

As Passed by the House

123rd General Assembly

Regular Session

1999-2000

Sub. H. B. No. 177

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A B I L L

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| To amend sections 1345.01, 1345.02, 1345.99, and | 1 |
| 4905.99 and to enact sections 1345.18 to 1345.20 | 2 |
| and 4905.72 to 4905.74 of the Revised Code to | 3 |
| prohibit any person from switching a consumer's | 4 |
| provider of natural gas or public | 5 |
| telecommunications service without first obtaining | 6 |
| the consumer's verified consent, and to provide | 7 |
| various remedies and penalties for violations. | 8 |

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

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| Section 1. That sections 1345.01, 1345.02, 1345.99, and | 9 |
| 4905.99 be amended and sections 1345.18, 1345.19, 1345.20, | 10 |
| 4905.72, 4905.73, and 4905.74 of the Revised Code be enacted to | 11 |
| read as follows: | 12 |

Sec. 1345.01. As used in sections 1345.01 to 1345.13 of the Revised Code:

(A) "Consumer transaction" means a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things. "Consumer transaction" does not include transactions between persons, defined in sections 4905.03 and 5725.01 of the Revised Code, and their customers; transactions between certified public accountants or public accountants and their clients; transactions between attorneys, physicians, or dentists and their clients or patients; and transactions between veterinarians and their patients that pertain to medical treatment but not ancillary services.

(B) "Person" includes an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, cooperative, or other legal entity.

(C) "Supplier" means a seller, lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumer transactions, whether or not ~~he~~ the person deals directly with the consumer.

(D) "Consumer" means a person who engages in a consumer transaction with a supplier.

(E) "Knowledge" means actual awareness, but such actual awareness may be inferred where objective manifestations indicate that the individual involved acted with such awareness.

(F) "Natural gas service" means the sale of natural gas, exclusive of any distribution or ancillary service.

(G) "Public telecommunications service" means the

transmission by electromagnetic or other means, other than by a 43
telephone company as defined in section 4927.01 of the Revised 44
Code, of signs, signals, writings, images, sounds, messages, or 45
data originating in this state regardless of actual call routing. 46
"public telecommunications service" excludes a system, including 47
its construction, maintenance, or operation, for the provision of 48
telecommunications service, or any portion of such service, by any 49
entity for the sole and exclusive use of that entity, its parent, 50
a subsidiary, or an affiliated entity, and not for resale, 51
directly or indirectly; the provision of terminal equipment used 52
to originate telecommunications service; broadcast transmission by 53
radio, television, or satellite broadcast stations regulated by 54
the federal government; or cable television service. 55

Sec. 1345.02. (A) No supplier shall commit an unfair or 56
deceptive act or practice in connection with a consumer 57
transaction. Such an unfair or deceptive act or practice by a 58
supplier violates this section whether it occurs before, during, 59
or after the transaction. 60

(B) Without limiting the scope of division (A) of this 61
section, the act or practice of a supplier in representing any of 62
the following is deceptive: 63

(1) That the subject of a consumer transaction has 64
sponsorship, approval, performance characteristics, accessories, 65
uses, or benefits that it does not have; 66

(2) That the subject of a consumer transaction is of a 67
particular standard, quality, grade, style, prescription, or 68
model, if it is not; 69

(3) That the subject of a consumer transaction is new, or 70
unused, if it is not; 71

(4) That the subject of a consumer transaction is available 72

to the consumer for a reason that does not exist; 73

(5) That the subject of a consumer transaction has been 74
supplied in accordance with a previous representation, if it has 75
not, except that the act of a supplier in furnishing similar 76
merchandise of equal or greater value as a good faith substitute 77
does not violate this section; 78

(6) That the subject of a consumer transaction will be 79
supplied in greater quantity than the supplier intends; 80

(7) That replacement or repair is needed, if it is not; 81

(8) That a specific price advantage exists, if it does not; 82

(9) That the supplier has a sponsorship, approval, or 83
affiliation that ~~he~~ the supplier does not have; 84

(10) That a consumer transaction involves or does not involve 85
a warranty, a disclaimer of warranties or other rights, remedies, 86
or obligations if the representation is false. 87

