

1                                   **UNAUTHORIZED CHARGES ON UTILITY**

2                                   **BILLS - CRAMMING AMENDMENTS**

3                                   2000 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Sponsor: Sheryl L. Allen**

6 AN ACT RELATING TO PUBLIC UTILITIES; PROVIDING DEFINITIONS; PROHIBITING  
7 UNAUTHORIZED CHARGES ON PUBLIC UTILITY BILLS; AND ENACTING RELATED  
8 PROVISIONS.

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 ENACTS:

11                   **54-4-37**, Utah Code Annotated 1953

12 *Be it enacted by the Legislature of the state of Utah:*

13                   Section 1. Section **54-4-37** is enacted to read:

14                   **54-4-37. Definitions -- Unauthorized charge to account -- Penalties -- Procedures for**  
15 **verification -- Authority of commission.**

16                   (1) For purposes of this section:

17                   (a) "Agents" includes any person, firm, or corporation representing a public utility for  
18 purposes of billing for a service or merchandise from a third-party supplier.

19                   (b) "Billing aggregator" means any person, corporation, partnership, or other entity which  
20 initiates charges, combines or aggregates charges from third-party suppliers of services or  
21 merchandise, creates bills for account holders and passes these bills to another aggregator or to a  
22 public utility for the billing of account holders.

23                   (c) (i) "Public utility" means a company or utility providing:

24                   (A) natural gas services;

25                   (B) electrical services; or

26                   (C) telecommunications services.

27                   (ii) "Public utility" does not include a telecommunications corporation providing only

28 mobile wireless service or Internet access.

29 (d) "Subscriber" means a corporation, person, or government, or a person acting legally  
30 on behalf of a corporation, person, or government who has authorized a charge from a third-party  
31 provider of service or merchandise.

32 (e) (i) "Third party" means any person, corporation, partnership, or other entity other than  
33 the account holder and the public utility, including aggregators and public utility or nonpublic  
34 utility providers of services and merchandise, and includes those entities billing for services or  
35 merchandise, and those verifying a subscriber's authorization.

36 (ii) "Third party" does not include an affiliated or subsidiary company of a public utility  
37 whose charges the commission determines by rule would be reasonably associated by a subscriber  
38 with the type of charges that would appear on that particular public utility's bill.

39 (2) This section does not apply to telecommunications services that are used, initiated, or  
40 requested by the customer, including dial-around services such as 10-10-XXX, 1-900 numbers,  
41 directory assistance, operator-assisted calls, acceptance of collect calls, and other casual calling  
42 by the customer.

43 (3) Pursuant to the provisions of the section, a public utility may not charge an account  
44 holder for services the holder never ordered nor knowingly authorized.

45 (4) Each public utility may include in its bills to account holders, billed amounts for  
46 authorized services or merchandise from third parties, only in conformance with the following  
47 requirements.

48 (a) Each public utility shall ensure that its account holders receive:

49 (i) identification of third-party provider of services or merchandise;

50 (ii) toll-free numbers to enable a subscriber to contact the third party to resolve disputes;

51 (iii) a clear, concise description of services or merchandise being billed;

52 (iv) highlight or identification of each service or merchandise different from prior billing  
53 cycle services or merchandise;

54 (v) clear identification of the payment amount needed for each service or merchandise to  
55 ensure that any public utility service will continue;

56 (vi) prompt and courteous treatment of all disputed charges; and

57 (vii) notice of the provisions in Subsections (5) and (6).

58 (5) Unless specifically instructed by the account holder, each public utility shall first apply

59 all payments received to the account holder's bill for the public utility's own tariffed utility  
60 services. Any remaining credit shall then be allocated proportionally to other charges, unless  
61 otherwise specified by the account holder.

62 (6) No public utility may disconnect or threaten disconnection of any account holder's  
63 basic utility service for failure to pay third-party charges.

64 (7) Accounts receivable purchased by a public utility from third parties are not to be  
65 treated as public utility charges regardless of the service or product upon which the account  
66 receivable is based.

67 (8) (a) If an account holder informs the public utility that a third-party service or  
68 merchandise charge is neither knowingly used nor authorized, or the charge in whole or part is  
69 disputed, the public utility shall:

70 (i) immediately credit the account holder's account for the disputed amount and refer the  
71 matter back to the third party for collection; or

72 (ii) suspend the account holder's obligation of payment of the disputed amount until it is  
73 determined whether the charge was either knowingly used or authorized.

74 (b) The public utility may not request the account holder to contact the third party to  
75 resolve the dispute prior to applying the credit.

76 (c) The disputed charge shall be removed from the public utility's bill to the account holder  
77 no later than two billing cycles following the billing cycle during which the complaint or dispute  
78 is registered unless it is later determined that the charge was authorized and the account holder is  
79 required to pay such charge.

80 (d) The public utility shall inform the account holder of this process and the holder's  
81 options immediately upon the holder's first complaint or inquiry.

