



Legislative Fiscal Bureau

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TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 35: Increased Regulation of Certain Pay-Per-Call Services

Senate Bill 35 would revise current law regulations with respect to transferring toll-free calls to pay-per-call services or to international numbers and would establish new reporting and disclosure requirements applicable to service providers and to telecommunications utilities. The bill was referred to the Senate Committee on Privacy, Electronic Commerce and Financial Institutions. The Committee introduced and adopted Senate Amendment 1 and recommended the bill for passage, as amended, on a vote of 5-0.

BACKGROUND

Current Law Regulation of Pay-Per-Call Services. Under current law, the provider of pay-per-call services or "900" number services must generally begin the service with a clear and express preamble that discloses information stating the cost of the call. This provision does not apply where a flat rate fee is charged that does not exceed \$2. The preamble must include the name of the service provider and an accurate description of the information, product or services that the caller will receive. Customer billing may commence only after a specific, identifiable event, such as an audible signal tone. This identifiable event must occur after the preamble and after the caller has had a reasonable opportunity to disconnect the call. A caller may not be charged for time that the he or she is placed on hold.

A toll-free vendor may not transfer the calling party to a pay-per-call service or place a return collect call to the customer. Unless the calling party has a preexisting subscription relationship with the toll-free vendor or unless the caller discloses a credit card account number during the call, the toll-free vendor may not charge the calling party for information provided during the call.

Telecommunications utilities are required to provide disclosures on bills containing charges for pay-per-call services stating that the customer may dispute pay-per-call charges and that the customer may not have his or her telephone service disconnected for failure to pay for pay-per-call services. A telecommunication utility must also do all of the following: (1) list pay-per-call service billings separately from the utility's charges for telecommunication services; (2) if contacted by the customer regarding the pay-per-call charges, inform the customer that he or she may request that the charges be removed from subsequent billing statements; (3) if the customer reasonably disputes the charges and requests their deletion, remove the charges from subsequent billing statements; and (4) disseminate information explaining call-blocking services and the procedures for removing charges for pay-per-call services from utility billing statements (provided information is given stating that nonpayment of charges could result in civil collection actions by the pay-per-call service provider).

If a provider of pay-per-call services or a toll-free vendor fails to comply with current service standards and requirements, any person or class of persons may seek relief, including damages, injunctive or declaratory relief, performance of specific remedial actions or the rescinding of previous actions. The Department of Justice (DOJ), or a district attorney (after having informed DOJ), has enforcement authority, except that the Public Service Commission (PSC) must initiate requests for enforcement of actions where a telecommunications utility is involved. Persons who violate current pay-per-call services or "900" number services regulations are subject to civil forfeitures of not less than \$25 nor more than \$5,000 for each offense.

SUMMARY OF THE BILL

Transfers to International Numbers Prohibited. Senate Bill 35 would prohibit any toll-free service vendor from transferring the calling party to an international number.

Additional Disclosure Requirements in the Pay-Per-Call Service Preamble. Senate Bill 35 would require that the information provided in the preamble that a pay-per-call vendor must provide a customer before charges are assessed must state that it is illegal for a person to transfer a toll-free call to the pay-per-call service and, if the caller has been transferred in such a manner, the caller should contact the Department of Agriculture, Trade and Consumer Protection (DATCP) to report the transfer. Telecommunications utilities would be required to include in each billing statement that contains charges for pay-per-call services the following statement: "It is illegal to transfer a call made to a toll-free number to a 900 number. If you were transferred to a 900 number service from a toll-free number, you should contact the state Department of Agriculture, Trade and Consumer Protection."

Reporting Requirements. Senate Bill 35 would require a telecommunications utility to report to DOJ (to the extent authorized under federal law) any information the utility receives concerning a possible violation of the following provisions: (1) imposing a charge on a toll-free call; (2) transferring a call to a pay-per-call service or to an international number; (3) charging a party for information provided during the call (unless the calling party has a preexisting subscription

relationship with the toll-free vendor or unless the caller discloses a credit card account number during the call); or (4) returning a collect call to the customer.

