

56:8-175

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2007 **CHAPTER:** 293
NJSA: 56:8-175 (Regulates prepaid telephone calling cards and services)
BILL NO: S2887 (Substituted for A4401)

SPONSOR(S): Codey and others

DATE INTRODUCED: November 8, 2007

COMMITTEE: **ASSEMBLY:**
SENATE: Commerce

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** January 7, 2008
SENATE: December 17, 2007

DATE OF APPROVAL: January 13, 2008

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (Senate committee substitute (1R) enacted)

S2887

[SPONSOR'S STATEMENT:](#) (Begins on page 5 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

[FLOOR AMENDMENT STATEMENT:](#) [Yes](#)

LEGISLATIVE FISCAL ESTIMATE: No

A4401

[SPONSOR'S STATEMENT:](#) (Begins on page 5 of original bill) [Yes](#)

COMMITTEE STATEMENT: [ASSEMBLY:](#) [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

LAW/IS 6/17/08

P.L. 2007, CHAPTER 293, *approved January 13, 2008*
Senate Committee Substitute (*First Reprint*) for
Senate, No.2887

1 AN ACT concerning prepaid telephone calling cards and services
2 and supplementing P.L.1960, c.39 (C.56:8-1 et seq.).

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. As used in this act:

8 “Advertisement” means the attempt, directly or indirectly by
9 publication, dissemination, solicitation, endorsement or circulation
10 or in any other way, to induce directly or indirectly any person to
11 purchase any prepaid calling card or service, appearing in any
12 newspaper, magazine, periodical, circular, in-store or out-of-store
13 sign or other written matter placed before the consuming public, or
14 in any radio broadcast, television broadcast, electronic medium or
15 delivered to or through any computer.

16 “Company” means any entity, corporation, company,
17 association, firm, partnership or other business entity, or individual
18 engaged in the business of a prepaid calling service provider or
19 prepaid calling card distributor in this State.

20 “Director” means the Director of the Division of Consumer
21 Affairs.

22 “Division” means the Division of Consumer Affairs in the
23 Department of Law and Public Safety.

24 “Government fees” means and includes any and all fees, taxes
25 and charges assessed pursuant to State or federal law, regulation or
26 other mandate or requirement, including universal service fees and
27 charges.

28 “Payphone surcharge” means the surcharge that a provider may
29 charge a customer when that customer places a call with a card from
30 a payphone using a toll-free access number. The payphone
31 surcharge shall be deducted from a card’s balance.

32 “Permitted fee” means the fees and surcharges that a provider
33 may charge to, or deduct from, a card’s balance for the use of that
34 card, in addition to the rate per minute to the particular destination
35 called, which includes and is limited to **‘[the] any’** payphone
36 surcharge ¹, any recharge convenience fee, any directory assistance
37 fee,¹ and **‘any’** government fees.

38 “Prepaid calling card” or “card” means any right of use
39 purchased for a sum certain that contains an access number and
40 authorization code that enables a consumer to use a prepaid calling

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate floor amendments adopted December 10, 2007.

1 service. Such rights of use may be embodied on a card or other
2 physical object or may be purchased by an electronic or telephonic
3 means through which the purchaser obtains access numbers and
4 authorization codes that are not physically located on a card or
5 other object. "Prepaid calling card" shall not be construed to
6 include cards or other rights of use that provide access to:

7 (1) telecommunications service if the card or other rights of use
8 and telecommunications service are provided:

9 (a) for free or at no additional charge as a promotional item
10 accompanying a product or service purchased by a customer; or

11 (b) pursuant to an awards, loyalty, rebate or promotional
12 program without any separate monetary consideration being given
13 by the customer solely in exchange therefor; or

14 (2) a wireless telecommunications service account if the
15 purchaser has a pre-existing relationship with the wireless service
16 provider or establishes a carrier-customer relationship via the
17 purchase of the object.

18 "Prepaid calling card distributor" or "distributor" means and
19 includes: (1) any company that purchases or receives prepaid
20 calling cards from a prepaid calling service provider or distributor
21 and sells or distributes those cards to one or more distributors of
22 prepaid calling cards or to one or more prepaid calling card
23 retailers; and (2) any company that otherwise actively engages in
24 the promotion, advertising or dissemination of prepaid calling cards
25 and which is not a provider. "Prepaid calling card distributor" shall
26 not include any prepaid calling card retailers engaged exclusively in
27 point-of-sale transactions with customers.

28 "Prepaid calling card retailer" means any company that sells or
29 offers to sell prepaid calling cards directly to customers.

