

HOUSE BILL NO. 611

INTRODUCED BY H. JACOBSON

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO

5 TELECOMMUNICATIONS ACCESS SERVICES FOR PERSONS WITH DISABILITIES; AUTHORIZING THE

6 DEPARTMENT OF REVENUE TO COLLECT THE TELECOMMUNICATIONS ACCESS SERVICES AND

7 SPECIALIZED TELECOMMUNICATIONS EQUIPMENT FEE, CONDUCT AUDITS, AND ENGAGE IN OTHER

8 ENFORCEMENT ACTIVITIES; CLARIFYING THAT PROVIDERS OF PREPAID WIRELESS SERVICES ARE

9 REQUIRED TO ASSESS AND COLLECT THE TELECOMMUNICATIONS ACCESS SERVICES AND

10 SPECIALIZED TELECOMMUNICATIONS EQUIPMENT FEE; AMENDING SECTIONS 2-15-2212, 53-19-302,

11 53-19-306, 53-19-307, 53-19-308, 53-19-310, 53-19-311, AND 69-3-1302, MCA; REPEALING SECTION

12 53-19-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

13

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15

16 **Section 1.** Section 2-15-2212, MCA, is amended to read:

17 **"2-15-2212. Committee on telecommunications access services for persons with disabilities --**

18 **composition -- allocation.** (1) There is a committee on Montana telecommunications access services for

19 persons with disabilities.

20 (2) The committee consists of 13 members appointed by the governor as follows:

- 21 (a) four members who are persons with disabilities, two of whom must be deaf or hard-of-hearing;
- 22 (b) two members who are not persons with disabilities, one of whom must be engaged in a business
- 23 other than a business in the telecommunications industry and one of whom must be a senior citizen;
- 24 (c) one member from the department of public health and human services;
- 25 (d) one member from the largest ~~local exchange company~~ service provider in Montana;
- 26 (e) one member from an independent ~~local exchange company~~ service provider;
- 27 (f) one member from an interLATA interexchange carrier;
- 28 (g) one member from the public service commission;
- 29 (h) one member who is a licensed audiologist; and
- 30 (i) one member from the department of administration.

1 (3) The committee is allocated to the department of public health and human services for administrative  
2 purposes only as provided in 2-15-121."

3

4 **Section 2.** Section 53-19-302, MCA, is amended to read:

5 **"53-19-302. Definitions.** As used in this part, unless the context requires otherwise, the following  
6 definitions apply:

7 ~~(1) "Access line" means the local access connections between a customer's premises and the service~~  
8 ~~provider's point of presence, which is the service provider's equipment for the transmission of oral~~  
9 ~~communications between two or more persons.~~

10 ~~(1)(2)(1)~~ "Committee" means the committee on telecommunications access services for persons with  
11 disabilities established in 2-15-2212.

12 ~~(2) "Local exchange company" means a telecommunications company that provides telephone access~~  
13 ~~lines or wireless service to members of the general public who are its customers.~~

14 ~~(3)(2)~~ "Department" means the department of revenue.

15 ~~(3)~~ "END USER CONNECTION" MEANS A CUSTOMER'S CONNECTION TO A SERVICE PROVIDER'S NETWORK.

16 ~~(3)(4)~~ "Mobility-impaired" "Mobility-disabled" means the condition of a person with reduced function of  
17 the arms, legs, and or hands making activities related to moving, turning, or pressing objects difficult or  
18 impossible. The term includes difficulty in using a wide range of telecommunications equipment.

19 ~~(5)~~ "Net amount billed for the fee" means the gross amount billed for fees imposed by 53-19-311, less  
20 adjustments for uncollectible accounts, refunds, incorrect billings, and other appropriate adjustments.

21 ~~(4)(6)~~ "Person with a disability" means the condition of a person who is deaf and blind, deaf,  
22 hard-of-hearing, ~~speech-impaired~~ speech-disabled, or ~~mobility-impaired~~ mobility-disabled.

23 ~~(5)(7)~~ "Program" means the program established in 53-19-306.

24 ~~(8)~~ "Service provider" means an entity that offers services to subscribers in Montana to allow two or more  
25 persons in different locations to communicate orally, without regard to the technology or medium the entity uses  
26 to provide the telecommunications service, and access to telecommunications relay service. THE TERM INCLUDES  
27 PROVIDERS OF TELECOMMUNICATIONS SERVICE INCLUDING BUT NOT LIMITED TO PROVIDERS OF INTERNET  
28 PROTOCOL-ENABLED VOICE COMMUNICATIONS SERVICE.