The bill would also require DATCP and DOJ to submit a joint report to the Legislature by January 1 of each odd-numbered year including information, prepared by DATCP, summarizing the complaints received during the previous two-year period concerning possible violations of pay-per-call service requirements. The report would also have to include a description, prepared by DOJ, of DOJ's enforcement actions during the previous two-year period. Finally, the joint report would be required to include recommendations for remedial legislation, if the two departments believe that such changes are necessary for more effective enforcement of pay-per-call regulations.

Billing Services Provided by Telecommunications Utilities. Senate Bill 35 would prohibit a telecommunications utility from providing billing services to a pay-per-call provider that has been convicted of a violation of pay-per-call regulations, unless given prior approval by the PSC. The PSC would be authorized to approve the provision of billing services for a convicted provider only if the Commission had determined that the provider had established safeguards sufficient to prevent a further violation. The clerk of the circuit court in the jurisdiction where the violation occurred would be required to promptly report the conviction to the PSC. Where the conviction is subsequently reversed, set aside or vacated, the clerk of the court would also be required to forward to the PSC a certificate stating the court's actions.

Penalties. Senate Bill 35 would change current law civil forfeiture provisions applicable to violations of pay-per-call services regulations (a forfeiture of not less than \$25 nor more than \$5,000 for each offense) to a criminal penalty with a fine of not less than \$100 nor more than \$10,000 per violation, or imprisonment for not more than 90 days, or both.

Civil Liabilities. Senate Bill 35 would specify that in addition to current avenues of relief available to a person who has been adversely affected by a violation of pay-per-call services regulations (damages, injunctive or declaratory relief, performance of specific remedial actions or the rescinding of previous actions), treble damages could be awarded.

Senate Amendment 1. Senate Amendment 1 would enumerate pay-per-call services regulations under the matters for which DATCP or its agents would be authorized to conduct hearings, administer oaths, issue subpoenas and take testimony.

Technical Amendment. Senate Bill 35 requires a technical amendment specifying that the enhanced criminal penalties, enhanced civil liability provisions and the prohibition against telecommunications utilities providing billing services to a pay-per-call service provider who has violated relevant statutory regulations would first apply to violations occurring on and after the effective date of the bill.

FISCAL EFFECT

Senate Bill 35 does not appropriate any funds or authorize any new positions. Nonetheless, DATCP, DOJ and the PSC have indicated the following potential workload implications of the bill.

Department of Agriculture, Trade and Consumer Protection. The Department estimates that the provisions of Senate Bill 35 may result in the receipt of 1,000 new written complaints annually, of which 10 may require in-depth investigation. However, no specific data on the number of potential complaints is readily available. DATCP estimates that \$37,900 GPR annually and 1.0 GPR consumer protection investigator would be needed to process this level of additional complaint volume, investigate violations and prepare required reports for DOJ and the Legislature. Although the bill does not provide any additional funding or staffing for DATCP, the agency currently has 43.75 FTE positions related to consumer protection activities at an annual cost of approximately \$2.6 million. Of these 43.75 FTE positions, 13.65 FTE are consumer protection investigators and 4.0 FTE are consumer protection investigator supervisors. With these staff, the Department handles approximately 16,000 written complaints annually. Until the actual additional workload arising from the provisions of the bill is better known, DATCP would have to use current staffing resources to process complaints and investigations and prepare required biennial report materials.

Department of Justice. The Department indicates that Senate Bill 35 will result in: (1) additional pay-per-call complaints being forwarded to the Department (based on DATCP projections as to the impact of the bill); (2) additional work related to record keeping and the preparation of the biennial report to the Legislature; and (3) additional enforcement action by the Department, due in part to the new criminal penalties that would be created under the bill. As a result of the projected workload impact of these expected changes, DOJ estimates that a 0.25 GPR paralegal and a 0.25 GPR attorney position would be needed at an annual cost of \$35,600 GPR. Since the bill does not provide additional funding or staffing, DOJ would have to use current staffing resources to process complaints, engage in the necessary record keeping and prepare required biennial report materials.

Public Service Commission. The PSC indicates that the bill would require it to notify telecommunications utilities of any pay-per-call service providers that are convicted of violating statutory provisions governing such services. The Commission indicates that the communication process between the agency and the telecommunications utilities would be done electronically and could be accomplished utilizing existing budgeted resources.

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