

AN ACT

To amend sections 1716.01, 1716.14, 1716.99, and 2913.61 of the Revised Code and to amend section 2913.61 of the Revised Code contingent on Sub. H.B. 2 of the 123rd General Assembly becoming law, as concurred in on June 8, 1999, and, if the contingency occurs, to supersede the version of section 2913.61 of the Revised Code as amended by Sections 1 and 2 of this act to clarify that multiple offenses of theft may be tried as a single offense when they involve a common course of conduct to defraud multiple victims, to modify the law regarding prohibitions against committing a deceptive act or practice or misleading a person as to a material fact relative to the solicitation of contributions for a charitable organization, for a charitable purpose, or in response to a charitable sales promotion, to enhance the penalty for solicitation fraud when the victim of the offense is an elderly person or disabled adult, and to permit in specified circumstances the aggregation of contributions involved in solicitation fraud with other property or services obtained in a course of conduct involving solicitation fraud and specified other offenses.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1716.01, 1716.14, 1716.99, and 2913.61 of the Revised Code be amended to read as follows:

Sec. 1716.01. As used in this chapter:

(A)(1) "Charitable organization" means either of the following:

~~(1)~~(a) Any person that is determined by the internal revenue service to

be a tax exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code;

~~(2)~~(b) Any person that is or holds itself out to be established for any benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic, or other eleemosynary purpose or for the benefit of law enforcement personnel, ~~fire-fighters~~ firefighters, or other persons who protect the public safety, or any person who in any manner employs a charitable appeal as the basis of any solicitation or an appeal that suggests that there is a charitable purpose to any solicitation.

(2) "Charitable organization" is not limited to only those organizations to which contributions are tax deductible under section 170 of the Internal Revenue Code.

"Charitable organization" does not include an employer who is not engaged in the business of soliciting contributions or conducting charitable sales promotions but who incidentally solicits contributions for a charitable organization or purpose; or a compensated employee of an employer not engaged in the business of soliciting contributions or conducting charitable sales promotions, when the employee solicits contributions or conducts charitable sales promotions at the direction of ~~his~~ the employee's employer.

(B)(1) "Charitable purpose" means either of the following:

~~(1)~~(a) Any purpose described in section 501(c)(3) of the Internal Revenue Code;

~~(2)~~(b) Any benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic, or other eleemosynary objective or any objective that benefits law enforcement personnel, ~~fire-fighters~~ firefighters, or other persons who protect the public safety.

(2) "Charitable purpose" is not limited to only those purposes for which contributions are tax deductible under section 170 of the Internal Revenue Code.

(C) "Charitable sales promotion" means any advertising or sale conducted by a person who represents that the purchase or use of goods or services offered by the person will benefit, in whole or in part, any charitable organization or charitable purpose. The provision of advertising services to a charitable organization, either for compensation or as a donation, does not of itself constitute a charitable sales promotion.

(D) "Commercial co-venturer" means any person who for profit regularly and primarily is engaged in trade or commerce other than in connection with soliciting for charitable organizations or charitable purposes and who conducts a charitable sales promotion.

(E) "Contribution" means the promise, pledge, or grant of any money or property, financial assistance, or any other thing of value in response to a solicitation. "Contribution" does not include any bona fide fees, or any dues or assessments paid by members, provided that membership is not conferred solely as a consideration for making a contribution in response to a solicitation.

(F) "Deceptive act or practice" means knowingly misrepresenting any material fact related to the planning, conducting, or executing of any solicitation of contributions for a charitable organization or charitable purpose or to the planning, conducting, or executing of a charitable sales promotion, when the misrepresentation induces any person to make a contribution to a charitable organization, for a charitable purpose, or in response to a charitable sales promotion.

