MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Senator(s) Seymour

To: Judiciary, Division B

SENATE BILL NO. 2129

AN ACT TO AMEND SECTION 97-43-3, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF ORGANIZED RETAIL THEFT AND ORGANIZED RETAIL THEFT ENTERPRISE; TO AMEND SECTION 97-43-3.1, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 97-43-3, Mississippi Code of 1972, is amended as follows:

97-43-3. The following terms shall have the meanings ascribed to them herein unless the context requires otherwise:

(a) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce or intimidate another person to commit any crime which is chargeable under the following provisions of the Mississippi Code of 1972:

(1) Section 97-19-71, which relates to fraud in connection with any state or federally funded assistance programs.

(2) Section 75-71-735, which relates to violations of the Mississippi Securities Act.

(3) Sections 45-13-105, 45-13-109, 97-37-23 and 97-37-25, which relate to unlawful possession, use and transportation of explosives.

(4) Sections 97-3-19 and 97-3-21, which relate to murder.

(5) Section 97-3-7(2), which relates to aggravated assaults.

(6) Section 97-3-53, which relates to kidnapping.

(7) Sections 97-3-73 through 97-3-83, which relate to robbery.

(8) Sections 97-17-19 through 97-17-37, which relate to burglary.

(9) Sections 97-17-1 through 97-17-13, which relate to arson.

(10) Sections 97-29-49 and 97-29-51, which relate to prostitution.

(11) Sections 97-5-5 and 97-5-31 through 97-5-37, which relate to the exploitation of children and enticing children for concealment, prostitution or marriage.

(12) Section 41-29-139, which relates to violations of the Uniform Controlled Substances Law; provided, however, that in order to be classified as "racketeering activity," such offense must be punishable by imprisonment for more than one (1) year.

(13) Sections 97-21-1 through 97-21-63, which relate to forgery and counterfeiting.

(14) Sections 97-9-1 through 97-9-77, which relate to offenses affecting administration of justice.

(15) Sections 97-33-1 through 97-33-49, which relate to gambling and lotteries.

(16) Section 97-3-54 et seq., which relate to human trafficking.

(b) "Unlawful debt" means money or any other thing of value constituting principal or interest of a debt which is legally unenforceable, in whole or in part, because the debt was incurred or contracted in gambling activity in violation of state law or in the business of lending money at a rate usurious under state law, where the usurious rate is at least twice the enforceable rate.

(c) "Enterprise" means any individual, sole proprietorship, partnership, corporation, union or other legal entity, or any association or group of individuals associated in fact although not a legal entity. It includes illicit as well as licit enterprises and governmental, as well as other, entities.

(d) "Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents,

provided at least one (1) of such incidents occurred after July 1, 1984, and that the last of such incidents occurred within five (5) years after a prior incident of racketeering conduct.

(e) "Organized retail theft" means (1) obtaining retail merchandise in quantities that would not normally be purchased for personal use or consumption, for the purpose of reselling or otherwise returning the illegally gained retail merchandise to commerce, by theft, embezzlement, fraud, false pretense or other illegal means; or (2) the recruitment of persons to participate in such criminal activities.

(f) "Organized retail theft enterprise" or "organized retail fraud enterprise" means any association of two (2) or more persons who engage in the conduct of or are associated for the purpose of effectuating the transfer or sale of merchandise, services or information that has a pecuniary value that causes a loss to the victim and includes the planned or systematic design or scheme to carry out organized retail theft or organized retail fraud.

SECTION 2. Section 97-43-3.1, Mississippi Code of 1972, is amended as follows:

97-43-3.1. (1) It shall be unlawful for any person to conduct, organize, supervise or manage, directly or indirectly, an organized retail theft or retail fraud enterprise. *** * *** The criminal conduct that may constitute the elements of an illegal organized retail theft or retail fraud enterprise *** * *** includes,

but is not limited to, the conduct proscribed in the following provisions:

(a) Section 97-23-93, which relates to shoplifting;

(b) Sections 97-45-3 and 97-45-5, which relate to computer fraud;

(c) Section 97-45-19, which relates to fraudulent use of identity;

(d) Section 97-9-79, which relates to false information;

(e) Section 97-19-83, which relates to fraud by mail or other means of communication;

(f) Section 97-19-85, which relates to the fraudulent use of a social security number, credit card or debit card number or other identifying information; and

(g) Section 97-45-19, which relates to obtaining personal identity information of another person without authorization.

(2) It shall be unlawful for any person who has, with criminal intent, received any proceeds or services derived, directly or indirectly, from an organized theft or fraud enterprise.

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(*** * ***3) The value of the merchandise or services or the pecuniary loss involved in a violation of this section may be aggregated in determining the grade of the offense where the acts

or conduct constituting a violation were committed pursuant to *** * *** a single scheme or course of conduct, whether from the same person or several persons, or were committed in furtherance of or in conjunction with an organized retail theft or retail fraud enterprise.

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SECTION 3. This act shall take effect and be in force from and after July 1, 2021.