29 ~~(6)(9)~~ "Specialized telecommunications equipment" means any telecommunications device that enables  
30 or assists a person with a disability to communicate with others by means of the ~~conventional telephone network~~

1 public switched TELEPHONE NETWORK or internet protocol-enabled VOICE communications networks SERVICE. The  
 2 term includes but is not limited to text telephones (TTY), amplifiers, signaling devices, puff-blow devices,  
 3 electronic artificial larynx devices, telebraille, and equipment for the ~~mobility-impaired~~ mobility-disabled.

4 (10) "Subscriber" means an end user who receives telecommunications network access from a service  
 5 provider.

6 (11) "Telecommunications" means the transmission, between or among points specified by the user, of  
 7 information of the user's choosing without a change in the form or content of the information upon receipt.

8 ~~(7)~~(12) "Telecommunications relay service" means a service that permits full and simultaneous  
 9 communication between those using specialized telecommunications equipment and those using conventional  
 10 telephone equipment or any other technology or equipment, including but not limited to personal computers and  
 11 videophones.

12 ~~(8) "Telephone access line" means the telephone exchange access line or channel or wireless service~~  
 13 ~~that provides the customer of a local exchange company with access to the telecommunications network to effect~~  
 14 ~~the transfer of information."~~

15  
 16 **Section 3.** Section 53-19-306, MCA, is amended to read:

17 **"53-19-306. Program established -- purpose.** (1) The committee shall establish and administer a  
 18 program to provide specialized telecommunications equipment and services to persons with disabilities.

19 (2) The purpose of the program is to:

20 (a) furnish specialized telecommunications equipment to meet the needs of persons with disabilities; and

21 (b) provide a telecommunications relay service system to connect persons with disabilities with all  
 22 phases of public telecommunications service, including telecommunications service to emergency services and  
 23 public safety agencies as defined in 10-4-101.

24 ~~(3) The legislature may allocate funds from this program to the Montana school for the deaf and blind~~  
 25 ~~to be used to provide services to hearing-impaired students for the biennium ending June 30, 2005."~~

26  
 27 **Section 4.** Section 53-19-307, MCA, is amended to read:

28 **"53-19-307. Provision of services.** (1) In administering the program established in 53-19-306 for  
 29 individuals, the committee shall:

30 (a) develop an appropriate means test to determine eligibility for ~~participation in the program~~ specialized

1 telecommunications equipment based on family income of less than 250% of the federal poverty level;

2 (b) require that ~~participants in the program~~ the person with a disability be ~~residents~~ a resident of Montana  
3 and that residency be maintained as a condition of eligibility for ~~continued participation in the program~~ specialized  
4 telecommunications equipment;

5 (c) require ~~that participants~~ persons with a disability to provide satisfactory evidence that they have  
6 disabilities and would benefit from the use of specialized telecommunications equipment;

7 (d) provide specialized telecommunications equipment to participants through loan, lease, cost-sharing,  
8 or other methods that are determined appropriate by the committee;

9 (e) determine the type of specialized telecommunications equipment that it considers necessary and  
10 economically feasible for use by Montana's persons with disabilities;

11 (f) purchase or lease all specialized telecommunications equipment through bid by wholesale  
12 manufacturers on a competitive basis;

13 (g) require, as a condition of each equipment purchase or lease, that the ~~original manufacturer~~  
14 equipment vendor provide repair and maintenance service for new and returned equipment;

15 (h) maintain records for a minimum of 5 years of each item of equipment, including the location, serial  
16 number, and telephone number of each device;

17 ~~(i) at the discretion of the committee, require an appropriate security deposit for equipment at the time~~  
18 ~~of delivery that must be refunded without interest when the equipment is returned;~~

19 ~~(j)(i)~~ (i) make reasonable efforts to recover equipment from those who become ineligible for continued  
20 participation in the program;

21 ~~(k)(i)~~ (j) provide a telecommunications relay service system that would be available statewide for operation  
22 7 days a week, 24 hours a day, including holidays; and

23 ~~(l)~~ (k) adopt rules necessary to administer the program.

