

**As Reported by the Senate Judiciary Committee**

**134th General Assembly**

**Regular Session**

**2021-2022**

**S. B. No. 54**

**Senator Gavarone**

**Cosponsor: Senator Manning**

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**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 from a device that is identified as the receiving or

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 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 197  
engaging in a violation of any provision of this section or of a 198  
federal act or rule, the attorney general, subject to division 199  
~~(D) (2) or (D) (3) or (4)~~ of this section, may bring in the 200  
appropriate court of common pleas of this state or in the 201  
appropriate district court of the United States, but not in both 202  
courts, a civil action against the alleged violator for 203  
injunctive relief ~~or a civil action against the alleged violator~~ 204  
~~for,~~ damages, or both, and civil penalties pursuant to the 205  
federal act or rule, on behalf of the residents of this state 206  
who have been subjected to ~~telemarketing~~ acts or practices in 207  
violation of this section. The attorney general may bring the 208  
action under this section or under the applicable federal act or 209  
rule, but the attorney general shall not plead a violation of 210  
both this section and the applicable federal act or rule in the 211  
action. 212

(2) On the motion of the attorney general or on its own 213  
motion, a court may impose a civil penalty of five hundred 214  
dollars for a each violation of the provision of this section or 215  
of the federal act or rule that is the subject of the action. 216  
~~The amount of any award of damages made or civil penalty imposed~~ 217  
~~under division (D) (1) of this section shall not exceed any~~ 218  
~~maximum allowable amount of damages or civil penalty that is~~ 219  
~~specified in the applicable federal act or rule~~If the court 220  
finds the defendant willfully or knowingly committed the 221  
violation, the court may impose a civil penalty of one thousand 222  
five hundred dollars for each violation of the provision of this 223  
section or of the federal act or rules that is the subject of 224  
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 345  
intelligence activity of a law enforcement agency of the United 346  
States, a state, a county, or a political subdivision of a 347

state; 348

(3) Any activity engaged in pursuant to a court order that 349  
specifically authorizes the use of caller identification 350  
manipulation. 351

(D) If an offender commits a violation of division (A) or 352  
(B) of this section and the violation occurs as part of a course 353  
of conduct involving other violations of division (A) or (B) of 354  
this section or violations of, attempts to violate, conspiracies 355  
to violate, or complicity in violations of section 2913.02, 356  
2913.04, 2913.11, 2913.21, 2913.31, 2913.42, 2913.43, or 2921.13 357  
of the Revised Code, the court, in determining the degree of the 358  
offense pursuant to division ~~(C)~~ (E) of this section, may 359  
aggregate the value of the benefit obtained by the offender or 360  
of the detriment to the victim of the fraud in the violations 361  
involved in that course of conduct. The course of conduct may 362  
involve one victim or more than one victim. 363

~~(C)~~ (E) (1) Whoever violates this section is guilty of 364  
telecommunications fraud. Except as otherwise provided in this 365  
division, telecommunications fraud is a felony of the fifth 366  
degree. If the value of the benefit obtained by the offender or 367  
of the detriment to the victim of the fraud is one thousand 368  
dollars or more but less than seven thousand five hundred 369  
dollars, telecommunications fraud is a felony of the fourth 370  
degree. If the value of the benefit obtained by the offender or 371  
of the detriment to the victim of the fraud is seven thousand 372  
five hundred dollars or more but less than one hundred fifty 373  
thousand dollars, telecommunications fraud is a felony of the 374  
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