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133<sup>rd</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Sen. Burke

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### SUMMARY

- Creates four new offenses that generally prohibit persons from using specified electronic means to transmit false information of a specified nature regarding a telephone number or exchange or caller identification.
- Provides for the application of several consumer protection-related provisions to conduct in violation of its prohibitions under the offenses.

### DETAILED ANALYSIS

The bill creates four new offenses, “theft or conversion of a telephone number or exchange,” “theft or conversion of a telephone number or exchange against a person in a protected class,” “providing misleading caller identification information,” and “providing misleading caller identification information against a person in a protected class,” that pertain to a person using specified electronic means to transmit false information of a specified nature regarding a telephone number or exchange or caller identification. It also provides for the application of several consumer protection-related provisions to conduct in violation of its prohibitions under the offenses.

#### **“Theft or conversion of a telephone number or exchange” and “theft or conversion of a telephone number or exchange against a person in a protected class”**

The bill prohibits a person, in connection with any telecommunication service or voice over Internet protocol service, from knowingly causing any caller identification service to transmit information using or repeating a telephone number or exchange that is not assigned to the person. A violation of the prohibition is the offense of “theft or conversion of a telephone number or exchange.” The offense generally is a fifth degree felony, but if the victim is an elderly person, disabled adult, active duty service member, or spouse of an active duty

service member, the offense is renamed as “theft or conversion of a telephone number or exchange against a person in a protected class” and is a fourth degree felony.<sup>1</sup>

### **“Providing misleading caller identification information” and “providing misleading caller identification information against a person in a protected class”**

The bill prohibits a person, in connection with any telecommunication service or voice-over Internet protocol service, from knowingly causing any caller identification service to transmit misleading or inaccurate caller identification information, knowing that the caller identification information is misleading or inaccurate, and knowing that the misleading or inaccurate caller identification information will defraud or cause harm to the recipient or that the person will wrongfully obtain anything of value. A violation of the prohibition is the offense of “providing misleading caller identification information.” The offense generally is a fourth degree felony, but if the victim is an elderly person, disabled adult, active duty service member, or spouse of an active duty service member, the offense is renamed as “providing misleading caller identification information against a person in a protected class” and is a third degree felony.<sup>2</sup>

### **Exemption from bill’s provisions, including both offenses**

The bill specifies that none of its provisions, including the provisions described above regarding the four new offenses it creates, apply if the person uses a telephone number that is identified as “unknown” or “blocked” or if the person leaves a message and includes the person’s identity.<sup>3</sup>

## **Consumer protection provisions**

### **Operation of the bill**

The bill provides for the application of several consumer protection-related provisions to violations of its provisions. It specifies that:<sup>4</sup>

1. A violation of its provisions, including the provisions described above regarding the four new offenses it creates, must be considered an “unfair or deceptive act or practice” in violation of R.C. 1345.02 under the Consumer Sales Practices Law (CSP Law). R.C. 1345.02 is described below.
2. A person injured by a violation of its provisions, including the provisions described above regarding the four new offenses it creates, has a cause of action and is entitled to the same relief available to a consumer under R.C. 1345.09 of the CSP Law, and all

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<sup>1</sup> R.C. 2913.50(B)(1), (C)(1), (C)(2), and (C)(3)(a).

<sup>2</sup> R.C. 2913.50(B)(2), (C)(1), (C)(2), and (C)(3)(b).

<sup>3</sup> R.C. 2913.50(D).

<sup>4</sup> R.C. 2913.50(E) and (F).

powers and remedies available to the Attorney General (the AG) to enforce the CSP Law are available to the AG to enforce the bill's provisions, including the provisions described above regarding the four new offenses it creates. A conviction or plea of guilty to a violation of the bill's provisions, including the provisions described above regarding the four new offenses it creates, is not necessary to prevail in such an action, but such a conviction or plea of guilty creates an irrebuttable presumption of the violation in such a cause of action. R.C. 1345.09 and the powers and remedies available to the AG to enforce the CSP Law are described below.

3. In addition to any remedies of which a consumer is entitled, a consumer who obtains goods or services as a result of a violation of the bill's provisions, including the provisions described above regarding the four new offenses it creates, may keep those goods or services without an obligation to pay for those goods or services and the offender may not raise a claim for such payment against the consumer.

