



March 19, 1999

**ENGROSSED
HOUSE BILL No. 1434**

DIGEST OF HB 1434 (Updated March 16, 1999 2:20 pm - DI 75)

Citations Affected: IC 8-1; IC 23-7.

Synopsis: Telecommunications customers; professional solicitors and fundraisers. Provides that a customer's telecommunications provider may not be changed unless the customer's change order has been confirmed in writing, through an electronic authorization, by a qualified and independent third party, or through another procedure approved by the Indiana utility regulatory commission. Provides that the commission may impose a civil penalty of not more than \$2,500 if the commission finds that a telecommunications provider has violated the statute or the commission's rules adopted under the statute.

(Continued next page)

Effective: July 1, 1999.

Grubb, Yount, Hasler

(SENATE SPONSORS — LONG, LANANE)

January 19, 1999, read first time and referred to Committee on Commerce and Economic Development.

January 28, 1999, amended, reported — Do Pass.

February 2, 1999, read second time, amended, ordered engrossed.

February 3, 1999, engrossed.

February 8, 1999, read third time, recommitted to Committee of One, amended. Passed. Yeas 98, nays 0.

SENATE ACTION

February 22, 1999, read first time and referred to Committee on Commerce and Consumer Affairs.

March 18, 1999, amended, reported favorably — Do Pass.

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Digest Continued

Provides that the statute does not apply to commercial mobile radio service. Specifies that a charitable organization that resells used clothing or household items is not subject to the registration and reporting requirements for professional fundraiser consultants and professional solicitors. Requires a professional solicitor to submit the following information to the consumer protection division of the office of the attorney general after a solicitation campaign has ended: (1) the total gross amount of money raised by the professional solicitor and the charitable organization; (2) the total amount of money paid to or retained by the professional solicitor; (3) the total amount of expenses paid by the charitable organization, excluding money paid to the professional solicitor; and (4) the total amount of money paid to or retained by the charitable organization, after expenses and money paid to the professional solicitor are deducted. Provides that the consumer protection division may deny or revoke the registration of a professional solicitor who fails to submit this information after the end of a campaign. Provides that at the beginning of each solicitation call, a professional fundraiser consultant or a professional solicitor must state: (1) the name of the company for which the call is being made; (2) the name of the professional fundraiser consultant or professional solicitor; (3) the phone number and address of the location from which the call is being made; and (4) the percentage of the charitable contribution that will be expended for charitable purposes, after administrative costs and the costs of making the solicitation have been satisfied. Provides that the attorney general may impose fines on professional fundraiser consultants and professional solicitors for the late filing of reports.

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March 19, 1999

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

ENGROSSED HOUSE BILL No. 1434

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

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

1 SECTION 1. IC 8-1-29-1.3 IS ADDED TO THE INDIANA CODE
2 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 1999]: **Sec. 1.3. As used in this chapter, "letter of agency" means**
4 **a written statement that a customer signs that authorizes a change**
5 **to that customer's primary interexchange carrier or primary local**
6 **exchange carrier.**

7 SECTION 2. IC 8-1-29-1.5 IS ADDED TO THE INDIANA CODE
8 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
9 1, 1999]: **Sec. 1.5. As used in this chapter, "preferred carrier**
10 **change order" means a request to change a customer's**
11 **telecommunications provider.**

12 SECTION 3. IC 8-1-29-2 IS AMENDED TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 1999]: **Sec. 2. As used in this chapter,**
14 **"telecommunications" means the electronic transmission, between or**
15 **among points specified by the user, of information of the user's**
16 **choosing, without change in the form or content of the information sent**

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1 and received. **The term does not include commercial mobile radio**
 2 **service (as defined in 47 U.S.C. 332).**

3 SECTION 4. IC 8-1-29-5.5 IS ADDED TO THE INDIANA CODE
 4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 5 1, 1999]: **Sec. 5.5. A telecommunications provider may not submit**
 6 **a preferred carrier change order unless the order has first been**
 7 **confirmed in accordance with one (1) of the following procedures:**

8 (1) **The telecommunications provider has obtained the**
 9 **customer's written authorization through a letter of agency.**

10 (2) **The telecommunications provider has obtained the**
 11 **customer's electronic authorization:**

