

**As Reported by the Senate Judiciary Committee**

**129th General Assembly**

**Regular Session**

**2011-2012**

**Sub. S. B. No. 223**

**Senator Bacon**

**Cosponsors: Senators Wagoner, Faber, Turner, Kearney, Obhof**

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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 shall be subject to the limitations set forth in the 32  
"Electronic Communications Privacy Act of 1986," 18 U.S.C. 2703. 33

(C) Any information gathered by the attorney general during 34  
the course of the investigation that is in the possession of the 35  
attorney general, a prosecuting attorney, a law enforcement 36  
agency, or a special prosecutor is a confidential law enforcement 37  
investigatory record for purposes of section 149.43 of the Revised 38  
Code. No provision contained in this section affects or limits any 39  
right of discovery granted to any person under the Revised Code, 40  
the Rules of Criminal Procedure, or the Rules of Juvenile 41  
Procedure. 42

**Sec. 2913.05.** (A) No person, having devised a scheme to 43  
defraud, shall knowingly disseminate, transmit, or cause to be 44  
disseminated or transmitted by means of a wire, radio, satellite, 45  
telecommunication, telecommunications device, or 46  
telecommunications service any writing, data, sign, signal, 47  
picture, sound, or image with purpose to execute or otherwise 48  
further the scheme to defraud. 49

(B) If an offender commits a violation of division (A) of 50

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

(C) Whoever violates this section, subject to division (B) of 62  
this section, is guilty of telecommunications fraud if the victim 63  
is not an elderly person or disabled adult. Except as otherwise 64  
provided in this division, telecommunications fraud is a felony of 65  
the fifth degree. If the value of the benefit obtained by the 66  
offender or of the detriment to the victim of the fraud is ~~five~~ 67  
~~one~~ thousand dollars or more but less than ~~one hundred~~ seven 68  
thousand five hundred dollars, telecommunications fraud is a 69  
felony of the fourth degree. If the value of the benefit obtained 70  
by the offender or of the detriment to the victim of the fraud is 71  
~~one hundred~~ seven thousand five hundred dollars or more but less 72  
than one hundred fifty thousand dollars, telecommunications fraud 73  
is a felony of the third degree. If the value of the benefit 74  
obtained by the offender or of the detriment to the victims of the 75  
fraud is one hundred fifty thousand dollars or more but less than 76  
one million dollars, telecommunications fraud is a felony of the 77  
second degree. If the value of the benefit obtained by the 78  
offender or of the detriment to the victims of the fraud is one 79  
million dollars or more, telecommunications fraud is a felony of 80  
the first degree. 81

(D) If the victim of the offense is an elderly person or 82

disabled adult and the offender knows or has reasonable cause to 83  
know that the victim of the offense is an elderly person or 84  
disabled adult, a violation of this section is telecommunications 85  
fraud perpetrated against an elderly person or disabled adult, and 86  
division (D) of this section applies. Except as otherwise provided 87  
in this division, telecommunications fraud perpetrated against an 88  
elderly person or disabled adult is a felony of the fourth degree. 89  
If the value of the benefit obtained by the offender or of the 90  
detriment to the victims of the fraud is one thousand dollars or 91  
more but less than seven thousand five hundred dollars, 92  
telecommunications fraud perpetrated against an elderly person or 93  
disabled adult is a felony of the third degree. If the value of 94  
the benefit obtained by the offender or of the detriment to the 95  
victims of the fraud is seven thousand five hundred dollars or 96  
more but less than one hundred fifty thousand dollars, 97  
telecommunications fraud perpetrated against an elderly person or 98  
disabled adult is a felony of the second degree. If the value of 99  
the benefit obtained by the offender or of the detriment to the 100  
victims of the fraud is one hundred fifty thousand dollars or 101  
more, telecommunications fraud perpetrated against an elderly 102  
person or disabled adult is a felony of the first degree. 103

**Sec. 4719.17.** There is hereby created in the state treasury 104  
the telemarketing fraud enforcement fund. The treasurer of state 105  
shall deposit into the fund registration fees paid pursuant to 106  
divisions (A) and (D) of section 4719.02 of the Revised Code. The 107  
consumer protection section of the office of the attorney general 108  
shall use the moneys in the fund ~~for the administration and~~ 109  
~~enforcement of the program of registration established in sections~~ 110  
~~4719.01 to 4719.18 of the Revised Code and also to pay for any~~ 111  
expenses reasonably related to the administration of Chapter 4719. 112  
of the Revised Code, the investigation or prosecution of any 113  
crimes investigated by the consumer protection section, or for 114

educational activities that advance the purposes of ~~sections~~ 115  
~~4719.01 to 4719.18~~ Chapter 4719. of the Revised Code as set forth 116  
in section 4719.18 of the Revised Code. 117

**Section 2.** That existing sections 2913.05 and 4719.17 of the 118  
Revised Code are hereby repealed. 119