(G) "Fund-raising counsel" means any person who, for compensation, plans, manages, advises, consults, or prepares material for or with respect to the solicitation in this state of contributions for any charitable organization or at any time has custody of contributions from a solicitation, but does not solicit contributions and does not employ, procure, or otherwise engage any compensated person to solicit contributions. "Fund-raising counsel" does not include the following:

(1) An attorney, investment counselor, or banker who in the conduct of ~~his~~ the attorney's, investment counselor's, or banker's profession advises a client;

(2) A charitable organization or a bona fide officer, employee, or volunteer of a charitable organization, when the charitable organization has full knowledge of the services being performed on its behalf and either of the following applies:

(a) The services performed by the charitable organization, bona fide officer, employee, or volunteer are performed on behalf of the charitable organization that employs the bona fide officer or employee or engages the services of the bona fide volunteer;

(b) The charitable organization on whose behalf the services are performed shares some element of common control or an historic or continuing relationship with the charitable organization that performs the services or employs the bona fide officer or employee or engages the services of the bona fide volunteer;

(3) An employer who is not engaged in the business of soliciting contributions or conducting charitable sales promotions but who incidentally solicits contributions for a charitable organization or purpose without compensation;

(4) A compensated employee of an employer who is not engaged in the business of soliciting contributions or conducting charitable sales promotions, when the employee solicits contributions or conducts charitable sales promotions at the direction of ~~his~~ the employee's employer.

~~(G)~~(H) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.

~~(H)~~(I) "Person" has the same meaning as in section 1.59 of the Revised Code and includes a group, foundation, or any other entity however styled.

~~(I)~~(J) "Professional solicitor" means any person who, for compensation, performs on behalf of or for the benefit of a charitable organization any service in connection with which contributions are or will be solicited in this state by the compensated person or by any person it employs, procures, or otherwise engages directly or indirectly to solicit contributions. "Professional solicitor" does not include the following:

(1) An attorney, investment counselor, or banker who in the conduct of ~~his~~ the attorney's, investment counselor's, or banker's profession advises a client;

(2) A charitable organization or a bona fide officer, employee, or volunteer of a charitable organization, when the charitable organization has full knowledge of the services being performed on its behalf and either of the following applies:

(a) The services performed by the charitable organization, bona fide officer, employee, or volunteer are performed on behalf of the charitable organization that employs the bona fide officer or employee or engages the services of the bona fide volunteer;

(b) The charitable organization on whose behalf the services are performed shares some element of common control or an historic or continuing relationship with the charitable organization that performs the services or employs the bona fide officer or employee or engages the services of the bona fide volunteer;

(3) An employer who is not engaged in the business of soliciting contributions or conducting charitable sales promotions but who incidentally solicits contributions for a charitable organization or purpose without compensation;

(4) A compensated employee of an employer who is not engaged in the business of soliciting contributions or conducting charitable sales promotions, when the employee solicits contributions or conducts charitable sales promotions at the direction of ~~his~~ the employee's employer.

~~(J)~~(K)(1) "Solicit" or "solicitation" means to request or a request directly or indirectly for money, property, financial assistance, or any other thing of

value on the plea or representation that such money, property, financial assistance, or other thing of value or a portion of it will be used for a charitable purpose or will benefit a charitable organization. "Solicit" or "solicitation" includes but is not limited to the following methods of requesting or securing the promise, pledge, or grant of money, property, financial assistance, or any other thing of value:

~~(1)~~(a) Any oral or written request;

~~(2)~~(b) Making any announcement to the press, on radio or television, by telephone or telegraph, or by any other communication device concerning an appeal or campaign by or for any charitable organization or for any charitable purpose;

~~(3)~~(c) Distributing, circulating, posting, or publishing any handbill, written advertisement, or other publication that directly or by implication seeks to obtain any contribution;

~~(4)~~(d) Selling or offering or attempting to sell any advertisement, advertising space, book, card, tag, coupon, chance, device, magazine, membership, merchandise, subscription, sponsorship, flower, ticket, admission, candy, cookies, or other tangible item, or any right of any description in connection with which an appeal is made for any charitable organization or charitable purpose, or when the name of any charitable organization is used or referred to in any such appeal as an inducement or reason for making the sale, or when in connection with the sale or offer or attempt to sell, any statement is made that all or part of the proceeds from the sale will be used for any charitable purpose or will benefit any charitable organization.

