

2007 DRAFTING REQUEST

Bill

Received: **05/21/2007**

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Julie Lassa (608) 266-3123**

By/Representing: **Danielle Wilson**

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

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Lassa@legis.wisconsin.gov**

Carbon copy (CC:) to: **christopher.sundberg@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Require cell phone companies to refund overcharges within a given period of time

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>
/?	csundber 05/25/2007	bkraft 06/04/2007		_____			State
/1	csundber 08/21/2007	bkraft 08/27/2007	nmatzke 06/04/2007	_____	cduerst 06/04/2007		State
/2	csundber 09/19/2007	bkraft 09/20/2007	rschluet 08/28/2007	_____	lparisi 08/28/2007		State
/3			rschluet	_____	lparisi	cduerst	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			09/20/2007 _____		09/20/2007	10/16/2007	

FE Sent For:

at intro
11/12/07

<END>

2007 DRAFTING REQUEST

Bill

Received: 05/21/2007

Received By: csundber

Wanted: As time permits

Identical to LRB:

For: Julie Lassa (608) 266-3123

By/Representing: Danielle Wilson

This file may be shown to any legislator: NO

Drafter: csundber

May Contact:

Addl. Drafters:

Subject: Trade Regulation - other

Extra Copies:

Submit via email: YES

Requester's email: Sen.Lassa@legis.wisconsin.gov

Carbon copy (CC:) to: christopher.sundberg@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Require cell phone companies to refund overcharges within a given period of time

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>
/?	csundber 05/25/2007	bkraft 06/04/2007		_____			State
/1	csundber 08/21/2007	bkraft 08/27/2007	nmatzke 06/04/2007	_____	cduerst 06/04/2007		State
/2	csundber 09/19/2007	bkraft 09/20/2007	rschluet 08/28/2007	_____	lparisi 08/28/2007		State
/3			rschluet	_____	lparisi		

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

09/20/2007 _____

09/20/2007

FE Sent For:

<END>

2007 DRAFTING REQUEST

Bill

Received: **05/21/2007**

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Julie Lassa (608) 266-3123**

By/Representing: **Danielle Wilson**

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

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Lassa@legis.wisconsin.gov**

Carbon copy (CC:) to: **christopher.sundberg@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Require cell phone companies to refund overcharges within a given period of time

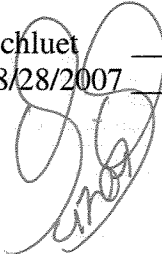
Instructions:

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>
/?	csundber 05/25/2007	bkraft 06/04/2007		_____			State
/1	csundber 08/21/2007	bkraft 08/27/2007	nmatzke 06/04/2007	_____	cduerst 06/04/2007		State
/2			rschluet 08/28/2007	_____	lparisi 08/28/2007		

1/3 bjk 9/20



FE Sent For:

<END>

2007 DRAFTING REQUEST

Bill

Received: **05/21/2007**

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Julie Lassa (608) 266-3123**

By/Representing: **Danielle Wilson**

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

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Lassa@legis.wisconsin.gov**

Carbon copy (CC:) to: **christopher.sundberg@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Require cell phone companies to refund overcharges within a given period of time

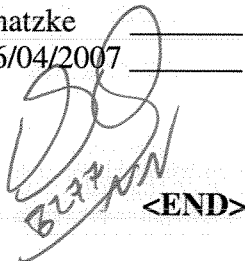
Instructions:

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>
/?	csundber 05/25/2007	bkraft 06/04/2007					State
/1		1/2 bjk 8/24	nmatzke 06/04/2007		cduerst 06/04/2007		

FE Sent For:


<END>

2007 DRAFTING REQUEST

Bill

Received: 05/21/2007

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Julie Lassa (608) 266-3123**

By/Representing: **Danielle Wilson**

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

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Lassa@legis.wisconsin.gov**

Carbon copy (CC:) to: **christopher.sundberg@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Require cell phone companies to refund overcharges within a given period of time

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>
/?	csundber	1 bjk 5/29 cjs 6/1	nwn 6/4	nwn 6/4			

FE Sent For:

<END>

Sundberg, Christopher

From: Wilson, Danielle
Sent: Monday, May 21, 2007 11:14 AM
To: Sundberg, Christopher
Subject: Draft Request and Instructions

Attachments: Cellphonebill.pdf

Senator Lassa would like a bill drafted that will require cell phone companies to refund overcharges within a given period of time and then provide a penalty if they do not comply. I have attached drafting instructions from David Lovell that explains the bill more clearly. If you have any questions, feel free to contact David or myself.

