
Commerce & Labor Committee

HB 1192

Brief Description: Concerning unsolicited goods and the promotional advertising of prizes.

Sponsors: Representatives Morrell, Parker, Kenney and Kelley; by request of Attorney General.

Brief Summary of Bill

- Prohibits a seller from billing or attempting to charge a person for unsolicited goods or services.
- Establishes requirements for offers of goods or services that include a negative option feature or use pre-acquired account information.
- Extends the regulation of promotional advertising of prizes to incentive programs and internet promotions.

Hearing Date: 1/21/09

Staff: Alison Hellberg (786-7152)

Background:

Unsolicited Goods Act

Unsolicited goods or services may be accepted, used, or disposed of by the person receiving them without any obligation to pay for or return them. They are gifts unless the person receiving them specifically requested, in an affirmative manner, the receipt of the goods or services according to the terms under which they are being offered. Failure to respond to an invitation to purchase the goods or services does not make the gifts solicited. A violation of these provisions is a violation of the Consumer Protection Act.

Promotional Advertising of Prizes Act

Restrictions are placed on the content of written notices and procedures associated with the use of prizes in advertising. Any written notice offering goods or services to an individual based upon a representation that the person will receive a prize must contain the name and address of the promoter and sponsor. The notice must disclose, in the immediate proximity of the listing of

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the prize, the retail value and any odds associated with receiving a prize. This disclosure must be at least as large as the standard text of the offer. Further, if the offer is part of a collective promotion with more than one sponsor, this fact must be disclosed.

If an individual is required or invited to attend a sales presentation in order to claim the prize, this fact must be disclosed along with any other restrictions or qualifications to receive or use a prize. No prize may be represented as being free if the individual must pay a sum of money to receive the prize, such as shipping or handling fees. At the beginning of any sales presentation, the consumer is to be informed of the prize to be received. A promoter may not include a prize in an offer unless the prize will be available in a sufficient quantity to meet the reasonably anticipated response to the offer. Provisions governing the availability or replacement of prizes are also set forth. The offer must include a clear statement of the consumer's rights concerning the substitution of prizes.

A person is authorized to bring an action against a sponsor or a promoter for damages. Damages may include the value of the prize and any fees paid. A court also may award the greater of \$500 or three times the actual damages sustained by the person (up to \$10,000), equitable relief, attorney's fees, and any other remedy deemed proper. A knowing violation of this act is a gross misdemeanor, which is punishable by a fine up to \$5,000 or imprisonment for one year, or both. A violation of these provisions is also a violation of the Consumer Protection Act.

Summary of Bill:

Unsolicited Goods Act

A seller is prohibited from billing or otherwise attempting to charge a person for unsolicited goods or services. This prohibition does not apply to telemarketers. For goods or services to be considered solicited, a seller must have obtained the customer's prior express agreement to receive and pay for the goods according to the terms and conditions under which they are being offered. An "express agreement" means a customer's written or electronic signature indicating the customer's request for the specific goods or services being offered under the terms and conditions disclosed at the time of the offer. An express agreement is not evidenced by a pre-checked box or other similar feature next to a statement indicating the customer's request for, and acceptance to pay for, the specific goods and services being offered.

Requirements are established for offers of goods or services that include a negative option feature, including free to pay conversions and automatic renewals. A "negative option feature" is an offer or agreement to sell or provide any goods or services with a provision that the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer. A "free to pay conversion" is an offer or agreement to sell or provide any goods or services with a provision that a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if the customer does not take affirmative action to cancel before the end of that period.

Prior to charging for goods or services that include a negative option, the seller must obtain an express agreement from the customer to be charged for the goods and services. An offer for goods or services that include a negative option feature must clearly and conspicuously disclose the material terms of the negative option feature. The disclosure must include the:

- fact that the customer will be billed or the customer's account will be charged unless the customer takes an affirmative action to avoid the charge;
- date the charge will be submitted for payment;
- total cost of the initial charge;
- total cost or range of costs of each subsequent payment;
- specific steps the customer must take to avoid the charge.

A seller must also comply with certain requirements if a transaction involves pre-acquired account information. Pre-acquired account information is information that enables a seller to cause a charge to be placed against a customer's account without obtaining the account number directly from the customer during the sales transaction. The seller must:

- obtain from the customer at least the last four digits of the account number to be charged;
- obtain from the customer prior to consummation of the sale his or her express agreement to be charged for the goods and services using the account number identified by the customer;
- notify the customer at least 10 days before the first charge will be submitted for payment; and
- provide the customer with specific steps to avoid the charge.

Promotional Advertising of Prizes Act

The regulation of promotional advertising is extended to incentive programs and promotional advertising over the internet. An "incentive program" is an advertisement, advertising program sweepstake, contest, direct giveaway, or solicitation that includes the award of or opportunity or chance to be awarded an incentive. An "incentive" is a prize offered on the internet in a commercial context, with or without involvement of the element of a chance, as an enticement to purchase to use a product or service, provide information, or view advertising.

A seller is prohibited from requiring a person to agree to any of the following as a condition of receiving a gift or incentive:

- enter into an agreement to purchase products or services;
- obtain the agreement of another to participate in the promotion;
- participate in any trial services or subscription without meeting certain requirements;
- provide personally identifiable information, unless the person has the option to restrict the sharing of information with third parties and the promoter discloses how the information will be used.

Various definitions are added to describe aspects of internet transactions.

Rules Authority: The bill does not address the rule-making powers of an agency.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.