(C) In construing division (A) of this section, the court 88
shall give due consideration and great weight to federal trade 89
commission orders, trade regulation rules and guides, and the 90
federal courts' interpretations of subsection 45 (a)(1) of the 91
"Federal Trade Commission Act," 38 Stat. 717 (1914), 15 U.S.C.A. 92
41, as amended. 93

(D) No supplier shall offer to a consumer or represent that a 94
consumer will receive a rebate, discount, or other benefit as an 95
inducement for entering into a consumer transaction in return for 96
giving the supplier the names of prospective consumers, or 97
otherwise helping the supplier to enter into other consumer 98
transactions, if earning the benefit is contingent upon an event 99
occurring after the consumer enters into the transaction. 100

(E)(1) No supplier, in connection with a consumer transaction 101
involving natural gas service or public telecommunications service 102

to a consumer in this state, shall request or submit, or cause to 103
be requested or submitted, a change in the consumer's provider of 104
natural gas service or public telecommunications service, without 105
first obtaining, or causing to be obtained, the verified consent 106
of the consumer. for the purpose of this division and with respect 107
to public telecommunications service only, the procedures 108
necessary for verifying the consent of a consumer shall be those 109
prescribed by rule by the public utilities commission for public 110
telecommunications service under division (D) of section 4905.72 111
of the Revised Code. Also, for the purpose of this division, the 112
act, omission, or failure of any officer, agent, or other 113
individual, acting for or employed by another person, while acting 114
within the scope of that authority or employment, is the act or 115
failure of that other person. 116

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(2) The attorney general may initiate criminal proceedings 118
for a prosecution under division (B) of section 1345.99 of the 119
Revised Code by presenting evidence of criminal violations to the 120
prosecuting attorney of any county in which the offense may be 121
prosecuted. if the prosecuting attorney does not prosecute the 122
violations, or at the request of the prosecuting attorney, the 123
attorney general may proceed in the prosecution with all the 124
rights, privileges, and powers conferred by law on prosecuting 125
attorneys, including the power to appear before grand juries and 126
to interrogate witnesses before grand juries. 127

Sec. 1345.18. (A) As used in this section: 128

(1) "Consumer," "person," and "supplier" have the same 129
meanings as in section 1345.01 of the Revised Code. 130

(2) "Consumer transaction" has the same meaning as in section 131
1345.01 of the Revised Code except that the sale, lease, 132
assignment, award by chance, or other transfer of an item of 133

goods, a service, a franchise, or an intangible, or solicitation 134
to supply any of those things, to an individual is for purposes 135
that are primarily other than personal, family, or household. 136

(3) "Natural gas service" means the sale of natural gas, 137
exclusive of any distribution or ancillary service. 138

(4) "Public telecommunications service" means the 139
transmission by electromagnetic or other means, other than by a 140
telephone company as defined in section 4927.01 of the Revised 141
Code, of signs, signals, writings, images, sounds, messages, or 142
data originating in this state regardless of actual call routing. 143
"public telecommunications service" excludes a system, including 144
its construction, maintenance, or operation, for the provision of 145
telecommunications service, or any portion of such service, by any 146
entity for the sole and exclusive use of that entity, its parent, 147
a subsidiary, or an affiliated entity, and not for resale, 148
directly or indirectly; the provision of terminal equipment used 149
to originate telecommunications service; broadcast transmission by 150
radio, television, or satellite broadcast stations regulated by 151
the federal government; or cable television service. 152

(B) No supplier, in connection with a consumer transaction 153
involving natural gas service or public telecommunications service 154
to a consumer in this state, shall request or submit, or cause to 155
be requested or submitted, a change in the consumer's provider of 156
natural gas service or public telecommunications service, without 157
first obtaining, or causing to be obtained, the verified consent 158
of the consumer. for the purpose of this division and with respect 159
to public telecommunications service only, the procedures 160
necessary for verifying the consent of a consumer shall be those 161
prescribed by rule by the public utilities commission for public 162
telecommunications service under division (D) of section 4905.72 163
of the Revised Code. Also, for the purpose of this division, the 164
act, omission, or failure of any officer, agent, or other 165

individual, acting for or employed by another person, while acting 166
within the scope of that authority or employment, is the act or 167
failure of that other person. 168

Sec. 1345.19. (A) The courts of common pleas, and municipal 169
or county courts within their respective jurisdictions, have 170
jurisdiction over any supplier with respect to a violation of 171
section 1345.18 of the Revised Code or any claim arising from a 172
consumer transaction subject to that section. 173

