SENATE DOCKET, NO. 1083 FILED ON: 1/17/2013

SENATE . . . . . No. 1617

The Commonwealth of Massachusetts

PRESENTED BY:

Karen E. Spilka

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing a cell phone users' bill of rights.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Karen E. Spilka	*Second Middlesex and Norfolk*
Kate Hogan	*3rd Middlesex*

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By Ms. Spilka, a petition (accompanied by bill, Senate, No. 1617) of Karen E. Spilka and Kate Hogan for legislation to establish a cell phone users bill of rights. Telecommunications, Utilities and Energy.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1692* OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act establishing a cell phone users' bill of rights.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 93 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after section 114, the following new sections:-

Section 115. Section 116 to 123, inclusive, shall be known and may be cited as the "Wireless Telephone Consumer Protection Act."

Section 116. As used in sections 116 to 123, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Department", the department of telecommunications and cable.

"Wireless telephone services", commercial mobile radio services as defined by the federal Telecommunications Act, 47 U.S.C. § 332(c).

"Wireless telephone service provider", any entity that provides wireless telephone service within the commonwealth.

“Wireless telephone number information", the telephone number, electronic address, and any other identifying information by which a calling party may reach a subscriber to commercial

14 mobile services, and which is assigned by a wireless telephone service provider to such
15 subscriber.

16 Section 117. (a) The department of telecommunications and energy shall
17 promulgate regulations requiring that any publication, including publication on the internet, of a
18 wireless telephone service provider concerning the terms of its plans or contracts for wireless
19 telephone service shall set forth, in a plain and conspicuous manner, the following information:

20 (1) Information on charges, including calling-from area, monthly
21 base charge, per-minute charges for minutes not included in the plan, and the method of
22 calculating minutes charged.

23 (2) Information on the minutes included in the plan, including
24 weekday/daytime, nights/weekends, or other differing charges; long-distance; roaming;
25 incoming; and directory assistance.

26 (3) Information on plan or contract terms, including length of
27 contract, early or other termination fees, trial periods, and start-up fees.

28 (4) Information on taxes to be collected by the carrier for, and paid
29 to, a state, local, or other governmental agency.

30 (5) Information on surcharges imposed by the carrier for the costs of
31 compliance with regulations or for other purposes.

32 (6) Any other information that the department considers appropriate
33 to ensure that consumers of wireless telephone service are fully informed of the terms of the plan
34 or contract.

35 (b) Wireless telephone service providers must provide the information required
36 by this section to a consumer prior to entering into any contract with a consumer for wireless
37 telephone service.

38 (c) The department shall adopt rules requiring that the information required by
39 this section be published by wireless telephone service providers in a tabular format, in a clear
40 and uniform manner, and in at least 10 point font. This format shall be designed to ensure that
41 consumers may accurately compare the true cost of services among wireless service providers.

42 (d) Wireless telephone service providers must meet the disclosure requirements
43 in this section in advertising to the extent the medium allows.

44 Section 118. (a) Each wireless telephone service provider shall make maps
45 available that show the wireless telephone service area of such provider nationwide and the
46 wireless telephone service area of such provider within Massachusetts. Such maps shall contain
47 the maximum practicable level of granularity and shall be updated quarterly.

48 (b) Each map of a service area under paragraph (a) shall be provided to a
49 consumer:

50 (i) upon the request of the consumer; and

51 (ii) whenever a plan or contract for the service is entered
52 into.

53 (c) Each map of a service area under paragraph (a) shall be available:

54 (i) on the Internet web site of the provider concerned; and

55 (ii) on the website of the department.

56 Section 119. (a) The department shall monitor the quality of wireless telephone
57 service provided in Massachusetts by requiring semiannual reports by wireless telephone service
58 providers on the following:

59 (1) Dropped calls;

60 (2) Blocked calls;

61 (3) Known coverage gaps (including average signal strength) or
62 dead zones;

63 (4) Predicted street level signal strength;

64 (5) Any other matters the Department considers appropriate;

65 (b) In monitoring the quality of wireless telephone service under paragraph (a),
66 the department shall establish a website at which members of the public can submit to the
67 department their comments and views on the quality of such service. The department shall also
68 accept written complaints by mail.

69 (c) The department shall make available to wireless telephone service providers
70 and the public on a semiannual basis information on the quality of wireless telephone service
71 provided in Massachusetts.

72 Section 120. (a) No contract for wireless telephone service shall be for a term
73 longer than twelve months, except that upon expiration of the contract, the wireless telephone
74 service provider may offer to the subscriber the right to renew the contract for a similar, shorter
75 or longer period not to exceed twelve months.

76 (b) An extension of a contract for wireless telephone service shall not be valid
77 unless the extension of the contract is in writing and signed by the subscriber, or confirmed in
78 writing and signed by the subscriber within seven days.

79 (c) A wireless telephone service provider must provide subscribers with written
80 notice of any change in rates, terms, or conditions of service at least 30 days before the change is
81 to take effect. If any such change will result in higher rates or more restrictions on service or
82 otherwise will result in a material, adverse change for such subscriber, the subscriber may,
83 within such 30 day period, terminate the service without penalty and receive a pro rata refund of
84 the charges, if any, paid for the handset used for the service. The notice of change must inform
85 the subscriber of the right to terminate the contract, the right to a handset refund, and the steps to
86 take to implement such a termination.

