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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 931 Session of  
2005

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INTRODUCED BY GREENLEAF, RAFFERTY, C. WILLIAMS, LEMMOND, COSTA,  
RHOADES, EARLL, STACK AND CONTI, NOVEMBER 14, 2005

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REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,  
NOVEMBER 14, 2005

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AN ACT

1 Providing for the regulation of commercial mobile radio service  
2 providers; further providing for the powers and duties of the  
3 Pennsylvania Public Utility Commission; and imposing  
4 penalties.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Wireless  
9 Telephone Consumer Protection Act.

10 Section 2. Legislative findings and declaration.

11 The General Assembly finds and declares as follows:

12 (1) Section 332(c)(3)(A) of the Communications Act of  
13 1934 (48 Stat. 1064, 47 U.S.C. § 332(c)(3)(A)) expressly  
14 states that no state or local government shall have the  
15 authority to regulate the rates charged by any commercial  
16 mobile service or private mobile service, but nothing shall  
17 prohibit a state from regulating the other terms and  
18 conditions of commercial mobile service.

1           (2) As commercial mobile radio service in this  
2       Commonwealth has expanded dramatically in recent years,  
3       customer complaints regarding wireless telephone service,  
4       such as early termination fees, have steadily increased.

5           (3) Currently, no quality service standards exist for  
6       acceptable commercial mobile radio service in this  
7       Commonwealth, and in order to protect the health, safety and  
8       welfare of its citizens, the Commonwealth must act, to the  
9       extent authorized by Federal law, to afford broad protection  
10      to consumers against deceptive and unfair commercial mobile  
11      radio service practices.

12          (4) It is in the public interest of the citizens of this  
13      Commonwealth to require the Pennsylvania Public Utility  
14      Commission to develop quality service standards for wireless  
15      telephone service, including proper disclosure of rates and  
16      terms of service, payment and billing standards, trial  
17      periods, customer service, registration, privacy and service  
18      termination procedures that commercial mobile service  
19      providers must abide by when providing wireless telephone  
20      service to all Pennsylvanians.

21   Section 3. Definitions.

22      The following words and phrases when used in this act shall  
23      have the meanings given to them in this section unless the  
24      context clearly indicates otherwise:

25      "Commercial mobile radio service" or "service." Commercial  
26      mobile service as defined in section 332(d) of the  
27      Communications Act of 1934 (48 Stat. 1064, 47 U.S.C. § 332(d)).

28      "Commercial mobile radio service provider" or "provider." A  
29      person who provides commercial mobile radio service as defined  
30      in section 332(d) of the Communications Act of 1934 (48 Stat.

1 1064, 47 U.S.C. § 332(d)). The term shall not include a person  
2 who provides only paging or messaging services, or other text-  
3 based services, utilizing facilities that are licensed by the  
4 Federal Communications Commission, including, but not limited  
5 to, narrowband personal communication services described in 47  
6 CFR Pt. 24 Subpt. D (relating to narrowband PCS), as in effect  
7 October 1, 2001.

8 "Commercial mobile radio service subscriber" or "subscriber."  
9 A person, firm or corporation designated on provider records as  
10 the party responsible for payment of bills for wireless  
11 telephone service.

12 "Commission." The Pennsylvania Public Utility Commission.

13 "Material rates, terms and conditions." Any provisions  
14 imposed by a provider to which a subscriber is bound, through a  
15 service agreement or contract, that may result in or increase a  
16 charge on a subscriber's bill or limit a subscriber's use of a  
17 product or service. The term shall include, but not be limited  
18 to, service territory availability, activation or initiation  
19 fees, monthly access fees or base charges, per-unit usage  
20 charges, usage allowances, extended coverage or roaming charges,  
21 any required contract term, early termination fees, the time of  
22 any peak and off-peak calling periods and any provision relating  
23 to whether any additional taxes, fees or surcharges apply.

24 "Provider charges." Fees or charges of any type that a  
25 provider imposes for service rendered under a contract  
26 pertaining to such service other than those fees and charges  
27 which are mandated by and remitted to a Federal, State or local  
28 governmental or regulatory body.

29 Section 4. Pennsylvania Public Utility Commission.

30 Notwithstanding any other provision of 66 Pa.C.S (relating to

public utilities) to the contrary, within 180 days of the effective date of this section, the commission shall provide by order interim guidelines to protect a subscriber and monitor and enforce compliance with those guidelines. The commission shall thereupon promulgate regulations setting forth permanent standards to protect a subscriber pursuant to this act. The interim guidelines shall be effective until the commission promulgates final rules and regulations. The rules and regulations shall include, but not be limited to:

(1) Specifying quality of service standards and requirements that commercial mobile radio service providers must meet.

(2) Requiring a provider to disclose, in an accurate and plainly stated format approved by the commission, the rate and service terms of all service plans and offers made to residential subscribers. A provider may not change service or modify the material rates, terms and conditions of a subscriber's contract without providing a reasonable advance, clear and conspicuous notice of a proposed change in service or modification and allowing the subscriber a time period of not less than 21 days to cancel the contract with no early termination fee. Every notice of either a change in service or modification of material rates, terms and conditions of a subscriber's contract shall provide, in accordance with the format approved by the commission, the right of the subscriber to cancel the contract with no early termination fee.

(3) Providing that a contract or agreement offered by a provider to a subscriber:

(i) May not extend for a period longer than one

1 year.

