

2241/P1

Due today, please

keep

~~2005 BILL~~

lu: 2/28 V. Adams

D-note

This is a preliminary draft. An analysis will be provided in a later version.

regen contracts

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- 2
- 3

AN ACT to amend 100.264 (2) (intro.); and to create 100.53 of the statutes;

relating to: regulating mobile telephone service providers and providing a penalty.

granting rule-making authority

Analysis by the Legislative Reference Bureau

This bill regulates mobile telephone service providers. 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 every mobile telephone service provider (provider) to bill its customers in one-second increments. The bill also 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) 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; 4) taxes and surcharges collected by the provider; and 5) any other information the Department of Agriculture, Trade and Consumer Protection determines to be necessary to protect customers.

The bill prohibits providers from engaging in certain conduct including charging a customer for service by rounding up to the nearest minute, charging a

BILL

customer for a call that is placed but not completed, charging a customer additional fees or higher rates than those specified in the customer's contract for services, 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 previously notified the customer of the extension or renewal in two monthly bills.

This bill also specifies that a customer may terminate a contract for mobile telephone service at any time during the first 30 days of the contract if the customer notifies the provider during that period that the calling area range or the quality of the reception is inadequate. Under the bill, if the customer cancels the contract during that first 30 days for one of these reasons, the provider may not charge the customer a cancellation fee. The bill prohibits any person other than a provider from charging a fee to cancel a contract. Under the bill, a cancellation fee must be prorated according to the remaining term of the contract.

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)** In this section:

1 (a) "Commercial mobile service" has the meaning given in 47 USC 332 (d).

2 (b) "Mobile telephone service provider" means a person that is authorized by
3 the federal communications commission to provide commercial mobile service.

4 (2) A mobile telephone service provider shall do all of the following:

5 (a) Bill its customers for commercial mobile service provided to the customer
6 in one-second increments.

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

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

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

14 (b) Conditions, limitations, or additional charges that relate to the location
15 where the customer initiates or receives a call, to the location of the recipient of the
16 customer's call, or to the time of day of usage.

17 (c) Taxes and surcharges collected from customers by the mobile telephone
18 service provider.

19 (d) Any other information that the department determines to be necessary to
20 protect customers.

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

23 (3) A mobile telephone service provider may not do any of the following:

24 (a) Charge a customer for providing commercial mobile service, nor determine
25 peak or nonpeak usage of that service, by rounding up to the nearest minute.

INS
3-14

1 (b) Charge a customer for providing commercial mobile service if the customer
2 places a call for such service and the call is not completed.

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

5 (b) Charge a customer late fees unless charges for commercial mobile service
6 provided to the customer are more that 60 days past due.

7 (c) Sell, give, or provide to a customer, in connection with a contract for
8 commercial mobile service, a mobile telephone that the customer is unable to use
9 with a different mobile telephone service provider whose mobile telephone service is
10 compatible with that mobile telephone.

11 (d) Extend or renew a contract for commercial mobile service upon the
12 expiration of the initial term of the contract, unless the mobile telephone service
13 provider has disclosed to the customer the date on which contract will be extended
14 or renewed and the action that the customer may take to prevent extension or

15 renewal. A disclosure under this paragraph shall be contained in monthly bills or
16 statements sent to the customer ^{may not} in the ordinary course of the term of the initial
17 contract, ^{and shall be} in the 2 months preceding the date of extension or renewal.

18 (4) No person may charge a customer a fee for cancelling a mobile telephone ^{not more than 30 days nor less than 15 days before}
19 service contract, except a mobile telephone service provider may charge a customer
20 a fee that is prorated according to the remaining term of the contract.

