

SECOND REGULAR SESSION

HOUSE BILL NO. 2191

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES WALSH (Sponsor), LeVOTA, HARRIS, NANCE, PACE,
JONES (89), CARTER, SCAVUZZO, ENGLUND, KRATKY, SKAGGS, ATKINS, FRAME,
WALTON GRAY, MEADOWS, LAMPE, CORCORAN, SCHIEFFER, FALLERT,
OXFORD AND FUNDERBURK (Co-sponsors).

5107L.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 407, RSMo, by adding thereto one new section relating to the anticramming protection act.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 407, RSMo, is amended by adding thereto one new section, to be
2 known as section 407.1092, to read as follows:

**407.1092. 1. This section shall be known and may be cited as the "Anticramming
2 Protection Act".**

3 **2. As used in this section, the following words mean:**

4 **(1) "Billing agent", any entity that submits charges to the billing carrier on behalf
5 of itself or any service provider;**

6 **(2) "Billing carrier", any telecommunications company, as defined in section
7 386.020, and any company providing services under a license granted by the Federal
8 Communications Commission under the commercial mobile radio service rules and
9 regulations that issues a bill directly to a customer for any product or service not provided
10 by such company;**

11 **(3) "Service provider", any entity that offers a product or service to a consumer
12 and that directly or indirectly charges to or collects from a consumer's telephone bill
13 received from a billing carrier an amount for the product or service.**

14 **3. This section shall not apply to the provision of services and products by a
15 telecommunications company subject to the provisions of chapters 386 and 392, by a**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 telecommunications company's affiliates, or an affiliated cable operator or video service
17 provider, as those terms are defined in section 67.2677, or a provider of services under a
18 license granted by the Federal Communications Commission under the commercial mobile
19 radio services rules and regulations.

20 **4. (1) A service provider or billing agent may submit charges for a product or**
21 **service to be billed on a consumer's telephone bill only if:**

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

26 **(b) After the clear and conspicuous disclosure of all material terms and conditions**
27 **as described in paragraph (a) of this subdivision, the consumer has expressly consented to**
28 **obtain the product or service offered and to have the charges appear on the consumer's**
29 **telephone bill, and the consent has been verified as provided in subdivision (2) of this**
30 **subsection;**

31 **(c) The service provider offering the product or service or any billing agent for the**
32 **service provider has provided the consumer with a toll-free telephone number the**
33 **consumer may call, or electronic mail address or physical street address to which the**
34 **consumer may write to resolve any billing dispute and to answer questions; and**

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

39 **(2) The consumer consent required in subdivision (1) of this subsection shall be**
40 **verified by the service provider offering the product or service before any charges are**
41 **submitted for billing on a consumer's telephone bill. A record of the consumer consent and**
42 **verification shall be maintained by the service provider offering the product or service for**
43 **a period of at least twenty-four months immediately after the consent and verification have**
44 **been obtained. The method of obtaining consumer consent and verification shall include**
45 **one or more of the following:**

46 **(a) A writing signed and dated by the consumer to be billed that clearly and**
47 **conspicuously discloses the material terms and conditions of the product or service being**
48 **offered in accordance with paragraph (a) of subdivision (1) of this subsection and clearly**
49 **and conspicuously states that the consumer expressly consents to be billed in accordance**
50 **with paragraph (b) of subdivision (1) of this subsection as follows:**

51 **a. If the writing is in electronic form, then it shall contain the consumer disclosures**
52 **required by Section 101(c) of the Federal Electronic Signatures in Global and National**
53 **Commerce Act; and**

54 **b. The writing shall be a separate document or easily separable document or**
55 **located on a separate screen or webpage containing only the disclosures and consent**
56 **described in subdivision (1) of this subsection;**

57 **(b) Third-party verification by an independent third party that:**

58 **a. Clearly and conspicuously discloses to the consumer to be billed all of the**
59 **information required by paragraph (a) of subdivision (1) of this subsection;**

60 **b. Operates from a facility physically separate from that of the service provider**
61 **offering the product or service;**

62 **c. Is not directly or indirectly managed, controlled, directed, or owned wholly or**
63 **in part by the service provider offering the product or service;**

64 **d. Does not derive commissions or compensation based upon the number of sales**
65 **confirmed;**

66 **e. Tape records the entire verification process with prior consent of the consumer**
67 **to be billed; and**

68 **f. Obtains confirmation from the consumer to be billed that he or she authorized**
69 **the purchase of the offered good or service;**

70 **(c) For a product or service obtained using a mobile device, then evidence of:**

71 **a. Clear and conspicuous disclosure of the material terms and conditions of the**
72 **product or service being offered, including, but not limited to, all charges and the fact that**
73 **the charges for the product or service shall appear on the consumer's telephone bill; and**

74 **b. The consumer's affirmative action to obtain the product or service offered and**
75 **consent to have the charges appear on the consumer's telephone bill;**

76 **(d) All verifications shall be conducted in the same language that was used in the**
77 **underlying sales transaction.**

78 **(3) Unless certification is required by federal law or rules implementing federal**
79 **law, subdivision (2) of this subsection shall not apply to customer-initiated transactions**
80 **with a certificated telecommunications company for which the service provider has the**
81 **appropriate documentation.**

82 **(4) This section shall not apply to message telecommunications service charges that**
83 **are initiated by dialing 1+, 0+, 0-, 1010XXX, or collect calls and charges for video services**
84 **if the service provider has the necessary records to establish the billing for the call or**
85 **service.**

86 **5. (1) Every service provider or billing agent shall maintain records of every**
87 **disputed charge for a product or service placed on a consumer's telephone bill.**

88 **(2) The record required under this subsection shall contain for every disputed**
89 **charge all of the following:**

90 **(a) Any affected telephone numbers and, if available, addresses;**

91 **(b) The date the consumer requested that the disputed charge be removed from the**
92 **consumer's telephone bill;**

93 **(c) The date the disputed charge was removed from the consumer's telephone bill;**
94 **and**

95 **(d) The date action was taken to refund or credit the consumer any money that the**
96 **consumer paid for the disputed charges.**

97 **(3) The record required by this subsection shall be maintained for at least twenty-**
98 **four months.**

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

102 **7. Any service provider or billing agent who violates this section commits an**
103 **unlawful practice within the meaning of this chapter.**

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