

February 18, 1998

**ENGROSSED
HOUSE BILL No. 1297**

DIGEST OF HB 1297 (Updated February 17, 1998 10:16 am - DI 75)

Citations Affected: IC 4-6; IC 8-1.

Synopsis: Unauthorized telecommunications carrier switching. Prohibits the unauthorized switching of a customer from one telecommunications provider to another. Prohibits billing a customer of a telecommunications provider for services that the customer did not authorize. Requires the Indiana utility regulatory commission (the commission) to adopt rules consistent with Federal Communications Commission rules designed to ensure that the customer of a telecommunications provider is not switched without authorization or
(Continued next page)

Effective: July 1, 1998.

**Kruzan, Bottorff, Grubb, Behning,
Crosby, Tabaczynski, Steele,
Kuzman, Mock, Kruse, Turner**

(SENATE SPONSORS — MILLS, LANANE)

January 13, 1998, read first time and referred to Committee on Commerce and Economic Development.

January 21, 1998, reported — Do Pass.

January 28, 1998, read second time, amended, ordered engrossed.

January 29, 1998, engrossed. Read third time, passed. Yeas 99, nays 0.

SENATE ACTION

February 3, 1998, read first time and referred to Committee on Commerce and Consumer Affairs.

February 17, 1998, amended, reported favorably — Do Pass.

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billed for services that the customer did not authorize. Allows customers, telecommunications providers, and the commission to file complaints about unauthorized switching with the commission. Allows the commission to refer an unauthorized switching or billing violation to the attorney general as a deceptive act making the violation a deceptive act that is actionable by the attorney general and the customer.

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February 18, 1998

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

ENGROSSED HOUSE BILL No. 1297

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-6-9-4, AS AMENDED BY P.L.18-1997,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 1998]: Sec. 4. (a) The division has the following powers and
4 duties:

5 (1) The power to investigate any written consumer complaint
6 made by a nonmerchant arising from a transaction between a
7 merchant as defined in the Uniform Commercial Code and a
8 nonmerchant concerning sales, leases, assignments, awards by
9 chance, or other dispositions of goods, services, or repairs, and
10 intangibles to a person for purposes that are primarily personal,
11 familial, household, charitable, or agricultural, or a solicitation to
12 supply any of the above things. When a consumer trades in or
13 sells a motor vehicle to another consumer or nonconsumer, he
14 shall be deemed to be a nonconsumer and shall be subject to the
15 provisions of this chapter. The division shall have no jurisdiction
16 over matters concerning utilities subject to regulation by the

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1 utility regulatory commission or by an agency of the United States
 2 except that the provisions of subdivision (5) shall apply **and**
 3 **except as provided in IC 8-1-29.**

4 (2) For complaints filed after August 31, 1984, the duty to
 5 ascertain from the consumer whether he consents to public
 6 disclosure by the division of the filing of the complaint, including
 7 his identity and telephone number, if any.

8 (3) The duty to notify the merchant of the nature of the complaint
 9 by written communication and request a written reply.

10 (4) Upon receipt of reply, the duty to act as mediator between the
 11 parties and attempt to resolve all complaints in a conciliatory
 12 manner.

13 (5) If no reply is received or if the parties are unable to resolve
 14 their differences, and no violation of federal or state statute or rule
 15 is indicated, the duty to provide the complainant with a copy of all
 16 correspondence relating to the matter.

17 (6) Whenever a violation of a state or federal law or
 18 administrative rule is indicated, the duty to forward to the
 19 appropriate state or federal agency a copy of the correspondence
 20 and request that the agency further investigate the complaint and
 21 report to the division upon the disposition of the complaint.

22 (7) The power to initiate and prosecute civil actions on behalf of
 23 the state whenever an agency to which a complaint has been
 24 forwarded fails to act upon the complaint within ten (10) working
 25 days after its referral, or whenever no state agency has jurisdiction
 26 over the subject matter of the complaint.

27 (b) All complaints and correspondence in the possession of the
 28 division under this chapter are confidential unless disclosure of a
 29 complaint or correspondence is:

- 30 (1) requested by the person who filed the complaint;
 31 (2) consented to, in whole or in part, after August 31, 1984, by the
 32 person who filed the complaint;
 33 (3) in furtherance of an investigation by a law enforcement
 34 agency; or
 35 (4) necessary for the filing of an action by the attorney general
 36 under IC 24-5-0.5.

37 (c) Notwithstanding subsection (b), the division may publicly
 38 disclose information relating to the status of complaints under
 39 ~~subsections~~ **subsection** (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7).

40 SECTION 2. IC 8-1-29 IS ADDED TO THE INDIANA CODE AS
 41 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 42 1, 1998]:

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1 **Chapter 29. Telecommunications Customers**

2 **Sec. 1. As used in this chapter, "customer" means a person to**
 3 **whom telecommunications services are provided.**

4 **Sec. 2. As used in this chapter, "telecommunications" means the**
 5 **electronic transmission, between or among points specified by the**
 6 **user, of information of the user's choosing, without change in the**
 7 **form or content of the information sent and received.**

8 **Sec. 3. As used in this chapter, "telecommunications provider"**
 9 **means a person that provides telecommunications service.**

10 **Sec. 4. As used in this chapter, "telecommunications service"**
 11 **means making telecommunications available to the public for a fee.**

12 **Sec. 5. A customer of a telecommunications provider may not**
 13 **be:**

- 14 (1) switched to another telecommunications provider unless
 15 the customer authorizes the switch; or
 16 (2) billed for services by a telecommunications provider that
 17 without the customer's authorization added the services to the
 18 customer's service order.

