



Aida S. Montano

Bill Analysis

Legislative Service Commission

H.B. 585

124th General Assembly
(As Introduced)

Reps. Britton, Allen, Carano, R. Miller, D. Miller, Distel, Lendrum, Redfern, Sullivan, Krupinski, Perry

BILL SUMMARY

- Prohibits any person, with purpose to defraud or knowing that the person is facilitating a fraud and knowing or having reasonable cause to believe that the person will not actually be able to secure any reparations, from obtaining or attempting to obtain from another any fee, compensation, remuneration, or other benefit in return for promising to secure for the other person or for the other person's relative any reparations from any governmental or quasi-governmental entity, that are owed or purported to be owed as a result of the other person's or relative's ancestors having been a slave.
- Designates the above prohibition as "the offense of slavery reparations fraud."
- Provides that slavery reparations fraud is a felony of the fifth degree if the value of the fee, compensation, remuneration, or other benefit obtained by the offender or the detriment to the victim is less than \$5,000, a felony of the fourth degree if that value or detriment is \$5,000 or more but less than \$100,000, and a felony of the third degree if the value or detriment is \$100,000 or more.
- Authorizes the Attorney General to bring a civil action on behalf of the injured victim or victims to seek recovery from the offender of restitution to the victims and the costs of investigating the offense and prosecuting the civil action and specifies the procedures for the civil action.
- Permits the Attorney General to obtain satisfaction of the judgment in the civil action and, if the Attorney General believes that the judgment debtor does not have sufficient money to pay restitution and costs, to file a motion with the court for the issuance of an order for the seizure and

criminal forfeiture to the state of all property of the judgment debtor that was derived from or realized through the offense.

- Prescribes the procedures for a hearing on that motion, the issuance of an order of seizure and criminal forfeiture, the disposal and sale of the forfeited property, and the application of the proceeds of the sale.
- Provides that slavery reparations fraud is a theft offense for purposes of the theft and fraud laws, and engaging in, attempting or conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in conduct constituting slavery reparations fraud is a corrupt activity for purposes of the corrupt activity laws.

CONTENT AND OPERATION

Slavery reparations fraud offense

The bill prohibits any person, with purpose to defraud or knowing that the person is facilitating a fraud and knowing or having reasonable cause to believe that the person will not actually be able to secure any reparations, from obtaining or attempting to obtain from another any fee, compensation, remuneration, or other benefit in return for promising to secure for the other person or for a relative of the other person any reparations from the government of Ohio, the government of the United States, or any other governmental or quasi-governmental entity, that are owed or purported to be owed as a result of the ancestors of the other person or of the relative of the other person having been a slave. Whoever violates this prohibition is guilty of slavery reparations fraud. (R.C. 2913.50(A) and (B).)

Penalty

If the value of the fee, compensation, remuneration, or other benefit obtained by the offender or the detriment to the victim of the violation is less than \$5,000, slavery reparations fraud is a felony of the fifth degree. If that value or detriment is \$5,000 or more but less than \$100,000, slavery reparations fraud is a felony of the fourth degree. If that value or detriment is \$100,000 or more, slavery reparations fraud is a felony of the third degree. (R.C. 2913.50(B).)

Civil remedies

Under existing law, anyone injured in person or property by a criminal act has, and may recover full damages in, a civil action unless specifically excepted by law, may recover the costs of maintaining the civil action and attorney's fees if authorized by any provision of the Rules of Civil Procedure or another section of the Revised Code or under the common law of Ohio, and may recover punitive or

exemplary damages if authorized by R.C. 2315.21 or another section of the Revised Code. No record of a conviction, unless obtained by confession in open court, may be used as evidence in the civil action. (R.C. 2307.60--not in the bill.)

Attorney General's restitution action

The bill provides that notwithstanding the above provision in existing law, the Attorney General may bring a civil action in an appropriate court on behalf of any victim or victims injured by the offense of slavery reparations fraud. The civil action may seek recovery from the person who commits the offense of restitution to the victims of the offense, the costs of any investigation into the offense, and the costs of prosecuting the civil action. The restitution must include, but not be limited to: (1) all money paid by the victim and all property given or surrendered by the victim during the course of conduct constituting the offense and (2) all other expenses and lost financial value of the victim related to or resulting from that course of conduct. If the Attorney General proves by a preponderance of the evidence that the defendant in the action committed the offense, the court must enter judgment against the defendant for restitution to the victims of the violation, the costs of any investigation into the violation, and the costs of prosecuting the civil action. The judgment must be entered on behalf of the victims of the offense.

