

**As Passed by the Senate**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**Am. H. B. No. 405**

**Representative Perales**

**Cosponsors: Representatives Butler, Boccieri, Dever, Fedor, Miller, Schaffer, Sheehy, Slaby, Smith, K., Sweeney, Vitale, Manning, Rezabek, Celebrezze, Galonski, Rogers, Seitz, Anielski, Antonio, Arndt, Ashford, Barnes, Boyd, Brown, Craig, Cupp, Faber, Gavarone, Ginter, Green, Greenspan, Hagan, Hambley, Henne, Holmes, Hoops, Huffman, Hughes, Kick, Landis, Lanese, Lang, Leland, Lepore-Hagan, O'Brien, Patmon, Patterson, Riedel, Romanchuk, Ryan, Schuring, Sprague, Stein, Strahorn, Young, Zeltwanger**

**Senators Bacon, Coley, Burke, Eklund, Gardner, Hackett, Hoagland, Huffman, Kunze, LaRose, McColley, Obhof, O'Brien, Oelslager, Schiavoni, Thomas, Uecker, Wilson**

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**A BILL**

To amend section 2923.31 and to enact section 1  
2913.30 of the Revised Code to create the 2  
offense of counterfeiting and to include 3  
counterfeiting within the definition of "corrupt 4  
activity" under the Corrupt Activities Law. 5

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

**Section 1.** That section 2923.31 be amended and section 6  
2913.30 of the Revised Code be enacted to read as follows: 7

**Sec. 2913.30.** (A) As used in this section: 8

(1) "Access device" means any debit or credit card 9  
representing a monetary security or retail amount by any 10  
financial institution, including a bank, savings bank, savings 11

and loan association, credit union, or business entity. 12

(2) "Obligation or other security" means an instrument 13  
recognized as currency or legal tender or that is issued by the 14  
United States treasury, including bills, coins, bonds, or 15  
checks. 16

(B) No person, with purpose to defraud or knowing that the 17  
person is facilitating a fraud, shall do any of the following: 18

(1) Falsely make, forge, counterfeit, or alter any 19  
obligation or other security of the United States; 20

(2) Pass, utter, sell, purchase, conceal, or transfer any 21  
counterfeit obligation or other security of the United States; 22

(3) Possess with the purpose to utter any obligation or 23  
other security of the United States, knowing that the obligation 24  
or other security has been counterfeited; 25

(4) Without authorization of the issuer, falsely make, 26  
forge, counterfeit, alter, or knowingly possess any access 27  
device. 28

(C) Whoever violates this section is guilty of 29  
counterfeiting. Except as otherwise provided in this division, 30  
counterfeiting is a felony of the fourth degree, and in 31  
addition, the court shall impose on the offender a fine from the 32  
range of fines for a felony of the fourth degree that is not 33  
less than five hundred dollars. 34

(1) If the value of the counterfeited obligations or other 35  
securities or access devices is five thousand dollars or more 36  
and is less than one hundred thousand dollars, or if the offense 37  
involves five or more access devices, counterfeiting is a felony 38  
of the third degree. 39

(2) If the value of the counterfeited obligations or other securities or access devices is one hundred thousand dollars or more and is less than one million dollars, counterfeiting is a felony of the second degree. 40  
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(3) If the value of the counterfeited obligations or other securities or access devices is one million dollars or more, counterfeiting is a felony of the first degree. 44  
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(D) A prosecution for a violation of this section does not preclude a prosecution for a violation of section 2913.02, 2913.31, or 2913.32 of the Revised Code based on the same conduct. However, if an offender is convicted of or pleads guilty to a violation of this section and is also convicted of or pleads guilty to a violation of section 2913.02, 2913.31, or 2913.32 of the Revised Code based on the same conduct involving the same victim that was the basis of the violation of this section, the two or more offenses are allied offenses of similar import under section 2941.25 of the Revised Code. 47  
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**Sec. 2923.31.** As used in sections 2923.31 to 2923.36 of the Revised Code: 57  
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(A) "Beneficial interest" means any of the following: 59

(1) The interest of a person as a beneficiary under a trust in which the trustee holds title to personal or real property; 60  
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(2) The interest of a person as a beneficiary under any other trust arrangement under which any other person holds title to personal or real property for the benefit of such person; 63  
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(3) The interest of a person under any other form of express fiduciary arrangement under which any other person holds title to personal or real property for the benefit of such 66  
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person. 69

"Beneficial interest" does not include the interest of a 70  
stockholder in a corporation or the interest of a partner in 71  
either a general or limited partnership. 72

