STATE OF NEW YORK

2456

2019-2020 Regular Sessions

IN SENATE

January 25, 2019

Introduced by Sen. KRUEGER -- 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 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:

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

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

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

(a) "Billing agent" means any entity that submits charges to the billing carrier on behalf of itself or any service provider.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Unless verification is required by federal law or rules implementing federal law, the provisions of paragraph (b) of this subdivision shall not apply to customer-initiated transactions with a certificated telecommunications carrier for which the service provider has the appropriate documentation.

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Each billing carrier and billing agent shall have in place and comply with a protocol for identifying unauthorized charges and suspending or terminating billing services to any billing agent or service provider that has submitted unauthorized charges.

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

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

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

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

(i) The attorney general's office shall have the authority to investigate complaints of cramming.

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

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

§ 3. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.