12 (A) **to submit a preferred carrier change order; and**

13 (B) **placed from a telephone number on which the**
 14 **telecommunications service is to be changed.**

15 **A call to the telecommunications provider under this**
 16 **subdivision must connect the customer to a voice response**
 17 **unit or a similar mechanism that records the required**
 18 **information regarding the preferred carrier change, including**
 19 **automatically recording the automatic number identification.**

20 (3) **An appropriately qualified and independent third party**
 21 **has obtained the customer's oral authorization to submit the**
 22 **preferred carrier change order. Such an authorization must**
 23 **confirm and include appropriate verification of the**
 24 **customer's identity.**

25 (4) **Any other procedure approved by the commission.**

26 SECTION 5. IC 8-1-29-6 IS AMENDED TO READ AS FOLLOWS
 27 [EFFECTIVE JULY 1, 1999]: **Sec. 6. The commission shall adopt rules**
 28 **under IC 4-22-2 designed to implement IC 8-1-29-5.5. The**
 29 **commission's rules shall ensure that a customer of a**
 30 **telecommunications provider is not:**

31 (1) **switched to another telecommunications provider without the**
 32 **customer's authorization; or**

33 (2) **billed for additional services by a telecommunications**
 34 **provider that without the customer's authorization added the**
 35 **services to the customer's service order.**

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

40 SECTION 6. IC 8-1-29-7 IS AMENDED TO READ AS FOLLOWS
 41 [EFFECTIVE JULY 1, 1999]: **Sec. 7. A complaint may be filed with**
 42 **the commission by any of the following:**



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- 1 (1) A customer of a telecommunications provider who has been:
 2 (A) switched by one (1) telecommunications provider to
 3 another telecommunications provider without the customer's
 4 authorization; or
 5 (B) billed for services by a telecommunications provider that
 6 without the customer's authorization added the services to the
 7 customer's service order.
 8 (2) A telecommunications provider that has been removed as a
 9 customer's telecommunications provider without the customer's
 10 authorization. ~~or~~
 11 (3) The commission on its own motion.
 12 (4) **The office of the utility consumer counselor.**

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

15 SECTION 7. IC 8-1-29-9 IS ADDED TO THE INDIANA CODE
 16 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY
 17 1, 1999]: **Sec. 9. (a) If after notice and hearing the commission finds**
 18 **that a telecommunications provider has violated this chapter or**
 19 **rules adopted under this chapter, the commission may impose a**
 20 **civil penalty of not more than two thousand five hundred dollars**
 21 **(\$2,500) for each offense.**

22 **(b) The secretary of the commission shall deposit civil penalties**
 23 **collected under subsection (a) in the state general fund.**

24 SECTION 8. IC 23-7-8-1 IS AMENDED TO READ AS FOLLOWS
 25 [EFFECTIVE JULY 1, 1999]: Sec. 1. As used in this chapter:

26 "Charitable organization" means any organization described in
 27 Section 501 of the federal Internal Revenue Code.

28 "Contribution" means a promise or pledge of money, a payment, or
 29 any other rendition of property or service. It does not include the
 30 payment of membership dues, fines or assessments, or payments for
 31 property sold or services rendered by the charitable organization, if not
 32 sold or rendered in connection with a solicitation, **and does not**
 33 **include a charitable organization that resells used clothing or**
 34 **household items.**

35 "Division" means the consumer protection division, office of the
 36 attorney general.

37 "Person" includes any individual, organization, trust foundation,
 38 association, partnership, limited liability company, or corporation.

39 "Professional fundraiser consultant" means any person who is hired
 40 for a fee to plan, manage, advise, or act as a consultant in connection
 41 with soliciting contributions for, or on behalf of, a charitable
 42 organization, but who does not actually solicit contributions as a part

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1 of the person's services or employ, procure, or engage a compensated
 2 person to solicit contributions. The term does not include a charitable
 3 organization, or a bona fide officer, employee, member, or volunteer of
 4 a charitable organization, **that solicits on its own behalf.**

5 "Professional solicitor" means a person who, for a financial
 6 consideration, solicits contributions for, or on behalf of, a charitable
 7 organization, either personally or through agents or employees
 8 specifically employed for that purpose. The term does not include a
 9 charitable organization, or an officer, **an** employee, **a** member, or **a**
 10 volunteer of a charitable organization, **that solicits on its own behalf.**

