

As Reported by the House Criminal Justice Committee

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Sub. H. B. No. 536

**Representatives Schlichter, Latta, Wolpert, McGregor, Reidelbach,
Aslanides, S. Smith, Webster, Hollister, Hoops, DeWine, Setzer, Daniels,
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A B I L L

To amend sections 2913.01 and 2913.02 of the Revised 1
Code to make the penalty for theft of anhydrous 2
ammonia a felony of the third degree. 3

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

Section 1. That sections 2913.01 and 2913.02 of the Revised 4
Code be amended to read as follows: 5

Sec. 2913.01. As used in this chapter, unless the context 6
requires that a term be given a different meaning: 7

(A) "Deception" means knowingly deceiving another or causing 8
another to be deceived by any false or misleading representation, 9
by withholding information, by preventing another from acquiring 10
information, or by any other conduct, act, or omission that 11
creates, confirms, or perpetuates a false impression in another, 12
including a false impression as to law, value, state of mind, or 13
other objective or subjective fact. 14

(B) "Defraud" means to knowingly obtain, by deception, some 15
benefit for oneself or another, or to knowingly cause, by 16
deception, some detriment to another. 17

(C) "Deprive" means to do any of the following:	18
(1) Withhold property of another permanently, or for a period that appropriates a substantial portion of its value or use, or with purpose to restore it only upon payment of a reward or other consideration;	19 20 21 22
(2) Dispose of property so as to make it unlikely that the owner will recover it;	23 24
(3) Accept, use, or appropriate money, property, or services, with purpose not to give proper consideration in return for the money, property, or services, and without reasonable justification or excuse for not giving proper consideration.	25 26 27 28
(D) "Owner" means, unless the context requires a different meaning, any person, other than the actor, who is the owner of, who has possession or control of, or who has any license or interest in property or services, even though the ownership, possession, control, license, or interest is unlawful.	29 30 31 32 33
(E) "Services" include labor, personal services, professional services, public utility services, common carrier services, and food, drink, transportation, entertainment, and cable television services and, for purposes of section 2913.04 of the Revised Code, include cable services as defined in that section.	34 35 36 37 38
(F) "Writing" means any computer software, document, letter, memorandum, note, paper, plate, data, film, or other thing having in or upon it any written, typewritten, or printed matter, and any token, stamp, seal, credit card, badge, trademark, label, or other symbol of value, right, privilege, license, or identification.	39 40 41 42 43
(G) "Forge" means to fabricate or create, in whole or in part and by any means, any spurious writing, or to make, execute, alter, complete, reproduce, or otherwise purport to authenticate any writing, when the writing in fact is not authenticated by that	44 45 46 47

conduct.	48
(H) "Utter" means to issue, publish, transfer, use, put or send into circulation, deliver, or display.	49 50
(I) "Coin machine" means any mechanical or electronic device designed to do both of the following:	51 52
(1) Receive a coin, bill, or token made for that purpose;	53
(2) In return for the insertion or deposit of a coin, bill, or token, automatically dispense property, provide a service, or grant a license.	54 55 56
(J) "Slug" means an object that, by virtue of its size, shape, composition, or other quality, is capable of being inserted or deposited in a coin machine as an improper substitute for a genuine coin, bill, or token made for that purpose.	57 58 59 60
(K) "Theft offense" means any of the following:	61
(1) A violation of section 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2911.31, 2911.32, 2913.02, 2913.03, 2913.04, 2913.041, 2913.05, 2913.06, 2913.11, 2913.21, 2913.31, 2913.32, 2913.33, 2913.34, 2913.40, 2913.42, 2913.43, 2913.44, 2913.45, 2913.47, former section 2913.47 or 2913.48, or section 2913.51, 2915.05, or 2921.41 of the Revised Code;	62 63 64 65 66 67
(2) A violation of an existing or former municipal ordinance or law of this or any other state, or of the United States, substantially equivalent to any section listed in division (K)(1) of this section or a violation of section 2913.41, 2913.81, or 2915.06 of the Revised Code as it existed prior to July 1, 1996;	68 69 70 71 72
(3) An offense under an existing or former municipal ordinance or law of this or any other state, or of the United States, involving robbery, burglary, breaking and entering, theft, embezzlement, wrongful conversion, forgery, counterfeiting, deceit, or fraud;	73 74 75 76 77

