(129th General Assembly)
(Amended Substitute Senate Bill Number 223)

# AN ACT

To amend sections 2913.05 and 4719.17 and to enact section 109.88 of the Revised Code to allow the Attorney General to investigate the offenses of unauthorized use of property and telecommunications fraud and to modify the penalties for telecommunications fraud.

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

SECTION 1. That sections 2913.05 and 4719.17 be amended and section 109.88 of the Revised Code be enacted to read as follows:

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.

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 any writing, data, sign, signal, picture, sound, or image with purpose to execute or otherwise further the scheme to defraud.

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

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 enforcement of the program of registration established in sections 4719.01 to 4719.18 of the Revised Code and also~~ to pay for any expenses reasonably related to the administration of Chapter 4719. of the Revised Code, the investigation or prosecution of any crimes investigated by the consumer protection section, or for educational activities that advance the purposes of ~~sections 4719.01 to 4719.18~~ Chapter 4719. of the Revised Code as set forth in section 4719.18 of the Revised Code.

SECTION 2. That existing sections 2913.05 and 4719.17 of the Revised Code are hereby repealed.

**Am. Sub. S. B. No. 223** **129th G.A.**

William G. Batchelder
*Speaker* ________________ *of the House of Representatives.*

Thomas E. Niehaus
*President* ________________ *of the Senate.*

**Passed** February 15, **20**12

**Approved** MARCH 9, **20**12

John R. Kasich
*Governor.*

Am. Sub. S. B. No. 223 129th G.A.

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

Mark C. Flanders
*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the 9th day of March, A. D. 2012.

Jon Husted
*Secretary of State.*

File No. 99 Effective Date June 8, 2012

File No 89

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*Introduced by*

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, Bubp, Sprague, Uecker, Young, Conditt, Blessing, Anielski, Antonio, Boose, Boyd, Buchy, Combs, DeVitis, Dovilla, Grossman, Hackett, Hall, Hill, Johnson, McGregor, Newbold, O'Brien, Patmon, Roegner, Thompson Speaker Batchelder

*Passed by the Senate,*

November 13, 2011

*Passed by the House of Representatives,*

January 31, 2012

House and Senate agreed to Conference Report February 15, 2012.

*Filed in the office of the Secretary of State at Columbus, Ohio, on the*

9th *day of* March, *A. D. 20*12

Jon Husted
*Secretary of State.*