



2001 SENATE BILL 35

January 31, 2001 - Introduced by Senators MOORE, BURKE, HANSEN, LAZICH and DARLING, cosponsored by Representatives COLON, YOUNG, BOCK, SCHNEIDER, GRONEMUS, MORRIS-TATUM, WILLIAMS, JESKEWITZ, SERATTI, TURNER, POCAN, BLACK, BALOW, RICHARDS, BERCEAU, J. LEHMAN, MILLER, PLOUFF, MUSSER, KREUSER, CULLEN, RILEY, KEDZIE, GUNDERSON, BOYLE, PLALE and LA FAVE. Referred to Committee on Privacy, Electronic Commerce and Financial Institutions.

1 **AN ACT to amend** 196.208 (5t) (b), 196.208 (7) (b) (intro.), 196.208 (11) (a) 1. and
2 196.208 (11) (d); and **to create** 196.208 (1) (bm), 196.208 (2) (cm), 196.208 (7)
3 (a) 1m., 196.208 (7m), 196.208 (9m), 196.208 (11) (bm) and 973.137 of the
4 statutes; **relating to:** transferring toll-free calls to pay-per-call services or
5 international numbers, creating certain disclosure and reporting
6 requirements, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, providers of pay-per-call services, or 900-number services, are subject to a number of requirements. A pay-per-call service must generally begin with a preamble that discloses information about the provider of the service and the cost of the call. Billing may commence only after a specific identified event, such as an audible signal tone, after the preamble and after the caller has a reasonable opportunity to disconnect the call. A provider may not charge for time that the caller is placed on hold and is subject to certain other limitations regarding charges. A toll-free vendor may not transfer the calling party to a pay-per-call service or call the calling party back collect. 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 certain disclosures on bills

SENATE BILL 35

containing pay-per-call services, informing the customer of the customer's right to dispute pay-per-call charges and informing the customer that his or her telephone service may not be disconnected for failure to pay for pay-per-call services. Telecommunication utilities are subject to additional requirements relating to the provision of billing services for pay-per-call service providers, to billing collection practices and to the provision of blocking services to prohibit the access of pay-per-call services. The department of justice (DOJ) is given authority to enforce provisions relating to pay-per-call service providers, and the public service commission (PSC) is responsible for administering the provisions relating to telecommunications utilities.

This bill makes a number of changes to the provisions governing pay-per-call services, including the following:

1. Transfers to international numbers. The bill prohibits a toll-free vendor from transferring a toll-free call to an international number.

2. Additional disclosure requirements. The bill requires the preamble at the beginning of a pay-per-call service to include a statement that it is illegal for a person to transfer a toll-free call to a pay-per-call service and that, if the caller has been transferred to this pay-per-call service from a toll-free number, the caller should report the information to the department of agriculture, trade and consumer protection (DATCP). Telecommunications utilities are required to place similar disclosures on bills containing a charge for pay-per-call services.

3. Reporting requirements. The bill requires telecommunications utilities, to the extent allowed under federal law, to report to DOJ information that they may obtain regarding the transfer of toll-free calls to international numbers or pay-per-call services. DATCP must make similar reports to DOJ. The bill also requires DOJ and DATCP to submit joint biennial reports to the legislature on complaints received by DATCP and DOJ's enforcement of the pay-per-call provisions. The report must also include recommendations for legislation, if DOJ or DATCP determines that additional legislation is needed to enforce the pay-per-call service provisions effectively.

4. Billing services. The bill prohibits a telecommunications utility from providing billing services to a pay-per-call service provider that has been convicted of a violation of the pay-per-call service provisions, without the prior approval of the PSC. The PSC may approve the provision of billing services to a provider that has been convicted of a violation of the pay-per-call provisions only if the PSC determines that the provider has established safeguards that are sufficient to prevent further violations of these provisions. In addition, if a pay-per-call service provider is convicted of violating the pay-per-call provisions, the clerk of the court in which the conviction occurred must notify the PSC, which must notify telecommunications utilities about the conviction.

5. Penalties. Under current law, whoever violates any of the pay-per-call service provisions is subject to a forfeiture of not less than \$25 nor more than \$5,000. The bill changes the forfeiture (civil penalty) to a criminal penalty of a fine of not less than \$100 nor more than \$10,000 per violation or imprisonment for not more than 90 days, or both.

SENATE BILL 35

6. Civil liability. Under current law, a person who has been adversely affected by a violation of the pay-per-call service provisions has a claim for appropriate relief, including damages, injunctive, or declaratory relief, specific performance and rescission, costs, disbursements, and reasonable attorney fees. The bill modifies the civil liability provisions to provide for treble damages.

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.** 196.208 (1) (bm) of the statutes is created to read:

2 196.208 (1) (bm) "Toll-free call" means a call that can be made at no charge to
3 the calling party.