30 "Prepaid calling service" or "service" means any prepaid
31 telecommunications service that allows customers to originate calls
32 through a local, long distance or toll-free access number and
33 authorization code, whether manually or electronically dialed.
34 "Prepaid calling service" shall not include any service that provides
35 access to a wireless telecommunications service account wherein
36 the purchaser has a pre-existing relationship with the wireless
37 service provider or establishes a carrier-customer relationship via
38 the purchase of the object.

39 "Prepaid calling service provider" or "provider" means any
40 company, providing prepaid calling service to the public using its
41 own, or a resold telecommunications network, or voice over
42 Internet technology.

43 "Toll-free number" means an 800 number, or other telephone
44 number widely understood to be toll-free, which, when called as the
45 destination number or as an access number, shall not result in the
46 calling party being assessed, by virtue of completing the call, any
47 fee, charge or higher rate for the call unless such fee, charge or

1 higher rate is disclosed pursuant to subsection a. of section 2 of this
2 act.

3

4 2. a. Prepaid calling service providers and prepaid calling card
5 distributors shall disclose the following information on cards or
6 their packaging, as prescribed by the director by regulation, and in
7 any advertising for the service or cards, including any Internet web
8 site used to promote or distribute the service or cards:

9 (1) The name of the prepaid calling service provider;

10 (2) The provider's 24 hour customer service telephone number;

11 (3) The amount and frequency of any permitted fee that may be
12 applicable to the use of the card or service for calls originating
13 within the United States;

14 (4) Notice that additional or different per minute rates, charges
15 or fees may apply to use of the card or the service for calls
16 '[originating outside the United States and calls]' to 'or from'
17 international 'telephone numbers, international' cellular and
18 'international' wireless telephone numbers;

19 (5) Notice that per minute rates may be higher for calls made via
20 toll-free numbers;

21 (6) The value of the card or service, in dollars or minutes;

22 (7) Any applicable policies relating to refund, recharge,
23 decrement and expiration; and

24 (8) such additional information as the director may prescribe by
25 regulation¹, including, but not limited to, information concerning
26 the notice and disclosure of any rates, charges or fees for the use of
27 the card or the service for calls¹.

28 b. Prepaid calling service providers and prepaid calling card
29 distributors shall make available through the customer service
30 number, a website or other electronic medium, packaging, if any, or
31 in a clear and conspicuous poster or other writing in plain language
32 at the point of sale such information as the director may prescribe
33 by regulation.

34 c. All minutes or rates, or both, promoted or advertised on any
35 prepaid calling card, any point of sale material relating to that card
36 or otherwise relating to any prepaid calling service, shall be
37 available and achievable by the customer, and there shall be no
38 limitations on the period of time for which the promoted or
39 advertised minutes or rates, or both, will be available to the
40 customer unless those limitations are clearly and conspicuously
41 disclosed in the same location on the card, advertising or point of
42 sale material where the minutes or rates, or both, are promoted or
43 advertised. All minutes promoted, advertised or disclosed on any
44 voice prompt given to a customer at the time the customer places a
45 call with the card, whether or not required by regulation to be given
46 to the customer, shall be immediately available and achievable by
47 the customer on that call. The customer shall not be charged for
48 any busy signal or unanswered call.

1 d. A provider may not charge, apply or deduct from a card's
2 balance any fees, taxes, surcharges or other amounts for use of the
3 card, except: (1) the rate per minute for the particular destination
4 called; (2) any permitted fees; and (3) any rate per minute, fee or
5 charge permitted pursuant to paragraphs (4) or (5) of subsection a.
6 of this section.

7 e. If a language other than English is predominantly used on a
8 prepaid calling card, its packaging, or in point of sale advertising or
9 promotion for the prepaid calling card or prepaid calling service,
10 then the disclosures required by this section shall be disclosed in
11 that language on that card, packaging, advertisement or promotion.

12 f. In the case of a prepaid calling service provider, the
13 company's 24 hour customer service telephone number shall enable
14 the customer to obtain, at no charge, any and all applicable
15 information regarding the rates, any permitted fees, charges and
16 minutes available and remaining on the card for use in a single,
17 uninterrupted call to a single, requested destination through the card
18 and prepaid calling service. Customer service may be provided by a
19 combination of a live operator, interactive voice response, and
20 electronic voice recording of customer inquiries and complaints, but
21 live operator service shall be available 24 hours a day, seven days a
22 week. If an electronic voice recorder is used, the provider shall
23 attempt to contact the customer no later than the next day following
24 the date of the recording.

