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State of Minnesota HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH SESSION

HOUSE FILE No. 635

February 5, 2007 Authored by Masin, Johnson, Morrow, Abeler, Thissen and others The bill was read for the first time and referred to the Committee on Commerce and Labor March 22, 2007 Committee Recommendation and Adoption of Report: To Pass as Amended and Read Second Time By motion, re-referred to the Committee on Public Safety and Civil Justice March 27, 2007 Committee Recommendation and Adoption of Report: To Pass and Read Second Time May 22, 2007 Pursuant to Rule 4.20, re-referred to the Committee on Public Safety and Civil Justice February 28, 2008 Committee Recommendation and Adoption of Report: To Pass and re-referred to the Committee on Commerce and Labor

1.1 A bill for an act
1.2 relating to telecommunications; enacting the Minnesota Wireless Telephone
1.3 Consumer Protection Act; changing certain existing requirements; proposing
1.4 coding for new law in Minnesota Statutes, chapter 325F; repealing Minnesota
1.5 Statutes 2006, section 325F.695.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. [325F.696] MINNESOTA WIRELESS TELEPHONE CONSUMER
1.8 PROTECTION ACT.

1.9 Subdivision 1. Definitions. (a) The definitions in this subdivision apply to this
1.10 section.

1.11 (b) "Government-mandated charges and taxes" means any taxes, fees, and other
1.12 charges that a wireless carrier is legally required to collect directly from consumers and
1.13 to remit to federal, state, or local governments, or to third parties authorized by such
1.14 governments, for the administration of government programs. "Government-mandated
1.15 charges and taxes" does not include discretionary charges authorized, but not required by,
1.16 government action.

1.17 (c) "Wireless carrier" means a provider of wireless telecommunications service.

1.18 (d) "Wireless telecommunications service" means commercial mobile radio service
1.19 as defined in Code of Federal Regulations, title 47, part 20.

1.20 Subd. 2. Required disclosures. (a) Wireless carriers providing wireless
1.21 telecommunications service in the state must:

1.22 (1) provide the customer, at the time of sale, with a coverage map that accurately
1.23 depicts the area where service is provided and that identifies areas where any domestic
1.24 roaming or additional charges would apply to the customer's service;

2.1 (2) make accurate coverage maps available to prospective and existing customers at
2.2 any location where the wireless carrier's wireless telecommunications service is offered
2.3 for sale and make those maps available electronically at the carrier's Web site;

2.4 (3) clearly and conspicuously disclose at the time of sale the price for the service
2.5 being purchased by the customer, including the monthly access fee or base charge,
2.6 the amount of any activation or initiation fee, any charges for domestic roaming, any
2.7 charge for domestic long distance, any charge for exceeding the number of minutes
2.8 or usage included in any allowance, and any other charges collected and retained by
2.9 the carrier and disclose a good faith estimate of the amount or range of all applicable
2.10 government-mandated or authorized charges and taxes;

2.11 (4) clearly and conspicuously disclose to the customer at the time of sale, in at least
2.12 12-point font in written materials: (i) that the price is not guaranteed to remain the same
2.13 for the minimum term of the contract if a contract provision allows the wireless carrier to
2.14 change the price of the service during the minimum term, and (ii) any early termination
2.15 fee that applies if service is terminated during the minimum term; and

2.16 (5) prior to the execution of a contract for wireless telephone service, provide
2.17 the customer the terms of the contract, and after execution of the contract provide the
2.18 customer with a copy of the writing or writings constituting the contract, at the time of
2.19 sale and thereafter upon the customer's request.

2.20 (b) With regard to any early termination fee provisions or provisions allowing the
2.21 wireless carrier to change the price of the service during the minimum contract term,
2.22 the wireless carrier must obtain a specific acknowledgement from the customer that the
2.23 customer has read and understands the provisions.

2.24 Subd. 3. **Billing; listing of government taxes and fees.** All bills for wireless
2.25 telecommunications services must list government-mandated charges and taxes in a
2.26 section of the bill separate from the section or sections listing the price and any other
2.27 charges for the wireless telecommunications service. The wireless carrier must include
2.28 a brief, easy-to-understand description of each charge included in the bill. The wireless
2.29 carrier must not represent, expressly or by implication, that discretionary cost recovery
2.30 fees or charges are government-mandated charges and taxes.

2.31 Subd. 4. **Billing for third-party goods and services.** (a) A wireless carrier must
2.32 not include on a customer's bill a charge for goods or services that the carrier bills on
2.33 behalf of a third party unless the third party or wireless carrier has obtained the customer's
2.34 prior express authorization to include those charges on the customer's bill issued by the
2.35 wireless carrier.

3.1 (b) If a customer of a wireless carrier disputes any third party charge appearing
3.2 on that customer's wireless bill, the customer shall not be obligated to pay the disputed
3.3 charge until the wireless carrier or third party provides evidence of the customer's prior
3.4 express authorization to include such charge. Evidence of the customer's prior express
3.5 authorization must be produced to the customer within 14 calendar days after the customer
3.6 notifies the wireless carrier that the charge is disputed. A customer shall be permitted to
3.7 dispute any charges that a wireless carrier bills on behalf of a third party for up to six
3.8 months after the charge appears on the customer's wireless bill. If the wireless carrier
3.9 cannot produce evidence that the customer authorized the third party charge, the wireless
3.10 carrier must remove the charge from the customer's wireless bill and credit the customer
3.11 for the unauthorized third party charges incurred during the previous six months.

