

**M e m o r a n d u m**

**Date:** May 20, 2008

**To:** The Commission  
(Meeting of May 29, 2008)

**From:** Pamela Loomis, Director  
Office of Governmental Affairs (OGA) — Sacramento

**Subject:** **AB 2136 (Mendoza) – Prepaid Calling Cards.  
As amended April 23, 2008.**

**LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT IF AMENDED**

**SUMMARY OF BILL:**

**AB 2136 would make the following changes in the Business & Professions Code Section 17538.9 relating to advertising and sale of prepaid calling cards and services:**

- A requirement that all minutes or rate or both, promoted or advertised on any card, packaging, or point-of-sale material relating to that card or service, shall be available to, and achievable by, the customer.
- A requirement that before a customer has recharged a card or service, no calling card company shall provide fewer minutes than those stated, or charge more than the rate stated, or charge more for ancillary services than stated on the card or packaging, or in any advertisement available at the time of sale.
- A requirement, if a service is recharged at a higher rate than the original purchase rate or last recharge rate, that the customer be informed of the increased rate at the time of recharge.
- A requirement that the calling card company provide a voice prompt at the beginning of each call made using the prepaid card that indicates the total number of prepaid minutes that are available for that card.

## **SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:**

These provisions provide added consumer protection measures. CPSD supports the concept behind these amendments; but proposes further changes in order to more effectively address issues faced by prepaid calling card consumers. Combined these amendments can help correct the rampant consumer harm caused by false and misleading advertising in the prepaid calling card business. Without these amendments, the bill does not address one of the most common misleading tactics of bad actors.

CPSD does not anticipate any fiscal impact resulting from these amendments.

## **SUMMARY OF SUGGESTED AMENDMENTS:**

CPSD would like to see changes to the amended bill to more effectively address “one call” limitation on advertised rates or minutes. A common tactic in prepaid calling card advertising is to advertise a number of minutes that is only achievable if the user makes one continuous, uninterrupted call. This fact needs to be appropriately disclosed to the consumers.

## **DIVISION ANALYSIS (Consumer Protection & Safety Division):**

- Existing law (Business and Professions Code Sec. 17538.9) regulates the advertising and sale of prepaid calling cards and services. Existing law makes it a crime to violate any of these provisions.
- Existing law requires any advertisement of the price, rate, or unit value in connection with the sale of prepaid calling cards or services to include a disclosure of any geographic limitation to the advertised price, rate, or unit value and of any additional surcharges, fees or call set up charges applicable to the advertised price, rate or unit value. This bill would require that such disclosures be “clear and conspicuous” and would require the disclosure of additional charges of any kind – defined as “ancillary charges”.
- Existing law requires that the calling card company print on the card or packaging and that the vendor make available at the point of sale certain information about the card, including the value of the card, the name of the calling card company, the recharge and refund policy etc. This bill would require that if the company provides the information on the packaging, the information must be able to be read without opening the packaging. It also would require that the information provided by the company and the vendor be current at the time of printing and for as long as the information is displayed. It would also require that the information disclose any ancillary charges, including any ancillary charges for international calls to each country for which the card may be used or in lieu thereof, the highest ancillary charges for any international calls applicable on that card.

- Existing law requires that if the network services associated with a prepaid card fail to operate in commercially reasonable manner, the calling card company must provide a refund to the customer within 60 days of notification. This bill would require a refund in 30 days.
- Consumer Protection and Safety Division (CPSD) is currently pursuing unregistered prepaid calling card providers. PU Code Section 885-886 requires all California prepaid calling card providers to register with the Commission.
- CPSD is also actively working with the Attorney General (AG) in prosecuting prepaid calling card providers who mislead consumers and falsely advertise the available minutes in the calling cards they sell. CPSD investigations reveal that certain providers promise as much as 100-400% and more of what their cards actually deliver. Large amounts of the calling card value are eaten up by various fees that are undisclosed or not properly disclosed to the consumers. One often finds hidden in the fine print of calling card advertising (typically posters hung in store windows or available on the store's counter, or in Internet website advertising) two caveats: (1) the advertised rates or minutes expire on a date shortly after the printing of the poster (meaning that the poster hangs months, and in many cases, years after the rates have expired); and (2) the advertised rates or minutes apply only where the user makes one continuous call (ancillary, non-usage based charges often attach as soon as the first call is made, and/or on subsequent days, weeks, and/or months). These misleading and false advertising practices cause substantial harm to consumers, especially since these products are mostly targeting lower income and limited English proficient consumers.
- In the case of Devine Communications, the Commission and the AG entered into a settlement and Stipulated Judgment with Devine that specifically requires the clear and conspicuous disclosure of all potentially applicable ancillary charges. The Stipulated Judgment was entered by the San Francisco Superior Court.
- The Commission and AG are jointly pursuing actions against other prepaid calling card providers. If the amendment and our suggested further amendments, were to pass, the amended bill would provide the Commission and the AG will a clearer set of laws under which to uniformly pursue violators. It will eliminate the potential for a patchwork of injunctions and stipulated judgments entered into on a company by company basis.
- In addition, a clearer set of legislative rules (vs. stipulated judgments and injunction on a company by company basis) can enable the marketplace to compete more fairly.
- Absent this legislative solution, the Commission and the AG would continue to pursue violators through lawsuits and/or settlements and undertake corrective actions through stipulated judgments or injunctions. This enforcement approach is

by far less effective when compared to broad reach of amending the code as proposed.

