

A Bill

The Consumer Protection Act of 2020

Whereas, many American consumers spend a substantial amount of time dealing with companies that provide services, due to overcharging and deceitful acts by the companies that provide the services;

Whereas, such overcharging and deceitful acts include informing the customer on the phone, etc. of a rate to be charged, followed by billing that is in excess of the informed rate, providing services that were not requested and then billing for such services, making it very difficult to terminate service or have a wrong be righted, and charging late fees for acts or conditions that are not the fault of the consumer;

Whereas, currently, virtually all of the service providers require their customers, as a condition of receiving services, to agree that they will not participated in a class action lawsuit with respect to services provided, and instead will bring any grievance against the service provider via arbitration;

Whereas, established case law provides that such requirements, to the extent provided in contracts, are binding, thus prohibiting class actions as potential remedies to service overcharges and deceptive practices, etc., thereby requiring arbitration be pursued;

Whereas, arbitration filings ordinarily require a substantial fee to be filed, or at least a fee that is disproportionate relative to the harm incurred, thus often causing filing of arbitration to be an imprudent action, resulting in arbitration not being filed;

Whereas, the service providers are aware of the legal protections and practical limitations of consumers with respect to arbitration, and thus have taken advantage of consumers, by overcharging and committing deceitful actions, etc., as noted above; and

Whereas, Congress desires to aid American consumers by protecting them from the acts conducted by service providing companies specified above, by discouraging service providing companies from committing one or more of the actions specified above.

Therefore, in order to achieve the objectives outlined above, effective January 1, 2021, Congress hereby amends the Telemarketing and Consumer Fraud and Abuse Prevention Act, as amended, 15 U.S.C. §6101 *et seq.* (the “Act”), as follows.

(a) Paragraph (4) of 15 U.S.C. §6101 is revised to read as follows: “Consumers are victimized by other forms of telemarketing and service administration deception and abuse, including oral promises of fees and terms that are not carried out when bills are issued, supplying of services that are not requested, charging of late fees for acts or conditions that are not the fault of the consumer, and extreme difficulty in terminating service or correcting one or more of the foregoing conditions.”

(b) Paragraphs (1) and (3) of Subsection (a) of §6102 are revised by replacement of “abusive telemarketing acts” with “abusive telemarketing and service administration acts.”

(c) At the end of Subparagraph (C) of Paragraph (3) of Subsection (a) of §6102, the semi-colon is replaced with a comma, and the word “and” is deleted.

(d) At the end of Subparagraph (D) of Paragraph (3) of Subsection (a) of §6102, the period is replaced with a comma.

(e) New Subparagraphs (E) through (H) are added to Paragraph (3) of Subsection (a) of §6102, and the flush language at the end of Subsection (a) of §6102 is changed, to read as follows:

(E) prohibition on orally promising service fees or terms that are not carried out when any bill issued,

(F) a requirement that the means of terminating service or correcting an overbilling situation (with the orally promised price being binding) be simple and easily determinable,

(G) a requirement that no services be supplied unless affirmatively requested by the consumer by action (and not by inaction) of the consumer, and

(H) prohibition of charging of late fees for payment made late, when the reason the payment is late is not the fault of the consumer.

In prescribing the rules described in this paragraph, the Commission shall also consider recordkeeping requirements, including provisions requiring service providers to record telephone calls and other communications from or with customers, and to retain such recordings, etc. for a specific period of time.

(f) Subsection (c) of 15 U.S.C. §6102 is revised by elimination of the word “and” at the end of Paragraph (1), change of the period at the end of Paragraph (2) to a semi-colon followed by the word “and,” and addition of the following Paragraph (3):

(3) shall, with respect to a violation specified in Subparagraphs (E), (F), (G) or (H) of Paragraph (3) of Subsection (a) (including violation with respect to more than one of such Subparagraphs), entitle the consumer to compensation (to be paid by the service provider) for time spent in excess of one hour, at a rate of \$50 per hour, provided that if more than one hour is spent dealing with the matter, compensation will be paid for the entire time spent by the consumer with respect to the matter. The Commission will establish a mechanism for complaints to be registered and considered by the Commission without litigation, and the Commission may charge a fee of the consumer not to exceed ten percent (10%) of the amount recovered by the consumer. After 2021, the hourly rate will be annually adjusted for inflation, applying the Chained Consumer Price Index for All Urban Consumers (as published by the Bureau of Labor Statistics of the Department of Labor) rate.

(g) Subsection (a) of §6103 and Subsection (a) of §6104 are revised by replacing “telemarketing” with “telemarketing or service administration,” in the places that “telemarketing” appears.

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