

2005 ASSEMBLY BILL 334

April 15, 2005 – Introduced by Representatives BERCEAU, SHERIDAN, TURNER, LEHMAN, BLACK, HINES, POCAN, POPE-ROBERTS, COLON and TRAVIS, cosponsored by Senators COGGS and ERPENBACH. Referred to Committee on Energy and Utilities.

1 **AN ACT to amend** 100.264 (2) (intro.); and **to create** 100.53 of the statutes;
2 **relating to:** regulating mobile telephone service providers and access to mobile
3 telephone numbers, granting rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill regulates mobile telephone service providers (providers) and requires the Department of Agriculture, Trade and Consumer Protection (DATCP) to enforce the provisions of the bill. The bill defines a mobile telephone service provider as a person who is authorized by the Federal Communications Commission to provide commercial mobile service. Generally, commercial mobile service is wireless telephone service.

This bill requires providers to conspicuously disclose in commercial mobile service contracts all of the following in a single document: 1) the monthly charge, the duration of the contract, and the minutes of usage included; 2) charges for activation, for minutes of usage in excess of the minutes included in the contract, for directory assistance, or for cancellation of the contract; 3) the cost of any services available to the customer that are not included in the monthly charge; 4) conditions, limitations, or additional charges or usage time that relate to the location where the customer initiates or receives a call, to the location of the recipient of the customer's call, or to the time of day of usage; 5) taxes and surcharges collected by the provider; and 6) any other information DATCP determines to be necessary to protect customers. Under the bill, a provider must, upon request by a customer, provide an itemized bill at no charge.

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The bill requires DATCP to promulgate rules that require providers to submit and update maps that show each provider's service area and require providers to make the map available on the Internet and supply the map to customers upon entering into a contract for commercial mobile service. Under the bill, DATCP must also promulgate rules that require providers to submit semiannual reports on the quality of their service. The reports must contain certain data, including the number of dropped calls experienced by a provider's customers and the street-level signal strength of a provider's commercial mobile service.

The bill prohibits providers from charging a customer additional fees or higher rates than those specified in the customer's contract for services; charging a late fee, unless payment is more than 60 days past due; and selling a mobile telephone to a customer that prevents the customer from using the mobile telephone with a different provider that offers services that are compatible with that mobile telephone. Under the bill, a provider may not extend or renew a contract unless it has notified the customer of the extension or renewal in a document separate from a monthly bill. The notice must be sent to the customer between 15 and 30 days before the date of extension or renewal. Further, the bill prohibits a provider from making a material modification to a customer's contract unless the provider gives prior written notice to the customer. Under the bill, the customer may terminate the contract within 30 days after receiving the notice from the provider.

This bill specifies that a customer may terminate a contract for mobile telephone service within 30 days after the customer receives the first bill, if the customer notifies the provider during that period. Under the bill, if the customer terminates the contract during that first 30 days for one of these reasons, the provider may not charge the customer a termination fee, and must within 14 days refund amounts that the customer has paid to the provider, except amounts owed by the customer for calls placed or received before terminating the contract. The bill prohibits any person other than a provider from charging a fee to terminate a contract. Under the bill, a termination fee must be prorated according to the remaining term of the contract.

This bill also prohibits a provider or provider's affiliate or agent from disclosing a customer's name or wireless telephone number without the customer's consent. The bill requires that a customer's consent be evidenced by a form that includes certain disclosures regarding the consequences that may follow from the customer's consent. Under the bill, a customer may revoke a consent at any time, and a provider must comply with the customer's revocation within 60 days. The bill prohibits a provider from imposing an additional charge upon a customer because the customer does not consent to disclosure. Certain types of disclosures are exempt from the prohibition on disclosure without consent, including: 1) a disclosure for the sole purpose of collecting a debt owed by the customer to the provider; 2) a disclosure for the sole purpose of responding to a 911 call; and 3) a disclosure made to a provider to effectuate a customer's request to transfer a wireless telephone number.

