

Committee Name:

**Senate Committee – Privacy, Electronic Commerce and Financial Institutions
(SC-PECFI)**

Appointments

01hr_SC-PECFI_Appoint_pt00

Clearinghouse Rules

01hr_SC-PECFI_CRule_01-

Committee Hearings

01hr_SC-PECFI_CH_pt00

Committee Reports

01hr_SC-PECFI_CR_pt00

Executive Sessions

01hr_SC-PECFI_ES_pt00

Hearing Records

01hr_ab0000

01hr_sb0035

Misc.

01hr_SC-PECFI_Misc_pt01

Record of Committee Proceedings

01hr_SC-PECFI_RCP_pt00

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 3-7-00

BILL NO. SB 35
OR

SUBJECT _____

Jim Rabbitt
(NAME)

PO Box 8911
(Street Address or Route Number)

Madison 53708
(City and Zip Code)

DATCP
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 3/7/2001

BILL NO. SB 35
OR

SUBJECT _____

PAUL NELSON
(NAME)

610 N. WHITNEY WAY
(Street Address or Route Number)

MADISON WI 53702
(City and Zip Code)

PUBLIC SERVICE COMMISSION
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information only; Neither for nor against:

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SENATE HEARING SLIP

(Please Print Plainly)

DATE: 7 March 2001

BILL NO. _____
OR SB 35
SUBJECT _____

Ewen Moore
for Senate
(NAME)

(Street Address or Route Number)

(City and Zip Code)

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information only; Neither for nor against:

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 3-5-01
BILL NO. SB 35
OR
SUBJECT _____

JoAnna Richard
(NAME)
123 W. Washington
(Street Address or Route Number)
Madison, WI 53703
(City and Zip Code)
Atty. Gen's Office -
(Representing) DAJ

Speaking in Favor:
Speaking Against:
Registering in Favor:
but not speaking:
Registering Against:
but not speaking:
Speaking for information only; Neither for nor against:

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 3/7/01
BILL NO. SB 35
OR
SUBJECT _____

Rep. Pedro Colon
(NAME)
338 W. Walker St.
(Street Address or Route Number)
Milwaukee, WI 53204
(City and Zip Code)
8th Assembly District
(Representing)

Speaking in Favor:
Speaking Against:
Registering in Favor:
but not speaking:
Registering Against:
but not speaking:
Speaking for information only; Neither for nor against:

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 3/7/01
BILL NO. SB 35
OR
SUBJECT _____

Sen. Brian Burke
(NAME)

(Street Address or Route Number)
Milwaukee
(City and Zip Code)
3rd Sen. Dist
(Representing)

Speaking in Favor:
Speaking Against:
Registering in Favor:
but not speaking:
Registering Against:
but not speaking:
Speaking for information only; Neither for nor against:

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State Capitol - B35 South
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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 3/7/01

BILL NO. SJR 21, SB12, SB35
OR

SUBJECT _____

Mary Kison

(NAME)

4296 N. Creek Ln.

(Street Address or Route Number)

Lena, WI 54139

(City and Zip Code)

herself

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information

only; Neither for nor against:

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State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

DATE: 3/7/01

BILL NO. SB 12 = SJR 21
OR

SUBJECT Social Security
Number collection

use

(NAME)

Carol M. Doepfers, Director

(Street Address or Route Number)

Wisconsin Data Privacy Project

(City and Zip Code)

ACLU of Wisconsin

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information

only; Neither for nor against:

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Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

VOTE SHEET

BILL SB35

SUBSTITUTE AMENDMENT _____

Authored by
Seconded by

SENATE AMENDMENT 1 committee author
Authored by
Seconded by

MOTION intro + adopt

	YES	NO
SENATOR ERPENBACH	<input checked="" type="checkbox"/>	
SENATOR JAUCH		
1 SENATOR PLACHE	<input checked="" type="checkbox"/>	
2 SENATOR HUELSMAN	<input checked="" type="checkbox"/>	
SENATOR FITZGERALD	<input checked="" type="checkbox"/>	

