



Sen. David Koehler

Filed: 4/17/2012

09700HB5211sam001

LRB097 18755 JLS 68486 a

1 AMENDMENT TO HOUSE BILL 5211

2 AMENDMENT NO. _____. Amend House Bill 5211 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Consumer Fraud and Deceptive Business
5 Practices Act is amended by changing Section 2HHH as follows:

6 (815 ILCS 505/2HHH)

7 Sec. 2HHH. Product ~~Authorization and verification for~~
8 ~~product~~ and service charges ~~to be~~ billed on a telephone bill
9 prohibited.

10 (a) Definitions. For purposes of this Section:

11 "Billing agent" means a person that submits charges for
12 services or goods to a telecommunications carrier on behalf of
13 a third-party vendor.

14 "Third-party vendor" means an entity not affiliated with a
15 telecommunications carrier that sells services or goods to a
16 consumer.

1 "Telecommunications carrier" has the same meaning as
2 defined in Section 13-202 of the Public Utilities Act.

3 (b) A third-party vendor shall not bill, directly or
4 through an intermediary, a consumer for goods or services that
5 will appear as a charge on a consumer's telephone bill.

6 (c) A billing agent, on behalf of a third-party vendor,
7 shall not submit, directly or through an intermediary, a charge
8 to a telecommunications carrier for goods or services that will
9 appear as a charge on a consumer's telephone bill.

10 (d) Any person who violates this Section commits an
11 unlawful practice within the meaning of this Act.

12 (e) This Section does not apply to:

13 (1) services or goods provided by a telecommunications
14 carrier subject to the provisions of Section 13-903 of the
15 Public Utilities Act;

16 (2) services or goods sold by any affiliate of the
17 telecommunications carrier issuing the bill to the
18 consumer;

19 (3) services or goods sold by any third-party vendor
20 that has a direct contractual arrangement for the joint or
21 cooperative sale of such services or goods with the
22 telecommunications carrier issuing the bill to the
23 consumer; provided however, that the telecommunications
24 carrier issuing the bill to the consumer shall be
25 responsible for assuring that such services or goods are
26 not sold without the informed authorization of the

1 consumer;

2 (4) wireless services, as described in Section 13-804
3 of the Public Utilities Act and any other services or goods
4 billed by or through a provider of wireless services;

5 (5) message telecommunications services that are
6 initiated by dialing 1+, 0+, 0-, or 1010XXX and calls that
7 are subject to the Pay-Per-Call Services Consumer
8 Protection Act; or

9 (6) contributions to any charitable organization
10 subject to Section 501(c)(3) of the Internal Revenue Code.

11 ~~"Billing agent" means any entity that submits charges to~~
12 ~~the billing carrier on behalf of itself or any service~~
13 ~~provider.~~

14 ~~"Billing carrier" means any telecommunications carrier, as~~
15 ~~defined in Section 13-202 of the Public Utilities Act, that~~
16 ~~issues a bill directly to a customer for any product or service~~
17 ~~not provided by a telecommunications carrier.~~

18 ~~"Service provider" means any entity that offers a product~~
19 ~~or service to a consumer and that directly or indirectly~~
20 ~~charges to or collects from a consumer's bill received from a~~
21 ~~billing carrier an amount for the product or service.~~

22 ~~(b) This Section does not apply to the provision of~~
23 ~~services and products by a telecommunications carrier subject~~
24 ~~to the provisions of Section 13-903 of the Public Utilities~~
25 ~~Act, by a telecommunications carrier's affiliates, or an~~
26 ~~affiliated cable or video provider, as that term is defined in~~

1 ~~Section 22-501 of the Public Utilities Act, or by a provider of~~
2 ~~public mobile services, as defined in Section 13-214 of the~~
3 ~~Public Utilities Act.~~

4 ~~(c) Requirements for submitting charges.~~

5 ~~(1) A service provider or billing agent may submit~~
6 ~~charges for a product or service to be billed on a~~
7 ~~consumer's telephone bill on or after the effective date of~~
8 ~~this amendatory Act of the 96th General Assembly only if:~~

9 ~~(A) the service provider offering the product or~~
10 ~~service has clearly and conspicuously disclosed all~~
11 ~~material terms and conditions of the product or service~~
12 ~~being offered, including, but not limited to, all~~
13 ~~charges; and the fact that the charges for the product~~
14 ~~or service shall appear on the consumer's telephone~~
15 ~~bill;~~

16 ~~(B) after the clear and conspicuous disclosure of~~
17 ~~all material terms and conditions as described in~~
18 ~~paragraph (A) of this item (1), the consumer has~~
19 ~~expressly consented to obtain the product or service~~
20 ~~offered and to have the charges appear on the~~
21 ~~consumer's telephone bill and the consent has been~~
22 ~~verified as provided in item (2) of this subsection~~
23 ~~(c);~~

24 ~~(C) the service provider offering the product or~~
25 ~~service or any billing agent for the service provider~~
26 ~~has provided the consumer with a toll free telephone~~