25 g. Providers and distributors shall conspicuously display the
26 applicable access numbers for the use of the card on the body of the
27 card itself or on its packaging.

28 h. A company shall not impose any fee or surcharge that is not
29 disclosed as required by this section or that exceeds the amount
30 disclosed by the company.

31
32 3. Prepaid calling card retailers shall not sell or offer for sale
33 any prepaid calling card that the retailer knows provides fewer
34 minutes than the number of minutes promoted or advertised for that
35 card, including the number of minutes listed on the card, any
36 advertising or point of sale material related to the card or any voice
37 prompt indicating the number of minutes available for a call with
38 the card.

39
40 4. A violation of any provision of this act shall be an unlawful
41 practice pursuant to P.L.1960, c.39 (C.56:8-1 et seq.) and shall be
42 subject to all remedies and penalties available pursuant to P.L.1960,
43 c.39 (C.56:8-1 et seq.).
44

45 5. Not later than 18 months after the date of adoption of
46 regulations implementing this act, the division shall issue a report to
47 the Governor and the Legislature, pursuant to section 2 of P.L.1991,
48 c.164 (C.52:14-19.1), on the activities of the division, including

1 their quantitative results, in enforcing this act and any
2 recommendations for additional legislation regulating the industry.

3

4 6. The Director of the Division of Consumer Affairs shall adopt,
5 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
6 (C.52:14B-1 et seq.), any rules and regulations necessary to
7 effectuate the purposes of this act.

8

9 7. This act shall take effect on the first day of the seventh month
10 next following enactment, but the director may take such
11 anticipatory action in advance of that date as may be necessary for
12 the timely implementation of this act. This act shall not apply to
13 prepaid calling cards and point-of-sale materials related to those
14 prepaid calling cards printed prior to the effective date. The act
15 shall apply to any prepaid calling card printed after the effective
16 date and to any advertisement, promotion, point-of-sale material or
17 voice prompt that is created, aired, printed, distributed, or otherwise
18 disseminated on or after the effective date.

19

20

21

22

23

Regulates prepaid telephone calling cards and services.

SENATE, No. 2887

STATE OF NEW JERSEY
212th LEGISLATURE

INTRODUCED NOVEMBER 8, 2007

Sponsored by:
Senator RICHARD J. CODEY
District 27 (Essex)

SYNOPSIS

Requires registration of certain prepaid calling services and cards providers.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning prepaid telephone calling card disclosures and
2 supplementing P.L.1960, c.39 (C.56:8-1 et seq.).
3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:
6

7 1. The Legislature finds and declares that:

8 a. The prepaid calling card industry within the State of New
9 Jersey is currently plagued by the fraudulent, deceptive and
10 unconscionable business practices of certain segments of the
11 industry which is causing undue economic hardships to consumers
12 and businesses in this State;

13 b. Legislative action is appropriate and necessary to restore a
14 competitive balance in the industry and to provide meaningful
15 protections for consumers and legitimate businesses within the
16 industry;

17 c. The necessary consumer protections relating to prepaid
18 calling cards must insure that all advertising is truthful, accurate
19 and reasonably discloses the terms and conditions of prepaid calling
20 cards and prepaid calling services, so that the advertising is:

21 (1) understandable to the average consumer;

22 (2) viable for the represented amount of time to allow the
23 consumer the opportunity to obtain the benefit of his or her
24 purchased services;

25 (3) verifiable for the consumer through readily available and
26 easily accessible customer service telephone lines;

27 (4) reliable to the extent that every consumer may reasonably
28 achieve actual number of minutes promoted, advertised or offered
29 on the prepaid calling card; and

30 (5) dependable in terms of the specific per-minute rates for each
31 prepaid calling card.

32 d. To effectuate the purpose of the appropriate consumer
33 protections regarding prepaid calling cards, both the consumer and
34 the State must be empowered to enforce the provisions of
35 P.L. , c. (C.) (pending before the Legislature as this bill).
36

37 2. As used in P.L. , c. (C.) (pending before the
38 Legislature as this bill):

39 a. "Company" means any entity, corporation, association, firm,
40 partnership or person providing prepaid calling service to the public
41 using its own, or a resold telecommunications, network or voice
42 over Internet technology;

43 b. "Prepaid calling service" or "service" means any prepaid
44 telecommunications service that allows consumers to originate calls
45 through a local, long distance or toll-free access number and
46 authorization code, whether manually or electronically dialed.
47 "Prepaid calling service" shall not be construed to include any
48 service that provides access to a wireless telecommunications

