

1991 Senate Bill 376

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1991 WISCONSIN ACT 127

AN ACT to create 196.208 of the statutes, relating to: telephone pay-per-call services and providing penalties.

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

SECTION 1. 196.208 of the statutes is created to read:

196.208 Telecommunications pay-per-call services. (1) DEFINITIONS. In this section:

(a) "Pay-per-call service" means a telecommunications service that permits simultaneous calling by a large number of callers to a single telephone number and for which the customer is assessed, on a per-call or a per-time-interval basis, a charge that is greater than or in addition to the charge for the transmission of the call. "Pay-per-call service" does not include a directory assistance or conference call service that is offered by a telecommunications utility and does not include a telecommunications service for which the customer charge is dependent on the existence of a presubscription relationship.

(b) "Provider" means a person who furnishes, conducts or offers a pay-per-call service or who holds himself or herself out as engaged in the business of furnishing, conducting or offering a pay-per-call service.

(2) PREAMBLE. (a) 1. Except as provided in subd. 2, a provider shall begin a pay-per-call service with a clear and express preamble that states the cost of the call. The preamble shall disclose all per-call charges. If the call is billed on a usage-sensitive basis, the preamble shall state all rates, by minute or other unit of time, any minimum charges and the total cost for a call to that service if the duration of the call may be determined.

2. A provider is not required to begin a pay-per-call service with a preamble if the service is charged at a flat rate that does not exceed \$2.

(b) A preamble shall include the name of the provider and an accurate description of the information, product or service that the caller will receive.

(c) A preamble shall inform the caller that billing will commence only after a specific identified event following the preamble, such as an audible signal tone.

(d) If the pay-per-call service is associated with, aimed at or likely to be of interest to an individual under the age of 18, the preamble shall include a statement that the caller should hang up unless the caller has parental permission.

(e) A provider may offer a caller a means to bypass the preamble on subsequent calls to the pay-per-call service, if the caller is in sole control of that bypass capability. If a provider includes preamble bypass instructions, the instructions shall be given at the end of the preamble or at the end of the pay-per-call service. A provider shall disable preamble bypass capability for 30 days following the date of an increase in any charge for the pay-per-call service.

(f) If a provider complies with federal requirements that specifically apply to a preamble on a pay-per-call service, that compliance shall be considered to be compliance with this subsection.

(3) BILLING COMMENCEMENT. If a preamble is required, a provider shall give a caller a reasonable opportunity to disconnect the call before the specific event identified under sub. (2) (c) that signals the commencement of billing.

(4) SOLICITATION REQUIREMENTS. If a provider includes an offer of goods or services within the pay-per-call service, all of the following apply:

(a) The provider shall disclose all conditions, restrictions and charges associated with the offer of goods and services during the initial communication with the caller.

(b) The provider may not make any assertion, representation or statement of fact that is false, deceptive or misleading.

(5) PROVIDER CHARGE LIMITS. (a) If a delayed billing period is required under sub. (3), a provider may not charge for usage of the pay-per-call service if the caller ends the usage before the specific event identified under sub. (2) (c) and, if the call is billed on a usage-sensitive basis, may not charge for the time that elapses before the specific event identified under sub. (2) (c) occurs.

(b) A provider may not charge for time that a caller is placed on hold.

(6) ADVERTISING AND SALES PRACTICES. A person shall do all of the following:

(a) In any advertisement for a pay-per-call service, clearly and conspicuously disclose the name of the provider and the identity and cost of any goods or services offered for sale.

(b) In any advertisement for a pay-per-call service, clearly and conspicuously disclose all conditions, restrictions and charges associated with the receipt of goods or services that are represented to be a gift, prize or incentive for using a pay-per-call service.

(c) Not make any assertion, representation or statement that is false, deceptive or misleading in an offer or sale of a pay-per-call service.

(d) If a caller to a pay-per-call service may be solicited to purchase additional pay-per-call services, clearly and conspicuously disclose that information in any advertisement for the pay-per-call service.

(7) BILLING INFORMATION. (a) A telecommunications utility shall do all of the following:

1. Include on each billing statement that includes charges for pay-per-call services a clear and conspicuous notice that states: "You may not have your telephone service disconnected for failure to pay for '900' number services. You may dispute charges for '900' number services if you believe the charges are unauthorized, fraudulent or illegal."

2. If a customer's local exchange telecommunications utility is technically able to provide blocking, semi-annually include with a billing statement a clear and conspicuous notice stating that the customer may request that the local exchange telecommunications utility block the customer's access to pay-per-call services.

