

As Reported by the Senate Judiciary--Criminal Justice Committee

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Sub. S. B. No. 320

Senator Seitz

**Cosponsors: Senators Spada, Schuring, Padgett, Coughlin, Schaffer,
Grendell, Fedor**

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A B I L L

To amend section 2923.31 of the Revised Code to 1
include organized retail theft and substantially 2
similar conduct occurring in another state within 3
the definition of corrupt activity as used in the 4
Ohio Corrupt Activities Law. 5

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

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

Sec. 2923.31. As used in sections 2923.31 to 2923.36 of the 8
Revised Code: 9

(A) "Beneficial interest" means any of the following: 10

(1) The interest of a person as a beneficiary under a trust 11
in which the trustee holds title to personal or real property; 12

(2) The interest of a person as a beneficiary under any other 13
trust arrangement under which any other person holds title to 14
personal or real property for the benefit of such person; 15

(3) The interest of a person under any other form of express 16
fiduciary arrangement under which any other person holds title to 17

personal or real property for the benefit of such person. 18

"Beneficial interest" does not include the interest of a 19
stockholder in a corporation or the interest of a partner in 20
either a general or limited partnership. 21

(B) "Costs of investigation and prosecution" and "costs of 22
investigation and litigation" mean all of the costs incurred by 23
the state or a county or municipal corporation under sections 24
2923.31 to 2923.36 of the Revised Code in the prosecution and 25
investigation of any criminal action or in the litigation and 26
investigation of any civil action, and includes, but is not 27
limited to, the costs of resources and personnel. 28

(C) "Enterprise" includes any individual, sole 29
proprietorship, partnership, limited partnership, corporation, 30
trust, union, government agency, or other legal entity, or any 31
organization, association, or group of persons associated in fact 32
although not a legal entity. "Enterprise" includes illicit as well 33
as licit enterprises. 34

(D) "Innocent person" includes any bona fide purchaser of 35
property that is allegedly involved in a violation of section 36
2923.32 of the Revised Code, including any person who establishes 37
a valid claim to or interest in the property in accordance with 38
division (E) of section 2981.04 of the Revised Code, and any 39
victim of an alleged violation of that section or of any 40
underlying offense involved in an alleged violation of that 41
section. 42

(E) "Pattern of corrupt activity" means two or more incidents 43
of corrupt activity, whether or not there has been a prior 44
conviction, that are related to the affairs of the same 45
enterprise, are not isolated, and are not so closely related to 46
each other and connected in time and place that they constitute a 47
single event. 48

At least one of the incidents forming the pattern shall occur 49
on or after January 1, 1986. Unless any incident was an aggravated 50
murder or murder, the last of the incidents forming the pattern 51
shall occur within six years after the commission of any prior 52
incident forming the pattern, excluding any period of imprisonment 53
served by any person engaging in the corrupt activity. 54

For the purposes of the criminal penalties that may be 55
imposed pursuant to section 2923.32 of the Revised Code, at least 56
one of the incidents forming the pattern shall constitute a felony 57
under the laws of this state in existence at the time it was 58
committed or, if committed in violation of the laws of the United 59
States or of any other state, shall constitute a felony under the 60
law of the United States or the other state and would be a 61
criminal offense under the law of this state if committed in this 62
state. 63

(F) "Pecuniary value" means money, a negotiable instrument, a 64
commercial interest, or anything of value, as defined in section 65
1.03 of the Revised Code, or any other property or service that 66
has a value in excess of one hundred dollars. 67

(G) "Person" means any person, as defined in section 1.59 of 68
the Revised Code, and any governmental officer, employee, or 69
entity. 70

(H) "Personal property" means any personal property, any 71
interest in personal property, or any right, including, but not 72
limited to, bank accounts, debts, corporate stocks, patents, or 73
copyrights. Personal property and any beneficial interest in 74
personal property are deemed to be located where the trustee of 75
the property, the personal property, or the instrument evidencing 76
the right is located. 77

(I) "Corrupt activity" means engaging in, attempting to 78
engage in, conspiring to engage in, or soliciting, coercing, or 79

