

HOUSE BILL No. 1297

DIGEST OF HB 1297 (Updated January 28, 1998 6:36 pm - DI 93)

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 billed for services that the customer did not authorize. Allows customers and, in the case of a pattern of abuse, telecommunications
(Continued next page)

Effective: July 1, 1998.

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

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.

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Digest Continued

providers to file complaints about unauthorized switching with the consumer affairs division of the commission. Requires the office of the utility consumer counselor and the attorney general to refer complaints to the consumer affairs division of the commission. Requires the consumer affairs division of the commission to compile and disseminate certain information regarding unauthorized switching and billing to the office of the utility consumer counselor and to the attorney general. Requires telecommunications providers to report complaints of unauthorized switching and billing to the consumer affairs division of the commission on a quarterly basis. Requires the consumer affairs division of the commission to report an unresolved complaint to the office of the utility consumer counselor which may then take more formal action on the complaint. Requires the consumer protection division of the attorney general to investigate a complaint if the complaint is referred to the attorney general by the office of the utility consumer counselor or if the office of the utility consumer counselor fails to take action on a complaint referred to the office. Provides that a complaint is actionable as a deceptive act if the attorney general investigates the complaint and determines that there has been an unauthorized switch or billing. Requires the commission to notify the Federal Communications Commission of certain information.

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Reprinted
January 29, 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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- 1, 1998]:
- 2 **Chapter 29. Telecommunications Customers**
- 3 **Sec. 1. As used in this chapter, "customer" means a person to**
4 **whom telecommunications services are provided.**
- 5 **Sec. 2. As used in this chapter, "telecommunications provider"**
6 **means a person that provides telecommunications service.**
- 7 **Sec. 3. As used in this chapter "telecommunications service"**
8 **means the electronic transmission, between or among points**
9 **specified by the user, of information of the user's choosing without**
10 **change in the form or content of the information sent and received.**
11 **The term includes local exchange service, message toll service, and**
12 **data transmission.**
- 13 **Sec. 4. A customer of a telecommunications provider may not**
14 **be:**
- 15 (1) **switched to another telecommunications provider unless**
16 **the customer authorizes the switch; or**
- 17 (2) **billed for services by a telecommunications provider that**
18 **without the customer's authorization added the services to the**
19 **customer's service order.**
- 20 **Sec. 5. (a) The office of the utility consumer counselor and the**
21 **attorney general shall initially refer a complaint filed with their**
22 **respective agencies by a customer alleging a violation of this**
23 **chapter to the consumer division of the commission.**
- 24 (b) **The office of the utility consumer counselor and the attorney**
25 **general shall advise a customer filing a complaint under subsection**
26 **(a) that the customer may have the complaint reviewed by the**
27 **consumer affairs division of the commission under section 6 of this**
28 **chapter.**
- 29 **Sec. 6. (a) A customer or, in the event of a pattern of violations,**
30 **a telecommunications provider may directly file a complaint**
31 **alleging a violation of this chapter with the consumer affairs**
32 **division of the commission or through the office of the utility**
33 **consumer counselor or attorney general under section 5 of this**
34 **chapter. The consumer affairs division of the commission shall**
35 **consider and propose a disposition of a complaint under the**
36 **informal review process under 170 IAC 7-1.1-17.**
- 37 (b) **As part of the review process under subsection (a), the**
38 **consumer affairs division of the commission shall review the**
39 **information compiled and maintained under subsection (c) and**
40 **consider the number of complaints filed against the**
41 **telecommunications provider under this chapter.**
- 42 (c) **The consumer affairs division of the commission shall**

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1 compile and maintain a list of complaints filed under this chapter
2 that:

- 3 (1) is current;
4 (2) specifies the number of complaints filed against a single
5 telecommunications provider; and
6 (3) specifies the number of complaints filed against
7 telecommunications generally.

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

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

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

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

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

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

33 (b) The office of the utility consumer counselor:

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

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

41 (c) If the commission determines that a pattern of violations of
42 this chapter has occurred, it may revoke the telecommunications

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1 provider's certificate of territorial authority if the revocation is
 2 otherwise consistent with this article. The ability to revoke the
 3 telecommunications provider's certificate of territorial authority
 4 is in addition to other remedies available to the commission.

5 (d) The commission shall provide notice and conduct a hearing
 6 under this section consistent with the provisions of IC 8-1.

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

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

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

17 (1) may on its own motion; and

18 (2) shall at the request of a customer;

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

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

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

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

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

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

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- 1 **(1) The number of complaints filed under this chapter during**
- 2 **the reporting period.**
- 3 **(2) The telecommunications providers against which**
- 4 **complaints were filed.**
- 5 **(3) The disposition of the complaints.**
- 6 **(4) A chronological listing of the complaints filed against each**
- 7 **telecommunications provider as of the end of the reporting**
- 8 **period.**

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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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