11 "Solicit" means:

12 (1) to request, other than as described in subdivision (2), directly
 13 or indirectly, financial assistance in any form on the
 14 representation that the financial assistance will be used for a
 15 charitable purpose; or

16 (2) to sell, offer, or attempt to sell any advertisement, advertising
 17 space, membership, or tangible item:

18 (A) in connection with which any appeal is made for any
 19 charitable organization or purpose;

20 (B) where the name of any charitable organization is used or
 21 referred to in any appeal made for any charitable organization
 22 as an inducement or reason for making a sale described in this
 23 subdivision; or

24 (C) when or where in connection with a sale described in this
 25 subdivision any statement is made that the whole or any part
 26 of the proceeds from the sale will be used for any charitable
 27 purpose or benefit any charitable organization.

28 A solicitation shall be considered to have taken place whether or not
 29 the person making the solicitation receives any contribution.

30 SECTION 9. IC 23-7-8-2 IS AMENDED TO READ AS FOLLOWS
 31 [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) A person may not act as a
 32 professional fundraiser consultant or professional solicitor for a
 33 charitable organization unless the person has first registered with the
 34 division. A person who applies for registration shall disclose the
 35 following information while under oath:

36 (1) The names and addresses of all officers, employees, and
 37 agents who are actively involved in fundraising or related
 38 activities.

39 (2) The names and addresses of all persons who own a ten percent
 40 (10%) or more interest in the registrant.

41 (3) A description of any other business related to fundraising
 42 conducted by the registrant or any person who owns ten percent

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- 1 (10%) or more interest.
- 2 (4) The name or names under which it intends to solicit
- 3 contributions.
- 4 (5) Whether the organization has ever had its registration denied,
- 5 suspended, revoked, or enjoined by any court or other
- 6 governmental authority.
- 7 (b) A registrant shall notify the division in writing within one
- 8 hundred eighty (180) days of any change in the information contained
- 9 in the registration. However, if requested by the division, the solicitor
- 10 has fifteen (15) days to notify the division of any change in the
- 11 information.
- 12 (c) Each registration is valid for one (1) year and may be renewed
- 13 for additional one (1) year periods upon application to the division and
- 14 payment of the renewal fee.
- 15 (d) Before acting as a professional fundraiser consultant for a
- 16 particular charitable organization, the consultant must enter into a
- 17 written contract with the organization and file this contract with the
- 18 division. The contract must identify the services that the professional
- 19 fundraiser consultant is to provide, including whether the professional
- 20 fundraiser consultant will at any time have custody of contributions.
- 21 (e) Before a professional solicitor engages in a solicitation, the
- 22 professional solicitor must have a contract which is filed with the
- 23 division. This contract must specify the percentage of gross
- 24 contributions which the charitable organization will receive or the
- 25 terms upon which a determination can be made as to the amount of the
- 26 gross revenue from the solicitation campaign that the charitable
- 27 organization will receive. The amount that the charitable organization
- 28 will receive must be expressed as a fixed percentage of the gross
- 29 revenue or as a reasonable estimate of the gross revenue. If a fixed
- 30 percentage is used, the percentage must exclude any amount that the
- 31 charitable organization is to pay as expenses of the solicitation
- 32 campaign, including the cost of the merchandise or services sold. If
- 33 requested by the charitable organization, the person who solicits must
- 34 at the conclusion of a charitable appeal provide to the charitable
- 35 organization the names and addresses of all contributors, the amount
- 36 of each contribution, and a final accounting of all expenditures. Such
- 37 information may not be used in violation of any trade secret laws. The
- 38 contract must disclose the average percentage of gross contributions
- 39 collected on behalf of charitable organizations that the charitable
- 40 organizations received from the professional solicitor for the three (3)
- 41 years preceding the year in which the contract is formed.
- 42 (f) Before beginning a solicitation campaign, a professional solicitor

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1 must file a solicitation notice with the division. The notice must include
2 the following:

- 3 (1) A copy of the contract described in subsection (e).
4 (2) The projected dates when soliciting will begin and end.
5 (3) The location and telephone number from where solicitation
6 will be conducted.
7 (4) The name and residence address of each person responsible
8 for directing and supervising the conduct of the campaign.
9 However, the division shall not divulge the residence address
10 unless ordered to do so by a court of competent jurisdiction, or in
11 furtherance of the prosecution of a violation under this chapter.
12 (5) If the solicitation is one described under section 7(a)(2) of this
13 chapter, the solicitation notice must include a copy of the required
14 written authorization.