03-07-01

VOTE SHEET

BILL SB35

SUBSTITUTE AMENDMENT _____

Authored by
Seconded by

SENATE AMENDMENT _____

Authored by
Seconded by

MOTION passage + amended

	YES	NO
SENATOR ERPENBACH	X	
SENATOR JAUCH		
1 SENATOR PLACHE	X	
2 SENATOR HUELSMAN	X	
SENATOR FITZGERALD	X	



Pedro Colón

STATE REPRESENTATIVE

Testimony in Support of Senate Bill 35

Senate Committee on Privacy, Electronic Commerce and Financial Institutions

Wednesday, March 7, 2001

1:00 p.m., Room 300 Southeast

by

Representative Pedro A. Colón

Senator Erpenbach and Committee members, thank you for holding today's hearing on Senate Bill 35 which seeks to enhance Wisconsin's law related to the practice of illegal switchovers from toll-free calls to pay-per call services or international numbers.

During the past seven years, Wisconsin has seen a dramatic increase in the number of complaints related to billing charges on phone bills due to the increased practice of illegal switchovers and call transfers to overseas numbers and pay-per call services. Senate Bill 35 seeks to address this mounting problem by enhancing state law in order to give consumers additional protections and remedies. Today, we live in a society that has seen a dramatic explosion in technology and telecommunication. Unfortunately the dark side of this is an increase in consumer fraud and rip-offs to the unsuspecting person.

We have all seen the television advertisements enticing people to call a "toll-free" number to get services, merchandise, or advice from a psychic. Increasingly, unwary consumers are duped into calling these numbers under the guise that this call is free. The shock often comes when they are mailed their phone bill, which includes large toll charges related to these services.

Senate Bill 35 seeks to give consumers the protection they need. The bill prohibits a toll free vendor from transferring a toll-free call to international numbers. In addition, SB 35 will require that any company that offers a pay-per call service must include an up front message describing the services, charges for the services and information on who is providing the services.

Currently, the Department of Agriculture, Trade and Consumer Protection has a mechanism in place to collect and analyze complaints regarding improper phone charges. Senate Bill 35 would make use of this system to require that DATCP and the telecommunication industry report any illegal activity to the Department of Justice for action. Then DOJ and DATCP would be required to report to the Legislature regarding the number of complaints and actions that were taken.

In addition to the disclosure and reporting requirements set forth in SB 35, there are remedies that exist. Companies with a record of violations would be prohibited from providing services unless they receive authorization from the PSC and the clerk of courts in which the violation

8th Assembly District

occurred must report any convictions to the PSA. This bill also changes the penalties for violation from civil to criminal. Thus the penalties per violations would be no less than \$100 or more than \$10,000 or imprisonment for up to 90 days.

Inclosing, I would urge members to look favorably upon this bill. It is a bill designed to protect consumers through disclosure, additional reporting requirement, increased enforcement and stronger remedies for violators.

Thank you again for bringing Senate Bill 35 before this committee today.

State Senator GWENDOLYNNE MOORE



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E-Mail: sen.moore@legis.state.wi.us
Member: Joint Finance Committee
Board Member: Wisconsin Housing and
Economic Development Authority

Testimony on 2001 Senate Bill 35

Senate Committee on Privacy, Electronic Commerce and Financial Institutions

Wednesday, March 7, 2001

1:00 pm

300 Southeast

Good afternoon. I would like to thank Senator Erpenbach and the members of the committee for holding today's hearing on Senate Bill 35. SB 35 is identical to the amended version of 1999 SB 7, which was passed unanimously by this committee on February 25, 1999, and which passed the full Senate on March 2, 1999.

2001 SB 35 will strengthen consumer protections regarding illegal switchovers from toll-free calls to pay-per call services or international phone numbers. This bill will help to remedy the growing number of complaints from citizens around the state that receive bills for phone services that were never ordered or were illegally added to a person's telephone bill. It will also make it easier for action to be taken on complaints so that the Department of Agriculture, Trade, and Consumer Protection (DATCP) and telecommunication utilities will refer complaints to DOJ for prosecution.

According to the Public Service Commission (PSC), **complaints about telephone bills and services have increased 500 percent since 1993.** Also, the PSC reported **that complaints in 1998 about long-distance companies drew 81% more complaints than the year before.** SB 35 provides for increased penalties to help deter the increase in illegal activity.