1 ~~number the consumer may call and an address to which~~
2 ~~the consumer may write to resolve any billing dispute~~
3 ~~and to answer questions; and~~

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

10 ~~(2) The consumer consent required by item (1) of this~~
11 ~~subsection (c) must be verified by the service provider~~
12 ~~offering the product or service before any charges are~~
13 ~~submitted for billing on a consumer's telephone bill. A~~
14 ~~record of the consumer consent and verification must be~~
15 ~~maintained by the service provider offering the product or~~
16 ~~service for a period of at least 24 months immediately~~
17 ~~after the consent and verification have been obtained. The~~
18 ~~method of obtaining consumer consent and verification must~~
19 ~~include one or more of the following:~~

20 ~~(A) A writing signed and dated by the consumer to~~
21 ~~be billed that clearly and conspicuously discloses the~~
22 ~~material terms and conditions of the product or service~~
23 ~~being offered in accordance with paragraph (A) of item~~
24 ~~(1) of this subsection (c) and clearly and~~
25 ~~conspicuously states that the consumer expressly~~
26 ~~consents to be billed in accordance with paragraph (B)~~

1 ~~of item (1) of this subsection (c) as follows:~~

2 ~~(i) if the writing is in electronic form, then~~
3 ~~it shall contain the consumer disclosures required~~
4 ~~by Section 101(c) of the federal Electronic~~
5 ~~Signatures in Global and National Commerce Act;~~
6 ~~and~~

7 ~~(ii) the writing shall be a separate document~~
8 ~~or easily separable document or located on a~~
9 ~~separate screen or webpage containing only the~~
10 ~~disclosures and consent described in item (1) of~~
11 ~~this subsection (c).~~

12 ~~(B) Third party verification by an independent~~
13 ~~third party that:~~

14 ~~(i) clearly and conspicuously discloses to the~~
15 ~~consumer to be billed all of the information~~
16 ~~required by paragraph (A) of item (1) of this~~
17 ~~subsection (c);~~

18 ~~(ii) operates from a facility physically~~
19 ~~separate from that of the service provider~~
20 ~~offering the product or service;~~

21 ~~(iii) is not directly or indirectly managed,~~
22 ~~controlled, directed, or owned wholly or in part by~~
23 ~~the service provider offering the product or~~
24 ~~service;~~

25 ~~(iv) does not derive commissions or~~
26 ~~compensation based upon the number of sales~~

1 ~~confirmed;~~

2 ~~(v) tape records the entire verification~~
3 ~~process, with prior consent of the consumer to be~~
4 ~~billed; and~~

5 ~~(vi) obtains confirmation from the consumer to~~
6 ~~be billed that he or she authorized the purchase of~~
7 ~~the offered good or service.~~

8 ~~(C) All verifications must be conducted in the same~~
9 ~~language that was used in the underlying sales~~
10 ~~transaction.~~

11 ~~(3) Unless verification is required by federal law or~~
12 ~~rules implementing federal law, item (2) of this subsection~~
13 ~~(c) does not apply to customer-initiated transactions with~~
14 ~~a certificated telecommunications carrier for which the~~
15 ~~service provider has the appropriate documentation.~~

16 ~~(4) This Section does not apply to message~~
17 ~~telecommunications service charges that are initiated by~~
18 ~~dialing 1+, 0+, 0, 1010XXX, or collect calls and charges~~
19 ~~for video services if the service provider has the~~
20 ~~necessary records to establish the billing for the call or~~
21 ~~service.~~

22 ~~(d) Records of disputed charges.~~

23 ~~(1) Every service provider or billing agent shall~~
24 ~~maintain records of every disputed charge for a product or~~
25 ~~service placed on a consumer's bill.~~

26 ~~(2) The record required under this subsection (d) shall~~

1 ~~contain for every disputed charge all of the following:~~

2 ~~(A) any affected telephone numbers and, if~~
3 ~~available, addresses;~~

4 ~~(B) the date the consumer requested that the~~
5 ~~disputed charge be removed from the consumer's bill;~~

6 ~~(C) the date the disputed charge was removed from~~
7 ~~the consumer's telephone bill; and~~

8 ~~(D) the date action was taken to refund or credit~~
9 ~~to the consumer any money that the consumer paid for~~
10 ~~the disputed charges.~~

11 ~~(3) The record required by this subsection (d) shall be~~
12 ~~maintained for at least 24 months.~~

13 ~~(c) Billing agents shall take reasonable steps designed to~~
14 ~~ensure that service providers on whose behalf they submit~~
15 ~~charges to a billing carrier comply with the requirements of~~
16 ~~this Section.~~

17 ~~(f) Any service provider or billing agent who violates this~~
18 ~~Section commits an unlawful practice within the meaning of this~~
19 ~~Act.~~

20 (Source: P.A. 96-827, eff. 11-30-09.)

21 Section 99. Effective date. This Act takes effect January
22 1, 2013."