

AN ACT

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

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

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

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

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

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

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

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

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

(4) That the subject of a consumer transaction is available to the consumer for a reason that does not exist;

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

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

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

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

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

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

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

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

(E)(1) No supplier, in connection with a consumer transaction involving natural gas service or public telecommunications service to a consumer in this state, shall request or submit, or cause to be requested or submitted, a change in the consumer's provider of natural gas service or public telecommunications service, without first obtaining, or causing to be obtained, the verified consent of the consumer. for the purpose of this division and with respect to public telecommunications service only, the procedures necessary for verifying the consent of a consumer shall be those prescribed by rule by the public utilities commission for public telecommunications service under division (D) of section 4905.72 of the Revised Code. Also, for the purpose of this division, the act, omission, or failure of any officer, agent, or other individual, acting for or employed by another person, while acting within the scope of that authority or employment, is the act or failure of that other person.

(2) Consistent with the exclusion, under 47 C.F.R. 64.1100(a)(3), of commercial mobile radio service providers from the verification requirements adopted in 47 C.F.R. 64.1100, 64.1150, 64.1160, 64.1170, 64.1180, and 64.1190 by the federal communications commission, division (E)(1) of this section does not apply to a provider of commercial mobile radio service insofar as such provider is engaged in the provision of commercial mobile radio service. However, when that exclusion no longer is in effect, division (E)(1) of this section shall apply to such a provider.

(3) The attorney general may initiate criminal proceedings for a prosecution under division (C) of section 1345.99 of the Revised Code by

presenting evidence of criminal violations to the prosecuting attorney of any county in which the offense may be prosecuted. if the prosecuting attorney does not prosecute the violations, or at the request of the prosecuting attorney, the attorney general may proceed in the prosecution with all the rights, privileges, and powers conferred by law on prosecuting attorneys, including the power to appear before grand juries and to interrogate witnesses before grand juries.

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

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

(2) "Consumer transaction" has the same meaning as in section 1345.01 of the Revised Code except that the sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, or solicitation to supply any of those things, to an individual is for purposes that are primarily other than personal, family, or household.

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

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

(B)(1) No supplier, in connection with a consumer transaction involving natural gas service or public telecommunications service to a consumer in this state, shall request or submit, or cause to be requested or submitted, a change in the consumer's provider of natural gas service or public telecommunications service, without first obtaining, or causing to be obtained, the verified consent of the consumer. for the purpose of this division and with respect to public telecommunications service only, the procedures necessary for verifying the consent of a consumer shall be those prescribed by rule by the public utilities commission for public telecommunications service under division (D) of section 4905.72 of the Revised Code. Also, for the purpose of this division, the act, omission, or

ilure of any officer, agent, or other individual, acting for or employed by another person, while acting within the scope of that authority or employment, is the act or failure of that other person.

(2) Consistent with the exclusion, under 47 C.F.R. 64.1100(a)(3), of commercial mobile radio service providers from the verification requirements adopted in 47 C.F.R. 64.1100, 64.1150, 64.1160, 64.1170, 64.1180, and 64.1190 by the federal communications commission, division (B)(1) of this section does not apply to a provider of commercial mobile radio service insofar as such provider is engaged in the provision of commercial mobile radio service. However, when that exclusion no longer is in effect, division (B)(1) of this section shall apply to such a provider.

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

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

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

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

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

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

(c) Requiring the supplier to refund or pay to the aggrieved consumer any fees paid or costs incurred by the consumer resulting from the change of the consumer's service provider or providers, or from the resumption of the consumer's service with the service provider or providers from which the

consumer was switched:

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

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

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

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

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

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

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

(C) No action may be brought under division (A) of this section to recover for a transaction more than two years after the occurrence of a violation. No action may be brought under division (B) of this section more

than one year after the date on which a ruling in an action brought under division (A) of this section was rendered.

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

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

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

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

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

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

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

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

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

(2) Consistent with the exclusion, under 47 C.F.R. 64.1100 (a)(3), of commercial mobile radio service providers from the verification

requirements adopted in 47 C.F.R. 64.1100, 64.1150, 64.1160, 64.1170, 64.1180, and 64.1190 by the federal communications commission, division (B) of this section does not apply to a provider of commercial mobile radio service insofar as such provider is engaged in the provision of commercial mobile radio service. however, when that exclusion no longer is in effect, division (B) of this section shall apply to such a provider, and the commission shall adopt rules applicable to such a provider in accordance with division (D) of this section.

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

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

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

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

(2) Require the public utility to absolve the aggrieved consumer of any liability for any charges assessed the consumer, or refund to the aggrieved consumer any charges collected from the consumer, by the public utility during the thirty-day period after the violation or failure to comply occurred or, where appropriate, during such other period after that occurrence as determined reasonable by the commission;

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

(4) Require the public utility to make the consumer whole regarding any bonuses or benefits, such as airline mileage or product discounts, to which

the consumer is entitled, by restoring bonuses or benefits the consumer lost as a result of the violation or failure to comply and providing bonuses or benefits the consumer would have earned if not for the violation or failure to comply, or by providing something of equal value.

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

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

(2) Require the public utility to compensate the service provider or providers from which the aggrieved consumer was switched in the amount of all charges the consumer would have paid that particular service provider for the same or comparable service had the violation or failure to comply not occurred;

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

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

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

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

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

(E) The commission may direct the attorney general to commence an action under section 4905.57 or 4905.60 of the Revised Code to enforce an order of the commission issued under division (B) or (C) of this section.

including orders assessing forfeitures. Notwithstanding section 4905.57 of the Revised Code, an action authorized under this division may be brought in the court of common pleas of Franklin county or the court of common pleas of any county in which venue is proper under the Rules of Civil Procedure.

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

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

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

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

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

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

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

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

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 177

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____