



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Dennis M. Papp

### **Am. H.B. 405**

132nd General Assembly  
(As Passed by the House)

**Reps.** Perales, Butler, Boccieri, Dever, Fedor, Miller, Schaffer, Sheehy, Slaby, K. Smith, Sweeney, Vitale, Manning, Rezabek, Celebrezze, Galonski, Rogers, Seitz, Anielski, Antonio, Arndt, Ashford, Barnes, Boyd, Brown, Craig, Cupp, Faber, Gavarone, Ginter, Green, Greenspan, Hagan, Hambley, Henne, Holmes, Hoops, Huffman, Hughes, Kick, Landis, Lanese, Lang, Leland, Lepore-Hagan, O'Brien, Patmon, Patterson, Riedel, Romanchuk, Ryan, Schuring, Sprague, Stein, Strahorn, Young, Zeltwanger

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## **BILL SUMMARY**

- Creates the criminal offense of counterfeiting, prohibiting certain conduct involving counterfeited, forged, or altered U.S. currency, other U.S. securities, or debit or credit cards.
- Specifies penalties ranging from a fourth degree felony to a first degree felony based on the value of the counterfeited item involved or the number of debit or credit cards involved.
- Provides that a person may be prosecuted for counterfeiting and related offenses, but that if the multiple offenses involve the same conduct and the same victim, they must merge for conviction and sentencing as allied offenses of similar import.
- Adds counterfeiting, and any comparable offense under the law of another state, to the list of offenses included within the definition of "corrupt activity" applicable to the Corrupt Activities Law.

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## CONTENT AND OPERATION

### Offense of counterfeiting

#### Prohibited conduct

The bill creates the offense of "counterfeiting." A person is guilty of counterfeiting if the person, with purpose to defraud or knowing that the person is facilitating a fraud, does any of the following:<sup>1</sup>

(1) Falsely makes, forges, counterfeits, or alters any "obligation or other security" (meaning, an instrument recognized as currency or legal tender or that is issued by the U.S. Treasury, including bills, coins, bonds, or checks<sup>2</sup>) of the United States;

(2) Passes, utters, sells, purchases, conceals, or transfers any counterfeit obligation or other security of the United States (to "utter" means to issue, publish, transfer, use, put or send into circulation, deliver, or display<sup>3</sup>);

(3) Possesses with the purpose to utter any obligation or other security of the United States, knowing it has been counterfeited;

(4) Without authorization of the issuer, falsely makes, forges, counterfeits, alters, or knowingly possesses any "access device" (meaning, any debit or credit card representing a monetary security or retail amount by any financial institution, including a bank, savings bank, savings and loan association, credit union, or business entity<sup>4</sup>).

#### Penalties

Under the bill, counterfeiting generally is a fourth degree felony and, in addition, the court must impose a fine of at least \$500 and not more than \$5,000. The penalty for counterfeiting increases if the value of the counterfeited obligations or other securities or access devices is \$5,000 or more or the offense involves five or more such devices, as follows:<sup>5</sup>

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<sup>1</sup> R.C. 2913.30(B).

<sup>2</sup> R.C. 2913.30(A)(2).

<sup>3</sup> R.C. 2913.01(H), not in the bill.

<sup>4</sup> R.C. 2913.30(A)(1).

<sup>5</sup> R.C. 2913.30(C).



- If the value of the counterfeited items is \$5,000 or more but less than \$100,000, or if the offense involves five or more access devices, counterfeiting is a third degree felony.
- If the value of the counterfeited items is \$100,000 or more but less than \$1 million, counterfeiting is a second degree felony.
- If the value of the counterfeited items is \$1 million or more, counterfeiting is a first degree felony.

### **Allied offenses of similar import**

The Revised Code specifies that when the same conduct by a defendant can be construed to constitute two or more allied offenses of similar import, the defendant may be charged with all of those offenses but may be "convicted" of only one of them.<sup>6</sup> Ohio's courts have held that, as used in this provision, a "conviction" consists of a guilty verdict *and* the imposition of a sentence or penalty.<sup>7</sup>

The bill states that a prosecution for counterfeiting does not preclude a prosecution for an offense under the statute that contains the general theft prohibitions or a prosecution for "forgery," "forging identification cards or selling or distributing forged identification cards," or "criminal simulation." However, the bill further provides that if an offender is convicted of counterfeiting and another of those offenses based on the same conduct involving the same victim as under the counterfeiting offense, the two or more offenses are allied offenses of similar import, meaning that the offender may be found guilty of and sentenced for only one of the offenses.<sup>8</sup>

### **Corrupt activity**

The bill adds the crime of "counterfeiting" to the definition of "corrupt activity" for purposes of the Corrupt Activities Law. "Corrupt activity" is engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in: (1) any of a list of offenses specified in current law, (2) any conduct constituting a violation of a law of any state other than Ohio that is substantially similar to any of those offenses if the defendant was convicted of the conduct in the other state, or (3) racketeering activity under federal law, animal or ecological terrorism, or certain organized retail theft conduct.<sup>9</sup> Under current law,

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<sup>6</sup> R.C. 2941.25(A), not in the bill.

<sup>7</sup> See, e.g., *State v. Williams* (2016), 148 Ohio St.3d 403.

<sup>8</sup> R.C. 2913.30(D).

<sup>9</sup> R.C. 2923.31(I).



unchanged by the bill, a person who engages in a "pattern of corrupt activity" may be subject to criminal penalties and fines, property forfeiture, a civil proceeding from a person seeking relief, and a corrupt activity lien.<sup>10</sup> A "pattern of corrupt activity" is two or more incidents of corrupt activity, whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event; at least one of the incidents must have occurred on or after January 1, 1986, and generally, the last of the incidents must have occurred within six years of any of the prior incidents.<sup>11</sup>

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## HISTORY

ACTION	DATE
Introduced	11-07-17
Reported, H. Criminal Justice	01-24-18
Passed by House (92-1)	03-21-18

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<sup>10</sup> R.C. 2923.32, 2923.34, and 2923.36, not in the bill.

<sup>11</sup> R.C. 2923.31(E).