15 (g) **Not later than ninety (90) days** after a solicitation campaign,
16 other than a campaign for which a written authorization has been filed
17 under subsection (f)(5), has ended, ~~a professional fundraiser consultant~~
18 ~~or~~ a professional solicitor shall submit the following information
19 concerning the campaign to the division:

- 20 (1) The total **gross** amount of money ~~collected~~ **raised** by the
21 professional solicitor **and the charitable organization from**
22 **donors**.
23 (2) The total amount of money paid to **or retained** by the
24 professional solicitor.
25 (3) The total amount of money, **not including the amount**
26 **identified under subsection (g)(2), that paid** by the charitable
27 organization ~~paid~~ as expenses as part of the solicitation campaign.
28 (4) The total amount of money ~~received~~ **paid to or retained** by
29 the charitable organization **after the amounts identified under**
30 **subsection (g)(2) and (g)(3) are deducted**.

31 **The division may deny or revoke the registration of a professional**
32 **solicitor who fails to comply with this subsection.**

33 (h) The charitable organization on whose behalf the professional
34 solicitor is acting must certify that the information filed under
35 subsections (f) and (g) is true and complete to the best of its
36 knowledge.

37 (i) **At the beginning of each solicitation call, a professional**
38 **fundraiser consultant and a professional solicitor must state all of**
39 **the following:**

- 40 (1) **The name of the company for whom the professional**
41 **fundraiser consultant or professional solicitor is calling.**
42 (2) **The name of the professional fundraiser consultant or**



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1 **professional solicitor.**

2 **(3) The phone number and address of the location from which**
 3 **the professional fundraiser consultant or professional solicitor**
 4 **is making the telephone call.**

5 **(4) The percentage of the charitable contribution that will be**
 6 **expended for charitable purposes after administrative costs**
 7 **and the costs of making the solicitation have been satisfied.**

8 SECTION 10. IC 23-7-8-8 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. (a) The division may
 10 receive, investigate, and prosecute complaints concerning the activities
 11 of professional fundraiser consultants and professional solicitors who:

12 (1) may be subject to this chapter; or

13 (2) have or may have violated this chapter.

14 All complaints must be in writing, signed by the complainant, and filed
 15 with the division.

16 (b) The attorney general may subpoena witnesses, send for and
 17 compel the production of books, records, papers, and documents of
 18 professional fundraiser consultants and professional solicitors who are
 19 subject to registration under this chapter, for the furtherance of any
 20 investigation under this chapter. The circuit or superior court located
 21 in the county where the subpoena is to be issued shall enforce any such
 22 subpoena by the attorney general.

23 (c) The attorney general may bring an action to enjoin a violation of
 24 this chapter. In this action, the court may order a person who has
 25 violated this chapter to pay the reasonable costs of investigation and
 26 prosecution incurred by the attorney general, may award the state civil
 27 penalties up to five hundred dollars (\$500) for each violation, and may
 28 order the professional fundraiser consultant or professional solicitor to
 29 repay money unlawfully received from aggrieved solicitees. In ordering
 30 injunctive relief, the division is not required to establish irreparable
 31 harm but only a violation of a statute or that the requested order
 32 promotes the public interest. It is an affirmative defense to the
 33 assessment of civil penalties under this subsection that the defendant
 34 acted pursuant to a good faith misunderstanding concerning the
 35 requirements of this chapter.

36 (d) A person who knowingly or intentionally:

37 (1) fails to file a registration statement or other information;

38 (2) files a statement or other information which is materially false;

39 or

40 (3) fails to make a disclosure;

41 as required by this chapter, commits a Class B misdemeanor. However,
 42 the offense is a Class A misdemeanor if the person has a previous

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1 unrelated conviction under this subsection.