21 (8) A customer who has entered into a contract with a mobile telephone service
22 provider to provide commercial mobile service may terminate that contract within
23 the first 30 days of the contract if the customer notifies the mobile telephone service
24 provider during that period that the calling area range for the commercial mobile
25 service or the quality of the commercial mobile service reception is inadequate. A

after the customer first receives a plain period bill from the mobile telephone service provider,

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4-21

plain period

1 mobile telephone service provider may not charge a customer a fee to terminate a
2 contract under this subsection. Within 14 days after the customer terminates a
3 contract under this subsection, the mobile telephone service provider shall refund to
4 the customer any amounts paid to the mobile telephone service provider by the
5 customer ~~during those first 30 days other than~~ any amounts owed by the customer

6 for calls placed or received ~~during that period~~ *prior to terminating the contract, except*

7 ~~4 (10) (a)~~ The effect of this section *plain period of* may not be varied by ~~any~~ contract or agreement.

8 Any contract or agreement purporting to do so is void and unenforceable to that
9 ~~(3)~~ extent only. *prior to terminating the contract*

10 ~~(11) (a) (1)~~ A person who violates this section may be required to forfeit not less than
11 \$500 nor more than \$5,000 or imprisoned in the county jail for not more than 6
12 months, or both, for each violation.

13 (END)

d-note
↓

INS
5-7 ✓

INS
5-13 ✓

Insert 3-14:

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

Insert 4-21:

(5) A mobile telephone service provider may not make a material modification to a customer's contract for commercial mobile service unless the mobile telephone service provider has given prior written notice of the modification to the customer. No later than 30 days after the customer's receipt of such notice, the customer may cancel the contract upon providing written notice of the cancellation to the mobile telephone service provider. A mobile telephone service provider may not charge a fee for a cancellation under this subsection.

(6) The department shall promulgate rules requiring mobile telephone service providers to prepare and, on a quarterly basis, update maps that show, to the maximum degree of precision that is practicable, their service areas for commercial mobile service. The rules shall require mobile telephone service providers to provide copies of the map to customers upon entering into contracts with customers, to provide updated copies without charge to customers upon request, and to make the maps available without charge to the public on the Internet.

(7) (a) The department shall promulgate rules that require a mobile telephone service provider to submit semiannual reports to the department describing all of the following information:

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

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

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

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

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

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

Insert 5-7:

(9) (a) A mobile telephone service provider or affiliate or agent of a mobile telephone service provider may not disclose a customer's name or wireless telephone number to another without the customer's consent. ✓

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

1. The form is not attached to any other document.
2. The form is signed and dated by the customer.
3. The form clearly and conspicuously discloses the person to whom the disclosure will be made and the purpose of the disclosure.

4. The form clearly and conspicuously discloses that, by signing, the customer consents to having the customer's mobile telephone number included in a mobile telephone directory that may be available to the public.

5. If the purpose of the disclosure is to include the customer's mobile telephone number in a directory, and if the mobile telephone service provider requires the customer to pay for calls or text messaging received by the customer from a telephone solicitor, the form clearly and conspicuously discloses that by consenting to disclosure the customer may incur additional charges for receiving unsolicited calls or text messages.

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

(d) A mobile telephone service provider may not charge a ~~subscriber~~ ^{customer} who does not consent to disclosure.

(e) This ~~section~~ ^{subsection} does not apply to any of the following:

1. ~~The~~ ^A disclosure ~~is~~ ^{is} made for the sole purpose of collecting a debt owed by the customer to the mobile telephone service provider.

2. ~~The~~ ^A disclosure ~~is~~ ^{is} made for the sole purpose of responding to a call to an emergency services number under s. 146.70 or for the sole purpose of communicating an imminent threat to life or property.

3. ~~The~~ ^A disclosure ~~is~~ ^{is} required by an order of a court or the department.

4. ~~The~~ ^A disclosure ~~is~~ ^{is} made to another mobile telephone service provider that provides commercial mobile service to the customer.

5. ~~The~~ ^A disclosure ~~is~~ ^{is} made to another for the sole purpose of billing the customer for commercial mobile service.