(4) A conspiracy or attempt to commit, or complicity in committing, any offense under division (K)(1), (2), or (3) of this section. 78
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(L) "Computer services" includes, but is not limited to, the use of a computer system, computer network, computer program, data that is prepared for computer use, or data that is contained within a computer system or computer network. 81
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(M) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses. "Computer" includes, but is not limited to, all input, output, processing, storage, computer program, or communication facilities that are connected, or related, in a computer system or network to an electronic device of that nature. 85
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(N) "Computer system" means a computer and related devices, whether connected or unconnected, including, but not limited to, data input, output, and storage devices, data communications links, and computer programs and data that make the system capable of performing specified special purpose data processing tasks. 92
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(O) "Computer network" means a set of related and remotely connected computers and communication facilities that includes more than one computer system that has the capability to transmit among the connected computers and communication facilities through the use of computer facilities. 97
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(P) "Computer program" means an ordered set of data representing coded instructions or statements that, when executed by a computer, cause the computer to process data. 102
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(Q) "Computer software" means computer programs, procedures, and other documentation associated with the operation of a computer system. 105
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(R) "Data" means a representation of information, knowledge, facts, concepts, or instructions that are being or have been prepared in a formalized manner and that are intended for use in a computer, computer system, or computer network. For purposes of section 2913.47 of the Revised Code, "data" has the additional meaning set forth in division (A) of that section.

(S) "Cable television service" means any services provided by or through the facilities of any cable television system or other similar closed circuit coaxial cable communications system, or any microwave or similar transmission service used in connection with any cable television system or other similar closed circuit coaxial cable communications system.

(T) "Gain access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network, or any cable service or cable system both as defined in section 2913.04 of the Revised Code.

(U) "Credit card" includes, but is not limited to, a card, code, device, or other means of access to a customer's account for the purpose of obtaining money, property, labor, or services on credit, or for initiating an electronic fund transfer at a point-of-sale terminal, an automated teller machine, or a cash dispensing machine. It also includes a county procurement card issued under section 301.29 of the Revised Code.

(V) "Electronic fund transfer" has the same meaning as in 92 Stat. 3728, 15 U.S.C.A. 1693a, as amended.

(W) "Rented property" means personal property in which the right of possession and use of the property is for a short and possibly indeterminate term in return for consideration; the rentee generally controls the duration of possession of the property, within any applicable minimum or maximum term; and the

amount of consideration generally is determined by the duration of 139
possession of the property. 140

(X) "Telecommunication" means the origination, emission, 141
dissemination, transmission, or reception of data, images, 142
signals, sounds, or other intelligence or equivalence of 143
intelligence of any nature over any communications system by any 144
method, including, but not limited to, a fiber optic, electronic, 145
magnetic, optical, digital, or analog method. 146

(Y) "Telecommunications device" means any instrument, 147
equipment, machine, or other device that facilitates 148
telecommunication, including, but not limited to, a computer, 149
computer network, computer chip, computer circuit, scanner, 150
telephone, cellular telephone, pager, personal communications 151
device, transponder, receiver, radio, modem, or device that 152
enables the use of a modem. 153

(Z) "Telecommunications service" means the providing, 154
allowing, facilitating, or generating of any form of 155
telecommunication through the use of a telecommunications device 156
over a telecommunications system. 157

(AA) "Counterfeit telecommunications device" means a 158
telecommunications device that, alone or with another 159
telecommunications device, has been altered, constructed, 160
manufactured, or programmed to acquire, intercept, receive, or 161
otherwise facilitate the use of a telecommunications service or 162
information service without the authority or consent of the 163
provider of the telecommunications service or information service. 164
"Counterfeit telecommunications device" includes, but is not 165
limited to, a clone telephone, clone microchip, tumbler telephone, 166
or tumbler microchip; a wireless scanning device capable of 167
acquiring, intercepting, receiving, or otherwise facilitating the 168
use of telecommunications service or information service without 169

immediate detection; or a device, equipment, hardware, or software 170
designed for, or capable of, altering or changing the electronic 171
serial number in a wireless telephone. 172

(BB)(1) "Information service" means, subject to division 173
(BB)(2) of this section, the offering of a capability for 174
generating, acquiring, storing, transforming, processing, 175
retrieving, utilizing, or making available information via 176
telecommunications, including, but not limited to, electronic 177
publishing. 178

(2) "Information service" does not include any use of a 179
capability of a type described in division (BB)(1) of this section 180
for the management, control, or operation of a telecommunications 181
system or the management of a telecommunications service. 182

(CC) "Elderly person" means a person who is sixty-five years 183
of age or older. 184

