Department of Legislative Services

Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 643 (Senator Pugh, *et al.*)
Finance Economic Matters

Telephone Bills - Third-Party Vendor Billing

This bill addresses the practice of "cramming." The bill prohibits a third-party vendor or its billing agent from submitting charges to a telephone company or reseller unless the third-party vendor or billing agent first obtains an ordering customer's express authorization. The bill establishes requirements for such an authorization and specifies conditions under which a customer is not liable for third-party vendor billing charges. A third-party vendor or billing agent that violates the bill's provisions is subject to the civil penalty and enforcement provisions, but not the criminal penalty provisions, of the Maryland Consumer Protection Act (MCPA).

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues from civil penalties assessed on third-party vendors and billing agents. If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: A "third-party vendor" is an entity not affiliated with a telephone company or reseller that provides products or services to a customer and seeks to charge the customer through third-party vendor billing. "Third-party vendor billing" is the use of a telephone company or reseller's billing system, either directly or through a billing agent, to charge a customer for products or services provided by a third-party vendor.

A third-party vendor or its billing agent may not submit charges to a telephone company or reseller unless the third-party vendor or billing agent first obtains an ordering customer's express authorization. "Express authorization" includes written authorization, oral authorization verified and recorded by an independent party, or a recorded electronic authorization by an ordering customer. This authorization must be separate from any solicitation material or entry forms for sweepstakes or contests and must include specified information. A third-party vendor or billing agent must retain a copy of the authorization for two years.

A customer is not liable for third-party vendor billing charges unless the customer (1) has received notice that free blocking of third-party vendor billing may be available to the customer; and (2) is provided access to itemized third-party vendor charges and the name and telephone number of the third-party vendor or its billing agent.

If there is a dispute about a charge, a customer who has made the dispute in a timely manner is not liable for the charge unless the third-party vendor or billing agent provides a copy of the required authorization.

An agreement for third-party vendor billing entered into by a telephone company or reseller and a third-party vendor or billing agent on or after October 1, 2010 must comply with the bill's requirements.

A violation of the bill by a third-party vendor or billing agent is considered an unfair or deceptive trade practice under the MCPA and is subject to the enforcement and penalty provisions of the MCPA, except for specified criminal penalty provisions.

Current Law: The Federal Communications Commission "Truth-in-Billing" rules (section 64.2401) require that a telephone company's bill must: (1) be accompanied by a brief, clear, nonmisleading, plain language description of the service or services rendered; (2) identify the service provider associated with each charge; (3) clearly and conspicuously identify any change in service provider; (4) contain full and nonmisleading descriptions of charges; (5) identify those charges for which failure to pay will not result in disconnection of the customer's basic local service; and (6) provide a toll-free number for customers to call in order to lodge a complaint or obtain information.

The Code of Maryland Regulations (COMAR 20.45.04.01) requires that a telephone customer's bill must be sent monthly and contain a clear listing of all charges and credits. For purposes of clarity a customer's bill must include the total amount due supported by the following data:

- the charges, including applicable federal and local taxes;
- local monthly services from current to the next due bill date;
- additional message units;
- toll calls and telegrams;
- other charges and credits with appropriate explanation; and
- the amount of the balance due carried forward from the prior bill.

Chapters 543 and 544 of 1999 prohibit a telephone company or reseller from changing a telephone customer's provider, service, or billing arrangement without express authorization by the customer, a practice commonly referred to as "slamming." The Acts also establish notice requirements and penalties for noncompliance.

A reseller is a person who provides telecommunications services to end-use customers by using the transmission facilities of another person or bills an end-use customer or causes the customer to be billed for telecommunications service.

An unfair or deceptive trade practice under MCPA includes any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer service; the extension of consumer credit; and the collection of consumer debt.

The Consumer Protection Division of the Office of the Attorney General is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, hold a public hearing, seek an injunction, or bring an action for damages. A merchant who violates MCPA is subject to a fine of up to $1,000 for the first violation and up to $5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to $1,000 and/or imprisonment for up to one year. Those criminal penalties, however, are not applied to the provisions of this bill.

Background: Billing aggregators or clearinghouses provide billing and collection services to long distance carriers, independent telephone companies, information service providers, and many other service providers. These aggregators and clearinghouses accumulate service charges due to a telephone customer from different service providers and transmit them to the local telephone company to be included on the customer's local telephone bill. Although many businesses and services charged through third-party vendor billing are legitimate charges for services requested by a customer, third-party vendor billing has also been widely used for fraudulent charges for services that were never ordered, authorized, received, or used.

"Cramming" is a term applied to the action of some service providers in charging end users through a customer's telephone bill for miscellaneous services that were not ordered. Such charges that appear on a customer's bill may be listed as one-time charges or may occur as recurring monthly charges for services to which the customer may not have subscribed or may have inadvertently subscribed. Cramming may occur through sweepstakes entry forms, responses to telemarketing questionnaires, or a collect call acceptance, among many other methods.

Case Number 8776 of the Public Service Commission (PSC) was initiated in October 1997 to investigate unauthorized changes in a telephone service or billing provider without a customer's consent, a practice known as "slamming." In February 1998 the proceeding was expanded to include an examination of the practice of "cramming," the practice of including charges for services that the customer had not authorized in the customer's local telephone service bill. Enactment of Chapters 543 and 544 of 1999 addressed the "slamming" phase of the proceeding but the "cramming" phase of the proceeding was not specifically addressed through the legislation or a final order by PSC.

PSC regulates over 300 telecommunications companies and reviewed 328 tariff filings in 2008. Customer disputes regarding telecommunications services are handled by PSC's Office of External Relations. In 2008 the office handled 2,358 telecommunications complaints. **Exhibit 1** shows the number of third-party billing disputes PSC has received since 2007. As shown in the exhibit, the practice of slamming represents the majority of third-party billing disputes.

Exhibit 1
PSC Third-party Billing Disputes

Year	Cramming Complaints	Slamming Complaints
2007	42	177
2008	87	178
2009	78	128
2010*	19	11

*2010 complaints are through February 24, 2010.
Source: Public Service Commission

State Fiscal Effect: General fund revenues may increase due to the application of existing civil penalty provisions to violations of the bill. PSC has advised that penalties for related complaints have not been assessed on telephone companies in recent years. Accordingly, it is expected that any civil penalty revenue will be minimal.

If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources. Although PSC receives greater than 50 related complaints in some years, Legislative Services advises that the notification and authorization requirements in the bill may act to decrease the number of consumer complaints that the Office of the Attorney General will need to address each year. Thus, for purposes of this fiscal and policy note, it is assumed that enforcement of the bill can be handled with existing resources.

Additional Information

Prior Introductions: None.

Cross File: HB 880 (Delegate Kramer, *et al.*) - Economic Matters.

Information Source(s): Office of People's Counsel, Public Service Commission, Department of Legislative Services

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