 55
or common law. 56

(C) As used in this section, "victim" has the same meaning 57
as in section 2930.01 of the Revised Code. 58

Sec. 2907.01. As used in sections 2907.01 to 2907.38 and 59
2917.211 of the Revised Code: 60

(A) "Sexual conduct" means vaginal intercourse between a 61
male and female; anal intercourse, fellatio, and cunnilingus 62
between persons regardless of sex; and, without privilege to do 63
so, the insertion, however slight, of any part of the body or 64
any instrument, apparatus, or other object into the vaginal or 65
anal opening of another. Penetration, however slight, is 66
sufficient to complete vaginal or anal intercourse. 67

(B) "Sexual contact" means any touching of an erogenous 68
zone of another, including without limitation the thigh, 69
genitals, buttock, pubic region, or, if the person is a female, 70
a breast, for the purpose of sexually arousing or gratifying 71
either person. 72

(C) "Sexual activity" means sexual conduct or sexual 73
contact, or both. 74

(D) "Prostitute" means a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.

(E) "Harmful to juveniles" means that quality of any material or performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse in any form to which all of the following apply:

(1) The material or performance, when considered as a whole, appeals to the prurient interest of juveniles in sex.

(2) The material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles.

(3) The material or performance, when considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles.

(F) When considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply:

(1) Its dominant appeal is to prurient interest;

(2) Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite;

(3) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality;

(4) Its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose;

(5) It contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.

(G) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(H) "Nudity" means the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.

(I) "Juvenile" means an unmarried person under the age of eighteen.

(J) "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, or tape, or other

tangible thing capable of arousing interest through sight, 132
sound, or touch and includes an image or text appearing on a 133
computer monitor, television screen, liquid crystal display, or 134
similar display device or an image or text recorded on a 135
computer hard disk, computer floppy disk, compact disk, magnetic 136
tape, or similar data storage device. 137

(K) "Performance" means any motion picture, preview, 138
trailer, play, show, skit, dance, or other exhibition performed 139
before an audience. 140

(L) "Spouse" means a person married to an offender at the 141
time of an alleged offense, except that such person shall not be 142
considered the spouse when any of the following apply: 143

(1) When the parties have entered into a written 144
separation agreement authorized by section 3103.06 of the 145
Revised Code; 146

(2) During the pendency of an action between the parties 147
for annulment, divorce, dissolution of marriage, or legal 148
separation; 149

(3) In the case of an action for legal separation, after 150
the effective date of the judgment for legal separation. 151

(M) "Minor" means a person under the age of eighteen. 152

(N) "Mental health client or patient" has the same meaning 153
as in section 2305.51 of the Revised Code. 154

(O) "Mental health professional" has the same meaning as 155
in section 2305.115 of the Revised Code. 156

(P) "Sado-masochistic abuse" means flagellation or torture 157
by or upon a person or the condition of being fettered, bound, 158
or otherwise physically restrained. 159

Sec. 2907.31. (A) No person, with knowledge of its	160
character or content, shall recklessly do any of the following:	161
(1) Directly sell, deliver, furnish, disseminate, provide,	162
exhibit, rent, or present to a juvenile, a group of juveniles, a	163
law enforcement officer posing as a juvenile, or a group of law	164
enforcement officers posing as juveniles any material or	165
performance that is obscene or harmful to juveniles;	166
(2) Directly offer or agree to sell, deliver, furnish,	167
disseminate, provide, exhibit, rent, or present to a juvenile, a	168
group of juveniles, a law enforcement officer posing as a	169
juvenile, or a group of law enforcement officers posing as	170
juveniles any material or performance that is obscene or harmful	171
to juveniles;	172
(3) While in the physical proximity of the juvenile or law	173
enforcement officer posing as a juvenile, allow any juvenile or	174
law enforcement officer posing as a juvenile to review or peruse	175
any material or view any live performance that is harmful to	176
juveniles.	177
(B) The following are affirmative defenses to a charge	178
under this section that involves material or a performance that	179
is harmful to juveniles but not obscene:	180
(1) The defendant is the parent, guardian, or spouse of	181
the juvenile involved.	182
(2) The juvenile involved, at the time of the conduct in	183
question, was accompanied by the juvenile's parent or guardian	184
who, with knowledge of its character, consented to the material	185
or performance being furnished or presented to the juvenile.	186
(3) The juvenile exhibited to the defendant or to the	187
defendant's agent or employee a draft card, driver's license,	188

