

AN ACT

To amend sections 109.87, 109.88, and 2913.05 of the Revised Code to include within the offense of telecommunications fraud providing misleading or inaccurate caller identification information, allow the Attorney General to prosecute offenses of unauthorized use of property and telecommunications fraud, and prohibit any person, entity, or merchant from violating the federal Telemarketing and Consumer Fraud and Abuse Prevention Act.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 109.87, 109.88, and 2913.05 of the Revised Code be amended to read as follows:

Sec. 109.87. (A)(1) Unless otherwise defined in this section, the terms that are used in this section have the same meanings as in the applicable federal act or rule.

(2) As used in this section, "federal:

(a) "Federal act or rule" means the "Telemarketing and Consumer Fraud and Abuse Prevention Act," 108 Stat. 1545 to 1551, 15 U.S.C. 6101 to 6108, the "Telephone Consumer Protection Act of 1991," 105 Stat. 2395, 47 U.S.C. 227, any amendment or reenactment of either of those acts, any rule adopted or issued pursuant to either of those acts, or any amendment of that rule.

(2) The terms that are used in this section have the same meanings as in the applicable federal act or rule (b) "Voice service provider" means any entity originating, carrying, or terminating voice calls through time-division multiplexing, voice over internet protocol, including interconnected or one-way voice over internet protocol, or commercial mobile radio service.

(c) "Voice service" means any service that is interconnected with the public switched telephone network, directly or as an intermediary, and that furnishes voice communications to an end user using resources from the North American numbering plan or any successor to the North American numbering plan adopted by the federal communications commission under the Communications Act of 1934, 47 U.S.C. 251(e)(1), and includes both of the following:

(i) A transmission from a telephone facsimile machine, computer, or other device to a telephone facsimile machine.

(ii) Without limitation, any service that enables real-time, two-way voice communications, including any service that requires internet protocol-compatible customer premises equipment out-bound calling, whether or not the service is one-way or two-way voice over internet protocol.

(d)(i) "Text message" means a message consisting of text, images, sounds, or other information that is transmitted to or from a device that is identified as the receiving or transmitting device by means of a ten-digit telephone number or N-1-1 service code and includes a short message service and a multimedia message service.

(ii) "Text message" does not include a real-time, two-way voice or video communication or a message sent over an internet protocol-enabled messaging service to another user of the same messaging service, except a message described in division (A)(2)(d)(i) of this section.

(e) "Text messaging service" means a service that enables the transmission or receipt of a text message, including a service provided as part of or in connection with a voice service.

(B)(1) No person, entity, merchant, seller, or telemarketer shall engage in any act or practice in violation of any provision of a federal act or rule.

(2)(a) No person shall provide substantial assistance or support to any person, entity, merchant, seller, or telemarketer when that person knows or consciously avoids knowing that the other person, entity, merchant, seller, or telemarketer is engaged in any act or practice that violates any provision of a federal act or rule.

(b) For purposes of division (B)(2)(a) of this section, "substantial assistance or support" does not include the provision of a voice service to a third party by a voice service provider if one or more of the following is true:

(i) The voice service provider is not designated as a non-cooperative carrier by the consortium registered with the federal communications commission pursuant to 47 C.F.R. 64.1203.

(ii) The network of the voice service provider does not originate the voice service or text messaging service.

(iii) The network of the voice service provider is not the first domestic provider handling the voice service or text messaging service that originates outside of the United States.

(3) The attorney general, in any proceedings under this section, shall recognize any exemptions recognized by the federal communications commission under the "Telephone Consumer Protection Act of 1991," 105 Stat. 2395, 47 U.S.C. 227, any amendment or reenactment of that act, any rule adopted or issued pursuant to that act, or any amendment of that rule.

(C)(1) If the attorney general, as a result of complaints or the attorney general's own inquiries, has reason to believe that a person has engaged, is engaging, or is preparing to engage in a violation of this section or any provision of a federal act or rule, the attorney general may investigate the alleged violation. For purposes of an investigation under division (C)(1) of this section, the attorney general may administer oaths, subpoena witnesses, adduce evidence, and require the production of any relevant matter.

(2) If the matter to be produced under division (C)(1) of this section is located outside this state, the attorney general may designate any representative, including any official of the state in which the matter is located, to inspect the matter on the behalf of the attorney general. The person subpoenaed may make the matter available to the attorney general at a convenient location within the state or pay the reasonable and necessary expenses for the attorney general or the attorney general's representative to examine the matter at the place where it is located, provided that those expenses shall not be charged to a party that subsequently is not found to have engaged in a violation of this section or any provision of a federal act or rule.

(3) A person subpoenaed under division (C)(1) of this section may file a motion to extend the day on which the subpoena is to be returned or to modify or quash the subpoena, for good cause shown, in the court of common pleas of Franklin county or of the county in this state in which the person resides or in which the person's principal place of business is located. The person may file the

motion not later than twenty days after the service of the subpoena.