Thank you for your assistance.

Danielle Wilson

Office of Senator Julie Lassa
State Capitol, Room 323 - South
P.O. Box 7882
Madison, WI 53707-7882

(608) 266-3123

danielle.wilson@legis.wisconsin.gov

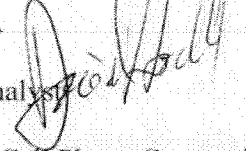


Cellphonebill.pdf
(445 KB)



WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: SENATOR JULIE LASSA
FROM: David L. Lovell, Senior Analyst 
RE: Refund of Overcharges by Cell Phone Companies; Drafting Instructions
DATE: May 18, 2007

This memorandum summarizes drafting instructions for legislation relating to the refund of overcharges by cell phone companies.

Requirement

Specify that a commercial mobile radio service provider (cell phone company) must refund to a customer any amount it has charged the customer in excess of what it is legally authorized to charge the customer. Further specify that the commercial mobile radio service provider must make the refund no later than the end of the billing cycle after the billing cycle in which it learns of the excess charge.

Penalty

Specify that, if a cell phone company does not make a required refund to a customer within a specified time limit, it must refund to the customer twice the amount of the excess charge.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

DLL:jal

Sundberg, Christopher

From: Wilson, Danielle
Sent: Monday, May 21, 2007 11:16 AM
To: Sundberg, Christopher
Subject: FW: Draft Request and Instructions

Attachments: Cellphonebill.pdf

One additional instruction that was not in David's memo but that we would like included is a specification that companies may not put any additional costs that arise from the requirements in this bill onto the consumer.

Thanks again!

Danielle Wilson

Office of Senator Julie Lassa
State Capitol, Room 323 - South
P.O. Box 7882
Madison, WI 53707-7882

(608) 266-3123

danielle.wilson@legis.wisconsin.gov

From: Wilson, Danielle
Sent: Monday, May 21, 2007 11:14 AM
To: Sundberg, Christopher
Subject: Draft Request and Instructions

Senator Lassa would like a bill drafted that will require cell phone companies to refund overcharges within a given period of time and then provide a penalty if they do not comply. I have attached drafting instructions from David Lovell that explains the bill more clearly. If you have any questions, feel free to contact David or myself.

Thank you for your assistance.

Danielle Wilson

Office of Senator Julie Lassa
State Capitol, Room 323 - South
P.O. Box 7882
Madison, WI 53707-7882

(608) 266-3123

danielle.wilson@legis.wisconsin.gov



Cellphonebill.pdf
(445 KB)



bjk & cjs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2007 BILL

SA ✓
X-ref. ✓

gen. cat.

1 AN ACT ...; relating to: refunds of overcharges by commercial mobile radio
2 service providers.

Analysis by the Legislative Reference Bureau

This bill requires a commercial mobile radio service provider (cellular telephone service provider) to refund to a customer any amount charged to the customer in excess of the amount actually owed by the customer. Under the bill, the service provider must make such a refund not later than the end of the billing cycle that follows the billing cycle in which the provider learns of the excess charge. A service provider that fails to make a timely refund must pay the customer twice the amount of the refund owed to the customer. The bill also specifies that a service provider may not impose an additional charge solely as a consequence of the service provider's compliance with the requirements of the bill.

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:

3 SECTION 1. 100.55 of the statutes is created to read:

Sundberg, Christopher

From: Lovell, David
Sent: Monday, August 13, 2007 11:10 AM
To: Sundberg, Christopher
Cc: Wilson, Danielle
Subject: FW: Memo to Sen. Lassa
Attachments: 09lassa_dll.doc

Chris,

Attached is an outline of instructions for a redraft of LRB-2764/1 for Senator Lassa.