### **Relevant Consumer Sales Practices Law provisions**

The bill refers to the following existing CSP Law provisions:<sup>5</sup>

1. R.C. 1345.02 prohibits a "supplier" from committing an unfair or deceptive act or practice in connection with a "consumer transaction," and specifies that such an unfair or deceptive act or practice by a supplier violates the prohibition regardless of when it occurs. The section lists ten examples of an act or practice of a supplier that, in representing the matter specified in the example, is deceptive and specifies that the listing of the examples does not limit the prohibition's scope. In construing the prohibition, a court must give due consideration and great weight to Federal Trade Commission (FTC) orders, trade regulation rules and guides, and the federal courts' interpretations of a specified provision of the FTC Act. As used in the prohibition, a "consumer transaction" is a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things (certain transactions are excluded) and a "supplier" is a seller, lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumer transactions, whether or not the person deals directly with the consumer (certain residential mortgage participants are excluded).<sup>6</sup> Other provisions of that Law provide remedies for violations of the prohibition.
2. R.C. 1345.09 provides that, for a violation of the CSP Law, a consumer has a cause of action and is entitled to specified types of relief. Regarding the action, relevant to the bill:<sup>7</sup> (a) where the violation was an act prohibited by R.C. 1345.02, the consumer may,

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<sup>5</sup> R.C. 2913.50(E).

<sup>6</sup> R.C. 1345.02, not in the bill.

<sup>7</sup> R.C. 1345.09, not in the bill.

in an individual action, rescind the transaction or recover actual economic damages plus an amount not exceeding \$5,000 in noneconomic damages, (b) in an action for rescission, revocation of the consumer transaction must occur within a reasonable time after the consumer discovers or should have discovered the ground for the action and before any substantial change in condition of the subject of the transaction, (c) a consumer may seek a declaratory judgment, injunction, or other appropriate relief against an act or practice violating the CSP Law, (d) when a consumer commences an individual action for a declaratory judgment or injunction or a class action under the section, the AG may intervene in the pending private action or an appeal, (e) in specified circumstances, the court may award to the prevailing party a reasonable attorney's fee, and (f) nothing in the section precludes a consumer from also proceeding with a cause of action under any other theory of law.

3. The powers and remedies available to the AG to enforce the CSP Law include:

(a) Requesting that an individual who refuses to testify or to produce relevant material on the ground that the testimony or matter may incriminate the individual be ordered by the court to provide the testimony or matter.<sup>8</sup>

(b) If there is reasonable cause to believe that a person has engaged or is engaging in an act or practice that violates the CSP Law, investigating possible violations of that Law, and, for that purpose, administering oaths, subpoenaing witnesses, adducing evidence, and requiring the production of relevant matter.<sup>9</sup>

(c) If a person the AG subpoenas fails without lawful excuse to obey the subpoena or produce relevant matter, applying to a court for an order compelling compliance.<sup>10</sup>

(d) During an investigation, affording a supplier an opportunity to cease and desist from a suspected violation (the investigation may be suspended while the supplier is permitted to cease and desist, but the suspension does not prejudice or prohibit any further investigation) or terminating an investigation upon acceptance of a written assurance of voluntary compliance from a supplier who is suspected of violating the CSP Law (an investigation terminated by the acceptance of such an assurance may be reopened if the AG believes that further proceedings are in the public interest).<sup>11</sup>

(e) If there is reasonable cause to believe that a supplier has engaged or is engaging in an act or practice that violates the CSP Law and that the action would be in the public interest, bring any of the following:<sup>12</sup> (i) an action to obtain a declaratory judgment that the act or

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<sup>8</sup> R.C. 1345.05(D) and 1345.06(E), not in the bill.

<sup>9</sup> R.C. 1345.06(A) and (B), not in the bill.

<sup>10</sup> R.C. 1345.06(D), not in the bill.

<sup>11</sup> R.C. 1345.06(F), not in the bill.

