

1 H.254

2 Introduced by Representatives Botzow of Pownal and Marcotte of Coventry

3 Referred to Committee on

4 Date:

5 Subject: Commerce and trade; consumer protection

6 Statement of purpose: This bill proposes to implement new consumer

7 protections relating to goods and services appearing on a telephone bill, to

8 discount membership programs, to security breach notices, and to change the

9 name of the consumer fraud act to the consumer protection act.

10 An act relating to consumer protection

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 Sec. 1. 9 V.S.A. § 2466 is amended to read:

13 § 2466. GOODS AND SERVICES APPEARING ON TELEPHONE BILL

14 (a) ~~No~~ Except as provided in subsection (f) of this section, a seller shall not

15 bill a consumer for goods or services that will appear as a charge on the

16 person's local telephone bill ~~without the consumer's express authorization.~~

17 (b) ~~No later than the tenth business day after a seller has entered into a~~

18 ~~contract or other agreement with a consumer to sell or lease or otherwise~~

19 ~~provide for consideration goods or services that will appear as a charge on the~~

1 ~~consumer's local telephone bill, the seller shall send, or cause to be sent, to the~~
2 ~~consumer, by first class mail, postage prepaid, a notice of the contract or~~
3 ~~agreement.~~

4 ~~(e) The notice shall clearly and conspicuously disclose:~~

5 ~~(1) The nature of the goods or services to be provided;~~

6 ~~(2) The cost of the goods or services;~~

7 ~~(3) Information on how the consumer may cancel the contract or~~
8 ~~agreement;~~

9 ~~(4) The consumer assistance address and telephone number specified by~~
10 ~~the attorney general;~~

11 ~~(5) That the charges for the goods or services may appear on the~~
12 ~~consumer's local telephone bill; and~~

13 ~~(6) Such other information as the attorney general may prescribe by rule.~~

14 ~~(d) The notice shall be a separate document sent for the sole purpose of~~
15 ~~providing to the consumer the information required by subsection (c) of this~~
16 ~~section. The notice shall not be combined with any sweepstakes offer or other~~
17 ~~inducement to purchase goods or services.~~

18 ~~(e) The sending of the notice required by this section is not a defense to a~~
19 ~~claim that a consumer did not consent to enter into the contract or agreement.~~

1 ~~(f)~~ No person shall arrange on behalf of a seller of goods or services,
2 directly or through an intermediary, with a local exchange carrier, to bill a
3 consumer for goods or services unless the seller complies with this section.

4 This prohibition applies, but is not limited, to persons who aggregate consumer
5 billings for a seller and to persons who serve as a clearinghouse for aggregated
6 billings.

7 ~~(g)~~(c) Failure to comply with this section is an unfair and deceptive act and
8 practice in commerce under this chapter.

9 ~~(h)~~(d) The attorney general may make rules and regulations to carry out the
10 purposes of this section.

11 ~~(i)~~(e) Nothing in this section limits the liability of any person under
12 existing statutory or common law.

13 ~~(j)~~(f) This section does not apply to ~~sellers regulated by~~ billing for goods or
14 services marketed or sold by persons subject to the jurisdiction of the Vermont
15 public service board under ~~Title 30, other than section 231a of Title 30~~
16 30 V.S.A. § 203, but this section does apply to billing aggregators described in
17 30 V.S.A. § 231a. Nothing in this section affects any rule issued by the
18 Vermont public service board.

1 Sec. 2. 9 V.S.A. chapter 63, subchapter 1C is added to read:

2 Subchapter 1C. Discount Membership Programs

3 § 2470aa. DEFINITIONS

4 In this subchapter:

5 (1) “Billing information” means any data that enables a seller of a
6 discount membership program to access a consumer’s credit or debit card,
7 bank, or other account, but does not include the consumer’s name, e-mail
8 address, telephone number, or mailing address. For credit card and debit card
9 accounts, billing information includes the full account number, card type, and
10 expiration date, and, if necessary, the security code. For accounts at a financial
11 institution, “billing information” includes the full account number and routing
12 number, and, if necessary, the name of the financial institution holding the
13 account.

14 (2) A “discount membership program” is a program that entitles
15 consumers to receive discounts on the purchase of goods or services or both, in
16 whole or in part, from any third party.

17 § 2470bb. APPLICABILITY

18 A discount membership program is a good or service within the meaning of
19 subsection 2451a(b) of this chapter. This subchapter applies only to persons
20 who are regularly and primarily engaged in trade or commerce in this state in
21 connection with offering or selling discount membership programs.

