F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 03/10/09
SPONSOR Gardner **LAST UPDATED** **HB** 885

SHORT TITLE Cell Phone Contract Grace Periods **SB**

ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Attorney General's Office (AGO)
Taxation and Revenue Department (TRD)
Department of Information Technology (DoIT)

SUMMARY

Synopsis of Bill

House Bill 885 enacts a new section of the Cellular Telephone Services Act 63-9B-1 NMSA 1978. The bill addresses cell phone contract early termination fees (ETF) and provides for a graduated fee schedule upon early termination including:

0-30 days	–	No termination fee
31- 365 days	-	Half (1/2) of the termination fee
366 – 456 days	-	One quarter (1/4) of the termination fee
457 – end of contract	-	No termination fee

If termination occurs during the first tier, 0 – 30 days, any equipment obtained under the contract must be returned in "reasonably the same condition" as when the equipment was provided to the customer.

FISCAL IMPLICATIONS

According to the Attorney General's Office (AGO), this bill could conceivably add to the tasks of the Consumer Protection Division, by creating new issues regarding cell phone bills and contracts. Factual issues could center on whether a particular piece of equipment was in "reasonably the same" condition, as well as when the contract was effectively created or terminated. Any additional costs are estimated to be minimal.

SIGNIFICANT ISSUES

According to the AGO, this bill might be preempted by federal law. "[N]o State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service[.]" 47 USC §332 (1996). The Federal Communications Commission (FCC) started an inquiry into this issue; and as of 2007 there was legislation pending in the U.S. Senate that attempted to govern this issue. (Cell Phone Consumer Empowerment Act of 2007, sponsored by Senators Klobuchar [D-MN] and Rockefeller [D-WV]).

However under existing law it is likely that cell phone carriers operating in the state would claim that this law attempts to govern their "rates, terms and conditions" of market entry and thus a strong legal argument that this is a matter of federal law.

There have been numerous class actions on this issue throughout the nation, and both the State and Federal Circuit Courts are split on the issue of a State's ability to specifically govern early termination fees.

Consumer advocates argue that early termination fees are rarely disclosed, and that they tend to lock consumers into a contract with high penalties for terminating, which they contend is "anti-competitive" in that it does not allow for "shopping around" for better deals or coverage.

In response to consumer lawsuits in several states, including California, Florida and Illinois, challenging early termination fees as unfair, the cell phone industry has petitioned the FCC to treat ETFs not as penalties designed to restrict consumer choice, but as a part of the rates that the companies charge their customers for cell phone.

OTHER SUBSTANTIVE ISSUES

A 2005 survey by U.S. PIRG (Public Interest Research Group) found that nearly half of U.S. cell phone customers would switch or consider switching cell phone service carriers to get a lower rate and better service if they didn't have to pay an average penalty of $170 to cancel their service contract.

DL/mc