(2) A solicitation is considered as having taken place for purposes of division (K)(1) of this section whether or not the person making the solicitation receives any contribution. A solicitation does not occur when a person applies for a grant or an award to the government or to an organization that is exempt from federal income taxation under section 501(a) and described in section 501(c)(3) of the Internal Revenue Code.

(L) "Theft offense" has the same meaning as in section 2913.01 of the Revised Code.

(M) "Elderly person" and "disabled adult" have the same meanings as in section 2913.01 of the Revised Code.

Sec. 1716.14. (A) The following acts and practices are hereby prohibited and declared unlawful as applied to the planning, conducting, or executing of any solicitation of contributions for a charitable organization or charitable purpose or to the planning, conducting, or executing of a charitable sales promotion:

~~(1) Operating in violation of, or failing to comply with, any of the requirements of this chapter or any rule adopted under this chapter;~~

~~(2) Committing any unfair or deceptive act or practice;~~

(2) Misleading any person as to any material fact concerning the solicitation of contributions for a charitable organization or charitable purpose or concerning a charitable sales promotion;

(3) Using any representation that implies that the contribution is for or on behalf of a charitable organization, or using any emblem, device, or printed matter belonging to or associated with a charitable organization, without first having been authorized in writing to do so by the charitable organization;

(4) Using a name, symbol, or statement that is so closely related or similar to that used by another charitable organization, public official, or public agency in such a manner that the use of the name, symbol, or statement tends to confuse or mislead a person being solicited for contributions, except that the name, symbol, or statement may be used if written permission is obtained from the other charitable organization, public official, or public agency and filed with the attorney general prior to any solicitation for a charitable purpose or prior to engaging in any charitable sales promotion;

(5) Misleading any person in any manner in the belief, or ~~misrepresenting~~ making or using any representation to any person that implies, that the organization on whose behalf a solicitation or charitable sales promotion is being conducted is a charitable organization or that the proceeds of the solicitation or charitable sales promotion will be used for a charitable purpose if either of those is not the fact;

(6) Misleading any person in any manner in the belief, or ~~misrepresenting~~ making or using any representation to any person that implies, that any other person sponsors, endorses, or approves of the solicitation or charitable sales promotion when that other person has not given its consent in writing to that representation or to the use of its name for any of those purposes;

(7) Using or exploiting the fact of registration in such a manner as to lead any person to believe that the registration in any manner constitutes an endorsement or approval by the state;

(8) Representing directly or by implication that a charitable organization will receive a fixed or estimated percentage of the gross revenue from a solicitation campaign that is greater than that set forth in the contract filed with the attorney general pursuant to section 1716.08 of the Revised Code, or that a charitable organization will receive an actual or estimated dollar

amount or percentage per unit of goods or services purchased or used in a charitable sales promotion, that is greater than that agreed to by the commercial co-venturer and the charitable organization;

(9) Filing false or misleading information in any document required to be filed with the attorney general under this chapter;

(10) Filing false or misleading information in response to a request from the attorney general under section 1716.15 of the Revised Code;

(11) Failing to provide complete and timely payment to a charitable organization of the proceeds from a solicitation campaign or a charitable sales promotion;

(12) Operating in violation of, or failing to comply with, any of the requirements of this chapter or any rule adopted under this chapter.

(B) The act of soliciting contributions for any charitable organization or charitable purpose or engaging in a charitable sales promotion without complying with the requirements of this chapter or any rule adopted pursuant to this chapter, is a nuisance.

Sec. 1716.99. (A) Whoever violates any provision of sections 1716.02 to 1716.17 of the Revised Code ~~or any rule adopted pursuant to those sections, other than division (A)(1) of section 1716.14 of the Revised Code,~~ is guilty of ~~solicitation fraud~~, a misdemeanor of the first degree.