7 6 A
5. ~~disclosure~~ disclosure made to a mobile telephone service provider to effectuate a customer's request to transfer the customer's wireless telephone number.

Insert 5-13:

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2241/ldh

CTS::

Plb
Jld

Representative Berceau:

This is a redraft of LRB-0850/P1 based on memoranda from Professor Steve Meili and the Law School's Consumer Law Litigation Clinic (clinic). I have made a number of modifications to conform to our drafting conventions and to enhance readability. Although I had initially intended to generate an introducible draft, I later decided that another preliminary draft was in order. I have opened a new LRB number in order to submit this as a preliminary draft.

Please note the following comments and questions regarding this draft:

1. This draft creates a private cause of action that permits a customer to recover the amount of the customer's pecuniary loss or \$500, whichever is greater. Like current s. 100.20 (5), cited in the clinic's memorandum, this provision requires a court to award reasonable attorney fees to a prevailing plaintiff. Is this okay? Also, do you want to specify a limitations period for such an action?

* 2. This draft requires that a service provider send a notice of automatic contract extension or renewal to the customer not more than 30 days nor less than 15 days before the date of extension or renewal. Is this okay?

3. This draft incorporates a provision suggested by the clinic that requires service providers to file service quality reports. The language suggested by the clinic required that these reports be filed with the PSC. It was my understanding, however, that you intended for DATCP to have responsibility for enforcement, so this draft requires that the reports be filed with DATCP. Is this okay?

4. The language suggested by Professor Meili restricts disclosure of customers' names and wireless telephone numbers without customer consent. The suggested language also allows a customer to revoke consent at any time and requires a service provider to comply with revocation within 60 days. It is not clear what a service provider must do in order to comply, particularly if the service provider has disclosed the number to a third party. Can you clarify?

5. Based on your instructions, this draft does not include a provision that prohibits charges for calls that are not completed. Please note that current s. 196.202 (5) prohibits a commercial mobile radio service provider from charging a customer for an incomplete call.

6. It seems unnecessary to include an exception for disclosures to the FCC, if in fact the FCC has jurisdiction and control over service providers. This draft does not contain such an exclusion. Is this okay?
7. It also seems unnecessary to include language that provides that there is no civil or criminal liability for disclosures authorized by the provisions of the draft. I have not incorporated the suggested language. Is this okay?
8. This draft does not incorporate a severability clause, as current s. 990.001 (11) provides that all statutes are severable. ✓

Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail: christopher.sundberg@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2241/P1dn
CTS:jld:jf

February 28, 2005

Representative Berceau:

This is a redraft of LRB-0850/P1 based on memoranda from Professor Steve Meili and the Law School's Consumer Law Litigation Clinic (clinic). I have made a number of modifications to conform to our drafting conventions and to enhance readability. Although I had initially intended to generate an introducible draft, I later decided that another preliminary draft was in order. I have opened a new LRB number in order to submit this as a preliminary draft.

Please note the following comments and questions regarding this draft:

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3. This draft incorporates a provision suggested by the clinic that requires service providers to file service quality reports. The language suggested by the clinic required that these reports be filed with the PSC. It was my understanding, however, that you intended for DATCP to have responsibility for enforcement, so this draft requires that the reports be filed with DATCP. Is this okay?
4. The language suggested by Professor Meili restricts disclosure of customers' names and wireless telephone numbers without customer consent. The suggested language also allows a customer to revoke consent at any time and requires a service provider to comply with revocation within 60 days. It is not clear what a service provider must do in order to comply, particularly if the service provider has disclosed the number to a third party. Can you clarify?
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Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail: christopher.sundberg@legis.state.wi.us

Sundberg, Christopher

From: Powell, Thomas
Sent: Wednesday, March 02, 2005 9:21 AM
To: Sundberg, Christopher
Cc: Rabbitt, Jim L DATCP; Pagel, Matthew PSC
Subject: FW: Recommendations for questions from drafter

Chris,

I am forwarding to you the responses I got from Jennifer (from WISPIRG) and Patrick (from the UW Consumer Law Litigation Clinic to the questions you posed for the Cell Phone Users' Consumer Protection bill.