If the Attorney General obtains a judgment in a civil action as described above against a person who committed the offense, the Attorney General must apply any amount of money paid in satisfaction of the judgment initially to make restitution to the victims of the offense. After the victims receive complete restitution, the Attorney General must use the remaining amount of money so paid to repay the costs of the investigation and the costs of prosecution. (R.C. 2913.50(C).)

Satisfaction of judgment; criminal forfeiture

If the Attorney General obtains a judgment in a civil action as described above against a person who committed the offense, the Attorney General may use any proceedings or procedures to obtain satisfaction of the judgment, including, but not limited to, execution and garnishment proceedings, that are permitted to obtain satisfaction of a judgment in a civil action. In addition, if the Attorney General believes that the judgment debtor does not have sufficient money to pay the restitution and costs ordered in the judgment, the Attorney General may file a motion with the court that rendered the judgment that requests the court to issue an order requiring the seizure and criminal forfeiture to the state of all real and personal property of the judgment debtor that was derived from, or realized in whole or in part through, the offense that was the basis of the judgment and the forfeiture of that property. (R.C. 2913.50(D)(1).)

Hearing and court order. If the Attorney General files such a motion, the court must conduct a hearing to determine whether to issue the order requiring the seizure and forfeiture. The court must conduct the hearing in the same manner as a contraband forfeiture hearing under specified law (see **COMMENT 1**), except to the extent that the provisions of that law by their terms are clearly inapplicable to the hearing under the bill. Upon a demonstration by the Attorney General of the need for the seizure and forfeiture, the court at the hearing must issue an order requiring the seizure and criminal forfeiture of the property. The court must specify in the order the property that is to be seized and criminally forfeited. An order of seizure and criminal forfeiture entered by the court must authorize an appropriate law enforcement agency to seize the property declared forfeited in the order, upon the terms and conditions relating to the time and manner of seizure that the court determines proper. (R.C. 2913.50(D)(2).)

Interest in forfeited property. All right, interest, and title to the forfeited property vest in the state, effective from the date of seizure. However, no bona fide security interest in any property may be forfeited if the holder of the interest establishes by a preponderance of the evidence that: (1) the holder of the interest neither knew, nor should have known after a reasonable inquiry, that the property was derived from, or realized in whole or in part through, the offense that was the basis of the judgment in question and (2) the security interest was perfected pursuant to law prior to the seizure. If the holder of the interest satisfies the court that these requirements are met, the court must preserve the interest. In a case of that nature, the court must order that the holder be paid for the interest from the proceeds of any sale as described below. (R.C. 2913.50(D)(2).)

Disposal and sale. The law enforcement agency that seizes any property ordered criminally forfeited must hold it for disposal as described in the following paragraph. The agency must maintain an accurate record of each item of property so seized and held. The record must include the date on which each item was seized and the manner and date of disposition by the agency. (R.C. 2913.50(D)(2).)

The bill requires the Attorney General to do all of the following (R.C. 2913.50(D)(3)):

- (1) Sell any property ordered criminally forfeited as described above, without appraisal, at a public auction to the highest bidder for cash;
- (2) Prior to the sale, cause a notice of the proposed sale of the property to be given in accordance with law;
- (3) Apply the proceeds of the sale in the following order: (a) first, to the payment of the balance due on any security interest preserved as described above in "**Interest in forfeited property,**" (b) second, the remaining proceeds after

compliance with (a), above, for restitution to the victims of the offense, the costs of any investigation into the offense, and the costs of prosecuting the civil action for restitution, and (c) third, the remaining proceeds after compliance with (a) and (b), above, to the State General Revenue Fund.

Other remedies

The bill provides that the application of any civil remedy as described above does not preclude the application of any criminal remedy under the bill or any other provision of law, any delinquent child disposition under the Juvenile Code, or any relevant forfeiture provision under any provision of law (R.C. 2913.50(E)).

Slavery reparations fraud as theft offense or corrupt activity

The bill expands the definition of "theft offense" for purposes of the Theft and Fraud Law (R.C. Chapter 2913.) to include the offense of slavery reparations fraud (R.C. 2913.02(K)(1)). (See **COMMENT 2.**) The bill also expands the definition of "corrupt activity" under the Corrupt Activity Law (R.C. 2923.31 to 2923.36) to include engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in conduct constituting a violation of the bill's prohibition against slavery reparations fraud (R.C. 2923.31(I)(2)(a)). (See **COMMENT 3.**)

COMMENT

1. Under the Contraband Forfeiture Law, if the property seized was determined by the seizing law enforcement officer to be contraband because of its relationship to an underlying criminal offense, no forfeiture hearing is held unless the person pleads guilty to or is convicted of the commission of, or an attempt or conspiracy to commit, the offense or a different offense arising out of the same facts and circumstances. A forfeiture hearing must be held in a case of that nature no later than 45 days after the conviction, unless the time for the hearing is extended by the court for good cause shown. Where possible, a court holding a contraband forfeiture hearing must follow the Rules of Civil Procedure. (R.C. 2933.43(C)--not in the bill.)