I am not sure if item 2.c. in the outline needs to be stated explicitly, but I included it to indicate the Senator's intent and to ensure that 2.b. is drafted in a way that has that effect.

Please contact me if you have any questions.

Thank you.

David

David L. Lovell, Senior Analyst
Wisconsin Legislative Council Staff
608/266-1537

From: Wilson, Danielle
Sent: Monday, August 13, 2007 10:51 AM
To: Lovell, David
Subject: FW: Memo to Sen. Lassa

Hi David,

Everything looks good to me and Senator Lassa, so if you would like to send the outline as redrafting instructions to Christopher Sundberg, I would greatly appreciate it.

Thank you again for all of your assistance and guidance through this process.

Danielle

From: Julie Lassa [mailto:jlassa@charter.net]
Sent: Fri 8/10/2007 4:55 PM
To: Wilson, Danielle
Subject: Re: Memo to Sen. Lassa

08/20/2007

Looks good.

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

From: Wilson, Danielle

To: Julie Lassa

Sent: Thursday, August 09, 2007 3:43 PM

Subject: FW: Memo to Sen. Lassa

Danielle Wilson

Office of Senator Julie Lassa

State Capitol, Room 323 - South

P.O. Box 7882

Madison, WI 53707-7882

(608) 266-3123

danielle.wilson@legis.wisconsin.gov

From: Lovell, David

Sent: Thursday, August 09, 2007 3:42 PM

To: Wilson, Danielle

Subject: FW: Memo to Sen. Lassa

Danielle,

Here's the outline, to share with Julie. I used the wording suggested by David Ghilardi -- it makes good sense to me. Let me know if you want to discuss it. (I did hear your message ...)

David

David L. Lovell, Senior Analyst

Wisconsin Legislative Council Staff

608/266-1537

<<09lassa_dll>>



WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: SENATOR JULIE LASSA
FROM: David L. Lovell, Senior Analyst
RE: Drafting Instructions Regarding Refunds of Overcharges on Cell Phone Bills
DATE: August 9, 2007

The following is an outline of drafting instructions for a redraft of LRB-2764/1, relating to refunds of overcharges on cell phone bills. The outline is based on conversations with Danielle Wilson, of your staff, and staff at the Department of Agriculture, Trade, and Consumer Protection. The outline uses the term "cell phone provider," although the draft uses the statutory term "commercial mobile radio service provider."

1. General Requirement.
 - ✓ a. Require that a cell phone provider refund or credit to a customer any amount charged to the customer in excess of the amount actually owed by the customer.
 - ✓ b. Require that a cell phone provider make a refund or credit not later than the last day of the billing cycle following the billing cycle in which the cell phone provider becomes aware of or should reasonably be aware of the overcharge.
 - ✓ c. Provide that a cell phone provider may not impose an additional charge upon a customer solely as a consequence of the cell phone provider's compliance with this requirement.
2. Responsibility for Discovery of an Overcharge.
 - a. Provide that a cell phone provider has the primary responsibility for the discovery of an overcharge.
 - ✓ b. Provide that a cell phone provider should reasonably be aware of an overcharge under either of the following circumstances:
 - i. The overcharge is part of a pattern of overcharges about which the provider has received multiple reports; or

- ii. The overcharge is the result of an error that the provider knows or has reason to know affects multiple customers.
 - c. Provide that the circumstances described in b. are not the only circumstances under which a cell phone provider should reasonably be aware of an overcharge.
3. Enforcement; Penalties.
- ✓ a. Provide that a cell phone provider that violates 1. a. or b. shall pay the customer twice the amount of the overcharge.
 - b. Provide that the Department of Agriculture, Trade, and Consumer Protection or a district attorney may commence an action on behalf of the state to recover a forfeiture of not more than \$200 for the first violation and not more than \$500 for each subsequent violation of 1. a. or b.
 - c. Provide that a person who is injured as a result of a violation of 1. a. or b. may bring an action against the cell phone provider for temporary or permanent injunctive relief or for three times the amount of the amount of the overcharge, or \$200, whichever is greater, together with costs, including reasonable attorney's fees.

