

As Reported by the Senate Judiciary Committee

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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

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 40

securities or access devices is one hundred thousand dollars or 41
more and is less than one million dollars, counterfeiting is a 42
felony of the second degree. 43

(3) If the value of the counterfeited obligations or other 44
securities or access devices is one million dollars or more, 45
counterfeiting is a felony of the first degree. 46

(D) A prosecution for a violation of this section does not 47
preclude a prosecution for a violation of section 2913.02, 48
2913.31, or 2913.32 of the Revised Code based on the same 49
conduct. However, if an offender is convicted of or pleads 50
guilty to a violation of this section and is also convicted of 51
or pleads guilty to a violation of section 2913.02, 2913.31, or 52
2913.32 of the Revised Code based on the same conduct involving 53
the same victim that was the basis of the violation of this 54
section, the two or more offenses are allied offenses of similar 55
import under section 2941.25 of the Revised Code. 56

Sec. 2923.31. As used in sections 2923.31 to 2923.36 of 57
the Revised Code: 58

(A) "Beneficial interest" means any of the following: 59

(1) The interest of a person as a beneficiary under a 60
trust in which the trustee holds title to personal or real 61
property; 62

(2) The interest of a person as a beneficiary under any 63
other trust arrangement under which any other person holds title 64
to personal or real property for the benefit of such person; 65

(3) The interest of a person under any other form of 66
express fiduciary arrangement under which any other person holds 67
title to personal or real property for the benefit of such 68
person. 69

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

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

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

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

(E) "Pattern of corrupt activity" means two or more incidents of corrupt activity, whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event.

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 246
Revised Code that is based on one or more violations of section 247
2913.02 or 2913.51 of the Revised Code, one or more similar 248

offenses under the laws of this state or any other state, or any 249
combination of any of those violations or similar offenses, even 250
though the conduct constituting the basis for those violations 251
or offenses could be construed as also constituting organized 252
retail theft or conduct of the type described in division (I) (5) 253
(a) (ii) of this section. 254

(J) "Real property" means any real property or any 255
interest in real property, including, but not limited to, any 256
lease of, or mortgage upon, real property. Real property and any 257
beneficial interest in it is deemed to be located where the real 258
property is located. 259

(K) "Trustee" means any of the following: 260

(1) Any person acting as trustee under a trust in which 261
the trustee holds title to personal or real property; 262

(2) Any person who holds title to personal or real 263
property for which any other person has a beneficial interest; 264

(3) Any successor trustee. 265

"Trustee" does not include an assignee or trustee for an 266
insolvent debtor or an executor, administrator, administrator 267
with the will annexed, testamentary trustee, guardian, or 268
committee, appointed by, under the control of, or accountable to 269
a court. 270

(L) "Unlawful debt" means any money or other thing of 271
value constituting principal or interest of a debt that is 272
legally unenforceable in this state in whole or in part because 273
the debt was incurred or contracted in violation of any federal 274
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