



HOUSE BILL No. 5474

March 2, 2000, Introduced by Reps. Kowall, Gosselin, Rick Johnson, Richardville, Hager, Shackleton, Woodward and Bradstreet and referred to the Committee on Energy and Technology.

A bill to amend 1991 PA 179, entitled
"Michigan telecommunications act,"
(MCL 484.2101 to 484.2604) by adding section 507.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 507. (1) A TELECOMMUNICATIONS PROVIDER SHALL NOT
2 INCLUDE OR ADD OPTIONAL SERVICES IN AN END USER'S TELECOMMUNICA-
3 TIONS SERVICE PACKAGE WITHOUT THE AUTHORIZATION OF THE END USER.

4 (2) THE COMMISSION SHALL ISSUE ORDERS TO ENSURE THAT A TELE-
5 COMMUNICATIONS PROVIDER DOES NOT INCLUDE OR ADD OPTIONAL SERVICES
6 IN THE END USER'S TELECOMMUNICATIONS SERVICE PACKAGE WITHOUT THE
7 END USER'S ORAL AUTHORIZATION, WRITTEN CONFIRMATION, CONFIRMATION
8 THROUGH AN INDEPENDENT THIRD PARTY, OR OTHER VERIFICATION PROCE-
9 DURES APPROVED BY THE COMMISSION, CONFIRMING THE END USER'S
10 INTENT TO RECEIVE THE OPTIONAL SERVICES. THE ORDERS ISSUED UNDER
11 THIS SECTION SHALL REQUIRE THAT ALL PROVIDERS COMPLY WITH ANY

1 REGULATIONS ESTABLISHED BY THE FEDERAL COMMUNICATIONS COMMISSION
2 REGARDING THE PROVIDING OF OPTIONAL TELECOMMUNICATIONS SERVICES.

3 (3) UPON THE RECEIPT OF A COMPLAINT FILED BY A PERSON ALLEG-
4 ING A VIOLATION OF THIS SECTION OR UPON THE COMMISSION'S OWN
5 MOTION, THE COMMISSION MAY CONDUCT A CONTESTED CASE AS PROVIDED
6 UNDER SECTION 203.

7 (4) IF THE COMMISSION FINDS THAT A PERSON HAS VIOLATED THIS
8 SECTION OR AN ORDER ISSUED UNDER THIS SECTION, THE COMMISSION
9 SHALL ORDER REMEDIES AND PENALTIES TO PROTECT AND MAKE WHOLE END
10 USERS AND OTHER PERSONS WHO HAVE SUFFERED DAMAGES AS A RESULT OF
11 THE VIOLATION, INCLUDING, BUT NOT LIMITED TO, 1 OR MORE OF THE
12 FOLLOWING:

13 (A) ORDER THE PERSON TO PAY A FINE FOR THE FIRST OFFENSE OF
14 NOT LESS THAN \$10,000.00 OR MORE THAN \$20,000.00. FOR A SECOND
15 AND ANY SUBSEQUENT OFFENSE, THE COMMISSION SHALL ORDER THE PERSON
16 TO PAY A FINE OF NOT LESS THAN \$25,000.00 OR MORE THAN
17 \$40,000.00. IF THE COMMISSION FINDS THAT THE SECOND OR ANY OF
18 THE SUBSEQUENT OFFENSES WERE KNOWINGLY MADE IN VIOLATION OF
19 SECTION 505, THE COMMISSION SHALL ORDER THE PERSON TO PAY A FINE
20 OF NOT MORE THAN \$50,000.00.

21 (B) ORDER THE PROVIDER TO REFUND TO THE END USER ANY AMOUNT
22 THE END USER PAID TO THE PROVIDER FOR THE UNAUTHORIZED SERVICES.

23 (C) IF THE PERSON IS LICENSED UNDER THIS ACT, REVOKE THE
24 LICENSE IF THE COMMISSION FINDS A PATTERN OF VIOLATIONS OF THIS
25 SECTION.

26 (D) ISSUE CEASE AND DESIST ORDERS.

1 (5) NOTWITHSTANDING SUBSECTION (4), A FINE SHALL NOT BE
2 IMPOSED FOR A VIOLATION OF THIS SECTION IF THE PROVIDER HAS
3 OTHERWISE FULLY COMPLIED WITH THIS SECTION AND SHOWS THAT THE
4 VIOLATION WAS AN UNINTENTIONAL AND BONA FIDE ERROR NOTWITHSTAND-
5 ING THE MAINTENANCE OF PROCEDURES REASONABLY ADOPTED TO AVOID THE
6 ERROR. EXAMPLES OF A BONA FIDE ERROR INCLUDE CLERICAL, CALCULA-
7 TION, COMPUTER MALFUNCTION, PROGRAMMING, OR PRINTING ERRORS. AN
8 ERROR IN LEGAL JUDGMENT WITH RESPECT TO A PERSON'S OBLIGATIONS
9 UNDER THIS SECTION IS NOT A BONA FIDE ERROR. THE BURDEN OF PROV-
10 ING THAT A VIOLATION WAS AN UNINTENTIONAL AND BONA FIDE ERROR IS
11 ON THE PROVIDER.

12 (6) IF THE COMMISSION FINDS THAT A PARTY'S COMPLAINT OR
13 DEFENSE FILED UNDER THIS SECTION IS FRIVOLOUS, THE COMMISSION
14 SHALL AWARD TO THE PREVAILING PARTY COSTS, INCLUDING REASONABLE
15 ATTORNEY FEES, AGAINST THE NONPREVAILING PARTY AND THEIR
16 ATTORNEY.

17 (7) AS USED IN THIS SECTION:

18 (A) "END USER" MEANS THE RETAIL SUBSCRIBER OF A TELECOMMUNI-
19 CATIONS SERVICE.

20 (B) "TELECOMMUNICATIONS PROVIDER" OR "PROVIDER" MEANS A
21 PERSON THAT PROVIDES 1 OR MORE TELECOMMUNICATIONS SERVICES FOR
22 COMPENSATION. TELECOMMUNICATIONS PROVIDER DOES NOT INCLUDE A
23 PROVIDER OF COMMERCIAL MOBILE SERVICE AS DEFINED IN SECTION
24 332(d)(1) OR PART I OF TITLE III OF THE COMMUNICATIONS ACT OF
25 1934, CHAPTER 652, 96 STAT. 1096, 47 U.S.C. 332.