If you have any questions regarding this outline, please contact me directly at the Legislative Council staff offices.

DLL:jal



2e
RMNIR

Inserts (out of order)

stays

2007 BILL

D-note

SA ✓
X-ref ✓

regen. cat.

actions against commercial mobile radio service providers that fail to make timely refunds, and providing a penalty

1 AN ACT to create 100.55 of the statutes; relating to: refunds of overcharges by commercial mobile radio service providers.

or credit to the customer's account

(overcharge)

Analysis by the Legislative Reference Bureau

* This bill requires a commercial mobile radio service provider (cellular telephone service provider) to refund to a customer any amount charged to the customer in excess of the amount actually owed by the customer. Under the bill, the service provider must make such a refund not later than the end of the billing cycle that follows the billing cycle in which the provider learns of the excess charge. A service provider that fails to make a timely refund must pay the customer twice the amount of the refund owed to the customer. The bill also specifies that a service provider may not impose an additional charge solely as a consequence of the service provider's compliance with the requirements of the bill.

overcharge

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

or reasonably should be aware of

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

3 SECTION 1. 100.55 of the statutes is created to read:

INS A

BILL

INS 2-3

1 **100.55 Commercial mobile radio service providers; overcharge**

2 **refunds.** (1) In this section, "commercial mobile radio service provider" has the
3 meaning given in s. 196.01 (2g). *overcharge*

or credit to the customer's account

4 (2) (a) A commercial mobile radio service provider shall refund to a customer
5 any amount charged to the customer in excess of the amount actually owed by the
6 customer to the commercial mobile radio service provider. *A commercial mobile radio*

or credit an account

7 service provider required to make a refund under this paragraph shall make the
8 refund not later than the last day of the billing cycle that follows the billing cycle in
9 which the commercial mobile radio service provider learns of the excess charge. *or reasonably should be aware of*

or reasonably should be aware of

10 (b) A commercial mobile radio service provider may not impose an additional
11 charge upon a customer solely as a consequence of the commercial mobile radio
12 service provider's compliance with this section.

13 (3) A commercial mobile radio service provider that violates sub. (2) (a) shall
14 pay to the customer an amount equal to twice the amount of the excess charge to the
15 customer. *overcharge*

overcharge

16 (END)

INS 2-15

D-note

INS 2-12

(a)
(b)

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2764/2ins
CTS:.....

bjk

1 **insert 2-3:**

2 (b) "Overcharge" means an amount that a commercial mobile radio service
3 provider has charged a customer of the commercial mobile radio service provider in
4 excess of the amount actually owed by the customer. ✓

end of insert 2-3

5 **insert 2-12:**

6 (3) A commercial mobile radio service provider has primary responsibility for
7 determining whether an overcharge has occurred. For purposes of sub. (2) (a),
8 instances in which a commercial mobile radio service provider reasonably should be
9 aware that an overcharge has occurred include all of the following: ✓

10 (a) The overcharge is part of a pattern of overcharges about which the
11 commercial mobile radio service provider has received multiple reports. ✓

12 (b) The overcharge is the result of an error that the commercial mobile radio
13 service provider knows or has reason to know affects multiple customers. ✓

end of insert 2-12

14 **insert 2-15:**

15 (b) The department or a district attorney may commence an action on behalf
16 of the state against a person who violates this section to recover a forfeiture of not
17 more than \$200 for a first violation and not more than \$500 for each subsequent
18 violation. ✓

19 (c) A person who is injured as a result of a violation of this section may bring
20 an action against the violator for temporary or permanent injunctive relief or for
21 damages in an amount equal to 3 times the amount of the amount of the overcharge,
22 or \$200, whichever is greater, together with costs, including reasonable attorney's
23 fees, notwithstanding s. 814.04 (1). ✓

end of insert 2-15

Insert A to LRB-2764/2:

CTS: bjk:

¶ Under the bills the Department of Agriculture,
Trade and Consumer Protection may bring an action
against a person who violates the provisions of
the bill. In addition, a person who is injured
by a violation may bring an action to recover
three times the amount of the overcharge
or \$200, whichever is greater, plus attorney's
fees.