Under the definition of "contraband" in R.C. 2901.01(A)(13)(d), which includes property that is forfeitable pursuant to a section of the Revised Code, the judgment debtor's real or personal property derived from, or realized in whole or in part through, the offense of slavery reparations fraud that was the basis of the civil judgment would be considered contraband.

2. The effects of the expansion of the definition of "theft offense" to include the new offense of slavery reparations fraud include the following (cited R.C. sections are not in the bill):

(a) A person who receives, retains, or disposes of property of another knowing or having reasonable cause to believe that the property has been obtained through the commission of a theft offense is guilty of receiving stolen property (R.C. 2913.51).

(b) The commission of or purpose to commit a theft offense is included as an element of the commission of another offense such as falsification in a theft offense (R.C. 2921.13) or theft in office (R.C. 2921.41).

(c) Prior conviction of a theft offense is a factor that enhances the penalty for certain offenses such as tampering with coin machines (R.C. 2911.32), cheating (R.C. 2915.05), or solicitation fraud under the Charitable Organizations Law (R.C. 1716.99).

(d) A court may require a person who is convicted of or pleads guilty to a misdemeanor to make restitution for all or part of the value of the property that is the subject of a theft offense (R.C. 2929.21). Restitution is one of the financial sanctions that a court may impose upon any offender for a felony (R.C. 2929.18).

(e) A person who, having been convicted of one or more theft offenses and having been imprisoned for one or more of those theft offenses, commits a subsequent theft offense is a "repeat offender" and is ineligible for a pre-trial diversion program (R.C. 2935.36).

(f) A person may recover certain compensatory and liquidated damages and administrative costs against a person who commits a theft offense (R.C. 2307.61) or may recover damages against the parent of a minor who commits a theft offense (R.C. 3109.09).

(g) An applicant for a certificate of registration as a telephone solicitor must disclose in the application any conviction of, any plea of guilty or plea of no contest to, any prosecution for, or any issuance against the applicant of an injunction, temporary restraining order, or final judgment or order in a civil or administrative action or any pending proceeding involving, a theft offense (R.C. 4719.02(B)). Any conviction of or plea of guilty or no contest to a theft offense is a ground for denial, suspension, or revocation of a certificate of registration of a telephone solicitor (R.C. 4719.03(B)). The failure of a telephone solicitor to notify the Attorney General of a conviction of or plea of guilty or no contest to a theft offense is a prohibited act in violation of R.C. 4719.08(H).

(h) A prosecutor must notify a board of education of the conviction of a board employee of a theft offense (R.C. 3319.20). Conviction of a theft offense is a ground for the refusal, limitation, suspension, or revocation of certain licenses granted by a board of education (R.C. 3319.31).

3. The effects of the expansion of the definition of "corrupt activity" to include engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in conduct constituting slavery reparations fraud include the following (cited R.C. sections are not in the bill):

(a) The following acts are included in the offense of *engaging in a pattern of corrupt activity* involving conduct constituting slavery reparations fraud (R.C. 2923.32(A)):

(i) Conducting or participating in, directly or indirectly, the affairs of an enterprise through a pattern of corrupt activity by a person employed by, or associated with, the enterprise;

(ii) Through a pattern of corrupt activity, acquiring or maintaining, directly or indirectly, any interest in, or control of, any enterprise or real property;

(iii) Using or investing, directly or indirectly, any part of the proceeds, or any proceeds derived from the use or investment of any of the proceeds, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise, by any person who knowingly has received any proceeds derived, directly or indirectly, from a pattern of corrupt activity.

In addition to any other penalty or disposition authorized or required by law, a court must order a person who is convicted of or pleads guilty to engaging in a pattern of corrupt activity or who is adjudicated delinquent by reason of that violation to criminally forfeit to the state any real or personal property in which the person has an interest and that was used in the course of or intended for use in the course of the offense, or that was derived from or realized through conduct constituting the offense, including any property constituting an interest in, means of control over, or influence over the enterprise involved in the offense and any property constituting proceeds derived from the offense (R.C. 2923.32(B)(3)).

