

**UNAUTHORIZED CHARGES ON UTILITY
BILLS - CRAMMING AMENDMENTS**

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Sheryl L. Allen

Patrice M. Arent

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

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

ENACTS:

54-4-37, Utah Code Annotated 1953

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

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

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

(1) For purposes of this section:

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

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

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

(A) natural gas services;

(B) electrical services; or

(C) telecommunications services.

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

mobile wireless service or Internet access.

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

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

(ii) "Third party" does not include:

(A) an affiliated or subsidiary company of a public utility whose charges the commission determines by rule would be reasonably associated by a subscriber with the type of charges that would

appear on that particular public utility's bill; or

(B) charges from a presubscribed local or long distance telecommunications corporation or its affiliated or subsidiary company for local or long distance telephone, data, or wireless services.

(2) This section does not apply to:

(a) telecommunications services that are used, initiated, or requested by the customer, including dial-around services such as 10-10-XXX, 1-900 numbers, directory assistance, operator-assisted calls, acceptance of collect calls, and other casual calling by the customer;

(b) changes in telecommunications providers regulated by Section 54-8b-18; or

(c) the provision of any charges for financing by an affiliated or subsidiary company of a public utility in connection with the purchase of services or merchandise, provided that there is a written agreement for the financing between the customer and the affiliated or subsidiary company.

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

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

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

(b) upon subscriber request, toll-free numbers to enable a subscriber to contact the third party to resolve disputes;

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

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

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

(f) prompt and courteous treatment of all disputed charges; and

(g) information about the provisions in Subsections (5) and (6).

(5) Unless specifically instructed by the account holder, each public utility shall first apply all payments received to the account holder's bill for the public utility's own tariffed utility services. Any remaining credit shall then be allocated proportionally to other charges, unless otherwise specified by the account holder.

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

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

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

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

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

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

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

required to pay such charge.

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

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

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

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

(9) (a) If requested by the account holder, each public utility shall provide the account holder with toll-free numbers supplied by the provider of the service or merchandise, so the account holder may contact the third-party supplier of the services or merchandise billed.

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

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

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

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

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

(i) obtaining the subscriber's written authorization;

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

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

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

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

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

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

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

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

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

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

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

(i) by the public utility on whose bill the charge will appear, the third-party provider, or their agents that seek to provide the service or merchandise or by any corporation, firm, or person who directly owns or indirectly manages, controls, directs, or owns more than 5% of the public utility or third-party provider; or

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

(c) operate from facilities physically separated from:

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

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

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

(15) A verifier that obtains the subscriber's oral verification regarding the change shall record

that verification by obtaining the appropriate verification data.

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

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

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

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

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

(19) Each public utility shall maintain monthly records of the number of complaints about unauthorized charges that appear on a public utility bill which shall be available to the commission upon request.

(20) (a) Proceedings for violations of this section may be commenced by request for agency action filed with the commission by an account holder, a public utility, the Division of Public Utilities, or by the commission on its own motion.

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

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

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

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

