



# House of Representatives

General Assembly

**File No. 545**

February Session, 2016

Substitute House Bill No. 5635

*House of Representatives, April 7, 2016*

The Committee on Judiciary reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING FRAUD COMMITTED THROUGH TELEPHONE SOLICITATION AND ACCESS TO TELEPHONE RECORDS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2016*) (a) A person is guilty of  
2 telephone fraud in the first degree when such person (1) knowingly or  
3 intentionally devises or participates in a scheme to defraud another  
4 person of money or property, (2) (A) employs false pretenses or false  
5 promises, as described in section 53a-119 of the general statutes, to  
6 obtain such money or property and the amount of such money or the  
7 value of such property exceeds twenty thousand dollars, or (B)  
8 regardless of its value, obtains such money or property by extortion,  
9 and (3) uses a telephonic call, including, but not limited to, a call made  
10 by an individual, an automated telephone call and a recorded message,  
11 to obtain such money or property from such other person.

12 (b) Telephone fraud in the first degree is a class B felony.

13 Sec. 2. (NEW) (*Effective October 1, 2016*) (a) A person is guilty of

14 telephone fraud in the second degree when such person (1) knowingly  
15 or intentionally devises or participates in a scheme to defraud another  
16 person of money or property, (2) employs false pretenses or false  
17 promises, as described in section 53a-119 of the general statutes, to  
18 obtain such money or property and the amount of such money or the  
19 value of such property exceeds ten thousand dollars, and (3) uses a  
20 telephonic call, including, but not limited to, a call made by an  
21 individual, an automated telephone call and a recorded message, to  
22 obtain such money or property from such other person.

23 (b) Telephone fraud in the second degree is a class C felony.

24 Sec. 3. (NEW) (*Effective October 1, 2016*) (a) A person is guilty of  
25 telephone fraud in the third degree when such person (1) knowingly or  
26 intentionally devises or participates in a scheme to defraud another  
27 person of money or property, (2) employs false pretenses or false  
28 promises, as described in section 53a-119 of the general statutes, to  
29 obtain such money or property and the amount of such money or the  
30 value of such property exceeds two thousand dollars, and (3) uses a  
31 telephonic call, including, but not limited to, a call made by an  
32 individual, an automated telephone call and a recorded message, to  
33 obtain such money or property from such other person.

34 (b) Telephone fraud in the third degree is a class D felony.

35 Sec. 4. (NEW) (*Effective October 1, 2016*) (a) A person is guilty of  
36 telephone fraud in the fourth degree when such person (1) knowingly  
37 or intentionally devises or participates in a scheme to defraud another  
38 person of money or property, (2) employs false pretenses or false  
39 promises, as described in section 53a-119 of the general statutes, to  
40 obtain such money or property and the amount of such money or the  
41 value of such property exceeds one thousand dollars, and (3) uses a  
42 telephonic call, including, but not limited to, a call made by an  
43 individual, an automated telephone call and a recorded message, to  
44 obtain such money or property from such other person.

45 (b) Telephone fraud in the fourth degree is a class A misdemeanor.

46 Sec. 5. (NEW) (*Effective October 1, 2016*) (a) A person is guilty of  
47 telephone fraud in the fifth degree when such person (1) knowingly or  
48 intentionally devises or participates in a scheme to defraud another  
49 person of money or property, (2) employs false pretenses or false  
50 promises, as described in section 53a-119 of the general statutes, to  
51 obtain such money or property and the amount of such money or the  
52 value of such property exceeds five hundred dollars, and (3) uses a  
53 telephonic call, including, but not limited to, a call made by an  
54 individual, an automated telephone call and a recorded message, to  
55 obtain such money or property from such other person.

56 (b) Telephone fraud in the fifth degree is a class B misdemeanor.

57 Sec. 6. (NEW) (*Effective October 1, 2016*) (a) A person is guilty of  
58 telephone fraud in the sixth degree when such person (1) knowingly or  
59 intentionally devises or participates in a scheme to defraud another  
60 person of money or property, (2) employs false pretenses or false  
61 promises, as described in section 53a-119 of the general statutes, to  
62 obtain such money or property and the amount of such money or the  
63 value of such property is five hundred dollars or less, and (3) uses a  
64 telephonic call, including, but not limited to, a call made by an  
65 individual, an automated telephone call and a recorded message, to  
66 obtain such money or property from such other person.

67 (b) Telephone fraud in the sixth degree is a class C misdemeanor.