~~(B)~~ Each occurrence of a solicitation of a contribution from any person in violation of any provision of sections 1716.02 to 1716.17 of the Revised Code ~~or any rule adopted under those sections, other than division (A)(1) of section 1716.14 of the Revised Code,~~ is considered a separate offense ~~of solicitation fraud.~~

(B)(1) Whoever violates division (A)(1) of section 1716.14 of the Revised Code is guilty of solicitation fraud and shall be punished as provided in divisions (B)(2) to (4) of this section.

(2) Except as otherwise provided in division (B)(4) of this section, division (B)(3) of this section applies to solicitation fraud, and solicitation fraud is one of the following:

(a) Except as otherwise provided in divisions (B)(2)(b) to (d) of this section, a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to a theft offense or a violation of division (A)(1) of section 1716.14 of the Revised Code, a felony of the fifth degree.

(b) If the value of the contribution or contributions made in the violation is five hundred dollars or more but less than five thousand dollars, a felony of the fifth degree or, if the offender previously has been convicted of or pleaded guilty to a theft offense or a violation of division (A)(1) of section

1716.14 of the Revised Code, a felony of the fourth degree.

(c) If the value of the contribution or contributions made in the violation is five thousand dollars or more but less than one hundred thousand dollars, a felony of the fourth degree or, if the offender previously has been convicted of or pleaded guilty to a theft offense or a violation of division (A)(1) of section 1716.14 of the Revised Code, a felony of the third degree.

(d) If the value of the contribution or contributions made in the violation is one hundred thousand dollars or more, a felony of the third degree.

(3) When an offender commits a series of offenses in violation of division (A)(1) of section 1716.14 of the Revised Code as part of a common scheme or plan to defraud multiple victims, all of the offenses may be tried as a single offense. If the offenses are tried as a single offense, the value of the contributions for purposes of determining the value as required by division (B)(2) of this section is the aggregate value of all contributions involved in all offenses in the common scheme or plan to defraud multiple victims. In prosecuting a single offense under this division, it is not necessary to separately allege and prove each offense in the series. Rather, it is sufficient to allege and prove that the offender, within a given span of time, committed one or more offenses as part of a common scheme or plan to defraud multiple victims as described in this division.

(4) If the victim of the offense is an elderly person or disabled adult, division (B)(4) of this section and section 2913.61 of the Revised Code apply to solicitation fraud, and solicitation fraud is one of the following:

(a) Except as otherwise provided in divisions (B)(4)(b) to (d) of this section, a felony of the fifth degree;

(b) If the value of the contributions made in the violation is five hundred dollars or more and is less than five thousand dollars, a felony of the fourth degree;

(c) If the value of the contributions made in the violation is five thousand dollars or more and is less than twenty-five thousand dollars, a felony of the third degree;

(d) If the value of the contributions made in the violation is twenty-five thousand dollars or more, a felony of the second degree.

(C) Any person who is found guilty of ~~solicitation fraud~~ any act or omission prohibited under this chapter shall forfeit the bond described in section 1716.05 or 1716.07 of the Revised Code to the state treasury to the credit of the charitable foundations fund established under section 109.32 of the Revised Code and shall be prohibited from registering with the attorney general or from serving as a fund-raising counsel or professional solicitor in this state for a period of five years after his conviction.

Sec. 2913.61. (A) When a person is charged with a theft offense involving property or services valued at five hundred dollars or more, a theft offense involving property or services valued at five hundred dollars or more and less than five thousand dollars, a theft offense involving property or services valued at five thousand dollars or more and less than one hundred thousand dollars, or a theft offense involving property or services valued at one hundred thousand dollars or more, the jury or court trying the accused shall determine the value of the property or services as of the time of the offense and, if a guilty verdict is returned, shall return the finding of value as part of the verdict. In any case in which the jury or court determines that the value of the property or services at the time of the offense was five hundred dollars or more, it is unnecessary to find and return the exact value, and it is sufficient if the finding and return is to the effect that the value of the property or services involved was five hundred dollars or more and less than five thousand dollars, was five thousand dollars or more and less than one hundred thousand dollars, or was one hundred thousand dollars or more.

