

As Reported by the House Criminal Justice Committee

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Sub. H. B. No. 276

Representatives Powell, Schmidt

Cosponsors: Representatives Zeltwanger, Riedel, Jordan, Koehler, LaRe, O'Brien, Vitale, McClain, Fowler Arthur, White, Bird, Manchester, Abrams, Wiggam, Miller, A.

A BILL

To amend sections 2907.01 and 2923.31 and to enact 1
section 2907.251 of the Revised Code to prohibit 2
a person from receiving proceeds of 3
prostitution. 4

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

Section 1. That sections 2907.01 and 2923.31 be amended 5
and section 2907.251 of the Revised Code be enacted to read as 6
follows: 7

Sec. 2907.01. As used in sections 2907.01 to 2907.38 and 8
2917.211 of the Revised Code: 9

(A) "Sexual conduct" means vaginal intercourse between a 10
male and female; anal intercourse, fellatio, and cunnilingus 11
between persons regardless of sex; and, without privilege to do 12
so, the insertion, however slight, of any part of the body or 13
any instrument, apparatus, or other object into the vaginal or 14
anal opening of another. Penetration, however slight, is 15
sufficient to complete vaginal or anal intercourse. 16

(B) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

(C) "Sexual activity" means sexual conduct or sexual contact, or both.

(D) "Prostitute" means a male or female who ~~promiscuously~~ engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.

(E) "Harmful to juveniles" means that quality of any material or performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse in any form to which all of the following apply:

(1) The material or performance, when considered as a whole, appeals to the prurient interest of juveniles in sex.

(2) The material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles.

(3) The material or performance, when considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles.

(F) When considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply:

(1) Its dominant appeal is to prurient interest;

(2) Its dominant tendency is to arouse lust by displaying 45
or depicting sexual activity, masturbation, sexual excitement, 46
or nudity in a way that tends to represent human beings as mere 47
objects of sexual appetite; 48

(3) Its dominant tendency is to arouse lust by displaying 49
or depicting bestiality or extreme or bizarre violence, cruelty, 50
or brutality; 51

(4) Its dominant tendency is to appeal to scatological 52
interest by displaying or depicting human bodily functions of 53
elimination in a way that inspires disgust or revulsion in 54
persons with ordinary sensibilities, without serving any genuine 55
scientific, educational, sociological, moral, or artistic 56
purpose; 57

(5) It contains a series of displays or descriptions of 58
sexual activity, masturbation, sexual excitement, nudity, 59
bestiality, extreme or bizarre violence, cruelty, or brutality, 60
or human bodily functions of elimination, the cumulative effect 61
of which is a dominant tendency to appeal to prurient or 62
scatological interest, when the appeal to such an interest is 63
primarily for its own sake or for commercial exploitation, 64
rather than primarily for a genuine scientific, educational, 65
sociological, moral, or artistic purpose. 66

(G) "Sexual excitement" means the condition of human male 67
or female genitals when in a state of sexual stimulation or 68
arousal. 69

(H) "Nudity" means the showing, representation, or 70
depiction of human male or female genitals, pubic area, or 71
buttocks with less than a full, opaque covering, or of a female 72
breast with less than a full, opaque covering of any portion 73

thereof below the top of the nipple, or of covered male genitals 74
in a discernibly turgid state. 75

(I) "Juvenile" means an unmarried person under the age of 76
eighteen. 77

(J) "Material" means any book, magazine, newspaper, 78
pamphlet, poster, print, picture, figure, image, description, 79
motion picture film, phonographic record, or tape, or other 80
tangible thing capable of arousing interest through sight, 81
sound, or touch and includes an image or text appearing on a 82
computer monitor, television screen, liquid crystal display, or 83
similar display device or an image or text recorded on a 84
computer hard disk, computer floppy disk, compact disk, magnetic 85
tape, or similar data storage device. 86

(K) "Performance" means any motion picture, preview, 87
trailer, play, show, skit, dance, or other exhibition performed 88
before an audience. 89

(L) "Spouse" means a person married to an offender at the 90
time of an alleged offense, except that such person shall not be 91
considered the spouse when any of the following apply: 92

(1) When the parties have entered into a written 93
separation agreement authorized by section 3103.06 of the 94
Revised Code; 95

(2) During the pendency of an action between the parties 96
for annulment, divorce, dissolution of marriage, or legal 97
separation; 98

(3) In the case of an action for legal separation, after 99
the effective date of the judgment for legal separation. 100

(M) "Minor" means a person under the age of eighteen. 101

(N) "Mental health client or patient" has the same meaning 102
as in section 2305.51 of the Revised Code. 103

(O) "Mental health professional" has the same meaning as 104
in section 2305.115 of the Revised Code. 105

