

1999 DRAFTING REQUEST

Bill

Received: **10/26/98**

Received By: **hubliks**

Wanted: **As time permits**

Identical to LRB:

For: **Gwendolynne Moore (608)266-5810**

By/Representing: **Jessica**

This file may be shown to any legislator: **NO**

Drafter: **hubliks**

May Contact:

Alt. Drafters:

Subject: **Trade Regulation
Bus. Assn. - miscellaneous**

Extra Copies:

Topic:

Strengthening 900 pay-per-call and 800 number consumer protections

Instructions:

See attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	hubliks 10/27/98	chanaman 12/11/98		_____			State
/1			hhagen 12/14/98	_____	lrb_docadmin 12/14/98	lrb_docadmin 12/17/98	

FE Sent For:

01-20-99

<END>

1999 DRAFTING REQUEST

Bill

Received: 10/26/98

Received By: **hubliks**

Wanted: **As time permits**

Identical to LRB:

For: **Gwendolynne Moore (608)266-5810**

By/Representing: **Jessica**

This file may be shown to any legislator: **NO**

Drafter: **hubliks**

May Contact:

Alt. Drafters:

Subject: **Trade Regulation
Bus. Assn. - miscellaneous**

Extra Copies:

Topic:

Strengthening 900 pay-per-call and 800 number consumer protections

Instructions:

See attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	hubliks 10/27/98	chanaman 12/11/98		_____			State
/1			hhagen 12/14/98	_____	lrb_docadmin 12/14/98		

FE Sent For:

<END>

1999 DRAFTING REQUEST

Bill

Received: 10/26/98

Received By: **hubliks**

Wanted: **As time permits**

Identical to LRB:

For: **Gwendolynne Moore (608)266-5810**

By/Representing: **Jessica**

This file may be shown to any legislator: **NO**

Drafter: **hubliks**

May Contact:

Alt. Drafters:

Subject: **Trade Regulation
Bus. Assn. - miscellaneous**

Extra Copies:

Topic:

Strengthening 900 pay-per-call and 800 number consumer protections

Instructions:

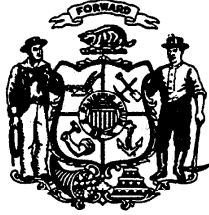
See attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1?	hubliks	1 12/11 JLG	12/14	12/14			

FE Sent For:

<END>



STATE SENATOR GWENDOLYNNE MOORE

Memorandum

Date: October 22, 1998

To: Scott Hubli, Legislative Attorney

From: Jessica Clark
Sen. Gwendolynne Moore's Office, (608) 266-5810

Re: Strengthening of 900 pay-per-call and 800-number consumer protection laws

Dear Scott:

During the last legislative session, you worked with us on a proposal to strengthen some of the existing consumer protection laws in regards to 800/900 numbers. We would like to re-draft this legislation for the upcoming session.

Camille Major, who headed the research on this proposal, is no longer working in our office. I have looked through the file that she created for this proposal, but have not found a draft of this bill. I did, however, find a memo from you dated February 19, 1998, detailing some of the options that we could include in our proposal. I have enclosed this memo for you to review.

I would like to include the following provisions in the new draft of the bill:

1. The explicit prohibition of transferring a toll-free number to an international number, which would not be included in the current definition of a pay-per-call service. ✓
2. Strengthen disclosure provisions to include a preamble to consumers stating that it is illegal to transfer a toll-free call to a pay-per-call service. Many consumers are undoubtedly unaware of this law. ✓

3. Prohibit telecommunications vendors from providing billing services for vendors convicted of violating the law. ✓
4. Require the Public Service Commission and the telecommunications providers to report any complaints which are suspected to be in violation of Wis. Stats. 196.208 (5t) to the Department of Justice. The Department of Justice will then determine the validity of the complaint. ✓
5. An increase in the forfeiture and the criminalization of violation of the pay-per-call provisions, as well as the provisions that would be included for the transferring a toll-free call to an international number. Currently, the forfeiture amount can be no less than \$25 and no more than \$5000 per incident. A meager fine of \$25 does not provide enough of an incentive to cease fraudulent acts, in my opinion. Punishment should be more severe for these actions, which are becoming more and more widespread. ✓
6. Broaden the civil remedies as to include punitive or treble damages, whereby the consumer and the consumer's attorney will have greater incentive to pursue violators. ✓
7. Require the Department of Justice to report to the legislature biennially on the success of enforcement in these matters. The report should include any suggestions for further legislation which would benefit the consumer in these matters. ✓

Thank you for your continuing assistance in the creation of this proposal. If you have any questions or additional information, you can contact me until October 29, 1998 at (608)266-5810. Any questions after this date should be directed to Shirley Ellis at the same phone number.