24 (2) In adopting rules to implement subsections (1)(a) and (1)(d), the committee may, based upon  
25 available funds, provide the specialized telecommunications equipment, without charge, to individuals whose  
26 family income is less than 250% of the federal poverty level."  
27

28 **Section 5.** Section 53-19-308, MCA, is amended to read:

29 **"53-19-308. Telecommunications relay service system -- requirements.** The committee shall contract  
30 with a one or more qualified provider providers to design and implement a telecommunications relay service

1 system that fulfills the purpose described in 53-19-306. The committee shall require, under the terms of the  
2 contract, that:

- 3 (1) the system relay all messages promptly and accurately;  
4 (2) the system maintain the privacy of persons using the system; and  
5 (3) the provider preserve the confidentiality of all ~~telephone~~ communications, except in instances in which  
6 the confidentiality would further a violation of the law."  
7

8 **Section 6.** Section 53-19-310, MCA, is amended to read:

9 **"53-19-310. Fund Account for telecommunications services and specialized telecommunications**  
10 **equipment for persons with disabilities.** (1) There is an account for telecommunications services and  
11 specialized telecommunications equipment for persons with disabilities in the state special revenue fund in the  
12 state treasury. The account consists of:

- 13 (a) all monetary contributions, gifts, and grants received by the committee as provided in 53-19-309; and  
14 (b) all ~~charges~~ fees billed and collected pursuant to 53-19-311.

15 (2) ~~Unless allocated to the Montana school for the deaf and blind, the~~ The money in the account is  
16 allocated to the committee for purposes of implementing this part.

17 (3) All expenditures of the committee in administering this part must be paid from money deposited in  
18 the account."  
19

20 **Section 7.** Section 53-19-311, MCA, is amended to read:

21 **"53-19-311. Special assessment.** (1) A ~~charge~~ fee of 10 cents a month must be assessed on each  
22 ~~telephone access line~~ END USER CONNECTION provided and billed or any prepaid options by each ~~local exchange~~  
23 ~~company service provider~~ and is imposed for the purposes of this part.

24 (2) Each ~~customer~~ subscriber of a ~~local exchange company service provider~~ is liable for payment to the  
25 ~~local exchange company service provider~~ of any ~~charge~~ fee properly imposed pursuant to this part. The ~~local~~  
26 ~~exchange company service provider~~ is not liable for any uncollected ~~charge~~ fee, nor does the ~~company service~~  
27 ~~provider~~ have an obligation to take legal action to enforce the collection of any ~~charge~~ fee that is unpaid by its  
28 ~~customers~~ subscribers.

29 (3) ~~(A)~~ Each ~~local exchange company service provider~~ that periodically bills subscribers for its services  
30 shall bill each ~~customer~~ subscriber for the ~~charge~~ fee provided for in subsection (1). For subscribers who are not

1 billed periodically, including but not limited to subscribers who purchase prepaid wireless telecommunication  
 2 services for a flat fee, the service provider shall include in the price of the service a fee of 10 cents for each  
 3 30-day period during which the subscriber is authorized to use the service; OR A PREPAID WIRELESS TELEPHONE  
 4 SERVICE PROVIDER SHALL REMIT AN AMOUNT EQUAL TO THE FEES ESTABLISHED IN SUBSECTION (1) AFTER COLLECTING  
 5 THE AMOUNT USING ONE OF THE FOLLOWING OPTIONS:

6 (I) ON A MONTHLY BASIS, THE PREPAID SERVICE PROVIDER SHALL COLLECT AN AMOUNT EQUAL TO THE FEES  
 7 ESTABLISHED IN SUBSECTION (1) FROM EACH ACTIVE PREPAID SUBSCRIBER WHOSE ACCOUNT BALANCE IS EQUAL TO OR  
 8 GREATER THAN THE FEES ESTABLISHED IN SUBSECTION (1); OR

9 (II) THE PREPAID SERVICE PROVIDER SHALL DIVIDE THE TOTAL INTRASTATE MONTHLY REVENUE BY THE AVERAGE  
 10 REVENUE FOR EACH PREPAID SUBSCRIBER OF THE WIRELESS INDUSTRY TO DETERMINE THE NUMBER OF PREPAID  
 11 SUBSCRIBERS. THE FEES ESTABLISHED IN SUBSECTION (1) ARE THEN APPLIED TO THE NUMBER OF PREPAID SUBSCRIBERS.

12 (B) EACH SERVICE PROVIDER SHALL FILE A RETURN PROVIDED BY THE DEPARTMENT REPORTING THE AMOUNT  
 13 OF FEES COLLECTED ON ACCESS LINE SERVICES DURING THE QUARTER. Except as provided in subsection (4), all  
 14 ~~charges billed and fees~~ collected by a ~~local exchange company~~ service provider must be transmitted to the ~~state~~  
 15 ~~treasurer~~ department no later than the last day of the month following the end of each calendar quarter in which  
 16 ~~the charge is billed~~ fees are collected. All ~~charges~~ fees received by the ~~state treasurer~~ department must be  
 17 deposited in the ~~fund~~ account established in 53-19-310 to the credit of the committee.

