

By: Davis of Dallas

H.B. No. 3169

A BILL TO BE ENTITLED

AN ACT

relating to wireless telephone consumer protections.

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

SECTION 1. Subtitle A, Title 10, Business & Commerce Code, as effective April 1, 2009, is amended by adding Chapter 308 to read as follows:

CHAPTER 308. WIRELESS TELEPHONES AND CONTRACTS

Sec. 308.001. SHORT TITLE. This chapter may be cited as the Cell Phone Lemon Law.

Sec. 308.002. DEFINITIONS. In this chapter:

(1) "Wireless telephone" means a telephone that operates without a physical wireline connection to the wireless telephone service provider's equipment. The term includes cellular and mobile telephones.

(2) "Wireless telephone service provider" includes a wireless telephone service provider's dealers, distributors, and agents.

Sec. 308.003. CONSUMER OPTIONS. (a) If, within the period of a contract for wireless telephone service, the wireless telephone sold in conjunction with the contract requires repair or replacement on three or more occasions, the consumer may, in lieu of having the telephone repaired or replaced on the third or a subsequent occasion, choose to:

(1) cancel the contract without paying any early

1 termination fee, penalty, or charge; or

2 (2) upgrade or downgrade the consumer's wireless
3 telephone.

4 (b) If a consumer chooses to upgrade the consumer's wireless
5 telephone under Subsection (a)(2), the consumer shall pay the
6 difference between the price of the consumer's wireless telephone
7 requiring repair or replacement and the best promotional price of
8 the wireless telephone to which the consumer is upgrading.

9 (c) If a consumer chooses to downgrade the consumer's
10 wireless telephone under Subsection (a)(2), the wireless telephone
11 service provider shall credit the consumer with the difference
12 between the price of the consumer's wireless telephone requiring
13 repair or replacement and the best promotional price of the
14 telephone to which the consumer is downgrading.

15 (d) If a consumer chooses the option of upgrading or
16 downgrading the consumer's wireless telephone under Subsection
17 (a)(2), the wireless telephone service provider may not use the
18 choice as the sole basis for automatically renewing or extending
19 the consumer's contract for wireless telephone service. A wireless
20 telephone service provider must allow a consumer the option to
21 upgrade or downgrade the consumer's wireless telephone under
22 Subsection (a)(2) without the action causing a change to the
23 consumer's contract.

24 Sec. 308.004. WRITTEN NOTICE. A wireless telephone service
25 provider shall give a consumer a written statement of the
26 consumer's rights under this chapter when a sale is made to which
27 this chapter applies.

1 Sec. 308.005. DAMAGE CAUSED BY CONSUMER ACTION. This
2 chapter does not apply with respect to any repair to or replacement
3 of a wireless telephone that was damaged or failed to work properly
4 as a result of a harmful action by the consumer. The types of damage
5 creating an inference of harmful consumer action under this section
6 include:

7 (1) equipment showing signs of water or other liquid
8 damage;

9 (2) equipment showing signs of physical impact;

10 (3) a scratched or broken casing;

11 (4) components or buttons in a condition that
12 indicates undue force was used; and

13 (5) other external damage.

14 Sec. 308.006. NONAPPLICABILITY. This chapter does not
15 apply to:

16 (1) quality or lack of services, including cellular
17 telephone or other subscribed services available to the consumer;

18 (2) contractually agreed-on rates; or

19 (3) equipment compatibility issues.

20 Sec. 308.007. DECEPTIVE TRADE PRACTICE. A violation of
21 this chapter is a false, misleading, or deceptive act or practice as
22 defined by Section 17.46(b), and a remedy under Subchapter E,
23 Chapter 17, is available for a violation of this chapter.

24 SECTION 2. This Act applies only to a contract entered into
25 or renewed on or after the effective date of this Act. A contract
26 entered into or renewed before the effective date of this Act is
27 governed by the law in effect when the contract was entered into or

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1 renewed, and the former law is continued in effect for that purpose.

2 SECTION 3. This Act takes effect September 1, 2009.