birth record, marriage license, or other official or apparently 189
official document purporting to show that the juvenile was 190
eighteen years of age or over or married, and the person to whom 191
that document was exhibited did not otherwise have reasonable 192
cause to believe that the juvenile was under the age of eighteen 193
and unmarried. 194

(C) (1) It is an affirmative defense to a charge under this 195
section, involving material or a performance that is obscene or 196
harmful to juveniles, that the material or performance was 197
furnished or presented for a bona fide medical, scientific, 198
educational, governmental, judicial, or other proper purpose, by 199
a physician, psychologist, sociologist, scientist, teacher, 200
librarian, ~~clergyman~~ member of the clergy, prosecutor, judge, or 201
other proper person. 202

(2) Except as provided in division (B) (3) of this section, 203
mistake of age is not a defense to a charge under this section. 204

(D) (1) A person directly sells, delivers, furnishes, 205
disseminates, provides, exhibits, rents, or presents or directly 206
offers or agrees to sell, deliver, furnish, disseminate, 207
provide, exhibit, rent, or present material or a performance to 208
a juvenile, a group of juveniles, a law enforcement officer 209
posing as a juvenile, or a group of law enforcement officers 210
posing as juveniles in violation of this section by means of an 211
electronic method of remotely transmitting information if the 212
person knows or has reason to believe that the person receiving 213
the information is a juvenile or the group of persons receiving 214
the information are juveniles. 215

(2) A person remotely transmitting information by means of 216
a method of mass distribution does not directly sell, deliver, 217
furnish, disseminate, provide, exhibit, rent, or present or 218

directly offer or agree to sell, deliver, furnish, disseminate, 219
provide, exhibit, rent, or present the material or performance 220
in question to a juvenile, a group of juveniles, a law 221
enforcement officer posing as a juvenile, or a group of law 222
enforcement officers posing as juveniles in violation of this 223
section if either of the following applies: 224

(a) The person has inadequate information to know or have 225
reason to believe that a particular recipient of the information 226
or offer is a juvenile. 227

(b) The method of mass distribution does not provide the 228
person the ability to prevent a particular recipient from 229
receiving the information. 230

(E) If any provision of this section, or the application 231
of any provision of this section to any person or circumstance, 232
is held invalid, the invalidity does not affect other provisions 233
or applications of this section or related sections that can be 234
given effect without the invalid provision or application. To 235
this end, the provisions are severable. 236

(F) (1) Whoever violates this section is guilty of 237
disseminating matter harmful to juveniles. If the material or 238
performance involved is harmful to juveniles, except as 239
otherwise provided in this division or division (F) (2) of this 240
section, a violation of this section is a misdemeanor of the 241
first degree. If the material or performance involved is 242
obscene, except as otherwise provided in this division or 243
division (F) (2) of this section, a violation of this section is 244
a felony of the fifth degree. If the material or performance 245
involved is obscene and the juvenile to whom it is sold, 246
delivered, furnished, disseminated, provided, exhibited, rented, 247
or presented, the juvenile to whom the offer is made or who is 248

the subject of the agreement, or the juvenile who is allowed to 249
review, peruse, or view it is under thirteen years of age, 250
except as otherwise provided in division (F)(2) of this section, 251
a violation of this section is a felony of the fourth degree. 252

