A bill for an act

relating to telecommunications; enacting the Minnesota Wireless Telephone Consumer Protection Act; proposing coding for new law in Minnesota Statutes, chapter 325F; repealing Minnesota Statutes 2006, section 325F.695.

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

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

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

(b) "Customer" means an individual consumer purchasing wireless telecommunications service, or a business or corporate entity making a bulk purchase of wireless telecommunications service for use by its employees.

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

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

(e) "Wireless telecommunications service" means commercial mobile radio service as defined in Code of Federal Regulations, title 47, part 20, but does not include "information services" as defined in United States Code, title 47, section 153, paragraph (20).

(f) "Prepaid wireless service" means a wireless telecommunications service that is activated in advance by payment for a finite dollar amount of service or for a finite number of minutes that terminates either upon use by a customer of that amount of service or within a specified period of time following the initial purchase or activation, unless additional payments are made. Prepaid wireless service is service that at no point required or requires the customer to agree to a term contractual agreement with the wireless carrier.

Subd. 2. **Required disclosures.** Wireless carriers providing wireless telecommunications service in the state must:

(1) provide the customer, at the time of sale, with a coverage map showing where service is generally available and that identifies areas where any domestic roaming or additional charges would apply to the customer's service;

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

(3) clearly and conspicuously disclose at the time of sale the price for the service being purchased by the customer, including the monthly access fee or base charge, the amount of any activation or initiation fee, any charges for domestic roaming, any charge for domestic long distance, any charge for exceeding the number of minutes or usage included in any allowance, number of peak and off-peak minutes, hours when peak and off-peak minutes apply, material terms of cancellation, return policy and any applicable charges, and any other charges collected and retained by the carrier, and disclose a good faith estimate of the amount or range of all applicable government-mandated or authorized charges and taxes;

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

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

(6) obtain a specific acknowledgment from the customer that the customer has read and understands the provisions of any early termination fee or provisions allowing the wireless carrier to change the price of the service during the minimum contract term.

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

Subd. 4. **Billing for third-party goods and services.** (a) A wireless carrier must not include on a customer's bill a charge for goods or services that the carrier bills on behalf of a third party unless the wireless carrier has obtained the prior authorization of the customer or an individual that the customer has authorized to use the wireless service to include those charges on the customer's bill issued by the wireless carrier.

(b) If a customer of a wireless carrier disputes any third-party charge appearing on that customer's wireless bill, the customer shall not be obligated to pay the disputed charge until the wireless carrier provides evidence of the customer's prior express authorization to include such charge. Evidence of the customer's prior express authorization must be produced to the customer within 60 calendar days after the customer notifies the wireless carrier that the charge is disputed. A customer shall be permitted to dispute any charges that a wireless carrier bills on behalf of a third party for up to six months after the charge appears on the customer's wireless bill. If the wireless carrier cannot produce evidence that the customer authorized the third-party charge, the wireless carrier must remove the charge from the customer's wireless bill and credit the customer for the unauthorized third-party charges incurred during the previous 60 calendar days.

(c) A wireless carrier meets the prior express authorization requirements of this subdivision only if it obtains or receives authorization from the customer containing clear, unambiguous, and separate authorizations for each third-party good or service to be included on the customer's bill.

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

Subd. 5. **Extensions in contract length.** (a) If a customer is offered, accepts, or requests a good, service, or promotion or changes the customer's wireless service plan in any manner, and this good, service, promotion, or change will result in the extension of the minimum contract term or create a new contract with a minimum term, the wireless carrier must disclose to the customer at the point of sale or acceptance that the requested good, service, promotion, or change will result in a contract extension or creation of a new contract with a minimum term, and must further disclose the length of the extension or new term.

(b) If the customer and a representative of the carrier are personally present at the point of sale or acceptance, the wireless provider must also in connection with the new good, service, promotion, or change obtain the customer's signed consent in an independent document. The independent document must only include the terms set forth in clauses (1) to (3) and must clearly and conspicuously disclose:

(1) that the new good, service, promotion, or change will result in an extension or renewal of the customer's contract;

(2) the new contract start and end dates; and

(3) that failure to complete the new contract term may result in early termination fees and, if so, the amount of the fees.

(c) If the customer's consent is obtained via the Internet, the wireless provider must disclose the terms listed in paragraph (b), clauses (1) to (3). The customer must provide a valid electronic signature showing that the wireless provider has disclosed and the customer has agreed to the extension or renewal of the contract. An electronic record must be available upon request to the customer until the new contract term expires.

(d) If the customer's consent is obtained orally, the wireless provider must clearly disclose the terms listed in paragraph (b), clauses (1) to (3), and the customer's consent to each term must be recorded and retained by the provider and be made available upon request to the customer until the new contract term expires.

(e) Within ten days after a customer's contract has been extended or renewed, the wireless service provider must notify the customer in an independent writing that the contract has been extended or renewed. The independent writing must only include the terms set forth in clauses (1) to (3) and must clearly and conspicuously disclose:

(1) that the new good, service, promotion, or change will result in an extension or renewal of the customer's contract;

(2) the new contract start and end dates; and

(3) that failure to complete the new contract term may result in early termination fees and, if so, the amount of the fees.

(f) Failure of the provider to make any of the disclosures or to obtain any of the consents required in this subdivision voids any contract extension covered by this subdivision.

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

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

Sec. 2. **REPEALER.**

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

Sec. 3. **EFFECTIVE DATE.**

Section 1 is effective August 1, 2008, except that subdivision 4 is effective March 1, 2009.

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.