Thanks again!



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

ATTY. PETER J. DYKMAN
ACTING CHIEF

LAWRENCE S. BARISH
DIRECTOR OF REFERENCE AND LIBRARY

LEGAL SECTION: (608) 266 3561
LEGAL FAX: (608) 264 8522

REFERENCE SECTION: (608) 266 0341
REFERENCE FAX: (608) 266 5648

Thursday, February 19, 1998

MEMORANDUM

To: Camille Major & Shirley Ellis,
Senator Gwendolyn Moore's Office

From: K. Scott Hubli, Legislative Attorney, (608) 266-0135

Subject: Transferring Toll-Free Calls to Pay-Per-Call Services

You asked that I review the law governing the transfer of callers from toll-free numbers to pay-per-call service numbers or to international numbers. You also requested that I explore options for legislation that would provide additional consumer protections against such transfers.

Current Law

Section 196.208 (5c) of the Wisconsin Statutes prohibits a toll-free service vendor from doing any of the following:

- (a) Imposing a charge on the calling party or the customer responsible for the access line from which the call is placed for calling the toll-free service vendor.
- (b) Transferring the calling party to a pay-per-call service.
- (c) Charging the calling party for information provided during the call, unless the calling party has a presubscription relationship with the toll-free service vendor or unless the caller discloses a credit card account number during the call.
- (d) Calling back the calling party collect.

Current law allows a person, or a class of persons, who are adversely affected by a failure of a toll-free service vendor to comply with this provision to bring a claim for appropriate relief, including damages, injunctive or declaratory relief, specific performance, rescission, costs, disbursements and reasonable attorney fees. (Section 196.208 (11) (a)). In addition to civil actions for damages, toll-free service vendors who violate this provision may be required to forfeit not less than \$25 nor more than \$5,000 for each offense. This forfeiture may be enforced by action on behalf of the state by the department of justice or, upon informing the department of justice, by the district attorney of the county where the violation occurs. (Section 196.208 (11) (d)) The department of

justice is also authorized to bring actions to enjoin toll-free service providers from violating these provisions.

In addition to these provisions, related requirements apply to telecommunications utilities. First, telecommunications utilities must include the following statement on bills that include charges for pay-per-call services: "You may not have your telephone service disconnected for failure to pay for '900' number services. You may dispute charges for '900' number services if you believe the charges are unauthorized, fraudulent or illegal." In addition, if a telecommunications utility provides billing services for pay-per-call services and a customer contacts the telecommunications utility regarding a charge for pay-per-call services, the telecommunications utility must inform the customer that the customer may request the telecommunications utility to remove charges for pay-per-call services from subsequent billing statements. If a customer reasonably disputes a charge for pay-per-call services and requests removal, the telecommunications utility must remove that charge for pay-per-call services from subsequent billing statements. Finally, telecommunications utilities are required to disseminate information that explains that a customer may request blocking, if available, and may request that charges for pay-per-call services be removed from its billing statements, although nonpayment of charges may result in a civil collection action. These provisions governing telecommunications utilities are administered and enforced by the public service commission.

Options for Legislation

Since, for the most part, current law already appears to prohibit the practices that you are concerned with, I focused on options for legislation to strengthen the enforcement of the current provisions. The legislative liaison for the department of justice, Kelly Kennedy, referred me to Assistant Attorney General David J. Gilles, who apparently does the most work on telephone fraud issues. You are welcome to call Mr. Gilles directly if you have questions about the department of justice's role in enforcing existing provisions or if you would like to discuss with him the possible options for legislation outlined in this memo. Mr. Gilles's telephone number is 266-1792.

After discussing the current law provisions with Mr. Gilles, the following options for strengthening enforcement efforts came to mind:

- * Increasing Department of Justice staff. Mr. Gilles indicated that part of the reason why enforcement efforts have not been more vigorous was the lack of sufficient staff resources. One option would be to provide the department of justice with additional staff to bring enforcement actions.
- (2) Ensuring that referrals properly made the Department of Justice. Mr. Gilles indicated the willingness of the department of justice to investigate and seek the statutory forfeiture in cases where the victim can document the violation. Part of the problem may be the failure of the public service commission and telecommunications utilities to provide the information that they may have received regarding violations to the department of justice for enforcement. Legislation could be drafted requiring the PSC, and perhaps telecommunication providers, to forward, to the department of justice, any complaints that they have received which appear involve a violation of s. 196.208 (5t).