(2) Notwithstanding division (F)(1) of this section, if a 253
person violates this section by privately transmitting to a 254
juvenile an image of the person in a state of nudity or engaged 255
in a sexual act, the person is not more than five years older 256
than the juvenile, and the person subsequently becomes a victim 257
of a violation of section 2917.211 of the Revised Code in 258
connection to the image, a violation of this section is a 259
misdemeanor of the third degree. 260

Sec. 2917.211. (A) As used in this section: 261

(1) "Disseminate" means to post, distribute, or publish on 262
a computer device, computer network, web site, or other 263
electronic device or medium of communication. 264

(2) "Image" means a photograph, film, videotape, digital 265
recording, or other depiction or portrayal of a person. 266

(3) "Interactive computer service" has the meaning defined 267
in the "Telecommunications Act of 1996," 47 U.S.C. 230, as 268
amended. 269

(4) "Internet provider" means a provider of internet 270
service, including all of the following: 271

(a) Broadband service, however defined or classified by 272
the federal communications commission; 273

(b) Information service, as defined in the 274
"Telecommunications Act of 1996," 47 U.S.C. 153, as amended; 275

(c) Internet protocol-enabled services, as defined in 276

<u>section 4927.01 of the Revised Code.</u>	277
<u>(5) "Mobile service" and "telecommunications carrier" have the meanings defined in 47 U.S.C. 153, as amended.</u>	278 279
<u>(6) "Cable service provider" has the same meaning as in section 1332.01 of the Revised Code.</u>	280 281
<u>(7) "Direct-to-home satellite service" has the meaning defined in 47 U.S.C. 303, as amended.</u>	282 283
<u>(8) "Video service provider" has the same meaning as in section 1332.21 of the Revised Code.</u>	284 285
<u>(9) "Sexual act" means any of the following:</u>	286
<u>(a) Sexual activity;</u>	287
<u>(b) Masturbation;</u>	288
<u>(c) An act involving a bodily substance that is performed for the purpose of sexual arousal or gratification;</u>	289 290
<u>(d) Sado-masochistic abuse.</u>	291
<u>(B) No person shall knowingly disseminate an image of another person if all of the following apply:</u>	292 293
<u>(1) The person in the image is eighteen years of age or older.</u>	294 295
<u>(2) The person in the image can be identified from the image itself or from information displayed in connection with the image and the offender supplied the identifying information.</u>	296 297 298
<u>(3) The person in the image is in a state of nudity or is engaged in a sexual act.</u>	299 300
<u>(4) The offender knows or reasonably should know that the person in the image has not consented to the dissemination, has</u>	301 302

revoked consent to the dissemination, or consented because of 303
physical force, the threat of physical force, duress, or 304
coercion. 305

(5) The offender obtained the image under circumstances in 306
which a reasonable person would know or understand that the 307
image was intended to remain private. 308

(C) This section does not prohibit the dissemination of an 309
image if any of the following apply: 310

(1) The image is disseminated for the purpose of a 311
criminal investigation that is otherwise lawful. 312

(2) The image is disseminated for the purpose of, or in 313
connection with, the reporting of unlawful conduct. 314

(3) The image is part of a news report or commentary or an 315
artistic or expressive work, such as a performance, work of art, 316
literary work, theatrical work, musical work, motion picture, 317
film, or audiovisual work. 318

(4) The image is disseminated by a law enforcement 319
officer, or a corrections officer or guard in a detention 320
facility, acting within the scope of the person's official 321
duties. 322

(5) The image is disseminated for another lawful public 323
purpose. 324

(6) The person in the image is knowingly and willingly in 325
a state of nudity or engaged in a sexual act and is knowingly 326
and willingly in a location in which the person does not have a 327
reasonable expectation of privacy. 328

(7) The image is disseminated for the purpose of medical 329
treatment or examination. 330

(D) The following entities are not liable for a violation 331
of this section solely as a result of an image or other 332
information provided by another person: 333

(1) A provider of interactive computer service; 334

(2) A mobile service; 335

(3) A telecommunications carrier; 336

(4) An internet provider; 337

(5) A cable service provider; 338

(6) A direct-to-home satellite service; 339

(7) A video service provider. 340

(E) Any conduct that is a violation of this section and 341
any other section of the Revised Code may be prosecuted under 342
this section, the other section, or both sections. 343