(B) The power, remedies, forfeitures, and penalties provided 174
by sections 1345.18 to 1345.20 and division (B) of section 1345.99 175
of the Revised Code are in addition to any other power, remedy, 176
forfeiture, or penalty provided by law. 177

Sec. 1345.20. (A) AN AGGRIEVED CONSUMER MAY bring an action 178
for a DECLARATORY JUDGMENT, an INJUNCTION, OR OTHER APPROPRIATE 179
RELIEF AGAINST A SUPPLIER THAT IS VIOLATING OR HAS VIOLATED 180
SECTION 1345.18 OF THE REVISED CODE. THE COURT MAY ISSUE ANY ORDER 181
OR ENTER A JUDGMENT AS NECESSARY TO ENSURE COMPLIANCE WITH SECTION 182
1345.18 OF THE REVISED CODE OR PREVENT ANY act or PRACTICE THAT 183
VIOLATES THAT SECTION. IN ADDITION, UPON A PREPONDERANCE OF THE 184
EVIDENCE, THE COURT: 185

(1) SHALL ISSUE AN ORDER PROVIDING FOR ALL OF THE FOLLOWING: 186

(a) Rescinding the aggrieved consumer's change in service 187
provider; 188

(b) Requiring the supplier to absolve the aggrieved consumer 189
of any liability for any charges assessed the consumer, or refund 190
to the aggrieved consumer any charges collected from the consumer, 191
by the supplier during such period, after the violation occurred, 192
that is determined reasonable by the court; 193

(c) Requiring the supplier to refund or pay to the aggrieved 194
consumer any fees paid or costs incurred by the consumer resulting 195

from the change of the consumer's service provider or providers, 196
or from the resumption of the consumer's service with the service 197
provider or providers from which the consumer was switched; 198

(d) Requiring the supplier to make the consumer whole 199
regarding any bonuses or benefits, such as airline mileage or 200
product discounts, to which the consumer is entitled, by restoring 201
bonuses or benefits the consumer lost as a result of the violation 202
and providing bonuses or benefits the consumer would have earned 203
if not for the violation, or by providing something of equal 204
value. 205

(2) May issue an order providing for any of the following: 206

(a) Requiring the supplier to comply or undertake any 207
necessary corrective action; 208

(b) Assessing upon the supplier forfeitures of not more than 209
one thousand dollars for each day of each violation. However, if 210
the preponderance of the evidence shows that the supplier has 211
engaged or is engaging in a pattern or practice of committing any 212
such violations, the court may assess upon the supplier 213
forfeitures of not more than five thousand dollars for each day of 214
each violation. Upon collection, one-half of any such forfeiture 215
assessed under this division shall be paid to the treasurer of the 216
county in which the action was brought and one-half shall be paid 217
into the state treasury to the credit of the general revenue fund. 218

(B) UPON A FINDING IN AN ACTION UNDER DIVISION (a) OF THIS 219
SECTION THAT A SUPPLIER IS VIOLATING OR HAS VIOLATED SECTION 220
1345.18 OF THE REVISED CODE, a service provider or providers of 221
natural gas service or public telecommunications service FROM WHOM 222
THE aggrieved CONSUMER WAS SWITCHED may BRING AN ACTION SEEKING 223
THE RELIEF AUTHORIZED BY THIS DIVISION. upon the filing of suCH 224
action, the court may issue an order providing for either of the 225
following: 226

(1) Requiring the supplier to compensate the service provider 227
or providers from which the aggrieved consumer was switched in the 228
amount of all charges the consumer would have paid that particular 229
service provider for the same or comparable service had the 230
violation or failure to comply not occurred; 231

(2) Requiring the supplier to compensate the service provider 232
or providers from which the aggrieved consumer was switched for 233
any costs that the particular service provider incurs as a result 234
of making the consumer whole as provided in division (A)(1)(d) of 235
this section or of effecting the resumption of the consumer's 236
service. 237

(C) No action may be brought under division (A) of this 238
section to recover for a transaction more than two years after the 239
occurrence of a violation. No action may be brought under division 240
(B) of this section more than one year after the date on which a 241
ruling in an action brought under division (A) of this section was 242
rendered. 243