The prosecuting attorney of the county in which engaging in a pattern of corrupt activity or a conspiracy to engage in a pattern of corrupt activity occurs may institute a civil proceeding in an appropriate court seeking relief from any person whose conduct constituted such offense or conspiracy. Generally, any person who is injured or threatened with injury by the offense of engaging in a pattern of corrupt activity may institute a civil proceeding in an appropriate court

seeking relief from any person whose conduct constituted or allegedly constituted that offense or conspired or allegedly conspired to commit that offense.

If the plaintiff in a civil action instituted as described in the previous paragraph proves the violation by a preponderance of the evidence, the court, after making due provision for the rights of innocent persons, may grant relief by entering any appropriate orders to ensure that the violation will not continue or be repeated. The court may grant injunctive relief without a showing of special or irreparable injury. In a civil proceeding by an injured person, any person directly or indirectly injured by conduct constituting the offense of engaging in a pattern of corrupt activity or a conspiracy to commit the offense, other than the offender or a conspirator, also has a cause of action for triple the actual damages the person sustained. If a person, other than an individual, is not convicted of the offense of engaging in a pattern of corrupt activity, the prosecuting attorney may institute proceedings against the person to recover a civil penalty for conduct that the prosecuting attorney proves by clear and convincing evidence constitutes engaging in a pattern of corrupt activity. (R.C. 2923.34.)

At any time during the pendency of any criminal, juvenile, or civil proceeding as described above, the state may file a corrupt activity lien notice with the county recorder of any county in which property subject to forfeiture may be located (R.C. 2923.36).

(b) The Organized Crime Investigations Commission coordinates investigations of organized criminal activity, which includes any combination or conspiracy to engage in activity that constitutes engaging in a pattern of corrupt activity (R.C. 177.01).

(c) The Check Cashing Business Law prohibits any person from conducting or attempting to conduct a transaction: (i) knowing that the property involved in the transaction is the proceeds of some form of unlawful activity with the purpose of committing or furthering the commission of corrupt activity or (ii) with the purpose to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of corrupt activity. That Law also prohibits any person from conducting or structuring a transaction that involves the proceeds of corrupt activity that is of a value greater than \$10,000 if the person knows or has reasonable cause to know that the transaction involves the proceeds of corrupt activity. (R.C. 1315.55(A).)

(d) The Conspiracy Law prohibits any person, with purpose to commit or to promote or facilitate the commission of any of specified offenses, including engaging in a pattern of corrupt activity, from doing either of the following: (i) with another person or persons, plan or aid in planning the commission of any of the specified offenses or (ii) agree with another person or persons that one or more

of them will engage in conduct that facilitates the commission of any of the specified offenses (R.C. 2923.01(A)).

(e) The Felony Sentencing Law requires a court to impose a prison term for corrupt activity in violation of R.C. 2923.32 when the most serious offense in the pattern of corrupt activity that is the basis of the offense is a felony of the first degree (R.C. 2929.12(F)). If a court imposing sentence upon an offender for a felony finds that the offender is guilty of corrupt activity with the most serious offense in the pattern of corrupt activity being a felony of the first degree, the court must impose upon the offender for the felony violation a ten-year prison term that cannot be reduced (R.C. 2929.14(D)(3)(a)).

(f) No reduction of sentence may be granted to a person who is serving a term of imprisonment for engaging in a pattern of corrupt activity (R.C. 2967.18(E)(1)).

(g) No permit or license for an off-site facility may be issued or renewed by the Director of Environmental Protection, the Hazardous Waste Facility Board, or a board of health if any individual or business concern required to be listed in the disclosure statement or shown to have a beneficial interest in the business of the applicant or the permittee, other than an equity interest or debt liability, has been convicted of engaging in a pattern of corrupt activity (R.C. 3734.44(B)).

(h) An applicant for a certificate of registration as a telephone solicitor must disclose any conviction of, any plea of guilty or plea of no contest to, any prosecution for, or any issuance against the applicant of an injunction, temporary restraining order, or final judgment or order in a civil or administrative action or any pending proceeding involving, engaging in a pattern of corrupt activity (R.C. 4719.02(B)). Any conviction of or plea of guilty or no contest to engaging in a pattern of corrupt activity is a ground for denial, suspension, or revocation of a certificate of registration of a telephone solicitor (R.C. 4719.03(B)). The failure of a telephone solicitor to notify the Attorney General of a conviction of or plea of guilty or no contest to engaging in corrupt activity is a prohibited act in violation of R.C. 4719.08(H).

HISTORY

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