(F) (1) (a) Except as otherwise provided in division (F) (1) 344
(b) or (c) of this section, whoever violates this section is 345
guilty of nonconsensual dissemination of private sexual images, 346
a misdemeanor of the first degree. 347

(b) If the offender has previously been convicted of a 348
violation of this section, nonconsensual dissemination of 349
private sexual images is a felony of the fifth degree. 350

(c) If the offender is under eighteen years of age and the 351
person in the image is not more than five years older than the 352
offender, the offender shall not be prosecuted under this 353
section. 354

(2) In addition to any other penalty or disposition 355
authorized or required by law, the court shall order any person 356
who is convicted of a violation of this section or who is 357

adjudicated delinquent by reason of a violation of this section 358
to criminally forfeit all of the following property to the state 359
under Chapter 2981. of the Revised Code: 360

(a) Any profits or proceeds and any property the person 361
has acquired or maintained in violation of this section that the 362
sentencing court determines to have been acquired or maintained 363
as a result of the violation; 364

(b) Any interest in, securities of, claim against, or 365
property or contractual right of any kind affording a source of 366
influence over any enterprise that the person has established, 367
operated, controlled, or conducted in violation of this section 368
that the sentencing court determines to have been acquired or 369
maintained as a result of the violation. 370

(G) A victim of a violation of this section may commence a 371
civil cause of action against the offender, as described in 372
section 2307.54 of the Revised Code. 373

Sec. 2981.02. (A) (1) The following property is subject to 374
forfeiture to the state or a political subdivision under either 375
the criminal or delinquency process in section 2981.04 of the 376
Revised Code or the civil process in section 2981.05 of the 377
Revised Code: 378

~~(1)~~ (a) Contraband involved in an offense; 379

~~(2)~~ (b) Proceeds derived from or acquired through the 380
commission of an offense; 381

~~(3)~~ (c) An instrumentality that is used in or intended to 382
be used in the commission or facilitation of any of the 383
following offenses when the use or intended use, consistent with 384
division (B) of this section, is sufficient to warrant 385
forfeiture under this chapter: 386

(a) <u>(i)</u> A felony;	387
(b) <u>(ii)</u> A misdemeanor, when forfeiture is specifically authorized by a section of the Revised Code or by a municipal ordinance that creates the offense or sets forth its penalties;	388 389 390
(c) <u>(iii)</u> An attempt to commit, complicity in committing, or a conspiracy to commit an offense of the type described in divisions (A) (3) (a) and (b) of this section.	391 392 393
(B) <u>(2)</u> In determining whether an alleged instrumentality was used in or was intended to be used in the commission or facilitation of an offense or an attempt, complicity, or conspiracy to commit an offense in a manner sufficient to warrant its forfeiture, the trier of fact shall consider the following factors the trier of fact determines are relevant:	394 395 396 397 398 399
(1) <u>(a)</u> Whether the offense could not have been committed or attempted but for the presence of the instrumentality;	400 401
(2) <u>(b)</u> Whether the primary purpose in using the instrumentality was to commit or attempt to commit the offense;	402 403
(3) <u>(c)</u> The extent to which the instrumentality furthered the commission of, or attempt to commit, the offense.	404 405
<u>(B) The property described in division (F) (2) of section 2917.211 of the Revised Code is subject to forfeiture under the criminal or delinquency process in section 2981.04 of the Revised Code.</u>	406 407 408 409
(C) This chapter does not apply to or limit forfeitures under Title XLV of the Revised Code, including forfeitures relating to section 2903.06 or 2903.08 of the Revised Code.	410 411 412
Sec. 2981.04. (A) (1) Property described in division (A) <u>or</u> <u>(B)</u> of section 2981.02 of the Revised Code may be forfeited	413 414

under this section only if the complaint, indictment, or 415
information charging the offense or municipal violation, or the 416
complaint charging the delinquent act, contains a specification 417
of the type described in section 2941.1417 of the Revised Code 418
that sets forth all of the following to the extent it is 419
reasonably known at the time of the filing: 420