1 service account wherein the purchaser has a pre-existing
2 relationship with the wireless service provider or establishes a
3 carrier-customer relationship via the purchase of the object; and

4 c. "Prepaid calling card" or "card" means any right of use
5 purchased for a sum certain that contains an access number and
6 authorization code that enables a consumer to use prepaid calling
7 service. Such rights of use may be embodied on a card or other
8 physical object or may be purchased by an electronic or telephonic
9 means through which the purchaser obtains access numbers and
10 authorization codes that are not physically located on a card or
11 other object. "Prepaid calling card" shall not be construed to
12 include cards or other rights of use that provide access to:

13 (1) telecommunications service wherein the card or other rights
14 of use and telecommunications service are provided for free or at no
15 additional charge as a promotional item accompanying a product or
16 service purchased by a consumer; or

17 (2) a wireless telecommunications service account wherein the
18 purchaser has a pre-existing relationship with the wireless service
19 provider or establishes a carrier-customer relationship via the
20 purchase of the object.

21

22 3. a. Any company providing a prepaid calling service or
23 issuing prepaid calling cards for such a service in this State shall
24 maintain an active registration with the Division of Consumer
25 Affairs and comply with any and all rules and regulations
26 established by the director.

27 b. Any company that wishes to provide a prepaid calling service
28 or issue prepaid calling cards for such a service in this State shall
29 apply to the division for registration on a form prescribed by the
30 director, which shall contain any information the director may
31 require, but shall include as a minimum:

32 (1) the name and address of the company's registered agent, if
33 any;

34 (2) the name, address, and title of each officer or director of the
35 company;

36 (3) a description of any prepaid calling services or prepaid
37 calling cards the company offers or intends to offer; and

38 (4) the company's 24 hour customer service telephone number
39 for customers within this State.

40 c. Prior to registering any company to provide a prepaid calling
41 service or issue prepaid calling cards for such a service in this State,
42 the director shall require the company to certify that:

43 (1) the company is financially viable;

44 (2) the key operating personnel, officers, directors, partners or
45 owners of the company have no prior history in any jurisdiction of
46 committing fraud on the public or engaging in deceptive, fraudulent
47 or predatory business practices.

1 d. The director shall also require, as a precondition to registering
2 a company to provide a prepaid calling service or issue prepaid
3 calling cards for such a service in this State, the procurement of a
4 surety bond, or other authorized security, in the minimum amount
5 of \$250,000.

6 e. The director may, in its discretion, cancel, revoke, or suspend
7 the registration of any company upon any of the following grounds:

8 (1) the company does not provide or update the information
9 required by this section;

10 (2) the company fails to provide or maintain the required surety
11 bond, or other authorized security;

12 (3) the company violates any law, or other order, decision, rule,
13 regulation, direction, demand, or requirement established or
14 adopted by director or the division pursuant to
15 P.L. , c. (C.) (pending before the Legislature as this bill);

16 (4) the company files a false statement with the division;

17 (5) the company violates any provision of P. L.1960, c.39
18 (C. 56:8-1, et seq.) or any rules or regulations adopted pursuant to
19 that act; or

20 (6) the company fails to file, in a manner and time prescribed by
21 the director, an amended statement showing any changes in its key
22 operating personnel, officers, directors, partners or owners.

23 f. The registration required pursuant to subsection a. of this
24 section shall be in addition to, and does not obviate any
25 certification, authorization, registration or other regulatory
26 requirements imposed on intrastate telecommunications carriers by
27 the New Jersey Board of Public Utilities, which requirements shall
28 remain in full force and effect as may be amended from time to
29 time.

30

31 4. a. Any company registered to provide a prepaid calling
32 service or issue prepaid calling cards for such a service in this State
33 shall disclose the following information on its cards or their
34 packaging and in any advertising for the prepaid calling service or
35 cards, including any Internet web site used to promote or distribute
36 prepaid calling cards:

37 (1) the name of the company;

38 (2) the company's 24 hour customer service telephone number;

39 (3) the applicable access numbers for the use of the card; and

40 (4) any applicable terms and conditions, including but not
41 limited to, minimum charges per call and policies relating to refund,
42 recharge, decrement and expiration.

43 b. All minutes promoted or advertised on any prepaid calling
44 card, through any voice prompts or relating to any prepaid calling
45 service, shall be available and achievable by the customer, and the
46 customer shall not be charged for any busy signals or unanswered
47 calls.

1 c. If a language other than English is used in the advertising or
2 on the prepaid calling cards or their packaging, all of the
3 disclosures required by this section shall be made in that language,
4 unless that language is only used for the name of the prepaid calling
5 card itself.