3. Strengthening the required disclosures. There are 2 types of disclosures required under current law. First, a pay-per-call service must begin with a "preamble" that states the name of the provider, a description of the information, product or service that the caller will receive, and all rates, by minute or other unit of time, any minimum charges and the total cost for a call to that service if the duration of the call may be determined. The second type of disclosure appears on phone bills that contain charges for pay-per-call services. Both of these disclosures could be modified to require disclosure of the fact that it is illegal to transfer a call from a toll-free number to a pay-per-call service.
4. Specifically prohibit switching to international services. The current statute only prohibits transfers from a toll-free number to a pay-per-call service, which is defined as a call for which the customer is assessed, on a per-call or a per-time-interval basis, a charge that is greater than or in addition to the charge for the transmission of the call. The definition would include all pay-per-call services, whether or not the services are domestic or international, but would not include a transfer to an international number if the only charge was the regular charge for the international call. The statute could be broadened to specifically prohibit transfers to international calls.
5. Require the department of justice to report on enforcement efforts. To the extent that part of the problem may be a lack of enforcement effort by the department of justice, it may make sense to require the department of justice to report annually or biennially to the legislature on its enforcement actions under the pay-per-call provisions. The report could require the department of justice to include recommendations for additional legislative actions, if necessary for effective enforcement of the provisions.
6. Increase forfeiture or criminalize conduct. Current law provides for a civil forfeiture of not less than \$25 nor more than \$5,000 for each violation of the provision prohibiting transfers from toll-free numbers to pay-per-call services. This penalty could be increased or the conduct could be criminalized to provide for jail or prison time for persons convicted of violating the pay-per-call provisions.
7. Increased civil remedies. Current law provides that, if a person who has been adversely affected by a violation of the provision prohibiting transfers from toll-free numbers to pay-per-call services, the person may sue the violator for appropriate relief, including damages, injunctive or declaratory relief, specific performance and rescission. This remedy could be broadened to include punitive damages or to provide for treble damages. This may provide an greater incentive for private individuals and attorneys to go after violators of the pay-per-call provisions.
8. Prohibiting telecommunications utilities from providing billing services for problem vendors. Many of the pay-per-call services bill for their services through telecommunications utilities. Especially if conduct under these provisions is criminalized, it may be possible to prohibit a telecommunications utility from providing billing services for a pay-per-call service, if that pay-per-call service has been convicted of a crime involving pay-per-call services.

These options are **not the only ones** that exist for addressing this issue. Please let me know if you would like to **discuss any other ideas** you may have for addressing the problem or if you would like a bill drafted **incorporating one or more** of these options. I hope this information is helpful.

Memorandum for "900 Dial Direct" Bill

Senator Moore would like a consumer protection bill that would only allow access to a "900" number only by dialing direct to the pay-per-call service.

There have been many instances of people being billed for dialing an "800" number and then getting automatically switched to a "900" number. There have also been many accounts of calling a number in order to win a trip and when the customer calls back it is an international pay-per-call service, so in essence they have called an international "900" number and didn't know it.

I have spoken and visited with Mary Pat Lytle at Public Service Communications. Ms. Lytle gave me extensive documentation of complaint type codes listed under the code "808". I have highlighted instances where this type of "800" to "900" switch has occurred. It has occurred frequently enough to be deemed problematic for consumers.

I have also spoken with Dennis Klaila (PSC Attorney) in regard to the concern of duplicating a law already existing relating to only being able to direct a "900" number directly. There are 2 laws mentioned that address consumer protection in terms of telecommunications:

1) Statute 196.207, Regulation of Public Utilities

This law does not address protection against indirect use of a "900" number. This law states that local service will be protected, and explaining what a provider is entitled to do and making the customer aware of what he/she is getting into.

2) 47 usc 228 (c&7)

Relates to regulating phone companies. Sets up "800" service and certain provisions that go with it. Doesn't refer to the "900" problem.

3) 134 usc 72

Prohibits recorded phone message without the consent of the caller. Customer Must have option of whether business can leave message for the caller. Doesn't refer to the "900" problem.

1997 - 1998 LEGISLATURE

-0671/T

LRB-50544

KSH:kmg:km

1997 SENATE BILL 509

D-NOTE

March 19, 1998 - Introduced by Senators MOORE, BURKE and WIRCH, cosponsored by Representatives OTTE, BAUMGART, ZIEGELBAUER, BOCK, MURAT, L. YOUNG, MORRIS-TATUM, NOTESTEIN, R. YOUNG, MUSSER and RILEY. Referred to Committee on Utility Regulation.