SB 35 offers additional protection to consumers by providing protection from international switchovers, stricter disclosure requirements, more coordinated reporting requirements. Furthermore, SB 35 would hold fraudulent pay-per-call services more accountable for their actions by establishing stringent regulations in the area of billing services and enacting harsher penalties against such services that break the law.

I. TRANSFERS TO INTERNATIONAL NUMBERS

CURRENT LAW

1. Current law prohibits transfers from a toll-free number to a pay-per call service. This applies to all pay-per call services, both domestic and international. However, under the current definition of pay-per call service, a transfer to an

international number would **not** be illegal if the only charge was the **regular** charge for the international call.

2. For instance, if a person calls an 800# and they are transferred to an international number, it is currently legal for them to be charged the regular rate for an international call. The only illegality is if the rates charged were higher than the regular international rate.
3. Here is how it works: A consumer calls an 800# and receives a charge on his or her phone bill from an international phone company (say a company from Bermuda) because of this type of switchover. If the rate charged is the regular rate for an international phone call, the consumer has no recourse. The 800# vendor that transferred the call will receive a cut of the bill from the international phone company.

CHANGES CONTAINED IN SB-35

This bill specifically prohibits a toll-free vendor from transferring a toll-free call to an international number.

This change will protect consumers from having international calls (which are significantly more expensive than domestic calls) on their phone bills due to a switchover by a pay-per-call vendor.

II. DISCLOSURE REQUIREMENTS

CURRENT LAW

Pay-per call services must begin with a preamble that discloses to a consumer a complete description of the services provided, including the name of the provider, a description of the information that will be received, and the minimum charges involved. In addition, this type of disclosure must be included on phone bills that contain pay-per call charges.

CHANGES CONTAINED IN SB 35

Under my bill, the disclosures in the preamble and on phone bills must include a statement informing consumers that it is illegal to transfer a toll-free call to a pay-per call service and that the caller should report any violations they have experienced to the DATCP.

This change will ensure that consumers are informed of their rights concerning this type of practice. It also informs them of which state agency to direct their complaints.

III. REPORTING REQUIREMENTS

CURRENT LAW

1. The Department of Justice (DOJ) is in charge of bringing actions to enforce violations of the statute covering toll-free vendors.
2. When consumers have complaints on their phone bills, they usually address complaints to one of three offices, the DOJ, the PSC or DATCP. This can create problems for a consumer attempting to report a violation.
3. It has been noted that one of the problems relating to enforcement against toll-free vendors **might be** a failure of the DATCP and telecommunication utilities to provide information regarding violations to the DOJ.

CHANGES CONTAINED IN SB-35

1. Requires the DATCP and the telecommunication utilities to report any information regarding illegal transfers of toll-free calls to international numbers or pay-per-call services to the DOJ. Currently the DATCP maintains a database recording consumer complaints against telecommunications utilities, including illegal 800# switchovers. We have been informed that the DATCP already works closely with DOJ to refer complaints for prosecution.
2. Requires the DOJ & DATCP to submit joint biennial reports to the legislature on the complaints received by the DATCP and the DOJ's activities relating to enforcement of pay-per call provisions. Furthermore, the report must include recommendations for legislation, if either body believes further legislation is necessary to effectively enforce the pay-per-service provisions.

This change will make it easier for action to be taken on complaints. Under the current reporting system, some complaints seem to be getting lost in the shuffle. SB 35 will help prevent this from happening by mandating that all violations be reported by DATCP and the telecommunications utilities directly to the DOJ, the agency with authority to prosecute. This will also make it easier for the legislature to review the effectiveness of enforcing the provisions of the statute.

IV. BILLING SERVICES

CURRENT LAW

1. When a telecommunications utility (like Ameritech) provides a billing service to a pay-per call service and a customer contacts the utility about a charge for a pay-per call service, it is up to the telecommunications utility to inform the customer that he or she may request the charges for pay-per call services be removed from subsequent billing statements.
2. If the customer has a reasonable dispute about a pay-per call service and requests its removal, then the telecommunications utility must remove that charge for pay-per call service from subsequent bills.
3. Telecommunications utilities must send information that a consumers may request blocking, if available, and may request pay-per call services be removed from its billing statements. However, the nonpayment of charges may still result in a civil collection action.

