

HOUSE BILL NO. 479

INTRODUCED BY GILLAN, BRANAE, GIBSON

A BILL FOR AN ACT ENTITLED: "AN ACT ~~PROHIBITING~~ REVISING THE LAWS THAT PROHIBIT TELECOMMUNICATIONS CARRIERS AND OTHER ENTITIES FROM SWITCHING A CUSTOMER'S TELECOMMUNICATIONS SERVICES WITHOUT THE CUSTOMER'S CONSENT; CLARIFYING THAT ENTITIES NOT OTHERWISE REGULATED BY THE PUBLIC SERVICE COMMISSION ARE SUBJECT TO THE PROHIBITION; DEFINING TERMS; PROHIBITING TELECOMMUNICATIONS CARRIERS AND OTHER ENTITIES FROM MISREPRESENTING PRODUCTS AND SERVICES TO BE CHARGED ON TELEPHONE BILLS; PROHIBITING INITIATION OF UNAUTHORIZED CHARGES TO BE PLACED ON TELEPHONE BILLS; ESTABLISHING REGISTRATION REQUIREMENTS FOR ENTITIES OFFERING OR BILLING FOR SERVICES AND PRODUCTS; ESTABLISHING PENALTIES; PROVIDING FOR NOTICE TO THE ATTORNEY GENERAL; PROVIDING THAT THE PUBLIC SERVICE COMMISSION MAY REQUEST COMPLAINTS OF VIOLATIONS; AMENDING SECTIONS 69-3-1301, 69-3-1302, 69-3-1303, AND 69-3-1305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-3-1301, MCA, is amended to read:

"69-3-1301. Purpose. The purpose of this part is to prohibit telecommunications carriers, including ~~carriers~~ all other entities not otherwise regulated by the commission, from switching a customer's telecommunications services from one telecommunications carrier to another without the customer's consent and to prohibit charges for a product or service not requested by or provided to the customer from being placed on the customer's telephone bill."

Section 2. Section 69-3-1302, MCA, is amended to read:

"69-3-1302. Definitions. As used in this part, the following definitions apply:

(1) "Billing agent" means a telecommunications carrier that includes in a bill that it sends to a customer a charge for a product or service offered by a service provider.

(2) "Billing aggregator" means any entity, other than a service provider, that forwards the charge for a product or service offered by a service provider to a billing agent.

~~(1)~~(3) "Commission" means the public service commission provided for in 2-15-2602.

~~(2)~~(4) "Customer" means a person who has purchased telecommunications services from a telecommunications carrier OR WHO HAS BEEN BILLED CHARGES ON A TELEPHONE BILL FOR THE SERVICES OR PRODUCTS OF ANOTHER ENTITY.

~~(3)~~(5) "Local exchange company" means the same as provided in 53-19-302.

~~(4)~~(6) "Primary interexchange carrier" means the telecommunications carrier from which a customer chooses to purchase long-distance services.

(7) "Service provider" means any entity, other than the billing agent, that offers a product or service to a customer, the charge for which appears on the bill of a billing agent.

~~(5)~~(8) (a) "Telecommunications carrier" or "carrier" means any provider of telecommunications services. ~~A person~~ AN ENTITY providing other products and services is considered a telecommunications carrier only to the extent that the ~~person~~ ENTITY is engaged in providing telecommunications services.

(b) The term does not mean aggregators of telecommunications services as defined in 47 U.S.C. 226."

Section 3. Section 69-3-1303, MCA, is amended to read:

"69-3-1303. Prohibition -- exceptions. (1) A telecommunications carrier may not request a change in a customer's primary interexchange carrier or local exchange company except:

(a) when the requesting carrier has obtained from the customer a document signed by the customer that contains clear and conspicuous disclosure of the customer's request for a change in telecommunications carrier;

(b) when the customer affected by the change initiates the contact with the carrier in order to request the change; or

(c) when the carrier who has initiated the change has obtained the customer's verbal authorization as verified by an independent third party or by electronic means in accordance with rules prescribed by the commission.

