

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Communications and Public Utilities Committee

BILL: SB 2256

INTRODUCER: Senator Baker

SUBJECT: Prepaid Telephone Calling Cards and Services

DATE: March 21, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	CU	Pre-meeting
2.			CM	
3.				
4.				
5.				
6.				

I. Summary:

The bill provides for the regulation of prepaid calling card services. The bill:

- defines certain terms including “prepaid calling card,” “prepaid calling card distributor,” “prepaid calling card retailer,” “prepaid calling service,” and “prepaid calling service provider.”
- requires certain information to be disclosed on the card and in advertising.
- sets forth the form and information providers and distributors are required to make available to customers.
- prescribes how advertised or promoted rates, as well as other fees, may be charged against the card.
- prescribes how additional information must be provided where languages other than English are used on the card.
- provides for customer service and product display requirements.
- sets forth certain prohibitions and provides that a violation of the section is a violation of Chapter 501, F.S.

This bill creates a new section of the Florida Statutes.

II. Present Situation:

According to the Public Service Commission (commission), prepaid calling service providers are interexchange telecommunications companies that provide or resell interexchange services. The commission has limited jurisdiction over such companies under s. 364.337, F.S. The commission has adopted rules that applies to companies that provide prepaid calling services to the public

using its own or resold telecommunications networks.¹ (See 25-24.900-.935, F.A.C.) The rules define “Prepaid Calling Service (PPCS)” to mean any prepaid telecommunications service that allows end users to originate calls through an access number and authorization code, whether manually or electronically dialed.² The term “Prepaid Calling Card” is defined to mean any object containing an access number and authorization code that enables an end uses to use PPCS.³ Companies are required to be registered with the commission.⁴ Companies are required to file tariffs or price lists.⁵ The rules require that certain information be printed legibly on the card including the registered name, the toll-free customer service number, the toll-free network access number, and the authorization code.⁶ Each company is required to provide specific information legibly printed either on the card, packaging, or display in a prominent area at the point of sale to allow the customer to make an informed decision. The information is the maximum charge per billing increment, any applicable surcharges or other fees, and expiration policy. Each company is required to insure by contract with its retailers or distributors that the information is provided to the consumer.⁷ Each company is to provide through its customer service number its registration number, rates and surcharges, balance of use in the account, and the expiration date.⁸ Each company must provide a live operator 24 hours a day, seven days a week or electronically voice record end user complaints and respond within 24 hours.⁹ Rates must reflect filed tariffs or price lists.¹⁰ Conditions are specified for reducing the values on the card.¹¹ If no expiration date is specified, the card shall be considered active for a minimum of one year from the date of first use, or if recharged, from the date of the last recharge.¹² Finally, if PPCS are sold without a card or printed material, tariffed charges and surcharges shall be disclosed at the point of sale.¹³ The rules also provide for refunds¹⁴ and discontinuance of service¹⁵.

Under s. 364.285, F.S., the commission has the power to impose upon any entity subject to its jurisdiction under this chapter which is found to have refused to comply with or to have willfully violated any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than \$25,000, which penalty shall be fixed, imposed, and collected by the commission; or the commission may, for any such violation, amend, suspend, or revoke any certificate issued by it. Each day that such refusal or violation continues constitutes a separate offense. Each penalty shall be a lien upon the real and personal property of the entity, enforceable by the commission as a statutory lien under chapter 85. Collected penalties shall be deposited in the General Revenue Fund unallocated.

¹ 25-24.900(1), F.A.C.

² 25-24.905(3), F.A.C.

³ 25-24.905(4), F.A.C.

⁴ 25-24.910, F.A.C.

⁵ 25-24.915, F.A.C.

⁶ 25-24.920(1), F.A.C.

⁷ 25-24.920(2), F.A.C.

⁸ 25-24.920(3), F.A.C.

⁹ 25-24.920(4), F.A.C.

¹⁰ 25-24.920(5), F.A.C.

¹¹ 25-24.920(6), F.A.C.

¹² 25-24.920(7), F.A.C.

¹³ 25-24.920(8), F.A.C.

¹⁴ 25-24.925, F.A.C.

¹⁵ 25-24.935, F.A.C.

The Federal Communications Commission has jurisdiction over interstate and international calls since the origination or termination points of the call are outside the state of Florida.