4. Provisions regulating telecommunications utilities are administered by the PSC.

CHANGES INCLUDED IN SB-35

1. Prohibits a telecommunications utility from providing billing services to a pay-per call service provider that has been convicted of a violation, unless prior approval is obtained from the PSC.
2. Prior approval may be granted only if the PSC determines the provider has established safeguards to prevent further violations.
3. If a pay-per-call service provider is convicted of violating the pay-per-call provisions, the clerk of court in which the conviction occurred must notify the PSC, which must, in turn, notify the telecommunications utilities about the conviction.

This aspect of the bill makes it easier for a telecommunications utility to deny billing privileges to unscrupulous vendors. Along with the tougher reporting requirements, this provision provides a pay-per call provider to be held accountable for their illegal actions.

V. PENALTIES

CURRENT LAW

1. Violators of pay-per call services provisions are subject to a **civil** forfeiture in the amount of no less than \$25 and no more than \$5,000 for each violation.
2. Also, a person is allowed to maintain a civil action for appropriate relief against the violator, including damages and injunctive relief.

CHANGES INCLUDED IN SB-35

1. The civil penalty is changed to a **criminal** forfeiture of not less than \$100 or more than \$10,000 per violation or imprisonment for not more than 90 days, or both.
2. The civil liability provisions are modified to allow for treble damages.

The changes in the civil penalty area are necessary to provide a greater incentive for private individuals to go after violators of pay-per-call provisions. It will also make the pay-per call providers more wary of violating the law if they must pay higher amounts. The change to a criminal penalty (instead of a civil penalty) is necessary to underline the significance of a violation of the provisions by allowing for jail time in particularly egregious situations. Also, a criminal conviction for violations offers strong proof to a telecommunications utility that billing services should be denied to a pay-per-call provider.

VI. CHANGES ADOPTED LAST SESSION TO 1999 SB 7 WHICH ARE INCORPORATED INTO 2001 SB 35

Last session, some concerns were brought to my attention regarding certain language and reporting requirements that were incorporated in 1999 SB 7 at the time. After working

with the DATCP and telecommunications utilities like Ameritech, an amendment was crafted which resolved these concerns. As a result of the amendment, which was passed by this committee on February 25, 1999, SB 35 addresses the following concerns not addressed in the original 1999 SB 7:

1. DATCP Request

Originally, we had delegated the authority for reporting violations to the DOJ. However, the DATCP later officially requested this authority be delegated to them (see attached letter). The DATCP currently has a database in place to compile and analyze statistics and has the ability to deliver a summary report to the DOJ of the pay-per-call statistics already contained in their database. As such, this change incorporated functions that already exist in both the DATCP and the DOJ and allows the provisions of SB 35 to flow smoothly through the administrative process.

2. Telecommunications Request

After the initial introduction of 1999 SB 7, I was contacted by telecommunications companies regarding some of the potential problems that they could face as a result of the passage of this bill. As such, this legislation was amended last session to:

- a) Prohibit a telecommunications utility from providing billing services to a pay-per-call service vendor convicted of violating the law. Upon conviction, the court must give notice of the conviction to the PSC and the PSC must then send the reports to telecommunications providers notifying them of vendors convicted of violations. Prior to this change, telecommunications companies had no mechanism to enforce the requirement that they refuse service to a pay-per-call vendor who had been in violation of the law.
- b) Telecommunications utilities under my bill are required to report information relating to possible violations of the proposed law. However, the telecommunications utilities informed us that certain information pertaining to private vendors is considered confidential under federal law. As such, 1999 SB 7 was amended to specify the information required to be reported (i.e. types of complaints and statistics) and to clarify that any information considered to be confidential under federal law need not be reported.
- c) My intention with this legislation is to end the fraudulent practices of pay-per-call vendors. Originally, SB 7 stated "whoever violates" the provisions provided for in the bill would be subject to the bill's penalties. However, telecommunications utilities were concerned that this broad definition could possibly subject them to penalties. As such, 1999 SB 7 was amended to read that "any pay-per-call service provider or any toll-free service vendor who violates..." these provisions would be held liable.