(2) The documentation required in subsection (1):

(a) must be signed by the customer responsible for paying the charges on the account held by the telecommunications carrier; and

(b) may not be a part of any sweepstakes, contest, or similar promotional program.

~~(3) A telecommunications carrier or other entity may not initiate charges to be placed on a customer's telecommunications bill unless the service or product has been requested by and provided to the customer. A customer request must be made in the following manner:~~

~~— (a) by written authorization, in which the telecommunications provider or other entity has obtained a document signed by the customer containing a clear and conspicuous disclosure of the customer's authorization or order of the product or service; or~~

~~— (b) by verbal authorization, in which the telecommunications carrier or other entity has obtained the customer's verbal authorization as verified by an independent third party or by electronic means in accordance with commission rules.~~

~~— (4) The documentation provided for in subsections (3)(a) and (3)(b):~~

~~— (a) must be signed by the customer responsible for paying the charges on the telecommunications bill; and~~

~~— (b) may not be a part of a sweepstakes, contest, or similar promotional program.~~

~~— (5) A customer is not liable for any charges submitted for billing on the local exchange company's telephone bill by another carrier or entity for products or services that the customer did not authorize or that were not provided to the customer.~~

~~— (6) The provisions of subsections (3), (4), and (5) do not apply to a transaction between a customer and that customer's selected providers of local exchange or interexchange service."~~

Section 4. Section 69-3-1305, MCA, is amended to read:

"69-3-1305. Telecommunications UNAUTHORIZED CHANGE IN TELECOMMUNICATIONS carrier -- liability -- penalty for violation. (1) A telecommunications carrier who initiates an unauthorized change in the customer's telecommunications carrier in violation of 69-3-1303 is liable:

(a) to the customer for all intrastate long-distance charges, interstate long-distance charges, monthly service charges, carrier switching fees, and other relevant charges incurred by the customer during the period of the unauthorized change; and

(b) to the customer's original telecommunications carrier for all charges related to reinstating service to the customer.

(2) A telecommunications carrier or any other entity who purposely or knowingly initiates an unauthorized change of a customer's telecommunications carrier under 69-3-1303 or ~~initiates charges to be billed on a customer's telephone bill for services or products not provided to or authorized by the customer~~ this section is guilty of a misdemeanor and upon conviction shall be punished as provided in 46-18-212.

(3) (a) If, after a hearing held pursuant to the Montana Administrative Procedure Act, the commission finds that ~~a person~~ any entity has initiated an unauthorized change of a customer's telecommunications carrier

~~or has initiated charges to be billed on a customer's telephone bill for services or products not provided or authorized, the commission may impose for each change or charge made in violation of 69-3-1303; a civil fine not to exceed \$1,000 for each violation, which must be deposited in the general fund.~~

(b) If, after a hearing held pursuant to the Montana Administrative Procedure Act, the commission finds that ~~a person~~ AN ENTITY has, with a frequency to indicate a general business practice, initiated unauthorized changes of customers' telecommunications carriers ~~or initiated charges to be billed on a customer's telephone bill for services or products not provided or authorized,~~ the commission may take any of the following actions:

(i) notify the secretary of state, and the secretary of state who shall then suspend or revoke any license, registration, or other filing entitling that person ENTITY to transact business in this state;

(ii) prohibit any billing agent or billing aggregator from billing charges on behalf of the service provider CARRIER OR OTHER ENTITY determined to have engaged in a pattern of violations;

(III) PROHIBIT A BILLING AGENT THAT BILLS DIRECTLY FOR THE CARRIER OR OTHER ENTITY DETERMINED TO HAVE ENGAGED IN A PATTERN OF VIOLATIONS FROM BILLING CHARGES ON BEHALF OF THAT CARRIER OR OTHER ENTITY;

(iii)(IV) prohibit local exchange companies from providing exchange access services to the service provider REVOKE THE REGISTRATION OF A SERVICE PROVIDER OR BILLING AGGREGATOR; OR

(iv)(V) limit the actions PROHIBITIONS under THIS subsection (3)(b)(ii) or (3)(b)(iii) to a specific period of time. A prohibition under THIS subsection (3)(b)(ii) or (3)(b)(iii) may be withdrawn upon a showing of good cause.