6 d. The company's 24 hour customer service telephone line shall
7 enable the customer to obtain, at no charge, any and all applicable
8 information regarding the rates, any applicable fees, charges and
9 minutes available for the card and prepaid calling service, as well as
10 the balance remaining on the card.

11
12 5. a. Any violation of the provisions of P.L. , c. (C.)
13 (pending before the Legislature as this bill) shall be an unlawful
14 practice.

15 b. The seller of any prepaid calling service or prepaid calling
16 card that is not registered pursuant to P.L. , c. (C.)
17 (pending before the Legislature as this bill) shall be guilty of an
18 unlawful practice.

19
20 6. The Director of the Division of Consumer Affairs in the
21 Department of Law and Public Safety shall adopt, pursuant to the
22 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
23 seq.), any rules and regulations necessary to effectuate the purposes
24 of this Act.

25
26 7. This act shall take effect on the first day of the thirteenth
27 month after enactment, but the Director of the Division of
28 Consumer Affairs may take such anticipatory acts in advance of that
29 date as may be necessary for the timely implementation of this act.

30
31

32 STATEMENT

33

34 To deter the fraudulent, deceptive and unconscionable practices
35 of a segment of the prepaid telephone calling card industry, this
36 legislation establishes a comprehensive registration system and
37 mandatory disclosures for companies providing a prepaid calling
38 service or issuing prepaid calling cards for such a service in New
39 Jersey. Under this bill, such companies would be required to
40 register with the Division of Consumer Affairs, and disclose certain
41 consumer protection information in all their advertising and on the
42 prepaid calling cards and their packaging.

43 The bill specifies that a violation of its provisions would
44 constitute an unlawful practice. An unlawful practice under the
45 Consumer Fraud Act is punishable by a monetary penalty of not
46 more than \$10,000 for a first offense and not more than \$20,000 for
47 any subsequent offense. In addition, a violation can result in cease
48 and desist orders issued by the Attorney General, the assessment of

S2887 CODEY

6

- 1 punitive damages, and the awarding of treble damages and costs to
- 2 the injured party.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2887**

STATE OF NEW JERSEY

DATED: DECEMBER 3, 2007

The Senate Commerce Committee reports favorably a Senate Committee Substitute for Senate Bill No. 2887.

This substitute establishes mandatory disclosure requirements for prepaid calling service providers and prepaid calling card distributors.

The substitute is intended to deter the fraudulent, deceptive and unconscionable practices that a segment of the prepaid telephone calling card industry has used to deceive and defraud New Jersey consumers and damage the reputations and economic viability of legitimate prepaid calling service providers, and prepaid calling card distributors and retailers.

Under the provisions of the substitute, prepaid calling card service providers and distributors must disclose: the name of the provider; the provider's 24 hour customer service telephone number; the amount and frequency of any permitted fee, as defined by the substitute, that may be applicable to use the card or service for calls originating within the United States; notice if additional or different per minute rates, charges or fees apply to the use of the card or service for calls originating outside the United States, international cellular numbers and wireless telephone numbers; notice that per minute rates may be higher for calls made via toll-free numbers; the value of the card in dollars or minutes; any applicable policies relating to refund, recharge, decrement and expiration; and such additional information as the Director of the Division of Consumer Affairs may prescribe by regulation.

The substitute further provides that all minutes promoted or advertised on any prepaid calling card, any point of sale materials, in any voice prompt, or in any other manner shall be immediately available to the customer, unless any limitations are conspicuously disclosed. Furthermore, a customer may not be charged for any busy signal or unanswered call.

Under the provisions of the substitute, a provider may not charge, apply or deduct from a card's balance any fees, taxes, surcharges or other amounts, except: (1) the stated rate per minute for each chargeable call; (2) permitted fees; and (3) other charges specifically authorized under the substitute.

In addition, if a language other than English is predominantly used on a card, its packaging, or in point of sale advertising or promotion for the card or calling service, then the disclosures must be disclosed in that language on that card, packaging, advertisement or promotion.

The prepaid calling service provider must also establish and maintain a 24 hour customer service line. Customer service may be provided by a combination of live operator, interactive voice response, and electronic voice recording. If a recorder is used, the provider must try to contact the customer no later than the next day.

Prepaid calling card retailers are prohibited from selling or offering to sell any prepaid calling card that the retailer knows provide fewer minutes than the number advertised on the card, on any point of sale material, as part of any voice prompt, or other communication or advertisement.

A person violating any provisions of the substitute is subject to the penalties as defined under New Jersey's consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.).