<sup>12</sup> R.C. 1345.07(A), not in the bill.

practice violates a provision of that Law, (ii) an action to obtain a temporary restraining order or a preliminary or permanent injunction to restrain the act or practice (with a possible civil penalty of not more than \$5,000 for each day of violation of such an order or injunction if the supplier received notice of the action), or (iii) a class action on behalf of consumers who have engaged in consumer transactions in Ohio for damage caused by a specified type of act in violation of that Law. The CSP Law provides certain restrictions and rules regarding such actions, in specified circumstances.<sup>13</sup>

(f) If a consumer brings an individual action for a violation of the CSP Law for a declaratory judgment or injunction or a class action, intervening in the private action or an appeal.<sup>14</sup>

(g) Initiating criminal proceedings for a prosecution involving public telecommunications service “slamming” under R.C. 1345.99(C) by presenting evidence of criminal violations to the prosecuting attorney of a county in which the offense may be prosecuted and, after that presentation in specified circumstances, proceeding in the prosecution with all the rights, privileges, and powers of a prosecuting attorney.<sup>15</sup> Under R.C. 1345.99(C), a violation of the “slamming” prohibition is a third degree misdemeanor on a first offense and a second degree misdemeanor for any subsequent offense.<sup>16</sup>

## Definitions

1. The existing Telecommunications Law definition of “**voice-over Internet protocol service**” applies to the bill. Under that definition, “**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.<sup>17</sup>
2. The following existing Theft Offense Law definitions apply to the bill:<sup>18</sup>

“**Active duty service member**” means any member of the U.S. armed forces performing active duty under Title 10 of the U.S. Code.

“**Defraud**” means to knowingly obtain, by deception, some benefit for oneself or another, or to knowingly cause, by deception, some detriment to another. As used in this definition, “**deception**” means knowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another

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<sup>13</sup> R.C. 1345.11, not in the bill.

<sup>14</sup> R.C. 1345.09, not in the bill.

<sup>15</sup> R.C. 1345.02(E)(3), not in the bill.

<sup>16</sup> R.C. 1345.99(C), not in the bill.

<sup>17</sup> R.C. 2913.50(A), by reference to R.C. 4927.01, not in the bill.

<sup>18</sup> R.C. 2913.01, not in the bill.

from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact.

**“Disabled adult”** means a person who is age 18 or older and has some impairment of body or mind that makes the person unable to work at any substantially remunerative employment that the person otherwise would be able to perform and that will, with reasonable probability, continue for a period of at least 12 months without any present indication of recovery from the impairment, or who is age 18 or older and has been certified as permanently and totally disabled by an agency of Ohio or the U.S. that has the function of so classifying persons.

**“Elderly person”** means a person who is age 65 or older.

**“Telecommunications service”** means the providing, allowing, facilitating, or generating of any form of telecommunication through the use of a telecommunications device over a telecommunications system. As used in this definition: (a) **“telecommunication”** means the origination, emission, dissemination, transmission, or reception of data, images, signals, sounds, or other intelligence or equivalence of intelligence of any nature over any communications system by any method, including, but not limited to, a fiber optic, electronic, magnetic, optical, digital, or analog method, and (b) **“telecommunications device”** means any instrument, equipment, machine, or other device that facilitates telecommunication, including, but not limited to, a computer, computer network, computer chip, computer circuit, scanner, telephone, cellular telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables the use of a modem.

3. The existing General Provisions definition of “anything of value” applies to the bill. Under that definition, unless the context otherwise requires, “anything of value” includes:<sup>19</sup> (a) money, bank bills or notes, U.S. treasury notes, and other bills, bonds, or notes issued by lawful authority and intended to pass and circulate as money, (b) goods and chattels, (c) promissory notes, bills of exchange, orders, drafts, warrants, checks, or bonds given for the payment of money, (d) receipts given for the payment of money or other property, (e) rights in action, (f) things that savor of the realty and are, at the time they are taken, a part of the freehold, whether they are of the substance or produce thereof or affixed thereto, although there may be no interval between the severing and taking away, (g) any interest in realty, including fee simple and partial interests, present and future, contingent or vested interest, beneficial interests, leasehold interests, and any other interest in realty, (h) any promise of future employment, and (i) every other thing of value.

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<sup>19</sup> R.C. 1.03, not in the bill.

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## HISTORY

Action	Date
Introduced	05-08-19

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