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Senator Gavarone

Cosponsors: Senators Manning, Antonio, Blessing, Brenner, Cirino, Craig, Fedor, Hackett, Hottinger, Johnson, Kunze, O'Brien, Reineke, Romanchuk, Rulli, Schaffer, Sykes, Thomas, Wilson, Yuko

A BILL

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 46
from a device that is identified as the receiving or 47
transmitting device by means of a ten-digit telephone number or 48
N-1-1 service code and includes a short message service and a 49
multimedia message service. 50

(ii) "Text message" does not include a real-time, two-way 51
voice or video communication or a message sent over an internet 52
protocol-enabled messaging service to another user of the same 53
messaging service, except a message described in division (A) (2) 54
(d) (i) of this section. 55

(e) "Text messaging service" means a service that enables 56
the transmission or receipt of a text message, including a 57
service provided as part of or in connection with a voice 58
service. 59

(B) (1) No person, entity, merchant, seller, or 60
telemarketer shall engage in any act or practice in violation of 61
any provision of a federal act or rule. 62

(2) (a) No person shall provide substantial assistance or 63
support to any person, entity, merchant, seller, or telemarketer 64
when that person knows or consciously avoids knowing that the 65
other person, entity, merchant, seller, or telemarketer is 66
engaged in any act or practice that violates any provision of a 67
federal act or rule. 68

(b) For purposes of division (B) (2) (a) of this section, 69
"substantial assistance or support" does not include the 70
provision of a voice service to a third party by a voice service 71
provider if one or more of the following is true: 72

(i) The voice service provider is not designated as a non- 73
cooperative carrier by the consortium registered with the 74

federal communications commission pursuant to 47 C.F.R. 64.1203. 75

(ii) The network of the voice service provider does not 76
originate the voice service or text messaging service. 77

(iii) The network of the voice service provider is not the 78
first domestic provider handling the voice service or text 79
messaging service that originates outside of the United States. 80

(3) The attorney general, in any proceedings under this 81
section, shall recognize any exemptions recognized by the 82
federal communications commission under the "Telephone Consumer 83
Protection Act of 1991," 105 Stat. 2395, 47 U.S.C. 227, any 84
amendment or reenactment of that act, any rule adopted or issued 85
pursuant to that act, or any amendment of that rule. 86

(C) (1) If the attorney general, as a result of complaints 87
or the attorney general's own inquiries, has reason to believe 88
that a person has engaged, is engaging, or is preparing to 89
engage in a violation of this section or any provision of a 90
federal act or rule, the attorney general may investigate the 91
alleged violation. For purposes of an investigation under 92
division (C) (1) of this section, the attorney general may 93
administer oaths, subpoena witnesses, adduce evidence, and 94
require the production of any relevant matter. 95

(2) If the matter to be produced under division (C) (1) of 96
this section is located outside this state, the attorney general 97
may designate any representative, including any official of the 98
state in which the matter is located, to inspect the matter on 99
the behalf of the attorney general. The person subpoenaed may 100
make the matter available to the attorney general at a 101
convenient location within the state or pay the reasonable and 102
necessary expenses for the attorney general or the attorney 103

general's representative to examine the matter at the place 104
where it is located, provided that those expenses shall not be 105
charged to a party that subsequently is not found to have 106
engaged in a violation of this section or any provision of a 107
federal act or rule. 108

(3) A person subpoenaed under division (C)(1) of this 109
section may file a motion to extend the day on which the 110
subpoena is to be returned or to modify or quash the subpoena, 111
for good cause shown, in the court of common pleas of Franklin 112
county or of the county in this state in which the person 113
resides or in which the person's principal place of business is 114
located. The person may file the motion not later than twenty 115
days after the service of the subpoena. 116

(4) A person subpoenaed under division (C)(1) of this 117
section shall comply with the terms of the subpoena unless the 118
parties agree to modify the terms of the subpoena or unless the 119
court has modified or quashed the subpoena, extended the day on 120
which the subpoena is to be returned, or issued any other order 121
with respect to the subpoena prior to the day on which the 122
subpoena is to be returned. If a person fails without lawful 123
excuse to testify or to produce relevant matter pursuant to a 124
subpoena, the attorney general may apply to the court of common 125
pleas of the county in which the person subpoenaed resides or in 126
which the person's principal place of business is located for an 127
order that compels compliance with the subpoena. 128

(5) If an individual subpoenaed under division (C)(1) of 129
this section refuses to testify or to produce relevant matter 130
pursuant to the subpoena on the ground that the testimony or 131
matter may incriminate the individual, the attorney general may 132
request the court to order the individual to provide the 133

testimony or matter. With the exception of a prosecution for 134
perjury or a civil action for damages under division (D)(1) of 135
this section, an individual who complies with a court order to 136
provide testimony or matter, after asserting a privilege against 137
self-incrimination to which the individual is entitled by law, 138
shall not be subjected to a criminal proceeding or a civil 139
penalty or forfeiture on the basis of the testimony or matter 140
required to be disclosed or testimony or matter discovered 141
through that testimony or matter required to be disclosed. 142