(B) "Costs of investigation and prosecution" and "costs of 73  
investigation and litigation" mean all of the costs incurred by 74  
the state or a county or municipal corporation under sections 75  
2923.31 to 2923.36 of the Revised Code in the prosecution and 76  
investigation of any criminal action or in the litigation and 77  
investigation of any civil action, and includes, but is not 78  
limited to, the costs of resources and personnel. 79

(C) "Enterprise" includes any individual, sole 80  
proprietorship, partnership, limited partnership, corporation, 81  
trust, union, government agency, or other legal entity, or any 82  
organization, association, or group of persons associated in 83  
fact although not a legal entity. "Enterprise" includes illicit 84  
as well as licit enterprises. 85

(D) "Innocent person" includes any bona fide purchaser of 86  
property that is allegedly involved in a violation of section 87  
2923.32 of the Revised Code, including any person who 88  
establishes a valid claim to or interest in the property in 89  
accordance with division (E) of section 2981.04 of the Revised 90  
Code, and any victim of an alleged violation of that section or 91  
of any underlying offense involved in an alleged violation of 92  
that section. 93

(E) "Pattern of corrupt activity" means two or more 94  
incidents of corrupt activity, whether or not there has been a 95  
prior conviction, that are related to the affairs of the same 96  
enterprise, are not isolated, and are not so closely related to 97

each other and connected in time and place that they constitute 98  
a single event. 99

At least one of the incidents forming the pattern shall 100  
occur on or after January 1, 1986. Unless any incident was an 101  
aggravated murder or murder, the last of the incidents forming 102  
the pattern shall occur within six years after the commission of 103  
any prior incident forming the pattern, excluding any period of 104  
imprisonment served by any person engaging in the corrupt 105  
activity. 106

For the purposes of the criminal penalties that may be 107  
imposed pursuant to section 2923.32 of the Revised Code, at 108  
least one of the incidents forming the pattern shall constitute 109  
a felony under the laws of this state in existence at the time 110  
it was committed or, if committed in violation of the laws of 111  
the United States or of any other state, shall constitute a 112  
felony under the law of the United States or the other state and 113  
would be a criminal offense under the law of this state if 114  
committed in this state. 115

(F) "Pecuniary value" means money, a negotiable 116  
instrument, a commercial interest, or anything of value, as 117  
defined in section 1.03 of the Revised Code, or any other 118  
property or service that has a value in excess of one hundred 119  
dollars. 120

(G) "Person" means any person, as defined in section 1.59 121  
of the Revised Code, and any governmental officer, employee, or 122  
entity. 123

(H) "Personal property" means any personal property, any 124  
interest in personal property, or any right, including, but not 125  
limited to, bank accounts, debts, corporate stocks, patents, or 126

copyrights. Personal property and any beneficial interest in 127  
personal property are deemed to be located where the trustee of 128  
the property, the personal property, or the instrument 129  
evidencing the right is located. 130

(I) "Corrupt activity" means engaging in, attempting to 131  
engage in, conspiring to engage in, or soliciting, coercing, or 132  
intimidating another person to engage in any of the following: 133

(1) Conduct defined as "racketeering activity" under the 134  
"Organized Crime Control Act of 1970," 84 Stat. 941, 18 U.S.C. 135  
1961(1)(B), (1)(C), (1)(D), and (1)(E), as amended; 136

(2) Conduct constituting any of the following: 137

(a) A violation of section 1315.55, 1322.02, 2903.01, 138  
2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2905.01, 2905.02, 139  
2905.11, 2905.22, 2905.32 as specified in division (I)(2)(g) of 140  
this section, 2907.321, 2907.322, 2907.323, 2909.02, 2909.03, 141  
2909.22, 2909.23, 2909.24, 2909.26, 2909.27, 2909.28, 2909.29, 142  
2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2911.31, 2913.05, 143  
2913.06, 2913.30, 2921.02, 2921.03, 2921.04, 2921.11, 2921.12, 144  
2921.32, 2921.41, 2921.42, 2921.43, 2923.12, or 2923.17; 145  
division (F)(1)(a), (b), or (c) of section 1315.53; division (A) 146  
(1) or (2) of section 1707.042; division (B), (C)(4), (D), (E), 147  
or (F) of section 1707.44; division (A)(1) or (2) of section 148  
2923.20; division (E) or (G) of section 3772.99; division (J)(1) 149  
of section 4712.02; section 4719.02, 4719.05, or 4719.06; 150  
division (C), (D), or (E) of section 4719.07; section 4719.08; 151  
or division (A) of section 4719.09 of the Revised Code. 152

