

**UNAUTHORIZED CHARGES ON UTILITIES -
CRAMMING AMENDMENTS**

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Sheryl L. Allen

This act modifies the Public Utilities code to exclude cities, towns, and counties as third party providers from the requirements regarding unauthorized charges to a public utility account and to make technical changes.

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

AMENDS:

54-4-37, as enacted by Chapter 31, Laws of Utah 2000

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

Section 1. Section **54-4-37** is amended 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]~~ that:

(i) initiates charges~~[-];~~

(ii) combines or aggregates charges from third-party suppliers of services or merchandise~~[-]; or~~

(iii) (A) creates bills for account holders; and

(B) passes these bills for the billing of account holders to:

(I) another billing aggregator; or ~~[to]~~

(II) a public utility ~~[for the billing of account holders].~~



28 (c) (i) "Public utility" ~~§ [means a company or utility providing:]~~ IS AS DEFINED IN SECTION
 28a 54-2-1.

29 ~~[(A) natural gas services;~~

30 ~~[(B) electrical services; or]~~

31 ~~[(C) telecommunications services.]~~ §

32 (ii) "Public utility" does not include a telecommunications corporation providing only
 33 mobile wireless service or Internet access.

34 (d) "Subscriber" means a ~~[corporation,]~~ person[;] or government[;] or a person acting
 35 legally on behalf of a ~~[corporation,]~~ person[;] or government who ~~[has authorized]~~ authorizes a
 36 charge from a third-party provider of service or merchandise.

37 (e) (i) "Third party" means any person~~[, corporation, partnership, or other entity]~~ other than
 38 the account holder and the public utility~~[, including aggregators and]~~.

39 (ii) "Third party" includes:

40 (A) a billing aggregator;

41 (B) a public utility [or];

42 (C) a nonpublic utility [providers] provider of services and merchandise[, and includes];

43 (D) those [entities] persons billing for services or merchandise[;]; and

44 (E) those persons verifying a subscriber's authorization.

45 (ii) "Third party" does not include:

46 (A) an affiliated or subsidiary company of a public utility whose charges the commission
 47 determines by rule would be reasonably associated by a subscriber with the type of charges that
 48 would appear on that particular public utility's bill; [or]

49 (B) ~~[charges from]~~ a presubscribed local or long distance telecommunications corporation
 50 or its affiliated or subsidiary company as to charges for local or long distance telephone, data, or
 51 wireless services.

52 (2) This section does not apply to:

53 (a) telecommunications services that are used, initiated, or requested by the customer,
 54 including dial-around services such as:

55 (i) 10-10-XXX[;];

56 (ii) 1-900 numbers[;];

57 (iii) directory assistance[;];

58 (iv) operator-assisted calls[;];

59 (v) acceptance of collect calls[;]; and

60 (vi) other casual calling by the customer;

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

62 (c) the provision of any charges for financing by an affiliated or subsidiary company of a
63 public utility in connection with the purchase of services or merchandise[~~,-provided that~~] if there
64 is a written agreement for the financing between the customer and the affiliated or subsidiary
65 company[;]; or

66 (d) § EXCEPT FOR SUBSECTIONS (5) AND (6), § services provided by any of the following that
66a are billed through a public utility:

67 (i) a city;

68 (ii) a town; or

69 (iii) a county.

70 (3) Pursuant to [~~the provisions of the~~] this section, a public utility may not charge an
71 account holder for services the account holder never:

72 (a) ordered [~~nor~~]; or

73 (b) knowingly authorized.

74 (4) [~~Each~~] A public utility shall ensure that its account holders receive:

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

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

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

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

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

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

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

85 (5) (a) Unless specifically instructed by the account holder, each public utility shall first
86 apply all payments received to the account holder's bill for the public utility's own tariffed utility
87 services.

88 (b) Any remaining credit after the application of payment under Subsection (5)(a) shall
89 [~~then~~] be allocated proportionally to other charges, unless otherwise specified by the account

90 holder.

91 (6) ~~[No]~~ A public utility may not disconnect or threaten disconnection of any account
92 holder's basic utility service for failure to pay third-party charges.