18 (4) Each ~~local exchange company~~ service provider may deduct and retain 3/4 of 1% of the total ~~charges~~  
 19 ~~billed and fees~~ collected each month to cover its administrative expenses in complying with the requirements of  
 20 subsection (3)."

21

22 **Section 8.** Section 69-3-1302, MCA, is amended to read:

23 **"69-3-1302. Definitions.** As used in this part, the following definitions apply:

24 (1) "Billing agent" means a telecommunications carrier that includes in a bill that it sends to a customer  
 25 a charge for a product or service offered by a service provider.

26 (2) "Billing aggregator" means any entity, other than a service provider, that forwards the charge for a  
 27 product or service offered by a service provider to a billing agent.

28 (3) "Customer" means a person who has purchased telecommunications services from a  
 29 telecommunications carrier or who has been billed charges on a telephone bill for the services or products of  
 30 another entity.

1 (4) "Electronic signature" has the meaning as provided in 30-18-102.

2 (5) "Local exchange company" ~~has the meaning as provided in 53-19-302:~~ means a telecommunications  
 3 company that provides telephone lines or wireless service to members of the general public who are its  
 4 customers.

5 (6) "Primary interexchange carrier" means the telecommunications carrier from which a customer  
 6 chooses to purchase long-distance services.

7 (7) "Service provider" means any entity, other than the billing agent, that offers a product or service to  
 8 a customer, the charge for which appears on the bill of a billing agent.

9 (8) (a) "Telecommunications carrier" or "carrier" means any provider of telecommunications services.  
 10 An entity providing other products and services is considered a telecommunications carrier only to the extent that  
 11 the entity is engaged in providing telecommunications services.

12 (b) The term does not mean aggregators of telecommunications services as defined in 47 U.S.C. 226."  
 13

14 NEW SECTION. Section 9. Records -- audit. (1) Each service provider required to collect the fee  
 15 provided for in 53-19-311 shall maintain and have available for inspection by the department books, ledgers,  
 16 registers, or other documents showing the collection of the fee for telecommunications access services and  
 17 specialized telecommunications equipment for persons with disabilities for the preceding 5 years or until any  
 18 dispute or litigation concerning the fees is resolved, whichever is later.

19 (2) At the request of the committee or on its own initiative, the department or a third party designated by  
 20 the department may audit the records of any service provider to ensure proper accounting of all fees billed and  
 21 collected pursuant to 53-19-311. Any expenses of the audit must be paid by the program.  
 22

23 ~~NEW SECTION. Section 10. Deadline for filing returns.~~ (1) ~~The service provider collecting the fee~~  
 24 ~~under 53-19-311 shall file a return with the department on or before the last day of the month following the end~~  
 25 ~~of each calendar quarter, reporting the amount of fees collected on access line services during the quarter.~~

26 ~~(2) The service provider required to make the return shall pay the fees due the department at the time~~  
 27 ~~fixed for filing the return. The service provider shall pay the fees based on the net amount billed for the fees during~~  
 28 ~~the quarter.~~

30 NEW SECTION. Section 10. Service provider required to hold fee in trust for state penalty and

1 **interest.** (1) Each service provider required to collect the fee imposed by 53-19-311 holds the fee in trust for the  
2 state of Montana and for payment of the fee to the department as provided in ~~[section 10]~~ 53-19-311.

3 (2) (a) A service provider that fails to file the return required in ~~[section 10]~~ 53-19-311 must be assessed  
4 a penalty as provided in 15-1-216. The department may waive any penalty as provided in 15-1-206.

5 (b) A service provider that fails to make payment or fails to report and make payment as required by  
6 ~~[section 10]~~ 53-19-311 must be assessed penalty and interest as provided in 15-1-216. The department may  
7 waive any penalty pursuant to 15-1-206.

8 (c) Interest on fees not paid when due is assessed in the same manner as taxes not paid when due as  
9 provided in 15-1-216.

10 (3) (a) If a service provider fails to file the return required by ~~[section 10]~~ 53-19-311 or if the department  
11 determines that the report understates the amount of fees due, the department may determine the amount of the  
12 fees due and assess that amount against the service provider. The provisions of 15-1-211 apply to any  
13 assessment by the department. The service provider may seek review of the assessment pursuant to 15-1-211.

