

STATE OF NEW YORK

5024

2017-2018 Regular Sessions

IN SENATE

March 6, 2017

Introduced by Sens. KRUEGER, HAMILTON -- read twice and ordered printed,
and when printed to be committed to the Committee on Consumer
Protection

AN ACT to amend the general business law, in relation to requiring
authorization by the customer, and verification by the telecommuni-
cations providers, of the validity of third-party charges for products
and services billed to a customer on bills issued by telecommuni-
cations providers to their customers

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Legislative findings and purpose. The legislature finds
2 that some third-party companies are placing unauthorized service charges
3 on telecommunications customers' monthly bills. The practice is commonly
4 called "cramming". Cramming is a form of fraud in which charges are
5 added to a bill by a third party without the customer's consent or
6 disclosure. The legislature further finds that many New Yorkers are
7 switching to phone service provided by cable TV or Internet companies.
8 These companies can also offer third-party billing that may inadvertent-
9 ly result in fraud through no fault of their own actions. Accordingly,
10 the purpose of this act is to help reduce the level of cramming and to
11 provide remedies that offer greater protection to the telecommunications
12 customers of all service providers.

13 § 2. The general business law is amended by adding a new section 399-
14 zzzzz to read as follows:

15 § 399-zzzzz. Authorization and verification for product and service
16 charges to be billed on a consumer's bill. 1. Definitions. For purposes
17 of this section:

18 (a) "Billing agent" means any entity that submits charges to the bill-
19 ing carrier on behalf of itself or any service provider.

20 (b) "Billing carrier" means any telephone corporation, as defined in
21 subdivision seventeen of section two of the public service law, and

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 every cable television company, as defined in subdivision one of section
2 two hundred twelve of the public service law that provides telephone or
3 like service to customers in the state of New York, that issues a bill
4 directly to a customer for any product or service not provided by a
5 telecommunications carrier, its affiliate or third party provider with
6 whom a telephone corporation or cable television company or their affil-
7 iates jointly market services.

8 (c) "Cramming" means a form of fraud in which charges are added to a
9 bill by a third party without the subscriber's authorization or disclo-
10 sure.

11 (d) "Service provider" means any entity that offers a product or
12 service to a consumer and that directly or indirectly charges to or
13 collects from a consumer's bill received from a billing carrier an
14 amount for the product or service. For purposes of this section, a
15 service provider shall not include an affiliate of a billing carrier or
16 a third party provider with whom a billing carrier or its affiliates
17 jointly market services.

18 2. Requirements for submitting charges. (a) A service provider or
19 billing agent may submit charges for a product or service to be billed
20 on a consumer's bill only if:

21 (1) the service provider offering the product or service has clearly
22 and conspicuously disclosed all material terms and conditions of the
23 product or service being offered, including, but not limited to, all
24 charges; and the fact that the charges for the product or service shall
25 appear on the consumer's bill;

26 (2) after the clear and conspicuous disclosure of all material terms
27 and conditions by the service provider as described in subparagraph one
28 of this paragraph, the consumer has expressly consented to obtain the
29 product or service offered and to have the charges appear on the consum-
30 er's bill and the consent has been verified by the service provider as
31 provided in paragraph (b) of this subdivision;

32 (3) the service provider offering the product or service or any bill-
33 ing agent for the service provider has provided the consumer with a
34 toll-free telephone number the consumer may call and an address to which
35 the consumer may write to resolve any billing dispute and to answer
36 questions; and

37 (4) the service provider offering the product or service or the bill-
38 ing agent has taken effective steps to determine that the consumer who
39 purportedly consented to obtain the product or service offered is
40 authorized to incur charges for the telephone number to be billed.

41 (b) The consumer consent required by paragraph (a) of this subdivision
42 must be verified by the service provider offering the product or service
43 before any charges are submitted for billing on a consumer's bill. A
44 record of the consumer consent and verification must be maintained by
45 the service provider offering the product or service for a period of at
46 least twenty-four months immediately after the consent and verification
47 have been obtained. The method of obtaining consumer consent and verifi-
48 cation shall include one or more of the following:

49 (1) a writing, signed and dated by the consumer to be billed, that
50 clearly and conspicuously discloses the material terms and conditions of
51 the product or service being offered in accordance with paragraph (a) of
52 this subdivision and which clearly and conspicuously states that the
53 consumer expressly consents to be billed in accordance with the
54 provisions of this subdivision as follows:

1 (A) if the writing is in electronic form, then it shall contain the
2 consumer disclosures required by Section 101(c) of the federal Electron-
3 ic Signatures in Global and National Commerce Act; and

4 (B) the writing shall be a separate document or easily separable docu-
5 ment or located on a separate screen or webpage containing only the
6 disclosures and consent described in this subdivision;

7 (2) third-party verification by an independent third party that:

8 (A) clearly and conspicuously discloses to the consumer to be billed
9 all of the information required by paragraph (a) of this subdivision;

10 (B) operates from a facility physically separate from that of the
11 service provider offering the product or service;

12 (C) is not directly or indirectly managed, controlled, directed, or
13 owned wholly or in part by the service provider offering the product or
14 service;

15 (D) does not derive commissions or compensation based upon the number
16 of sales confirmed;

17 (E) tape records the entire verification process, with prior consent
18 of the consumer to be billed; and

19 (F) obtains confirmation from the consumer to be billed that he or she
20 authorized the purchase of the offered good or service.