(DD) "Disabled adult" means a person who is eighteen years of 185
age or older and has some impairment of body or mind that makes 186
the person unfit to work at any substantially remunerative 187
employment that the person otherwise would be able to perform and 188
that will, with reasonable probability, continue for a period of 189
at least twelve months without any present indication of recovery 190
from the impairment, or who is eighteen years of age or older and 191
has been certified as permanently and totally disabled by an 192
agency of this state or the United States that has the function of 193
so classifying persons. 194

(EE) "Firearm" and "dangerous ordnance" have the same 195
meanings as in section 2923.11 of the Revised Code. 196

(FF) "Motor vehicle" has the same meaning as in section 197
4501.01 of the Revised Code. 198

(GG) "Dangerous drug" has the same meaning as in section 199

4729.01 of the Revised Code.	200
(HH) "Drug abuse offense" has the same meaning as in section	201
2925.01 of the Revised Code.	202
(II)(1) "Computer hacking" means any of the following:	203
(a) Gaining access or attempting to gain access to all or	204
part of a computer, computer system, or a computer network without	205
express or implied authorization with the intent to defraud or	206
with intent to commit a crime;	207
(b) Misusing computer or network services including, but not	208
limited to, mail transfer programs, file transfer programs, proxy	209
servers, and web servers by performing functions not authorized by	210
the owner of the computer, computer system, or computer network or	211
other person authorized to give consent. As used in this division,	212
"misuse of computer and network services" includes, but is not	213
limited to, the unauthorized use of any of the following:	214
(i) Mail transfer programs to send mail to persons other than	215
the authorized users of that computer or computer network;	216
(ii) File transfer program proxy services or proxy servers to	217
access other computers, computer systems, or computer networks;	218
(iii) Web servers to redirect users to other web pages or web	219
servers.	220
(c)(i) Subject to division (II)(1)(c)(ii) of this section,	221
using a group of computer programs commonly known as "port	222
scanners" or "probes" to intentionally access any computer,	223
computer system, or computer network without the permission of the	224
owner of the computer, computer system, or computer network or	225
other person authorized to give consent. The group of computer	226
programs referred to in this division includes, but is not limited	227
to, those computer programs that use a computer network to access	228
a computer, computer system, or another computer network to	229

determine any of the following: the presence or types of computers 230
or computer systems on a network; the computer network's 231
facilities and capabilities; the availability of computer or 232
network services; the presence or versions of computer software 233
including, but not limited to, operating systems, computer 234
services, or computer contaminants; the presence of a known 235
computer software deficiency that can be used to gain unauthorized 236
access to a computer, computer system, or computer network; or any 237
other information about a computer, computer system, or computer 238
network not necessary for the normal and lawful operation of the 239
computer initiating the access. 240

(ii) The group of computer programs referred to in division 241
(II)(1)(c)(i) of this section does not include standard computer 242
software used for the normal operation, administration, 243
management, and test of a computer, computer system, or computer 244
network including, but not limited to, domain name services, mail 245
transfer services, and other operating system services, computer 246
programs commonly called "ping," "tcpdump," and "traceroute" and 247
other network monitoring and management computer software, and 248
computer programs commonly known as "nslookup" and "whois" and 249
other systems administration computer software. 250

(d) The intentional use of a computer, computer system, or a 251
computer network in a manner that exceeds any right or permission 252
granted by the owner of the computer, computer system, or computer 253
network or other person authorized to give consent. 254

(2) "Computer hacking" does not include the introduction of a 255
computer contaminant, as defined in section 2909.02 of the Revised 256
Code, into a computer, computer system, computer program, or 257
computer network. 258

~~(II)~~(JJ) "Police dog or horse" and "service dog" have the 259
same meanings as in section 2921.321 of the Revised Code. 260

(KK) "Anhydrous ammonia" is a compound formed by the 261
combination of two gaseous elements, nitrogen and hydrogen, in the 262
manner described in this division. Anhydrous ammonia is one part 263
nitrogen to three parts hydrogen (NH₃). Anhydrous ammonia by 264
weight is fourteen parts nitrogen to three parts hydrogen, which 265
is approximately eighty-two per cent nitrogen to eighteen per cent 266
hydrogen. 267

Sec. 2913.02. (A) No person, with purpose to deprive the 268
owner of property or services, shall knowingly obtain or exert 269
control over either the property or services in any of the 270
following ways: 271

(1) Without the consent of the owner or person authorized to 272
give consent; 273

(2) Beyond the scope of the express or implied consent of the 274
owner or person authorized to give consent; 275