Under the bill, a customer may bring an action against a provider who violates a provision in the bill, and may recover twice the amount of the customer's pecuniary loss or \$500, whichever is greater. A provider who violates a provision of the bill is

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also subject to a forfeiture of \$500 to \$5,000 or up to six months imprisonment or both. The bill also gives DATCP enforcement authority.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* 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.** 100.264 (2) (intro.) of the statutes is amended to read:

2 100.264 **(2)** SUPPLEMENTAL FORFEITURE. (intro.) If a fine or a forfeiture is
3 imposed on a person for a violation under s. 100.16, 100.17, 100.18, 100.182, 100.183,
4 100.20, 100.205, 100.207, 100.21, 100.30 (3), 100.35, 100.44 ~~or~~, 100.46, or 100.53, or
5 a rule promulgated under one of those sections, the person shall be subject to a
6 supplemental forfeiture not to exceed \$10,000 for that violation if the conduct by the
7 defendant, for which the violation was imposed, was perpetrated against an elderly
8 person or disabled person and if the court finds that any of the following factors is
9 present:

10 **SECTION 2.** 100.53 of the statutes is created to read:

11 **100.53 Mobile telephone service. (1) DEFINITIONS.** In this section:

12 (a) “Commercial mobile service” has the meaning given in 47 USC 332 (d).

13 (b) “Mobile telephone service provider” means a person that is authorized by
14 the federal communications commission to provide commercial mobile service.

15 **(2) REQUIREMENTS; MOBILE TELEPHONE SERVICE PROVIDERS.** A mobile telephone
16 service provider shall do all of the following:

17 (a) Conspicuously disclose in every contract for commercial mobile service all
18 of the following in a single document:

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1 1. The monthly charge to the customer, the duration of the contract, the
2 minutes of usage allowed without incurring charges in addition to the monthly
3 charge. and the method used for calculating minutes of usage.

4 2. Charges for activation, for minutes of usage in excess of the minutes specified
5 in subd. 1., for directory assistance, or for cancellation of the contract.

6 3. The cost of any services available to the customer that are not included in
7 the monthly charge.

8 4. Conditions, limitations, or additional charges that relate to the location
9 where the customer initiates or receives a call, to the location of the recipient of the
10 customer's call, or to the time of day of usage.

11 5. Taxes and surcharges collected from customers by the mobile telephone
12 service provider.

13 6. Any other information that the department determines to be necessary to
14 protect customers.

15 (b) Upon the request of the customer, provide to the customer an itemized bill
16 at no charge.

17 **(3) PROHIBITED ACTS; MOBILE TELEPHONE SERVICE PROVIDERS.** A mobile telephone
18 service provider may not do any of the following:

19 (a) Charge a customer additional fees or higher rates than specified in the
20 customer's contract for commercial mobile service.

21 (b) Charge a customer late fees unless payment for commercial mobile service
22 provided to the customer is more than 60 days past due.

23 (c) Sell, give, or provide to a customer, in connection with a contract for
24 commercial mobile service, a mobile telephone that the customer is unable to use

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1 with a different mobile telephone service provider whose mobile telephone service is
2 compatible with that mobile telephone.

3 (d) Extend or renew a contract for commercial mobile service upon the
4 expiration of the initial term of the contract, unless the mobile telephone service
5 provider has disclosed to the customer the date on which contract will be extended
6 or renewed and the action that the customer may take to prevent extension or
7 renewal. A disclosure under this paragraph may not be contained in a monthly bill
8 or statement and shall be sent to the customer not more than 30 days nor less than
9 15 days before the date of extension or renewal.

10 (4) TERMINATION FEES. No person may charge a customer a fee for terminating
11 a mobile telephone service contract, except a mobile telephone service provider may
12 charge a customer a fee that is prorated according to the remaining term of the
13 contract.

14 (5) CONTRACT MODIFICATIONS. A mobile telephone service provider may not
15 make a material modification to a customer's contract for commercial mobile service
16 unless the mobile telephone service provider has given prior written notice of the
17 modification to the customer. No later than 30 days after the customer's receipt of
18 notice of the modification, the customer may terminate the contract by providing
19 written notice of the termination to the mobile telephone service provider. A mobile
20 telephone service provider may not charge a fee for a termination under this
21 subsection.

22 (6) RULES; MOBILE TELEPHONE SERVICE AREA MAPS. The department shall
23 promulgate rules requiring mobile telephone service providers to prepare and, on a
24 quarterly basis, update maps that show, to the maximum degree of precision that is
25 practicable, their service areas for commercial mobile service. The rules shall

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1 require mobile telephone service providers to provide copies of the map to customers
2 upon entering into contracts with customers, to provide updated copies without
3 charge to customers upon request, and to make the maps available without charge
4 to the public on the Internet.

5 **(7) RULES; MOBILE TELEPHONE SERVICE QUALITY REPORTS.** (a) The department
6 shall promulgate rules that require a mobile telephone service provider to submit
7 semiannual reports to the department describing all of the following information:

8 1. The number of dropped calls experienced by customers of the mobile
9 telephone service provider.