Both are included below.

Each raises an additional point which we should discuss later. I haven't had a chance to mull them over yet. Too busy this morning.

I am also CC:ing Jim Rabbit from DATCP and Matthew Pagel for the PSC on this.

Tom Powell
Rep. Berceau's Office

-----Original Message-----

From: Jennifer Giegerich [mailto:jennifer@wispirg.org]
Sent: Wednesday, March 02, 2005 6:44 AM
To: patrick@pmueller.org; Powell, Thomas
Subject: RE: Recommendations for questions from drafter

Tom and Patrick,

I defer to the clinic on all their points. As far as question 4, as I understand it this is similar to landlines. To show compliance, the telephone companies just have to show that you have been taken off the list. If a third party bought your name before you took it off, the consumer has very little recourse. If you can prove they bought your name from the list after you requested you be taken off, you can enforce the law with the keeper of the list.

I also wanted to get your feedback on the intent of Section 3(a) on page 3--I'm reading it as an attempt to prohibit unilateral contract changes? Is that correct? I'm just concerned that if that is the intent, it is can be gotten around pretty easily because cell phone companies say in their contracts that they have the right to change contracts at anytime. Even though it is being challenged in court, you might want to consider language from the MN bill that explicitly outlawed that practice.

Thanks,
Jennifer

Jennifer Giegerich
WISPIRG State Director
210 N. Bassett St., Suite 200
Madison, WI 53703
(608) 251-1918

-----Original Message-----

From: Patrick Mueller [mailto:prmueller@wisc.edu]
Sent: Tuesday, March 01, 2005 9:49 PM
To: tom powell; jennifer giegerich
Subject: Recommendations for questions from drafter

Tom and Jennifer -

Here are the Clinic's recommendations for the issues presented by Chris Sundberg in the drafter's notes. The numbers refer to the numbered

questions in the notes.

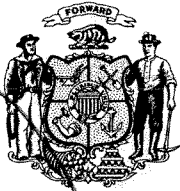
1. The statute of limitations for the Telephone Consumer Protection Act, a federal law, is four years. We relied on the TCPA's private right of action that provides a \$500 per violation penalty in recommending the private right of action that was added to the bill. However, the Clinic recommends a slightly shorter statute of limitations for the Cell Phone Users Bill of Rights -- either two or three years.
2. The provision for the notice of contract extension or renewal provisions sounds good. (Fine as is.)
3. The quality reports to be filed with DATCP sounds good as well. (Fine as is.)
4. The Clinic defers to WISPIRG on this item.
5. The Clinic recommends that the bill remain as is, without regulating the billing practices for uncompleted calls in order to avoid preemption challenges. (Fine as is.)
6. The lack of a specific exemption for the FCC is ok. (Fine as is.)
7. The Clinic feels that the extraneous language is not necessary. (Fine as is.)
8. Likewise, the Clinic thinks that the severability clause does not need to be included separately. (Fine as is.)

Finally, we would like to make an additional recommendation with respect to DATCP's public enforcement role. As it stands, the bill allows DATCP to issue rulemakings (e.g., additional contract disclosures that the department feels are necessary). However, the Clinic recommends that the agency also be given the authority to issue fines for violations of the statute. Although consumers can bring their own actions, authorizing the state consumer's protection authority to also do so will greatly enhance consumer protection. The Clinic recommends using Wis. Stat. 100.18(11)(a) ("Fraudulent Representations") as a model for this provision:

"The department of agriculture, trade and consumer protection shall enforce this section. Actions to enjoin violation of this section or any regulations thereunder may be commenced and prosecuted by the department in the name of the state in any court having equity jurisdiction. This remedy is not exclusive."