21 All verifications must be conducted in the same language that was used
22 in the underlying sales transaction.

23 (c) Unless verification is required by federal law or rules implement-
24 ing federal law, the provisions of paragraph (b) of this subdivision
25 shall not apply to customer-initiated transactions with a certificated
26 telecommunications carrier for which the service provider has the appro-
27 priate documentation.

28 (d) The provisions of this section shall not apply to commercial
29 mobile radio services, or message telecommunications service charges
30 that the end-user customer initiates by dialing 1+, 0+, 0-, 1010XXX, or
31 collect calls and charges for video services if the service provider has
32 the necessary records to establish the billing for the call or service.

33 3. Records of disputed charges. (a) Every service provider or billing
34 agent shall maintain records of every disputed charge for a product or
35 service placed on a consumer's bill.

36 (b) The record required under this subdivision shall contain for every
37 disputed charge all of the following:

38 (1) any affected telephone numbers and, if available, addresses;

39 (2) the date the consumer requested that the disputed charge be
40 removed from the consumer's bill;

41 (3) the date the disputed charge was removed from the consumer's bill;
42 and

43 (4) the date action was taken to refund or credit to the consumer any
44 money that the consumer paid for the disputed charges.

45 (c) The record required by this subdivision shall be maintained for at
46 least twenty-four months.

47 4. Compliance. Billing agents shall take reasonable steps designed to
48 ensure that service providers on whose behalf they submit charges to a
49 billing carrier comply with the requirements of this section.

50 5. Violation. Any service provider or billing agent who violates the
51 provisions of this section commits an unlawful practice.

52 (a) If a customer disputes a charge from a service provider or billing
53 agent and has it removed from their bill, neither the billing carrier,
54 service provider, or billing agent can put the same charge from the
55 service provider on any future bills unless the customer has explicitly
56 granted approval to do so.

1 (b) If a customer contacts the service provider directly instead of
2 calling the billing carrier regarding an unauthorized charge on their
3 telephone bill, the service provider must agree to provide a credit
4 adjustment to the bill. Any further collection attempts on the part of
5 the service provider should not include the bill.

6 (c) Any unauthorized service charges on telecommunications customers
7 will be deemed void and unenforceable. Service providers found to have
8 submitted unauthorized service charges cannot pursue said charges
9 through collection agencies.

10 (d) Each billing carrier and billing agent shall have in place and
11 comply with a protocol for identifying unauthorized charges and suspend-
12 ing or terminating billing services to any billing agent or service
13 provider that has submitted unauthorized charges.

14 (e) If a customer contacts a billing carrier to dispute a billed item
15 from a billing agent or service provider, the billing carrier must
16 promptly address the dispute before referring the customer to the bill-
17 ing agent or service provider when the customer indicates the product or
18 service was not authorized. This includes, but is not limited to, remov-
19 ing the unauthorized charges from the customer's bill, ensuring that
20 unauthorized charges from the same service provider or billing agent
21 will not continue to appear on the customer's bill, and offering the
22 customer the option to bar all third-party billing on their bill.

23 (f) Annually, billing carriers shall provide information to their
24 customers regarding a course of action to dispute unauthorized charges
25 from service providers. This shall include, but is not limited to, a
26 definition of cramming, how to dispute an unauthorized charge, and how
27 to file a complaint with the attorney general's office.

28 (g) Third-party charges shall be separated from direct charges in a
29 clear manner.

30 (h) Billing carriers cannot disconnect services over the failure to
31 pay a disputed third party charge.

32 (i) The attorney general's office shall have the authority to investi-
33 gate complaints of cramming.

34 (j) The attorney general's office shall have the authority to pursue
35 civil action against service providers and billing agents found to have
36 been engaging in cramming.

37 (k) The attorney general's office shall have the authority to black-
38 list any service provider or billing agent who has been found to be in
39 violation of this section or otherwise participating in unscrupulous
40 practices from contracting with any billing carrier in New York state.

41 § 3. This act shall take effect on the one hundred twentieth day after
42 it shall have become a law; provided, however that effective immediate-
43 ly, the addition, amendment and/or repeal of any rule or regulation
44 necessary for the implementation of this act on its effective date are
45 authorized and directed to be made and completed on or before such
46 effective date.