(a) The nature and extent of the alleged offender's or 421
delinquent child's interest in the property; 422

(b) A description of the property; 423

(c) If the property is alleged to be an instrumentality, 424
the alleged use or intended use of the property in the 425
commission or facilitation of the offense. 426

(2) If any property is not reasonably foreseen to be 427
subject to forfeiture at the time of filing the indictment, 428
information, or complaint, the trier of fact still may return a 429
verdict of forfeiture concerning that property in the hearing 430
described in division (B) of this section if the prosecutor, 431
upon discovering the property to be subject to forfeiture, gave 432
prompt notice of this fact to the alleged offender or delinquent 433
child under Criminal Rule 7(E) or Juvenile Rule 10(B). 434

(3) For good cause shown, the court may consider issues of 435
the guilt of the alleged offender or the delinquency of the 436
alleged delinquent child separate from whether property 437
specified as subject to forfeiture should be forfeited. 438

(B) If a person pleads guilty to or is convicted of an 439
offense or is adjudicated a delinquent child for committing a 440
delinquent act and the complaint, indictment, or information 441
charging the offense or act contains a specification covering 442
property subject to forfeiture under section 2981.02 of the 443

Revised Code, the trier of fact shall determine whether the 444
person's property shall be forfeited. If the state or political 445
subdivision proves by a preponderance of the evidence that the 446
property is in whole or part subject to forfeiture under section 447
2981.02 of the Revised Code, after a proportionality review 448
under section 2981.09 of the Revised Code when relevant, the 449
trier of fact shall return a verdict of forfeiture that 450
specifically describes the extent of the property subject to 451
forfeiture. If the trier of fact is a jury, on the offender's or 452
delinquent child's motion, the court shall make the 453
determination of whether the property shall be forfeited. 454

(C) If the court enters a verdict of forfeiture under this 455
section, the court imposing sentence or disposition, in addition 456
to any other sentence authorized by Chapter 2929. of the Revised 457
Code or any disposition authorized by Chapter 2152. of the 458
Revised Code, shall order that the offender or delinquent child 459
forfeit to the state or political subdivision the offender's or 460
delinquent child's interest in the property. The property vests 461
with the state or political subdivision subject to the claims of 462
third parties. The court may issue any additional order to 463
affect the forfeiture, including, but not limited to, an order 464
under section 2981.06 of the Revised Code. 465

(D) After the entry of a forfeiture order under this 466
section, the prosecutor shall attempt to identify any person 467
with an interest in the property subject to forfeiture by 468
searching appropriate public records and making reasonably 469
diligent inquiries. The prosecutor shall give notice of the 470
forfeiture that remains subject to the claims of third parties 471
and proposed disposal of the forfeited property to any person 472
known to have an interest in the property. The prosecutor also 473
shall publish notice of the forfeiture that remains subject to 474

the claims of third parties and proposed disposal of the 475
forfeited property once each week for two consecutive weeks in a 476
newspaper of general circulation in the county in which the 477
property was seized. 478

(E) (1) Any person, other than the offender or delinquent 479
child whose conviction or plea of guilty or delinquency 480
adjudication is the basis of the forfeiture order, who asserts a 481
legal interest in the property that is the subject of the order 482
may petition the court that issued the order for a hearing under 483
division (E) (3) of this section to adjudicate the validity of 484
the person's alleged interest in the property. All of the 485
following apply to the petition: 486

(a) It shall be filed within thirty days after the final 487
publication of notice or the person's receipt of notice under 488
division (D) of this section. 489

(b) It shall be signed by the petitioner under the 490
penalties for falsification specified in section 2921.13 of the 491
Revised Code. 492

(c) It shall describe the nature and extent of the 493
petitioner's interest in the property, the time and 494
circumstances of the petitioner's acquisition of that interest, 495
any additional facts supporting the petitioner's claim, and the 496
relief sought. 497