(B) If more than one item of property or services is involved in a theft offense, the value of the property or services involved for the purpose of determining the value as required by division (A) of this section is the aggregate value of all property or services involved in the offense.

(C)(1) When an offender commits a series of offenses under section 2913.02 of the Revised Code ~~is committed by the offender~~ in the offender's same employment, capacity, or relationship to another, all of those offenses shall be tried as a single offense, and the value of the property or services involved for the purpose of determining the value as required by division (A) of this section is the aggregate value of all property and services involved in all offenses in the series. ~~In prosecuting a single offense under this division, it is not necessary to separately allege and prove each offense in the series. It is sufficient to allege and prove that the offender, within a given span of time, committed one or more theft offenses in the offender's same employment, capacity, or relationship to another.~~

(2) If an offender ~~is being tried for the commission of~~ commits a series of offenses under section 2913.02 of the Revised Code ~~against more than one victim pursuant to a scheme or that involve a common~~ course of conduct to defraud multiple victims, all of the offenses may be tried as a single offense, and, if the offenses are tried as a single offense, the value of the property or services involved; for the purpose of determining the value as required by division (A) of this section; is the aggregate value of all property and services involved in the series of all of the offenses in the common course of conduct to defraud multiple victims.

(3) In prosecuting a single offense under division (C)(1) or (2) of this section, it is not necessary to separately allege and prove each offense in the series. Rather, it is sufficient to allege and prove that the offender, within a given span of time, committed one or more theft offenses in the offender's same employment, capacity, or relationship to another as described in division (C)(1) of this section or that involve a common course of conduct to defraud multiple victims as described in division (C)(2) of this section.

(D) The following criteria shall be used in determining the value of property or services involved in a theft offense:

(1) The value of an heirloom, memento, collector's item, antique, museum piece, manuscript, document, record, or other thing that has intrinsic worth to its owner and that either is irreplaceable or is replaceable only on the expenditure of substantial time, effort, or money, is the amount that would compensate the owner for its loss.

(2) The value of personal effects and household goods, and of materials, supplies, equipment, and fixtures used in the profession, business, trade, occupation, or avocation of its owner, which property is not covered under division (D)(1) of this section and which retains substantial utility for its purpose regardless of its age or condition, is the cost of replacing the property with new property of like kind and quality.

(3) The value of any real or personal property that is not covered under division (D)(1) or (2) of this section, and the value of services, is the fair market value of the property or services. As used in this section, "fair market value" is the money consideration that a buyer would give and a seller would accept for property or services, assuming that the buyer is willing to buy and the seller is willing to sell, that both are fully informed as to all facts material to the transaction, and that neither is under any compulsion to act.

(E) Without limitation on the evidence that may be used to establish the value of property or services involved in a theft offense:

(1) When the property involved is personal property held for sale at wholesale or retail, the price at which the property was held for sale is prima-facie evidence of its value.

(2) When the property involved is a security or commodity traded on an exchange, the closing price or, if there is no closing price, the asked price, given in the latest market quotation prior to the offense is prima-facie evidence of the value of the security or commodity.

(3) When the property involved is livestock, poultry, or raw agricultural products for which a local market price is available, the latest local market price prior to the offense is prima-facie evidence of the value of the

livestock, poultry, or products.

(4) When the property involved is a negotiable instrument, the face value is prima-facie evidence of the value of the instrument.

(5) When the property involved is a warehouse receipt, bill of lading, pawn ticket, claim check, or other instrument entitling the holder or bearer to receive property, the face value or, if there is no face value, the value of the property covered by the instrument less any payment necessary to receive the property is prima-facie evidence of the value of the instrument.

(6) When the property involved is a ticket of admission, ticket for transportation, coupon, token, or other instrument entitling the holder or bearer to receive property or services, the face value or, if there is no face value, the value of the property or services that may be received by the instrument is prima-facie evidence of the value of the instrument.