14 (b) When a deficiency is determined and the amount due becomes final, the department shall mail a  
15 notice and demand for payment to the owner or operator. Penalty and interest must be added to any deficiency  
16 as provided in 15-1-216.

17  
18 **NEW SECTION. Section 11. Credit or refund for overpayment -- interest on overpayment.** (1) If  
19 the department determines that the amount of fees, penalty, or interest paid for any year is more than the amount  
20 due, the amount of the overpayments must be credited against any fees, penalty, or interest then due from the  
21 service provider and the balance refunded to the service provider or the service provider's successor through  
22 reorganization, merger, or consolidation, or to the service provider's shareholders upon dissolution.

23 (2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is  
24 charged on deficiency assessments as provided in ~~[section 14]~~ 15-1-216 from the due date of the return or from  
25 the date of overpayment, whichever date is later, to the date the department approved refunding or crediting of  
26 the overpayment.

27 (3) (a) Interest does not accrue during any period in which the processing of a claim for a refund is  
28 delayed more than 30 days by reason of failure of the service provider to furnish information requested by the  
29 department for the purpose of verifying the amount of the overpayment.

30 (b) Interest is not allowed if:



1 (i) the overpayment is refunded within 6 months from the date the return is due or from the date the  
2 return is filed, whichever is later; or

3 (ii) the amount of interest is less than \$1.

4 (c) Only a payment made incident to a bona fide and orderly discharge of actual liability is considered  
5 an overpayment with respect to which interest is allowed.

6  
7 ~~NEW SECTION. Section 13. Refund to service provider for excess payment of fees -- limitations.~~

8 ~~(1) If the amount paid by a service provider to the department exceeds the amount of fees owed, the department~~  
9 ~~shall refund the amount of the excess payment, with interest. Interest is allowed on overpayments at the same~~  
10 ~~rate that is charged on delinquent taxes as provided in 15-1-216.~~

11 ~~(2) A refund may not be made to a service provider who fails to claim the refund within 5 years after the~~  
12 ~~due date for filing of the return to which the claim for refund relates.~~

13  
14 NEW SECTION. Section 12. Statute of limitations. (1) Except as provided in subsection (3), a  
15 deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice  
16 of the additional fee proposed to be assessed is mailed within 5 years from the date the return was filed. For  
17 purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last  
18 day. If the service provider, before the expiration of the period prescribed for assessment of the fee, consents  
19 in writing to an assessment after that time, the fee may be assessed at any time prior to the expiration of the  
20 period agreed upon.

21 (2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after  
22 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment,  
23 whichever period expires later, unless before the expiration of the period the service provider files a claim or the  
24 department determines the existence of the overpayment and approves the refund or credit. If the service  
25 provider has agreed in writing under the provisions of subsection (1) to extend the time within which the  
26 department may propose an additional assessment, the period within which a claim for refund or credit may be  
27 filed or a credit or refund is allowed if no claim is filed is automatically extended.

28 (3) If a return is required to be filed and the service provider fails to file the return, the fee may be  
29 assessed or an action to collect the fee may be brought at any time. If a return is required to be filed and the  
30 service provider files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until

1 discovery of the fraud by the department.

2

3 **NEW SECTION. Section 13. Service provider considered taxpayer under provisions for fee.**

4 Unless the context requires otherwise, the provisions of Title 15, referring to the audit and examination of reports  
5 and returns, determination of deficiency assessments, claims for refunds, penalties and interest, jeopardy  
6 assessments, warrants, conferences, appeals to the department, appeals to the state tax appeal board, and  
7 procedures relating to the application of this part apply as if the fee imposed in this part were a tax imposed upon  
8 or measured by net income. The provisions apply to the subscriber liable for the fee and to the service provider  
9 required to collect the fee. Any amount collected and required to be remitted to the department is considered a  
10 tax upon the service provider required to collect it, and the service provider is considered a taxpayer.

11

12 **NEW SECTION. Section 14. Repealer.** Section 53-19-312, MCA, is repealed.

13

14 **NEW SECTION. Section 15. Codification instruction.** [Sections 9 through ~~45~~ 13] are intended to be  
15 codified as an integral part of Title 53, chapter 19, part 3, and the provisions of Title 53, chapter 19, part 3, apply  
16 to [sections 9 through ~~45~~ 13].

17

18 **NEW SECTION. Section 16. Effective date.** [This act] is effective on passage and approval.

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- END -