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 2887

with Senate Floor Amendments
(Proposed By Senator CODEY)

ADOPTED: DECEMBER 10, 2007

These floor amendments provide two points of clarification regarding the regulation of prepaid telephone calling cards and services. First, the amendments expand the definition of “permitted fees” to include references to both “any recharge convenience fee” (for adding calling time to an existing card’s balance) and “any directory assistance fee.” These fees represent charges for optional customer services, and by their addition, the amendments clarify that providers shall give notice of such optional services and fees, and that they may deduct any such fees from a card’s balance. Second, the amendments clarify the scope of the notice requirements for contrasting a card’s international calling rates, charges and fees with its domestic equivalents by including notice requirements for all calls “to or from international telephone numbers, international cellular and international wireless numbers.”

Additionally, the floor amendments emphasize the regulatory authority of the Director of Consumer Affairs to promulgate regulations with respect to additional notice and disclosure requirements concerning any rates, charges, or fees applicable to the use of any prepaid telephone calling cards and services.

ASSEMBLY, No. 4401

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED JUNE 14, 2007

Sponsored by:

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Assemblyman JOHN F. MCKEON

District 27 (Essex)

SYNOPSIS

Requires registration of certain prepaid calling services and cards providers.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/22/2007)

1 AN ACT concerning prepaid telephone calling card disclosures and
2 supplementing P.L.1960, c.39 (C.56:8-1 et seq.).

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. The Legislature finds and declares that:

8 a. The prepaid calling card industry within the State of New
9 Jersey is currently plagued by the fraudulent, deceptive and
10 unconscionable business practices of certain segments of the
11 industry which is causing undue economic hardships to consumers
12 and businesses in this State;

13 b. Legislative action is appropriate and necessary to restore a
14 competitive balance in the industry and to provide meaningful
15 protections for consumers and legitimate businesses within the
16 industry;

17 c. The necessary consumer protections relating to prepaid
18 calling cards must insure that all advertising is truthful, accurate
19 and reasonably discloses the terms and conditions of prepaid calling
20 cards and prepaid calling services, so that the advertising is:

21 (1) understandable to the average consumer;

22 (2) viable for the represented amount of time to allow the
23 consumer the opportunity to obtain the benefit of his or her
24 purchased services;

25 (3) verifiable for the consumer through readily available and
26 easily accessible customer service telephone lines;

27 (4) reliable to the extent that every consumer may reasonably
28 achieve actual number of minutes promoted, advertised or offered
29 on the prepaid calling card; and

30 (5) dependable in terms of the specific per-minute rates for each
31 prepaid calling card.

32 d. To effectuate the purpose of the appropriate consumer
33 protections regarding prepaid calling cards, both the consumer and
34 the State must be empowered to enforce the provisions of
35 P.L. , c. (C.) (pending before the Legislature as this bill).

36

37 2. As used in P.L. , c. (C.) (pending before the
38 Legislature as this bill):

39 a. "Company" means any entity, corporation, association, firm,
40 partnership or person providing prepaid calling service to the public
41 using its own, or a resold telecommunications, network or voice
42 over Internet technology;

43 b. "Prepaid calling service" or "service" means any prepaid
44 telecommunications service that allows consumers to originate calls
45 through a local, long distance or toll-free access number and
46 authorization code, whether manually or electronically dialed.
47 "Prepaid calling service" shall not be construed to include any
48 service that provides access to a wireless telecommunications

1 service account wherein the purchaser has a pre-existing
2 relationship with the wireless service provider or establishes a
3 carrier-customer relationship via the purchase of the object; and

4 c. "Prepaid calling card" or "card" means any right of use
5 purchased for a sum certain that contains an access number and
6 authorization code that enables a consumer to use prepaid calling
7 service. Such rights of use may be embodied on a card or other
8 physical object or may be purchased by an electronic or telephonic
9 means through which the purchaser obtains access numbers and
10 authorization codes that are not physically located on a card or
11 other object. "Prepaid calling card" shall not be construed to
12 include cards or other rights of use that provide access to:

13 (1) telecommunications service wherein the card or other rights
14 of use and telecommunications service are provided for free or at no
15 additional charge as a promotional item accompanying a product or
16 service purchased by a consumer; or

17 (2) a wireless telecommunications service account wherein the
18 purchaser has a pre-existing relationship with the wireless service
19 provider or establishes a carrier-customer relationship via the
20 purchase of the object.