(b) Any violation of section 3769.11, 3769.15, 3769.16, or 153  
3769.19 of the Revised Code as it existed prior to July 1, 1996, 154  
any violation of section 2915.02 of the Revised Code that occurs 155

on or after July 1, 1996, and that, had it occurred prior to 156  
that date, would have been a violation of section 3769.11 of the 157  
Revised Code as it existed prior to that date, or any violation 158  
of section 2915.05 of the Revised Code that occurs on or after 159  
July 1, 1996, and that, had it occurred prior to that date, 160  
would have been a violation of section 3769.15, 3769.16, or 161  
3769.19 of the Revised Code as it existed prior to that date. 162

(c) Any violation of section 2907.21, 2907.22, 2907.31, 163  
2913.02, 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.42, 164  
2913.47, 2913.51, 2915.03, 2925.03, 2925.04, 2925.05, or 2925.37 165  
of the Revised Code, any violation of section 2925.11 of the 166  
Revised Code that is a felony of the first, second, third, or 167  
fourth degree and that occurs on or after July 1, 1996, any 168  
violation of section 2915.02 of the Revised Code that occurred 169  
prior to July 1, 1996, any violation of section 2915.02 of the 170  
Revised Code that occurs on or after July 1, 1996, and that, had 171  
it occurred prior to that date, would not have been a violation 172  
of section 3769.11 of the Revised Code as it existed prior to 173  
that date, any violation of section 2915.06 of the Revised Code 174  
as it existed prior to July 1, 1996, or any violation of 175  
division (B) of section 2915.05 of the Revised Code as it exists 176  
on and after July 1, 1996, when the proceeds of the violation, 177  
the payments made in the violation, the amount of a claim for 178  
payment or for any other benefit that is false or deceptive and 179  
that is involved in the violation, or the value of the 180  
contraband or other property illegally possessed, sold, or 181  
purchased in the violation exceeds one thousand dollars, or any 182  
combination of violations described in division (I) (2) (c) of 183  
this section when the total proceeds of the combination of 184  
violations, payments made in the combination of violations, 185  
amount of the claims for payment or for other benefits that is 186

false or deceptive and that is involved in the combination of 187  
violations, or value of the contraband or other property 188  
illegally possessed, sold, or purchased in the combination of 189  
violations exceeds one thousand dollars; 190

(d) Any violation of section 5743.112 of the Revised Code 191  
when the amount of unpaid tax exceeds one hundred dollars; 192

(e) Any violation or combination of violations of section 193  
2907.32 of the Revised Code involving any material or 194  
performance containing a display of bestiality or of sexual 195  
conduct, as defined in section 2907.01 of the Revised Code, that 196  
is explicit and depicted with clearly visible penetration of the 197  
genitals or clearly visible penetration by the penis of any 198  
orifice when the total proceeds of the violation or combination 199  
of violations, the payments made in the violation or combination 200  
of violations, or the value of the contraband or other property 201  
illegally possessed, sold, or purchased in the violation or 202  
combination of violations exceeds one thousand dollars; 203

(f) Any combination of violations described in division 204  
(I) (2) (c) of this section and violations of section 2907.32 of 205  
the Revised Code involving any material or performance 206  
containing a display of bestiality or of sexual conduct, as 207  
defined in section 2907.01 of the Revised Code, that is explicit 208  
and depicted with clearly visible penetration of the genitals or 209  
clearly visible penetration by the penis of any orifice when the 210  
total proceeds of the combination of violations, payments made 211  
in the combination of violations, amount of the claims for 212  
payment or for other benefits that is false or deceptive and 213  
that is involved in the combination of violations, or value of 214  
the contraband or other property illegally possessed, sold, or 215  
purchased in the combination of violations exceeds one thousand 216

dollars;	217
(g) Any violation of section 2905.32 of the Revised Code	218
to the extent the violation is not based solely on the same	219
conduct that constitutes corrupt activity pursuant to division	220
(I) (2) (c) of this section due to the conduct being in violation	221
of section 2907.21 of the Revised Code.	222
(3) Conduct constituting a violation of any law of any	223
state other than this state that is substantially similar to the	224
conduct described in division (I) (2) of this section, provided	225
the defendant was convicted of the conduct in a criminal	226
proceeding in the other state;	227
(4) Animal or ecological terrorism;	228
(5) (a) Conduct constituting any of the following:	229
(i) Organized retail theft;	230
(ii) Conduct that constitutes one or more violations of	231
any law of any state other than this state, that is	232
substantially similar to organized retail theft, and that if	233
committed in this state would be organized retail theft, if the	234
defendant was convicted of or pleaded guilty to the conduct in a	235
criminal proceeding in the other state.	236
(b) By enacting division (I) (5) (a) of this section, it is	237
the intent of the general assembly to add organized retail theft	238
and the conduct described in division (I) (5) (a) (ii) of this	239
section as conduct constituting corrupt activity. The enactment	240
of division (I) (5) (a) of this section and the addition by	241
division (I) (5) (a) of this section of organized retail theft and	242
the conduct described in division (I) (5) (a) (ii) of this section	243
as conduct constituting corrupt activity does not limit or	244
preclude, and shall not be construed as limiting or precluding,	245

any prosecution for a violation of section 2923.32 of the Revised Code that is based on one or more violations of section 2913.02 or 2913.51 of the Revised Code, one or more similar offenses under the laws of this state or any other state, or any combination of any of those violations or similar offenses, even though the conduct constituting the basis for those violations or offenses could be construed as also constituting organized retail theft or conduct of the type described in division (I) (5) (a) (ii) of this section.