2 (e) A local unit of government may adopt an ordinance which
3 regulates professional fundraisers and solicitors if the ordinance does
4 not conflict with this chapter.

5 (f) A professional fundraiser consultant, or a professional solicitor,
6 who has the person's principal place of business outside of Indiana, or
7 who has organized under the laws of another state, and who solicits
8 contributions from persons in Indiana, is subject to this chapter and
9 shall be considered to have appointed the secretary of state as his agent.
10 All service of process under this subsection shall be made on the
11 secretary of state under Rule 4.10 of the Indiana Rules of Trial
12 Procedure.

13 (g) **Under rules adopted by the attorney general, the attorney**
14 **general may impose fines on professional fundraiser consultants**
15 **and professional solicitors for the late filing of information**
16 **required to be filed under this chapter.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce and Economic Development, to which was referred House Bill 1434, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 32, after "deducted." begin a new line blocked left and insert:

"The division may deny or revoke the registration of a professional solicitor who fails to comply with this subsection."

and when so amended that said bill do pass.

(Reference is to HB 1434 as introduced.)

CROOKS, Chair

Committee Vote: yeas 13, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1434 be amended to read as follows:

Page 4, between lines 38 and 39, begin a new paragraph and insert:
 "SECTION 3. IC 23-7-8-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. (a) A person who solicits charitable contributions may not:

- (1) use the fact of registration as an endorsement by the state;
- (2) use the name "police", "law enforcement", "trooper", "rescue squad", "firemen", or "firefighter" unless a bona fide police, law enforcement, rescue squad, or fire department authorizes its use in writing;
- (3) misrepresent to anyone that the contribution will be used for a charitable purpose if the person has reason to believe the contribution will not be used for a charitable purpose;
- (4) misrepresent to anyone that another person endorses the solicitation unless that person has consented in writing to the use of the person's name for the purpose of endorsing the solicitation;
- (5) misrepresent to anyone that the contribution is solicited on behalf of anyone other than the charitable organization that authorized the solicitation; or
- (6) collect or attempt to collect a contribution in person or by means of a courier unless:
 - (A) the solicitation is made in person and the collection or attempt to collect is made at the time of the solicitation; or
 - (B) the contributor has agreed to purchase goods or items in connection with the solicitation, and the collection or attempt to collect is made at the time of delivery of the goods or items.

(b) A person who solicits charitable contributions shall not represent that tickets to events will be donated for use by another, unless the following requirements have been met:

- (1) The paid solicitor has commitments, in writing, from charitable organizations stating that they will accept donated tickets and specifying the number of tickets they are willing to accept.
- (2) No more contributions for donated tickets are solicited than the number of ticket commitments received from charitable organizations.

(c) A person who solicits a charitable contribution must, before making the solicitation to a person, disclose to the person the percentage of the charitable contribution that will be expended for charitable purposes, after administrative costs and the costs of

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making the solicitation have been satisfied."

Page 6, line 2, delete "Pursuant to" and insert "**Under**".
Renumber all SECTIONS consecutively.

(Reference is to HB 1434 as printed January 29, 1999.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1434 be amended to read as follows:

Page 1, line 9, strike ".".

Page 1, line 9, after "solicitation" insert ", and does not include a charitable organization that resells used clothing or household items."

(Reference is to HB 1434 as printed January 29, 1999.)

GRUBB

HOUSE MOTION

Mr. Speaker: I move that House Bill 1434 be amended to read as follows:

Page 4, between lines 38 and 39, begin a new paragraph and insert:

"(i) At the beginning of each solicitation call, a professional fundraiser consultant and a professional solicitor must state:

- (1) the name of the company for whom the professional fundraiser consultant or professional solicitor is calling;**
- (2) the name of the professional fundraiser consultant or professional solicitor; and**
- (3) the phone number and address of the location from which the professional fundraiser consultant or professional solicitor is making the telephone call."**

Page 6, line 2, delete "pursuant to" and insert "**under**".

(Reference is to HB 1434 as printed January 29, 1999.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1434 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-1-29-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: 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 **added to the customer's service order** by a telecommunications provider; ~~that without the customer's authorization added the services to the customer's service order.~~ **unless the telecommunications provider has prior written authorization from the customer."**

Page 6, line 2, delete "Pursuant to" and insert "**Under**".