-- Patrick

Patrick Mueller, JD 2006
University of Wisconsin Law School
patrick@pmueller.org



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2241/00

RMRN

CTS/jld/jf

keep

DUE BY WED

[Handwritten scribbles]

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2005 BILL

lu: 3/10/05

B-note

ING A ✓

Hand access to mobile telephone numbers

Regen

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, granting
3 rule-making authority, and providing a penalty.

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~~This is a preliminary draft. An analysis will be provided in a later version.~~
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:

4 SECTION 1. 100.264 (2) (intro.) of the statutes is amended to read:
5 100.264 (2) SUPPLEMENTAL FORFEITURE. (intro.) If a fine or a forfeiture is
6 imposed on a person for a violation under s. 100.16, 100.17, 100.18, 100.182, 100.183,
7 100.20, 100.205, 100.207, 100.21, 100.30 (3), 100.35, 100.44 or, 100.46, or 100.53, or

1 a rule promulgated under one of those sections, the person shall be subject to a
2 supplemental forfeiture not to exceed \$10,000 for that violation if the conduct by the
3 defendant, for which the violation was imposed, was perpetrated against an elderly
4 person or disabled person and if the court finds that any of the following factors is
5 present:

DEFINITIONS. ← CS

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

7 100.53 Mobile telephone service. (1) In this section:

8 (a) "Commercial mobile service" has the meaning given in 47 USC 332 (d).

9 (b) "Mobile telephone service provider" means a person that is authorized by
10 the federal communications commission to provide commercial mobile service.

REQUIREMENTS; MOBILE TELEPHONE SERVICE PROVIDERS. ← CS

11 (2) A mobile telephone service provider shall do all of the following:

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

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

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

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

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

24 5. Taxes and surcharges collected from customers by the mobile telephone
25 service provider.

1 6. Any other information that the department determines to be necessary to
2 protect customers.

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

5 (3) A mobile telephone service provider may not do any of the following:

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

8 (b) Charge a customer late fees unless ~~charges~~ ^{is} for commercial mobile service
9 provided to the customer are more than 60 days past due.

10 (c) Sell, give, or provide to a customer, in connection with a contract for
11 commercial mobile service, a mobile telephone that the customer is unable to use
12 with a different mobile telephone service provider whose mobile telephone service is
13 compatible with that mobile telephone.

14 (d) Extend or renew a contract for commercial mobile service upon the
15 expiration of the initial term of the contract, unless the mobile telephone service
16 provider has disclosed to the customer the date on which contract will be extended
17 or renewed and the action that the customer may take to prevent extension or
18 renewal. A disclosure under this paragraph may not be contained in a monthly bill
19 or statement and shall be sent to the customer not more than 30 days nor less than
20 15 days before the date of extension or renewal.

21 (4) No person may charge a customer a fee for ~~cancelling~~ ^{terminating} a mobile telephone
22 service contract, except a mobile telephone service provider may charge a customer
23 a fee that is prorated according to the remaining term of the contract.

24 (5) A mobile telephone service provider may not make a material modification
25 to a customer's contract for commercial mobile service unless the mobile telephone

PROHIBITED ACTS, MOBILE TELEPHONE SERVICE PROVIDERS.
CS →

Payment

charges

is

TERMINATION FEES. ← CS

CONTRACT MODIFICATIONS. ← CS

of the modification

1 service provider has given prior written notice of the modification to the customer.

2 No later than 30 days after the customer's receipt of such notice, the customer may

3 ~~cancel~~ the contract ^{by} upon providing written notice of the ~~cancellation~~ to the mobile
terminate termination

4 telephone service provider. A mobile telephone service provider may not charge a fee

5 for a ~~cancellation~~ ^{termination} under this subsection.