2 (ii) May not contain an arbitration clause or an  
3 automatic renewal clause unless the contract provides for  
4 a renewal option for continued membership which must be  
5 affirmatively accepted by the subscriber at the  
6 expiration of each contract term.

7 (iii) Shall contain a provision permitting the  
8 subscriber or the subscriber's legal representative to  
9 cancel the contract if the subscriber dies or becomes  
10 permanently disabled which precludes the subscriber from  
11 utilizing the service and requiring the provider, upon  
12 receipt of written notice of cancellation, including a  
13 copy of the death certificate or physician verification  
14 of disability, to waive any early termination fee and  
15 refund any remaining balance that was paid in advance.

16 (iv) Shall contain a provision permitting the  
17 subscriber to cancel the contract if the subscriber moves  
18 out of the calling area and is unable to transfer the  
19 contract to the subscriber's new location and requiring  
20 the provider to, upon receipt of such notice of  
21 cancellation, waive any early termination fee.

22 (4) Requiring that all forms of solicitation and  
23 advertisements to a residential subscriber disclose the  
24 material rates, terms and conditions in the equivalent of  
25 ten-point type or larger and requiring such solicitations,  
26 which include advertising and other marketing materials, to  
27 clearly, conspicuously and accurately disclose material  
28 rates, terms and conditions.

29 (5) Requiring that wireless telephone bills:

30 (i) Be clearly outlined and only contain charges for

1 products and services authorized by the subscriber.

2 (ii) Include the legal name of the service provider,  
3 the amount charged for each product and service,  
4 description of each product and service, the period of  
5 service covered by the bill, the payment due date, the  
6 late payment charge, methods of payment and the  
7 provider's toll-free telephone number along with postal  
8 address and e-mail address, if applicable, where the  
9 subscriber may send billing inquiries or complaints.

10 (iii) Separately identify provider charges from  
11 taxes, fees and other charges collected by the provider  
12 and remitted to Federal, State or local governments.

13 (6) Requiring a provider to extend to a new subscriber a  
14 30-day trial period to rescind the contract or agreement and  
15 terminate service, without fees, charges or penalties, except  
16 for usage fees incurred prior to the cancellation of the  
17 contract or agreement, provided that the subscriber complies  
18 with applicable return policies, exchange policies or both.  
19 Every new contract or agreement for service shall provide, in  
20 accordance with a format approved by the commission,  
21 reasonable notice of the 30-day trial period and the right of  
22 the subscriber to rescind the contract or agreement with no  
23 early termination fee during that period.

24 (7) Requiring a provider to establish a means for  
25 logging subscriber questions, comments or complaints and for  
26 expeditiously resolving those subscriber questions,  
27 complaints or disputes, which shall include the  
28 establishment, maintenance and staffing of a toll-free  
29 telephone number, during normal business hours, to respond to  
30 subscribers' questions or comments.

1           (8) Requiring a provider to preserve for a minimum of  
2           four years written or recorded disputes and complaints, and  
3           to keep the records within this Commonwealth at an office  
4           located in the territory served by it and to make the records  
5           available for examination by the commission or its staff.  
6           Information to be maintained under this paragraph shall  
7           include the following:

8                 (i) The payment performance of each of its  
9                 subscribers.

10                (ii) The number of settlement agreements made by the  
11                provider and a synopsis of the terms, conditions and  
12                standards upon which agreements were made.

13                (iii) The number of service terminations and  
14                reconnections.

15                (iv) Communications to or from subscribers regarding  
16                interruptions, discontinuances, terminations and  
17                reconnections of service, including the name and address  
18                of each such subscriber, the date and character of the  
19                dispute or complaint and the adjustment or disposal made  
20                of the matter.

21           (9) Requiring a provider to clearly and conspicuously  
22           notify subscribers in writing and obtain their written  
23           consent before using confidential customer information for  
24           any purpose other than the provision or billing of the  
25           service or if the provider plans to give the information to a  
26           third party.

27           (10) Requiring a provider to notify a subscriber in  
28           writing at least ten days prior to terminating service for  
29           nonpayment of overdue bills.

30           (11) Authorizing the commission to resolve any informal

1 or formal complaint arising under the provisions of this act  
2 not otherwise resolved by the provider and the subscriber.

3 (12) Requiring a provider to file a registration form  
4 with the commission in a format to be developed by the  
5 commission that contains essential information that the  
6 commission deems necessary to comply with this act.

7 Section 5. Penalties and enforcement.

8 (a) Imposition of penalties.--The commission may impose  
9 fines and other civil penalties on a commercial mobile radio  
10 service provider or any of its agents or vendors that fail to  
11 comply with the rules and regulations promulgated by the  
12 commission pursuant to this act.

13 (b) Unfair trade practice.--A violation of the interim  
14 guidelines or rules and regulations promulgated pursuant to this  
15 act shall constitute a violation of the act of December 17, 1968  
16 (P.L.1224, No.387), known as the Unfair Trade Practices and  
17 Consumer Protection Law, and shall be subject to the enforcement  
18 provisions, civil penalties and private rights of action  
19 contained in that act.

20 (c) Injunctive relief.--Nothing in the rules and regulations  
21 promulgated by the commission shall be construed to preclude a  
22 district attorney, the Attorney General or any law enforcement  
23 agency from obtaining injunctive relief, civil penalties and  
24 other relief permitted by law against a provider or any of its  
25 agents or vendors that engage in business practices that violate  
26 such rules and regulations.

27 Section 6. Effective date.

28 This act shall take effect in 60 days.