Sec. 1345.99. (A) Whoever violates section 1345.23 or 1345.24 244
of the Revised Code is guilty of a minor misdemeanor. 245

(B) Whoever violates division (D) of section 1345.76 of the 246
Revised Code shall be fined not more than one thousand dollars. 247

(C) Whoever knowingly violates division (E) of section 248
1345.02 or knowingly violates section 1345.18 of the Revised Code 249
is guilty of a misdemeanor of the third degree for a first offense 250
and a misdemeanor of the second degree for any subsequent offense. 251

Sec. 4905.72. (A) As used in this section: 252

(1) "Natural gas service" means the sale of natural gas, 253
exclusive of any distribution or ancillary service. 254

(2) "Public telecommunications service" means the 255

transmission by a telephone company, by electromagnetic or other 256
means, of signs, signals, writings, images, sounds, messages, or 257
data originating in this state regardless of actual call routing, 258
but does not include a system, including its construction, 259
maintenance, or operation, for the provision of telecommunications 260
service, or any portion of such service, by any entity for the 261
sole and exclusive use of that entity, its parent, a subsidiary, 262
or an affiliated entity, and not for resale, directly or 263
indirectly; the provision of terminal equipment used to originate 264
telecommunications service; broadcast transmission by radio, 265
television, or satellite broadcast stations regulated by the 266
federal government; or cable television service. 267

(B)(1) No public utility shall request or submit, or cause to 268
be requested or submitted, a change in the provider of natural gas 269
service or public telecommunications service to a consumer in this 270
state, without first obtaining, or causing to be obtained, the 271
verified consent of the consumer in accordance with rules adopted 272
by the public utilities commission pursuant to division (D) of 273
this section. 274

(2) No public utility shall violate or fail to comply with 275
any provision of a rule adopted by the commission pursuant to 276
division (D) of this section or any provision of an order issued 277
by the commission pursuant to division (B) or (C) of section 278
4905.73 of the Revised Code. 279

(C)(1) Division (B) of this section does not apply to the 280
transfer of a customer's natural gas service or public 281
telecommunications service that occurs solely due to the operation 282
of default provisions in the schedule of a public utility filed 283
under section 4905.30 of the Revised Code. 284

(2) Consistent with the exclusion, under 47 C.F.R. 64.1100 285
(a)(3), of commercial mobile radio service providers from the 286
verification requirements adopted in 47 C.F.R. 64.1100, 64.1150, 287

64.1160, 64.1170, 64.1180, and 64.1190 by the federal 288
communications commission, division (B) of this section does not 289
apply to the transfer of a customer's commercial mobile radio 290
service. however, at such time as that exclusion no longer is in 291
effect, division (B) of this section shall apply to such a 292
transfer, and the commission shall adopt rules applicable to such 293
a transfer in accordance with division (D) of this section. 294

(D) The commission shall adopt competitively neutral rules 295
prescribing procedures necessary for verifying the consent of a 296
consumer for purposes of division (B)(1) of this section and any 297
procedures necessary for the filing of a security under division 298
(C)(5) of section 4905.73 of the Revised Code, and may adopt such 299
other competitively neutral rules as the commission considers 300
necessary to carry out this section and section 4905.73 of the 301
Revised Code. with respect to public telecommunications service 302
only, the rules prescribing procedures necessary for verifying 303
consumer consent shall be consistent with the rules of the federal 304
communications commission in 47 C.F.R. 64.1100 and 64.1150. 305

Sec 4905.73. (A) The public utilities commission, upon 306
complaint by any person or complaint or initiative of the 307
commission, has jurisdiction under section 4905.26 of the Revised 308
Code regarding any violation of division (B) of section 4905.72 of 309
the Revised Code by a public utility. 310

(B) Upon complaint or initiative under division (A) of this 311
section, if the commission finds, after notice and hearing 312
pursuant to section 4905.26 of the Revised Code, that a public 313
utility has violated section 4905.72 of the Revised Code, the 314
commission, by order, shall do all of the following: 315

(1) Rescind the aggrieved consumer's change in service 316
provider; 317

(2) Require the public utility to absolve the aggrieved 318

consumer of any liability for any charges assessed the consumer, 319
or refund to the aggrieved consumer any charges collected from the 320
consumer, by the public utility during the thirty-day period after 321
the violation or failure to comply occurred or, where appropriate, 322
during such other period after that occurrence as determined 323
reasonable by the commission; 324