19 **Sec. 6. The commission shall adopt rules under IC 4-22-2**
 20 **designed to ensure that a customer of a telecommunications**
 21 **provider is not:**

- 22 (1) switched to another telecommunications provider without
 23 the customer's authorization; or
 24 (2) billed for additional services by a telecommunications
 25 provider that without the customer's authorization added the
 26 services to the customer's service order.

27 **The rules adopted under this section must be consistent with rules**
 28 **adopted by the Federal Communications Commission concerning**
 29 **verification procedures for the switching of a customer's**
 30 **telecommunications provider.**

31 **Sec. 7. A complaint may be filed with the commission by:**

- 32 (1) a customer of a telecommunications provider who has
 33 been:
 34 (A) switched by one (1) telecommunications provider to
 35 another telecommunications provider without the
 36 customer's authorization; or
 37 (B) billed for services by a telecommunications provider
 38 that without the customer's authorization added the
 39 services to the customer's service order;
 40 (2) a telecommunications provider that has been removed as
 41 a customer's telecommunications provider without the
 42 customer's authorization; or



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1 **(3) the commission on its own motion.**
2 **A hearing held on a complaint filed under this section must be**
3 **consistent with IC 8-1-1-8.**
4 **Sec. 8. The commission may refer a violation of section 5 of this**
5 **chapter or rules adopted under section 6 of this chapter to the**
6 **attorney general as a deceptive act. If a violation of section 5 of this**
7 **chapter or rules adopted under section 6 of this chapter is referred**
8 **to the attorney general as a deceptive act, the person who commits**
9 **the violation commits a deceptive act that is actionable by the**
10 **attorney general and the customer and is subject to the remedies**
11 **and penalties under IC 24-5-0.5.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce and Economic Development, to which was referred House Bill 1297, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BOTTORFF, Chair

Committee Vote: yeas 15, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that 1297 be amended to read as follows:

Page 3, delete lines 5 through 12, begin a new paragraph and insert:

"Sec. 2. As used in this chapter, "telecommunications provider" means a person that provides telecommunications service.

Sec. 3. As used in this chapter "telecommunications service" means the electronic transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information sent and received. The term includes local exchange service, message toll service, and data transmission."

Page 3, line 13, delete "5." and insert "4."

Page 3, delete lines 20 through 42, begin a new paragraph and insert:

"Sec. 5. (a) The office of the utility consumer counselor and the attorney general shall initially refer a complaint filed with their respective agencies by a customer alleging a violation of this chapter to the consumer division of the commission.

(b) The office of the utility consumer counselor and the attorney general shall advise a customer filing a complaint under subsection (a) that the customer may have the complaint reviewed by the consumer affairs division of the commission under section 6 of this chapter.

Sec. 6. (a) A customer or, in the event of a pattern of violations, a telecommunications provider may directly file a complaint alleging a violation of this chapter with the consumer affairs division of the commission or through the office of the utility consumer counselor or attorney general under section 5 of this chapter. The consumer affairs division of the commission shall consider and propose a disposition of a complaint under the informal review process under 170 IAC 7-1.1-17.

(b) As part of the review process under subsection (a), the consumer affairs division of the commission shall review the information compiled and maintained under subsection (c) and consider the number of complaints filed against the telecommunications provider under this chapter.

(c) The consumer affairs division of the commission shall compile and maintain a list of complaints filed under this chapter that:

- (1) is current;**
- (2) specifies the number of complaints filed against a single telecommunications provider; and**



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(3) specifies the number of complaints filed against telecommunications generally.

The consumer affairs division of the commission shall furnish the information compiled and maintained under this section to the office of the utility consumer counselor and to the attorney general on a quarterly basis.

Sec. 7. (a) A telecommunications provider shall report a complaint received from a customer alleging a violation of this chapter to the consumer affairs division of the commission on a quarterly basis.

(b) The report required under subsection (a) must include the disposition of the complaint and action taken by the telecommunications provider, if any.

(c) A telecommunications provider shall advise a customer who notifies the provider of a complaint under subsection (a) that the customer's complaint may be reviewed by the commission under section 6 of this chapter.

(d) The reporting requirements of this section apply to all telecommunications providers, including a telecommunications provider furnishing service to a customer at the time a violation of this chapter occurs.

Sec. 8. (a) If the consumer affairs division of the commission fails to render a decision on a complaint filed under section 6 of this chapter within thirty (30) days after receiving the complaint, the consumer affairs division shall notify the office of the utility consumer counselor and the customer in writing within ten (10) days after the expiration of the thirty (30) day period.

