

As Passed by the House (Corrected Version)

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Sub. S. B. No. 223

Senator Bacon

**Cosponsors: Senators Wagoner, Faber, Turner, Kearney, Obhof, Balderson,
Beagle, Burke, Cafaro, Coley, Daniels, Eklund, Hite, Hughes, Jones, Lehner,
Manning, Niehaus, Oelslager, Sawyer, Schaffer, Schiavoni, Seitz, Smith,
Tavares, Widener**

**Representatives Winburn, Pillich, Williams, Slaby, Hayes, Bubb, Sprague,
Uecker, Young, Conditt, Blessing, Anielski, Antonio, Boose, Boyd, Buchy,
Combs, DeVitis, Dovilla, Grossman, Hackett, Hall, Hill, Johnson, McGregor,
Newbold, O'Brien, Patmon, Roegner, Thompson Speaker Batchelder**

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A B I L L

To amend sections 2913.05 and 4719.17 and to enact 1
section 109.88 of the Revised Code to allow the 2
Attorney General to investigate the offenses of 3
unauthorized use of property and 4
telecommunications fraud, to modify the penalties 5
for telecommunications fraud, and to create the 6
offense of telecommunications fraud perpetrated 7
against an elderly person or disabled adult. 8

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

Section 1. That sections 2913.05 and 4719.17 be amended and 9
section 109.88 of the Revised Code be enacted to read as follows: 10

Sec. 109.88. (A) If the attorney general has reasonable cause 11
to believe that a person or enterprise has engaged in, is engaging 12

in, or is preparing to engage in a violation of any provision of 13
section 2913.04 or 2913.05 of the Revised Code, the attorney 14
general may investigate the alleged violation. 15

(B) For purposes of an investigation under division (A) of 16
this section, the attorney general may issue subpoenas and 17
subpoenas duces tecum. The attorney general may compel the 18
attendance of witnesses and the production of records and papers 19
of all kinds and descriptions that are relevant to the 20
investigation, including, but not limited to, any books, accounts, 21
documents, and memoranda pertaining to the subject of the 22
investigation. Upon the failure of any person to comply with any 23
subpoena or subpoena duces tecum issued by the attorney general 24
under this section, the attorney general may apply to the court of 25
common pleas in Franklin county or in any county in which an 26
element of the crime occurred for a contempt order as in the case 27
of disobedience of the requirements of a subpoena issued from the 28
court of common pleas or a refusal to testify on a subpoena. A 29
subpoena or subpoena duces tecum issued by the attorney general 30
under this section to a provider of electronic communication 31
services or remote computing services shall be subject to the 32
limitations set forth in the "Electronic Communications Privacy 33
Act of 1986," 18 U.S.C. 2703. 34

(C) Any information gathered by the attorney general during 35
the course of the investigation that is in the possession of the 36
attorney general, a prosecuting attorney, a law enforcement 37
agency, or a special prosecutor is a confidential law enforcement 38
investigatory record for purposes of section 149.43 of the Revised 39
Code. No provision contained in this section affects or limits any 40
right of discovery granted to any person under the Revised Code, 41
the Rules of Criminal Procedure, or the Rules of Juvenile 42
Procedure. 43

Sec. 2913.05. (A) No person, having devised a scheme to defraud, shall knowingly disseminate, transmit, or cause to be disseminated or transmitted by means of a wire, radio, satellite, telecommunication, telecommunications device, or telecommunications service any writing, data, sign, signal, picture, sound, or image with purpose to execute or otherwise further the scheme to defraud.

(B) ~~Whoever~~ If an offender commits a violation of division (A) of this section and the violation occurs as part of a course of conduct involving other violations of division (A) of this section or violations of, attempts to violate, conspiracies to violate, or complicity in violations of section 2913.02, 2913.04, 2913.11, 2913.21, 2913.31, 2913.42, 2913.43, or 2921.13 of the Revised Code, the court, in determining the degree of the offense pursuant to division (C) or (D) of this section, may aggregate the value of the benefit obtained by the offender or of the detriment to the victim of the fraud in the violations involved in that course of conduct. The course of conduct may involve one victim or more than one victim.

(C) Except as otherwise provided in division (D) of this section, whoever violates this section is guilty of telecommunications fraud. Except as otherwise provided in this division, telecommunications fraud is a felony of the fifth degree. If the value of the benefit obtained by the offender or of the detriment to the victim of the fraud is ~~five~~ one thousand dollars or more but less than ~~one hundred~~ seven thousand five hundred dollars, telecommunications fraud is a felony of the fourth degree. If the value of the benefit obtained by the offender or of the detriment to the victim of the fraud is ~~one hundred~~ seven thousand five hundred dollars or more but less than one hundred fifty thousand dollars, telecommunications fraud is a felony of the third degree. If the value of the benefit obtained

by the offender or of the detriment to the victims of the fraud is 76
one hundred fifty thousand dollars or more but less than one 77
million dollars, telecommunications fraud is a felony of the 78
second degree. If the value of the benefit obtained by the 79
offender or of the detriment to the victims of the fraud is one 80
million dollars or more, telecommunications fraud is a felony of 81
the first degree. 82

(D) If the victim of the offense is an elderly person or 83
disabled adult, a violation of this section is telecommunications 84
fraud perpetrated against an elderly person or disabled adult, and 85
division (D) of this section applies. Except as otherwise provided 86
in this division, telecommunications fraud perpetrated against an 87
elderly person or disabled adult is a felony of the fourth degree. 88
If the value of the benefit obtained by the offender or of the 89
detriment to the victims of the fraud is one thousand dollars or 90
more but less than seven thousand five hundred dollars, 91
telecommunications fraud perpetrated against an elderly person or 92
disabled adult is a felony of the third degree. If the value of 93
the benefit obtained by the offender or of the detriment to the 94
victims of the fraud is seven thousand five hundred dollars or 95
more but less than one hundred fifty thousand dollars, 96
telecommunications fraud perpetrated against an elderly person or 97
disabled adult is a felony of the second degree. If the value of 98
the benefit obtained by the offender or of the detriment to the 99
victims of the fraud is one hundred fifty thousand dollars or 100
more, telecommunications fraud perpetrated against an elderly 101
person or disabled adult is a felony of the first degree. 102

Sec. 4719.17. There is hereby created in the state treasury 103
the telemarketing fraud enforcement fund. The treasurer of state 104
shall deposit into the fund registration fees paid pursuant to 105
divisions (A) and (D) of section 4719.02 of the Revised Code. The 106
consumer protection section of the office of the attorney general 107

shall use the moneys in the fund ~~for the administration and~~ 108
~~enforcement of the program of registration established in sections~~ 109
~~4719.01 to 4719.18 of the Revised Code and also to pay for any~~ 110
expenses reasonably related to the administration of Chapter 4719. 111
of the Revised Code, the investigation or prosecution of any 112
crimes investigated by the consumer protection section, or for 113
educational activities that advance the purposes of ~~sections~~ 114
~~4719.01 to 4719.18 Chapter 4719.~~ of the Revised Code as set forth 115
in section 4719.18 of the Revised Code. 116

Section 2. That existing sections 2913.05 and 4719.17 of the 117
Revised Code are hereby repealed. 118