

LEGISLATIVE RESEARCH UNIT

PATRICK D. O'GRADY, EXECUTIVE DIRECTOR

December 10, 2008

LAWS AND BILLS TO PROTECT CELLPHONE CUSTOMERS

An article in *State Legislatures* magazine for October/November 2008¹ briefly mentioned several bills or laws in other states that are intended to provide rights and protections to cellphone customers. You asked us whether Illinois has any laws similar to them.

A section of Illinois' Consumer Fraud and Deceptive Business Practices Act² addresses wireless telephone service providers and third-party billings. But it is not as comprehensive as some of the consumer protection measures reported in that article. We summarize that law and current Illinois bills below, followed by other bills and laws described in the article.

Illinois

Law on Third-Party Billings

A section of the Consumer Fraud and Deceptive Business Practices Act (enclosed) requires each wireless telephone service provider to give a contact phone number and brief description of the service provided with each third-party billing. This must be done on the cellphone bill to the extent allowed by federal law, or through a customer service representative. The section defines a third-party billing as any billing by a wireless telephone provider on behalf of a third party, in which the provider is only the billing agent with no ability to provide refunds or credits, or otherwise to adjust charges.³

LRU

Current Bills

At least four bills of the 95th General Assembly have proposed other financial protections for cellphone users. We describe them below by topic.

Text messaging

- H.B. 4593 (Cole-Coulson et al.) would require wireless carriers to allow consumers to opt out of all text message services in wireless service agreements. It was introduced in January 2008, and never assigned to a substantive House committee.
- H.B. 4721 (Cole) would also require that customers be able to opt out of text message services. It would add that the option must be available throughout the contract term, and that the provider could not change the length of the contract for exercising that option "in the middle of" the contract. This bill too was introduced in January 2008 and never assigned to a substantive House committee.

Cell Phone Lemon Law

- H.B. 1958 (Mendoza-Madigan-Franks-Dunn-Graham et al.—Jacobs) proposes a Cell Phone Lemon Law. It would provide that a customer with a repeatedly defective cellphone can cancel the contract or, in some conditions, choose another cellphone model. It passed 72-43 in 2007 but was never assigned to a substantive committee in the Senate.

No-Commitment Plans

- H.B. 4743 (Washington-Turner-Howard) would require each cellphone service provider to offer at least one plan that has no commitment to subscribe for a specified time. Introduced in 2008, the bill was voted "do pass" 8-4 in the House Consumer Protection Committee and got to Second Reading in the House, but was re-referred to the Rules Committee for lack of action by the deadline.

Other States' Laws

Kentucky

Under a 2005 law, the provision of cellular telephone service is found to be market-based and not subject to regulation by the Kentucky Public Service Commission; but the Commission must retain jurisdiction to assist in resolving consumer complaints about cellular telephone service.⁴

Louisiana

Before a wireless service contract is signed, the provider must give the consumer the terms of the contract in writing. The information provided must include, at a minimum, the length of the contract. An executed contract must include a provision stating that the consumer has received a written copy of its terms.⁵

Wireless providers cannot automatically renew service contracts. However, if a contract expires, the service can continue on a month-to-month basis under the same terms as the original contract until either party ends the contract.⁶

Other States' Bills

Maryland

A 2008 bill would require a wireless telephone service provider to send written notice to a residential customer within 10 days after any change in the rates, terms, or conditions of wireless phone service, by U.S. mail and separate from any bill or other mailing.⁷ The bill received an unfavorable report from the House Economic Matters committee in February 2008 and received no further action.

New Jersey

Disclosure of terms; billing disputes

Companion bills introduced in 2008 in each house would require that wireless companies fully disclose information to contract customers on their terms and conditions, including fees, trial periods, taxes, and surcharges. The bills would also establish other consumer protection rights for subscribers, including these requirements:

- to provide service coverage maps to consumers;
- for the state Board of Public Utilities to monitor the quality of service from wireless providers;
- service contract extensions to be in writing and signed by subscribers; and
- wireless service providers to give written notice of any change in rates, terms, or conditions of service at least 30 days before they took effect.

Other provisions would require that some customers receive itemized bills, and establish procedures for subscribers to

file complaints over billing disputes. Providers could not terminate a customer's service for nonpayment while the bill remains in dispute.⁸

These bills were referred to committees last spring; no further action was taken.

Prorated fees after cancellation

Two identical bills propose that if a subscriber cancels, any cancellation fee must be prorated based on the time remaining on the contract.⁹ These bills also were assigned to committees last spring but had no further action.

Wireless billing practices

Another 2008 bill would require a wireless provider to notify a subscriber within 3 business days after the subscriber, in any one-month period, accrued over \$20 in charges for Internet use or text messaging. This requirement would not apply to prepaid wireless customers.¹⁰ The bill was introduced in November 2008 and assigned to a committee.

New York

Wireless Telephone Consumer Protection Act

Identical Senate and Assembly bills propose a comprehensive Wireless Telephone Consumer Protection Act. The proposed Act would establish wireless telephone fair practices, along with a consumer complaint process in the state Consumer Protection Board.

Wireless service providers would have to disclose calling plans, monthly fees, airtime minutes, additional charges, termination fees, the availability and implementation of enhanced 911 service, and coverage areas and maps. The Act would also require that customer bills be clearly organized and written in plain language. Other provisions would require a trial period up to 15 days after the first monthly bill was issued. A customer cancelling within the trial period could not be charged a termination fee.¹¹

The Assembly bill passed the Assembly on June 22, 2007; but in January 2008 it was recalled from the Senate and returned to the Assembly (an automatic action at the beginning of the second year if a bill that passed its house of origin in the first year fails to advance in the second house).

The Senate bill was amended in a Senate committee in January 2008 and remains there.

Pennsylvania

Wireless Telephone Consumer Protection Act

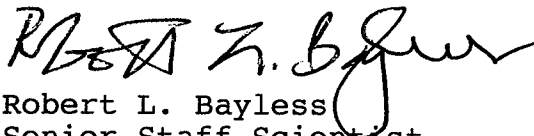
A 2007 bill would require the Pennsylvania Public Utility Commission to develop regulations setting quality service standards for wireless telephone service. The standards would include proper disclosure of rates and terms of service; payment and billing standards; trial periods; customer service; registration; and privacy and service termination procedures for wireless providers.

Among other provisions, the bill would also prohibit contracts that exceed 1 year. It would require that wireless telephone bills be clearly outlined to distinguish provider charges from taxes, fees, and other charges the provider collects for other entities such as governments.¹²

This bill was assigned to committee in May 2007 and has received no further action.

We hope this information is helpful. Please let us know if you need anything further.

Sincerely,



Robert L. Bayless
Senior Staff Scientist

RLB:mf

Enclosure

815 ILCS 505/2WW.

Notes

1. "Wireless Consumer Bill of Rights," *State Legislatures*, October/November 2008, p. 10.
2. 815 ILCS 505/1 ff.
3. 815 ILCS 505/2WW.
4. Ky. Rev. Stat., subsec. 278.54611(3).
5. La. Rev. Stat., sec. 45:844-5.
6. La. Rev. Stat., sec. 45:844-6.
7. Maryland H.B. 110 (2008).
8. New Jersey A. 2248 (2008) and S. 1479 (2008).
9. New Jersey A. 2210 (2008) and S. 1478 (2008).
10. New Jersey A. 3424 (2008).
11. New York A.B. 2030 (2007) and S.B. 3293 (2007).
12. Pennsylvania S.B. 812 (2007).