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| intimidating another person to engage in any of the following: | 80 |
| (1) Conduct defined as "racketeering activity" under the | 81 |
| "Organized Crime Control Act of 1970," 84 Stat. 941, 18 U.S.C. | 82 |
| 1961(1)(B), (1)(C), (1)(D), and (1)(E), as amended; | 83 |
| (2) Conduct constituting any of the following: | 84 |
| (a) A violation of section 1315.55, 1322.02, 2903.01, | 85 |
| 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2905.01, 2905.02, | 86 |
| 2905.11, 2905.22, 2907.321, 2907.322, 2907.323, 2909.02, 2909.03, | 87 |
| 2909.22, 2909.23, 2909.24, 2909.26, 2909.27, 2909.28, 2909.29, | 88 |
| 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2911.31, 2913.05, | 89 |
| 2913.06, 2921.02, 2921.03, 2921.04, 2921.11, 2921.12, 2921.32, | 90 |
| 2921.41, 2921.42, 2921.43, 2923.12, or 2923.17; division | 91 |
| (F)(1)(a), (b), or (c) of section 1315.53; division (A)(1) or (2) | 92 |
| of section 1707.042; division (B), (C)(4), (D), (E), or (F) of | 93 |
| section 1707.44; division (A)(1) or (2) of section 2923.20; | 94 |
| division (J)(1) of section 4712.02; section 4719.02, 4719.05, or | 95 |
| 4719.06; division (C), (D), or (E) of section 4719.07; section | 96 |
| 4719.08; or division (A) of section 4719.09 of the Revised Code. | 97 |
| (b) Any violation of section 3769.11, 3769.15, 3769.16, or | 98 |
| 3769.19 of the Revised Code as it existed prior to July 1, 1996, | 99 |
| any violation of section 2915.02 of the Revised Code that occurs | 100 |
| on or after July 1, 1996, and that, had it occurred prior to that | 101 |
| date, would have been a violation of section 3769.11 of the | 102 |
| Revised Code as it existed prior to that date, or any violation of | 103 |
| section 2915.05 of the Revised Code that occurs on or after July | 104 |
| 1, 1996, and that, had it occurred prior to that date, would have | 105 |
| been a violation of section 3769.15, 3769.16, or 3769.19 of the | 106 |
| Revised Code as it existed prior to that date. | 107 |
| (c) Any violation of section 2907.21, 2907.22, 2907.31, | 108 |
| 2913.02, 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.42, | 109 |
| 2913.47, 2913.51, 2915.03, 2925.03, 2925.04, 2925.05, or 2925.37 | 110 |

of the Revised Code, any violation of section 2925.11 of the 111
Revised Code that is a felony of the first, second, third, or 112
fourth degree and that occurs on or after July 1, 1996, any 113
violation of section 2915.02 of the Revised Code that occurred 114
prior to July 1, 1996, any violation of section 2915.02 of the 115
Revised Code that occurs on or after July 1, 1996, and that, had 116
it occurred prior to that date, would not have been a violation of 117
section 3769.11 of the Revised Code as it existed prior to that 118
date, any violation of section 2915.06 of the Revised Code as it 119
existed prior to July 1, 1996, or any violation of division (B) of 120
section 2915.05 of the Revised Code as it exists on and after July 121
1, 1996, when the proceeds of the violation, the payments made in 122
the violation, the amount of a claim for payment or for any other 123
benefit that is false or deceptive and that is involved in the 124
violation, or the value of the contraband or other property 125
illegally possessed, sold, or purchased in the violation exceeds 126
five hundred dollars, or any combination of violations described 127
in division (I)(2)(c) of this section when the total proceeds of 128
the combination of violations, payments made in the combination of 129
violations, amount of the claims for payment or for other benefits 130
that is false or deceptive and that is involved in the combination 131
of violations, or value of the contraband or other property 132
illegally possessed, sold, or purchased in the combination of 133
violations exceeds five hundred dollars; 134

(d) Any violation of section 5743.112 of the Revised Code 135
when the amount of unpaid tax exceeds one hundred dollars; 136

(e) Any violation or combination of violations of section 137
2907.32 of the Revised Code involving any material or performance 138
containing a display of bestiality or of sexual conduct, as 139
defined in section 2907.01 of the Revised Code, that is explicit 140
and depicted with clearly visible penetration of the genitals or 141
clearly visible penetration by the penis of any orifice when the 142

total proceeds of the violation or combination of violations, the 143
payments made in the violation or combination of violations, or 144
the value of the contraband or other property illegally possessed, 145
sold, or purchased in the violation or combination of violations 146
exceeds five hundred dollars; 147

(f) Any combination of violations described in division 148
(I)(2)(c) of this section and violations of section 2907.32 of the 149
Revised Code involving any material or performance containing a 150
display of bestiality or of sexual conduct, as defined in section 151
2907.01 of the Revised Code, that is explicit and depicted with 152
clearly visible penetration of the genitals or clearly visible 153
penetration by the penis of any orifice when the total proceeds of 154
the combination of violations, payments made in the combination of 155
violations, amount of the claims for payment or for other benefits 156
that is false or deceptive and that is involved in the combination 157
of violations, or value of the contraband or other property 158
illegally possessed, sold, or purchased in the combination of 159
violations exceeds five hundred dollars. 160

(3) Conduct constituting a violation of any law of any state 161
other than this state that is substantially similar to the conduct 162
described in division (I)(2) of this section, provided the 163
defendant was convicted of the conduct in a criminal proceeding in 164
the other state; 165