(4) A person subpoenaed under division (C)(1) of this section shall comply with the terms of the subpoena unless the parties agree to modify the terms of the subpoena or unless the court has modified or quashed the subpoena, extended the day on which the subpoena is to be returned, or issued any other order with respect to the subpoena prior to the day on which the subpoena is to be returned. If a person fails without lawful excuse to testify or to produce relevant matter pursuant to a subpoena, the attorney general may apply to the court of common pleas of the county in which the person subpoenaed resides or in which the person's principal place of business is located for an order that compels compliance with the subpoena.

(5) If an individual subpoenaed under division (C)(1) of this section refuses to testify or to produce relevant matter pursuant to the subpoena on the ground that the testimony or matter may incriminate the individual, the attorney general may request the court to order the individual to provide the testimony or matter. With the exception of a prosecution for perjury or a civil action for damages under division (D)(1) of this section, an individual who complies with a court order to provide testimony or matter, after asserting a privilege against self-incrimination to which the individual is entitled by law, shall not be subjected to a criminal proceeding or a civil penalty or forfeiture on the basis of the testimony or matter required to be disclosed or testimony or matter discovered through that testimony or matter required to be disclosed.

(6) In conducting an investigation under this section, the attorney general shall not publicly disclose the identity of persons, entities, merchants, sellers, or telemarketers investigated or the facts developed in the investigation unless this information has become a matter of public record in enforcement proceedings or if those being investigated have consented in writing to public disclosure.

(7) In conducting an investigation under this section, the attorney general shall cooperate with state and local officials of other states and officials of the federal government in the administration of comparable laws and regulations.

(8) The attorney general may do either of the following:

(a) During an investigation under division (C) of this section, afford the person who is the subject of the investigation, in a manner considered appropriate to that person, an opportunity to cease and desist from any suspected violation of this section or any provision of a federal act or rule. The attorney general may suspend the investigation during the period that the attorney general permits the person to cease and desist from that suspected violation. The suspension of the investigation or the affording of an opportunity to cease and desist shall not prejudice or prohibit any further investigation by the attorney general under division (C) of this section.

(b) Terminate an investigation under division (C) of this section upon acceptance of a written assurance of voluntary compliance from a person who is suspected of a violation of this section or any provision of a federal act or rule. The acceptance of an assurance under division ~~(C)(6)(b)-(C)(8)~~ (b) of this section may be conditioned upon an undertaking to reimburse or to take other appropriate corrective action with respect to identifiable telephone service subscribers who are damaged by an alleged violation of this section or any provision of a federal act or rule. An assurance of compliance given by a person under division ~~(C)(6)(b)-(C)(8)(b)~~ of this section is not evidence of a violation of this section or any provision of a federal act or rule. The attorney general, at any time, may reopen an

investigation terminated by the acceptance of an assurance of voluntary compliance, if the attorney general believes that further proceedings are in the public interest. Evidence of a violation of an assurance of voluntary compliance is prima-facie evidence of an act or practice in violation of this section or the applicable provision of a federal act or rule if the evidence is presented after the violation in a civil action brought under division (D)(1) of this section. An assurance of voluntary compliance may be filed with the court and if approved by the court, entered as a consent judgment in the action.

~~(7)-(9)~~ The procedures that are available to the attorney general under division (C) of this section are cumulative and concurrent, and the exercise of one procedure by the attorney general does not preclude or require the exercise of any other procedure.

(D)(1) If, by the attorney general's own inquiries or as a result of complaints or an investigation conducted under division (C) of this section, the attorney general has reasonable cause to believe that a person has engaged or is engaging in a violation of any provision of this section or of a federal act or rule, the attorney general, subject to division ~~(D)(2) or (D)(3) or (4)~~ of this section, may bring in the appropriate court of common pleas of this state or in the appropriate district court of the United States, but not in both courts, a civil action against the alleged violator for injunctive relief ~~or a civil action against the alleged violator for damages, or both, and civil penalties~~ pursuant to the federal act or rule, on behalf of the residents of this state who have been subjected to ~~telemarketing~~ acts or practices in violation of this section. The attorney general may bring the action under this section or under the applicable federal act or rule, but the attorney general shall not plead a violation of both this section and the applicable federal act or rule in the action.

~~(2)~~ On the motion of the attorney general or on its own motion, a court may impose a civil penalty of five hundred dollars for a each violation of the provision of this section or of the federal act or rule that is the subject of the action. ~~The amount of any award of damages made or civil penalty imposed under division (D)(1) of this section shall not exceed any maximum allowable amount of damages or civil penalty that is specified in the applicable federal act or rule.~~ If the court finds the defendant willfully or knowingly committed the violation, the court may impose a civil penalty of one thousand five hundred dollars for each violation of the provision of this section or of the federal act or rules that is the subject of the action. An award of damages or civil penalties may be recovered under this section or under the applicable federal act or rule, but an award of damages or civil penalties shall not be recovered under both this section and the applicable federal act or rule.