(3) Require the public utility to refund or pay to the 325
aggrieved consumer any fees paid or costs incurred by the consumer 326
resulting from the change of the consumer's service provider or 327
providers, or from the resumption of the consumer's service with 328
the service provider or providers from which the consumer was 329
switched; 330

(4) Require the public utility to make the consumer whole 331
regarding any bonuses or benefits, such as airline mileage or 332
product discounts, to which the consumer is entitled, by restoring 333
bonuses or benefits the consumer lost as a result of the violation 334
or failure to comply and providing bonuses or benefits the 335
consumer would have earned if not for the violation or failure to 336
comply, or by providing something of equal value. 337

(C) In addition to the remedies under division (B) of this 338
section, if the commission finds, after notice and hearing 339
pursuant to section 4905.26 of the Revised Code, that a public 340
utility has violated section 4905.72 of the Revised Code, the 341
commission, by order, may impose any of the following remedies or 342
forfeitures: 343

(1) Require the public utility to comply or undertake any 344
necessary corrective action; 345

(2) Require the public utility to compensate the service 346
provider or providers from which the aggrieved consumer was 347
switched in the amount of all charges the consumer would have paid 348
that particular service provider for the same or comparable 349

service had the violation or failure to comply not occurred; 350

(3) Require the public utility to compensate the service 351
provider or providers from which the aggrieved consumer was 352
switched for any costs that the particular service provider incurs 353
as a result of making the consumer whole as provided in division 354
(B)(4) of this section or of effecting the resumption of the 355
consumer's service; 356

(4) Assess upon the public utility forfeitures of not more 357
than one thousand dollars for each day of each violation or 358
failure to comply. However, if the commission finds that the 359
public utility has engaged or is engaging in a pattern or practice 360
of committing any such violations or failures to comply, the 361
commission may assess upon the public utility forfeitures of not 362
more than five thousand dollars for each day of each violation or 363
failure. Any forfeiture collected pursuant to this division shall 364
be deposited into the state treasury to the credit of the general 365
revenue fund. 366

(5) Require the public utility to file with the commission a 367
security payable to the state in such amount and upon such terms 368
as the commission determines necessary to ensure compliance and 369
payment of any forfeitures assessed pursuant to division (C)(4) of 370
this section; 371

(6) Rescind the public utility's authority to provide natural 372
gas service or public telecommunications service within this 373
state. 374

(D) Proceedings of the commission pursuant to division (B) or 375
(C) of this section are governed by Chapter 4903. of the Revised 376
Code. 377

(E) The commission may direct the attorney general to 378
commence an action under section 4905.57 or 4905.60 of the Revised 379
Code to enforce an order of the commission issued under division 380

(B) or (C) of this section, including orders assessing 381
forfeitures. Notwithstanding section 4905.57 of the Revised Code, 382
an action authorized under this division may be brought in the 383
court of common pleas of Franklin county or the court of common 384
pleas of any county in which venue is proper under the Rules of 385
Civil Procedure. 386

(F) The remedy available under section 4905.61 of the Revised 387
Code may be applied to any violation of section 4905.72 of the 388
Revised Code. 389

(G) The powers, remedies, forfeitures, and penalties provided 390
by this section and section 4905.72 and division (D) of section 391
4905.99 of the Revised Code are in addition to any other power, 392
remedy, forfeiture, or penalty provided by law. 393

Sec. 4905.74. No public utility shall knowingly engage in a 394
persistent practice or pattern of conduct of violating division 395
(B) of section 4905.72 of the Revised Code. 396

Sec. 4905.99. (A) Whoever violates section 4905.52 of the 397
Revised Code shall be fined not less than fifty nor more than five 398
hundred dollars. 399

(B) Whoever violates section 4905.56 of the Revised Code is 400
guilty of a felony of the fifth degree. 401

(C) Coincident with the operation of section 4905.78 of the 402
Revised Code, whoever violates that section is guilty of a 403
misdemeanor of the fourth degree. 404

(D) Whoever violates section 4905.74 of the Revised Code is 405
guilty of a misdemeanor of the third degree. 406

Section 2. That existing sections 1345.01, 1345.02, 1345.99, 407
and 4905.99 of the Revised Code are hereby repealed. 408