(P) "Sado-masochistic abuse" means flagellation or torture 106
by or upon a person or the condition of being fettered, bound, 107
or otherwise physically restrained. 108

Sec. 2907.251. (A) As used in this section, "sexual 109
activity for hire" has the same meaning as in section 2907.24 of 110
the Revised Code. 111

(B) No person shall receive or acquire money or any other 112
thing of value knowing that the money or other thing of value 113
was earned from sexual activity for hire or as a result of a 114
violation of section 2905.32 of the Revised Code. 115

(C) This section does not apply to a prostitute who 116
receives or acquires money or any other thing of value from the 117
prostitute's own engagement in sexual activity for hire. 118

(D) (1) Whoever violates this section is guilty of 119
receiving proceeds of prostitution. Except as provided in 120
division (D) (2) of this section, receiving proceeds of 121
prostitution is a felony of the third degree. 122

(2) If a person violates this section by knowingly 123
receiving or acquiring money or any other thing of value from a 124
prostitute under division (B) of this section and the prostitute 125
is under eighteen years of age, receiving proceeds of 126
prostitution is a felony of the second degree. 127

(E) A prosecution for a violation of this section does not 128
preclude a prosecution of a violation of any other section of 129

the Revised Code. One or more acts, a series of acts, or a 130
course of behavior that can be prosecuted under this section or 131
any other section of the Revised Code may be prosecuted under 132
this section, the other section of the Revised Code, or both 133
sections. However, if an offender is convicted of or pleads 134
guilty to a violation of this section and also is convicted of 135
or pleads guilty to a violation of section 2907.21, 2907.22, 136
2907.25, or 2907.32 or division (B) of section 2907.23 of the 137
Revised Code based on the same conduct involving the same victim 138
that was the basis of the violation of this section, the two 139
offenses are allied offenses of similar import under section 140
2941.25 of the Revised Code. 141

Sec. 2923.31. As used in sections 2923.31 to 2923.36 of 142
the Revised Code: 143

(A) "Beneficial interest" means any of the following: 144

(1) The interest of a person as a beneficiary under a 145
trust in which the trustee holds title to personal or real 146
property; 147

(2) The interest of a person as a beneficiary under any 148
other trust arrangement under which any other person holds title 149
to personal or real property for the benefit of such person; 150

(3) The interest of a person under any other form of 151
express fiduciary arrangement under which any other person holds 152
title to personal or real property for the benefit of such 153
person. 154

"Beneficial interest" does not include the interest of a 155
stockholder in a corporation or the interest of a partner in 156
either a general or limited partnership. 157

(B) "Costs of investigation and prosecution" and "costs of 158

investigation and litigation" mean all of the costs incurred by 159
the state or a county or municipal corporation under sections 160
2923.31 to 2923.36 of the Revised Code in the prosecution and 161
investigation of any criminal action or in the litigation and 162
investigation of any civil action, and includes, but is not 163
limited to, the costs of resources and personnel. 164

(C) "Enterprise" includes any individual, sole 165
proprietorship, partnership, limited partnership, corporation, 166
trust, union, government agency, or other legal entity, or any 167
organization, association, or group of persons associated in 168
fact although not a legal entity. "Enterprise" includes illicit 169
as well as licit enterprises. 170

(D) "Innocent person" includes any bona fide purchaser of 171
property that is allegedly involved in a violation of section 172
2923.32 of the Revised Code, including any person who 173
establishes a valid claim to or interest in the property in 174
accordance with division (E) of section 2981.04 of the Revised 175
Code, and any victim of an alleged violation of that section or 176
of any underlying offense involved in an alleged violation of 177
that section. 178

(E) "Pattern of corrupt activity" means two or more 179
incidents of corrupt activity, whether or not there has been a 180
prior conviction, that are related to the affairs of the same 181
enterprise, are not isolated, and are not so closely related to 182
each other and connected in time and place that they constitute 183
a single event. 184

At least one of the incidents forming the pattern shall 185
occur on or after January 1, 1986. Unless any incident was an 186
aggravated murder or murder, the last of the incidents forming 187
the pattern shall occur within six years after the commission of 188

any prior incident forming the pattern, excluding any period of 189
imprisonment served by any person engaging in the corrupt 190
activity. 191

For the purposes of the criminal penalties that may be 192
imposed pursuant to section 2923.32 of the Revised Code, at 193
least one of the incidents forming the pattern shall constitute 194
a felony under the laws of this state in existence at the time 195
it was committed or, if committed in violation of the laws of 196
the United States or of any other state, shall constitute a 197
felony under the law of the United States or the other state and 198
would be a criminal offense under the law of this state if 199
committed in this state. 200

