

**As Reported by the House Criminal Justice Committee (Corrected
Version)**

**129th General Assembly
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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**

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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 44

defraud, shall knowingly disseminate, transmit, or cause to be 45
disseminated or transmitted by means of a wire, radio, satellite, 46
telecommunication, telecommunications device, or 47
telecommunications service any writing, data, sign, signal, 48
picture, sound, or image with purpose to execute or otherwise 49
further the scheme to defraud. 50

(B) ~~Whoever~~ If an offender commits a violation of division 51
(A) of this section and the violation occurs as part of a course 52
of conduct involving other violations of division (A) of this 53
section or violations of, attempts to violate, conspiracies to 54
violate, or complicity in violations of section 2913.02, 2913.04, 55
2913.11, 2913.21, 2913.31, 2913.42, 2913.43, or 2921.13 of the 56
Revised Code, the court, in determining the degree of the offense 57
pursuant to division (C) or (D) of this section, may aggregate the 58
value of the benefit obtained by the offender or of the detriment 59
to the victim of the fraud in the violations involved in that 60
course of conduct. The course of conduct may involve one victim or 61
more than one victim. 62

(C) Except as otherwise provided in division (D) of this 63
section, whoever violates this section is guilty of 64
telecommunications fraud. Except as otherwise provided in this 65
division, telecommunications fraud is a felony of the fifth 66
degree. If the value of the benefit obtained by the offender or of 67
the detriment to the victim of the fraud is ~~five~~ one thousand 68
dollars or more but less than ~~one hundred~~ seven thousand five 69
hundred dollars, telecommunications fraud is a felony of the 70
fourth degree. If the value of the benefit obtained by the 71
offender or of the detriment to the victim of the fraud is ~~one~~ 72
~~hundred~~ seven thousand five hundred dollars or more but less than 73
one hundred fifty thousand dollars, telecommunications fraud is a 74
felony of the third degree. If the value of the benefit obtained 75
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 million dollars, telecommunications fraud is a felony of the second degree. If the value of the benefit obtained by the offender or of the detriment to the victims of the fraud is one million dollars or more, telecommunications fraud is a felony of the first degree. 77
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(D) If the victim of the offense is an elderly person or disabled adult, a violation of this section is telecommunications fraud perpetrated against an elderly person or disabled adult, and division (D) of this section applies. Except as otherwise provided in this division, telecommunications fraud perpetrated against an elderly person or disabled adult is a felony of the fourth degree. If the value of the benefit obtained by the offender or of the detriment to the victims of the fraud is one thousand dollars or more but less than seven thousand five hundred dollars, telecommunications fraud perpetrated against an elderly person or disabled adult 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 seven thousand five hundred dollars or more but less than one hundred fifty thousand dollars, telecommunications fraud perpetrated against an elderly person or disabled adult is a felony of the second degree. If the value of the benefit obtained by the offender or of the detriment to the victims of the fraud is one hundred fifty thousand dollars or more, telecommunications fraud perpetrated against an elderly person or disabled adult is a felony of the first degree. 83
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Sec. 4719.17. There is hereby created in the state treasury the telemarketing fraud enforcement fund. The treasurer of state shall deposit into the fund registration fees paid pursuant to divisions (A) and (D) of section 4719.02 of the Revised Code. The consumer protection section of the office of the attorney general shall use the moneys in the fund ~~for the administration and~~ 103
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~~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