21

22 3. a. Any company providing a prepaid calling service or
23 issuing prepaid calling cards for such a service in this State shall
24 maintain an active registration with the Division of Consumer
25 Affairs and comply with any and all rules and regulations
26 established by the director.

27 b. Any company that wishes to provide a prepaid calling service
28 or issue prepaid calling cards for such a service in this State shall
29 apply to the division for registration on a form prescribed by the
30 director, which shall contain any information the director may
31 require, but shall include as a minimum:

32 (1) the name and address of the company's registered agent, if
33 any;

34 (2) the name, address, and title of each officer or director of the
35 company;

36 (3) a description of any prepaid calling services or prepaid
37 calling cards the company offers or intends to offer; and

38 (4) the company's 24 hour customer service telephone number
39 for customers within this State.

40 c. Prior to registering any company to provide a prepaid calling
41 service or issue prepaid calling cards for such a service in this State,
42 the director shall require the company to certify that:

43 (1) the company is financially viable;

44 (2) the key operating personnel, officers, directors, partners or
45 owners of the company have no prior history in any jurisdiction of
46 committing fraud on the public or engaging in deceptive, fraudulent
47 or predatory business practices.

1 d. The director shall also require, as a precondition to registering
2 a company to provide a prepaid calling service or issue prepaid
3 calling cards for such a service in this State, the procurement of a
4 surety bond, or other authorized security, in the minimum amount
5 of \$250,000.

6 e. The director may, in its discretion, cancel, revoke, or suspend
7 the registration of any company upon any of the following grounds:

8 (1) the company does not provide or update the information
9 required by this section;

10 (2) the company fails to provide or maintain the required surety
11 bond, or other authorized security;

12 (3) the company violates any law, or other order, decision, rule,
13 regulation, direction, demand, or requirement established or
14 adopted by director or the division pursuant to
15 P.L. , c. (C.) (pending before the Legislature as this bill);

16 (4) the company files a false statement with the division;

17 (5) the company violates any provision of P. L.1960, c.39 (C.
18 56:8-1, et seq.) or any rules or regulations adopted pursuant to that
19 act; or

20 (6) the company fails to file, in a manner and time prescribed by
21 the director, an amended statement showing any changes in its key
22 operating personnel, officers, directors, partners or owners.

23 f. The registration required pursuant to subsection a. of this
24 section shall be in addition to, and does not obviate any
25 certification, authorization, registration or other regulatory
26 requirements imposed on intrastate telecommunications carriers by
27 the New Jersey Board of Public Utilities, which requirements shall
28 remain in full force and effect as may be amended from time to
29 time.

30

31 4. a. Any company registered to provide a prepaid calling
32 service or issue prepaid calling cards for such a service in this State
33 shall disclose the following information on its cards or their
34 packaging and in any advertising for the prepaid calling service or
35 cards, including any Internet web site used to promote or distribute
36 prepaid calling cards:

37 (1) the name of the company;

38 (2) the company's 24 hour customer service telephone number;

39 (3) the applicable access numbers for the use of the card; and

40 (4) any applicable terms and conditions, including but not
41 limited to, minimum charges per call and policies relating to refund,
42 recharge, decrement and expiration.

43 b. All minutes promoted or advertised on any prepaid calling
44 card, through any voice prompts or relating to any prepaid calling
45 service, shall be available and achievable by the customer, and the
46 customer shall not be charged for any busy signals or unanswered
47 calls.

1 c. If a language other than English is used in the advertising or
2 on the prepaid calling cards or their packaging, all of the
3 disclosures required by this section shall be made in that language,
4 unless that language is only used for the name of the prepaid calling
5 card itself.

6 d. The company's 24 hour customer service telephone line shall
7 enable the customer to obtain, at no charge, any and all applicable
8 information regarding the rates, any applicable fees, charges and
9 minutes available for the card and prepaid calling service, as well as
10 the balance remaining on the card.

11
12 5. a. Any violation of the provisions of P.L. , c. (C.)
13 (pending before the Legislature as this bill) shall be an unlawful
14 practice.

15 b. The seller of any prepaid calling service or prepaid calling
16 card that is not registered pursuant to P.L. , c. (C.)
17 (pending before the Legislature as this bill) shall be guilty of an
18 unlawful practice.

19
20 6. The Director of the Division of Consumer Affairs in the
21 Department of Law and Public Safety shall adopt, pursuant to the
22 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
23 seq.), any rules and regulations necessary to effectuate the purposes
24 of this Act.

25
26 7. This act shall take effect on the first day of the thirteenth
27 month after enactment, but the Director of the Division of
28 Consumer Affairs may take such anticipatory acts in advance of that
29 date as may be necessary for the timely implementation of this act.