(F) "Pecuniary value" means money, a negotiable 201
instrument, a commercial interest, or anything of value, as 202
defined in section 1.03 of the Revised Code, or any other 203
property or service that has a value in excess of one hundred 204
dollars. 205

(G) "Person" means any person, as defined in section 1.59 206
of the Revised Code, and any governmental officer, employee, or 207
entity. 208

(H) "Personal property" means any personal property, any 209
interest in personal property, or any right, including, but not 210
limited to, bank accounts, debts, corporate stocks, patents, or 211
copyrights. Personal property and any beneficial interest in 212
personal property are deemed to be located where the trustee of 213
the property, the personal property, or the instrument 214
evidencing the right is located. 215

(I) "Corrupt activity" means engaging in, attempting to 216
engage in, conspiring to engage in, or soliciting, coercing, or 217

intimidating another person to engage in any of the following:	218
(1) Conduct defined as "racketeering activity" under the	219
"Organized Crime Control Act of 1970," 84 Stat. 941, 18 U.S.C.	220
1961(1)(B), (1)(C), (1)(D), and (1)(E), as amended;	221
(2) Conduct constituting any of the following:	222
(a) A violation of section 1315.55, 1322.07, 2903.01,	223
2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2905.01, 2905.02,	224
2905.11, 2905.22, 2905.32 as specified in division (I)(2)(g) of	225
this section, <u>2907.251</u> , 2907.321, 2907.322, 2907.323, 2909.02,	226
2909.03, 2909.22, 2909.23, 2909.24, 2909.26, 2909.27, 2909.28,	227
2909.29, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2911.31,	228
2913.05, 2913.06, 2913.30, 2921.02, 2921.03, 2921.04, 2921.11,	229
2921.12, 2921.32, 2921.41, 2921.42, 2921.43, 2923.12, or	230
2923.17; division (F)(1)(a), (b), or (c) of section 1315.53;	231
division (A)(1) or (2) of section 1707.042; division (B), (C)	232
(4), (D), (E), or (F) of section 1707.44; division (A)(1) or (2)	233
of section 2923.20; division (E) or (G) of section 3772.99;	234
division (J)(1) of section 4712.02; section 4719.02, 4719.05, or	235
4719.06; division (C), (D), or (E) of section 4719.07; section	236
4719.08; or division (A) of section 4719.09 of the Revised Code.	237
(b) Any violation of section 3769.11, 3769.15, 3769.16, or	238
3769.19 of the Revised Code as it existed prior to July 1, 1996,	239
any violation of section 2915.02 of the Revised Code that occurs	240
on or after July 1, 1996, and that, had it occurred prior to	241
that date, would have been a violation of section 3769.11 of the	242
Revised Code as it existed prior to that date, or any violation	243
of section 2915.05 of the Revised Code that occurs on or after	244
July 1, 1996, and that, had it occurred prior to that date,	245
would have been a violation of section 3769.15, 3769.16, or	246
3769.19 of the Revised Code as it existed prior to that date.	247

(c) Any violation of section 2907.21, 2907.22, 2907.31,	248
2913.02, 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.42,	249
2913.47, 2913.51, 2915.03, 2925.03, 2925.04, 2925.05, or 2925.37	250
of the Revised Code, any violation of section 2925.11 of the	251
Revised Code that is a felony of the first, second, third, or	252
fourth degree and that occurs on or after July 1, 1996, any	253
violation of section 2915.02 of the Revised Code that occurred	254
prior to July 1, 1996, any violation of section 2915.02 of the	255
Revised Code that occurs on or after July 1, 1996, and that, had	256
it occurred prior to that date, would not have been a violation	257
of section 3769.11 of the Revised Code as it existed prior to	258
that date, any violation of section 2915.06 of the Revised Code	259
as it existed prior to July 1, 1996, or any violation of	260
division (B) of section 2915.05 of the Revised Code as it exists	261
on and after July 1, 1996, when the proceeds of the violation,	262
the payments made in the violation, the amount of a claim for	263
payment or for any other benefit that is false or deceptive and	264
that is involved in the violation, or the value of the	265
contraband or other property illegally possessed, sold, or	266
purchased in the violation exceeds one thousand dollars, or any	267
combination of violations described in division (I) (2) (c) of	268
this section when the total proceeds of the combination of	269
violations, payments made in the combination of violations,	270
amount of the claims for payment or for other benefits that is	271
false or deceptive and that is involved in the combination of	272
violations, or value of the contraband or other property	273
illegally possessed, sold, or purchased in the combination of	274
violations exceeds one thousand dollars;	275
(d) Any violation of section 5743.112 of the Revised Code	276
when the amount of unpaid tax exceeds one hundred dollars;	277
(e) Any violation or combination of violations of section	278