1 § 2470cc. REQUIRED DISCLOSURES; CONSENT

2 (a) No person shall charge or attempt to charge a consumer for a discount
3 membership program, or to renew a discount membership program beyond the
4 term expressly agreed to by the consumer or the term permitted under section
5 2470ff of this title, whichever is shorter, unless:

6 (1) Before obtaining the consumer's billing information, the person has
7 clearly and conspicuously disclosed to the consumer all material terms of the
8 transaction, including:

9 (A) A description of the types of goods and services on which a
10 discount is available;

11 (B) The name of the discount membership program and the name and
12 address of the seller of the program;

13 (C) The amount, or a good faith estimate, of the typical discount on
14 each category of goods and services;

15 (D) The cost of the program, including the amount of any periodic
16 charges, how often such charges are imposed, and the method of payment;

17 (E) The right to cancel and to terminate the program, which shall be
18 no more restrictive than as required by section 2470ee of this subchapter, and a
19 toll-free telephone number and e-mail address that can be used to cancel
20 the membership;

1 (F) The maximum length of membership, as described in section
2 2470ff of this subchapter;

3 (G) In the event that the program is offered on the Internet through a
4 link or referral from another business's website, the fact that the seller is not
5 affiliated with that business; and

6 (2) The person has received express informed consent for the charge
7 from the consumer whose credit or debit card, bank, or other account will be
8 charged, by:

9 (A) Obtaining from the consumer:

10 (i) the consumer's billing information; and

11 (ii) the consumer's name and address and a means to contact the
12 consumer; and

13 (B) Requiring the consumer to perform an additional affirmative
14 action, such as clicking on an online confirmation button, checking an online
15 box that indicates the consumer's consent to be charged the amount disclosed,
16 or expressly giving consent over the telephone.

17 (b) A person who sells discount membership programs shall retain
18 evidence of a consumer's express informed consent for at least three years
19 after the consent is given.

1 § 2470dd. PERIODIC NOTICES

2 (a) A person who periodically charges a consumer for a discount
3 membership program shall send the consumer a notice of the charge no less
4 frequently than every three months from the date of initial enrollment that
5 clearly and conspicuously discloses:

6 (1) A description of the program;

7 (2) The name of the discount membership program and the name and
8 address of the seller of the program;

9 (3) The cost of the program, including the amount of any periodic
10 charges, how often such charges are imposed, and the method of payment;

11 (4) The right to cancel and to terminate the program, which shall be no
12 more restrictive than as required by section 2470ee of this subchapter, and a
13 toll-free number and e-mail address that can be used to cancel the
14 membership; and

15 (5) The maximum length of membership, as described in section 2470ff
16 of this subchapter.

17 (b) The notice specified in subsection (a) of this section:

18 (1) Shall be sent:

19 (A) To the consumer's last known e-mail address, if the consumer
20 enrolled in the discount membership program online or by e-mail, with the
21 subject line, "IMPORTANT INFORMATION ABOUT YOUR DISCOUNT

1 PROGRAM BILLING,” or substantially similar words, provided that the
2 sender takes reasonable steps to verify that the e-mail has been opened; or

3 (B) Otherwise by first-class mail to the consumer’s last known
4 mailing address, with the heading on the enclosure and outside envelope,
5 “IMPORTANT INFORMATION ABOUT YOUR DISCOUNT PROGRAM
6 BILLING,” or substantially similar words; and

7 (2) Shall not include any solicitation or advertising.

8 § 2470ee. CANCELLATION AND TERMINATION

9 (a) In addition to any other right to revoke an offer, a consumer may cancel
10 the purchase of a discount membership program until midnight on the 30th day
11 after the date the consumer has given express informed consent to be charged
12 for the program.

13 (b) Notice of cancellation shall be deemed given when deposited in a
14 mailbox properly addressed and postage prepaid or when e-mailed to the
15 e-mail address of the seller of the discount membership program.

16 (c) In addition to the right to cancel described in this subchapter, a
17 consumer may terminate a discount membership program at any time by
18 providing notice to the seller by one of the methods described in this section.
19 In that case, the consumer shall not be obligated to make any further payments
20 under the program and shall not be entitled to any discounts under the program
21 for any period of time after the last month for which payment has been made.

1 (d) If the seller of a discount membership program cancels the program for
2 any reason other than nonpayment by the consumer, the seller shall make pro
3 rata reimbursement to the consumer of all periodic charges paid by the
4 consumer for periods of time after cancellation. Prior to such cancellation, the
5 seller shall first provide reasonable notice and an explanation of the
6 cancellation in writing to the consumer.

7 § 2470ff. MAXIMUM LENGTH OF PLAN

8 No person shall sell, or offer for sale, a discount membership program
9 lasting longer than 18 months.

10 § 2470gg. BILLING INFORMATION

11 No person who offers or sells discount membership programs shall obtain
12 billing information relating to a consumer except directly from the consumer.

13 § 2470hh. VIOLATIONS

14 (a) A violation of this subchapter is deemed to be a violation of section
15 2453 of this title.

16 (b) The attorney general has the same authority to make rules, conduct
17 civil investigations, enter into assurances of discontinuance, and bring civil
18 actions as is provided under subchapter 1 of this chapter.

19 Sec. 3. 9 V.S.A. § 2435 is amended to read:

20 § 2435. NOTICE OF SECURITY BREACHES

21 (a) This section shall be known as the Security Breach Notice Act.

1 (b) Notice of breach.

