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BILL ANALYSIS

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Senate Bill 1201 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Valde Garcia
Committee: Senior Citizens and Veterans Affairs

Date Completed: 5-2-08

RATIONALE

When active duty military personnel are deployed overseas or transferred, they or their families typically have a lot of personal and financial matters to address before the deployment or transfer. Often, one of those matters involves the continuation or cancellation of a contract with a cellular phone service provider. If a service member has such a contract, he or she may be unable to cancel it without paying an early termination penalty, even though the service member might be sent to an area not served by that provider. Some people believe that wireless telecommunication service providers should be required to allow service members who are deployed overseas or transferred for an extended period to terminate their cell phone contracts without penalty.

CONTENT

The bill would create the "Military Personnel Wireless Contract Act" to do all of the following:

- Allow a service member who was transferred, or deployed overseas, on active duty for at least 180 days, to an area not served by his or her wireless telecommunication provider, or the service member's spouse, to terminate a wireless telecommunications contract without an early termination charge.**
- Require the person terminating the contract to give written notice, and document the service member's transfer or deployment orders.**

- Require the person terminating the contract to return equipment acquired from the telecommunications provider and not owned by the service member.**
- Authorize the Attorney General to seek civil damages for a violation of the bill, and require that the recovered money be deposited into the Military Family Relief Fund.**

The proposed Act would not apply to prepaid wireless telecommunication services.

Specifically, if a service member were transferred, or deployed overseas, on active duty for a period of 180 days or more, to an area where his or her existing wireless telecommunication provider did not offer facilities-based wireless service, the service member or the service member's spouse acting on his or her behalf if the spouse were authorized by the service member to make changes to the account, could terminate any contract with the wireless telecommunications provider if the service member were a party to the contract, the contract were entered into on or after the bill's effective date, and the contract were executed before the service member was transferred or deployed overseas.

The termination would be effective on the date that both of the following were met:

- The service member or spouse gave the lessor a written notice by certified mail of the intention to terminate the contract, a copy of the military or gubernatorial orders transferring the service member

or calling him or her to active duty, and a copy of any orders further extending the service member's period of active duty.

- Any wireless telecommunications equipment not owned by the service member, and acquired from the wireless communications provider, was returned to the custody or control of the provider within 30 days after the delivery of the written notice.

If a contract with a wireless telecommunications provider were terminated under the bill, the provider could not impose an early termination charge. The service member would remain responsible for any use charges incurred before termination.

In addition to any other penalty provided by law, the Attorney General could file a civil action in which the court could impose on a wireless telecommunications provider a civil fine of up to \$2,000 for each violation. Money recovered under this provision would have to be forwarded to the State Treasurer for deposit into the Military Family Relief Fund created in the Military Family Relief Fund Act.

Under the bill, "active duty" would mean active duty pursuant to an executive order of the U.S. President, an act of Congress, or an order of the Governor. "Service member" would mean a member of the Armed Forces, a reserve branch of the Armed Forces, or the Michigan National Guard.

"Armed forces" would mean that term as defined in the Veteran Right to Employment Services Act (the Army, Air Force, Navy, Marine Corps, Coast Guard, or other military force designated by Congress as a part of the Armed Forces of the United States). "Michigan national guard" would mean that term as defined in the Michigan Military Act (the Army National Guard and the Air National Guard).

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

In recent years, many Michigan citizens have been deployed, as part of regular,

reserve, or National Guard units, to perform military duty outside of the State or overseas. When a service member is transferred, or deployed overseas, he or she must make arrangements for various personal and financial matters before shipping out. One issue that a deployed or transferred service member may have to address is a cell phone contract. Typically, these are multiple-year agreements, with financial penalties for early termination. Since someone who serves in the military and is deployed overseas, or is transferred for an extended period of time, does so out of duty and not out of personal choice, he or she should not have to pay a fee to cancel a cell phone contract. Allowing a service member or his or her spouse to terminate such a contract without an early termination charge, if the service member were transferred, or deployed overseas, on active duty for at least 180 days to an area not served by the wireless carrier, would recognize the sacrifice made by Michigan's military personnel, and would ease their burden of preparing for deployment or transfer. Michigan's men and women in service should not be financially tethered to the terms of an unusable cell phone agreement at a time when they are providing a great service to the people of Michigan and the United States.

Response: The issue of when military personnel should be able to cancel a wireless telecommunication contract without an early termination fee should be addressed at the Federal level. Proposed amendments to the Servicemembers Civil Relief Act (formerly known as the Soldiers and Sailors Civil Relief Act) would allow a service member to terminate or suspend a wireless contract, without an early termination fee or a reactivation fee, upon receiving military orders to deploy outside of the continental United States for at least 90 days, if the deployment would materially affect the service member's ability to satisfy the contract or use the service. Federal legislation would provide a uniform policy for these matters and minimize confusion created by a patchwork of differing state statutes.

Opposing Argument

The legislation is not needed, as market forces have and will continue to address this issue. According to written testimony provided by an international trade association for wireless carriers known as

CTIA—The Wireless Association, "[A]ll of the national wireless carriers already have policies that relieve activated or deployed military personnel of their wireless contract commitments during their service to our country." While the terms and conditions of the policies may vary by provider, each of the major companies apparently allows deployed military personnel to suspend their contract without paying a fee.

Response: While the few major wireless telecommunications providers may have instituted policies to allow suspensions, many other providers may not offer such relief. A statutory requirement would ensure that all of Michigan's service members who were deployed overseas, or transferred, for at least 180 days could terminate—not just suspend—a cell phone contract, regardless of their carrier.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Any civil fines collected under the bill would be deposited into the Military Family Relief Fund created for grants to military families in need of financial assistance. The amount of revenue to the Fund would depend on the number of enforcement actions and the size of the fine imposed by the court. Currently, the Military Family Relief Fund is funded primarily by donations via a check-off on the Michigan income tax return. Since its beginning in tax year 2004, the Fund has received donations totaling \$2,577,000.

Fiscal Analyst: Joe Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.