(4) THE COMMISSION SHALL PROVIDE ADEQUATE TIME FOR A BILLING AGENT THAT IS PROHIBITED FROM BILLING OF BEHALF OF A CARRIER OR OTHER ENTITY UNDER THIS SECTION TO TERMINATE A CONTRACTUAL AGREEMENT WITH THAT CARRIER OR OTHER ENTITY.

(4)(5) The remedies provided by this section are in addition to any other remedies, including injunctive relief, available by law."

NEW SECTION. Section 5. Prohibitions on charges on bill -- exceptions. (1) A telecommunications carrier, service provider, or other entity may not initiate ~~or place~~ charges TO BE PLACED on a customer's telecommunications bill unless the service or product has been requested by and provided to the customer. A customer request must be made in the following manner:

(a) by written authorization, in which the telecommunications carrier, service provider, or other entity has obtained a document signed by the customer containing a clear and conspicuous disclosure of the customer's authorization or order of the product or service; or

(b) by verbal authorization, in which the telecommunications carrier, service provider, or other entity has

obtained the customer's verbal authorization as verified by an independent third party or by electronic means in accordance with commission rules.

(2) (a) The documentation provided for in subsection (1)(a) must be signed by the customer responsible for paying the charges on the telecommunications bill.

(b) The documentation provided for in subsection (1) may not be a part of a sweepstakes, contest, or similar promotional program.

(3) A customer is not liable for any charges submitted for billing on the local exchange company's telephone bill by another carrier, service provider, or entity for products or services that the customer did not authorize or that were not provided to the customer.

(4) The provisions of subsections (1) through (3) do not apply to a transaction between a customer and that customer's selected providers of local exchange or interexchange service, except upon a finding by the commission that services billed were neither requested nor received.

NEW SECTION. Section 6. Telecommunications carrier liability for charges on LIABILITY FOR UNAUTHORIZED CHARGES ON TELEPHONE bill -- penalty for violation. (1) If, after a hearing held pursuant to the Montana Administrative Procedure Act, the commission finds that any entity has initiated unauthorized charges ~~or caused unauthorized charges~~ to be placed on a customer's telephone bill for services or products not provided or authorized OR THAT A BILLING AGGREGATOR HAS CAUSED UNAUTHORIZED CHARGES TO BE FORWARDED TO A BILLING AGENT FOR PLACEMENT ON A TELEPHONE BILL, the commission may impose a civil fine not to exceed \$1,000 for each violation. The fines must be deposited in the state general fund.

(2) If, after a hearing held pursuant to the Montana Administrative Procedure Act, the commission finds that ~~any entity~~ A CARRIER OR SERVICE PROVIDER has, with a frequency to indicate a general business practice, initiated, placed, or caused unauthorized charges to be placed on a customer's telephone bill for services or products not provided or authorized OR THAT A BILLING AGGREGATOR HAS CAUSED UNAUTHORIZED CHARGES TO BE FORWARDED TO A BILLING AGENT FOR PLACEMENT ON A TELEPHONE BILL, the commission may take any of the following actions:

(a) notify the secretary of state, who shall then suspend or revoke any license, registration, or other filing entitling that ~~person~~ CARRIER OR SERVICE PROVIDER to transact business in this state;

(b) prohibit any billing agent ~~or billing aggregator from billing charges~~ THAT BILLS DIRECTLY on behalf of the service provider determined to have engaged in a pattern of violations; FROM PLACING THE SERVICE PROVIDER'S UNAUTHORIZED CHARGES ON A CUSTOMER'S TELEPHONE BILL;