(J) "Real property" means any real property or any interest in real property, including, but not limited to, any lease of, or mortgage upon, real property. Real property and any beneficial interest in it is deemed to be located where the real property is located.

(K) "Trustee" means any of the following:

(1) Any person acting as trustee under a trust in which the trustee holds title to personal or real property;

(2) Any person who holds title to personal or real property for which any other person has a beneficial interest;

(3) Any successor trustee.

"Trustee" does not include an assignee or trustee for an insolvent debtor or an executor, administrator, administrator with the will annexed, testamentary trustee, guardian, or committee, appointed by, under the control of, or accountable to a court.

(L) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of any federal

or state law relating to the business of gambling activity or 275  
relating to the business of lending money at an usurious rate 276  
unless the creditor proves, by a preponderance of the evidence, 277  
that the usurious rate was not intentionally set and that it 278  
resulted from a good faith error by the creditor, 279  
notwithstanding the maintenance of procedures that were adopted 280  
by the creditor to avoid an error of that nature. 281

(M) "Animal activity" means any activity that involves the 282  
use of animals or animal parts, including, but not limited to, 283  
hunting, fishing, trapping, traveling, camping, the production, 284  
preparation, or processing of food or food products, clothing or 285  
garment manufacturing, medical research, other research, 286  
entertainment, recreation, agriculture, biotechnology, or 287  
service activity that involves the use of animals or animal 288  
parts. 289

(N) "Animal facility" means a vehicle, building, 290  
structure, nature preserve, or other premises in which an animal 291  
is lawfully kept, handled, housed, exhibited, bred, or offered 292  
for sale, including, but not limited to, a zoo, rodeo, circus, 293  
amusement park, hunting preserve, or premises in which a horse 294  
or dog event is held. 295

(O) "Animal or ecological terrorism" means the commission 296  
of any felony that involves causing or creating a substantial 297  
risk of physical harm to any property of another, the use of a 298  
deadly weapon or dangerous ordnance, or purposely, knowingly, or 299  
recklessly causing serious physical harm to property and that 300  
involves an intent to obstruct, impede, or deter any person from 301  
participating in a lawful animal activity, from mining, 302  
forestry, harvesting, gathering, or processing natural 303  
resources, or from being lawfully present in or on an animal 304

facility or research facility. 305

(P) "Research facility" means a place, laboratory, 306  
institution, medical care facility, government facility, or 307  
public or private educational institution in which a scientific 308  
test, experiment, or investigation involving the use of animals 309  
or other living organisms is lawfully carried out, conducted, or 310  
attempted. 311

(Q) "Organized retail theft" means the theft of retail 312  
property with a retail value of one thousand dollars or more 313  
from one or more retail establishments with the intent to sell, 314  
deliver, or transfer that property to a retail property fence. 315

(R) "Retail property" means any tangible personal property 316  
displayed, held, stored, or offered for sale in or by a retail 317  
establishment. 318

(S) "Retail property fence" means a person who possesses, 319  
procures, receives, or conceals retail property that was 320  
represented to the person as being stolen or that the person 321  
knows or believes to be stolen. 322

(T) "Retail value" means the full retail value of the 323  
retail property. In determining whether the retail value of 324  
retail property equals or exceeds one thousand dollars, the 325  
value of all retail property stolen from the retail 326  
establishment or retail establishments by the same person or 327  
persons within any one-hundred-eighty-day period shall be 328  
aggregated. 329

**Section 2.** That existing section 2923.31 of the Revised 330  
Code is hereby repealed. 331

**Section 3.** Section 2923.31 of the Revised Code is 332  
presented in this act as a composite of the section as amended 333

by both Am. Sub. H.B. 386 and Am. Sub. H.B. 262 of the 129th 334  
General Assembly. The General Assembly, applying the principle 335  
stated in division (B) of section 1.52 of the Revised Code that 336  
amendments are to be harmonized if reasonably capable of 337  
simultaneous operation, finds that the composite is the 338  
resulting version of the section in effect prior to the 339  
effective date of the section as presented in this act. 340