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Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Gavarone

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SUMMARY

- Prohibits a person, entity, or merchant from engaging in any act or practice in violation of any provision of a specified federal act or rule.
- Prohibits a person from providing 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 the federal act or rule.
- Allows the Attorney General to investigate alleged violations of the prohibitions described in the preceding two bullet points and allows for civil penalties for those violations.
- Requires the Attorney General to deposit any civil penalties imposed to the credit of the Telemarketing Fraud Enforcement Fund and specifies how those funds must be utilized.
- Specifies that the Attorney General cannot bring an action for damages or a civil penalty more than five years after the occurrence of the violation.
- Specifies that a violation of the prohibitions that involve a consumer transaction are considered an unfair or deceptive act or practice.
- Allows the Attorney General to prosecute a case involving the unauthorized use of property, unauthorized use of computer, cable, or telecommunication property, or telecommunications fraud if certain conditions are met.
- Prohibits a person, having devised a scheme to defraud, from knowingly disseminating, transmitting, or causing to be disseminated or transmitted by means of a 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.
- Generally prohibits a person, with intent to defraud, cause harm, or wrongfully obtain anything of value, from knowingly causing, 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.

- Specifies that if the victim of telecommunications fraud is an elderly person, disabled adult, active duty service member, or spouse of an active duty service member, telecommunications fraud is a fourth degree felony.

DETAILED ANALYSIS

Telemarketer engaging in any act or practice in violation of federal law

Prohibitions

The bill modifies the existing prohibition against a seller or telemarketer engaging in any act or practice in violation of any provision of a federal act or rule by also including a person, entity, or merchant within that prohibition.¹ Existing law, unchanged by the bill, defines a “federal act or rule” as the “Telemarketing and Consumer Fraud and Abuse Prevention Act,” the “Telephone Consumer Protection Act of 1991,” 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 bill also prohibits a person from providing 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.³ “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:⁴

- The voice service provider is not designated as a noncooperative carrier by the consortium registered with the Federal Communications Commission pursuant to 47 C.F.R. 64.1203.
- The network of the voice service provider does not originate the voice service or text messaging service.
- 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.

Investigation of violations

The bill modifies existing law that authorizes the Attorney General to investigate alleged violations of the federal acts or rules and for the purposes of investigation, to administer oaths,

¹ R.C. 109.87(B)(1).

² R.C. 109.87(A)(2)(a).

³ R.C. 109.87(B)(2)(a).

⁴ R.C. 109.87(B)(2)(b).

subpoena witnesses, adduce evidence, and require the production of any relevant matter by allowing the Attorney General to investigate alleged violations of the prohibitions described above.⁵ The bill specifies that, in conducting an investigation, the Attorney General is prohibited from publicly disclosing the identity of persons, entities, merchants, sellers, or telemarketers investigated for 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.⁶ The Attorney General, in conducting an investigation, must cooperate with state and local officials of other states and officials of the federal government in the administration of comparable laws and regulations.⁷

Penalties

The bill allows the court, on the motion of the Attorney General or on the court's own motion, to impose a civil penalty of \$500 for each violation of the offenses described above or of the federal act or rule that is the subject of the action, instead of an award of damages or civil penalty the amount of which cannot exceed any maximum allowable amount of damages or the 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 \$1,500 for each violation of the offenses described above or of the federal act or rule that is the subject of the action.⁸

The Attorney General must deposit any civil penalties imposed to the credit of the Telemarketing Fraud Enforcement Fund (rather than the Telephone Solicitation Protection Fund under existing law), to be used to pay the costs of the Attorney General's office in investigating any violation of, or in enforcing, any federal act or rule or the offenses described above, or for any other purpose as set forth in the fund.⁹

Period of limitation

Under the bill, the Attorney General cannot bring an action for damages or a civil penalty more than five years after the occurrence of the violation.¹⁰

Unfair or deceptive act or practice

Under the bill, a violation of the offenses described above that involves a consumer transaction is considered an unfair or deceptive act or practice. All powers and remedies

⁵ R.C. 109.87(C) to (F).

⁶ R.C. 109.87(C)(6).

⁷ R.C. 109.87(C)(7).

⁸ R.C. 109.87(D)(2).

⁹ R.C. 109.87(F).

¹⁰ R.C. 109.87(D)(5).

available to the Attorney General to enforce the Consumer Sales Practices Act are available to the Attorney General to enforce the provisions described above.¹¹

Definitions

The bill defines the following terms for the purposes of the provisions described above:¹²

- “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. “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 the preceding sentence.
- “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.
- “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.
- “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 FCC under the Communications Act of 1934, and includes both of the following:
 - A transmission from a telephone facsimile machine, computer, or other device to a telephone facsimile machine.
 - 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.

Attorney General investigating telecommunications and telemarketing fraud

Existing law allows the Attorney General, 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

¹¹ R.C. 109.87(G).

¹² R.C. 109.87(A)(2).

in the unauthorized use of property, unauthorized use of computer, cable, or telecommunication property, or telecommunications fraud, to investigate the alleged violation, including issuing subpoenas and subpoenas duces tecum and compelling the attendance of witnesses and the production of relevant records and papers.¹³ Under the bill, in order to initiate a criminal proceeding related to the unauthorized use of property, unauthorized use of computer, cable, or telecommunication property, or telecommunications fraud, the Attorney General must first present in writing any evidence of a violation of those prohibitions to the prosecuting attorney of a county in which the action may be brought. If within 45 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 are in addition to any other applicable powers of the Attorney General.¹⁴

Telecommunications fraud

Prohibitions

The bill modifies the existing offense of telecommunications fraud by prohibiting a person, having devised a scheme to defraud, from knowingly disseminating, transmitting, or causing to be disseminated or transmitted by means of a 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.¹⁵ “Voice over internet protocol service” means a service that enables real-time, two-way, voice communications that originate or terminate from the user’s location using internet protocol or a successor protocol, including, but not limited to, any such service that permits an end user to receive calls from and terminate calls to the public switched network.¹⁶

The bill also adds to the offense of telecommunications fraud by prohibiting a person, with intent to defraud, cause harm, or wrongfully obtain anything of value, from knowingly causing, 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.¹⁷ The prohibitions against telecommunications fraud do not apply to any of the following:¹⁸

¹³ R.C. 109.88(A) and (B).

¹⁴ R.C. 109.88(D).

¹⁵ R.C. 2913.05(A).

¹⁶ R.C. 2913.05(F) (cross reference to R.C. 4927.01(A)(17)).

¹⁷ R.C. 2913.05(B).

¹⁸ R.C. 2913.05(C).

- 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.
- Any lawfully authorized investigative, protective, or intelligence activity of a United States law enforcement agency or a state, county, or political subdivision law enforcement agency.
- Any activity engaged in pursuant to a court order that specifically authorizes the use of caller identification manipulation.

Penalty

The existing penalty generally for telecommunications fraud is a fifth degree felony. The bill specifies that if the victim of telecommunications fraud is an elderly person, disabled adult, active duty service member, or spouse of an active duty service member, telecommunications fraud is a fourth degree felony.¹⁹

Technical changes

The bill makes several cross reference and other conforming changes.²⁰

HISTORY

Action	Date
Introduced	02-09-21

S0054-I-134/ts

¹⁹ R.C. 2913.05(E).

²⁰ R.C. 109.87 and 2913.05.