(C) PROHIBIT A CARRIER OR SERVICE PROVIDER DETERMINED TO HAVE ENGAGED IN A PATTERN OF VIOLATIONS FROM INITIATING UNAUTHORIZED CHARGES TO BE PLACED ON A CUSTOMER'S TELEPHONE BILL;

(D) PROHIBIT A BILLING AGGREGATOR FROM FORWARDING THAT ENTITY'S UNAUTHORIZED CHARGES TO A BILLING AGENT;

~~(c)(E) prohibit local exchange companies from providing exchange access services to the service provider~~ REVOKE THE REGISTRATION OF THE SERVICE PROVIDER OR BILLING AGGREGATOR; or

~~(d)(F) limit the actions~~ PROHIBITIONS under THIS subsection ~~(2)(b) or (2)(c)~~ (2) to a specific period of time. A prohibition under THIS subsection ~~(2)(b) or (2)(c)~~ (2) may be withdrawn upon a showing of good cause.

(3) THE COMMISSION SHALL PROVIDE ADEQUATE TIME FOR A BILLING AGENT THAT IS PROHIBITED FROM BILLING ON BEHALF OF A SERVICE PROVIDER UNDER THIS SECTION TO TERMINATE CONTRACTUAL AGREEMENTS WITH THAT SERVICE PROVIDER.

~~(3)(4)~~ (4) The remedies provided by this section are in addition to any other remedies, including injunctive relief, available by law.

~~(4)(5) An entity~~ A CARRIER OR SERVICE PROVIDER that purposely or knowingly initiates ~~or places~~ unauthorized charges TO BE PLACED on a customer's telephone bill for services or products not provided to or authorized by the customer OR A BILLING AGGREGATOR THAT CAUSES UNAUTHORIZED CHARGES TO BE FORWARDED TO A BILLING AGENT FOR PLACEMENT ON A TELEPHONE BILL is guilty of a misdemeanor and upon conviction shall be punished as provided in 46-18-212.

NEW SECTION. Section 7. Misrepresentation by solicitor concerning product or service -- violations -- complaints. (1) An entity may not misrepresent its association or affiliation with a telephone carrier when soliciting, inducing, or otherwise implementing the customer's agreement to purchase the products or services of the entity and to have the charge for the product or service appear on the customer's telephone bill.

(2) If the commission finds that an entity is operating in violation of any provision of this section, the commission may:

(A) order the carrier or a billing agent THAT BILLS DIRECTLY FOR THAT ENTITY to terminate the billing and collection services for that entity. THE COMMISSION SHALL PROVIDE ADEQUATE TIME FOR THE BILLING AGENT TO TERMINATE CONTRACTUAL AGREEMENTS WITH THE ENTITY. THIS SECTION DOES NOT PRECLUDE A CARRIER OR BILLING AGENT FROM TAKING ACTION ON ITS OWN TO TERMINATE BILLING AND COLLECTION SERVICES. ~~or~~

(B) PROHIBIT the entity's billing aggregator ~~or billing agent. This section does not preclude a billing telephone company from taking action on its own to terminate billing and collection services~~ FROM FORWARDING

ANY CHARGES FROM AN ENTITY OPERATING IN VIOLATION OF THIS SECTION TO A CARRIER OR BILLING AGENT FOR PLACEMENT ON A CUSTOMER'S TELEPHONE BILL.