4 **SECTION 2.** 196.208 (2) (cm) of the statutes is created to read:

5 196.208 (2) (cm) A preamble shall include a statement that it is illegal for a
6 person to transfer a toll-free call to this pay-per-call service and that, if the caller
7 has been transferred to this pay-per-call service from a toll-free call, the caller
8 should contact the department of agriculture, trade and consumer protection to
9 report the transfer.

10 **SECTION 3.** 196.208 (5t) (b) of the statutes is amended to read:

11 196.208 (5t) (b) Transfer the calling party to a pay-per-call service or to an
12 international number.

13 **SECTION 4.** 196.208 (7) (a) 1m. of the statutes is created to read:

14 196.208 (7) (a) 1m. Include on each billing statement that includes charges for
15 pay-per-call services a clear and conspicuous notice that states: "It is illegal to
16 transfer a call made to a toll-free number to a '900' number. If you were transferred
17 to a '900' number service from a toll-free number, you should contact the state
18 department of agriculture, trade and consumer protection to report the transfer."

SENATE BILL 35**SECTION 5**

1 **SECTION 5.** 196.208 (7) (b) (intro.) of the statutes is amended to read:

2 196.208 (7) (b) (intro.) A telecommunications utility may not provide billing
3 services to a provider that has been convicted of a violation of this section, without
4 the prior approval of the commission. The commission may approve the provision
5 of billing services to a provider that has been convicted of a violation of this section
6 only if the commission determines that the provider has established safeguards that
7 are sufficient to prevent further violations of this section. If a telecommunications
8 utility provides billing services to a provider, the telecommunications utility shall do
9 all of the following:

10 **SECTION 6.** 196.208 (7m) of the statutes is created to read:

11 196.208 (7m) REPORTING BY TELECOMMUNICATIONS UTILITIES. Except to the
12 extent that the report would violate federal law, a telecommunications utility shall
13 report to the department of justice any information that it obtains concerning a
14 possible violation of sub. (5t).

15 **SECTION 7.** 196.208 (9m) of the statutes is created to read:

16 196.208 (9m) REPORTING REQUIREMENTS. (a) *Biennial report.* No later than
17 January 1 of every odd-numbered year, the departments of agriculture, trade and
18 consumer protection and justice shall submit a joint report to the legislature under
19 s. 13.172 (2). The report shall include information, prepared by the department of
20 agriculture, trade and consumer protection, on complaints received concerning
21 possible violations of this section over the previous 2-year period. The report shall
22 also include a description, prepared by the department of justice, concerning the
23 department's efforts in enforcing this section over the previous 2-year period. The
24 report shall include recommendations for legislation, if the department of
25 agriculture, trade and consumer protection or the department of justice determines

SENATE BILL 35

1 that additional legislation is needed to enforce the pay-per-call service provisions
2 effectively.

3 (b) *Notices of convictions.* If the public service commission receives a notice
4 from a clerk of court under s. 973.137, the public service commission shall provide
5 a copy of the notice to all telecommunications utilities in this state.

6 **SECTION 8.** 196.208 (11) (a) 1. of the statutes is amended to read:

7 196.208 (11) (a) 1. If a provider or a toll-free service vendor fails to comply with
8 this section, any person or class of persons adversely affected by the failure to comply
9 has a claim for appropriate relief, including ~~but not limited to~~ treble damages,
10 injunctive or declaratory relief, specific performance, and rescission.

11 **SECTION 9.** 196.208 (11) (bm) of the statutes is created to read:

12 196.208 (11) (bm) The department of agriculture, trade and consumer
13 protection shall report violations of this section to the department of justice.

14 **SECTION 10.** 196.208 (11) (d) of the statutes is amended to read:

15 196.208 (11) (d) ~~Any person~~ A provider or a toll-free service vendor who
16 violates subs. (2) to (9) ~~shall be required to forfeit~~ may be fined not less than \$25 ~~\$100~~
17 nor more than \$5,000 ~~for each offense. Forfeitures under this \$10,000 or imprisoned~~
18 for not more than 90 days or both. This paragraph shall be enforced by ~~action on~~
19 ~~behalf of the state~~ by the department of justice or, upon informing the department
20 of justice, by the district attorney of the county where the violation occurs.

21 **SECTION 11.** 973.137 of the statutes is created to read:

22 **973.137 Courts to report convictions to the public service commission.**

23 (1) In this section:

24 (a) "Pay-per-call service provider" has the meaning given to "provider" in s.
25 196.208 (1) (b).

SENATE BILL 35

1 (b) "Toll-free service vendor" has the meaning given in s. 196.208 (1) (c).

2 (2) If a court determines that a person has been convicted of a violation of s.
3 196.208 (2) to (9), the clerk of the court in which such conviction occurred shall
4 promptly forward to the public service commission the record of conviction.

5 (3) If a conviction under sub. (2) is reversed, set aside, or vacated, the clerk of
6 the court shall promptly forward to the public service commission a certificate
7 stating that the conviction has been reversed, set aside, or vacated.

8 (END)