For a forfeiture up to \$200 for a
first-time violation or up to \$500
for subsequent violations.

end of insert A

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

LRB-2764/2dn

CTS:.....

bjk

Date

✓
Senator Lassa:

✓
Please review this draft carefully to ensure it is consistent with your intent. ✓

✓
Note that this draft incorporates language suggested in the drafting instructions that a provider "has primary responsibility for determining whether an overcharge has occurred." ✓ This language seems vague. ✓ What does this language require a provider to do, or permit a customer not to do? ✓

Christopher T. Sundberg

Legislative Attorney

Phone: (608) 266-9739

E-mail:

christopher.sundberg@legis.wisconsin.gov

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

LRB-2764/2dn
CTS:bjk:rs

August 27, 2007

Senator Lassa:

Please review this draft carefully to ensure it is consistent with your intent.

Note that this draft incorporates language suggested in the drafting instructions that a provider "has primary responsibility for determining whether an overcharge has occurred." This language seems vague. What does this language require a provider to do, or permit a customer not to do?

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

Sundberg, Christopher

From: Wilson, Danielle
Sent: Tuesday, September 18, 2007 9:19 AM
To: Sundberg, Christopher
Subject: RE: Cell phone overcharge bill

Hi Chris,

Thank you for your help in focusing our language. To address the concerns you brought up, the legal counsel at DATCP recommends a more drastic rewrite. The following are his comments and suggestions that we would like included in the redraft:

(3) For purposes of sub. (2) (a), it is presumed that a commercial mobile radio service provider should reasonably be aware of an overcharge unless the overcharge is an isolated incident not related to overcharges to other customers or repeated overcharges to the same customer.

Since we say "presumed", it gives the provider a chance to rebut if it can show facts to support. I like these guidelines better than what's currently in the draft because it is expressed in terms of actions required, it is less than vague than the current draft language, and in fact is how we would interpret the current draft language.

The current draft language, upon closer inspection, is actually not that good. Under (a), we say "a pattern" about which the provider receives "messages." What if the provider is so lame that it simply does not receive messages? Well, then we go to (b) which says messages aren't necessary, just "reason to know" multiple customers are affected. So why do we bother with (a) since it is consumed in (b). And (b) still begs the question about "reason to know" forcing us to make an interpretation after the fact.

I see in the conversation below that it is suggested we would like a law where we have the "discretion" to interpret. Not really. It makes our job harder. We would prefer if the interpretation that we would give after the fact is written into the law before the fact so we don't have to argue about it.

In addition to the changes recommended by DATCP, we also found that on page 2, line 12, "or credit" should be added after "refund," to be parallel to the wording on page 2, line 11.

Thank you again for all of your help. If you have any questions, feel free to contact me or David Lovell.

Danielle Wilson

Office of Senator Julie Lassa
State Capitol, Room 323 - South
P.O. Box 7882
Madison, WI 53707-7882

(608) 266-3123
danielle.wilson@legis.wisconsin.gov

From: Sundberg, Christopher
Sent: Wednesday, August 29, 2007 11:03 AM
To: Wilson, Danielle
Subject: RE: Cell phone overcharge bill

A good way to enhance clarity in any draft is to try to express the intent in terms of actions that are required,

09/18/2007

prohibited, or permitted. The 'primary responsibility' language doesn't do that. It sounds like what you want the bill to do is require providers to take reasonable, affirmative steps to try to discover overcharges. That kind of language would seem to give providers a better idea of what they need to do to comply with the provisions of the bill.

On the other hand, as the bill stands now, DATCP has the authority to interpret what the provisions of the bill mean. If you trust DATCP to interpret the bill correctly, clarification might not be necessary.

Let me know if you have any questions.