**LEGISLATIVE HISTORY:**

AB 2885 (De La Torre) requires the CPUC to adopt rules to protect consumers of prepaid calling cards from undisclosed charges. AB 2885 received a “support if amended” position from the Commission at its May 15 hearing.

**FISCAL IMPACT:**

None.

**STATUS:**

AB 2136 is currently in the Senate Rules Committee awaiting policy committee assignment.

**SUPPORT/OPPOSITION:**

Support: AT&T  
Consumer Federation of California

Opposition: None on file.

**STAFF CONTACTS:**

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**Date:** May 20, 2008

**BILL LANGUAGE:**

BILL NUMBER: AB 2136 AMENDED  
BILL TEXT

AMENDED IN ASSEMBLY APRIL 23, 2008  
AMENDED IN ASSEMBLY MARCH 25, 2008

INTRODUCED BY Assembly Member Mendoza

FEBRUARY 20, 2008

An act to amend Section 17538.9 of the Business and Professions Code, relating to advertising.

LEGISLATIVE COUNSEL'S DIGEST

AB 2136, as amended, Mendoza. Prepaid calling cards.

Existing law regulates the advertising and sale of prepaid calling cards and services. Existing law requires an advertisement of the price, rate, or unit value in connection with the sale of prepaid calling cards or services to include specified information, and requires certain information to be legibly printed on a prepaid calling card. ~~The bill~~ Existing law also requires a company that sells prepaid calling cards and services and a vendor to make certain disclosures regarding fees and surcharges on the card and packaging and at the point of sale, and requires the company to maintain a toll-free customer service telephone number, meeting specified requirements. Existing law requires a company that issues prepaid calling cards or services to provide a refund within 60 days to any purchaser of a card or services if the network services associated with the card or services fail to operate in a commercially reasonable manner. Existing law makes it a crime to violate any of these provisions.

This bill would ~~instead require any advertisement of the price, rate, or unit value in connection with the sale of prepaid calling cards or services to be disclosed as the effective rate, as defined, and to clearly and conspicuously disclose specified information~~ impose additional requirements upon a company that issues prepaid calling cards or services, including, among others, a requirement to make available, and, once purchased, to provide, the promoted or advertised minutes or rates, and, upon a rate increase at the time of recharge, a requirement that the customer be informed of that increase .

The bill would also require the information that is to be printed legibly on ~~the~~ a card or packaging to be readable without having to open the packaging, and would require that information to be current, as specified  ~~, and to include if applicable, the date upon and amount by which an effective rate or ancillary charge, as defined, may increase. The bill would apply these disclosure requirements specifically to retail vendors~~ . The bill would prohibit a person from offering or selling any prepaid calling card or prepaid calling services that do not contain the information required to be disclosed on the card

or packaging, and would require a distributor that sells directly to a retail vendor to provide the vendor with the current information required to be displayed by the vendor ~~—, and would prohibit a person from offering or selling a prepaid calling card or prepaid calling service if the advertised or disclosed effective rate or ancillary charges have expired~~. The bill would further require a company that sells prepaid calling cards and services to provide a voice prompt at the beginning of each call that states the ~~effective rate for that call in a specified form~~ total number of prepaid minutes that are available for that call. The bill would require a refund based on the failure of network services associated with prepaid calling cards or services to be made within 30 days.

By creating new requirements with respect to the advertising and sale of prepaid calling cards, the violation of which would be a crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 17538.9 of the Business and Professions Code is amended to read:

17538.9. (a) For the purposes of this section:

(1) "Ancillary charges" means all surcharges, taxes, fees, connection charges, maintenance fees, monthly or other periodic fees, per-call access fees, or other assessments or charges of any kind, however denominated, that may be imposed in connection with the use of a card or services, other than the per unit or per minute rate charged.

(2) "Cellular telephone services" means facilities-based, commercial mobile telephone services.

(3) "Company" refers to any entity providing prepaid calling services to the public using its own or a resold telecommunications network.

(4) "Distributor" means any person who offers or sells a card or services to a retail vendor or to any other person for ultimate resale to a retail vendor.