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

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

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

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

103 (b) The public utility may not request the account holder to contact the third party to
104 resolve the dispute prior to applying the credit under Subsection (8)(a).

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

109 ~~(d) [The public utility shall inform the account holder of this process and the holder's~~
110 ~~options immediately]~~ Immediately upon the account holder's first complaint or inquiry, the public
111 utility shall inform the account holder of:

112 (i) the process provided in this Subsection (8); and

113 (ii) the account holder's options.

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

116 (i) the third party may not use the utility bill to:

117 (A) rebill the charges; or

118 (B) further attempt to collect the charge; and

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

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

124 (b) The public utility responsibility prescribed by Subsection (9)(a) applies through all
125 layers of third parties, including:

126 (i) public utilities[-];

127 (ii) service providers[-];

128 (iii) merchandise providers[-];

129 (iv) affiliate billing companies[-]; or

130 (v) billing aggregators[-, ~~and the~~].

131 (c) A public utility shall perform due diligence to acquire [that] the information required
132 under this Subsection (9) from any provider for whom it bills.

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

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

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

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

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

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

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

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

145 (12) The written authorization for the service or merchandise described in Subsection (10)
146 shall;

147 (a) be signed by the subscriber; and ~~shall~~

148 (b) contain a clear, conspicuous, and unequivocal request by the subscriber for the service
149 or merchandise.

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

151 (a) (i) confirm the subscriber's identity with information unique to the customer[-, ~~unless~~];

152 or

153 (ii) if the customer refuses to provide identifying information, ~~[then that]~~ note the fact
154 ~~[shall be noted]~~ that the customer would not provide the identifying information;

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

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

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

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

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

162 by:

163 (i) ~~[by]~~ the public utility on whose bill the charge will appear~~[-, the];~~

164 (ii) a third-party provider~~[-, or their agents];~~

165 (iii) an agent of a public utility or third party provider that ~~[seek]~~ seeks to provide the
166 service or merchandise ~~[or by any corporation, firm, or];~~

167 (iv) a person who directly owns or indirectly manages, controls, directs, or owns more than
168 5% of the public utility or third-party provider described in Subsection (14)(b)(i) or (ii); ~~[or]~~

169 ~~[(i) by]~~ (v) the marketing entity that seeks to market the third-party provider's service or
170 merchandise; or ~~[by]~~

171 (vi) any ~~[corporation, firm, or]~~ person who directly or indirectly manages, controls, or
172 owns more than 5% of the marketing entity described in Subsection (14)(b)(v);

173 (c) operate from facilities physically separated from~~[-(i)]~~ those facilities of:

174 (i) the public utility on whose bill the charge will appear[-];

175 (ii) the third party or its agents that seek to provide the service or merchandise to the
176 subscriber; or

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

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

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

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

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

187 (c) Any intentional unauthorized release of the information in violation of Subsection
188 (16)(b) is grounds for:

189 (i) penalties or other action by the commission; or

190 (ii) remedies provided by law to the aggrieved subscriber against any of the following who
191 is responsible for the violation:

192 (A) the third-party provider[;];

193 (B) the verifier[, their agents, or their employees who are responsible for the violation.];

194 (C) an agent or employee of the third party provider or verifier.

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

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

199 (19) (a) Each public utility shall maintain monthly records of the number of complaints
200 about unauthorized charges that appear on a public utility bill [~~which~~].

201 (b) The records described in Subsection (19)(a) shall be available to the commission upon
202 request.

203 (20) (a) Proceedings for violations of this section may be commenced by request for
204 agency action filed with the commission by:

205 (i) an account holder[;];

206 (ii) a public utility[;];

207 (iii) the Division of Public Utilities[;]; or [by]

208 (iv) the commission on [its] the commissioner's own motion.

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

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

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

217 (23) The commission is granted authority to:

218 (a) enforce [~~provisions of~~] this section; and

219 (b) implement rules to carry out the requirements of the section.

Legislative Review Note

as of 11-21-00 1:50 PM

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

Office of Legislative Research and General Counsel

Committee Note

The Public Utilities and Technology Interim Committee recommended this bill.