

January 22, 1998

HOUSE BILL No. 1297

DIGEST OF HB1297 (Updated January 21, 1998 10:38 am - DI 93)

Citations Affected: IC 4-6-9-4; IC 8-1-29.

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 billed for services that the customer did not authorize. Allows
(Continued next page)

Effective: July 1, 1998.

**Kruzan, Bottorff, Grubb, Behning,
Crosby, Tabaczynski**

January 13, 1998, read first time and referred to Committee on Commerce and Economic Development.
January 21, 1998, reported — Do Pass.

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Digest Continued

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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January 22, 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.

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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

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

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

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

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

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

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

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

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

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

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

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

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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:**
 - (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**

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1 customer's authorization; or
2 (3) the commission on its own motion.
3 **A hearing held on a complaint filed under this section must be**
4 **consistent with IC 8-1-1-8.**
5 **Sec. 8. The commission may refer a violation of section 5 of this**
6 **chapter or rules adopted under section 6 of this chapter to the**
7 **attorney general as a deceptive act. If a violation of section 5 of this**
8 **chapter or rules adopted under section 6 of this chapter is referred**
9 **to the attorney general as a deceptive act, the person who commits**
10 **the violation commits a deceptive act that is actionable by the**
11 **attorney general and the customer and is subject to the remedies**
12 **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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