(Reference is to HB 1434 as printed January 29, 1999.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1434 be recommitted to a Committee of One, its author, with specific instructions to amend as follows:

Page 2, line 4, delete "and does not include" and insert "**and does not include a charitable organization that resells used clothing or household items.**".

Page 2, delete line 5.

Page 4, line 38, delete "," and insert ",".

Page 5, line 1, delete "subsections" and insert "**subsection**".

Page 5, line 1, before "The" begin a new line blocked left.

(Reference is to HB 1434 as reprinted February 3, 1999.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee of One, to which was referred House Bill 1434, begs leave to report that said bill has been amended as directed.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred House Bill No. 1434, 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:

Delete the amendment made on motion of Representative Grubb adopted February 8, 1999.

Page 1, delete lines 1 through 10, begin a new paragraph and insert:

"SECTION 1. IC 8-1-29-1.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 1.3. As used in this chapter, "letter of agency" means a written statement that a customer signs that authorizes a change to that customer's primary interexchange carrier or primary local exchange carrier.**

SECTION 2. IC 8-1-29-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 1.5. As used in this chapter, "preferred carrier change order" means a request to change a customer's telecommunications provider.**

SECTION 3. IC 8-1-29-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **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. The term does not include commercial mobile radio service (as defined in 47 U.S.C. 332).**

SECTION 4. IC 8-1-29-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 5.5. A telecommunications provider may not submit a preferred carrier change order unless the order has first been confirmed in accordance with one (1) of the following procedures:**

- (1) The telecommunications provider has obtained the customer's written authorization through a letter of agency.
- (2) The telecommunications provider has obtained the customer's electronic authorization:
 - (A) to submit a preferred carrier change order; and
 - (B) placed from a telephone number on which the telecommunications service is to be changed.

A call to the telecommunications provider under this subdivision must connect the customer to a voice response unit or a similar mechanism that records the required



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information regarding the preferred carrier change, including automatically recording the automatic number identification.

(3) An appropriately qualified and independent third party has obtained the customer's oral authorization to submit the preferred carrier change order. Such an authorization must confirm and include appropriate verification of the customer's identity.

(4) Any other procedure approved by the commission.

SECTION 5. IC 8-1-29-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. The commission shall adopt rules under IC 4-22-2 designed to **implement IC 8-1-29-5.5. The commission's rules shall** 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.

SECTION 6. IC 8-1-29-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. A complaint may be filed with the commission by **any of the following:**

- (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 customer's authorization. ~~or~~
- (3) The commission on its own motion.

(4) The office of the utility consumer counselor.

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

SECTION 7. IC 8-1-29-9 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 1999]: **Sec. 9. (a) If after notice and hearing the commission finds**

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that a telecommunications provider has violated this chapter or rules adopted under this chapter, the commission may impose a civil penalty of not more than two thousand five hundred dollars (\$2,500) for each offense.

(b) The secretary of the commission shall deposit civil penalties collected under subsection (a) in the state general fund."

Page 2, line 4, delete "and does not include" and insert "and does not include a charitable organization that resells used clothing or household items."

Page 2, delete line 5.

Page 4, line 38, delete "," and insert " ,".

Page 5, line 1, delete "subsections" and insert "subsection".

Page 5, line 1, before "The" begin a new line blocked left.

Page 5, line 9, delete ":" and insert "all of the following:".

Page 5, line 10, delete "(1) the" and insert "(1) The".

Page 5, line 11, delete ";" and insert ".".

Page 5, line 12, delete "(2) the" and insert "(2) The".

Page 5, line 13, delete "; and" and insert ".".

Page 5, line 14, delete "(3) the" and insert "(3) The".

Page 5, between lines 16 and 17, begin a new line block indented and insert:

"(4) The percentage of the charitable contribution that will be expended for charitable purposes after administrative costs and the costs of making the solicitation have been satisfied."

Page 5, delete lines 17 through 42.

Page 6, delete lines 1 through 13.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1434 as reprinted February 3, 1999, and as amended on motion of Representative Grubb, adopted February 8, 1999.)

MILLS, Chairperson

Committee Vote: Yeas 8, Nays 0.

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Y