1 AN ACT to amend 196.208 (5t) (b), 196.208 (7) (b) (intro.), 196.208 (11) (a) 1. and
2 196.208 (11) (d); and to create 196.208 (1) (bm), 196.208 (2) (cm), 196.208 (7)
3 (a) 1m., 196.208 (7m), 196.208 (9m) and 196.208 (11) (bm) of the statutes;
4 relating to: transferring toll-free calls to pay-per-call services or
5 international numbers, creating certain disclosure and reporting requirements
6 and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, providers of pay-per-call services, or 900-number services, are subject to a number of requirements. A pay-per-call service must generally begin with a preamble that discloses information about the provider of the service and the cost of the call. Billing may commence only after a specific identified event, such as an audible signal tone, after the preamble and after the caller has a reasonable opportunity to disconnect the call. A provider may not charge for time that the caller is placed on hold and is subject to certain other limitations regarding charges. A toll-free vendor may not transfer the calling party to a pay-per-call service or call the calling party back collect. Unless the calling party has a preexisting subscription relationship with the toll-free vendor or unless the caller discloses a credit card account number during the call, the toll-free vendor may not charge the calling party for information provided during the call. Telecommunications utilities are required to provide certain disclosures on bills

SENATE BILL 509

containing pay-per-call services, informing the customer of the customer's right to dispute pay-per-call charges and informing the customer that his or her telephone service may not be disconnected for failure to pay for pay-per-call services. Telecommunications utilities are subject to additional requirements relating to the provision of billing services for pay-per-call service providers, to billing collection practices and to the provision of blocking services to prohibit the access of pay-per-call services. The department of justice is given authority to enforce provisions relating to pay-per-call service providers, and the public service commission is responsible for administering the provisions relating to telecommunications utilities.

(DOJ)

This bill makes a number of changes to the provisions governing pay-per-call services, including the following:

(PSC)

1. Transfers to international numbers. The bill prohibits a toll-free vendor from transferring a toll free call to an international number.

2. Additional disclosure requirements. The bill requires the preamble at the beginning of a pay-per-call service to include a statement that it is illegal for a person to transfer a toll-free call to a pay-per-call service and that, if the caller has been transferred to this pay-per-call service from a toll-free number, the caller should report the information to the department of justice. Telecommunications utilities are required to place similar disclosures on bills containing a charge for pay-per-call services.

(DOJ)

3. Reporting requirements. The bill requires telecommunications utilities, as well as the public service commission and the department of agriculture, trade and consumer protection, to report information that they may obtain regarding the transfer of toll-free calls to international numbers or pay-per-call services. The bill requires the department of justice to submit biennial reports to the legislature on its activities relating to the enforcement of the pay-per-call service provisions, together with recommendations for legislation, if the department of justice determines that additional legislation is needed to effectively enforce the pay-per-call service provisions.

(PSC)

4. Billing services. The bill prohibits a telecommunications utility from providing billing services to a pay-per-call service provider that has been convicted of a violation of the pay-per-call service provisions, without the prior approval of the commission. The commission may approve the provision of billing services to a provider that has been convicted of a violation of the pay-per-call provisions only if the commission determines that the provider has established safeguards that are sufficient to prevent further violations of these provisions.

~~public service~~

5. Penalties. Under current law, whoever violates any of the pay-per-call service provisions is subject to a forfeiture of not less than \$25 nor more than \$5,000 per violation. The bill changes the forfeiture (civil penalty) to a criminal penalty of a fine of not less than \$100 nor more than \$10,000 per violation or imprisonment for not more than 90 days, or both.

6. Civil liability. Under current law, a person who has been adversely affected by a violation of the pay-per-call service provisions has a claim for appropriate relief, including damages, injunctive or declaratory relief, specific performance and

SENATE BILL 509

rescission, costs, disbursements and reasonable attorney fees. This bill modifies the civil liability provisions to provide for treble damages.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 196.208 (1) (bm) of the statutes is created to read:

2 196.208 (1) (bm) "Toll-free call" means a call that can be made at no charge to
3 the calling party.

4 **SECTION 2.** 196.208 (2) (cm) of the statutes is created to read:

5 196.208 (2) (cm) A preamble shall include a statement that it is illegal for a
6 person to transfer a toll-free call to this pay-per-call service and that, if the caller
7 has been transferred to this pay-per-call service from a toll-free call, the caller
8 should contact the department of justice to report the transfer.

9 **SECTION 3.** 196.208 (5t) (b) of the statutes is amended to read:

10 196.208 (5t) (b) Transfer the calling party to a pay-per-call service or to an
11 international number.