~~—(5) "Effective rate" means the rate that would be charged if the entire remaining value of the card or service were consumed in one continuous call to a stated or dialed destination, and shall be determined as provided in subparagraph (A) and expressed as provided in subparagraph (B).~~

~~—(A) The effective rate shall be based on the applicable per unit charge and all ancillary charges that the person disclosing the effective rate should reasonably know the caller would incur in making and completing the call. Ancillary charges dependent on an individual caller's usage that are not reasonably known at the time the disclosure of the effective rate is made need not be included in determining the effective rate (e.g., an ancillary charge for placing~~

~~a call at a pay telephone if the person disclosing the effective rate does not reasonably know at the time of the disclosure that the card or service will be used at a pay telephone).~~

~~—(E) The effective rate shall be expressed as an amount per unit (e.g., \$0.10 per minute) or the total number of minutes available for the continuous call.~~

~~—(6)~~

(5) "Prepaid calling card" or "card" means any object containing an access number and authorization code that enables a consumer to use prepaid calling services. It does not include any object of that type used for promotional purposes.

~~—(7)~~

(6) "Prepaid calling services" or "services" refers to any prepaid telecommunications service that allows consumers to originate calls through an access number and authorization code, whether manually or electronically dialed.

~~—(8)~~

(7) "Retail vendor" means any person who sells a card or service to a consumer for use in making telephone calls.

(b) The following standards and requirements for consumer disclosure and services shall apply to the advertising and sale of prepaid calling cards and prepaid calling services:

(1) Any advertisement of the price, rate, or unit value in connection with the sale of prepaid calling cards or services shall ~~be disclosed as the effective rate, and shall clearly and conspicuously disclose all of the following information:~~

~~—(A) The effective rate is valid if the entire value of the card is consumed in one continuous call, unless the effective rate applies to all calls. This disclosure shall be printed in type at least as large as the largest type used to state the effective rate and shall appear immediately before or above all of the effective rates to which it applies.~~

~~—(B) If more than one effective rate applies to the same destination, the highest effective rate for the destination shall be the most prominently disclosed and the conditions applicable to any stated effective rate, such as limitations based on the day of the week or the time of day in which the card or service is used, shall be disclosed as clearly and conspicuously as the effective rate to which the conditions apply.~~

~~—(C) Any geographic limitation on any effective rate.~~

~~—(D) If any effective rate or ancillary charge disclosed at the time a card or service is purchased may increase after purchase, the date on which the increase may occur and the largest percentage by which the rate or charge may increase. This disclosure shall be made as clearly and conspicuously as the most prominently disclosed effective rate.~~

~~—(E) — Ancillary charges that are not included in the stated effective rate.~~

*include a clear and conspicuous disclosure of any geographic limitation to the advertised price, rate, or unit value, and of any ancillary charges applicable to the advertised price, rate, or unit value.*

(2) The following information shall be legibly printed on the card:

(A) The name of the company.

(B) A toll-free customer service number.

(C) A toll-free network access number, if required to access service.

(D) The authorization code, if required to access service.

(E) The expiration date or policy, if applicable, except where paragraph ~~(9)~~ (12) applies.

(3) The company shall print legibly on the card or packaging, so that it may be read without having to open any packaging, and the retail vendor shall make available clearly and conspicuously in a prominent area immediately proximate to the point of sale of the prepaid calling card or prepaid calling services the following information, which shall be current at the time of printing and for as long as it is displayed:

(A) The value of the card and all ancillary charges.

(B) Ancillary charges for international calls to each country for which the card may be used or, in lieu of disclosing ancillary charges for each country, the highest ancillary charges for any international calls applicable on that card and any additional or different prices, rates, or unit values applicable to international usage of the prepaid calling card or prepaid calling services.

(C) The minimum charge per call, such as a three-minute minimum charge, if any.

(D) The definition of the term "unit," if applicable.

(E) The billing decrement.

(F) The name of the company.

(G) The recharge policy, if any.

(H) The refund policy, if any.

(I) The expiration policy, if any.

~~(J) If any effective rate or ancillary charge disclosed at the time a card or service is purchased may increase after purchase, the date on which the increase may occur and the largest percentage by which the rate or charge may increase.~~

~~(K)~~

(J) The 24-hour customer service toll-free telephone number required in paragraph ~~(7)~~ (10).

(4) All minutes or rates, or both, promoted or advertised on any card, packaging, or point of sale material relating to that card or service shall be available to, and achievable by, the customer.

(5) Before a customer has recharged a card or service, no company shall provide fewer minutes than those stated, charge more than the rate stated, or charge more for ancillary services than stated on the card or packaging, or in an advertisement available to the public at the time the card or service is purchased.

(6) Service may be recharged by the customer at a rate higher than the rate at initial purchase or last recharge. However, the customer shall be informed of any increased rates or charges at the time of recharge.