30
31

32 STATEMENT

33
34 To deter the fraudulent, deceptive and unconscionable practices
35 of a segment of the prepaid telephone calling card industry, this
36 legislation establishes a comprehensive registration system and
37 mandatory disclosures for companies providing a prepaid calling
38 service or issuing prepaid calling cards for such a service in New
39 Jersey. Under this bill, such companies would be required to
40 register with the Division of Consumer Affairs, and disclose certain
41 consumer protection information in all their advertising and on the
42 prepaid calling cards and their packaging.

43 The bill specifies that a violation of its provisions would
44 constitute an unlawful practice. An unlawful practice under the
45 Consumer Fraud Act is punishable by a monetary penalty of not
46 more than \$10,000 for a first offense and not more than \$20,000 for
47 any subsequent offense. In addition, a violation can result in cease
48 and desist orders issued by the Attorney General, the assessment of

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- 1 punitive damages, and the awarding of treble damages and costs to
- 2 the injured party.

[Corrected Copy]

ASSEMBLY CONSUMER AFFAIRS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 4401

STATE OF NEW JERSEY

DATED: NOVEMBER 19, 2007

The Assembly Consumer Affairs reports favorably an Assembly Committee Substitute for Assembly Bill No. 4401.

This Assembly Committee Substitute for Assembly Bill No. 4401 establishes a comprehensive registration system and mandatory disclosure requirements for prepaid calling service providers and prepaid calling card distributors. The purpose of the bill is to deter the fraudulent, deceptive and unconscionable practices that a segment of the prepaid telephone calling card industry has used to deceive, defraud, and cheat New Jersey consumers and damage the reputations and economic viability of legitimate prepaid calling service providers, and prepaid calling card distributors and retailers.

Under the provisions of this substitute, prepaid calling service providers and distributors are required to register annually with the Division of Consumer Affairs and disclose certain consumer protection information in all their advertising and on the prepaid calling cards and their packaging.

As part of the registration requirements, providers and distributors are to pay a fee, set by the Director of the Division of Consumer Affairs, sufficient to cover the division's costs in administering and enforcing the provisions of the substitute. In addition, providers (other than those regulated by the New Jersey Board of Public Utilities) are required to procure a surety bond, or other security, of at least \$250,000. Distributors (other than those regulated by the New Jersey Board of Public Utilities) are required to procure a surety bond, or other security, for at least \$25,000, if their annual sales are less than \$1,000,000. If a distributor's annual sales are more than \$1,000,000, the minimum amount of the security bond, or other security, is to be \$50,000.

The director has the authority to suspend, cancel, or revoke any provider or distributor's registration for failing to fulfill their registration responsibilities; violating any rule, regulation or directive of the director; or for violating the provisions of the New Jersey

Consumer Fraud Act (P.L.1960, c.39; C.56:8-1 et seq.) or any other law.

The substitute clearly specifies that the registration required under its provisions are in addition to those imposed on intrastate telecommunications carriers by the New Jersey Board of Public Utilities.

The information providers and distributors are required to disclose under the provisions of the substitute includes: a provider's 24 hour customer service telephone number; the amount and frequency of any permitted fee that may be applicable to use the card or service for calls originating within the United States; notice if additional or different per minute rates, charges of fees apply to the use of the card or service for calls originating outside the United States, international cellular numbers and wireless telephone numbers; the value of the card in dollars and minutes; and any applicable limit on the period of time for which the minutes are available.

The substitute further provides that all minutes promoted or advertised on any prepaid calling card; any point of sale materials; in any voice prompt; or in any other manner shall be available to the customer. Furthermore, a customer may not be charged for any busy signal or unanswered call.

Under the provisions of the substitute, a provider may not charge, apply or deduct from a card's balance any fees, taxes, surcharges of other amounts; except (1) the rate per minute for each chargeable call, (2) permitted fees, and (3) other charges specifically authorized under the substitute.

Prepaid calling card retailers are prohibited from selling or offering to sell any prepaid calling card that the retailer knows provide fewer minutes than the number advertised on the card, on any point of sale material, as part of any voice prompt, or other communication or advertisement.

A person violating any of the provisions of the substitute is subject to a penalty of not more than \$10,000 for a first violation and not more than \$25,000 for any subsequent violation. A person who suffers damages, or otherwise is aggrieved, may bring an action in a court of competent jurisdiction. The court, in addition to any appropriate legal or equitable relief, may award threefold damages. The court may also award reasonable attorney fees, filing fees, and costs of suit.