(6) In conducting an investigation under this section, the 143
attorney general shall not publicly disclose the identity of 144
persons, entities, merchants, sellers, or telemarketers 145
investigated or the facts developed in the investigation unless 146
this information has become a matter of public record in 147
enforcement proceedings or if those being investigated have 148
consented in writing to public disclosure. 149

(7) In conducting an investigation under this section, the 150
attorney general shall cooperate with state and local officials 151
of other states and officials of the federal government in the 152
administration of comparable laws and regulations. 153

(8) The attorney general may do either of the following: 154

(a) During an investigation under division (C) of this 155
section, afford the person who is the subject of the 156
investigation, in a manner considered appropriate to that 157
person, an opportunity to cease and desist from any suspected 158
violation of this section or any provision of a federal act or 159
rule. The attorney general may suspend the investigation during 160
the period that the attorney general permits the person to cease 161
and desist from that suspected violation. The suspension of the 162
investigation or the affording of an opportunity to cease and 163

desist shall not prejudice or prohibit any further investigation 164
by the attorney general under division (C) of this section. 165

(b) Terminate an investigation under division (C) of this 166
section upon acceptance of a written assurance of voluntary 167
compliance from a person who is suspected of a violation of this 168
section or any provision of a federal act or rule. The 169
acceptance of an assurance under division ~~(C) (6) (b)~~ (C) (8) (b) of 170
this section may be conditioned upon an undertaking to reimburse 171
or to take other appropriate corrective action with respect to 172
identifiable telephone service subscribers who are damaged by an 173
alleged violation of this section or any provision of a federal 174
act or rule. An assurance of compliance given by a person under 175
division ~~(C) (6) (b)~~ (C) (8) (b) of this section is not evidence of 176
a violation of this section or any provision of a federal act or 177
rule. The attorney general, at any time, may reopen an 178
investigation terminated by the acceptance of an assurance of 179
voluntary compliance, if the attorney general believes that 180
further proceedings are in the public interest. Evidence of a 181
violation of an assurance of voluntary compliance is prima-facie 182
evidence of an act or practice in violation of this section or 183
the applicable provision of a federal act or rule if the 184
evidence is presented after the violation in a civil action 185
brought under division (D) (1) of this section. An assurance of 186
voluntary compliance may be filed with the court and if approved 187
by the court, entered as a consent judgment in the action. 188

~~(7)~~ (9) The procedures that are available to the attorney 189
general under division (C) of this section are cumulative and 190
concurrent, and the exercise of one procedure by the attorney 191
general does not preclude or require the exercise of any other 192
procedure. 193

(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 225
recovered under this section or under the applicable federal act 226
or rule, but an award of damages or civil penalties shall not be 227
recovered under both this section and the applicable federal act 228
or rule. 229

~~(2)~~ (3) If a civil action has been instituted by or on 230
behalf of the federal trade commission or the federal 231
communications commission for a violation of any provision of an 232
applicable federal act or rule, the attorney general, during the 233
pendency of that action, shall not institute any civil action 234
under division (D) (1) of this section against any defendant that 235
is named in the complaint in the civil action that has been 236
instituted by or on behalf of the federal trade commission or 237
the federal communications commission, whichever is applicable, 238
for any violation that is alleged in that complaint. 239

~~(3)~~ (4) If a civil action that has been instituted by or 240
on behalf of the federal trade commission or the federal 241
communications commission for a violation of any provision of an 242
applicable federal act or rule affecting the residents of this 243
state is litigated to its conclusion and the federal trade 244
commission or the federal communications commission recovers an 245
award of damages or civil penalties or obtains any relief under 246
the applicable federal act or rule, the attorney general shall 247
not institute any civil action under division (D) (1) of this 248
section for any violation within the same time period that is 249
alleged in the civil action that was instituted as described in 250
division ~~(D) (3)~~ (D) (4) of this section and in which the federal 251
trade commission or federal communications commission has 252
recovered the damages or civil penalties or obtained the relief. 253

(5) No action may be brought by the attorney general under 254

this section for damages or a civil penalty more than five years 255
after the occurrence of the violation. 256

(E) Any civil action that the attorney general brings in a 257
federal court under division (D) (1) of this section shall comply 258
with the applicable provisions of the federal act or rule the 259
violation of which is the subject of the action. 260

(F) The attorney general shall deposit any civil penalties 261
that are imposed under division ~~(D) (1)~~ (D) (2) of this section to 262
the credit of the ~~telephone solicitation protection~~ 263
telemarketing fraud enforcement fund, which is hereby created in 264
the state treasury under section 4719.17 of the Revised Code, to 265
be used to pay the costs of the office of the attorney general 266
in investigating any violation of, and in enforcing, any federal 267
act or rule or this section or for any other purpose as set 268
forth under section 4719.17 of the Revised Code. 269

