

50-6,103. Telecommunications services; unauthorized change of provider ("slamming") or addition of services ("cramming"). (a) As used in this section:

(1) "Express authorization" means an express, affirmative act by a consumer clearly agreeing to a change in the consumer's telecommunications carrier or local exchange carrier to another carrier.

(2) "Supplemental telecommunication services" means any property or services for which any charge or assessment appears on a billing statement directed to a consumer by a local exchange carrier or telecommunications carrier, including but not limited to personal 800 number services, calling card plans, internet advertisement and website services, voice mail services, paging services, psychic services, psychic memberships, dating services or memberships, travel club memberships, internet access services and service maintenance plans. "Supplemental telecommunication services" does not include direct dial services to which a per use charge applies.

(3) "Telecommunications services" has the meaning provided by K.S.A. 66-1,187, and amendments thereto.

(b) No local exchange carrier or telecommunications carrier shall submit or cause to be submitted to a local exchange carrier an order to change a consumer's telecommunications carrier or local exchange carrier to another carrier without having obtained the express authorization of the consumer authorized to make the change. The local exchange carrier or telecommunications carrier requesting the change shall have the burden of proving the express authorization by a preponderance of the evidence. It shall not be a violation of this subsection for a local exchange carrier to assign a consumer to a telecommunications carrier for purposes of intraLATA services pursuant to order of the state corporation commission.

(c) No supplier shall:

(1) Engage in any activity, conduct or representation that has the capacity to mislead, deceive or confuse the consumer, while soliciting or verifying a change in a consumer's telecommunications carrier or local exchange carrier to another carrier;

(2) employ a box or container used to collect entries for sweepstakes, contests or drawings to gather letters of agency or other documents that constitute authorizations by consumers to change the consumers' telecommunications carrier or local exchange carrier to another carrier or to change or add to the consumers' accounts any supplemental telecommunications services;

(3) use any methods not approved by statute, regulations of the federal communications commission or federal trade commission (as in effect on the effective date of this act) or state corporation commission rules and regulations to change a consumer's telecommunications carrier or local exchange carrier to another carrier; or

(4) employ a check, draft or other negotiable instrument that constitutes authorization to change or add to the consumer's accounts any supplemental telecommunications services.

(d) Any supplier that violates subsection (b) or (c) shall be subject to a civil penalty of not less than \$5,000 nor more than \$20,000 for each such violation instead of the penalty provided for in subsection (a) of K.S.A. 50-636, and amendments thereto.

(e) Any violation of this section is a deceptive and unconscionable act or practice under the provisions of the Kansas consumer protection act and shall be subject to any and all of the enforcement provisions of the Kansas consumer protection act. Nothing in this section shall preclude the state corporation commission from exerting its authority as it pertains to intrastate services nor the attorney general from pursuing violations of any other provisions of the Kansas consumer protection act by a supplier.

(f) All local exchange carriers and electing carriers shall offer consumers the option of notifying the local exchange carrier in writing that they do not desire any change of telecommunications carrier regardless of any orders to the contrary submitted by any third party. The consumer shall be permitted to cancel such notification or to change its telecommunications carrier by notifying the consumer's local exchange carrier or electing carrier accordingly. For the purposes of this section, a letter of agency, as described in 47 C.F.R. § 64.1130, as in effect on the effective date of this act, that is signed by the consumer shall satisfy the notification requirement for purposes of making changes to the consumer's telecommunications carrier. All local exchange carriers and electing carriers shall annually notify the consumers of the carrier's telecommunications services of the availability of this option.

(g) Any person alleging a violation of this section may bring a private action to seek relief pursuant to K.S.A. 50-634, 50-636 and this section, and amendments thereto, and such person may be defined as a consumer pursuant to K.S.A. 50-624, and amendments thereto, for the purposes of such private action.

(h) The attorney general and the state corporation commission shall enter into a memorandum of understanding providing for the cooperation and sharing of information necessary to enforce this section against suppliers and to assist consumers under federal and state law.

(i) This section shall be part of and supplemental to the Kansas consumer protection act.

History: L. 1998, ch. 138, § 5; L. 2001, ch. 115, § 1; L. 2011, ch. 54, § 1; July 1.