~~(3) Each telecommunications carrier, billing agent, billing aggregator, and service provider that provides products or services that are charged on telephone bills shall provide the commission, upon request, with reports of complaints made by customers regarding the billing for products or services that are charged on customers' telephone bills as a result of the billing and collection services that the telecommunications carrier, billing aggregator, or billing agent provides to third parties, including affiliates of the telecommunications carrier.~~

~~(4)(3) Failure by an entity to respond to commission staff requests for information RELATED TO AN INVESTIGATION OF A POSSIBLE VIOLATION OF THIS SECTION is grounds for the commission to:~~

~~(A) order the carrier, BILLING AGGREGATOR, or billing agent providing billing and collection services THAT BILLS DIRECTLY FOR THE ENTITY to cease billing and collection services for the service provider; or~~

~~(B) PROHIBIT A billing aggregator FROM FORWARDING CHARGES TO THE BILLING AGENT TO BE PLACED ON A CUSTOMER'S TELEPHONE BILL.~~

~~(5)(4) This section does not obligate a billing agent to provide billing and collection services to a billing aggregator or service provider.~~

~~(6)(5) A telephone company has a right of indemnity against anyone who has provided it with false information as to the status of charges billed on behalf of a service provider.~~

NEW SECTION. Section 8. Registration requirements -- prohibitions -- revocation. (1) A service provider may not offer a product or service to a customer, the charge for which appears on the bill of a billing agent, unless the service provider is properly registered with the commission.

(2) A billing aggregator may not forward to a billing agent charges for a service or product offered by a service provider unless the billing aggregator is properly registered with the commission.

(3) A billing aggregator may not forward charges to a billing agent from a service provider who is required to be registered under this section and who is not properly registered under this section.

(4) A billing agent may not ~~knowingly~~ DIRECTLY bill on behalf of a service provider ~~who is required to be registered under this section and who~~ THAT IS NOT THE BILLING AGENT IF THE SERVICE PROVIDER is not properly registered, IF REGISTRATION IS REQUIRED under this section.

(5) The commission shall provide a form for registration and establish the procedure for registering with the commission. A registration remains effective until revoked by the commission or surrendered by the service provider or billing aggregator.

- (6) After notice and an opportunity for a hearing, the commission may revoke a registration.
- (7) The commission may revoke the registration of a service provider that has:
 - (a) knowingly or repeatedly billed one or more customers for unauthorized service; or
 - (b) engaged in any other false or deceptive billing practices.
- (8) The commission may revoke the registration of a billing aggregator that has:
 - (a) knowingly or repeatedly forwarded the charge for a service or product to a billing agent on behalf of a service provider that was required to be registered with the commission and that was not properly registered; or
 - (b) engaged in any other false or deceptive billing practices.
- (9) Immediately following a revocation of registration under this section, the commission shall provide notice of the revocation to all telecommunications carriers AND REGISTERED BILLING AGGREGATORS doing business in Montana.

NEW SECTION. SECTION 9. SUBMISSION OF LIST OF ENTITIES SERVED BY BILLING AGGREGATOR REQUIRED.
EACH BILLING AGGREGATOR DOING BUSINESS IN MONTANA SHALL SUBMIT TO THE COMMISSION A LIST OF SERVICE PROVIDERS AND OTHER ENTITIES FOR WHICH THE BILLING AGGREGATOR PROVIDES BILLING SERVICES. THE COMMISSION SHALL ADOPT RULES THAT SPECIFY INFORMATION THAT MUST BE INCLUDED WITH THE LIST IN ORDER TO ENFORCE THE PROVISIONS OF THIS PART. THE LIST MUST INCLUDE THE NAME AND ADDRESS OF A CONTACT PERSON FOR EACH ENTITY.

NEW SECTION. SECTION 10. Notice to attorney general. If the commission has reason to believe that any entity has violated any provision of the law for which a criminal penalty is provided or any law regarding fraud or consumer protection, the commission shall notify the attorney general.

NEW SECTION. SECTION 11. Codification instruction. [Sections 5 through 9 10] are intended to be codified as an integral part of Title 69, chapter 3, part 13, and the provisions of Title 69, chapter 3, part 13, apply to [sections 5 through 9 10].

NEW SECTION. SECTION 12. Effective date. [This act] is effective on passage and approval.

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