68 Sec. 7. Section 54-47aa of the general statutes is repealed and the  
69 following is substituted in lieu thereof (*Effective October 1, 2016*):

70 (a) For the purposes of this section:

71 (1) "Basic subscriber information" means: (A) Name, (B) address, (C)  
72 local and long distance telephone connection records or records of  
73 session times and durations, (D) length of service, including start date,  
74 and types of services utilized, (E) telephone or instrument number or  
75 other subscriber number or identity, including any assigned Internet  
76 protocol address, and (F) means and source of payment for such

77 service, including any credit card or bank account number;

78 (2) "Call-identifying information" means dialing or signaling  
79 information that identifies the origin, direction, destination or  
80 termination of each communication generated or received by a  
81 subscriber or customer by means of any equipment, facility or service  
82 of a telecommunications carrier;

83 (3) "Electronic communication service" means "electronic  
84 communication service" as defined in 18 USC 2510, as amended from  
85 time to time;

86 (4) "Law enforcement official" means the Chief State's Attorney, a  
87 state's attorney, an inspector with the Division of Criminal Justice, a  
88 sworn member of the Division of State Police within the Department of  
89 Emergency Services and Public Protection or a sworn member of an  
90 organized local police department;

91 (5) "Remote computing service" means "remote computing service"  
92 as defined in section 18 USC 2711, as amended from time to time; and

93 (6) "Telecommunications carrier" means "telecommunications  
94 carrier" as defined in 47 USC 1001, as amended from time to time.

95 (b) A law enforcement official may request an ex parte order from a  
96 judge of the Superior Court to compel (1) a telecommunications carrier  
97 to disclose call-identifying information pertaining to a subscriber or  
98 customer, or (2) a provider of electronic communication service or  
99 remote computing service to disclose basic subscriber information  
100 pertaining to a subscriber or customer. The judge shall grant such  
101 order if the law enforcement official states a reasonable and articulable  
102 suspicion that a crime has been or is being committed or that exigent  
103 circumstances exist and such call-identifying or basic subscriber  
104 information is relevant [and] or material to an ongoing criminal  
105 investigation. The order shall state upon its face the case number  
106 assigned to such investigation, the date and time of issuance and the  
107 name of the judge authorizing the order. The law enforcement official

108 shall have any ex parte order issued pursuant to this subsection signed  
109 by the authorizing judge [within] not later than forty-eight hours or  
110 [not later than] the next business day after the issuance of such order,  
111 whichever is earlier.

112 (c) A telecommunications carrier shall disclose call-identifying  
113 information and a provider of electronic communication service or  
114 remote computing service shall disclose basic subscriber information  
115 to a law enforcement official when an order is issued pursuant to  
116 subsection (b) of this section.

117 (d) Not later than forty-eight hours after the issuance of an order  
118 pursuant to subsection (b) of this section, the law enforcement official  
119 shall mail notice of the issuance of such order to the subscriber or  
120 customer whose call-identifying information or basic subscriber  
121 information is the subject of such order, except that such notification  
122 may be delayed for a period of up to ninety days upon the execution of  
123 a written certification of such official to the judge who authorized the  
124 order that there is reason to believe that notification of the existence of  
125 the order may result in (1) endangering the life or physical safety of an  
126 individual, (2) flight from prosecution, (3) destruction of or tampering  
127 with evidence, (4) intimidation of potential witnesses, or (5) otherwise  
128 seriously jeopardizing the investigation. The law enforcement official  
129 shall maintain a true copy of such certification. During such ninety-day  
130 period, the law enforcement official may request the court to extend  
131 such period of delayed notification. Such period may be extended  
132 beyond ninety days only upon approval of the court.

133 (e) A telecommunications carrier or provider of electronic  
134 communication service or remote computing service that provides  
135 information pursuant to an order issued pursuant to subsection (b) of  
136 this section shall be compensated for the reasonable expenses incurred  
137 in providing such information.

138 (f) Any telecommunications carrier or provider of electronic  
139 communication service or remote computing service that provides  
140 information in good faith pursuant to an order issued pursuant to

141 subsection (b) of this section shall be afforded the legal protections  
142 provided under 18 USC 3124, as amended from time to time, with  
143 regard to such actions.

144 (g) Not later than January fifteenth of each year, each law  
145 enforcement official shall report to the Chief State's Attorney the  
146 information required by this subsection with respect to each order  
147 issued pursuant to subsection (b) of this section in the preceding  
148 calendar year. The Chief State's Attorney shall, based upon the reports  
149 filed by each law enforcement official and not later than January thirty-  
150 first of each year, submit a report, in accordance with the provisions of  
151 section 11-4a, to the joint standing committee of the General Assembly  
152 having cognizance of matters relating to criminal law and procedure  
153 concerning orders issued pursuant to subsection (b) of this section in  
154 the preceding calendar year. The report shall include the following  
155 information: (1) The number of orders issued, (2) whether the order  
156 was directed to a telecommunications carrier, provider of electronic  
157 communication service or provider of remote computing service, (3)  
158 whether the information sought was call-identifying information or  
159 basic subscriber information, (4) the statutory offense or offenses that  
160 were the subject of the investigation, (5) the number of notifications  
161 that were delayed pursuant to subsection (d) of this section, and the  
162 reason for such delayed notification, (6) the number of motions to  
163 vacate an order that were filed, and the number of motions granted or  
164 denied, (7) the number of investigations concluded and the final result  
165 of such investigations, and (8) the status of any criminal prosecution  
166 resulting from the investigation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2016	New section
Sec. 2	October 1, 2016	New section
Sec. 3	October 1, 2016	New section
Sec. 4	October 1, 2016	New section
Sec. 5	October 1, 2016	New section
Sec. 6	October 1, 2016	New section

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Sec. 7	October 1, 2016	54-47aa
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**Statement of Legislative Commissioners:**

In Sections 1 through 6, inclusive, "voluntarily and intentionally" was changed to "knowingly or intentionally" for conformity with existing *mens rea* descriptions in the penal code.