CS

From: Wilson, Danielle
Sent: Wednesday, August 29, 2007 9:46 AM
To: 'Jenkins, Janet A - DATCP'; Lovell, David
Cc: Sundberg, Christopher
Subject: RE: Cell phone overcharge bill

David and Janet-
Thank you both for all of your hard work and insight on the bill. We really couldn't have done it without you.

Chris-
We will certainly appreciate any suggestions you may have to improve the clarity.

From: Jenkins, Janet A - DATCP [mailto:Janet.Jenkins@Wisconsin.gov]
Sent: Wednesday, August 29, 2007 9:41 AM
To: Lovell, David; Wilson, Danielle; Wilson, Danielle
Cc: Sundberg, Christopher
Subject: RE: Cell phone overcharge bill

Works for me.

Janet

From: Lovell, David [mailto:David.Lovell@legis.wisconsin.gov]
Sent: Wednesday, August 29, 2007 9:39 AM
To: Jenkins, Janet A - DATCP; Wilson, Danielle - LEGIS; Wilson, Danielle - LEGIS
Cc: Sundberg, Christopher - LEGIS
Subject: RE: Cell phone overcharge bill

Danielle,

I agree with Janet: (1) we do not want to define "primary responsibility"; (2) it means that it is the cell phone company's responsibility to detect these errors, not the customer's; that is to say, it does not require a complaint from a customer to trigger the company's obligation to make a refund; and (3) in all other regards, the draft looks fine.

However, I can see why Chris Sundberg (the drafter) raises the question. If he or anyone else has thoughts on how to express this idea more clearly, we should consider it.

I am copying Chris both for his information and to get the explanations in this message into the drafting file.

David

09/18/2007

David L. Lovell, Senior Analyst
Wisconsin Legislative Council Staff
608/266-1537

From: Jenkins, Janet A - DATCP [mailto:Janet.Jenkins@Wisconsin.gov]
Sent: Wednesday, August 29, 2007 8:03 AM
To: Wilson, Danielle; Wilson, Danielle; Lovell, David
Subject: RE: Cell phone overcharge bill

Danielle -

Looks good to me. I don't think we want to define "primary responsibility". To me, that phrase clearly means that it's not up to customers to find errors, but to the provider. In my opinion, any further definition would add, not eliminate, more confusion.

Thanks so much for asking us to work on this. We really appreciate it.

Janet

From: Wilson, Danielle [mailto:Danielle.Wilson@legis.wisconsin.gov]
Sent: Tuesday, August 28, 2007 3:03 PM
To: Wilson, Danielle - LEGIS; Lovell, David - LEGIS; Jenkins, Janet A - DATCP
Subject: RE: Cell phone overcharge bill

<< File: 07-27642dn.pdf >> << File: 07-27642.pdf >>
Sorry, here are the attachments!

Danielle Wilson
Office of Senator Julie Lassa
State Capitol, Room 323 - South
P.O. Box 7882
Madison, WI 53707-7882

(608) 266-3123
danielle.wilson@legis.wisconsin.gov

From: Wilson, Danielle
Sent: Tuesday, August 28, 2007 3:02 PM
To: Lovell, David; Jenkins, Janet A - DATCP
Subject:

Hello!

I received the redraft for the cell phone overcharge bill today with the corrections we discussed a couple of weeks ago. I was hoping that you could look it over to make sure it covers everything we wanted. I am also attaching the drafter's note, which asks for clarity on the statement that says a provider "has primary responsibility for determining whether an overcharge has occurred." From my recollection, we intentionally left this vague, but if anyone has come up with a suggestion to further address it, I would really appreciate hearing it.

Thank you both for your help and insight!

Danielle Wilson

Office of Senator Julie Lassa
State Capitol, Room 323 - South
P.O. Box 7882
Madison, WI 53707-7882

(608) 266-3123

danielle.wilson@legis.wisconsin.gov



fw: 9/19/07
State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-2764-2

CTS:bjk&cjs:rs

3
RMN/C
stays

2007 BILL

SA

regen. cat.

