

# STATE OF NEW YORK

6912

2019-2020 Regular Sessions

## IN ASSEMBLY

March 27, 2019

Introduced by M. of A. NIOU -- read once and referred to the Committee on Consumer Affairs and Protection

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

The People of the State of New York, represented in Senate and Assembly, 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 inadvertently  
9 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  
22 every cable television company, as defined in subdivision one of section

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

LBD08622-01-9

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (C) is not directly or indirectly managed, controlled, directed, or  
10 owned wholly or in part by the service provider offering the product or  
11 service;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 (b) If a customer contacts the service provider directly instead of  
55 calling the billing carrier regarding an unauthorized charge on their  
56 telephone bill, the service provider must agree to provide a credit

1 adjustment to the bill. Any further collection attempts on the part of  
2 the service provider should not include the bill.

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

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

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

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

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

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

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

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

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

38 § 3. This act shall take effect on the one hundred twentieth day after  
39 it shall have become a law. Effective immediately, the addition, amend-  
40 ment and/or repeal of any rule or regulation necessary for the implemen-  
41 tation of this act on its effective date are authorized and directed to  
42 be made and completed on or before such effective date.