(b) The office of the utility consumer counselor:

- (1) may on its own motion; and
- (2) shall at the request of a customer;

file a complaint with the commission within thirty (30) days after receiving notice from the consumer affairs division of the commission under subsection (a). The commission shall hold a public hearing and enter an order on the complaint filed under this section within thirty (30) days after the hearing.

(c) If the commission determines that a pattern of violations of this chapter has occurred, it may revoke the telecommunications provider's certificate of territorial authority if the revocation is otherwise consistent with this article. The ability to revoke the telecommunications provider's certificate of territorial authority is in addition to other remedies available to the commission.

(d) The commission shall provide notice and conduct a hearing



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under this section consistent with the provisions of IC 8-1.

(e) This section does not limit the remedies and powers available to the office of the utility consumer counselor under IC 8-1-1.1-4.1.

Sec. 9. (a) If the office of the utility consumer counselor fails to file a complaint under section 8 of this chapter within the time period specified in that section, the office of the utility consumer counselor shall, within thirty (30) days after the expiration of the time period specified in that section, notify in writing the consumer protection division of the office of the attorney general.

(b) Notwithstanding subsection (a), the office of the utility consumer counselor:

- (1) may on its own motion; and
- (2) shall at the request of a customer;

refer a complaint under section 8 of this chapter directly to the consumer protection division of the office of the attorney general. A complaint under this subsection is still actionable by the office of the utility consumer counselor under section 8 of this chapter.

(c) The consumer protection division shall investigate a complaint of which it is notified under subsection (a) or (b) to determine if a violation of this chapter has occurred. If the consumer protection division of the attorney general determines that a violation of this chapter has occurred, the violation is actionable as a deceptive act by the attorney general and by the customer and is subject to the remedies and penalties provided under IC 24-5-0.5.

(d) The attorney general shall notify in writing the commission and office of the utility consumer counselor of the disposition of a complaint filed with the attorney general under this section.

Sec. 10. (a) The commission shall adopt rules under IC 4-22-2 to implement this chapter.

(b) Rules adopted under subsection (a) must be consistent with federal law and the rules adopted by the Federal Communications Commission concerning verification procedures for the switching of telecommunications providers.

Sec. 11. The commission shall notify the Federal Communications Commission on a quarterly basis of the following information:

- (1) The number of complaints filed under this chapter during the reporting period.
- (2) The telecommunications providers against which complaints were filed.
- (3) The disposition of the complaints.



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(4) A chronological listing of the complaints filed against each telecommunications provider as of the end of the reporting period."

Delete page 4.

(Reference is to House Bill 1297 as printed January 22, 1998.)

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HOUSE MOTION

Mr. Speaker: I move that Representatives Mock, Kruse, and Turner be added as coauthors of House Bill 1297.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred House Bill 1297, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, delete lines 41 through 42 begin a new paragraph and insert:
"SECTION 2. IC 8-1-29 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

Chapter 29. Telecommunications Customers

Sec. 1. As used in this chapter, "customer" means a person to whom telecommunications services are provided.

Sec. 2. As used in this chapter, "telecommunications" means the electronic transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received.

Sec. 3. As used in this chapter, "telecommunications provider" means a person that provides telecommunications service.

Sec. 4. As used in this chapter, "telecommunications service" means making telecommunications available to the public for a fee.

Sec. 5. A customer of a telecommunications provider may not be:

- (1) switched to another telecommunications provider unless the customer authorizes the switch; or
- (2) billed for services by a telecommunications provider that without the customer's authorization added the services to the customer's service order.

Sec. 6. The commission shall adopt rules under IC 4-22-2 designed to ensure that a customer of a telecommunications provider is not:

- (1) switched to another telecommunications provider without the customer's authorization; or
- (2) billed for additional services by a telecommunications provider that without the customer's authorization added the services to the customer's service order.

The rules adopted under this section must be consistent with rules adopted by the Federal Communications Commission concerning verification procedures for the switching of a customer's telecommunications provider.

Sec. 7. A complaint may be filed with the commission by:

- (1) a customer of a telecommunications provider who has been:



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(A) switched by one (1) telecommunications provider to another telecommunications provider without the customer's authorization; or

(B) billed for services by a telecommunications provider that without the customer's authorization added the services to the customer's service order;

(2) a telecommunications provider that has been removed as a customer's telecommunications provider without the customer's authorization; or

(3) the commission on its own motion.

A hearing held on a complaint filed under this section must be consistent with IC 8-1-1-8.

Sec. 8. The commission may refer a violation of section 5 of this chapter or rules adopted under section 6 of this chapter to the attorney general as a deceptive act. If a violation of section 5 of this chapter or rules adopted under section 6 of this chapter is referred to the attorney general as a deceptive act, the person who commits the violation commits a deceptive act that is actionable by the attorney general and the customer and is subject to the remedies and penalties under IC 24-5-0.5."

Delete pages 3 through 6.

and when so amended that said bill do pass.

(Reference is to House Bill 1297 as reprinted January 29, 1998.)

MILLS, Chairperson

Committee Vote: Yeas 11, Nays 0.

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