1 AN ACT *to create* 100.55 of the statutes; **relating to:** refunds of overcharges by
2 commercial mobile radio service providers, actions against commercial mobile
3 radio service providers that fail to make timely refunds, and providing a
4 penalty.

Analysis by the Legislative Reference Bureau

This bill requires a commercial mobile radio service provider (cellular telephone service provider) to refund to a customer or credit to the customer's account any amount charged to the customer in excess of the amount actually owed by the customer (overcharge). Under the bill, the service provider must make such a refund not later than the end of the billing cycle that follows the billing cycle in which the provider learns of, or reasonable should be aware of, the overcharge. A service provider that fails to make a timely refund must pay the customer twice the amount of the refund owed to the customer. The bill also specifies that a service provider may not impose an additional charge solely as a consequence of the service provider's compliance with the requirements of the bill.

Under the bill, the Department of Agriculture, Trade and Consumer Protection may bring an action against a person who violates the provisions of the bill for a forfeiture up to \$200 for a first-time violation or up to \$500 for subsequent violations. In addition, a person who is injured by a violation may bring an action to recover three times the amount of the overcharge or \$200, whichever is greater, plus attorney's fees.

BILL

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. 100.55 of the statutes is created to read:

2 **100.55 Commercial mobile radio service providers; overcharge**
3 **refunds.** (1) In this section:

4 (a) "Commercial mobile radio service provider" has the meaning given in s.
5 196.01 (2g).

6 (b) "Overcharge" means an amount that a commercial mobile radio service
7 provider has charged a customer of the commercial mobile radio service provider in
8 excess of the amount actually owed by the customer.

9 (2) (a) A commercial mobile radio service provider shall refund to a customer
10 or credit to the customer's account any overcharge. A commercial mobile radio
11 service provider required to make a refund or credit an account under this paragraph
12 shall make the refund not later than the last day of the billing cycle that follows the
13 billing cycle in which the commercial mobile radio service provider learns, or
14 reasonably should be aware, of the overcharge.

15 (b) A commercial mobile radio service provider may not impose an additional
16 charge upon a customer solely as a consequence of the commercial mobile radio
17 service provider's compliance with this section.

18 (3) A commercial mobile radio service provider has primary responsibility for
19 determining whether an overcharge has occurred. For purposes of sub. (2) (a),
20 instances in which a commercial mobile radio service provider reasonably should be
21 aware that an overcharge has occurred include all of the following:

NS
2-17

or credit

(Handwritten box around lines 18-21)

BILL

- ①
- ②
- ③
- ④

(a) The overcharge is part of a pattern of overcharges about which the commercial mobile radio service provider has received multiple reports.

(b) The overcharge is the result of an error that the commercial mobile radio service provider knows or has reason to know affects multiple customers.

5 (4) (a) A commercial mobile radio service provider that violates sub. (2) (a) shall
6 pay to the customer an amount equal to twice the amount of the overcharge.

7 (b) The department or a district attorney may commence an action on behalf
8 of the state against a person who violates this section to recover a forfeiture of not
9 more than \$200 for a first violation and not more than \$500 for each subsequent
10 violation.

11 (c) A person who is injured as a result of a violation of this section may bring
12 an action against the violator for temporary or permanent injunctive relief or for
13 damages in an amount equal to 3 times the amount of the amount of the overcharge,
14 or \$200, whichever is greater, together with costs, including reasonable attorney's
15 fees, notwithstanding s. 814.04 (1).

16

(END)

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2764/3ins
CTS:.....

ljk

1 **Insert 2-17:**

2 (3) For purposes of sub. (2) (a), it is presumed that a commercial mobile radio
3 service provider should reasonably be aware of an overcharge, unless the overcharge
4 is an isolated incident not related to overcharges to other customers or repeated
5 overcharges to the same customer.

end of insert 2-17

Duerst, Christina

From: Wilson, Danielle
Sent: Tuesday, October 16, 2007 3:42 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-2764/3 Topic: Require cell phone companies to refund overcharges within a given period of time

Please Jacket LRB 07-2764/3 for the SENATE.