(3) By deception; 276

(4) By threat; 277

(5) By intimidation. 278

(B)(1) Whoever violates this section is guilty of theft. 279

(2) Except as otherwise provided in this division or division 280
(B)(3), (4), (5), (6), ~~or (7)~~, or (8) of this section, a violation 281
of this section is petty theft, a misdemeanor of the first degree. 282
If the value of the property or services stolen is five hundred 283
dollars or more and is less than five thousand dollars or if the 284
property stolen is any of the property listed in section 2913.71 285
of the Revised Code, a violation of this section is theft, a 286
felony of the fifth degree. If the value of the property or 287
services stolen is five thousand dollars or more and is less than 288
one hundred thousand dollars, a violation of this section is grand 289
theft, a felony of the fourth degree. If the value of the property 290

or services stolen is one hundred thousand dollars or more and is 291
less than five hundred thousand dollars, a violation of this 292
section is aggravated theft, a felony of the third degree. If the 293
value of the property or services is five hundred thousand dollars 294
or more and is less than one million dollars, a violation of this 295
section is aggravated theft, a felony of the second degree. If the 296
value of the property or services stolen is one million dollars or 297
more, a violation of this section is aggravated theft of one 298
million dollars or more, a felony of the first degree. 299

(3) Except as otherwise provided in division (B)(4), (5), 300
(6), ~~or (7)~~, or (8) of this section, if the victim of the offense 301
is an elderly person or disabled adult, a violation of this 302
section is theft from an elderly person or disabled adult, and 303
division (B)(3) of this section applies. Except as otherwise 304
provided in this division, theft from an elderly person or 305
disabled adult is a felony of the fifth degree. If the value of 306
the property or services stolen is five hundred dollars or more 307
and is less than five thousand dollars, theft from an elderly 308
person or disabled adult is a felony of the fourth degree. If the 309
value of the property or services stolen is five thousand dollars 310
or more and is less than twenty-five thousand dollars, theft from 311
an elderly person or disabled adult is a felony of the third 312
degree. If the value of the property or services stolen is 313
twenty-five thousand dollars or more and is less than one hundred 314
thousand dollars, theft from an elderly person or disabled adult 315
is a felony of the second degree. If the value of the property or 316
services stolen is one hundred thousand dollars or more, theft 317
from an elderly person or disabled adult is a felony of the first 318
degree. 319

(4) If the property stolen is a firearm or dangerous 320
ordnance, a violation of this section is grand theft, a felony of 321
the third degree, and there is a presumption in favor of the court 322

imposing a prison term for the offense. The offender shall serve 323
the prison term consecutively to any other prison term or 324
mandatory prison term previously or subsequently imposed upon the 325
offender. 326

(5) If the property stolen is a motor vehicle, a violation of 327
this section is grand theft of a motor vehicle, a felony of the 328
fourth degree. 329

(6) If the property stolen is any dangerous drug, a violation 330
of this section is theft of drugs, a felony of the fourth degree, 331
or, if the offender previously has been convicted of a felony drug 332
abuse offense, a felony of the third degree. 333

(7) If the property stolen is a police dog or horse or a 334
service dog and the offender knows or should know that the 335
property stolen is a police dog or horse or service dog, a 336
violation of this section is theft of a police dog or horse or 337
service dog, a felony of the third degree. 338

(8) If the property stolen is anhydrous ammonia, a violation 339
of this section is theft of anhydrous ammonia, a felony of the 340
third degree. 341

(9) In addition to the penalties described in division (B)(2) 342
of this section, if the offender committed the violation by 343
causing a motor vehicle to leave the premises of an establishment 344
at which gasoline is offered for retail sale without the offender 345
making full payment for gasoline that was dispensed into the fuel 346
tank of the motor vehicle or into another container, the court may 347
do one of the following: 348

(a) Unless division (B)~~(8)~~(9)(b) of this section applies, 349
suspend for not more than six months the offender's driver's 350
license, probationary driver's license, commercial driver's 351
license, temporary instruction permit, or nonresident operating 352
privilege; 353

(b) If the offender's driver's license, probationary driver's license, commercial driver's license, temporary instruction permit, or nonresident operating privilege has previously been suspended pursuant to division (B)~~(8)~~(9)(a) of this section, impose a class seven suspension of the offender's license, permit, or privilege from the range specified in division (A)(7) of section 4510.02 of the Revised Code, provided that the suspension shall be for at least six months.

(C) The sentencing court that suspends an offender's license, permit, or nonresident operating privilege under division (B)~~(8)~~(9) of this section may grant the offender limited driving privileges during the period of the suspension in accordance with Chapter 4510. of the Revised Code.

Section 2. That existing sections 2913.01 and 2913.02 of the Revised Code are hereby repealed.

Section 3. Section 2913.01 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 369 and Am. Sub. S.B. 146 of the 125th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.