**JUD**      *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 17 \$</b>	<b>FY 18 \$</b>
Correction, Dept.; Judicial Dept. (Probation)	GF - Potential Cost	See Below	See Below
Resources of the General Fund	GF - Potential Revenue Gain	See Below	See Below

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill, which creates a new crime of telephone fraud, results in a potential cost. To the extent that offenders are prosecuted for new or expanded offenses under this bill, potential costs for incarceration or probation supervision in the community, or judicial revenue would result. On average, it costs the state \$7,260 (including benefits) to supervise an inmate in the community as opposed to \$61,320 (including benefits) to incarcerate an offender.

The bill also results in additional potential revenue gain from the collection of criminal fines.

The bill makes additional procedural changes which do not result in a fiscal impact.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis**

**HB 5635**

**AN ACT CONCERNING FRAUD COMMITTED THROUGH TELEPHONE SOLICITATION AND ACCESS TO TELEPHONE RECORDS.**

**SUMMARY:**

This bill makes it a crime of telephone fraud to:

1. knowingly and intentionally devise or participate in a scheme to defraud someone of money or property;
2. obtain such money or property by false pretenses, false promises (see BACKGROUND), or extortion; and
3. use a telephone to make a call, including sending automated telephone calls or recorded messages, to obtain such money or property.

The bill classifies the crime of telephone fraud based on the amount of money or value of the property the violator obtained illegally (see below).

The bill also lowers the threshold for the exigent circumstances a law enforcement official must meet before a judge may issue an ex parte order compelling disclosure of certain telephone and Internet records. It requires a showing that the requested information is either relevant or material to an ongoing criminal investigation. Under current law, such information must be both relevant and material.

The bill specifies that the law enforcement official must have the signed ex parte order by the earlier of the next business day after the issue date or within 48 hours of its issuance.

EFFECTIVE DATE: October 1, 2016

## TELEPHONE FRAUD

A person convicted of telephone fraud may be imprisoned, fined, or both, as shown in the table below.

Table 1: Telephone Fraud Penalties

<i>Telephone Fraud</i>	<i>Value of Money or Property</i>	<i>Classification of Crime</i>	<i>Imprisonment</i>	<i>Fines</i>
1 <sup>st</sup> degree	above \$20,000	Class B felony	1 to 20 years	up to \$15,000
2 <sup>nd</sup> degree	above \$10,000	Class C felony	1 to 10 years	up to \$10,000
3 <sup>rd</sup> degree	above \$2,000	Class D felony	up to 5 years	up to \$5,000
4 <sup>th</sup> degree	above \$1,000	Class A misdemeanor	up to 1 year	up to \$2,000
5 <sup>th</sup> degree	above \$500	Class B misdemeanor	up to 6 months	up to \$1,000
6 <sup>th</sup> degree	\$500 or less	Class C misdemeanor	up to 3 months	up to \$500

## EX PARTE COURT ORDER TO COMPEL DISCLOSURE OF CERTAIN TELEPHONE AND INTERNET RECORDS

By law, a law enforcement official may request an ex parte order from a Superior Court judge to compel (1) a telecommunications carrier to disclose call-identifying information about a subscriber or customer or (2) an electronic communication service or remote computing service provider to disclose basic subscriber information about a subscriber or customer.

Under the bill, the judge must grant such an order if the law enforcement official states (1) a reasonable and articulable suspicion that a crime has been or is being committed or (2) that exigent circumstances exist and such call-identifying or basic subscriber information is relevant or material to an ongoing criminal investigation. Under current law, such information requested in exigent circumstances must be both relevant and material to the ongoing investigation.

## BACKGROUND

**Obtaining Property by False Pretenses**

A person obtains property by false pretenses when, by any false token, pretense, or device, he or she obtains any property from another person, with intent to defraud anyone (CGS § 53a-119(2)).

**Obtaining Property by False Promise**

A person obtains property by false promise when, he or she schemes to defraud someone by obtaining the person's property through express or implied representation that he or she or a third person will engage in particular conduct when he or she does not intend to do so or does not believe that the third person intends to do so (CGS § 53a-119(3)).

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 42    Nay 1    (03/21/2016)