(2) (a) In lieu of filing a petition as described in 498
division (E) (1) of this section, a person, other than the 499
offender or delinquent child whose conviction or plea of guilty 500
or delinquency adjudication is the basis of the forfeiture 501
order, may file an affidavit as described in this division to 502
establish the validity of the alleged right, title, or interest 503

in the property that is the subject of the forfeiture order if 504
the person is a secured party or other lienholder of record that 505
asserts a legal interest in the property, including, but not 506
limited to, a mortgage, security interest, or other type of 507
lien. The affidavit shall contain averments that the secured 508
party or other lienholder acquired its alleged right, title, or 509
interest in the property in the regular course of its business, 510
for a specified valuable consideration, without actual knowledge 511
of any facts pertaining to the offense that was the basis of the 512
forfeiture order, in good faith, and without the intent to 513
prevent or otherwise impede the state or political subdivision 514
from seizing or obtaining a forfeiture of the property. The 515
person shall file the affidavit within thirty days after the 516
earlier of the final publication of notice or the receipt of 517
notice under division (D) of this section. 518

(b) Except as otherwise provided in this section, the 519
affidavit shall constitute prima-facie evidence of the validity 520
of the affiant's alleged interest in the property. 521

(c) Unless the prosecutor files a motion challenging the 522
affidavit within ten days after its filing and unless the 523
prosecutor establishes by a preponderance of the evidence at the 524
hearing held under division (E) (3) of this section that the 525
affiant does not possess the alleged interest in the property or 526
that the affiant had actual knowledge of facts pertaining to the 527
offense or delinquent act that was the basis of the forfeiture 528
order, the affidavit shall constitute conclusive evidence of the 529
validity of the affiant's interest in the property. 530

(d) Any subsequent purchaser or other transferee of 531
property pursuant to forfeiture under this section shall take 532
the property subject to the continued validity of the interest 533

of the affiant. 534

(3) Upon receipt of a petition or affidavit filed under 535
division (E) (1) or (2) of this section, the court shall hold a 536
hearing to determine the validity of the petitioner's interest 537
in the property that is the subject of the forfeiture order or, 538
if the affidavit was challenged, to determine the validity of 539
the affiant's interest in the property. To the extent 540
practicable and consistent with the interests of justice, the 541
court shall hold the hearing within thirty days after the filing 542
of the petition or within thirty days after the prosecutor files 543
the motion challenging the affidavit. The court may consolidate 544
the hearing with a hearing on any other petition or affidavit 545
that is filed by a person other than the offender or delinquent 546
child whose conviction or plea of guilty or delinquency 547
adjudication is the basis of the forfeiture order and that 548
relates to the property that is the subject of the forfeiture 549
order. 550

At the hearing, the petitioner or affiant may testify, 551
present evidence and witnesses on the petitioner's or affiant's 552
behalf, and cross-examine witnesses for the state or political 553
subdivision. In regards to a petition, the state or political 554
subdivision may present evidence and witnesses in rebuttal and 555
in defense of its claim to the property and may cross-examine 556
witnesses for the petitioner. In regards to an affidavit, the 557
prosecutor may present evidence and witnesses and cross-examine 558
witnesses for the affiant. 559

In addition to the evidence and testimony presented at the 560
hearing, the court also shall consider the relevant portions of 561
the record in the criminal or delinquent child case that 562
resulted in the forfeiture order. 563

(F) (1) If the hearing involves a petition, the court shall 564
amend its forfeiture order if it determines at the hearing held 565
pursuant to division (E) (3) of this section that the petitioner 566
has established either of the following by a preponderance of 567
the evidence: 568

(a) The petitioner has a legal interest in the property 569
that is subject to the forfeiture order that renders the order 570
completely or partially invalid because the legal interest in 571
the property was vested in the petitioner, rather than the 572
offender or delinquent child whose conviction or plea of guilty 573
or delinquency adjudication is the basis of the order, or was 574
superior to any interest of that offender or delinquent child, 575
at the time of the commission of the offense or delinquent act 576
that is the basis of the order. 577

