

HOUSE BILL NO. 611
INTRODUCED BY H. JACOBSON

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO TELECOMMUNICATIONS ACCESS SERVICES FOR PERSONS WITH DISABILITIES; AUTHORIZING THE DEPARTMENT OF REVENUE TO COLLECT THE TELECOMMUNICATIONS ACCESS SERVICES AND SPECIALIZED TELECOMMUNICATIONS EQUIPMENT FEE, CONDUCT AUDITS, AND ENGAGE IN OTHER ENFORCEMENT ACTIVITIES; CLARIFYING THAT PROVIDERS OF PREPAID WIRELESS SERVICES ARE REQUIRED TO ASSESS AND COLLECT THE TELECOMMUNICATIONS ACCESS SERVICES AND SPECIALIZED TELECOMMUNICATIONS EQUIPMENT FEE; AMENDING SECTIONS 2-15-2212, 53-19-302, 53-19-306, 53-19-307, 53-19-308, 53-19-310, 53-19-311, AND 69-3-1302, MCA; REPEALING SECTION 53-19-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

"2-15-2212. Committee on telecommunications access services for persons with disabilities -- composition -- allocation. (1) There is a committee on Montana telecommunications access services for persons with disabilities.

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

(a) four members who are persons with disabilities, two of whom must be deaf or hard-of-hearing;

(b) two members who are not persons with disabilities, one of whom must be engaged in a business other than a business in the telecommunications industry and one of whom must be a senior citizen;

(c) one member from the department of public health and human services;

(d) one member from the largest ~~local exchange company~~ service provider in Montana;

(e) one member from an independent ~~local exchange company~~ service provider;

(f) one member from an interLATA interexchange carrier;

(g) one member from the public service commission;

(h) one member who is a licensed audiologist; and

(i) one member from the department of administration.

(3) The committee is allocated to the department of public health and human services for administrative

purposes only as provided in 2-15-121."

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

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

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

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

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

(3) "Department" means the department of revenue.

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

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

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

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

(8) "Service provider" means an entity that offers services to subscribers in Montana to allow two or more persons in different locations to communicate orally, without regard to the technology or medium the entity uses to provide the telecommunications service, and access to telecommunications relay service.

~~(6)(9)~~ (9) "Specialized telecommunications equipment" means any telecommunications device that enables or assists a person with a disability to communicate with others by means of the ~~conventional telephone network~~ public switched or internet protocol-enabled communications networks. The term includes but is not limited to text telephones (TTY), amplifiers, signaling devices, puff-blow devices, electronic artificial larynx devices, telebraille, and equipment for the ~~mobility-impaired~~ mobility-disabled.

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

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

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

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

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

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

(2) The purpose of the program is to:

(a) furnish specialized telecommunications equipment to meet the needs of persons with disabilities; and
 (b) provide a telecommunications relay service system to connect persons with disabilities with all phases of public telecommunications service, including telecommunications service to emergency services and public safety agencies as defined in 10-4-101.

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

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

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

(a) develop an appropriate means test to determine eligibility for ~~participation in the program~~ specialized telecommunications equipment based on family income of less than 250% of the federal poverty level;

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

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

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

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

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

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

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

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

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

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

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

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

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

"53-19-308. Telecommunications relay service system -- requirements. The committee shall contract with ~~a one or more~~ qualified provider providers to design and implement a telecommunications relay service system that fulfills the purpose described in 53-19-306. The committee shall require, under the terms of the contract, that:

(1) the system relay all messages promptly and accurately;

(2) the system maintain the privacy of persons using the system; and

(3) the provider preserve the confidentiality of all ~~telephone~~ communications, except in instances in which the confidentiality would further a violation of the law."

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

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

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

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

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

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

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

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

(3) Each ~~local exchange company service provider~~ that periodically bills subscribers for its services shall bill each ~~customer subscriber~~ for the charge fee provided for in subsection (1). For subscribers who are not billed periodically, including but not limited to subscribers who purchase prepaid wireless telecommunication services for a flat fee, the service provider shall include in the price of the service a fee of 10 cents for each 30-day period during which the subscriber is authorized to use the service. Except as provided in subsection (4), all ~~charges billed and fees~~ collected by a ~~local exchange company service provider~~ must be transmitted to the ~~state treasurer department~~ no later than the last day of the month following the end of each calendar quarter in which the ~~charge is billed~~ fees are collected. All ~~charges fees~~ received by the ~~state treasurer department~~ must be deposited in the ~~fund account~~ established in 53-19-310 to the credit of the committee.

(4) Each ~~local exchange company service provider~~ may deduct and retain 3/4 of 1% of the total ~~charges~~

~~billed and fees~~ collected each month to cover its administrative expenses in complying with the requirements of subsection (3)."

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

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

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

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

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

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

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

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

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

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

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

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

(2) At the request of the committee or on its own initiative, the department or a third party designated by

the department may audit the records of any service provider to ensure proper accounting of all fees billed and collected pursuant to 53-19-311. Any expenses of the audit must be paid by the program.

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

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

NEW SECTION. Section 11. Service provider required to hold fee in trust for state penalty and interest. (1) Each service provider required to collect the fee imposed by 53-19-311 holds the fee in trust for the state of Montana and for payment of the fee to the department as provided in [section 10].

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

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

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

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

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

NEW SECTION. Section 12. Credit or refund for overpayment -- interest on overpayment. (1) If the department determines that the amount of fees, penalty, or interest paid for any year is more than the amount due, the amount of the overpayments must be credited against any fees, penalty, or interest then due from the

service provider and the balance refunded to the service provider or the service provider's successor through reorganization, merger, or consolidation, or to the service provider's shareholders upon dissolution.

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

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

(b) Interest is not allowed if:

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

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

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

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

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

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

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

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after

5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the service provider files a claim or the department determines the existence of the overpayment and approves the refund or credit. If the service provider has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund is allowed if no claim is filed is automatically extended.

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

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

NEW SECTION. Section 16. Repealer. Section 53-19-312, MCA, is repealed.

NEW SECTION. Section 17. Codification instruction. [Sections 9 through 15] are intended to be codified as an integral part of Title 53, chapter 19, part 3, and the provisions of Title 53, chapter 19, part 3, apply to [sections 9 through 15].

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

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