CONCLUSION

- This bill will assist consumers in combating the increasing occurrence of switchovers from toll-free calls to pay-per call services.
- As these types of pay-per call services multiply, the potential for violations by unscrupulous vendors also increases.
- SB 35 establishes a workable regulatory scheme that protects the consumer and does not create an excessive burden for those who operate in the pay-per-call business.
- The changes offered in SB 35 streamline the reporting requirements and strengthen the disclosure provisions of current law in order to make them more consumer-friendly.
- The bill establishes harsher penalties for those pay-per call providers that operate outside the law.
- The bill will make it easier for consumers to receive help with problems they encounter relating to switchovers.
- Telecommunications utilities and state agencies will be able to monitor the behavior of toll-free vendors in a more efficient manner.

All in all, SB 35 establishes effective safeguards to help prevent the ever-increasing business of telephone fraud from being inflicted upon Wisconsin's citizens. This bill has wide bi-partisan support, with members from both sides of the aisle from both houses signing on as cosponsors. Representative Colon, the lead Assembly author on this legislation last session, is offering 2001 AB 67 as an Assembly companion bill to SB 35, as well. I urge committee members to once again vote in favor of this legislation.

I thank the committee for its time and I welcome any questions that members may have.



State of Wisconsin
CORRESPONDENCE/MEMORANDUM
Department of Agriculture, Trade and Consumer Protection
Division of Trade and Consumer Protection



Date: February 22, 1999

To: Senator Gwendolynne Moore
Darren Magee

From: William L. Oemichen, Administrator, Division of Trade & Consumer Protection
Merry Fran Tryon, Director, Bureau of Consumer Protection

Subject: SB 7 -- Pay-per-call, Fraudulent Switching of 800 #'s to 900 #'s

Thank you for providing us with the opportunity to give our comments on your legislation.

We support SB7's concept of its strengthening the disclosure requirements and increasing the penalties for pay-per-call violations. We also understand your desire to improve the reporting requirements that may help the Legislature to determine if there is a need for additional legislation.

However, the Department of Agriculture, Trade and Consumer Protection (DATCP) seeks modification of the legislation to ensure we continue handling complaints in our normal manner. DATCP currently has a data base in place to capture the statistics that would be helpful in analyzing the frequency and nature of the pay-per-call violations. The Consumer Protection Bureau routinely analyzes inquiries, complaints, patterns and trends to determine what consumer protection activities should be prioritized to assist Wisconsin consumers.

We do not believe it is your intent to create a "new bureaucracy" to "re-handle" the processing of complaints. As the state's primary consumer protection agency, we routinely collect data, deal with complaints (i.e., mediate and investigate). Where appropriate, we refer cases to the Department of Justice (DOJ) for possible prosecution. Even after enforcement referral, we continue to work closely with DOJ to provide further investigation as needed.

Thus, with respect to SB 7's data collection and reporting requirement, DATCP is already in the position to perform the listed functions, since we already have the necessary resources in place. This will keep the administrative functions such as data collection, analysis, and investigation in place at DATCP. There will be no need for DOJ to develop, store, and retrieve the required data. DOJ will not need to re-examine the complaints, since we do that at DATCP and the Public Service Commission (PSC) already reviews the complaint it receives. DATCP and PSC can continue to process and handle the complaints. This will eliminate the need for DOJ to re-examine any and all complaints.

Page 2
February 22, 1999

DATCP will continue to examine the issues and statistics. We can give DOJ a summary report of the pay-per-call statistics in our data base. DATCP can combine this information with DOJ's multi-state and other activities and PSC's statistics. This combined information can also be used to report to the Legislature as required.

The fiscal impact of SB 7 can be minimized and more efficiencies realized by using DATCP's current systems for processing telecommunications complaints including pay-per-call issues, e.g. data collection, analysis, investigation and referral to DOJ for prosecution consideration when appropriate. This will also more efficiently assist the legislature in getting a handle on pay-per-call issues.

Once again, thank you for the opportunity to present our views on this legislation.