(4) Animal or ecological terrorism; 166

(5)(a) Conduct constituting any of the following: 167

(i) Organized retail theft; 168

(ii) Conduct that constitutes one or more violations of any 169
law of any state other than this state, that is substantially 170
similar to organized retail theft, and that if committed in this 171
state would be organized retail theft, if the defendant was 172
convicted of or pleaded guilty to the conduct in a criminal 173

proceeding in the other state. 174

(b) By enacting division (I)(5)(a) of this section, it is the 175
intent of the general assembly to add organized retail theft and 176
the conduct described in division (I)(5)(a)(ii) of this section as 177
conduct constituting corrupt activity. The enactment of division 178
(I)(5)(a) of this section and the addition by division (I)(5)(a) 179
of this section of organized retail theft and the conduct 180
described in division (I)(5)(a)(ii) of this section as conduct 181
constituting corrupt activity does not limit or preclude, and 182
shall not be construed as limiting or precluding, any prosecution 183
for a violation of section 2923.32 of the Revised Code that is 184
based on one or more violations of section 2913.02 or 2913.51 of 185
the Revised Code, one or more similar offenses under the laws of 186
this state or any other state, or any combination of any of those 187
violations or similar offenses, even though the conduct 188
constituting the basis for those violations or offenses could be 189
construed as also constituting organized retail theft or conduct 190
of the type described in division (I)(5)(a)(ii) of this section. 191

(J) "Real property" means any real property or any interest 192
in real property, including, but not limited to, any lease of, or 193
mortgage upon, real property. Real property and any beneficial 194
interest in it is deemed to be located where the real property is 195
located. 196

(K) "Trustee" means any of the following: 197

(1) Any person acting as trustee under a trust in which the 198
trustee holds title to personal or real property; 199

(2) Any person who holds title to personal or real property 200
for which any other person has a beneficial interest; 201

(3) Any successor trustee. 202

"Trustee" does not include an assignee or trustee for an 203
insolvent debtor or an executor, administrator, administrator with 204

the will annexed, testamentary trustee, guardian, or committee, 205
appointed by, under the control of, or accountable to a court. 206

(L) "Unlawful debt" means any money or other thing of value 207
constituting principal or interest of a debt that is legally 208
unenforceable in this state in whole or in part because the debt 209
was incurred or contracted in violation of any federal or state 210
law relating to the business of gambling activity or relating to 211
the business of lending money at an usurious rate unless the 212
creditor proves, by a preponderance of the evidence, that the 213
usurious rate was not intentionally set and that it resulted from 214
a good faith error by the creditor, notwithstanding the 215
maintenance of procedures that were adopted by the creditor to 216
avoid an error of that nature. 217

(M) "Animal activity" means any activity that involves the 218
use of animals or animal parts, including, but not limited to, 219
hunting, fishing, trapping, traveling, camping, the production, 220
preparation, or processing of food or food products, clothing or 221
garment manufacturing, medical research, other research, 222
entertainment, recreation, agriculture, biotechnology, or service 223
activity that involves the use of animals or animal parts. 224

(N) "Animal facility" means a vehicle, building, structure, 225
nature preserve, or other premises in which an animal is lawfully 226
kept, handled, housed, exhibited, bred, or offered for sale, 227
including, but not limited to, a zoo, rodeo, circus, amusement 228
park, hunting preserve, or premises in which a horse or dog event 229
is held. 230

(O) "Animal or ecological terrorism" means the commission of 231
any felony that involves causing or creating a substantial risk of 232
physical harm to any property of another, the use of a deadly 233
weapon or dangerous ordnance, or purposely, knowingly, or 234
recklessly causing serious physical harm to property and that 235
involves an intent to obstruct, impede, or deter any person from 236

participating in a lawful animal activity, from mining, foresting, 237
harvesting, gathering, or processing natural resources, or from 238
being lawfully present in or on an animal facility or research 239
facility. 240

(P) "Research facility" means a place, laboratory, 241
institution, medical care facility, government facility, or public 242
or private educational institution in which a scientific test, 243
experiment, or investigation involving the use of animals or other 244
living organisms is lawfully carried out, conducted, or attempted. 245
246

(Q) "Organized retail theft" means the theft of retail 247
property with a retail value of five hundred dollars or more from 248
one or more retail establishments with the intent to sell, 249
deliver, or transfer that property to a retail property fence. 250

(R) "Retail property" means any tangible personal property 251
displayed, held, stored, or offered for sale in or by a retail 252
establishment. 253

(S) "Retail property fence" means a person who possesses, 254
procures, receives, or conceals retail property that was 255
represented to the person as being stolen or that the person knows 256
or believes to be stolen. 257

(T) "Retail value" means the full retail value of the retail 258
property. In determining whether the retail value of retail 259
property equals or exceeds five hundred dollars, the value of all 260
retail property stolen from the retail establishment or retail 261
establishments by the same person or persons within any 262
one-hundred-eighty-day period shall be aggregated. 263

Section 2. That existing section 2923.31 of the Revised Code 264
is hereby repealed. 265