3.12 (c) A wireless carrier or third party meets the prior express authorization
3.13 requirements of this subdivision only if it obtains or receives:

3.14 (1) written authorization from the customer containing clear, unambiguous, and
3.15 separate authorizations for each third party good or service to be included on the
3.16 customer's bill;

3.17 (2) a customer's oral authorization if the customer subsequently opts in by an e-mail
3.18 or text message exchange with the third party or wireless carrier; or

3.19 (3) a customer's affirmative authorization via an interactive voice response system
3.20 or via an electronic communication, such as through the Internet, by e-mail, or by text
3.21 message, if the customer subsequently opts in by e-mail or by text message.

3.22 (d) For direct-dialed calls, where the call itself represents the service for which the
3.23 charge is placed on a customer's wireless telephone bill, evidence that the call was placed
3.24 from the number that is subject to the wireless telephone bill is sufficient evidence of
3.25 authorization for that call for billing authorization purposes established in this subdivision.
3.26 Nothing in this subdivision may be construed to change obligations or affect rights
3.27 under section 325F.692.

3.28 (e) This subdivision does not apply to charges for collect calls.

3.29 (f) All wireless carriers must provide a means by which customers may restrict
3.30 access to third party charges on the customer's wireless bill.

3.31 (g) Nothing in this subdivision restricts the right of a wireless carrier to seek to
3.32 recover from a third party unauthorized charges credited to the customer by the wireless
3.33 carrier.

3.34 Subd. 5. **Extensions in contract length.** If a customer requests a new good or
3.35 service in connection with, or a change in a term of, an existing wireless service contract,
3.36 and the new good, service, or change will result in an extension of the minimum term of

4.1 the wireless service contract, the wireless carrier must specifically disclose to the customer
4.2 that the requested change will result in an extension of the minimum term, the length of
4.3 the extension, and the new minimum term period.

4.4 Subd. 6. **Remedies; penalties, enforcement.** A violation of this section is a
4.5 violation of a law referred to in section 8.31, subdivision 1.

4.6 Subd. 7. **Severability.** Each of the provisions of this section, and each application
4.7 of a provision to particular circumstances, is severable. If a provision or application is
4.8 found to be contrary to law and unenforceable, it is the intention of the legislature that the
4.9 remaining provisions and applications of this section remain valid and enforceable to the
4.10 full extent possible under section 645.20.

4.11 **Sec. 2. REPEALER.**

4.12 Minnesota Statutes 2006, section 325F.695, is repealed.

4.13 **Sec. 3. EFFECTIVE DATE.**

4.14 Section 1 is effective August 1, 2007, except that subdivision 4 is effective March
4.15 1, 2008.

325F.695 CONSUMER PROTECTIONS FOR WIRELESS CUSTOMERS.

Subdivision 1. **Definitions.** The definitions in this subdivision apply to this section.

(a) "Contract" means an oral or written agreement of definite duration between a provider and a customer, detailing the wireless telecommunications services to be provided to the customer and the terms and conditions for provision of those services.

(b) "Wireless telecommunications services" means commercial mobile radio services as defined in Code of Federal Regulations, title 47, part 20.

(c) "Provider" means a provider of wireless telecommunications services.

(d) "Substantive change" means a modification to, or addition or deletion of, a term or condition in a contract that could result in an increase in the charge to the customer under that contract or that could result in an extension of the term of that contract. "Substantive change" includes a modification in the provider's administration of an existing contract term or condition. A price increase that includes only the actual amount of any increase in taxes or fees, which the government requires the provider to impose upon the customer, is not a substantive change for purposes of this section.

Subd. 2. **Copy of contract.** A provider must provide each customer with a written copy of the customer's contract between the provider and the customer within 15 days of the date the contract is entered into. The provider may meet the requirement to provide a written copy of the contract by providing an electronic copy of the contract at the customer's request. A provider must maintain verification that the customer accepted the terms of the contract for the duration of the contract period.

Subd. 3. **Provider-initiated substantive change.** A provider must notify the customer in writing of any proposed substantive change in the contract between the provider and the customer 60 days before the change is proposed to take effect. The change only becomes effective if the customer opts in to the change by affirmatively accepting the change prior to the proposed effective date in writing or by oral authorization which is recorded by the provider and maintained for the duration of the contract period. If the customer does not affirmatively opt in to accept the proposed substantive change, then the original contract terms shall apply.

Subd. 4. **Customer-initiated change.** If the customer proposes to the provider any change in the terms of an existing contract, the provider must clearly disclose to the customer orally or electronically any substantive change to the existing contract terms that would result from the customer's proposed change. The customer's proposed change is only effective if the provider agrees to the proposed change and the customer agrees to any resulting changes in the contract. The provider must maintain recorded or electronic verification of the disclosure for the duration of the contract period.

Subd. 5. **Expiration.** This section expires August 1, 2007.