(G) A violation of division (B) (1) or (2) of this section 270
that involves a consumer transaction as defined in section 271
1345.01 of the Revised Code shall be considered an unfair or 272
deceptive act or practice in violation of section 1345.02 of the 273
Revised Code. All powers and remedies available to the attorney 274
general to enforce sections 1345.01 to 1345.13 of the Revised 275
Code are available to the attorney general to enforce this 276
section. 277

Sec. 109.88. (A) If the attorney general has reasonable 278
cause to believe that a person or enterprise has engaged in, is 279
engaging in, or is preparing to engage in a violation of any 280
provision of section 2913.04 or 2913.05 of the Revised Code, the 281
attorney general may investigate the alleged violation. 282

(B) For purposes of an investigation under division (A) of 283

this section, the attorney general may issue subpoenas and 284
subpoenas duces tecum. The attorney general may compel the 285
attendance of witnesses and the production of records and papers 286
of all kinds and descriptions that are relevant to the 287
investigation, including, but not limited to, any books, 288
accounts, documents, and memoranda pertaining to the subject of 289
the investigation. Upon the failure of any person to comply with 290
any subpoena or subpoena duces tecum issued by the attorney 291
general under this section, the attorney general may apply to 292
the court of common pleas in Franklin county or in any county in 293
which an element of the crime occurred for a contempt order as 294
in the case of disobedience of the requirements of a subpoena 295
issued from the court of common pleas or a refusal to testify on 296
a subpoena. A subpoena or subpoena duces tecum issued by the 297
attorney general under this section to a provider of electronic 298
communication services or remote computing services shall be 299
subject to the limitations set forth in the "Electronic 300
Communications Privacy Act of 1986," 18 U.S.C. 2703. 301

(C) Any information gathered by the attorney general 302
during the course of the investigation that is in the possession 303
of the attorney general, a prosecuting attorney, a law 304
enforcement agency, or a special prosecutor is a confidential 305
law enforcement investigatory record for purposes of section 306
149.43 of the Revised Code. No provision contained in this 307
section affects or limits any right of discovery granted to any 308
person under the Revised Code, the Rules of Criminal Procedure, 309
or the Rules of Juvenile Procedure. 310

(D) In order to initiate a criminal proceeding under this 311
section, the attorney general shall first present in writing any 312
evidence of a violation of section 2913.04 or 2913.05 of the 313
Revised Code to the prosecuting attorney of a county in which 314

the action may be brought. If within forty-five days the 315
prosecuting attorney has not presented the case to a grand jury, 316
the attorney general may prosecute the case with all of the 317
rights, privileges, and powers conferred by law on a prosecuting 318
attorney, including the power to appear before a grand jury, to 319
interrogate witnesses before a grand jury, and to handle a case 320
that comes out of a grand jury to its procedural conclusion, 321
including an indictment, plea, trial, sentencing, diversion, and 322
appeal. These powers of the attorney general shall be in 323
addition to any other applicable powers of the attorney general. 324

Sec. 2913.05. (A) No person, having devised a scheme to 325
defraud, shall knowingly disseminate, transmit, or cause to be 326
disseminated or transmitted by means of a wire, radio, 327
satellite, telecommunication, telecommunications device, ~~or~~ 328
telecommunications service, or voice over internet protocol 329
service any writing, data, sign, signal, picture, sound, or 330
image with purpose to execute or otherwise further the scheme to 331
defraud. 332

(B) No person, with the intent to defraud, cause harm, or 333
wrongfully obtain anything of value, shall knowingly cause, 334
directly or indirectly, any caller identification service to 335
transmit or display misleading or inaccurate caller 336
identification information in connection with any 337
telecommunication service or voice over internet protocol 338
service. 339

(C) Divisions (A) and (B) of this section do not apply to 340
any of the following: 341

(1) A person who uses a telephone number that is 342
identified as "unknown" or "blocked" or who leaves a message and 343
includes the person's true identity; 344

(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; 345
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(3) Any activity engaged in pursuant to a court order that specifically authorizes the use of caller identification manipulation. 349
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(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. 352
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~~(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 364
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third degree. If the value of the benefit obtained by the 375
offender or of the detriment to the victims of the fraud is one 376
hundred fifty thousand dollars or more but less than one million 377
dollars, telecommunications fraud is a felony of the second 378
degree. If the value of the benefit obtained by the offender or 379
of the detriment to the victims of the fraud is one million 380
dollars or more, telecommunications fraud is a felony of the 381
first degree. 382

(2) If the victim of a violation of this section is an 383
elderly person, disabled adult, active duty service member, or 384
spouse of an active duty service member, telecommunications 385
fraud is a felony of the fourth degree. 386

(F) As used in this section, "voice over internet protocol 387
service" has the same meaning as in section 4927.01 of the 388
Revised Code. 389

Section 2. That existing sections 109.87, 109.88, and 390
2913.05 of the Revised Code are hereby repealed. 391