The term “prepaid calling arrangement” is defined in ss. 202.11(9) and 212.05(1)(e)1.a.(I), F.S., as “the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered, and that are sold in predetermined units or dollars of which the number declines with use in a known amount.” Section 202.11(13)(b)4., F.S., provides that the sales price of communications service does not include the sale or recharge of a prepaid calling arrangement. Section 212.05(1)(e), F.S., imposes sales tax on the retail sale of prepaid calling arrangements.

III. Effect of Proposed Changes:

Section 1. Subsection (1) provides for definitions of the following terms: “advertisement,” “commission,” “company,” “government fee,” “payphone surcharge,” “permitted fee,” “prepaid calling card” or “card,” “prepaid calling card distributor” or “distributor,” “prepaid calling card retailer,” “prepaid calling service or “service,” “prepaid calling service provider” or “provider,” and “toll-free number.”

Subsection (2) requires each prepaid calling service provider and distributor of the card to disclose the following information on either the card or card packaging, and also any advertising, including Internet websites used to promote or distribute the service or cards.

- The name of the service provider,
- The provider’s 24-hour customer service telephone number,
- The amount and frequency of any permitted fee for calls originating in the US,
- Notice of per minute rates or fees that are different for international calls,
- Notice of per-minute rates that are higher for calls made via toll-free numbers,
- The value of the card in dollars or minutes,
- Any applicable policies relating to refund, recharge, and expiration, and
- Additional information as determined by the Commission required by rule regarding disclosure of rates, charges, fees.

The bill also requires providers and distributors to provide through the customer service number, website, or other electronic medium or packaging, or point-of-sale information, any other information commission may deem appropriate. The commission is authorized to adopt rules regarding information to be provided by prepaid service providers and card distributors.

The bill further requires that all rates or minutes advertised on any material, including the card, must be achievable by the customer, and if there are any limitations, those limitations must be disclosed in the same location where the minutes or rates are promoted or advertised. All minutes promoted, advertised, or disclosed via voice prompt must be available and achievable by the customer on that call. The customer may not be charged for any busy signal or unanswered call. The bill prohibits a provider from deducting charges that are not authorized. The bill further requires that if a language other than English is predominantly used on the card, the disclosures required by the proposed language must be in that language.

The bill allows the customer service number to connect the customer to live operators, interactive voice response, or voice recording for the purpose of receiving a customer's complaint. If the complaint is recorded, the provider shall attempt to contact the customer no later than the next day. The customer must be allowed to obtain information at no charge regarding rates, permitted fees, charges, and minutes available remaining on the card for use in a single, uninterrupted call to a single, requested destination.

In addition, the bill requires the provider and distributor to display the access numbers for use of the card either on the card or its packaging. The language does not allow a provider to impose any fee or surcharge that is not disclosed or exceeds the disclosed amount.

Subsection (3) forbids retailers from selling or offering cards that they know to carry fewer minutes than advertised.

Subsection (4) provides that any violation of the provision of the section is a deceptive and unfair trade practice that constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act under Chapter 501, F.S., and is subject to penalties and remedies provided for such violation. This provision does not specify whether the commission should continue its current enforcement requirements.

Subsection (5) requires the commission to submit a report by January 1, 2010, to the Governor and Legislature regarding the effectiveness of this bill and provide recommendations for additional legislation regulating the industry.

Subsection (6) requires the commission to adopt any rule necessary to administer this section.

Subsection (7) exempts cards and point-of-sale materials printed prior to July 1, 2008.

Section 2 provides that the section takes effect July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The bill provides specific exclusions from the terms “prepaid calling card” and “prepaid calling service” that are not excluded from the term “prepaid calling arrangement” as defined in ss. 202.11 and 212.05, F.S. This may lead to confusion regarding whether or not the exclusions provided in the proposed bill language affect the taxation of prepaid calling arrangements under chs. 202 and 212, F.S.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The Attorney General could incur additional workload enforcing the act under ch. 501, F.S. The fiscal impact is indeterminate.

VI. Technical Deficiencies:

Section 2 states that the section shall take effect July 1, 2008. This should state that the act takes effect July 1, 2008.

VII. Related Issues:

The bill provides that a violation of the requirements is a violation of the Florida Deceptive and Unfair Trade Practices Act, ch. 501, F.S. It is unclear whether the intent is for the commission to continue to levy fines or penalties against a provider found violating existing rules as is the current practice, nor is it clear whether the commission could pursue enforcement under ch. 501.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.