

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 788 (Delegate Stein, *et al.*)
Economic Matters

Mobile Phone Companies - Third-Party Vendor Billing - Restrictions

This bill addresses the practice of “cramming” by mobile telecommunications service providers (identified as commercial mobile radio service providers in the bill). The bill prohibits a mobile telecommunications service provider from including third-party vendor billing charges on customer bills without first obtaining a 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. Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA’s civil and criminal penalty provisions.

Fiscal Summary

State Effect: The bill’s imposition of existing penalty provisions does not have a material impact on State finances or operations. 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: The bill’s imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary: “Commercial mobile radio service” means a mobile telecommunications service that is (1) provided for profit; (2) an interconnected, two-way service; and (3) available to the public.

A “third-party vendor” is an entity that is not affiliated with a mobile telecommunications service provider but 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 mobile telecommunications service provider’s billing system, either directly or through a billing agent, to charge a customer for products or services provided by a third-party vendor.

“Third-party vendor billing” does not include billing for (1) products or services offered by, or bundled with, the products or services of a mobile telecommunications service provider or its affiliate; (2) specified pay-per-call services; or (3) contributions to any charitable organization subject to specified federal tax laws.

A mobile telecommunications service provider may not include a third-party vendor billing charge on a customer’s bill unless the provider first obtains an ordering customer’s express authorization. “Express authorization” includes written authorization, an independently verified and recorded oral authorization, or a recorded electronic authorization.

A customer is not liable for third-party vendor billing charges unless the customer (1) has expressly authorized third-party vendor billing and (2) is provided access to itemized third-party vendor charges that are separately identified as well as the name and telephone number of the third-party vendor or its billing agent.

Current Law: The Maryland Public Service Commission regulates the use of landline telephones, but it does not have jurisdiction over mobile telecommunications service providers.

Landline Telephones: 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.

Chapter 90 of 2010 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 is expressly inapplicable to commercial radio service providers.

Maryland Consumer Protection Act: An unfair or deceptive trade practice under MCPA includes, among other acts, 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 services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division 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.

Background: The Federal Communications Commission "Truth-in-Billing" rules (§ 64.2401) require that a commercial mobile radio service's bill must, among other things, (1) be accompanied by a brief, clear, nonmisleading, plain language description of the service or services rendered; (2) contain full and nonmisleading descriptions of charges; and (3) provide a toll-free number for customers to call in order to lodge a complaint or obtain information.

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.

Cramming has historically been associated with landlines. However, cramming is increasingly becoming an issue with mobile phones as well. According to the National Association of Attorneys General, 28 states have reported receiving more than 704 mobile cramming complaints, dating back as far as 2006.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Public Service Commission, National Association of Attorneys General, Department of Legislative Services

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