~~(4)~~

(7) If a language other than English is used on the card or packaging to provide dialing instructions to place a call or to contact customer service, the information required by paragraph (3) shall also be disclosed in that language in the point of sale disclosure in the manner described in paragraph (3).

~~(5)~~

(8) If a language other than English is used in the

advertising or promotion of the card or prepaid calling services or is used on the card or packaging other than for dialing instructions, the information required by paragraph (3) shall also be disclosed in that language on the card or packaging and in the point of sale disclosure in the manner described in paragraph (3).

~~(6) A company shall provide a voice prompt, immediately after a caller enters a PIN and destination number, that states the effective rate for that call substantially in either of the following forms:~~

~~(A) "You have (insert number) minutes available if you use up your card or service on this call."~~

~~(B) "Your rate is (insert number) cents per minute if you use up your card or service on this call."~~

(9) A company shall provide a voice prompt at the beginning of each call that indicates the total number of prepaid minutes that are available for that call.

~~(7)~~

(10) A company shall establish and maintain a toll-free customer service telephone number that shall meet the following requirements:

(A) A live operator shall answer incoming calls to the telephone number 24 hours a day, seven days a week.

(B) The telephone number shall have sufficient capacity and staffing to accommodate a reasonably anticipated number of calls without incurring a busy signal or undue wait. The company shall provide customer service in each language used on a prepaid calling card or its packaging and in the advertising or promotion of the prepaid calling card or prepaid calling services.

(C) The telephone number shall allow consumers to lodge complaints and obtain information on all of the following:

(i) All rates and ancillary charges.

(ii) The company's recharge, refund, and expiration policies.

(iii) The balance of use available in the consumer's account, if applicable.

(D) A company shall not impose any ancillary charge related to obtaining customer service, including any charge related to connecting with the customer service number or waiting to speak to a live operator.

A company offering prepaid cellular telephone services shall be deemed to be in compliance with the requirements of this paragraph if, when a request for information is made outside of normal business hours, that company provides the information requested on the next business day.

~~(8)~~

(11) A company that issues prepaid calling cards or prepaid calling services shall provide a refund to any purchaser of a prepaid calling card or prepaid calling services if the network services associated with that card or services fail to operate in a commercially reasonable manner. The refund shall be in an amount not less than the value remaining on the card or in the form of a replacement card, and shall be provided to the consumer within 30 days from the date of receipt of notification from the consumer that the card has failed to operate in a commercially reasonable manner.

~~(9)~~

(12) Cards without a specific expiration date or policy printed on the card, and with a balance of service remaining, shall

be considered active for a minimum of one year from the date of purchase, or if recharged, from the date of the last recharge.

~~—(10)~~

(13) In the case of prepaid calling cards or services utilized at a pay ~~phone~~ telephone, the company may provide voice prompt notification of any ancillary charges related to pay ~~phone~~ telephone usage, in lieu of providing notice of those ancillary charges as required by paragraph (1) and by subparagraph (A) of paragraph (3), provided that the company provides users of prepaid calling cards or services with reasonable time to terminate the call after notification of the ancillary charges related to pay ~~phone~~ telephone usage without incurring any charge for the call.

~~—(11)~~

(14) A company shall maintain access numbers with sufficient capacity to accommodate a reasonably anticipated number of calls without incurring a busy signal or undue delay.

~~—(12)~~

(15) A company may not impose any ancillary charges that are not disclosed as required by this section or that exceed the amount disclosed by the company.

~~—(13)~~

(16) A company may not impose any charges if the consumer is not connected to the number called. For the purpose of this paragraph, the customer shall not be considered connected to the number called if the customer receives a busy signal or the call is unanswered.

~~—(14)~~

(17) The value of the card and the amount of any ancillary charges, that are required to be disclosed by paragraph (3), shall be expressed in the same format. If the value of a card is expressed in minutes, the minutes shall be identified as domestic or international and the identification shall be printed on the same line or next line as the value of the card in minutes.

~~—(15)~~

(18) No person shall offer or sell any prepaid calling card or prepaid calling services that do not contain the information required to be disclosed on the card or packaging as provided in paragraph (3).

~~—(16)~~

(19) A distributor that sells directly to a retail vendor shall provide the retail vendor with the current information required by paragraph (3) in a form that may be displayed by the retail vendor as provided in paragraph (3).

~~—(17) A retail vendor shall remove from public display any information required to be disclosed by paragraph (3) that is no longer current and any advertisement of any effective rate or ancillary charge that has expired.~~

~~—(18) No person shall offer or sell a prepaid calling card or prepaid calling service if any advertised or disclosed effective rate or ancillary charge has expired.~~

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or

infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

\_\_\_\_\_ CORRECTIONS Text--Page 4 and 5.

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