~~(2)-(3)~~ If a civil action has been instituted by or on behalf of the federal trade commission or the federal communications commission for a violation of any provision of an applicable federal act or rule, the attorney general, during the pendency of that action, shall not institute any civil action under division (D)(1) of this section against any defendant that is named in the complaint in the civil action that has been instituted by or on behalf of the federal trade commission or the federal communications commission, whichever is applicable, for any violation that is alleged in that complaint.

~~(3)-(4)~~ If a civil action that has been instituted by or on behalf of the federal trade commission or the federal communications commission for a violation of any provision of an applicable federal act or rule affecting the residents of this state is litigated to its conclusion and the federal trade commission or the federal communications commission recovers an award of damages

or civil penalties or obtains any relief under the applicable federal act or rule, the attorney general shall not institute any civil action under division (D)(1) of this section for any violation within the same time period that is alleged in the civil action that was instituted as described in division ~~(D)(3)~~ (D)(4) of this section and in which the federal trade commission or federal communications commission has recovered the damages or civil penalties or obtained the relief.

(5) No action may be brought by the attorney general under this section for damages or a civil penalty more than five years after the occurrence of the violation.

(E) Any civil action that the attorney general brings in a federal court under division (D)(1) of this section shall comply with the applicable provisions of the federal act or rule the violation of which is the subject of the action.

(F) The attorney general shall deposit any civil penalties that are imposed under division ~~(D)~~ (+)(D)(2) of this section to the credit of the telephone solicitation protection telemarketing fraud enforcement fund, which is hereby created in the state treasury under section 4719.17 of the Revised Code, to be used to pay the costs of the office of the attorney general in investigating any violation of, and in enforcing, any federal act or rule or this section or for any other purpose as set forth under section 4719.17 of the Revised Code.

(G) A violation of division (B)(1) or (2) of this section that involves a consumer transaction as defined in section 1345.01 of the Revised Code shall be considered an unfair or deceptive act or practice in violation of section 1345.02 of the Revised Code. All powers and remedies available to the attorney general to enforce sections 1345.01 to 1345.13 of the Revised Code are available to the attorney general to enforce this section.

Sec. 109.88. (A) If the attorney general has reasonable cause to believe that a person or enterprise has engaged in, is engaging in, or is preparing to engage in a violation of any provision of section 2913.04 or 2913.05 of the Revised Code, the attorney general may investigate the alleged violation.

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

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

Rules of Juvenile Procedure.

(D) In order to initiate a criminal proceeding under this section, the attorney general shall first present in writing any evidence of a violation of section 2913.04 or 2913.05 of the Revised Code to the prosecuting attorney of a county in which the action may be brought. If within forty-five days the prosecuting attorney has not presented the case to a grand jury, the attorney general may prosecute the case with all of the rights, privileges, and powers conferred by law on a prosecuting attorney, including the power to appear before a grand jury, to interrogate witnesses before a grand jury, and to handle a case that comes out of a grand jury to its procedural conclusion, including an indictment, plea, trial, sentencing, diversion, and appeal. These powers of the attorney general shall be in addition to any other applicable powers of the attorney general.

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~~, or voice over internet protocol service any writing, data, sign, signal, picture, sound, or image with purpose to execute or otherwise further the scheme to defraud.

(B) No person, with the intent to defraud, cause harm, or wrongfully obtain anything of value, shall knowingly cause, directly or indirectly, any caller identification service to transmit or display misleading or inaccurate caller identification information in connection with any telecommunication service or voice over internet protocol service.

(C) Divisions (A) and (B) of this section do not apply to any of the following:

(1) A person who uses a telephone number that is identified as "unknown" or "blocked" or who leaves a message and includes the person's true identity;

(2) Any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a state, a county, or a political subdivision of a state;

(3) Any activity engaged in pursuant to a court order that specifically authorizes the use of caller identification manipulation.

(D) If an offender commits a violation of division (A) or (B) of this section and the violation occurs as part of a course of conduct involving other violations of division (A) or (B) 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)~~ ~~(E)~~ 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)~~ ~~(E)~~ (1) 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 one thousand dollars or more but less than 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 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 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.

(2) If the victim of a violation of this section is an elderly person, disabled adult, active duty service member, or spouse of an active duty service member, telecommunications fraud is a felony of the fourth degree.

(F) As used in this section, "voice over internet protocol service" has the same meaning as in section 4927.01 of the Revised Code.

SECTION 2. That existing sections 109.87, 109.88, and 2913.05 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

S. B. No. 54

134th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20 ____.

Secretary of State.

File No. _____ Effective Date _____