10 2. The number of properly dialed calls that are not processed properly by the
11 mobile telephone service provider.

12 3. Areas within the mobile telephone service provider's service area in which
13 customers experience difficulty in obtaining access to the provider's commercial
14 mobile service.

15 4. Street-level signal strength of commercial mobile service provided by the
16 mobile telephone service provider.

17 5. Any other information determined by the department that relates to the
18 quality of commercial mobile service.

19 (b) The rules under par. (a) may require mobile telephone service providers to
20 report information on the basis of geographic areas specified in the rules.

21 **(8) INITIAL RIGHT TO TERMINATE CONTRACT.** A customer who has entered into a
22 contract with a mobile telephone service provider to provide commercial mobile
23 service may terminate the contract within 30 days after the customer first receives
24 a bill from the mobile telephone service provider, if the customer notifies the mobile
25 telephone service provider during that period. A mobile telephone service provider

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1 may not charge a customer a fee to terminate a contract under this subsection.
2 Within 14 days after the customer terminates a contract under this subsection, the
3 mobile telephone service provider shall refund to the customer any amounts paid to
4 the mobile telephone service provider by the customer prior to terminating the
5 contract, except any amounts owed by the customer for calls placed or received prior
6 to terminating the contract.

7 **(9) DISCLOSURE OF MOBILE TELEPHONE NUMBER WITHOUT CONSENT PROHIBITED. (a)**
8 A mobile telephone service provider or affiliate or agent of a mobile telephone service
9 provider may not disclose a customer's name or wireless telephone number to
10 another without the customer's consent.

11 (b) A customer's consent under this subsection shall be evidenced by a form that
12 meets all of the following requirements:

- 13 1. The form is not attached to any other document.
- 14 2. The form is signed and dated by the customer.
- 15 3. The form clearly and conspicuously discloses the person to whom the
16 disclosure will be made and the purpose of the disclosure.
- 17 4. The form clearly and conspicuously discloses that, by signing, the customer
18 consents to having the customer's mobile telephone number included in a mobile
19 telephone directory that may be available to the public.
- 20 5. If the purpose of the disclosure is to include the customer's mobile telephone
21 number in a directory, and if the mobile telephone service provider requires the
22 customer to pay for calls or text messaging received by the customer from a telephone
23 solicitor, the form clearly and conspicuously discloses that by consenting to
24 disclosure the customer may incur additional charges for receiving unsolicited calls
25 or text messages.

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1 (c) A customer may revoke the customer's consent to disclosure under par. (a)
2 at any time. A mobile telephone service provider shall comply with the customer's
3 revocation within 60 days of receiving notice of the customer's revocation.

4 (d) A mobile telephone service provider may not impose an additional charge
5 upon a customer because the customer does not consent to disclosure.

6 (e) This subsection does not apply to any of the following:

7 1. A disclosure made for the sole purpose of collecting a debt owed by the
8 customer to the mobile telephone service provider.

9 2. A disclosure made for the sole purpose of responding to a call to an
10 emergency services number under s. 146.70 or for the sole purpose of communicating
11 an imminent threat to life or property.

12 3. A disclosure required by an order of a court or the department.

13 4. A disclosure made to another mobile telephone service provider that provides
14 commercial mobile service to the customer.

15 5. A disclosure made to another for the sole purpose of billing the customer for
16 commercial mobile service.

17 6. A disclosure made to a mobile telephone service provider to effectuate a
18 customer's request to transfer the customer's wireless telephone number.

19 **(10) ALTERATION BY CONTRACT PROHIBITED.** The effect of this section may not be
20 altered by contract or agreement. Any contract or agreement purporting to do so is
21 void and unenforceable to that extent only.

22 **(11) ENFORCEMENT.** (a) A person who violates this section may be required to
23 forfeit not less than \$500 nor more than \$5,000 or imprisoned in the county jail for
24 not more than 6 months, or both, for each violation.

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1 (b) The department shall enforce this section, and may bring an action to enjoin
2 a violation of this section or a violation of rules promulgated by the department under
3 this section.

4 (c) In addition to any other remedies, a customer who suffers damages as the
5 result of a mobile telephone service provider's violation of this section or of any rule
6 promulgated by the department under this section may bring an action against the
7 violator for the amount of the customer's pecuniary loss or \$500 for each violation,
8 whichever is greater. Notwithstanding s. 814.04 (1), in an action under this
9 paragraph, the court shall award a prevailing plaintiff reasonable attorney fees.

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(END)