(7) When the services involved are gas, electricity, water, telephone, transportation, shipping, or other services for which the rate is established by law, the duly established rate is prima-facie evidence of the value of the services.

(8) When the services involved are services for which the rate is not established by law, and the offender has been notified prior to the offense of the rate for the services, either in writing, orally, or by posting in a manner reasonably calculated to come to the attention of potential offenders, the rate contained in the notice is prima-facie evidence of the value of the services.

SECTION 2. That existing sections 1716.01, 1716.14, 1716.99, and 2913.61 of the Revised Code are hereby repealed.

SECTION 3. Subject to Section 5 of this act, that section 2913.61 of the Revised Code that results from Sub. H.B. 2 of the 123rd General Assembly contingently be amended to read as follows:

Sec. 2913.61. (A) When a person is charged with a theft offense ~~involving, or with a violation of division (A)(1) of section 1716.14 of the Revised Code involving a victim who is an elderly person or disabled adult that involves~~ property or services valued at five hundred dollars or more, a ~~theft offense involving~~ property or services valued at five hundred dollars or more and less than five thousand dollars, a ~~theft offense involving~~ property or services valued at five thousand dollars or more and less than twenty-five thousand dollars, a ~~theft offense involving~~ property or services valued at twenty-five thousand dollars or more and less than one hundred thousand dollars, or a ~~theft offense involving~~ property or services valued at one

hundred thousand dollars or more, the jury or court trying the accused shall determine the value of the property or services as of the time of the offense and, if a guilty verdict is returned, shall return the finding of value as part of the verdict. In any case in which the jury or court determines that the value of the property or services at the time of the offense was five hundred dollars or more, it is unnecessary to find and return the exact value, and it is sufficient if the finding and return is to the effect that the value of the property or services involved was five hundred dollars or more and less than five thousand dollars, was five thousand dollars or more and less than twenty-five thousand dollars, was twenty-five thousand dollars or more and less than one hundred thousand dollars, or was one hundred thousand dollars or more.

(B) If more than one item of property or services is involved in a theft offense or in a violation of division (A)(1) of section 1716.14 of the Revised Code involving a victim who is an elderly person or disabled adult, the value of the property or services involved for the purpose of determining the value as required by division (A) of this section is the aggregate value of all property or services involved in the offense.

(C)(1) When a series of offenses under section 2913.02 of the Revised Code, or a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of division (A)(1) of section 1716.14, section 2913.02, 2913.03, or 2913.04, division (B)(1) or (2) of section 2913.21, or section 2913.31 or 2913.43 of the Revised Code involving a victim who is an elderly person or disabled adult, is committed by the offender in the offender's same employment, capacity, or relationship to another, all of those offenses shall be tried as a single offense, ~~and the~~ The value of the property or services involved in the series of offenses for the purpose of determining the value as required by division (A) of this section is the aggregate value of all property and services involved in all offenses in the series. ~~In prosecuting a single offense under this division, it is not necessary to separately allege and prove each offense in the series. It is sufficient to allege and prove that the offender, within a given span of time, committed one or more theft offenses in the offender's same employment, capacity, or relationship to another.~~

(2) ~~If an offender is being tried for the commission of~~ commits a series of offenses under section 2913.02 of the Revised Code ~~against more than one victim, or that involves a common course of conduct to defraud multiple victims, all of the offenses may be tried as a single offense. If an offender is being tried for the commission of~~ a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of

division (A)(1) of section 1716.14, section 2913.02, 2913.03, or 2913.04, division (B)(1) or (2) of section 2913.21, or section 2913.31 or 2913.43 of the Revised Code, whether committed against one victim or more than one victim, involving a victim who is an elderly person or disabled adult, pursuant to a scheme or course of conduct, all of those offenses may be tried as a single offense, and. If the offenses are tried as a single offense, the value of the property or services involved; for the purpose of determining the value as required by division (A) of this section; is the aggregate value of all property and services involved in the series of all of the offenses in the course of conduct.