2907.32 of the Revised Code involving any material or 279
performance containing a display of bestiality or of sexual 280
conduct, as defined in section 2907.01 of the Revised Code, that 281
is explicit and depicted with clearly visible penetration of the 282
genitals or clearly visible penetration by the penis of any 283
orifice when the total proceeds of the violation or combination 284
of violations, the payments made in the violation or combination 285
of violations, or the value of the contraband or other property 286
illegally possessed, sold, or purchased in the violation or 287
combination of violations exceeds one thousand dollars; 288

(f) Any combination of violations described in division 289
(I) (2) (c) of this section and violations of section 2907.32 of 290
the Revised Code involving any material or performance 291
containing a display of bestiality or of sexual conduct, as 292
defined in section 2907.01 of the Revised Code, that is explicit 293
and depicted with clearly visible penetration of the genitals or 294
clearly visible penetration by the penis of any orifice when the 295
total proceeds of the combination of violations, payments made 296
in the combination of violations, amount of the claims for 297
payment or for other benefits that is false or deceptive and 298
that is involved in the combination of violations, or value of 299
the contraband or other property illegally possessed, sold, or 300
purchased in the combination of violations exceeds one thousand 301
dollars; 302

(g) Any violation of section 2905.32 of the Revised Code 303
to the extent the violation is not based solely on the same 304
conduct that constitutes corrupt activity pursuant to division 305
(I) (2) (c) of this section due to the conduct being in violation 306
of section 2907.21 of the Revised Code. 307

(3) Conduct constituting a violation of any law of any 308

state other than this state that is substantially similar to the 309
conduct described in division (I) (2) of this section, provided 310
the defendant was convicted of the conduct in a criminal 311
proceeding in the other state; 312

(4) Animal or ecological terrorism; 313

(5) (a) Conduct constituting any of the following: 314

(i) Organized retail theft; 315

(ii) Conduct that constitutes one or more violations of 316
any law of any state other than this state, that is 317
substantially similar to organized retail theft, and that if 318
committed in this state would be organized retail theft, if the 319
defendant was convicted of or pleaded guilty to the conduct in a 320
criminal proceeding in the other state. 321

(b) By enacting division (I) (5) (a) of this section, it is 322
the intent of the general assembly to add organized retail theft 323
and the conduct described in division (I) (5) (a) (ii) of this 324
section as conduct constituting corrupt activity. The enactment 325
of division (I) (5) (a) of this section and the addition by 326
division (I) (5) (a) of this section of organized retail theft and 327
the conduct described in division (I) (5) (a) (ii) of this section 328
as conduct constituting corrupt activity does not limit or 329
preclude, and shall not be construed as limiting or precluding, 330
any prosecution for a violation of section 2923.32 of the 331
Revised Code that is based on one or more violations of section 332
2913.02 or 2913.51 of the Revised Code, one or more similar 333
offenses under the laws of this state or any other state, or any 334
combination of any of those violations or similar offenses, even 335
though the conduct constituting the basis for those violations 336
or offenses could be construed as also constituting organized 337

retail theft or conduct of the type described in division (I) (5)	338
(a) (ii) of this section.	339
(J) "Real property" means any real property or any	340
interest in real property, including, but not limited to, any	341
lease of, or mortgage upon, real property. Real property and any	342
beneficial interest in it is deemed to be located where the real	343
property is located.	344
(K) "Trustee" means any of the following:	345
(1) Any person acting as trustee under a trust in which	346
the trustee holds title to personal or real property;	347
(2) Any person who holds title to personal or real	348
property for which any other person has a beneficial interest;	349
(3) Any successor trustee.	350
"Trustee" does not include an assignee or trustee for an	351
insolvent debtor or an executor, administrator, administrator	352
with the will annexed, testamentary trustee, guardian, or	353
committee, appointed by, under the control of, or accountable to	354
a court.	355
(L) "Unlawful debt" means any money or other thing of	356
value constituting principal or interest of a debt that is	357
legally unenforceable in this state in whole or in part because	358
the debt was incurred or contracted in violation of any federal	359
or state law relating to the business of gambling activity or	360
relating to the business of lending money at an usurious rate	361
unless the creditor proves, by a preponderance of the evidence,	362
that the usurious rate was not intentionally set and that it	363
resulted from a good faith error by the creditor,	364
notwithstanding the maintenance of procedures that were adopted	365
by the creditor to avoid an error of that nature.	366

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

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

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

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

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

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

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

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

Section 2. That existing sections 2907.01 and 2923.31 of the Revised Code are hereby repealed.

Section 3. Section 2923.31 of the Revised Code is presented in this act as a composite of the section as amended by both H.B. 199 and H.B. 405 of the 132nd 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.