(b) The petitioner is a bona fide purchaser for value of 578
the interest in the property that is subject to the forfeiture 579
order and was, at the time of the purchase, reasonably without 580
cause to believe that it was subject to forfeiture. 581

(2) The court also shall amend its forfeiture order to 582
reflect any interest of a secured party or other lienholder of 583
record in the property subject to forfeiture who prevails at a 584
hearing on the petition or affidavit filed pursuant to division 585
(E) (1) or (2) of this section. 586

(G) If the court disposes of all petitions or affidavits 587
timely filed under this section in favor of the state or 588
political subdivision, the state or political subdivision shall 589
have clear title to the property that is the subject of a 590
forfeiture order issued under this section, but only to the 591
extent that other parties' lawful interests in the property are 592
not infringed. To the extent that the state or political 593

subdivision has clear title to the property, the state or 594
political subdivision may warrant good title to any subsequent 595
purchaser or other transferee. 596

Sec. 3345.58. (A) No student who is enrolled in an 597
institution of higher education in Ohio and is the victim of a 598
violation of section 2917.211 of the Revised Code shall lose any 599
form of financial assistance provided by that institution for 600
educational expenses, including grants, scholarships, and 601
fellowships, for the sole reason of being the victim of such a 602
violation. Additionally, no institution of higher education 603
shall take any disciplinary action, including the imposition of 604
academic penalties, against that student for the sole reason of 605
being such a victim. 606

(B) If a person who is the victim of a violation of 607
section 2917.211 of the Revised Code applies to an institution 608
of higher education in Ohio, that person's status as such a 609
victim shall not affect the person's eligibility for any form of 610
financial assistance provided by the institution for educational 611
expenses, including grants, scholarships, and fellowships. 612

(C) As used in this section, "victim" has the same meaning 613
as in section 2930.01 of the Revised Code. 614

Sec. 4113.83. As used in this section and sections 4113.84 615
to 4113.87 of the Revised Code: 616

(A) "Employee" has the same meaning as in section 4113.51 617
of the Revised Code. 618

(B) "Employer" means any of the following: 619

(1) The state and any agency or instrumentality of the 620
state; 621

(2) A political subdivision of the state and any agency or instrumentality of the political subdivision; 622
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(3) Any individual, partnership, association, corporation, or business trust. 624
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(C) "Political subdivision" means a county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state. 626
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(D) "Reasonable accommodation" includes a changed work telephone number, transfer to a different department or location of the employer, modified employment schedules, assistance with documenting any harassment occurring at the workplace or in work-related settings, and time off work. 630
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(E) "Undue hardship" means any requirement that would require an employer to take an action with significant difficulty or expense when considered in light of factors, including all of the following: 635
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(1) The nature and cost of the accommodation; 639

(2) The overall financial resources of the employer; 640

(3) The overall size of the employer's business with respect to the number of employees; 641
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(4) The number, type, and location of the employer's facilities; 643
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(5) The effect on the employer's expenses and resources or the impact otherwise of the accommodation on the employer's operation. 645
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(F) "Victim" has the same meaning as in section 2930.01 of 648

the Revised Code. 649

Sec. 4113.84. No employer shall knowingly do any of the 650
following: 651

(A) Discharge, fail to hire, or otherwise discriminate or 652
retaliate against an individual or employee of the employer 653
because the individual or employee is a victim or is perceived 654
to be a victim of a violation of section 2917.211 of the Revised 655
Code; 656

(B) Take an adverse employment action against an employee 657
because the employee made a request for a reasonable 658
accommodation based on the employee's status as a victim or 659
perceived victim of a violation of section 2917.211 of the 660
Revised Code, regardless of whether the employer granted the 661
request for the accommodation; 662