87 (d) A contract for wireless service may be canceled upon the request of the
88 subscriber for any reason during the first 30 days. There shall be no penalty or other costs to the
89 subscriber for any cancellation during these 30 days, except that the subscriber shall be
90 responsible for the cost of the service used during the time period the contract was in effect.

91 Section 121. (a) A wireless telephone service provider shall provide bills for
92 wireless telephone services that are clearly organized and clearly describe in plain language the
93 products and services for which charges are imposed, and that conform to format standards
94 established by the department.

95 (b) Taxes and fees which are required by federal, state, or local statute or
96 regulation to be collected from the subscriber shall be set forth in a separate section of the bill
97 and shall be itemized separately. No charge which is not required by law to be recovered from
98 subscribers may be included in this section of the bill.

99 (c) Roaming or off-network charges shall be itemized on the subscriber's bill
100 within 60 days of the call being placed, and such roaming or off-network charges shall identify
101 the date and originating location of the call.

102 (d) Upon the request of a subscriber, a wireless telephone services provider
103 shall supply an itemized bill to the subscriber at no cost to the subscriber.

104 (e) Charges associated with the use of wireless telephone equipment or services
105 shall not be the liability of the subscriber if such use was unauthorized by the subscriber due to
106 loss or theft, provided that such loss or theft is promptly reported to the wireless telephone
107 service provider.

108 (f) The department shall promulgate regulations implementing this section and
109 establishing complaint handling procedures within the department for billing disputes between
110 wireless telephone service providers and subscribers.

111 (g) A wireless telephone service provider shall refrain from terminating a
112 subscriber's service for nonpayment so long as the subscriber's billing complaint is pending
113 before the department and for 15 days thereafter, or for such period as the department for good

114 cause shall establish, provided that as a condition of continued service during the adjudication of
115 any such dispute, the subscriber shall pay the undisputed portions of any bill for service and any
116 amounts the department determines are necessary to fairly compensate the wireless telephone
117 provider for services rendered while the complaint is pending and 15 days thereafter.

118 Section 122. (a) A wireless telephone service provider, or any direct or indirect
119 affiliate or agent of a provider, providing the name and wireless telephone number information
120 of a subscriber for inclusion in any directory of any form, or selling, leasing, licensing or sharing
121 the contents of any directory database, or any portion or segment thereof, shall not include the
122 wireless telephone number information of any subscriber without first obtaining the express
123 consent of that subscriber. The provider's form for obtaining the subscriber's express consent
124 shall meet all of the following requirements:

125 (1) it shall be a separate document that is not attached to any other
126 document;

127 (2) it shall be signed and dated by the subscriber;

128 (3) it shall be unambiguous, legible, and conspicuously disclose
129 that, by signing, the subscriber is consenting to have the subscriber's wireless telephone number
130 information sold or licensed as part of a list of subscribers and the subscriber's wireless telephone
131 number information may be included in a publicly available directory;

132 (4) if under the subscriber's calling plan the subscriber may be billed
133 for receiving unsolicited calls or text messaging from a telemarketer, the provider's form shall be
134 unambiguous, legible, and conspicuously disclose that, by consenting to have the subscriber's
135 wireless telephone number information sold or licensed as part of a list of subscribers or be
136 included in a publicly available directory, the subscriber may incur additional charges for
137 receiving unsolicited calls or text messages.

138 (b) A subscriber who provides express prior consent pursuant to paragraph (a)
139 may revoke that consent at any time. A wireless telephone service provider shall comply with the
140 subscriber's request to opt out within a reasonable period of time, not to exceed 60 days.

141 (c) A subscriber shall not be charged for making the choice to not be listed in a
142 directory.

143 (d) This section does not apply to the provision of wireless telephone number
144 information to the following parties for the purposes indicated:

145 (1) to a collection agency, to the extent disclosures made by the
146 provider are exclusively for the collection of the subscriber's unpaid debt to the provider;

147 (2) to any law enforcement agency, fire protection agency, public
148 health agency, public environmental health agency, city or county emergency services planning
149 agency, or private for-profit agency operating under contract with, and at the direction of, one or
150 more of these agencies, for the exclusive purpose of responding to a 911 call or communicating
151 an imminent threat to life or property;

152 (3) to a lawful process issued under state or federal law;

153 (4) to a telephone corporation providing service between service
154 areas for the provision to the subscriber of telephone service between service areas, or to third
155 parties for the limited purpose of providing billing services;

156 (5) to a telephone corporation to effectuate a subscriber's request to
157 transfer the customer's assigned telephone number from the customer's existing provider of
158 telecommunications services to a new provider of telecommunications services;

159 (6) to the department pursuant to its jurisdiction and control over
160 wireless telephone providers;

161 (e) No telephone corporation, nor any official or employee thereof, shall be
162 subject to criminal or civil liability for the release of subscriber information as authorized by this
163 section.

164 Section 123. (a) The department shall have the power and authority to enforce
165 the provisions of this act. The department shall have the power, consistent with federal law, to
166 assess a penalty for each violation not to exceed $1000 against any company that neglects or
167 knowingly fails to comply with any requirement of this act.

168 (b) Failure to comply with any provision of this act or any regulation
169 promulgated in accordance with this act shall constitute and unfair or deceptive act or practice
170 under chapter 93A.