

# HB5211



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB5211

Introduced 2/8/2012, by Rep. Kelly Burke

#### SYNOPSIS AS INTRODUCED:

815 ILCS 505/2HHH

Amends the Consumer Fraud and Deceptive Business Practices Act concerning product and services charges billed on telephone bills. Provides that a third-party vendor shall not bill a consumer for goods or services that will appear as a charge on a consumer's telephone bill. Effective immediately.

LRB097 18755 JLS 63990 b

A BILL FOR

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

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.

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

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

22 (c) A billing agent, on behalf of a third-party vendor,  
23 shall not submit, directly or through an intermediary, a charge

1 to a telecommunications carrier for goods or services that will  
2 appear as a charge on a consumer's telephone bill.

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

5 (e) This Section does not apply to the provision of  
6 services and products by a telecommunications carrier subject  
7 to the provisions of Section 13-903 of the Public Utilities  
8 Act, by a telecommunications carrier's affiliates, or an  
9 affiliated cable or video provider, as that term is defined in  
10 Section 22-501 of the Public Utilities Act, or by a provider of  
11 public mobile services, as defined in Section 13-214 of the  
12 Public Utilities Act.

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

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

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

24 ~~(b) This Section does not apply to the provision of~~  
25 ~~services and products by a telecommunications carrier subject~~  
26 ~~to the provisions of Section 13-903 of the Public Utilities~~

1 ~~Act, by a telecommunications carrier's affiliates, or an~~  
2 ~~affiliated cable or video provider, as that term is defined in~~  
3 ~~Section 22-501 of the Public Utilities Act, or by a provider of~~  
4 ~~public mobile services, as defined in Section 13-214 of the~~  
5 ~~Public Utilities Act.~~

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

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

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

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

26 ~~(C) the service provider offering the product or~~

1 ~~service or any billing agent for the service provider~~  
2 ~~has provided the consumer with a toll-free telephone~~  
3 ~~number the consumer may call and an address to which~~  
4 ~~the consumer may write to resolve any billing dispute~~  
5 ~~and to answer questions; and~~

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

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

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

1 ~~conspicuously states that the consumer expressly~~  
2 ~~consents to be billed in accordance with paragraph (B)~~  
3 ~~of item (1) of this subsection (c) as follows:~~

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

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

14 ~~(B) Third party verification by an independent~~  
15 ~~third party that:~~

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

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

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

1                   ~~(iv) does not derive commissions or~~  
2                   ~~compensation based upon the number of sales~~  
3                   ~~confirmed;~~

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

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

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

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

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

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

25                   ~~(1) Every service provider or billing agent shall~~  
26                   ~~maintain records of every disputed charge for a product or~~

1 ~~service placed on a consumer's bill.~~

2 ~~(2) The record required under this subsection (d) shall~~  
3 ~~contain for every disputed charge all of the following:~~

4 ~~(A) any affected telephone numbers and, if~~  
5 ~~available, addresses;~~

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

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

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

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

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

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

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

23 Section 99. Effective date. This Act takes effect upon  
24 becoming law.