(C) Discharge or otherwise discriminate or retaliate 663
against an employee who uses unpaid leave in accordance with 664
section 4113.86 of the Revised Code. 665

Sec. 4113.85. (A) An employer shall make a reasonable 666
accommodation for an employee who is a victim or is perceived to 667
be a victim of a violation of section 2917.211 of the Revised 668
Code, unless the employer demonstrates that the accommodation 669
would impose an undue hardship on the operation of the 670
employer's business. 671

(B) Before making a reasonable accommodation under this 672
section, an employer may require an employee who requests a 673
reasonable accommodation to provide documentation of the 674
violation or perceived violation of section 2917.211 of the 675
Revised Code. The employee may satisfy the documentation 676
requirement by providing the employer with any of the following: 677

(1) A copy of a police report or documentation of a court proceeding concerning the violation; 678
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(2) A written statement verifying the violation signed by the employee's attorney, a victim services organization, or a trained victim advocate; 680
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(3) A written statement verifying the violation signed by a member of the clergy from whom the employee has sought assistance in connection with the violation; 683
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(4) Any other evidence that corroborates the violation. 686

(C) No employer shall knowingly violate division (A) of this section. An employer who fails or refuses to make a reasonable accommodation under this section has the burden of proving that the accommodation would impose an undue hardship on the operation of the employer's business. 687
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(D) Except as provided in division (E) of this section, no employer shall knowingly fail to hold as confidential any information that the employer receives from an individual or employee under sections 4113.83 to 4113.87 of the Revised Code. If the employer is a public office, the information is not a public record for purposes of section 149.43 of the Revised Code. 692
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(E) Division (D) of this section does not apply if either of the following is the case: 699
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(1) The individual or employee gives written consent to allow the employer to share the information. 701
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(2) The employer is otherwise required by the Revised Code or federal law to share the information. 703
704

Sec. 4113.86. (A) An employer shall grant an employee of 705

the employer not less than five days per year of unpaid leave 706
related to incidents in which the employee is a victim or is 707
perceived to be a victim of a violation of section 2917.211 of 708
the Revised Code. To be eligible for this leave, an employee 709
shall satisfy both of the following requirements: 710

(1) Be employed by the employer for not less than twenty 711
weeks in the calendar year in which the leave is requested; 712

(2) Be employed by the employer for more than twenty-five 713
hours per week for not less than one hundred eighty days 714
immediately preceding the period of leave. 715

(B) An employee who is a victim or is perceived to be a 716
victim of a violation of section 2917.211 of the Revised Code 717
may take the unpaid leave described in division (A) of this 718
section to do any of the following: 719

(1) Seek nonemergency medical attention related to the 720
violation for the employee or employee's dependent, including 721
services from a victim services organization, psychological 722
treatment, and counseling; 723

(2) Meet with law enforcement officers regarding the 724
violation; 725

(3) Seek legal assistance or other assistance from a 726
counselor, social worker, trained victim advocate, health care 727
provider, or other professional who assists persons in dealing 728
with such a violation for the employee or the employee's 729
dependent; 730

(4) Attend a civil or criminal court proceeding related to 731
the violation. 732

(C) The leave provided under this section is in addition 733

to any other paid or unpaid leave an employer grants an 734
employee. 735

(D) No employer shall knowingly fail to grant the leave 736
provided under this section. 737

Sec. 4113.87. (A) An individual or employee of an employer 738
who believes that an employer violated section 4113.84, 4113.85, 739
or 4113.86 of the Revised Code may commence a civil action 740
against the employer in a court of competent jurisdiction. 741

(B) A court that finds that an employer violated section 742
4113.84, 4113.85, or 4113.86 of the Revised Code may award the 743
individual or employee compensatory and punitive damages, 744
reasonable attorney's fees, and costs of bringing the civil 745
action. The court also may reinstate an employee who was 746
discharged in violation of section 4113.84 of the Revised Code. 747

Section 2. That existing sections 2907.01, 2907.31, 748
2981.02, and 2981.04 of the Revised Code are hereby repealed. 749