82 (e) Except as provided in Subsection (8)(c), once the charges have been removed from the  
83 account holder's utility bill:

84 (i) the third party may not use the utility bill to rebill the charges or further attempt to  
85 collect the charge; and

86 (ii) the public utility may not allow any further collection attempts by the third party to  
87 involve the utility bill.

88 (9) (a) If requested by the account holder, each public utility shall provide the account  
89 holder with toll-free numbers supplied by the provider of the service or merchandise, so the

90 account holder may contact the third-party supplier of the services or merchandise billed.

91 (b) The public utility responsibility prescribed by Subsection (9)(a) applies through all  
92 layers of third parties, including utilities, service providers, merchandise providers, affiliate billing  
93 companies, or billing aggregators, and the public utility shall perform due diligence to acquire that  
94 information from any provider for whom it bills.

95 (10) A third-party provider of services or merchandise shall not request a public utility to  
96 bill its charges unless and until it:

97 (a) has provided to the public utility valid toll-free numbers to enable a subscriber to  
98 contact the third-party to resolve any disputed charges;

99 (b) has provided updated toll-free numbers to the public utility upon any change in the  
100 numbers; and

101 (c) has received authorization from the subscriber for the service or merchandise through:

102 (i) obtaining the subscriber's written authorization;

103 (ii) having the subscriber's oral authorization verified by an independent verifier; or

104 (iii) any means provided by rule of the commission.

105 (11) If the subscriber is not an individual, an authorization shall be valid only if given by  
106 an authorized representative of the subscriber.

107 (12) The written authorization for the service or merchandise shall be signed by the  
108 subscriber and shall contain a clear, conspicuous, and unequivocal request by the subscriber for  
109 the service or merchandise.

110 (13) The confirmation by a verifier shall, at a minimum:

111 (a) confirm the subscriber's identity with information unique to the customer, unless the  
112 customer refuses to provide identifying information, then that fact shall be noted;

113 (b) confirm that the subscriber requests the service or merchandise be provided by the third  
114 party; and

115 (c) confirm that the subscriber has the authority to request the service or merchandise be  
116 provided by the third party.

117 (14) A verifier shall meet each of the following:

118 (a) any criteria set for verifiers by the commission;

119 (b) not be directly or indirectly managed, controlled, directed, or owned wholly or in part:

120 (i) by the public utility on whose bill the charge will appear, the third-party provider, or

121 their agents that seek to provide the service or merchandise or by any corporation, firm, or person  
122 who directly owns or indirectly manages, controls, directs, or owns more than 5% of the public  
123 utility or third party provider; or

124 (ii) by the marketing entity that seeks to market the third-party provider's service or  
125 merchandise or by any corporation, firm, or person who directly or indirectly manages, controls,  
126 or owns more than 5% of the marketing entity;

127 (c) operate from facilities physically separated from:

128 (i) those facilities of the public utility on whose bill the charge will appear, the third party  
129 or its agents that seek to provide the service or merchandise to the subscriber; or

130 (ii) those facilities of the marketing entity that seeks to market the third-party provider's  
131 service or merchandise to the subscriber; and

132 (d) not derive commissions or compensation based upon the number of authorizations  
133 verified.

134 (15) A verifier that obtains the subscriber's oral verification regarding the change shall  
135 record that verification by obtaining the appropriate verification data.

136 (16) (a) The record verifying a subscriber's request for a third party to provide services or  
137 merchandise shall be available to the subscriber upon request.

138 (b) Information obtained from the subscriber through verification may not be used for any  
139 other purpose.

140 (c) Any intentional unauthorized release of the information in Subsection (16)(b) is  
141 grounds for penalties or other action by the commission or remedies provided by law to the  
142 aggrieved subscriber against the third-party provider, the verifier, their agents, or their employees  
143 who are responsible for the violation.

144 (17) The verification shall occur in the same language as that in which the request was  
145 solicited.

146 (18) Each public utility shall allow account holders to prohibit the public utility from  
147 billing for all or selected third parties for services or merchandise.

148 (19) Each public utility shall maintain monthly records of the number of cramming  
149 complaints about third-party service or merchandise that were reported by account holders.

150 (20) (a) Proceedings for violations of this section may be commenced by request for  
151 agency action filed with the commission by an account holder, a public utility, the Division of

152 Public Utilities, or by the commission on its own motion.

153 (b) The remedies provided by this chapter are not exclusive and are in addition to all other  
154 causes of action, remedies, and penalties provided by law.

155 (21) Any public utility, its agents, or a third-party provider of goods or services who  
156 violates this section or rules adopted to implement this section shall be subject to the provisions  
157 of Sections 54-7-23 through 54-7-29.

158 (22) The division shall have power to seek injunctive relief to stop repeated unauthorized  
159 violations of this section by a public utility or a third-party provider of service or merchandise.

160 (23) The commission is granted authority to enforce provisions of this section and  
161 implement rules to carry out the requirements of the section.

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**Legislative Review Note**

**as of 1-7-00 7:50 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**