

By: Lucio

S.B. No. 99

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. This Act may be cited as the Cell Phone Lemon Law.

SECTION 2. Title 12, Business & Commerce Code, is amended by adding Chapter 605 to read as follows:

CHAPTER 605. WIRELESS TELEPHONES AND CONTRACTS

Sec. 605.001. 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. 605.002. CONSUMER OPTIONS. (a) If, within the period of a contract for wireless telephone service, the wireless telephone sold in conjunction with the contract for wireless telephone service 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 either:

(1) cancel the contract for wireless telephone service

1 without paying any early termination fee, penalty, or charge; or

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

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

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

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

23 Sec. 605.003. WRITTEN NOTICE. A wireless telephone service
24 provider shall give a consumer a written statement of the
25 consumer's rights under this chapter when a sale is made to which
26 this chapter applies.

27 Sec. 605.004. DAMAGE CAUSED BY CONSUMER ACTION. This

chapter does not apply to any repair to or replacement of a wireless telephone that was damaged or failed to work properly as a result of some harmful action by the consumer. The types of damage creating an inference of harmful consumer action include:

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

(2) equipment showing signs of physical impact;

(3) a scratched or broken casing;

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

(5) other external damage.

Sec. 605.005. NONAPPLICABILITY. This chapter does not apply to:

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

(2) contractually agreed upon rates; or

(3) equipment compatibility issues.

Sec. 605.006. DECEPTIVE TRADE PRACTICE. A violation of this chapter is a false, misleading, or deceptive act or practice as defined by Section 17.46(b), and any remedy under Subchapter E, Chapter 17, is available for a violation of this chapter.

SECTION 3. This Act applies only to a retail sale of a new wireless telephone to a consumer by a wireless telephone service provider in conjunction with a contract for wireless telephone service made on or after the effective date of this Act. A retail sale of a new wireless telephone to a consumer by a wireless telephone service provider in conjunction with a contract for

1 wireless telephone service made before the effective date of this
2 Act is governed by the law as it existed immediately before the
3 effective date of this Act, and that law is continued in effect for
4 that purpose.

5 SECTION 4. This Act takes effect September 1, 2009.