RULES; MOBILE TELEPHONE SERVICE AREA MAPS. CS

6 (6) The department shall promulgate rules requiring mobile telephone service

7 providers to prepare and, on a quarterly basis, update maps that show, to the

8 maximum degree of precision that is practicable, their service areas for commercial

9 mobile service. The rules shall require mobile telephone service providers to provide

10 copies of the map to customers upon entering into contracts with customers, to

11 provide updated copies without charge to customers upon request, and to make the

12 maps available without charge to the public on the Internet.

RULES; MOBILE TELEPHONE SERVICE QUALITY REPORTS. CS

13 (7)(a) The department shall promulgate rules that require a mobile telephone

14 service provider to submit semiannual reports to the department describing all of the

15 following information:

16 1. The number of dropped calls experienced by customers of the mobile
17 telephone service provider.

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

20 3. Areas within the mobile telephone service provider's service area in which
21 customers experience difficulty in obtaining access to the provider's commercial
22 mobile service.

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

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

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

5 (8) ^{INITIAL RIGHT TO TERMINATE CONTRACT. ← (CS)} A customer who has entered into a contract with a mobile telephone service
6 provider to provide commercial mobile service may terminate ^{the} ~~that~~ contract within
7 30 days after the customer first receives a bill from the mobile telephone service
8 provider, if the customer notifies the mobile telephone service provider during that
9 period. A mobile telephone service provider may not charge a customer a fee to
10 terminate a contract under this subsection. Within 14 days after the customer
11 terminates a contract under this subsection, the mobile telephone service provider
12 shall refund to the customer any amounts paid to the mobile telephone service
13 provider by the customer prior to terminating the contract, except any amounts owed
14 by the customer for calls placed or received prior to terminating the contract.

15 (9) ^{DISCLOSURE OF MOBILE TELEPHONE NUMBER WITHOUT CONSENT PROHIBITED. ← (CS)} (a) A mobile telephone service provider or affiliate or agent of a mobile
16 telephone service provider may not disclose a customer's name or wireless telephone
17 number to another without the customer's consent.

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

- 20 1. The form is not attached to any other document.
- 21 2. The form is signed and dated by the customer.
- 22 3. The form clearly and conspicuously discloses the person to whom the
23 disclosure will be made and the purpose of the disclosure.

1 4. The form clearly and conspicuously discloses that, by signing, the customer
2 consents to having the customer's mobile telephone number included in a mobile
3 telephone directory that may be available to the public.

4 5. If the purpose of the disclosure is to include the customer's mobile telephone
5 number in a directory, and if the mobile telephone service provider requires the
6 customer to pay for calls or text messaging received by the customer from a telephone
7 solicitor, the form clearly and conspicuously discloses that by consenting to
8 disclosure the customer may incur additional charges for receiving unsolicited calls
9 or text messages.

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

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

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

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

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

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

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

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

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

3 (10) ^{ALTERATION BY CONTRACT PROHIBITED} The effect of this section may not be ^{altered} varied by contract or agreement. Any
4 contract or agreement purporting to do so is void and unenforceable to that extent
5 only. ^{ENFORCEMENT.}

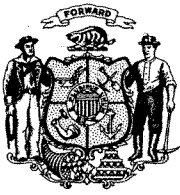
6 (11)(a) A person who violates this section may be required to forfeit not less
7 than \$500 nor more than \$5,000 or imprisoned in the county jail for not more than
8 6 months, or both, for each violation.

9 (b) ^(c) A customer who suffers damages as the result of a mobile telephone service
10 provider's violation of this section or of any rule promulgated by the department
11 under this section may bring an action against the violator for the amount of the
12 customer's pecuniary loss or \$500 for each violation, whichever is greater.
13 Notwithstanding s. 814.04 (1), in an action under this paragraph, the court shall
14 award a prevailing plaintiff reasonable attorney fees.

15 (END)

d-note
↓

INS
7-9 ✓



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INS A
to LRB-2241/1

and related to wireless mobile numbers

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 providing a
3 penalty.

