

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 47

Short Title: Unauthorized Wireless Phone Use /\$50 Limit. (Public)

Sponsors: Senators Goss; Bingham, Jones, and Stevens.

Referred to: Commerce.

February 4, 2009

1 A BILL TO BE ENTITLED
2 AN ACT LIMITING LIABILITY FOR THE UNAUTHORIZED USE OF WIRELESS
3 TELEPHONES TO FIFTY DOLLARS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Chapter 75 of the General Statutes is amended by adding the
6 following new Article to read as follows:

7 "Article 6.

8 "Unauthorized Use of Wireless Telephones.

9 **"§ 75-122. Definitions.**

10 The following definitions apply in this Article.

- 11 (1) Customer. – A person who has a contract for wireless telephone service with
12 a wireless telephone service provider.
- 13 (2) Unauthorized use. – The use of a wireless telephone by a person other than
14 the customer who does not have actual, implied, or apparent authority for the
15 use and from which the customer receives no benefit.
- 16 (3) Wireless telephone. – A telephone that operates without a physical wireline
17 connection to the wireless service provider's equipment. The term includes
18 cellular and mobile telephones.
- 19 (4) Wireless telephone service provider. – A provider of wireless telephone
20 service and its dealers, distributors, and agents.
- 21 (5) Wireless telephone service. – A service that is a two-way real-time voice
22 telecommunications service that is interconnected to a public switched
23 telephone network and is provided by a commercial mobile radio service, as
24 the term is defined by 47 C.F.R. § 20.3.

25 **"§ 75-123. Liability of customer of wireless telephone service provider.**

26 (a) A customer of a wireless telephone service provider shall be liable for the
27 unauthorized use of a wireless telephone only if the following conditions are met:

- 28 (1) The customer has a contract for wireless telephone service with a wireless
29 telephone service provider.
- 30 (2) The liability is not in excess of fifty dollars (\$50.00).
- 31 (3) The wireless telephone service provider gives adequate notice to the
32 customer of the potential liability.
- 33 (4) The wireless telephone service provider has provided the customer with a
34 description of a means by which the wireless telephone service provider may
35 be notified of loss or theft of the wireless telephone. The description may be
36 provided on the face or reverse side of the customer billing statement or on a
37 separate notice accompanying the statement.



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1 (5) The unauthorized use occurs before the wireless telephone service provider
2 has been notified that an unauthorized use of the wireless telephone has
3 occurred or may occur as the result of loss, theft, or otherwise.

4 (6) The wireless telephone service provider has provided a method whereby the
5 user of the wireless telephone can be identified as the person authorized to
6 use the wireless telephone.

7 (b) In any action by a wireless telephone service provider to enforce liability for the use
8 of a wireless telephone, the burden of proof is on the wireless telephone service provider to
9 show that the use was authorized or, if the use was unauthorized, the burden of proof is on the
10 wireless telephone service provider to show that the conditions of liability for the unauthorized
11 use of a wireless telephone as provided in subsection (a) of this section have been met.

12 (c) Nothing in this section imposes liability upon a customer for the unauthorized use of
13 a wireless telephone in excess of the customer's liability for the use under other applicable law
14 or under any agreement with the wireless telephone service provider.

15 (d) Except as provided in this section, a customer incurs no liability from the
16 unauthorized use of a wireless telephone.

17 (e) A violation of this section is a violation of G.S. 75-1.1."

18 **SECTION 2.** This act is effective when it becomes law, and applies only to
19 contracts entered into or renewed on or after October 1, 2009.