(3) In prosecuting a single offense under division (C)(1) or (2) of this section, it is not necessary to separately allege and prove each offense in the series. Rather, it is sufficient to allege and prove that the offender, within a given span of time, committed one or more theft offenses in the offender's same employment, capacity, or relationship to another as described in division (C)(1) of this section or that involve a common course of conduct to defraud multiple victims or a scheme or course of conduct as described in division (C)(2) of this section.

(D) The following criteria shall be used in determining the value of property or services involved in a theft offense:

(1) The value of an heirloom, memento, collector's item, antique, museum piece, manuscript, document, record, or other thing that has intrinsic worth to its owner and that either is irreplaceable or is replaceable only on the expenditure of substantial time, effort, or money, is the amount that would compensate the owner for its loss.

(2) The value of personal effects and household goods, and of materials, supplies, equipment, and fixtures used in the profession, business, trade, occupation, or avocation of its owner, which property is not covered under division (D)(1) of this section and which retains substantial utility for its purpose regardless of its age or condition, is the cost of replacing the property with new property of like kind and quality.

(3) The value of any real or personal property that is not covered under division (D)(1) or (2) of this section, and the value of services, is the fair market value of the property or services. As used in this section, "fair market value" is the money consideration that a buyer would give and a seller would accept for property or services, assuming that the buyer is willing to buy and the seller is willing to sell, that both are fully informed as to all facts material to the transaction, and that neither is under any compulsion to act.

(E) Without limitation on the evidence that may be used to establish the

value of property or services involved in a theft offense:

(1) When the property involved is personal property held for sale at wholesale or retail, the price at which the property was held for sale is prima-facie evidence of its value.

(2) When the property involved is a security or commodity traded on an exchange, the closing price or, if there is no closing price, the asked price, given in the latest market quotation prior to the offense is prima-facie evidence of the value of the security or commodity.

(3) When the property involved is livestock, poultry, or raw agricultural products for which a local market price is available, the latest local market price prior to the offense is prima-facie evidence of the value of the livestock, poultry, or products.

(4) When the property involved is a negotiable instrument, the face value is prima-facie evidence of the value of the instrument.

(5) When the property involved is a warehouse receipt, bill of lading, pawn ticket, claim check, or other instrument entitling the holder or bearer to receive property, the face value or, if there is no face value, the value of the property covered by the instrument less any payment necessary to receive the property is prima-facie evidence of the value of the instrument.

(6) When the property involved is a ticket of admission, ticket for transportation, coupon, token, or other instrument entitling the holder or bearer to receive property or services, the face value or, if there is no face value, the value of the property or services that may be received by the instrument is prima-facie evidence of the value of the instrument.

(7) When the services involved are gas, electricity, water, telephone, transportation, shipping, or other services for which the rate is established by law, the duly established rate is prima-facie evidence of the value of the services.

(8) When the services involved are services for which the rate is not established by law, and the offender has been notified prior to the offense of the rate for the services, either in writing, orally, or by posting in a manner reasonably calculated to come to the attention of potential offenders, the rate contained in the notice is prima-facie evidence of the value of the services.

SECTION 4. Subject to Section 5 of this act, that existing section 2913.61 of the Revised Code that results from Sub. H.B. 2 of the 123rd General Assembly contingently is hereby repealed.

SECTION 5. The amendments by this act adding division (M) to section 1716.01 and division (B)(4) to section 1716.99 and Sections 3 and 4 of this act are contingent on Sub. H.B. 2 of the 123rd General Assembly becoming law, as concurred in on June 8, 1999, pages 776-777, House Journal. If the contingency occurs, the version of section 2913.61 of the Revised Code in Sections 3 and 4 of this act that was contingent on Sub. H.B. 2 supersedes the version of section 2913.61 of the Revised Code in Sections 1 and 2 of this act.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. S. B. No. 2

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____