(b) If a telecommunications utility provides billing services to a provider, the telecommunications utility shall do all of the following:

1. In a clear and conspicuous manner, list charges for pay-per-call services separately from charges for telecommunications service or identify charges for pay-per-call services with an identifying symbol.

2. If a customer contacts the telecommunications utility regarding a charge for pay-per-call services, inform the customer that the customer may request the telecommunications utility to remove charges for pay-per-call services from subsequent billing statements.

3. If a customer reasonably disputes a charge for pay-per-call services and requests removal, remove that charge for pay-per-call services from subsequent billing statements.

(c) A local telecommunications utility shall disseminate information that explains that a customer may request blocking, if available, and may request that charges for pay-per-call services be removed from its billing statements, although nonpayment of charges may result in a civil collection action.

(8) COLLECTION PRACTICES. (a) A telecommunications utility may not do any of the following:

1. Disconnect a customer's basic local exchange and basic interexchange services for failure to pay for pay-per-call services billed by the telecommunications utility.

2. Misrepresent that telecommunication service may be disconnected for nonpayment of pay-per-call service charges.

3. Condition the extension of local exchange service to a customer upon the customer's agreement to block access to pay-per-call services.

4. Regarding a delinquent account, condition the acceptance of deposits or guarantees upon customer payment of outstanding pay-per-call service charges.

5. Regarding a delinquent account, condition the acceptance of a deferred payment plan upon inclusion of outstanding pay-per-call service charges in the plan unless the telecommunications utility discloses the amount of pay-per-call service charges, informs the customer that payment of pay-per-call service charges are not required as part of the plan and sends the customer a written confirmation that outlines the deferred payment plan with and without the inclusion of pay-per-call service charges.

(b) Except as provided in par. (c), a telecommunications utility shall verify that a notice of disconnection does not include charges relating to pay-per-call services before the telecommunications utility sends the notice to a customer.

(c) A telecommunications utility may request the commission to waive the verification requirement of par. (b). The commission may grant a waiver if it determines that the costs that would be incurred by the telecommunications utility to meet the verification requirement are such that meeting the verification requirement is not in the best interest of the utility's customers.

(9) BLOCKING. (a) If technically feasible, a local exchange telecommunications utility shall provide a cus-

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to the option of blocking access to pay-per-call services that use “900” exchanges.

(b) A local exchange telecommunications utility may not charge a customer for the cost of blocking the first time a customer requests blocking.

(c) A local exchange telecommunications utility may not reinstate a customer’s access to pay-per-call services that use “900” exchanges unless the customer makes the request for reinstatement in writing and the request is confirmed by the utility.

(10) TERRITORIAL APPLICATION. (a) Subsections (2) to (5) apply to any pay-per-call service that a caller may access by a call originating in this state.

(b) Subsection (6) applies to any advertising or sales practice directed to a resident of this state.

(11) REMEDIES AND PENALTIES. (a) 1. If a provider fails to comply with this section, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief, including but not limited to damages, injunctive or declaratory relief, specific performance and rescission.

2. A person or class of persons entitled to relief under subd. 1 is also entitled to recover costs, disbursements and reasonable attorney fees, notwithstanding s. 814.04 (1).

(b) The commission shall inquire into any violation of subs. (7) to (9) by a telecommunications utility or by an officer, employe or agent of a telecommunications utility and shall report all violations to the department of justice.

(c) 1. The department of justice, or any district attorney upon informing the department of justice, may commence an action in circuit court in the name of the state

to restrain by temporary or permanent injunction any violation of subs. (2) to (9). The department of justice or a district attorney may not commence an action to enforce subs. (7) to (9) unless the commission requests an enforcement action. Before entry of final judgment, the court may make such orders or judgments as may be necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action if proof of these acts or practices is submitted to the satisfaction of the court.

2. The department of justice may conduct hearings, administer oaths, issue subpoenas and take testimony to aid in its investigation of violations of subs. (2) to (6).

(d) Any person who violates subs. (2) to (9) shall be required to forfeit not less than \$25 nor more than \$5,000 for each offense. Forfeitures under this paragraph shall be enforced by action on behalf of the state by the department of justice or, upon informing the department of justice, by the district attorney of the county where the violation occurs.

SECTION 2. Initial applicability. (1) PAY-PER-CALL SERVICES. The treatment of section 196.208 (2) to (6) of the statutes first applies to a pay-per-call service provided on the effective date of this subsection.

(2) BILLINGS. The treatment of section 196.208 (7) of the statutes first applies to a billing statement prepared on the effective date of this subsection.

(3) BLOCKING. The treatment of section 196.208 (9) of the statutes first applies to a customer request made on the effective date of this subsection.

SECTION 3. Effective date. This act takes effect on the first day of the 4th month beginning after publication.