12 **SECTION 4.** 196.208 (7) (a) 1m. of the statutes is created to read:

13 196.208 (7) (a) 1m. Include on each billing statement that includes charges for
14 pay-per-call services a clear and conspicuous notice that states: "It is illegal to
15 transfer a call made to a toll-free number to a '900' number. If you were transferred
16 to a '900' number service from a toll-free number, you should contact the state
17 department of justice to report the transfer."

18 **SECTION 5.** 196.208 (7) (b) (intro.) of the statutes is amended to read:

19 196.208 (7) (b) (intro.) A telecommunications utility may not provide billing
20 services to a provider that has been convicted of a violation of this section, without

proof w/ stats.

proof w/ stats.

SENATE BILL 509

SECTION 5

proof w/ state

1 the prior approval of the commission. The commission may approve the provision
2 of billing services to a provider that has been convicted of a violation of this section
3 only if the commission determines that the provider has established safeguards that
4 are sufficient to prevent further violations of this section. If a telecommunications
5 utility provides billing services to a provider, the telecommunications utility shall do
6 all of the following:

7 SECTION 6. 196.208 (7m) of the statutes is created to read:

8 196.208 (7m) REPORTING BY TELECOMMUNICATIONS UTILITIES. A
9 telecommunications utility shall report to the department of justice any information
10 that it obtains concerning a possible violation of sub. (5t).

11 SECTION 7. 196.208 (9m) of the statutes is created to read:

12 196.208 (9m) BIENNIAL REPORT. No later than January 1 of every
13 odd-numbered year, the department of justice shall submit a report to the legislature
14 under s. 13.172 (2). The report shall describe efforts of the department of justice in
15 enforcing this section over the previous 2-year period. The report shall include
16 recommendations for legislation, if the department of justice determines that
17 additional legislation is needed to effectively enforce the pay-per-call service
18 provisions. *effectively*

19 SECTION 8. 196.208 (11) (a) 1. of the statutes is amended to read:

proof w/ state

20 196.208 (11) (a) 1. If a provider or a toll-free service vendor fails to comply with
21 this section, any person or class of persons adversely affected by the failure to comply
22 has a claim for appropriate relief, including but not limited to treble damages,
23 injunctive or declaratory relief, specific performance and rescission.

24 SECTION 9. 196.208 (11) (bm) of the statutes is created to read:

SENATE BILL 509

1 196.208 (11) (b^m) The commission and the department of agriculture, trade
 2 and consumer protection shall report to the department of justice any information
 3 obtained by the commission or the department of agriculture, trade and consumer
 4 protection concerning a possible violation of sub. (5t).

5 SECTION 10. 196.208 (11) (d) of the statutes is amended to read:

6 196.208 (11) (d) ~~Any person who~~ Whoever violates subs. (2) to (9) shall be
 7 ~~required to forfeit~~ may be find^e not less than \$~~25~~ 100 nor more than \$5,000 for each
 8 ~~offense. Forfeitures under this \$10,000~~[✓] or imprisoned for not more than 90 days or
 9 both. This paragraph shall be enforced by action on behalf of the state by the
 10 department of justice or, upon informing the department of justice, by the district
 11 attorney of the county where the violation occurs.

12 (END) ✓

proof w/ state
 (7)

~~see~~
~~state~~
~~sheet~~

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0671/1dn
KSH:.....

*cmH
+
jlg*

of
Jessica Clark of your office requested that I redraft the proposal from last session that I did for your office involving 900-number and 800-number services. This bill is a redraft of 1997 Senate Bill 509. Please let me know if you have any questions on the ~~draft~~ or if you wish to modify any of the provisions contained in the bill.

bill

K. Scott Hubli
Legislative Attorney
266-0135

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0671/1dn
KSH:cmh&jlg:hmh

Monday, December 14, 1998

Jessica Clark of your office requested that I redraft the proposal from last session that I did for your office involving 900-number and 800-number services. This bill is a redraft of 1997 Senate Bill 509. Please let me know if you have any questions on the bill or if you wish to modify any of the provisions contained in the bill.

K. Scott Hubli
Legislative Attorney
266-0135

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 12/14/98

To: Senator Moore

Relating to LRB drafting number: LRB-0671

Topic

Strengthening 900 pay-per-call and 800 number consumer protections

Subject(s)

Trade Regulation, Bus. Assn. - miscellaneous

1. **JACKET** the draft for introduction  _____

in the **Senate** or the **Assembly** _____ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT**. See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

K. Scott Hубли, Administrative Services Manager
Telephone: (608) 266-0135