This

(providers) and requires the Department of Agriculture, Trade and Consumer Protection (DATCAP) to enforce the provisions of the Bill

Analysis by the Legislative Reference Bureau

This bill regulates mobile telephone service providers. 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 every mobile telephone service provider (provider) to bill its customers in one-second increments. The bill also 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) 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; 4) taxes and surcharges collected by the provider; and 5) any other information the Department of Agriculture, Trade and Consumer Protection determines to be necessary to protect customers.

The bill prohibits providers from engaging in certain conduct including charging a customer for service by rounding up to the nearest minute, charging a customer for a call that is placed but not completed, charging a customer additional

3) the cost of any services available to the customer that are not included in the monthly charge;

INS A-2 ✓

NO # Under the bill, a provider must, upon request by a customer, provide an itemized bill at no charge.

charging a late fee, unless payment is more than 60 days past due;

a document separate from a ✓

fees or higher rates than those specified in the customer's contract for services; 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 previously notified the customer of the extension or renewal in two monthly bills within after the customer receives the first bill,

This bill also specifies that a customer may terminate a contract for mobile telephone service at any time during the first 30 days of the contract if the customer notifies the provider during that period that the calling area range or the quality of the reception is inadequate. 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 cancellation fee. The bill prohibits any person other than a provider from charging a fee to terminate a contract. Under the bill, a cancellation fee must be prorated according to the remaining term of the contract.

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) In this section:

INS A-B

termination

INS A-4

INS A-3

termination

END OF INS A to LRB-224111

LPS- INSERTS OUT OF ORDER

Inserts to Insert A to LRB-2241/1

Insert A-B:

~~NO~~ The notice must be sent to the customer ^{plain} between 15 ^{plain} 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.

(end insert A-B to INSERT A)

Insert A-2:

(IP) The bill requires DATCP (NO #)

(NO #)

→ to promulgate

rules that require providers to submit and update maps that show

each provider's service area and

require providers to supply the map make the map available on the internet and

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, ^{contain data,} _{comma}

INSERT A-2, cont'd:

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.

(end ins A-2 ~~to~~ INSERT A)

Insert A-3:

NO #, and must within 14 days refund ^{that} amounts, the customer has paid to the provider, except amounts owed by the customer for calls placed or received before terminating the contract. NO #

(end ins A-3 to INSERT A)

Insert A-4:

(P) 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

INTER A - ~~3~~⁴, cont'd:

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 a disclosure for the sole purpose of responding to a 911 call; and ³⁾ a disclosure made to a provider to

INSERT A-4 CONT

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 also subject a forfeiture of \$500 to \$5,000 or up to 6 months imprisonment ^{or both.} The bill also gives DAICP enforcement authority.

END of INSERT A-4 to INSERT A

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2241/02 ins
CTS:.....

1
2
3
4

Insert 7-~~16~~ ⁹

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

(end insert 7-9)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2241/P1 dn

CTS:.....

Jld

Representative Berceau:

This is a redraft of LRB-2241/P1 based on instructions from your research assistant, Thomas Powell. This draft includes a provision that grants enforcement authority to DATCP.

Upon reviewing the inquiry regarding unilateral contract modifications contained in an email from Jennifer Giegerich, I believe those concerns are addressed in proposed s. 100.53 (5), which prohibits contract modification without notice and gives the customer 30 days in which to cancel the contract. Is this correct?

Please contact me if you have any questions or if you would like to make further changes to the draft.

Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail: christopher.sundberg@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2241/1dn
CTS:jld:ch

March 15, 2005

Representative Berceau:

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Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail: christopher.sundberg@legis.state.wi.us

Basford, Sarah

From: Powell, Thomas
Sent: Tuesday, March 15, 2005 12:43 PM
To: LRB.Legal
Subject: Draft review: LRB 05-2241/1 Topic: Cell phone regulation

It has been requested by <Powell, Thomas> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-2241/1 Topic: Cell phone regulation