2 (1) Except as set forth in subsection (d) of this section, any data
3 collector that owns or licenses computerized personal information that includes
4 personal information concerning a consumer shall notify the consumer that
5 there has been a security breach following discovery or notification to the data
6 collector of the breach. Notice of the security breach shall be made in the most
7 expedient time possible and without unreasonable delay, consistent with the
8 legitimate needs of the law enforcement agency, as provided in subdivision ~~(3)~~
9 (4) of this subsection, or with any measures necessary to determine the scope
10 of the security breach and restore the reasonable integrity, security, and
11 confidentiality of the data system.

12 (2) Any data collector that maintains or possesses computerized data
13 containing personal information of a consumer that the ~~business~~ data collector
14 does not own or license or any data collector that acts or conducts business in
15 Vermont that maintains or possesses records or data containing personal
16 information that the data collector does not own or license shall notify the
17 owner or licensee of the information of any security breach immediately
18 following discovery of the breach, consistent with the legitimate needs of law
19 enforcement as provided in subdivision ~~(3)~~(4) of this subsection.

20 (3) In the most expedient time possible and unless delay is necessary to
21 determine the scope of the security breach under subdivision (1) of this

1 subsection or is requested by law enforcement pursuant to subdivision (4) of
2 this subsection, a data collector or other entity subject to this subchapter, other
3 than a person or entity licensed or registered with the department of banking,
4 insurance, securities, and health care administration under Title 8 or this title,
5 shall provide the attorney general's office notice of a security breach, notice of
6 the number of Vermont consumers affected if known to the data collector, and
7 a copy of the notice provided to a consumer under subdivision (1) of this
8 subsection.

9 (4) The notice to a consumer required by this subsection shall be
10 delayed upon request of a law enforcement agency. A law enforcement agency
11 may request the delay if it believes that notification may impede a law
12 enforcement investigation, or a national or homeland security investigation or
13 jeopardize public safety or national or homeland security interests. In the
14 event law enforcement makes the request in a manner other than in writing, the
15 data collector shall document such request contemporaneously in writing,
16 including the name of the law enforcement officer making the request and the
17 officer's law enforcement agency engaged in the investigation. A law
18 enforcement agency shall promptly notify the data collector when the law
19 enforcement agency no longer believes that notification may impede a law
20 enforcement investigation, or a national or homeland security investigation or
21 jeopardize public safety or national or homeland security interests. The data

1 collector shall provide notice required by this section without unreasonable
2 delay upon receipt of a written communication, which includes facsimile or
3 electronic communication, from the law enforcement agency withdrawing its
4 request for delay.

5 ~~(4)~~(5) The notice to a consumer shall be clear and conspicuous. The
6 notice shall include a description of each of the following, if known to the data
7 collector:

8 (A) The incident in general terms.

9 (B) The type of personal information that was subject to the
10 ~~unauthorized access or acquisition~~ security breach.

11 (C) The general acts of the ~~business~~ data collector to protect the
12 personal information from further unauthorized access or acquisition.

13 (D) A toll-free telephone number that the consumer may call for
14 further information and assistance.

15 (E) Advice that directs the consumer to remain vigilant by reviewing
16 account statements and monitoring free credit reports.

17 (F) The date or dates of the security breach and the date of the data
18 collector's discovery of the security breach.

19 ~~(5)~~(6) For purposes of this subsection, notice to consumers may be
20 provided by one of the following methods:

21 * * *

1 Sec. 4. 9 V.S.A. chapter 63 is amended to read:

2 Chapter 63. CONSUMER ~~FRAUD~~ PROTECTION

3 * * *

4 § 2453. PRACTICES PROHIBITED; ANTITRUST AND CONSUMER
5 ~~FRAUD~~ PROTECTION

6 * * *

7 § 2461e. REQUIREMENTS FOR GUARANTEED PRICE PLANS AND
8 PREPAID CONTRACTS

9 (d) Private right of action under consumer ~~fraud~~ protection act. In addition
10 to the remedies set forth in sections 2458 and 2461 of this title, a home heating
11 oil, kerosene, or liquefied petroleum gas dealer may bring an action against its
12 heating oil, kerosene, or liquefied petroleum gas suppliers for failing to honor
13 its contract with the home heating oil, kerosene, or liquefied petroleum gas
14 dealer. The home heating oil, kerosene, or liquefied petroleum gas dealer
15 bringing the action may recover all remedies available to consumers under
16 subsection 2461(b) of this title.

17 * * *

18 § 2480q. PENALTIES

19 (a) The following penalties shall apply to violations of this subchapter:

20 * * *

6 * * *

9 In each of the following sections, the term “consumer fraud” is deleted
10 wherever it appears and the term “consumer protection” is inserted in lieu
11 thereof: 7 V.S.A. § 1010; 8 V.S.A. §§ 2706, 2709, and 2764; 9 V.S.A. § 2471;
12 18 V.S.A. §§ 1511, 1512, 4086, 4631, 4633, 4634, and 9473;
13 20 V.S.A. § 2757; and 33 §§ 1923 and 2010.

15 This act shall take effect July 1, 2011.