

HB 889

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1 A bill to be entitled
2 An act relating to commercial mobile radio services;
3 providing a short title; creating s. 501.180, F.S.;
4 defining terms; prohibiting commercial mobile radio
5 service carriers from adding charges to consumer
6 accounts or collecting charges for third-party
7 application providers that have not been expressly
8 authorized by the primary account holders; prohibiting
9 commercial mobile radio service carriers from
10 obtaining a primary account holder's authorization
11 through misleading or deceptive means or from imposing
12 charges, collecting payments, or otherwise profiting
13 from blocking consumer accounts from incurring charges
14 from third-party application providers or receiving,
15 handling, or processing consumer complaints or
16 disputes; specifying procedures for providing notice
17 to consumers of certain disclosures relating to
18 charges for third-party applications, content,
19 services, and other things and for obtaining the
20 primary account holder's authorization of the charges;
21 requiring commercial mobile radio service carriers to
22 maintain certain documentation; providing procedures
23 for consumer complaints or disputes and the reversal
24 of disputed charges; providing that violations are
25 unfair and deceptive trade practices, which are
26 subject to specified penalties and remedies; requiring
27 a minimum award of damages under certain

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28 | circumstances; providing a directive to the Division
29 | of Statutory Revision; providing an effective date.

30 |
31 | Be It Enacted by the Legislature of the State of Florida:

32 |
33 | Section 1. This act may be cited as the "Wireless Anti-
34 | Fraud Act of 2012."

35 | Section 2. Section 501.180, Florida Statutes, is created
36 | to read:

37 | 501.180 Commercial mobile radio services; unauthorized,
38 | misleading, or deceptive charges.-

39 | (1) As used in this section, the term:

40 | (a) "Commercial mobile radio service carrier" or "carrier"
41 | means a person who provides a commercial mobile radio service as
42 | defined in 47 C.F.R. s. 20.3 and offers in the state any mobile
43 | service listed in 47 C.F.R. s. 20.9.

44 | (b) "Primary account holder" means:

45 | 1. The party identified in the carrier's account records
46 | as responsible for payment of charges on the consumer's account;

47 | 2. An adult person authorized by such party to incur any
48 | charge on the consumer's account for third-party applications,
49 | content, services, or other things; or

50 | 3. A person contractually or otherwise lawfully authorized
51 | to represent such party.

52 | (c) "Third-party application provider" means a person
53 | other than a carrier who provides or offers applications,
54 | content, services, or other things, which may include, but are

55 not limited to, ringtones, games, or streaming music or video,
56 to consumers across the carrier's network.

57 (2) A commercial mobile radio service carrier may not:

58 (a) Add any charge to a consumer's account or collect any
59 payment from a consumer at the request of or on behalf of a
60 third-party application provider that has not been expressly
61 authorized by the primary account holder in accordance with
62 subsection (3).

63 (b) Obtain the primary account holder's authorization
64 through misleading or deceptive means.

65 (c) Impose any charge, collect any payment from a
66 consumer, or otherwise profit from:

67 1. Blocking a consumer's account from incurring charges
68 from third-party application providers; or

69 2. Receiving, handling, or processing a consumer's
70 complaint or dispute of any charge added to the consumer's
71 account at the request of or on behalf of a third-party
72 application provider.

73 (3) A charge is authorized by a consumer, and consequently
74 does not violate this section, if, before the carrier adds the
75 charge to the consumer's account:

76 (a) The third-party application provider submits to the
77 carrier the first and last names of the consumer who requested
78 the charge and the telephone number of the wireless device
79 assigned in the carrier's account records to the consumer.

80 (b) The carrier provides notice to the primary account
81 holder that clearly and conspicuously discloses:

82 1. That the third-party application provider is requesting
83 that a charge be added to the consumer's account.

84 2. A description of the third-party applications, content,
85 services, or other things for which the charge is being
86 requested.

87 3. The amount of the requested charge.

88 4. Whether the requested charge is a one-time or recurring
89 charge and, if a recurring charge, the frequency at which the
90 recurring charge would be added to the consumer's account.

91 5. The name and valid telephone number of the third-party
92 application provider requesting the charge.

93 (c) The primary account holder, after receiving notice of
94 the requested charge under paragraph (b), submits to the carrier
95 his or her express authorization of the charge in one or more of
96 the following formats:

97 1. A written authorization signed by the primary account
98 holder.

99 2. A short message service text message submitted from a
100 wireless device assigned in the carrier's account records to the
101 primary account holder.

102 3. An electronic mail message submitted from an e-mail
103 address assigned in the carrier's account records to the primary
104 account holder.

105 4. A recorded verbal authorization of the primary account
106 holder.

107 (4) A charge is deemed to be unauthorized and constitutes
108 a violation of this section if the carrier does not maintain

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109 documentation demonstrating compliance with this section for at
110 least 4 years.

111 (5) Upon receipt or notice of a consumer's complaint or
112 dispute of any charge that violates this section, the carrier
113 shall immediately reverse the charge.

114 (6) A violation of this section constitutes an unfair and
115 deceptive trade practice in violation of part II of this chapter
116 and is subject to the penalties and remedies provided therein
117 for such a violation, except that any award of damages,
118 regardless of the actual amount of damages, must be at least:

119 (a) One thousand five hundred dollars per violation, if
120 the carrier was found to have committed a violation of this
121 section within 3 years before the date of the subject violation.

122 (b) Five hundred dollars per violation, if the carrier was
123 not found to have committed a violation of this section within 3
124 years before the date of the subject violation.

125
126 For purposes of this subsection, each charge added to a
127 consumer's account in violation of this section constitutes a
128 separate violation.

129 Section 3. The Division of Statutory Revision of the
130 Office of Legislative Services is directed to assign s. 501.180,
131 Florida Statutes, as created by this act, to part I of chapter
132 501, Florida Statutes.

133 Section 4. This act shall take effect July 1, 2012.